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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1991

BEGINNING OF TERM

OCTOBER 7, 1991, THROUGH FEBRUARY 24, 1992

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

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ERRATUM

499 U. S. 380, line 5 from bottom: "496" should be "492".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

WILLIAM H. REHNQUIST, Chief Justice.
BYRON R. WHITE, Associate Justice.
HARRY A. BLACKMUN, Associate Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.[1]

RETIRED

WARREN E. BURGER, Chief Justice.
LEWIS F. POWELL, Jr., Associate Justice.
WILLIAM J. BRENNAN, Jr., Associate Justice.
THURGOOD MARSHALL, Associate Justice.[2]

OFFICERS OF THE COURT

WILLIAM P. BARR, Attorney General.[3]
KENNETH W. STARR, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
ALFRED WONG, Marshal.
SHELLEY L. DOWLING, Librarian.

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*For notes, see p. IV.

NOTES

[1] The Honorable Clarence Thomas, of Georgia, formerly a Judge of the United States Court of Appeals for the District of Columbia Circuit, was nominated by President Bush on July 1, 1991, to be an Associate Justice of this Court; the nomination was confirmed by the Senate on October 15, 1991; he was commissioned on October 16, 1991, and he took the oaths and his seat on October 23, 1991. See also *post*, p. XI.

[2] Justice Marshall announced his retirement on June 27, 1991, effective October 1, 1991. See *post*, p. VII.

[3] The Honorable William P. Barr, of Virginia, was nominated by President Bush on October 16, 1991, to be Attorney General; the nomination was confirmed by the Senate on November 12, 1991; he was commissioned on November 20, 1991, took the oath of office on November 26, 1991, and was presented to the Court on December 9, 1991. See *post*, p. XV.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective October 9, 1990, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, THURGOOD MARSHALL, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, HARRY A. BLACKMUN, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, BYRON R. WHITE, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

October 9, 1990.

(For next previous allotment, and modifications, see 484 U. S., p. VII, and 497 U. S., p. IV.)

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 November 1, 1991, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.*

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, CLARENCE THOMAS, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

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For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, BYRON R. WHITE, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

November 1, 1991.

(For next previous allotment, and modifications, see 498 U. S., p. VI, and 501 U. S., p. V.)

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*For order of February 18, 1992, assigning JUSTICE THOMAS to the District of Columbia Circuit for the day of February 19, 1992, see *post*, p. 1084.

RETIREMENT OF JUSTICE MARSHALL

SUPREME COURT OF THE UNITED STATES

MONDAY, OCTOBER 7, 1991

Present: CHIEF JUSTICE REHNQUIST, JUSTICE WHITE, JUSTICE BLACKMUN, JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE SOUTER.

THE CHIEF JUSTICE said:

Before calling the first case for argument this morning, it is appropriate for us to note that today, for the first time in twenty-four years, a Term of the Court commences without our colleague Justice Thurgood Marshall sitting beside us on the bench. Following his retirement this summer his colleagues on the Court joined in sending him a letter which reads as follows:

SUPREME COURT OF THE UNITED STATES,
CHAMBERS OF THE CHIEF JUSTICE,
Washington, D. C., September 12, 1991.

Dear Thurgood:

Your decision to retire from the Court brings a sense of sorrow to all of us. For twenty-four years you have been a colleague, and for twenty-four years you have had an important voice in the shaping of the decisional law of this Court. We will miss your counsel in our future deliberations, and will likewise miss the innumerable "tall tales" with which you delighted us.

Everyone who sits on the Supreme Court will be remembered in the history of American constitutional law, but you are unique in having made major contributions to that law before becoming a member of the Court. Your role in the battle for equal treatment of the races would entitle you to a prominent place in that history had you never ascended the bench at all. You leave behind you landmarks from your career as a lawyer, as well as from your career as a judge.

We bid you farewell from our common labors, but look forward to your continued society off the bench. We trust that retirement at this time will help you regain the good health which is our wish for you.

Affectionately,

WILLIAM H. REHNQUIST
BYRON R. WHITE
HARRY A. BLACKMUN
JOHN PAUL STEVENS
SANDRA O'CONNOR
ANTONIN SCALIA
ANTHONY M. KENNEDY
DAVID H. SOUTER

Justice Marshall said:

SUPREME COURT OF THE UNITED STATES
CHAMBERS OF JUSTICE THURGOOD MARSHALL *(Retired)*,
Washington, D. C., October 1, 1991.

Dear Colleagues:

Thank you for your gracious letter. As I read it, I was reminded of the wonderful times we have spent together both personally and professionally over the years. It has been a great honor for me to serve on the Court, and I am saddened that I must now give up the daily fare—the oral arguments, the Conference discussions, the opinions and dissents—that has provided me such enormous intellectual and emotional satisfaction for 24 years.

More than that, though, I am saddened that I will no longer have the opportunity to enjoy regular contact and communications with all of you. Your warmth and collegiality have been of great encouragement to me; I will miss that—and all of you—deeply.

Although I will not take part in the work ahead, I am hopeful the Court will meet the upcoming challenges, and I am grateful for the time we have spent together. Because of the bonds we have formed, I rest assured that though my active service on the Court ends, our ties of friendship hold fast.

Affectionately,

THURGOOD

APPOINTMENT OF JUSTICE THOMAS

SUPREME COURT OF THE UNITED STATES

FRIDAY, NOVEMBER 1, 1991

Present: CHIEF JUSTICE REHNQUIST, JUSTICE WHITE, JUSTICE BLACKMUN, JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE SOUTER.

THE CHIEF JUSTICE said:

This special sitting of the Court is held today to receive the commission of the newly appointed Associate Justice of the Supreme Court of the United States, Clarence Thomas. The Court now recognizes the Acting Attorney General of the United States, William Barr.

The Acting Attorney General said:

MR. CHIEF JUSTICE and may it please the Court, I have the commission which has been issued to the Honorable Clarence Thomas as an Associate Justice of the Supreme Court of the United States. The commission has been duly signed by the President of the United States and attested by me as the Acting Attorney General of the United States. I move that the Clerk read the commission and that it be made a part of the permanent records of this Court.

THE CHIEF JUSTICE said:

Thank you Mr. Barr. Your motion is granted. Mr. Clerk, will you please read the Commission?

The Clerk then read the commission as follows:

GEORGE BUSH,

PRESIDENT OF THE UNITED STATES OF AMERICA,

To all who shall see these Presents, Greeting:

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

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

Done at the City of Washington, this sixteenth day of October, in the year of our Lord one thousand nine hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

[SEAL] GEORGE BUSH

By the President:

WILLIAM P. BARR,

Acting Attorney General

THE CHIEF JUSTICE said:

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

THE CHIEF JUSTICE said:

Justice Thomas, are you prepared to take the oath?

Justice Thomas said:

I am.

The oath of office was then administered by THE CHIEF JUSTICE and Justice Thomas repeated the oath after him as follows:

I, Clarence Thomas, do solemnly swear that I will administer justice without respect to person, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court of the United States under the Constitution and laws of the United States.

So help me God.

CLARENCE THOMAS

Subscribed and sworn to before me this first day of November, 1991.

WILLIAM H. REHNQUIST
Chief Justice

THE CHIEF JUSTICE said:

JUSTICE THOMAS, on behalf of all the members of the Court, it is a pleasure to extend to you a very warm welcome as an Associate Justice of this Court and to wish for you a long and happy career in our common calling.

PRESENTATION OF THE ATTORNEY GENERAL

SUPREME COURT OF THE UNITED STATES

MONDAY, DECEMBER 9, 1991

Present: CHIEF JUSTICE REHNQUIST, JUSTICE WHITE, JUSTICE BLACKMUN, JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, and JUSTICE THOMAS.

THE CHIEF JUSTICE said:

The Court now recognizes the Solicitor General, Mr. Kenneth Starr.

Mr. Solicitor General Kenneth Starr said:

MR. CHIEF JUSTICE, and may it please the Court, I have the honor to present to the Court the seventy-seventh Attorney General of the United States, the Honorable William Pelham Barr of Virginia.

THE CHIEF JUSTICE said:

Mr. Attorney General, on behalf of the Court, I welcome you as the chief law officer of the government and as an officer of this Court. We welcome you to the performance of the very important duties which will rest upon you by virtue of your office. Your commission as Attorney General of the United States will be placed in the records of the Court and we wish you well in your new office.

Attorney General William Barr said:

Thank you, MR. CHIEF JUSTICE.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1991

UNITED STATES *v.* IBARRA

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

No. 90–1713. Decided October 15, 1991

While stopped for a vehicle operating violation, respondent gave police permission to search his car, but they found nothing. However, they impounded the car because respondent had no operator's license, and they found cocaine during a subsequent search. Respondent filed a pretrial motion to suppress the evidence from the second search, which the Government contested on the ground that the search was conducted pursuant to his continuing consent. However, the Government abandoned this argument, and the District Court granted respondent's motion. The Government subsequently moved for reconsideration of the suppression order, again raising the consent issue, but the court denied the motion. The Court of Appeals dismissed the Government's appeal as untimely, holding that the Government's motion to reconsider did not "toll" the 30-day period to appeal, which began to run on the date of the initial order. The court also held that this Court's decisions in *United States* v. *Healy*, 376 U. S. 75—that a motion for rehearing renders an otherwise final decision of a district court not final until it decides the motion—and *United States* v. *Dieter*, 429 U. S. 6 *(per curiam)*—that there is no exception to *Healy*'s rule for petitions for rehearing which do not assert an alleged error of law—did not control in a case where the Government's motion is based on a previously disavowed theory.

Held: The Government's appeal was timely. All motions for reconsideration are subsumed under one general rule—the rule laid down in *Healy*. If a merits inquiry were grafted onto the general rule, litigants would

be required to guess at their peril the date on which the time to appeal commences to run. An alternative method of analysis—that the Government's motion was not a "true" motion for reconsideration because the Government did not initially urge the argument on which it based the motion—would also break down into subcategories the more general category of "motions for reconsideration" described in this Court's previous decisions.

Certiorari granted; 920 F. 2d 702, vacated and remanded.

PER CURIAM.

The United States District Court for the District of Wyoming ordered that certain evidence which the Government proposed to use in respondent's pending criminal trial be suppressed. The Government appealed the order to the Court of Appeals for the Tenth Circuit, but that court dismissed the Government's appeal. It held that the 30-day period in which to file an appeal began to run on the date of the District Court's original suppression order, rather than on the date the District Court denied the Government's motion for reconsideration. 920 F. 2d 702 (1990). We grant the Government's petition for certiorari and vacate the judgment of the Court of Appeals.

I

Respondent was indicted for possession of cocaine with intent to distribute. The circumstances leading to the indictment are largely uncontested. Law enforcement officers stopped respondent's car for a suspected operating violation. The officers questioned respondent and asked for permission to search the car. Respondent granted the request and a brief search was conducted but no cocaine was identified or seized. However, noting that neither respondent nor his passenger had a valid operator's license, the officers impounded the car and transported respondent and his passenger to a Western Union office. The officers then went to the towing service lot and searched the car a second time. They found cocaine in the trunk. Respondent filed a pretrial motion to suppress the evidence found in the second search.

Among the theories on which the Government originally contested the motion was that the second search had been conducted pursuant to respondent's continuing consent. However, before the District Court ruled on the suppression motion, the Government abandoned the continuing consent theory in papers filed with the court, citing a lack of legal support for its position. On November 15, 1989, after an evidentiary hearing, the District Court granted the motion to suppress and noted in its order the Government's abandonment of the continuing consent theory. 725 F. Supp. 1195, 1200 (Wyo. 1989). On December 13, 1989, the Government filed with the District Court a "Motion for Reconsideration of Suppression Order." The sole basis for the Government's motion was its reassertion of the continuing consent theory. On January 3, 1990, the District Court denied the motion. The Government noticed its appeal on January 30, 1990, less than 30 days after the denial of the motion for reconsideration but 76 days after the initial suppression order.

A divided panel of the Tenth Circuit dismissed the appeal as untimely, holding that the Government's motion to reconsider did not "toll" the 30-day period[1] to appeal which began

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[1] Federal Rule of Appellate Procedure 4(b) provides, *inter alia:*

"When an appeal by the government is authorized by statute, the notice of appeal shall be filed in the district court within 30 days after the entry of (i) the judgment or order appealed from or (ii) a notice of appeal by any defendant."

Statutory authorization for the United States to appeal a suppression order is found at 18 U. S. C. § 3731:

"An appeal by the United States shall lie to a court of appeals from a decision or order of a district courts *[sic]* suppressing or excluding evidence.

. . . . . .

"The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted."

to run on the date of the initial order.[2] In the course of its opinion, the Court of Appeals rejected the Government's argument that this Court's decisions in *United States* v. *Healy*, 376 U. S. 75 (1964), and *United States* v. *Dieter*, 429 U. S. 6 (1976) *(per curiam)*, controlled the decision.

In *United States* v. *Healy*, *supra*, we said:

> "The question, therefore, is simply whether in a criminal case a timely petition for rehearing by the Government filed within the permissible time for appeal renders the judgment not final for purposes of appeal until the Court disposes of the petition—in other words whether in such circumstances the 30-day period . . . begins to run from the date of entry of judgment or the denial of the petition for rehearing." 376 U. S., at 77–78.

The Court answered this question by saying that under the "well-established rule in civil cases," *id.*, at 78, the 30-day period begins with the denial of the petition for rehearing and by further observing that this Court's consistent practice had been to treat petitions for rehearing as having the

[2] The Court of Appeals' decision discusses the issue as a matter of whether the motion for reconsideration "tolled" the 30-day period that, by assumption, began to run with the District Court's first decision. We believe the issue is better described as whether the 30-day period began to run on the date of the first order or on the date of the order denying the motion for reconsideration, rather than as a matter of tolling. Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped. See *Cada* v. *Baxter Healthcare Corp.*, 920 F. 2d 446 (CA7 1990) (discussing principles of equitable tolling). Thus, in the present case for example, a motion to reconsider filed after 20 days, if it tolled the 30-day period to appeal, would leave at most only 10 days to appeal once the reconsideration motion was decided. However, we previously made clear that would-be appellants are entitled to the full 30 days after a motion to reconsider has been decided. *United States* v. *Dieter*, 429 U. S. 6, 7–8 (1976) *(per curiam)* ("[T]he 30-day limitation period runs from the denial of a timely petition . . . rather than from the date of the order itself").

same effect in criminal cases. *Id.*, at 78–79. More than 12 years later, we decided *United States* v. *Dieter*, *supra (per curiam)*. There, too, the Court of Appeals for the Tenth Circuit dismissed as untimely the Government's appeal from a District Court's order dismissing an indictment. Although the Government's notice of appeal had been filed within 30 days of a District Court order denying its "Motion to Set Aside Order of Dismissal," it was not filed within 30 days after the order of dismissal itself. The Court of Appeals held that our decision in *Healy*, *supra*, governed only in cases of claimed errors of law, whereas the basis of the Government's motion for reconsideration in *Dieter* was mistake or inadvertence.

We vacated and remanded the decision of the Court of Appeals, saying that it "misconceived the basis of our decision in *Healy*. We noted there that the consistent practice in civil and criminal cases alike has been to treat timely petitions for rehearing as rendering the original judgment nonfinal for purposes of appeal for as long as the petition is pending." 429 U. S., at 8. We pointed out the presumed benefits of this rule—district courts are given the opportunity to correct their own alleged errors, and allowing them to do so prevents unnecessary burdens being placed on the courts of appeals. We concluded that "the Court of Appeals' law/fact distinction—assuming such a distinction can be clearly drawn for these purposes—finds no support in *Healy*." *Ibid.*

The Court of Appeals in the present case nonetheless determined that the 30-day period was not affected by the Government's motion to reconsider. It instead created a special rule for motions that seek reconsideration of previously disavowed theories because it concluded that suspending the time to appeal upon such motions does not further the goals described in *Dieter*. Because such motions do not serve to

permit the district court to reconsider matters initially overlooked, the Court of Appeals thought that delaying the appellate process pending resolution of such motions is unlikely to contribute to judicial efficiency. 920 F. 2d, at 706. It also noted that Government motions to reconsider a position conceded during appellate litigation are viewed with disfavor when filed before an appellate tribunal. *Ibid.* (citing *United States* v. *Smith*, 781 F. 2d 184 (CA10 1986)).

II

We think the Court of Appeals has misread our decisions in *Healy*, *supra*, and *Dieter*, *supra*. The first of these decisions established that a motion for rehearing in a criminal case, like a motion for rehearing in a civil case, renders an otherwise final decision of a district court not final until it decides the petition for rehearing. In *Dieter*, we rejected an effort to carve out exceptions to this general rule in the case of petitions for rehearing which do not assert an alleged error of law. We think that the Court of Appeals' present effort to carve out a different exception to the general rule laid down in *Healy* must likewise be rejected.

It may be that motions to reconsider based on previously abandoned grounds are not apt to fare well either in the district court or on appeal to the court of appeals. But if such a judgment as to the merits were allowed to play a part in deciding the time in which a denial of the motion may be appealed, it is difficult to see why a similar merits analysis should not be undertaken for all motions for reconsideration. The result would be, as the dissenting judge below pointed out, to "graf[t] a merits inquiry onto what should be a bright-line jurisdictional inquiry." 920 F. 2d, at 710 (Baldock, J., dissenting).

Undoubtedly some motions for reconsideration are so totally lacking in merit that the virtues of the rule established in *Healy* are not realized by delaying the 30-day period. If it were possible to pick them out in advance, it would be

better if litigants pursuing such motions were made to go sooner, rather than later, on their fruitless way to the appellate court. But there is no certain way of deciding in advance which motions for reconsideration have the requisite degree of merit, and which do not. Given this, it is far better that all such motions be subsumed under one general rule—the rule laid down in *Healy.* Without a clear general rule litigants would be required to guess at their peril the date on which the time to appeal commences to run. Prudent attorneys would be encouraged to file notices of appeal from orders of the district court, even though the latter court is in the course of considering a motion for rehearing of the order. Cf. *United States* v. *Ladson,* 774 F. 2d 436, 438–439, n. 3 (CA11 1985). Less prudent attorneys would find themselves litigating in the courts of appeals whether a motion for reconsideration filed in the district court had sufficient potential merit to justify the litigant's delay in pursuing appellate review. Neither development would be desirable.

The Court of Appeals' opinion can be read to hold that because the Government did not initially urge the argument which it made in its motion for reconsideration, that motion was not a "true" motion for reconsideration which would extend the time for appeal. But this method of analysis, too, would break down into subcategories the more general category of "motions for reconsideration" described in our previous opinions. Here, the Government's motion before the District Court sought to "'reconsider [a] question decided in the case' in order to effect an 'alteration of the rights adjudicated.'" *Dieter,* 429 U. S., at 8–9 (quoting *Department of Banking of Neb.* v. *Pink,* 317 U. S. 264, 266 (1942)). That is sufficient under *Healy* and *Dieter.*[3]

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[3] Two other concerns that animate the Tenth Circuit's decision are simply inapposite to the present case. First, there is no assertion that the Government's abandonment and reassertion of the consensual search theory was done in bad faith. We thus have no occasion to consider whether instances of bad faith might require a different result. See *United States*

Per Curiam

The petition for certiorari is granted, respondent's motion to proceed *in forma pauperis* is granted, the judgment of the Court of Appeals is vacated, and the case is remanded to that court for further proceedings.

It is so ordered.

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v. *Healy,* 376 U. S. 75, 80, n. 4 (1964). Second, only a single motion for reconsideration was filed. We thus also have no occasion to consider whether it is appropriate to refuse to extend the time to appeal in cases in which successive motions for reconsideration are submitted. See *United States* v. *Marsh,* 700 F. 2d 1322 (CA10 1983).

MIRELES *v.* WACO

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

No. 91–311. Decided October 21, 1991

Respondent Waco, a public defender, filed this action under 42 U. S. C. § 1983, seeking damages from, *inter alios*, petitioner Mireles, a California Superior Court judge, for ordering the police, forcibly and with excessive force, to seize and bring him into the courtroom when he failed to appear for the calling of the calendar. The Federal District Court dismissed the complaint against the judge, pursuant to Federal Rule of Civil Procedure 54(b), on the grounds of complete judicial immunity. However, the Court of Appeals reversed, holding that the judge was not acting in his judicial capacity when he requested and authorized the use of excessive force.

Held: The Court of Appeals erred in ruling that Judge Mireles' alleged actions were not taken in his judicial capacity. Judicial immunity is an immunity from suit, not just from ultimate assessment of damages, and it can be overcome only if a judge's actions are nonjudicial or were taken in the complete absence of all jurisdiction. Here, the judge's function of directing police officers to bring counsel in a pending case before the court is a general function normally performed by a judge. That he may have made a mistake or acted in excess of his authority does not make the act nonjudicial. See, *e. g.*, *Forrester* v. *White*, 484 U. S. 219, 227. His action was also taken in the very aid of his jurisdiction over the matter before him, and thus it cannot be said that the action was taken in the absence of jurisdiction.

Certiorari granted; reversed.

PER CURIAM.

A long line of this Court's precedents acknowledges that, generally, a judge is immune from a suit for money damages. See, *e. g.*, *Forrester* v. *White*, 484 U. S. 219 (1988); *Cleavinger* v. *Saxner*, 474 U. S. 193 (1985); *Dennis* v. *Sparks*, 449 U. S. 24 (1980); *Supreme Court of Va.* v. *Consumers Union of United States, Inc.*, 446 U. S. 719 (1980); *Butz* v. *Economou*, 438 U. S. 478 (1978); *Stump* v. *Sparkman*, 435 U. S. 349 (1978); *Pierson*

v. *Ray*, 386 U. S. 547 (1967).[1] Although unfairness and injustice to a litigant may result on occasion, "it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley* v. *Fisher*, 13 Wall. 335, 347 (1872).

In this case, respondent Howard Waco, a Los Angeles County public defender, filed suit in the United States District Court for the Central District of California under Rev. Stat. § 1979, 42 U. S. C. § 1983, against petitioner, Raymond Mireles, a judge of the California Superior Court, and two police officers, for damages arising from an incident in November 1989 at the Superior Court building in Van Nuys, Cal. Waco alleged that after he failed to appear for the initial call of Judge Mireles' morning calendar, the judge, "angered by the absence of attorneys from his courtroom," ordered the police officer defendants "to forcibly and with excessive force seize and bring plaintiff into his courtroom." App. to Pet. for Cert. B–3, ¶ 7(a). The officers allegedly "by means of unreasonable force and violence seize[d] plaintiff and remove[d] him backwards" from another courtroom where he was waiting to appear, cursed him, and called him "vulgar and offensive names," then "without necessity slammed" him through the doors and swinging gates into Judge Mireles' courtroom. *Id.*, at B–4, ¶ 7(c). Judge Mireles, it was alleged, "knowingly and deliberately approved and ratified each of the aforedescribed acts" of the police officers. *Ibid.* Waco demanded general and punitive damages. *Id.*, at B–5 and B–6.

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[1] The Court, however, has recognized that a judge is not absolutely immune from criminal liability, *Ex parte Virginia*, 100 U. S. 339, 348–349 (1880), or from a suit for prospective injunctive relief, *Pulliam* v. *Allen*, 466 U. S. 522, 536–543 (1984), or from a suit for attorney's fees authorized by statute, *id.*, at 543–544.

Judge Mireles moved to dismiss the complaint as to him, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6), for failure to state a claim upon which relief could be granted. The District Court dismissed the claim against the judge and entered final judgment as to him, pursuant to Rule 54(b), on grounds of "complete judicial immunity." App. to Pet. for Cert. D–2. On Waco's appeal, the United States Court of Appeals for the Ninth Circuit reversed that judgment. *Waco* v. *Baltad*, 934 F. 2d 214 (1991). The court determined that Judge Mireles was not immune from suit because his alleged actions were not taken in his judicial capacity. It opined that Judge Mireles would have been acting in his judicial capacity if he had "merely directed the officers to bring Waco to his courtroom without directing them to use excessive force." *Id.*, at 216. But "[i]f Judge Mireles requested and authorized the use of excessive force, then he would not be acting in his judicial capacity." *Ibid.*

Taking the allegations of the complaint as true, as we do upon a motion to dismiss, we grant the petition for certiorari and summarily reverse.

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. *Mitchell* v. *Forsyth*, 472 U. S. 511, 526 (1985). Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial. *Pierson* v. *Ray*, 386 U. S., at 554 ("[I]mmunity applies even when the judge is accused of acting maliciously and corruptly"). See also *Harlow* v. *Fitzgerald*, 457 U. S. 800, 815–819 (1982) (allegations of malice are insufficient to overcome qualified immunity).

Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i. e.*, actions not taken in the judge's judicial capacity. *Forrester* v. *White*, 484 U. S., at 227–229; *Stump* v. *Sparkman*, 435 U. S., at 360.

Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Id.*, at 356–357; *Bradley* v. *Fisher*, 13 Wall., at 351.

We conclude that the Court of Appeals erred in ruling that Judge Mireles' alleged actions were not taken in his judicial capacity. This Court in *Stump* made clear that "whether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, *i. e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i. e.*, whether they dealt with the judge in his judicial capacity." 435 U. S., at 362. See also *Forrester* v. *White*, 484 U. S., at 227–229. A judge's direction to court officers to bring a person who is in the courthouse before him is a function normally performed by a judge. See generally Cal. Civ. Proc. Code Ann. §§ 128, 177, 187 (West 1982 and Supp. 1991) (setting forth broad powers of state judges in the conduct of proceedings).[2] Waco, who was called into the courtroom for purposes of a pending case, was dealing with Judge Mireles in the judge's judicial capacity.

Of course, a judge's direction to police officers to carry out a judicial order with excessive force is not a "function normally performed by a judge." *Stump* v. *Sparkman*, 435 U. S., at 362. But if only the particular act in question were to be scrutinized, then any mistake of a judge in excess of his authority would become a "nonjudicial" act, because an improper or erroneous act cannot be said to be normally performed by a judge. If judicial immunity means anything, it

[2] California Civ. Proc. Code Ann. § 128 (West Supp. 1991) provides in pertinent part: "Every court shall have the power to do all of the following: . . . (5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." See *Ligda* v. *Superior Court of Solano County*, 5 Cal. App. 3d 811, 826, 85 Cal. Rptr. 744, 753 (1970) (public defender is "'ministerial officer'" and one of "'all other persons in any manner connected with a judicial proceeding'" within the meaning of § 128, and may be ordered to appear to assist criminal defendant).

means that a judge "will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority." *Id.*, at 356. See also *Forrester* v. *White*, 484 U. S., at 227 (a judicial act "does not become less judicial by virtue of an allegation of malice or corruption of motive"). Accordingly, as the language in *Stump* indicates, the relevant inquiry is the "nature" and "function" of the act, not the "act itself." 435 U. S., at 362. In other words, we look to the particular act's relation to a general function normally performed by a judge, in this case the function of directing police officers to bring counsel in a pending case before the court.

Nor does the fact that Judge Mireles' order was carried out by police officers somehow transform his action from "judicial" to "executive" in character. As *Forrester* instructs, it is "the nature of the function performed, not the identity of the actor who performed it, that inform[s] our immunity analysis." 484 U. S., at 229. A judge's direction to an executive officer to bring counsel before the court is no more executive in character than a judge's issuance of a warrant for an executive officer to search a home. See *Burns* v. *Reed*, 500 U. S. 478, 492 (1991) ("[T]he issuance of a search warrant is unquestionably a judicial act").

Because the Court of Appeals concluded that Judge Mireles did not act in his judicial capacity, the court did not reach the second part of the immunity inquiry: whether Judge Mireles' actions were taken in the complete absence of all jurisdiction. We have little trouble concluding that they were not. If Judge Mireles authorized and ratified the police officers' use of excessive force, he acted in excess of his authority. But such an action—taken in the very aid of the judge's jurisdiction over a matter before him—cannot be said to have been taken in the absence of jurisdiction.

The petition for certiorari is granted, and the judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE STEVENS, dissenting.

Judicial immunity attaches only to actions undertaken in a judicial capacity. *Forrester* v. *White*, 484 U. S. 219, 227–229 (1988). In determining whether an action is "judicial," we consider the nature of the act and whether it is a "function normally performed by a judge." *Stump* v. *Sparkman*, 435 U. S. 349, 362 (1978).*

Respondent Howard Waco alleges that petitioner Judge Raymond Mireles ordered police officers "to forcibly and with excessive force seize and bring" respondent into petitioner's courtroom. App. to Pet. for Cert. B–3, ¶ 7(a). As the Court acknowledges, ordering police officers to use excessive force is "not a 'function normally performed by a judge.'" *Ante*, at 12 (quoting *Stump* v. *Sparkman*, 435 U. S., at 362). The Court nevertheless finds that judicial immunity is applicable because of the action's "relation to a general function normally performed by a judge." *Ante*, at 13.

Accepting the allegations of the complaint as true, as we must in reviewing a motion to dismiss, petitioner issued two commands to the police officers. He ordered them to bring respondent into his courtroom, and he ordered them to commit a battery. The first order was an action taken in a judicial capacity; the second clearly was not. Ordering a battery has no relation to a function normally performed by a judge. If an interval of a minute or two had separated the two orders, it would be undeniable that no immunity would attach to the latter order. The fact that both are alleged to

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*See also *Supreme Court of Va.* v. *Consumers Union of United States, Inc.*, 446 U. S. 719, 736–737 (1980) (judge not entitled to judicial immunity when acting in enforcement capacity); cf. *Mitchell* v. *Forsyth*, 472 U. S. 511, 520–524 (1985) (Attorney General not absolutely immune when performing "national security," rather than prosecutorial, function). Moreover, even if the act is "judicial," judicial immunity does not attach if the judge is acting in the "'clear absence of all jurisdiction.'" *Stump* v. *Sparkman*, 435 U. S., at 357 (quoting *Bradley* v. *Fisher*, 13 Wall. 335, 351 (1872)).

have occurred as part of the same communication does not enlarge the judge's immunity.

Accordingly, I respectfully dissent.

JUSTICE SCALIA, with whom JUSTICE KENNEDY joins, dissenting.

"A summary reversal . . . is a rare and exceptional disposition, 'usually reserved by this Court for situations in which the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error.'" R. Stern, E. Gressman, & S. Shapiro, Supreme Court Practice 281 (6th ed. 1986) (quoting *Schweiker* v. *Hansen*, 450 U. S. 785, 791 (1981) (Marshall, J., dissenting)). As JUSTICE STEVENS' dissent amply demonstrates, the decision here reversed is, at a minimum, not *clearly* in error.

I frankly am unsure whether the Court's disposition or JUSTICE STEVENS' favored disposition is correct; but I am sure that, if we are to decide this case, we should not do so without briefing and argument. In my view, we should not decide it at all; the factual situation it presents is so extraordinary that it does not warrant the expenditure of our time. I would have denied the petition for writ of certiorari.

Per Curiam

ZATKO *v.* CALIFORNIA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 91–5052. Decided November 4, 1991*

Over the past 10 years, petitioner Zatko has filed 73 petitions with this Court, 34 within the last 2 years, and petitioner Martin has filed over 45 petitions, 15 within the last 2 years.

Held: Zatko and Martin are denied *in forma pauperis* status in the instant cases, pursuant to this Court's Rule 39.8. Their patterns of repetitious filings have resulted in an extreme abuse of the system by burdening the office of the Clerk and other members of the Court's staff.

Motions denied.

PER CURIAM.

Last Term, we amended Rule 39 of the Rules of the Supreme Court of the United States to add the following:

> "39.8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis.*"

Because *in forma pauperis* petitioners lack the financial disincentives—filing fees and attorney's fees—that help to

*Together with No. 91–5111, *Zatko* v. *United States District Court for the Northern District of California*, No. 91–5166, *Zatko* v. *United States District Court for the Northern District of California*, No. 91–5167, *Zatko* v. *United States*, No. 91–5244, *Martin* v. *Mrvos*, No. 91–5246, *Martin* v. *Smith*, No. 91–5307, *Martin* v. *Delaware Law School of Widener University, Inc.*, No. 91–5331, *Martin* v. *Walmer*, No. 91–5332, *Martin* v. *Townsend*, No. 91–5401, *Martin* v. *Supreme Court of New Jersey*, No. 91–5416, *Zatko* v. *California*, No. 91–5476, *Martin* v. *Bar of the District of Columbia Court of Appeals*, No. 91–5583, *Martin* v. *Huyett*, No. 91–5594, *Zatko* v. *United States District Court for the Northern District of California*, No. 91–5692, *Zatko* v. *United States District Court for the Northern District of California*, No. 91–5730, *Zatko* v. *California*, and No. 91–5732, *Zatko* v. *California*, also on motion for leave to proceed *in forma pauperis.*

deter other litigants from filing frivolous petitions, we felt such a Rule change was necessary to provide us some control over the *in forma pauperis* docket. In ordering the amendment, we sought to discourage frivolous and malicious *in forma pauperis* filings, "particularly [from] those few persons whose filings are repetitive with the obvious effect of burdening the office of the Clerk and other members of the Court staff." *In re Amendment to Rule 39*, 500 U. S. 13 (1991).

Today, we invoke Rule 39.8 for the first time, and deny *in forma pauperis* status to petitioners Vladimir Zatko and James L. Martin. We do not do so casually, however. We deny leave to proceed *in forma pauperis* only with respect to two petitioners who have repeatedly abused the integrity of our process through frequent frivolous filings. Over the last 10 years, Zatko has filed 73 petitions in this Court; 34 of those filings have come within the last 2 years. Martin has been only slightly less prolific over the same 10-year period and has filed over 45 petitions, 15 of them within the last 2 years. In each of their filings up to this point, we have permitted Zatko and Martin to proceed *in forma pauperis*, and we have denied their petitions without recorded dissent. However, this Court's goal of fairly dispensing justice "is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests" such as these. *In re Sindram*, 498 U. S. 177, 179–180 (1991). We conclude that the pattern of repetitious filing on the part of Zatko and Martin has resulted in an extreme abuse of the system. In the hope that our action will deter future similar frivolous practices, we deny Zatko and Martin leave to proceed *in forma pauperis* in these cases.

The dissent complains that, by invoking this Rule against Zatko and Martin, we appear to ignore our duty to provide equal access to justice for both the rich and the poor. The message we hope to send is quite the opposite, however. In order to advance the interests of justice, the Court's general

practice is to waive all filing fees and costs for indigent individuals, whether or not the petitions those individuals file are frivolous. As the dissent recognizes, for example, well over half of the numerous *in forma pauperis* petitions filed since the beginning of this Term are best characterized as frivolous. It is important to observe that we have not applied Rule 39.8 to those frivolous petitions, although the Rule might technically apply to them. Instead, we have denied those petitions in the usual manner, underscoring our commitment to hearing the claims, however meritless, of the poor. But "[i]t is vital that the right to file *in forma pauperis* not be incumbered by those who would abuse the integrity of our process by frivolous filings." *In re Amendment to Rule 39, supra,* at 13. For that reason we take the limited step of censuring two petitioners who are unique—not merely among those who seek to file *in forma pauperis,* but also among those who have paid the required filing fees—because they have repeatedly made totally frivolous demands on the Court's limited resources.

To discourage abusive tactics that actually hinder us from providing equal access to justice for all, we therefore deny leave to proceed *in forma pauperis* in these cases, pursuant to Rule 39.8. Accordingly, petitioners are allowed until November 25, 1991, within which to pay the docketing fee required by Rule 38 and to submit petitions in compliance with Rule 33 of the Rules of this Court. Future similar filings from these petitioners will merit additional measures.

It is so ordered.

JUSTICE THOMAS took no part in the consideration or decision of these motions.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

Last Term, over the dissent of three Justices, the Court amended its Rule 39 for the "vital" purpose of protecting

"the integrity of our process" from those indigent petitioners who file frivolous petitions for certiorari.[1] Since the amended Rule became effective on July 1, 1991, indigent litigants have filed almost 1,000 petitions, which this Court has denied without pausing to determine whether they were frivolous within the meaning of Rule 39. In my judgment, well over half of these petitions could have been characterized as frivolous. Nevertheless, under procedures that have been in place for many years, the petitions were denied in the usual manner. The "integrity of our process" was not compromised in the slightest by the Court's refusal to spend valuable time deciding whether to enforce Rule 39 against so many indigent petitioners.

The Court has applied a different procedure to the petitioners in these cases. Their multiple filings have enabled the Court to single them out as candidates for enforcement of the amended Rule. As a result, the order in their cases denies leave to proceed *in forma pauperis* pursuant to Rule 39.8, rather than simply denying certiorari. The practical effect of such an order is the same as a simple denial.[2] However, the symbolic effect of the Court's effort to draw distinctions among the multitude of frivolous petitions—none of which will be granted in any event—is powerful. Although the Court may have intended to send a message about the

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[1] *In re Amendment to Rule 39*, 500 U. S. 13, 14 (1991). The amended Rule, Rule 39.8 of the Rules of the Supreme Court of the United States, provides as follows:

"If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis*."

[2] In the past, I have noted that the work of the Court is "facilitated by the practice of simply denying certiorari once a determination is made that there is no merit to the petitioner's claim," rather than determining whether "the form of the order should be a denial or a dismissal" in cases of questionable jurisdiction. *Davis* v. *Jacobs*, 454 U. S. 911, 914–915 (1981) (opinion respecting denial of petitions for writs of certiorari).

need for the orderly administration of justice and respect for the judicial process, the message that it actually conveys is that the Court does not have an overriding concern about equal access to justice for both the rich and the poor.[3]

By its action today, the Court places yet another barrier in the way of indigent petitioners.[4] By branding these petitioners under Rule 39.8, the Court increases the chances that their future petitions, which may very well contain a colorable claim, will not be evaluated with the attention they deserve.

Because I believe the Court has little to gain and much to lose by applying Rule 39.8 as it does today, I would deny certiorari in these cases, and will so vote in similar cases in the future.

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[3] "Our longstanding tradition of leaving our door open to all classes of litigants is a proud and decent one worth maintaining. See *Talamini* v. *Allstate Ins. Co.*, 470 U. S. 1067, 1070 (1985) (STEVENS, J., concurring)." *In re Sindram*, 498 U. S. 177, 182 (1991) (Marshall, J., dissenting, joined by BLACKMUN and STEVENS, JJ.).

[4] "And with each barrier that it places in the way of indigent litigants, . . . the Court can only reinforce in the hearts and minds of our society's less fortunate members the unsettling message that their pleas are not welcome here." *In re Demos*, 500 U. S. 16, 19 (1991) (Marshall, J., dissenting, joined by BLACKMUN and STEVENS, JJ.).

Syllabus

HAFER *v.* MELO ET AL.

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

No. 90–681. Argued October 15, 1991—Decided November 5, 1991

After petitioner Hafer, the newly elected auditor general of Pennsylvania, discharged respondents from their jobs in her office, they sued her for, *inter alia*, monetary damages under 42 U. S. C. § 1983. The District Court dismissed the latter claims under *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 71, in which the Court held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability under § 1983. In reversing this ruling, the Court of Appeals found that respondents sought damages from Hafer in her personal capacity and held that, because she acted under color of state law, respondents could maintain a § 1983 individual-capacity suit against her.

Held: State officers may be held personally liable for damages under § 1983 based upon actions taken in their official capacities. Pp. 25–31.

(a) The above-quoted language from *Will* does not establish that Hafer may not be held personally liable under § 1983 because she "act[ed]" in her official capacity. The claims considered in *Will* were official-capacity claims, and the phrase "acting in their official capacities" is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury. Pp. 25–27.

(b) State officials, sued in their individual capacities, are "persons" within the meaning of § 1983. Unlike official-capacity defendants—who are not "persons" because they assume the identity of the government that employs them, *Will*, *supra*, at 71—officers sued in their personal capacity come to the court as individuals and thus fit comfortably within the statutory term "person," cf. 491 U. S., at 71, n. 10. Moreover, § 1983's authorization of suits to redress deprivations of civil rights by persons acting "under color of" state law means that Hafer may be liable for discharging respondents precisely because of her authority as auditor general. Her assertion that acts that are both within the official's authority and necessary to the performance of governmental functions (including the employment decisions at issue) should be considered acts of the State that cannot give rise to a personal-capacity action is unpersuasive. That contention ignores this Court's holding that § 1983 was enacted to enforce provisions of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity,

whether they act in accordance with their authority or misuse it. *Scheuer* v. *Rhodes*, 416 U. S. 232, 243. Furthermore, Hafer's theory would absolutely immunize state officials from personal liability under § 1983 solely by virtue of the "official" nature of their acts, in contravention of this Court's immunity decisions. See, *e. g.*, *Scheuer*, *supra.* Pp. 27–29.

(c) The Eleventh Amendment does not bar § 1983 personal-capacity suits against state officials in federal court. *Id.*, at 237, 238. *Will*'s language concerning suits against state officials cannot be read as establishing the limits of liability under the Amendment, since *Will* arose from a suit in state court and considered the Amendment only because the fact that Congress did not intend to override state immunity when it enacted § 1983 was relevant to statutory construction. 491 U. S., at 66. Although imposing personal liability on state officers may hamper their performance of public duties, such concerns are properly addressed within the framework of this Court's personal immunity jurisprudence. Pp. 29–31.

912 F. 2d 628, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which all other Members joined, except THOMAS, J., who took no part in the consideration or decision of the case.

Jerome R. Richter argued the cause for petitioner. With him on the briefs was *Goncer M. Krestal.*

William Goldstein argued the cause for respondents. With him on the brief was *Edward H. Rubenstone.**

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58 (1989), we held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability

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**Richard Ruda* filed a brief for the National Association of Counties et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Andrew J. Pincus, John A. Powell*, and *Steven R. Shapiro;* for the American Federation of Labor and Congress of Industrial Organizations by *Robert M. Weinberg, Walter Kamiat*, and *Laurence Gold;* for Kenneth W. Fultz by *Cletus P. Lyman;* and for Nancy Haberstroh by *Stephen R. Kaplan.*

under Rev. Stat. § 1979, 42 U. S. C. § 1983. 491 U. S., at 71. Petitioner takes this language to mean that § 1983 does not authorize suits against state officers for damages arising from official acts. We reject this reading of *Will* and hold that state officials sued in their individual capacities are "persons" for purposes of § 1983.

I

In 1988, petitioner Barbara Hafer sought election to the post of auditor general of Pennsylvania. Respondents allege that during the campaign United States Attorney James West gave Hafer a list of 21 employees in the auditor general's office who secured their jobs through payments to a former employee of the office. App. 10. They further allege that Hafer publicly promised to fire all employees on the list if elected. *Ibid.*

Hafer won the election. Shortly after becoming auditor general, she dismissed 18 employees, including named respondent James Melo, Jr., on the basis that they "bought" their jobs. Melo and seven other terminated employees sued Hafer and West in Federal District Court. They asserted state and federal claims, including a claim under § 1983, and sought monetary damages. Carl Gurley and the remaining respondents in this case also lost their jobs with the auditor general soon after Hafer took office. These respondents allege that Hafer discharged them because of their Democratic political affiliation and support for her opponent in the 1988 election. *Id.*, at 28, 35, 40. They too filed suit against Hafer, seeking monetary damages and reinstatement under § 1983.

After consolidating the Melo and Gurley actions, the District Court dismissed all claims. In relevant part, the court held that the § 1983 claims against Hafer were barred because, under *Will*, she could not be held liable for employment decisions made in her official capacity as auditor general.

The Court of Appeals for the Third Circuit reversed this portion of the District Court's decision. 912 F. 2d 628 (1990). As to claims for reinstatement brought against Hafer in her official capacity, the court rested on our statement in *Will* that state officials sued for injunctive relief in their official capacities are "persons" subject to liability under § 1983. See *Will*, *supra*, at 71, n. 10. Turning to respondents' monetary claims, the court found that six members of the Gurley group had expressly sought damages from Hafer in her personal capacity. The remaining plaintiffs "although not as explicit, signified a similar intent." 912 F. 2d, at 636.* The court found this critical. While Hafer's power to hire and fire derived from her position as auditor general, it said, a suit for damages based on the exercise of this authority could be brought against Hafer in her personal capacity. Because Hafer acted under color of state law, respondents could maintain a § 1983 individual-capacity suit against her.

We granted certiorari, 498 U. S. 1118 (1991), to address the question whether state officers may be held personally liable for damages under § 1983 based upon actions taken in their official capacities.

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*The Third Circuit looked to the proceedings below to determine whether certain respondents brought their claims for damages against Hafer in her official capacity or her personal capacity. 912 F. 2d, at 635–636. Several other Courts of Appeals adhere to this practice. See *Conner* v. *Reinhard*, 847 F. 2d 384, 394, n. 8 (CA7), cert. denied, 488 U. S. 856 (1988); *Houston* v. *Reich*, 932 F. 2d 883, 885 (CA10 1991); *Lundgren* v. *McDaniel*, 814 F. 2d 600, 603–604 (CA11 1987). Still others impose a more rigid pleading requirement. See *Wells* v. *Brown*, 891 F. 2d 591, 592 (CA6 1989) (§ 1983 plaintiff must specifically plead that suit for damages is brought against state official in individual capacity); *Nix* v. *Norman*, 879 F. 2d 429, 431 (CA8 1989) (same). Because this issue is not properly before us, we simply reiterate the Third Circuit's view that "[i]t is obviously preferable for the plaintiff to be specific in the first instance to avoid any ambiguity." 912 F. 2d, at 636, n. 7. See this Court's Rule 14.1(a) ("Only the questions set forth in the petition, or fairly included therein, will be considered by the Court").

II

In *Kentucky* v. *Graham*, 473 U. S. 159 (1985), the Court sought to eliminate lingering confusion about the distinction between personal- and official-capacity suits. We emphasized that official-capacity suits "'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" *Id.*, at 165 (quoting *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658, 690, n. 55 (1978)). Suits against state officials in their official capacity therefore should be treated as suits against the State. 473 U. S., at 166. Indeed, when officials sued in this capacity in federal court die or leave office, their successors automatically assume their roles in the litigation. See Fed. Rule Civ. Proc. 25(d)(1); Fed. Rule App. Proc. 43(c)(1); this Court's Rule 35.3. Because the real party in interest in an official-capacity suit is the governmental entity and not the named official, "the entity's 'policy or custom' must have played a part in the violation of federal law." *Graham*, *supra*, at 166 (quoting *Monell*, *supra*, at 694). For the same reason, the only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses. 473 U. S., at 167.

Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, "[o]n the merits, to establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *Id.*, at 166. While the plaintiff in a personal-capacity suit need not establish a connection to governmental "policy or custom," officials sued in their personal capacities, unlike those sued in their official capacities, may assert personal immunity defenses such as objectively reasonable reliance on existing law. *Id.*, at 166–167.

Our decision in *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58 (1989), turned in part on these differences between

personal- and official-capacity actions. The principal issue in *Will* was whether States are "persons" subject to suit under § 1983. Section 1983 provides, in relevant part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . ."

The Court held that interpreting the words "[e]very person" to exclude the States accorded with the most natural reading of the law, with its legislative history, and with the rule that Congress must clearly state its intention to alter "'the federal balance'" when it seeks to do so. *Will*, *supra*, at 65 (quoting *United States* v. *Bass*, 404 U. S. 336, 349 (1971)).

The Court then addressed the related question whether state officials, sued for monetary relief in their official capacities, are persons under § 1983. We held that they are not. Although "state officials literally are persons," an official-capacity suit against a state officer "is not a suit against the official but rather is a suit against the official's office. As such it is no different from a suit against the State itself." 491 U. S., at 71 (citation omitted).

Summarizing our holding, we said: "[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983." *Ibid.* Hafer relies on this recapitulation for the proposition that she may not be held personally liable under § 1983 for discharging respondents because she "act[ed]" in her official capacity as auditor general of Pennsylvania. Of course, the claims considered in *Will* were official-capacity claims; the phrase "acting in their official capacities" is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury. To the extent that *Will*

allows the construction Hafer suggests, however, we now eliminate that ambiguity.

A

Will itself makes clear that the distinction between official-capacity suits and personal-capacity suits is more than "a mere pleading device." *Ibid.* State officers sued for damages in their official capacity are not "persons" for purposes of the suit because they assume the identity of the government that employs them. *Ibid.* By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person." Cf. *id.*, at 71, n. 10 ("[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State' ") (quoting *Graham*, 473 U. S., at 167, n. 14).

Hafer seeks to overcome the distinction between official- and personal-capacity suits by arguing that § 1983 liability turns not on the capacity in which state officials are sued, but on the capacity in which they acted when injuring the plaintiff. Under *Will*, she asserts, state officials may not be held liable in their personal capacity for actions they take in their official capacity. Although one Court of Appeals has endorsed this view, see *Cowan* v. *University of Louisville School of Medicine*, 900 F. 2d 936, 942–943 (CA6 1990), we find it both unpersuasive as an interpretation of § 1983 and foreclosed by our prior decisions.

Through § 1983, Congress sought "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Monroe* v. *Pape*, 365 U. S. 167, 172 (1961). Accordingly, it authorized suits to redress deprivations of civil rights by persons acting "under color of any [state] statute, ordinance, regulation, custom, or usage." 42 U. S. C. § 1983. The requirement of action under color of state law means that Hafer may be liable for

discharging respondents precisely because of her authority as auditor general. We cannot accept the novel proposition that this same official authority insulates Hafer from suit.

In an effort to limit the scope of her argument, Hafer distinguishes between two categories of acts taken under color of state law: those outside the official's authority or not essential to the operation of state government, and those both within the official's authority and necessary to the performance of governmental functions. Only the former group, she asserts, can subject state officials to personal liability under § 1983; the latter group (including the employment decisions at issue in this case) should be considered acts of the State that cannot give rise to a personal-capacity action.

The distinction Hafer urges finds no support in the broad language of § 1983. To the contrary, it ignores our holding that Congress enacted § 1983 "'to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.'" *Scheuer* v. *Rhodes*, 416 U. S. 232, 243 (1974) (quoting *Monroe* v. *Pape*, *supra*, at 171–172). Because of that intent, we have held that in § 1983 actions the statutory requirement of action "under color of" state law is just as broad as the Fourteenth Amendment's "state action" requirement. *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 929 (1982).

Furthermore, Hafer's distinction cannot be reconciled with our decisions regarding immunity of government officers otherwise personally liable for acts done in the course of their official duties. Her theory would absolutely immunize state officials from personal liability for acts within their authority and necessary to fulfilling governmental responsibilities. Yet our cases do not extend absolute immunity to all officers who engage in necessary official acts. Rather, immunity from suit under § 1983 is "predicated upon a considered inquiry into the immunity historically accorded the relevant

official at common law and the interests behind it," *Imbler* v. *Pachtman*, 424 U. S. 409, 421 (1976), and officials seeking absolute immunity must show that such immunity is justified for the governmental function at issue, *Burns* v. *Reed*, 500 U. S. 478, 486–487 (1991).

This Court has refused to extend absolute immunity beyond a very limited class of officials, including the President of the United States, legislators carrying out their legislative functions, and judges carrying out their judicial functions, "whose special functions or constitutional status requires complete protection from suit." *Harlow* v. *Fitzgerald*, 457 U. S. 800, 807 (1982). State executive officials are not entitled to absolute immunity for their official actions. *Scheuer* v. *Rhodes*, *supra*. In several instances, moreover, we have concluded that no more than a qualified immunity attaches to administrative employment decisions, even if the same official has absolute immunity when performing other functions. See *Forrester* v. *White*, 484 U. S. 219 (1988) (dismissal of court employee by state judge); *Harlow* v. *Fitzgerald*, *supra* (discharge of Air Force employee, allegedly orchestrated by senior White House aides) (action under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971)); *Davis* v. *Passman*, 442 U. S. 228 (1979) (dismissal of congressional aide) (*Bivens* action). That Hafer may assert personal immunity within the framework of these cases in no way supports her argument here.

B

Hafer further asks us to read *Will*'s language concerning suits against state officials as establishing the limits of liability under the Eleventh Amendment. She asserts that imposing personal liability on officeholders may infringe on state sovereignty by rendering government less effective; thus, she argues, the Eleventh Amendment forbids personal-capacity suits against state officials in federal court.

Most certainly, *Will*'s holding does not rest directly on the Eleventh Amendment. Whereas the Eleventh Amendment bars suits in federal court "by private parties seeking to impose a liability which must be paid from public funds in the state treasury," *Edelman* v. *Jordan*, 415 U. S. 651, 663 (1974), *Will* arose from a suit in *state* court. We considered the Eleventh Amendment in *Will* only because the fact that Congress did not intend to override state immunity when it enacted § 1983 was relevant to statutory construction: "Given that a principal purpose behind the enactment of § 1983 was to provide a federal forum for civil rights claims," Congress' failure to authorize suits against States in federal courts suggested that it also did not intend to authorize such claims in state courts. 491 U. S., at 66.

To the extent that Hafer argues from the Eleventh Amendment itself, she makes a claim that failed in *Scheuer* v. *Rhodes*, *supra*. In *Scheuer*, personal representatives of the estates of three students who died at Kent State University in May 1970 sought damages from the Governor of Ohio and other state officials. The District Court dismissed their complaints on the theory that the suits, although brought against state officials in their personal capacities, were in substance actions against the State of Ohio and therefore barred by the Eleventh Amendment.

We rejected this view. "[S]ince *Ex parte Young*, 209 U. S. 123 (1908)," we said, "it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law." *Scheuer*, *supra*, at 237. While the doctrine of *Ex parte Young* does not apply where a plaintiff seeks damages from the public treasury, damages awards against individual defendants in federal courts "are a permissible remedy in some circumstances notwithstanding the fact that they hold public office." 416 U. S., at 238. That is, the Eleventh Amendment does not erect a barrier

against suits to impose "individual and personal liability" on state officials under § 1983. *Ibid.*

To be sure, imposing personal liability on state officers may hamper their performance of public duties. But such concerns are properly addressed within the framework of our personal immunity jurisprudence. See *Forrester* v. *White*, *supra*, at 223. Insofar as respondents seek damages against Hafer personally, the Eleventh Amendment does not restrict their ability to sue in federal court.

We hold that state officials, sued in their individual capacities, are "persons" within the meaning of § 1983. The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from personal liability under § 1983 solely by virtue of the "official" nature of their acts.

The judgment of the Court of Appeals is

Affirmed.

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

Syllabus

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM *v.* MCORP FINANCIAL, INC., ET AL.

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

No. 90–913. Argued October 7, 1991—Decided December 3, 1991*

After MCorp, a bank holding company, filed voluntary bankruptcy petitions, it initiated an adversary proceeding in the Bankruptcy Court against the Board of Governors of the Federal Reserve System (Board) seeking to enjoin the prosecution of two pending administrative proceedings, one charging MCorp with a violation of the Board's "source of strength" regulation and the other alleging a violation of § 23A of the Federal Reserve Act. The District Court transferred the adversary proceeding to its own docket, ruled that it had jurisdiction to enjoin the Board from prosecuting both administrative proceedings, and entered a preliminary injunction halting those proceedings. The Court of Appeals vacated the injunction barring the § 23A proceeding, reasoning that the plain language of the judicial review provisions of the Financial Institutions Supervisory Act of 1966 (FISA), particularly 12 U. S. C. § 1818(i)(1), deprived the District Court of jurisdiction to enjoin either administrative proceeding. However, the Court of Appeals also interpreted *Leedom* v. *Kyne*, 358 U. S. 184, to authorize an injunction against any administrative proceeding conducted without statutory authorization, ruled that the Board's promulgation and enforcement of its source of strength regulation exceeded its statutory authority, and remanded the case with instructions to the District Court to enjoin the Board from enforcing the regulation.

Held: The District Court lacked jurisdiction to enjoin either regulatory proceeding. Pp. 37–45.

(a) This litigation is controlled by § 1818(i)(1)'s plain, preclusive language: "[N]o court shall have jurisdiction to affect by injunction . . . the issuance or enforcement of any [Board] notice or order." That language is not qualified or superseded by the Bankruptcy Code's automatic stay

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*Together with No. 90–914, *MCorp et al.* v. *Board of Governors of the Federal Reserve System*, also on certiorari to the same court.

Syllabus

provision, 11 U. S. C. § 362. The Board's planned actions against MCorp fall squarely within § 362(b)(4), which expressly provides that the automatic stay will not reach proceedings to enforce a "governmental unit's police or regulatory power." MCorp is not protected by §§ 362(a)(3) and 362(a)(6)—which stay "any act" to obtain possession of, or to exercise control over, property of the estate, or to recover claims against the debtor that arose prior to the filing of a bankruptcy petition—because such provisions do not have any application to ongoing, nonfinal administrative proceedings such as those at issue here. Moreover, MCorp's reliance on 28 U. S. C. § 1334(b)—which authorizes district courts to exercise concurrent jurisdiction over certain bankruptcy-related civil proceedings that would otherwise be subject to the exclusive jurisdiction of another "court"—is misplaced, since the Board is not another "court," and since the prosecution of the Board's proceedings, prior to the entry of a final order and the commencement of any enforcement action, seems unlikely to impair the Bankruptcy Court's exclusive jurisdiction over the property of the estate protected by § 1334(d). Pp. 37–42.

(b) The Court of Appeals erred in interpreting *Kyne* to authorize judicial review of the source of strength regulation. In contrast to the situation in *Kyne*, FISA, in § 1818(h)(2), expressly provides MCorp with a meaningful and adequate opportunity for review of the regulation's validity and application if and when the Board finds that MCorp has violated the regulation and, in § 1818(i)(1), clearly and directly demonstrates a congressional intent to preclude review. In such circumstances, the District Court is without jurisdiction to review and enjoin the Board's ongoing administrative proceedings. Pp. 42–45.

900 F. 2d 852: No. 90–913, reversed; No. 90–914, affirmed.

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

Jeffrey P. Minear argued the cause for petitioner in No. 90–913 and respondent in No. 90–914. On the briefs were *Solicitor General Starr, Assistant Attorney General Gerson, Deputy Solicitor General Roberts, Michael R. Lazerwitz, Anthony J. Steinmeyer*, and *James V. Mattingly, Jr.*

Alan B. Miller argued the cause for respondents in No. 90–913 and petitioners in No. 90–914. With him on the briefs were *Harvey R. Miller, Steven Alan Reiss, John D.*

Hawke, Jr., Jerome I. Chapman, Howard N. Cayne, and *David F. Freeman, Jr.*

JUSTICE STEVENS delivered the opinion of the Court.

MCorp, a bank holding company, filed voluntary bankruptcy petitions in March 1989. It then initiated an adversary proceeding against the Board of Governors of the Federal Reserve System (Board) seeking to enjoin the prosecution of two administrative proceedings, one charging MCorp with a violation of the Board's "source of strength" regulation[1] and the other alleging a violation of § 23A of the Federal Reserve Act, as added, 48 Stat. 183, and amended.[2] The District Court enjoined both proceedings, and the Board appealed. The Court of Appeals held that the District Court had no jurisdiction to enjoin the § 23A proceeding, but that, under the doctrine set forth in *Leedom* v. *Kyne,* 358 U. S. 184 (1958), the District Court had jurisdiction to review the validity of the "source of strength" regulation. The Court of Appeals then ruled that the Board had exceeded its statutory authority in promulgating that regulation. 900 F. 2d 852 (CA5 1990). We granted certiorari, 499 U. S. 904 (1991), to review the entire action but, because we conclude that the District Court lacked jurisdiction to enjoin either regulatory proceeding, we do not reach the merits of MCorp's challenge to the regulation.

I

In 1984, the Board promulgated a regulation requiring every bank holding company to "serve as a source of financial

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[1] The "source of strength" regulation provides in relevant part:

"A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not con[d]uct its operations in an unsafe or unsound manner." 12 CFR § 225.4(a)(1) (1991).

[2] Section 23A sets forth restrictions on bank holding companies' corporate practices, including restrictions on transactions between subsidiary banks and nonbank affiliates. See 12 U. S. C. § 371c.

and managerial strength to its subsidiary banks."[3] In October 1988, the Board commenced an administrative proceeding against MCorp,[4] alleging that MCorp violated the source of strength regulation and engaged in unsafe and unsound banking practices that jeopardized the financial condition of its subsidiary banks. The Board also issued three temporary cease-and-desist orders.[5] The first forbids MCorp to declare or pay any dividends without the prior approval of the Board. App. 65–67. The second forbids MCorp to dissipate any of its nonbank assets without the prior approval of the Board. *Id.*, at 68–70. The third directs MCorp to use "all of its assets to provide capital support to its Subsidiary Banks in need of additional capital." *Id.*, at 85. By agreement, enforcement of the third order was suspended while MCorp sought financial assistance from the Federal Deposit Insurance Corporation (FDIC).[6]

In March 1989, the FDIC denied MCorp's request for assistance. Thereafter, creditors filed an involuntary bankruptcy petition against MCorp in the Southern District of New York, and the Comptroller of the Currency determined that 20 of MCorp's subsidiary banks were insolvent and, accordingly, appointed the FDIC as receiver of those banks. MCorp then filed voluntary bankruptcy petitions in the

[3] See n. 1, *supra.* In 1987, the Board clarified its policy and stated that a "bank holding company's failure to assist a troubled or failing subsidiary bank . . . would generally be viewed as an unsafe and unsound banking practice or a violation of [12 CFR §225.4(a)(1)] or both." 52 Fed. Reg. 15707–15708.

[4] The term "MCorp" refers to the corporation and to two of its wholly owned subsidiaries, MCorp Financial, Inc., and MCorp Management.

[5] MCorp timely challenged these orders in the District Court for the Northern District of Texas, pursuant to 12 U. S. C. §1818(c)(2). The District Court stayed MCorp's challenge pending resolution of this proceeding. Brief for MCorp et al. 3.

[6] The current status of this order is unclear. See Tr. of Oral Arg. 22–25, 41–42. We address only MCorp's effort to enjoin the Board's administrative proceedings and express no opinion on the continuing vitality or validity of any of the temporary cease-and-desist orders.

Southern District of Texas and all bankruptcy proceedings were later consolidated in that forum.

At the end of March, the Board commenced a second administrative proceeding against MCorp alleging that it had violated § 23A of the Federal Reserve Act by causing two of its subsidiary banks to extend unsecured credit of approximately $63.7 million to an affiliate. For convenience, we shall refer to that proceeding as the "§ 23A proceeding" and to the earlier proceeding as the "source of strength proceeding."

In May 1989, MCorp initiated this litigation by filing a complaint in the Bankruptcy Court against the Board seeking a declaration that both administrative proceedings had been automatically stayed pursuant to the Bankruptcy Code; in the alternative, MCorp prayed for an injunction against the further prosecution of those proceedings without the prior approval of the Bankruptcy Court. On the Board's motion, the District Court transferred that adversary proceeding to its own docket.

In June 1989, the District Court ruled that it had jurisdiction to enjoin the Board from prosecuting both administrative proceedings against MCorp and entered a preliminary injunction halting those proceedings. The injunction restrained the Board from exercising "its authority over bank holding companies . . . to attempt to effect, directly or indirectly, a reorganization of the MCorp group [of companies] except through participation in the bankruptcy proceedings." *In re MCorp,* 101 B. R. 483, 491. The Board appealed.

Although the District Court did not differentiate between the two Board proceedings, the Court of Appeals held that the § 23A proceeding could go forward but that the source of strength proceeding should be enjoined. The court reasoned that the plain language of the judicial review provisions of the Financial Institutions Supervisory Act of 1966

(FISA), 80 Stat. 1046, as amended, 12 U. S. C. § 1818 *et seq.* (1988 ed. and Supp. II), particularly § 1818(i)(1), deprived the District Court of jurisdiction to enjoin either proceeding, but that our decision in *Leedom* v. *Kyne*, 358 U. S. 184 (1958), nevertheless authorized an injunction against an administrative proceeding conducted without statutory authorization. The Court of Appeals ruled that the Board's promulgation and enforcement of its source of strength regulation exceeded its statutory authority. Accordingly, the court vacated the District Court injunction barring the § 23A proceeding, but remanded the case with instructions to enjoin the Board from enforcing its source of strength regulation. Both parties petitioned for certiorari.

The Board's petition challenges the Court of Appeals' interpretation of *Leedom* v. *Kyne*, as well as its invalidation of the source of strength regulation. MCorp's petition challenges the Court of Appeals' interpretation of the relationship between the provisions governing judicial review of Board proceedings and those governing bankruptcy proceedings. We first address the latter challenge.

II

A series of federal statutes gives the Board substantial regulatory power over bank holding companies and establishes a comprehensive scheme of judicial review of Board actions. See FISA; the Bank Holding Company Act of 1956 (BHCA), 12 U. S. C. § 1841 *et seq.* (1988 ed. and Supp. II); and the International Lending Supervision Act of 1983, 12 U. S. C. § 3901 *et seq.* In this litigation, the most relevant of these is FISA.[7]

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[7] Although the several "Notices of Charges and of Hearing" issued by the Board against MCorp relied on FISA *and* the BHCA, *e. g.*, App. 57, 72, the parties have focused only on the former. We note, however, that the BHCA includes a preclusion provision that is similar to § 1818(i)(1) in FISA. See 12 U. S. C. § 1844(e)(2).

FISA authorizes the Board to institute administrative proceedings culminating in cease-and-desist orders, 12 U. S. C. §§ 1818(a)–(b) (1988 ed., Supp. II), and to issue temporary cease-and-desist orders that are effective upon service on a bank holding company. § 1818(c). In addition, FISA establishes a tripartite regime of judicial review. First, § 1818(c)(2) provides that, within 10 days after service of a temporary order, a bank holding company may seek an injunction in district court restraining enforcement of the order pending completion of the related administrative proceeding. Second, § 1818(h) authorizes court of appeals review of final Board orders on the application of an aggrieved party.[8] Finally, § 1818(i)(1) provides that the Board may apply to district court for enforcement of any effective and outstanding notice or order.

None of these provisions controls this litigation: The action before us is not a challenge to a temporary Board order, nor a petition for review of a final Board order, nor an enforcement action initiated by the Board. Instead, FISA's preclusion provision appears to speak directly to the jurisdictional question at issue in this litigation:

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[8] The statute characterizes such review of final Board orders as "exclusive" and provides:

"(2) Any party to any proceeding under paragraph (1) may obtain a review . . . by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. . . . Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency." 12 U. S. C. § 1818(h)(2) (1988 ed., Supp. II).

The referenced exception concerns actions taken by the agency with permission of the court.

> "[E]xcept as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order." *Ibid.*

Notwithstanding this plain, preclusive language, MCorp argues that the District Court's injunction against the prosecution of the Board proceedings was authorized either by the automatic stay provision in the Bankruptcy Code, 11 U. S. C. § 362, or by the provision of the Judicial Code authorizing district courts in bankruptcy proceedings to exercise concurrent jurisdiction over certain civil proceedings, 28 U. S. C. § 1334(b). We find no merit in either argument.

The filing of a bankruptcy petition operates as an automatic stay of several categories of judicial and administrative proceedings.[9] The Board's planned actions against MCorp constitute the "continuation . . . [of] administrative . . . proceeding[s]" and would appear to be stayed by 11 U. S. C. § 362(a)(1). However, the Board's actions also fall squarely

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[9] The automatic stay provision provides in relevant part:

"(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U. S. C. 78eee(a)(3)), operates as a stay, applicable to all entities, of—

"(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

. . . . . .

"(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

. . . . . .

"(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title . . . ." 11 U. S. C. § 362(a).

within § 362(b)(4), which expressly provides that the automatic stay will not reach proceedings to enforce a "governmental unit's police or regulatory power." [10]

MCorp contends that in order for § 362(b)(4) to obtain, a court must first determine whether the proposed exercise of police or regulatory power is legitimate and that, therefore, in this litigation the lower courts did have the authority to examine the legitimacy of the Board's actions and to enjoin those actions. We disagree. MCorp's broad reading of the stay provisions would require bankruptcy courts to scrutinize the validity of every administrative or enforcement action brought against a bankrupt entity. Such a reading is problematic, both because it conflicts with the broad discretion Congress has expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts. We therefore reject MCorp's reading of § 362(b)(4).

MCorp also argues that it is protected by §§ 362(a)(3) and 362(a)(6) of the Bankruptcy Code. Those provisions stay "any act" to obtain possession of, or to exercise control over, property of the estate, or to recover claims against the debtor that arose prior to the filing of the bankruptcy petition. MCorp contends that the ultimate objective of the source of strength proceeding is to exercise control of corporate assets and that the § 23A proceeding seeks enforcement of a prepetition claim.

We reject these characterizations of the ongoing administrative proceedings. At this point, the Board has only issued "Notices of Charges and of Hearing" and has expressed

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[10] Title 11 U. S. C. § 362(b)(4) provides:

"(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U. S. C. 78eee(a)(3)), does not operate as a stay—

. . . . . .

"(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power . . . ."

its intent to determine whether MCorp has violated specified statutory and regulatory provisions. It is possible, of course, that the Board proceedings, like many other enforcement actions, may conclude with the entry of an order that will affect the Bankruptcy Court's control over the property of the estate, but that *possibility* cannot be sufficient to justify the operation of the stay against an enforcement proceeding that is expressly exempted by § 362(b)(4). To adopt such a characterization of enforcement proceedings would be to render subsection (b)(4)'s exception almost meaningless. If and when the Board's proceedings culminate in a final order, and if and when judicial proceedings are commenced to enforce such an order, then it may well be proper for the Bankruptcy Court to exercise its concurrent jurisdiction under 28 U. S. C. § 1334(b). We are not persuaded, however, that the automatic stay provisions of the Bankruptcy Code have any application to ongoing, nonfinal administrative proceedings.[11]

MCorp's final argument rests on 28 U. S. C. § 1334(b). That section authorizes a district court to exercise concurrent jurisdiction over certain bankruptcy-related civil proceedings that would otherwise be subject to the exclusive jurisdiction of another court.[12] MCorp's reliance is misplaced. Section 1334(b) concerns the allocation of jurisdiction between bankruptcy courts and other *"courts,"* and, of

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[11] The Board suggests that the automatic stay provisions of § 362 do not themselves confer jurisdiction on the bankruptcy court, and thus that the filing of a bankruptcy petition operates as an automatic stay only where the bankruptcy court's jurisdiction has not already been precluded by a statute like § 1818(i)(1). We need not address this question in light of our determination that the automatic stay does not apply to the Board's ongoing administrative proceedings.

[12] Title 28 U. S. C. § 1334(b) provides:

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district court shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

course, an administrative agency such as the Board is not a "court." Moreover, contrary to MCorp's contention, the prosecution of the Board proceedings, prior to the entry of a final order and prior to the commencement of any enforcement action, seems unlikely to impair the Bankruptcy Court's exclusive jurisdiction over the property of the estate protected by 28 U. S. C. § 1334(d).[13] In sum, we agree with the Court of Appeals that the specific preclusive language in 12 U. S. C. § 1818(i)(1) (1988 ed., Supp. II) is not qualified or superseded by the general provisions governing bankruptcy proceedings on which MCorp relies.

III

Although the Court of Appeals found that § 1818(i)(1) precluded judicial review of many Board actions, it exercised jurisdiction in this litigation based on its reading of *Leedom* v. *Kyne*, 358 U. S. 184 (1958). *Kyne* involved an action in District Court challenging a determination by the National Labor Relations Board (NLRB) that a unit including both professional and nonprofessional employees was appropriate for collective-bargaining purposes—a determination in direct conflict with a provision of the National Labor Relations Act.[14] The Act, however, did not expressly authorize any judicial review of such a determination. Relying on *Switchmen* v. *National Mediation Bd.*, 320 U. S. 297 (1943), the NLRB argued that the statutory provisions establishing review of final Board orders in the courts of appeals indicated a congressional intent to bar review of any NLRB action

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[13] That subsection provides:

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate."

[14] See 29 U. S. C. § 159(b)(1).

in the District Court.[15] The Court rejected that argument, emphasizing the presumption that Congress normally intends the federal courts to enforce and protect the rights that Congress has created. Concluding that the Act did not bar the District Court's jurisdiction, we stated: "This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers." 358 U. S., at 190.

In this litigation, the Court of Appeals interpreted our opinion in *Kyne* as authorizing judicial review of any agency action that is alleged to have exceeded the agency's statutory authority. *Kyne*, however, differs from this litigation in two critical ways. First, central to our decision in *Kyne* was the fact that the Board's interpretation of the Act would wholly deprive the union of a meaningful and adequate means of vindicating its statutory rights.

> "Here, differently from the *Switchmen's* case, 'absence of jurisdiction of the federal courts' would mean 'a sacrifice or obliteration of a right which Congress' has given professional employees, for there is no other means, within their control . . . to protect and enforce that right." *Ibid.*

The cases before us today are entirely different from *Kyne* because FISA expressly provides MCorp with a meaningful and adequate opportunity for judicial review of the validity of the source of strength regulation. If and when the Board

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[15] In *Switchmen* v. *National Mediation Bd.*, 320 U. S., at 306, the Court had reasoned:

"When Congress in § 3 and in § 9 provided for judicial review of two types of orders or awards and in § 2 of the same Act omitted any such provision as respects a third type, it drew a plain line of distinction. And the inference is strong from the history of the Act that that distinction was not inadvertent. The language of the Act read in light of that history supports the view that Congress gave administrative action under § 2, Ninth a finality which it denied administrative action under the other sections of the Act."

finds that MCorp has violated that regulation, MCorp will have, in the Court of Appeals, an unquestioned right to review of both the regulation and its application.

The second, and related, factor distinguishing this litigation from *Kyne* is the clarity of the congressional preclusion of review in FISA. In *Kyne*, the NLRB contended that a statutory provision that provided for judicial review implied, by its silence, a preclusion of review of the contested determination. By contrast, in FISA Congress has spoken clearly and directly: *"[N]o court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any [Board] notice or order under this section."* 12 U. S. C. § 1818(i)(1) (1988 ed., Supp. II) (emphasis added). In this way as well, this litigation differs from *Kyne*.[16]

Viewed in this way, *Kyne* stands for the familiar proposition that "only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review." *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 141 (1967). As we have explained, however, in this case the statute provides us with clear and convincing evidence that Congress intended to deny the District Court jurisdiction to review and enjoin the Board's ongoing administrative proceedings.

IV

The Court of Appeals therefore erred when it held that it had jurisdiction to consider the merits of MCorp's challenge to the source of strength regulation. In No. 90–913, the

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[16] The other cases relied upon by the Court of Appeals—*Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667 (1986); *Breen* v. *Selective Service Local Bd. No. 16*, 396 U. S. 460 (1970); and *Oestereich* v. *Selective Service System Local Bd. No. 11*, 393 U. S. 233 (1968)—are distinguishable from this litigation for the same reasons. In each of those cases, the Court recognized that an unduly narrow construction of the governing statute would severely prejudice the party seeking review, and construed the statute to allow judicial review not expressly provided.

judgment of the Court of Appeals remanding the case with instructions to enjoin the source of strength proceedings is therefore reversed. In No. 90–914, the judgment of the Court of Appeals vacating the District Court's injunction against prosecution of the § 23A proceeding is affirmed.

It is so ordered.

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

Syllabus

GRIFFIN *v.* UNITED STATES

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

No. 90–6352. Argued October 7, 1991—Decided December 3, 1991

Petitioner Griffin and others were charged in a multiple-object conspiracy. The evidence introduced at trial implicated Griffin in the first object of the conspiracy but not the second. The District Court nevertheless instructed the jury in a manner that would permit it to return a verdict against Griffin if it found her to have participated in *either one* of the two objects. The jury returned a general verdict of guilty. The Court of Appeals upheld Griffin's conviction, rejecting the argument that the verdict could not stand because it left in doubt whether the jury had convicted her as to the first or the second object.

Held: Neither the Due Process Clause of the Fifth Amendment nor this Court's precedents require, in a federal prosecution, that a general guilty verdict on a multiple-object conspiracy be set aside if the evidence is inadequate to support conviction as to one of the objects. Pp. 49–60.

(a) The historical practice fails to support Griffin's due process claim, since the rule of criminal procedure applied by the Court of Appeals was a settled feature of the common law. Pp. 49–51.

(b) The precedent governing this case is not *Yates* v. *United States*, 354 U. S. 298, which invalidated a general verdict when one of the possible bases of conviction was *legally* inadequate, but *Turner* v. *United States*, 396 U. S. 398, 420, which upheld a general verdict when one of the possible bases of conviction was supported by *inadequate evidence.* The line between *Yates* and *Turner* makes good sense: Jurors are not generally equipped to determine whether a particular theory of conviction is contrary to law, but are well equipped to determine whether the theory is supported by the facts. Although it would generally be preferable to give an instruction removing from the jury's consideration an alternative basis of liability that does not have adequate evidentiary support, the refusal to do so does not provide an independent basis for reversing an otherwise valid conviction. Pp. 51–60.

913 F. 2d 337, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., filed an opinion concurring in the judgment, *post*,

p. 60. THOMAS, J., took no part in the consideration or decision of the case.

Michael G. Logan argued the cause and filed briefs for petitioner.

Deputy Solicitor General Bryson argued the cause for the United States. With him on the brief were *Solicitor General Starr*, *Assistant Attorney General Mueller*, and *Jeffrey P. Minear*.

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether, in a federal prosecution, a general guilty verdict on a multiple-object conspiracy charge must be set aside if the evidence is inadequate to support conviction as to one of the objects.

I

A federal grand jury returned a 23-count indictment against petitioner Diane Griffin and others. Count 20, the only count in which Griffin was named, charged her, Alex Beverly, and Betty McNulty with conspiring to defraud an agency of the Federal Government in violation of 18 U. S. C. § 371, which reads, in pertinent part, as follows:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be [guilty of a crime]."

The unlawful conspiracy was alleged to have had two objects: (1) impairing the efforts of the Internal Revenue Service (IRS) to ascertain income taxes; and (2) impairing the efforts of the Drug Enforcement Administration (DEA) to ascertain forfeitable assets.

The evidence introduced at trial implicated Beverly and McNulty in both conspiratorial objects, and petitioner in the

IRS object. However, because testimony anticipated by the Government from one of its witnesses did not materialize, the evidence did not connect petitioner to the DEA object. On that basis, petitioner moved for a severance, but her motion was denied. At the close of trial, she proposed instructions to the effect that she could be convicted only if the jury found she was aware of the IRS object of the conspiracy. She also proposed special interrogatories asking the jury to identify the object or objects of the conspiracy of which she had knowledge. Both requests were denied. The court instructed the jury in a manner that would permit it to return a guilty verdict against petitioner on Count 20 if it found her to have participated in *either one* of the two objects of the conspiracy. The jury returned a general verdict of guilty on Count 20 against Beverly, McNulty, and petitioner.

The Court of Appeals for the Seventh Circuit upheld petitioner's conviction, rejecting the argument that the general verdict could not stand because it left in doubt whether the jury had convicted her of conspiring to defraud the IRS, for which there was sufficient proof, or of conspiring to defraud the DEA, for which (as the Government concedes) there was not. *United States* v. *Beverly,* 913 F. 2d 337 (1990). We granted certiorari, 498 U. S. 1082 (1991).

The question presented for review, as set forth in the petition, is simply whether a general verdict of guilty under circumstances such as existed here "is reversible." The body of the petition, however, sets forth the Due Process Clause of the Fifth Amendment and the jury trial provision of the Sixth Amendment as bases for the relief requested. Only the former has been discussed (and that briefly) in the written and oral argument before us. For that reason, and also because the alleged defect here is not that a jury determination was denied but rather that a jury determination was permitted, we find it unnecessary to say anything more about the Sixth Amendment. We address below the Due

Process Clause and also the various case precedents relied upon by petitioner.

II

The rule of criminal procedure applied by the Seventh Circuit here is not an innovation. It was settled law in England before the Declaration of Independence, and in this country long afterwards, that a general jury verdict was valid so long as it was legally supportable on one of the submitted grounds—even though that gave no assurance that a valid ground, rather than an invalid one, was actually the basis for the jury's action. As Wharton wrote in 1889:

> "For years it was the prevailing practice in England and this country, where there was a general verdict of guilty on an indictment containing several counts, some bad and some good, to pass judgment on the counts that were good, on the presumption that it was to them that the verdict of the jury attached, and upon the withdrawal by the prosecution of the bad counts. . . . [I]n the United States, with but few exceptions, the courts have united in sustaining general judgments on an indictment in which there are several counts stating cognate offences, irrespective of the question whether one of these counts is bad." F. Wharton, Criminal Pleading and Practice § 771, pp. 533–536 (9th ed. 1889) (footnotes omitted).

And as this Court has observed:

> "In criminal cases, the general rule, as stated by Lord Mansfield before the Declaration of Independence, is 'that if there is any one count to support the verdict, it shall stand good, notwithstanding all the rest are bad.' And it is settled law in this court, and in this country generally, that in any criminal case a general verdict and judgment on an indictment or information containing several counts cannot be reversed on error, if any one of the counts is good and warrants the judgment, because,

> in the absence of anything in the record to show the contrary, the presumption of law is that the court awarded sentence on the good count only." *Claassen* v. *United States*, 142 U. S. 140, 146 (1891) (quoting *Peake* v. *Oldham*, 1 Cowper 275, 276, 98 Eng. Rep. 1083 (K. B. 1775)) (other citations omitted).

See also *Snyder* v. *United States*, 112 U. S. 216, 217 (1884); *Clifton* v. *United States*, 4 How. 242, 250 (1846); 1 J. Bishop, Criminal Procedure § 1015, p. 631 (2d ed. 1872).

This common-law rule applied in a variety of contexts. It validated general verdicts returned on multicount indictments where some of the counts were legally defective ("bad"), see, *e. g.*, *Clifton*, *supra*, at 250; *State* v. *Shelledy*, 8 Iowa 477, 511 (1859); *State* v. *Burke*, 38 Me. 574, 575–576 (1854); *Commonwealth* v. *Holmes*, 17 Mass. 336, 337 (1821), and general verdicts returned on multicount indictments where some of the counts were unsupported by the evidence, see, *e. g.*, *State* v. *Long*, 52 N. C. 24, 26 (1859); *State* v. *Bugbee*, 22 Vt. 32, 35 (1849); 1 Bishop, *supra*, § 1014, p. 630. It also applied to the analogous situation at issue here: a general jury verdict under a *single* count charging the commission of an offense by two or more means. For example, in reviewing a count charging defendants with composing, printing, and publishing a libel, Lord Ellenborough stated:

> "It is enough to prove publication. If an indictment charges that the defendant did and caused to be done a particular act, it is enough to prove either. The distinction runs through the whole criminal law, and it is invariably enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified." *King* v. *Hunt*, 2 Camp. 583, 584–585, 170 Eng. Rep. 1260 (N. P. 1811).

The latter application of the rule made it a regular practice for prosecutors to charge conjunctively, in one count, the various means of committing a statutory offense, in order to avoid the pitfalls of duplicitous pleading.

> "A statute often makes punishable the doing of one thing *or* another, . . . sometimes thus specifying a considerable number of things. Then, by proper and ordinary construction, a person who in one transaction does all, violates the statute but once, and incurs only one penalty. Yet he violates it equally by doing one of the things. Therefore the indictment on such a statute may allege, in a single count, that the defendant did as many of the forbidden things as the pleader chooses, employing the conjunction *and* where the statute has 'or,' and it will not be double, and it will be established at the trial by proof of any one of them." 1 J. Bishop, New Criminal Procedure § 436, pp. 355–356 (2d ed. 1913) (footnotes omitted).

See, *e. g.*, *Crain* v. *United States*, 162 U. S. 625, 636 (1896); *Sanford* v. *State*, 8 Ala. App. 245, 247, 62 So. 317, 318 (1913); *State* v. *Bresee*, 137 Iowa 673, 681, 114 N. W. 45, 48 (1907); *Morganstern* v. *Commonwealth*, 94 Va. 787, 790, 26 S. E. 402, 403 (1896). See also *Schad* v. *Arizona*, 501 U. S. 624, 630–631 (1991); Fed. Rule Crim. Proc. 7(c)(1) (authorizing a single count to allege that an offense was committed "by one or more specified means").

The historical practice, therefore, fails to support petitioner's claim under the Due Process Clause of the Constitution. See *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 276–277 (1856). Petitioner argues, however, that—whether as a matter of due process or by virtue of our supervisory power over federal courts—a result contrary to the earlier practice has been prescribed by our decision in *Yates* v. *United States*, 354 U. S. 298 (1957). *Yates* involved a single-count federal indictment charging a conspiracy "(1)

to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) to organize, as the Communist Party of the United States, a society of persons who so advocate and teach." *Id.*, at 300. The first of these objects (the "advocacy" charge) violated § 2(a)(1) of the Smith Act of 1940 (subsequently repealed and substantially reenacted as 18 U. S. C. § 2385), and the second of them (the "organizing" charge) violated § 2(a)(3). We found that the "organizing" object was insufficient in law, since the statutory term referred to initial formation, and the Communist Party had been "organized" in that sense at a time beyond the period of the applicable statute of limitations. 354 U. S., at 304–311. We then rejected the Government's argument that the convictions could nonetheless stand on the basis of the "advocacy" object. Our analysis made no mention of the Due Process Clause but consisted in its entirety of the following:

> "In these circumstances we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected. *Stromberg* v. *California*, 283 U. S. 359, 367–368; *Williams* v. *North Carolina*, 317 U. S. 287, 291–292; *Cramer* v. *United States*, 325 U. S. 1, 36, n. 45." *Id.*, at 312.

None of the three authorities cited for that expansive proposition in fact establishes it. The first of them, *Stromberg* v. *California*, 283 U. S. 359 (1931), is the fountainhead of decisions departing from the common law with respect to the point at issue here. That case, however—which does not explicitly invoke the Due Process Clause—does not sanction as broad a departure as the dictum in *Yates* expresses, or indeed even the somewhat narrower departure that the holding in *Yates* adopts. The defendant in *Stromberg* was

charged in one count of violating a California statute prohibiting the display of a red flag in a public place for any one of three purposes: (a) as a symbol of opposition to organized government; (b) as an invitation to anarchistic action; or (c) as an aid to seditious propaganda. *Id.*, at 361. The jury was instructed that it could convict if it found the defendant guilty of violating any one purpose of the statute. *Id.*, at 363–364. A conviction in the form of a general verdict followed. The California appellate court upheld the conviction on the ground that, even though it doubted the constitutionality of criminalizing the first of the three purposes, the statute (and conviction) could be saved if that provision was severed from the statute. We rejected that:

> "As there were three purposes set forth in the statute, and the jury were instructed that their verdict might be given with respect to any one of them, independently considered, it is impossible to say under which clause of the statute the conviction was obtained. If any one of these clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. . . . It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld." *Id.*, at 368.

This language, and the holding of *Stromberg*, do not necessarily stand for anything more than the principle that, where a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that may have rested on that ground.

The same principle explains the other two cases relied on by *Yates.* In *Williams* v. *North Carolina,* 317 U. S. 287 (1942), the defendant was convicted of bigamous cohabitation after the jury had been instructed that it could disregard the defendants' Nevada divorce decrees on the ground either that North Carolina did not recognize decrees based on substituted service or that the decrees were procured by fraud. *Id.,* at 290–291. The former of these grounds, we found, violated the Full Faith and Credit Clause. We continued:

> "[T]he verdict of the jury for all we know may have been rendered on that [unconstitutional] ground alone, since it did not specify the basis on which it rested. . . . No reason has been suggested why the rule of the *Stromberg* case is inapplicable here. Nor has any reason been advanced why the rule of the *Stromberg* case is not both appropriate and necessary for the protection of rights of the accused. To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights." *Id.,* at 292.

The third case cited by *Yates, Cramer* v. *United States,* 325 U. S. 1 (1945), was our first opportunity to interpret the provision of Article III, § 3, which requires, for conviction of treason against the United States, that there be "two Witnesses to the same overt Act." The prosecution had submitted proof of three overt acts to the jury, which had returned a general verdict of guilty. After a comprehensive analysis of the overt-act requirement, *id.,* at 8–35, we found that two of the acts proffered by the prosecution did not satisfy it, *id.,* at 36–44, and accordingly reversed the conviction. "Since it is not possible," we said, "to identify the grounds on which Cramer was convicted, the verdict must be set aside if any

of the separable acts submitted was insufficient." *Id.*, at 36, n. 45.[1]

A host of our decisions, both before and after *Yates*, has applied what *Williams* called "the rule of the *Stromberg* case" to general-verdict convictions that may have rested on an unconstitutional ground. See, *e. g.*, *Bachellar* v. *Maryland*, 397 U. S. 564, 570–571 (1970); *Leary* v. *United States*, 395 U. S. 6, 31–32 (1969); *Street* v. *New York*, 394 U. S. 576, 585–588 (1969); *Terminiello* v. *Chicago*, 337 U. S. 1, 5 (1949); *Thomas v. Collins*, 323 U. S. 516, 529 (1945). Cf. *Zant* v. *Stephens*, 462 U. S. 862, 880–884 (1983) (rejecting contention that *Stromberg* required a death sentence to be set aside if one of several statutory aggravating circumstances underlying the jury verdict was unconstitutionally vague). *Yates*, however, was the first and only case of ours to apply *Stromberg* to a general verdict in which one of the possible bases of conviction did not violate any provision of the Constitution but was simply legally inadequate (because of a statutory time bar). As we have described, that was an unexplained

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[1] At the outset of its discussion of the two overt acts, the *Cramer* Court said: "At the present stage of the case we need not weigh their sufficiency as a matter of pleading. Whatever the averments might have permitted the Government to prove, we now consider their adequacy on the proof as made." 325 U. S., at 37. Petitioner suggests this means that *Cramer* was a sufficiency-of-the-evidence case—a point relevant to our later analysis, see *infra*, at 58–59. That suggestion is mistaken. As is apparent from the Court's full discussion, "adequacy on the proof as made" meant not whether the evidence sufficed to enable an alleged fact to be found, but rather whether the facts adduced at trial sufficed *in law* to constitute overt acts of treason. Thus the Court could say: "It is not relevant to our issue to appraise weight or credibility of the evidence apart from determining its constitutional sufficiency." 325 U. S., at 43. The Court of Appeals' opinion in *Cramer* makes even clearer that legal as opposed to evidentiary sufficiency was at issue; it specifically distinguishes the case from those in which multiple overt acts sufficient in law are submitted to the jury and the conviction is upheld as long as the evidence suffices to show one of them. See *United States* v. *Cramer*, 137 F. 2d 888, 893–894 (CA2 1943).

extension, explicitly invoking neither the Due Process Clause (which is an unlikely basis) nor our supervisory powers over the procedures employed in a federal prosecution.

Our continued adherence to the holding of *Yates* is not at issue in this case. What petitioner seeks is an extension of its holding—an expansion of its expansion of *Stromberg*—to a context in which we have never applied it before. Petitioner cites no case, and we are aware of none, in which we have set aside a general verdict because one of the possible bases of conviction was neither unconstitutional as in *Stromberg*, nor even illegal as in *Yates*, but merely unsupported by sufficient evidence. If such invalidation on evidentiary grounds were appropriate, it is hard to see how it could be limited to those alternative bases of conviction that constitute separate legal grounds; surely the underlying principle would apply equally, for example, to an indictment charging murder by shooting or drowning, where the evidence of drowning proves inadequate. See *Schad* v. *Arizona*, 501 U. S., at 630–631. But petitioner's requested extension is not merely unprecedented and extreme; it also contradicts another case, postdating *Yates*, that in our view must govern here.

Turner v. *United States*, 396 U. S. 398 (1970), involved a claim that the evidence was insufficient to support a general guilty verdict under a one-count indictment charging the defendant with knowingly purchasing, possessing, dispensing, and distributing heroin not in or from the original stamped package, in violation of 26 U. S. C. § 4704(a) (1964 ed.). We held that the conviction would have to be sustained if there was sufficient evidence of distribution *alone*. We set forth as the prevailing rule: "[W]hen a jury returns a guilty verdict on an indictment charging several acts in the conjunctive, as Turner's indictment did, the verdict stands if the evidence is sufficient with respect to any one of the acts

charged." *Id.*, at 420. Cf. *United States* v. *Miller*, 471 U. S. 130, 136 (1985).

Although petitioner does not ask us to overrule *Turner*, neither does she give us any adequate basis for distinguishing it. She claims that we have not yet applied the rule of that case to multiple-act conspiracies. That is questionable. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 250 (1940). But whether we have yet done so or not, the controlling point is that a logical and consistent application of *Turner* demands that proof of alternative facts in conspiracy cases be treated the same as proof of alternative facts in other contexts. Imagine the not unlikely case of a prosecution for defrauding an insurer through two means and for conspiring to defraud the insurer through the same two means; and imagine a failure of proof with respect to one of the means. Petitioner's proposal would produce the strange result of voiding a conviction on the conspiracy while sustaining a conviction on the substantive offense. We agree with the vast majority of Federal Courts of Appeals, which have made no exception to the *Turner* rule for multiple-object and multiple-overt-act conspiracies. See, *e. g.*, *United States* v. *Bilzerian*, 926 F. 2d 1285, 1302 (CA2 1991), cert. denied, *post*, p. 813; *United States* v. *Beverly*, 913 F. 2d 337, 362–365 (CA7 1990) (case below); *United States* v. *Johnson*, 713 F. 2d 633, 645–646, and n. 15 (CA11 1983), cert. denied *sub nom. Wilkins* v. *United States*, 465 U. S. 1081 (1984); *United States* v. *Wedelstedt*, 589 F. 2d 339, 341–342 (CA8 1978), cert. denied, 442 U. S. 916 (1979); *United States* v. *James*, 528 F. 2d 999, 1014 (CA5), cert. denied *sub nom. Austin* v. *United States*, 429 U. S. 959 (1976); *Moss* v. *United States*, 132 F. 2d 875, 877–878 (CA6 1943).[2]

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[2] The only Court of Appeals we are aware of that adheres to the contrary rule is the Third Circuit, albeit without distinguishing, or even acknowledging the existence of, *Turner*. See *United States* v. *Tarnopol*, 561 F. 2d 466, 474–475 (1977). Many cases can be found, some of which are cited

Petitioner also seeks to distinguish *Turner* on the basis that it applies only where one can be *sure* that the jury did not use the inadequately supported ground as the basis of conviction. That assurance exists, petitioner claims, when the prosecution presents *no evidence whatever* to support the insufficient theory; if the prosecution offers *some*, but insufficient, evidence on the point, as it did in this case, then the *Yates* "impossible to tell" rationale controls. This novel theory posits two different degrees of failure of proof—a failure that is *sufficiently* insufficient, to which *Turner* would apply, and one that is *insufficiently* insufficient, to which *Yates* would apply. Besides producing an odd system in which the greater failure of proof is rewarded, the rule seems to us full of practical difficulty, bereft of support in *Turner*, and without foundation in the common-law presumption upon which *Turner* is based.

Finally, petitioner asserts that the distinction between legal error *(Yates)* and insufficiency of proof *(Turner)* is illusory, since judgments that are not supported by the requisite minimum of proof are invalid *as a matter of law*—and indeed, in the criminal law field at least, are *constitutionally*

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by petitioner, that invalidate general conspiracy verdicts on the basis of legal deficiency of some of the objects rather than inadequacy of proof; these are of course irrelevant. See, *e. g., United States* v. *Irwin*, 654 F. 2d 671, 680 (CA10 1981), cert. denied, 455 U. S. 1016 (1982); *United States* v. *Head*, 641 F. 2d 174, 178–179 (CA4 1981), cert. denied, 462 U. S. 1132 (1983); *United States* v. *Kavazanjian*, 623 F. 2d 730, 739–740 (CA1 1980); *United States v. Carman*, 577 F. 2d 556, 567–568 (CA9 1978); *United States* v. *Baranski*, 484 F. 2d 556, 560–561 (CA7 1973); *Van Liew* v. *United States*, 321 F. 2d 664, 672 (CA5 1963). Some other cases cited by petitioner do not involve a conspiracy charge at all, *e. g., United States* v. *Natelli*, 527 F. 2d 311, 324–325 (CA2 1975), cert. denied, 425 U. S. 934 (1976), or apply their ruling to both substantive and conspiracy charges, *e. g., United States* v. *Garcia*, 907 F. 2d 380, 381 (CA2 1990)—which means that they flatly contradict *Turner* and offer no support for the distinction that petitioner suggests. Still others have been distinguished (or effectively overruled) by later cases within the Circuit, see, *e. g., United States* v. *Berardi*, 675 F. 2d 894, 902 (CA7 1982).

required to be set aside. See *Jackson* v. *Virginia*, 443 U. S. 307, 319 (1979). Insufficiency of proof, in other words, *is* legal error. This represents a purely semantical dispute. In one sense "legal error" includes inadequacy of evidence—namely, when the phrase is used as a term of art to designate those mistakes that it is the business of judges (in jury cases) and of appellate courts to identify and correct. In this sense "legal error" occurs when a jury, properly instructed as to the law, convicts on the basis of evidence that no reasonable person could regard as sufficient. But in another sense—a more natural and less artful sense—the term "legal error" means a mistake about the law, as opposed to a mistake concerning the weight or the factual import of the evidence. The answer to petitioner's objection is simply that we are using "legal error" in the latter sense.

That surely establishes a clear line that will separate *Turner* from *Yates*, and it happens to be a line that makes good sense. Jurors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law—whether, for example, the action in question is protected by the Constitution, is time barred, or fails to come within the statutory definition of the crime. When, therefore, jurors have been left the option of relying upon a legally inadequate theory, there is no reason to think that their own intelligence and expertise will save them from that error. Quite the opposite is true, however, when they have been left the option of relying upon a factually inadequate theory, since jurors *are* well equipped to analyze the evidence, see *Duncan* v. *Louisiana*, 391 U. S. 145, 157 (1968). As the Seventh Circuit has put it:

> "It is one thing to negate a verdict that, while supported by evidence, may have been based on an erroneous view of the law; it is another to do so merely on the chance—remote, it seems to us—that the jury convicted on a ground that was not supported by adequate evidence when there existed alternative grounds for which the

evidence was sufficient." *United States* v. *Townsend*, 924 F. 2d 1385, 1414 (1991).

* * *

What we have said today does not mean that a district court cannot, in its discretion, give an instruction of the sort petitioner requested here, eliminating from the jury's consideration an alternative basis of liability that does not have adequate evidentiary support. Indeed, if the evidence is insufficient to support an alternative legal theory of liability, it would generally be preferable for the court to give an instruction removing that theory from the jury's consideration. The refusal to do so, however, does not provide an independent basis for reversing an otherwise valid conviction. The judgment of the Court of Appeals is affirmed.

It is so ordered.

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

JUSTICE BLACKMUN, concurring in the judgment.

I agree with the Court that petitioner has not made out a violation of the Due Process Clause, although I do not follow the Court on its self-guided tour of the common law. See *ante*, at 49–52. It is enough, I think, to observe that petitioner has not presented any sustained constitutional argument whatsoever.

I agree further with the Court's conclusion that *Yates* v. *United States*, 354 U. S. 298 (1957), does not require reversal in this case, and that petitioner has not sufficiently distinguished *Turner* v. *United States*, 396 U. S. 398 (1970). See *ante*, at 56–59. I would emphasize more strongly than does the Court, however, the danger of jury confusion that was inherent in this multiple-defendant, 23-count indictment and the resulting 5- to 6-week trial.

The Court rightly observes that "it would generally be preferable" for the trial court to remove unsupported theories from the jury's consideration. See *ante*, at 60. I would also note that the Government had two other means of avoiding the possibility, however remote, that petitioner was convicted on a theory for which there was insufficient evidence: The Government either could have charged the two objectives in separate counts, or agreed to petitioner's request for special interrogatories. The Court wisely rejects, albeit silently, the Government's argument that these practices, but not the complex and voluminous proof, would likely have confused the jury. I would go further than the Court and commend these techniques to the Government for use in complex conspiracy prosecutions.

Syllabus

ESTELLE, WARDEN *v.* McGUIRE

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

No. 90–1074. Argued October 9, 1991—Decided December 4, 1991

Respondent McGuire was found guilty in a California state court of the second-degree murder of his infant daughter, Tori. Among the prosecution's witnesses were two physicians, who testified that Tori was a battered child who had suffered prior injuries. The battered child testimony revealed evidence of rectal tearing, which was at least six weeks old, and evidence of partially healed rib fractures, which were approximately seven weeks old. The trial court instructed the jury that the prior injury evidence could be considered for "the limited purpose of determining if it tends to show . . . a clear connection between the other two offense[s] and the one of which [McGuire] is accused, so that it may be logically concluded that if the Defendant committed other offenses, he also committed the crime charged in this case." The State Court of Appeal upheld the conviction, finding that the introduction of prior injury evidence was proper under state law to prove "battered child syndrome," which exists when a child has sustained repeated and/or serious injuries by nonaccidental means. Subsequently, the Federal District Court denied McGuire's petition for habeas corpus. The Court of Appeals reversed, concluding that the trial was arbitrary and fundamentally unfair in violation of due process. It ruled that the prior injury evidence was erroneously admitted to establish battered child syndrome, because there was no evidence linking McGuire to the prior injuries and no claim made at trial that Tori died accidently, and that the jury instruction on the use of prior act evidence allowed a finding of guilt based simply on a judgment that he committed the prior acts.

Held: Neither the admission of the challenged evidence nor the jury instruction as to its use rises to the level of a due process violation. Pp. 67–75.

(a) The prior injury evidence, although not linked to McGuire himself, was probative on the question of the intent with which the person who caused Tori's injuries acted, since it demonstrated that her death was the result of an intentional act by *someone*, and not an accident. The fact that no claim that Tori died accidentally was made at trial did not relieve the prosecution of its burden to prove all of the essential elements of second-degree murder beyond a reasonable doubt. By eliminating the possibility of accident, the evidence was clearly probative of

such an element: that the killing was intentional. It was also improper for the Court of Appeals to base its holding on its conclusion that the evidence was incorrectly admitted under state law, since it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. *Lewis* v. *Jeffers*, 497 U. S. 764, 780. Pp. 67–70.

(b) The Court of Appeals erred in concluding that the instruction allowed the jury to consider the prior injury evidence for more than simply proof of battered child syndrome. The instruction's language forecloses McGuire's claim that the jury was directed to find that he had committed the prior acts. The trial court's inclusion of the words "if the Defendant committed other offenses" unquestionably left it to the jury to determine whether he committed the prior acts and to use the evidence in deciding his guilt *only* if it believed that he had committed those acts. To the extent that the jury may have believed that he inflicted the prior injuries, there was sufficient evidence in the record to support that conclusion. Also rejected is McGuire's argument that, even if the determination of the perpetrator was left to the jury, the instruction was a propensity instruction, allowing the jury to base its determination of guilt in part upon the conclusion that McGuire had committed the prior acts and therefore had a disposition to commit this type of crime. While the instruction was ambiguous, there is no "reasonable likelihood" that the jury would have concluded that it, read in the context of other instructions, authorized the use of propensity evidence. *Boyde* v. *California*, 494 U. S. 370, 380. It seems far more likely that the jury understood the instruction to mean that *if* it found a "clear connection" between the prior and instant injuries, and *if* it found that McGuire had committed the prior injuries, then it could use that fact in determining that he committed the crime charged. This parallels the use of prior act evidence for the purpose of showing intent, identity, motive, or plan, see, *e. g.*, Fed. Rule Evid. 404(b). More importantly, the court specifically guarded against possible misuse by advising the jury that the prior injury evidence, if believed, could not be considered to prove that McGuire was "a person of bad character or that he ha[d] a disposition to commit crimes." Neither the belief that the instruction violated state law nor a belief that the trial judge incorrectly interpreted the state evidence code is a ground for federal habeas relief. Pp. 70–75.

902 F. 2d 749, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, SCALIA, KENNEDY, and SOUTER, JJ., joined, and in Part I of

which STEVENS and O'CONNOR, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, J., joined, *post*, p. 75. THOMAS, J., took no part in the consideration or decision of the case.

Dane R. Gillette, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Daniel E. Lungren*, Attorney General, *George Williamson*, Chief Assistant Attorney General, *John H. Sugiyama*, Senior Assistant Attorney General, and *Morris Beatus*, Supervising Deputy Attorney General.

Ann Hardgrove Voris, by appointment of the Court, 499 U. S. 917, argued the cause and filed a brief for respondent.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Mark Owen McGuire was found guilty in a California state court of second-degree murder for the killing of his infant daughter. After unsuccessfully challenging his conviction on appeal in the state courts, McGuire sought federal habeas relief, and the United States Court of Appeals for the Ninth Circuit set aside his conviction. 902 F. 2d 749 (1990). We hold that in so doing the Court of Appeals exceeded the limited scope of federal habeas review of state convictions.

McGuire and his wife brought their 6-month-old daughter, Tori, to a hospital in Hayward, California. The baby was bluish in color and was not breathing. The attending physician noticed a large and relatively recent bruise on Tori's chest with multiple bruises around it, as well as black and

*Briefs of *amici curiae* urging reversal were filed for the United States by *Solicitor General Starr*, *Assistant Attorney General Mueller*, *Deputy Solicitor General Bryson*, and *Clifford M. Sloan;* and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger.*

Charles D. Weisselberg and *Dennis E. Curtis* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging affirmance.

blue marks around her ears. Efforts to revive the child were unsuccessful; Tori died 45 minutes after being brought to the hospital. An autopsy revealed 17 contusions on the baby's chest, 29 contusions in her abdominal area, a split liver, a split pancreas, a lacerated large intestine, and damage to her heart and one of her lungs. The autopsy also uncovered evidence of rectal tearing, which was at least six weeks old, and evidence of partially healed rib fractures, which were approximately seven weeks old.

The police questioned McGuire and his wife. McGuire stated his belief that Tori's injuries must have resulted from a fall off the family couch. He told the police that when his wife went out to make a telephone call, he went upstairs, leaving Tori lying on the couch; when he heard the baby cry, he came back downstairs to find her lying on the floor. After a police officer expressed skepticism at this explanation, McGuire replied that "[m]aybe some Mexicans came in" while he was upstairs. *Id.*, at 751. During separate questioning, McGuire's wife stated that she had not hit Tori, and that she was unsure whether her husband had done so.

McGuire was charged with second-degree murder. At trial, the prosecution introduced both the statements made by McGuire to police and the medical evidence, including the evidence of prior rectal tearing and fractured ribs. Two physicians testified that Tori was a battered child, relying in part on the prior rib and rectal injuries, as well as on the more recent injuries. McGuire's neighbor testified that she had seen McGuire carry Tori by one of her arms to the car and roughly pinch her cheeks together when she cried. The neighbor added that McGuire's wife had expressed fear in leaving Tori alone with McGuire, because he had been rough with the baby and "did bad things" to her.

In addition, the prosecution called a witness who had overheard a conversation between McGuire and his wife in the hospital emergency room the night of Tori's death. According to the witness, McGuire's wife several times insistently

asked, "What really happened?" McGuire replied that he "didn't know," and that he "guessed" the baby fell off the couch. His wife continued to press for an answer, stating, "I am very patient. I can wait a long time. I want to know what really happened." Finally, she told McGuire that "the baby was alright when I left. You are responsible." App. 44; Brief for United States as *Amicus Curiae* 3–4. McGuire's wife was called by the prosecution to testify at trial, after having been granted transactional immunity from future prosecution. In contrast to her prior statement to the police and her declarations at the hospital, she stated that she had beaten Tori on the day of her death before her husband arrived home. The jury convicted McGuire of second-degree murder.

The California Court of Appeal affirmed McGuire's conviction. The court observed that the evidence of prior rib and rectal injuries was introduced to prove "battered child syndrome." That syndrome exists when a child has sustained repeated and/or serious injuries by nonaccidental means. *People* v. *Bledsoe*, 36 Cal. 3d 236, 249, 681 P. 2d 291, 299 (1984). After reviewing California authority on the subject, the court concluded that "proof of Tori's 'prior injuries' tending to establish the 'battered child syndrome' was patently proper." App. 47. The California Supreme Court denied review.

McGuire then filed a petition for habeas corpus relief in the United States District Court for the Northern District of California. That court denied relief. The Court of Appeals for the Ninth Circuit reversed and granted McGuire's habeas petition. The court ruled that the prior injury evidence was erroneously admitted to establish battered child syndrome, because no evidence linked McGuire to the prior injuries and no claim had been made at trial that the baby died accidentally. In addition, the court believed that the trial court's instruction on the use of prior act evidence allowed a finding of guilt based simply on a judgment that

McGuire committed the prior bad acts.[1] The court concluded that the admission of the evidence, in conjunction with the prejudicial instruction, "rendered [McGuire's] trial arbitrary and fundamentally unfair" in violation of due process. 902 F. 2d, at 753. We hold that none of the alleged errors rise to the level of a due process violation, and so reverse.

I

We first consider whether the admission of the prior injury evidence justified habeas relief. In ruling that McGuire's due process rights were violated by the admission of the evidence, the Court of Appeals relied in part on its conclusion that the evidence was "incorrectly admitted . . . pursuant to California law." *Id.*, at 754. Such an inquiry, however, is no part of a federal court's habeas review of a state conviction. We have stated many times that "federal habeas corpus relief does not lie for errors of state law." *Lewis* v. *Jeffers*, 497 U. S. 764, 780 (1990); see also *Pulley* v. *Harris*, 465 U. S. 37, 41 (1984). Today, we reemphasize that it is not the

[1] The court instructed the jury:

"Evidence has been introduced for the purpose of showing that the Defendant committed acts similar to those constituting a crime other than that for which he is on trial. Such evidence, if believed, was not received, and may not be considered by you[,] to prove that he is a person of bad character or that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose of determining if it tends to show three things:

"1. The impeachment of Daisy McGuire's testimony that she had no cause to be afraid of the Defendant,

"2. To establish the battered child syndrome, and

"3. Also a clear connection between the other two offense[s] and the one of which the Defendant is accused, so that it may be logically concluded that if the Defendant committed other offenses, he also committed the crime charged in this case.

"For the limited purpose for which you may consider such evidence, you must weigh it in the same manner as you do all other evidence in the case. You are not permitted to consider evidence for any other purpose." App. 40–41.

province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States. 28 U. S. C. § 2241; *Rose* v. *Hodges*, 423 U. S. 19, 21 (1975) *(per curiam)*.[2]

We thus turn to the question whether the admission of the evidence violated McGuire's federal constitutional rights. California law allows the prosecution to introduce expert testimony and evidence related to prior injuries in order to prove "battered child syndrome." *People* v. *Bledsoe*, *supra*, at 249, 681 P. 2d, at 299; *Landeros* v. *Flood*, 17 Cal. 3d 399, 409, 551 P. 2d 389, 393 (1976); *People* v. *Jackson*, 18 Cal. App. 3d 504, 506–508, 95 Cal. Rptr. 919, 921–922 (1971). The demonstration of battered child syndrome "simply indicates that a child found with [serious, repeated injuries] has not suffered those injuries by accidental means." *Id.*, at 507, 95 Cal. Rptr., at 921. Thus, evidence demonstrating battered child syndrome helps to prove that the child died at the hands of another and not by falling off a couch, for example; it also tends to establish that the "other," whoever it may be, inflicted the injuries intentionally. When offered to show that certain injuries are a product of child abuse, rather than accident, evidence of prior injuries is relevant even though it does not purport to prove the identity of the person who might have inflicted those injuries. See *id.*, at 506–508, 95 Cal. Rptr., at 921–922; *People* v. *Bledsoe*, *supra*, at 249, 681 P. 2d, at 299. Because the prosecution had

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[2] In this regard, we observe that the Ninth Circuit reached a similar result in *Blair* v. *McCarthy*, 881 F. 2d 602 (1989), cert. granted, 498 U. S. 807, vacated as moot and remanded, 498 U. S. 954 (1990). In that case, the Court of Appeals based its grant of habeas relief solely on a violation of state law that prejudiced the defendant. *Blair* v. *McCarthy*, *supra*, at 603–604. As our discussion above makes clear, such state-law violations provide no basis for federal habeas relief.

charged McGuire with second-degree murder, it was required to prove that Tori's death was caused by the defendant's intentional act. Proof of Tori's battered child status helped to do just that; although not linked by any direct evidence to McGuire, the evidence demonstrated that Tori's death was the result of an intentional act by *someone*, and not an accident. The Court of Appeals, however, ignored the principle of battered child syndrome evidence in holding that this evidence was incorrectly admitted. For example, the court stated that "[e]vidence cannot have probative value unless a party connects it to the defendant in some meaningful way." 902 F. 2d, at 753. We conclude that the evidence of prior injuries presented at McGuire's trial, whether it was directly linked to McGuire or not, was probative on the question of the intent with which the person who caused the injuries acted.

In holding the prior injury evidence inadmissible, the Court of Appeals also relied on the theory that, because no claim was made at trial that Tori died accidentally, the battered child syndrome evidence was irrelevant and violative of due process. *Id.*, at 754. This ruling ignores the fact that the prosecution must prove all the elements of a criminal offense beyond a reasonable doubt. In this second-degree murder case, for example, the prosecution was required to demonstrate that the killing was intentional. Cal. Penal Code Ann. §§ 187, 189 (West 1988). By eliminating the possibility of accident, the evidence regarding battered child syndrome was clearly probative of that essential element, especially in light of the fact that McGuire had claimed prior to trial that Tori had injured herself by falling from the couch. The Court of Appeals, however, ruled that the evidence should have been excluded because McGuire did not raise the defense of accidental death at trial. But the prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense. In the federal courts, "[a]

simple plea of not guilty . . . puts the prosecution to its proof as to all elements of the crime charged." *Mathews* v. *United States*, 485 U. S. 58, 64–65 (1988). Neither the Court of Appeals nor the parties have given us any reason to think that the rule is different in California. The evidence of battered child syndrome was relevant to show intent, and nothing in the Due Process Clause of the Fourteenth Amendment requires the State to refrain from introducing relevant evidence simply because the defense chooses not to contest the point.

Concluding, as we do, that the prior injury evidence was relevant to an issue in the case, we need not explore further the apparent assumption of the Court of Appeals that it is a violation of the due process guaranteed by the Fourteenth Amendment for evidence that is not relevant to be received in a criminal trial. We hold that McGuire's due process rights were not violated by the admission of the evidence. See *Spencer* v. *Texas*, 385 U. S. 554, 563–564 (1967) ("Cases in this Court have long proceeded on the premise that the Due Process Clause guarantees the fundamental elements of fairness in a criminal trial. . . . But it has never been thought that such cases establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure") (citations omitted).

II

The Court of Appeals, however, did not rely solely on a finding that the admission of the evidence was unconstitutional. It based its decision in part on a belief that the instruction given by the trial court, set forth in n. 1, *supra*, allowed the jury to consider the prior injury evidence for more than simply proof of the battered child syndrome, and thereby violated McGuire's due process rights. McGuire focuses on the portion of the instruction explaining to the jury that the prior injury evidence

> "was received and may be considered by you only for the limited purpose of determining if it tends to show . . . a clear connection between the other two offense[s] and the one of which the Defendant is accused, so that it may be logically concluded that if the Defendant committed other offenses, he also committed the crime charged in this case." App. 41.

McGuire argues that, despite the absence of any direct evidence showing that he caused the rib and rectal injuries, the instruction told the jury to find that he had committed those prior offenses. Furthermore, he argues, the instruction left the jury with the mistaken impression that it could base its finding of guilt on the simple fact that he had previously harmed Tori. Under McGuire's reading, the instruction is transformed into a propensity instruction, allowing the jury to consider as evidence of his guilt the fact that his prior acts show a disposition to commit this type of crime. This, he contends, violates the Due Process Clause.

In arguing his point, McGuire makes much of the fact that, in giving its instruction, the trial court deviated in part from standard jury instruction 2.50, 1 California Jury Instructions, Criminal (4th ed. 1979) (CALJIC).[3] As we have stated above, however, the fact that the instruction was allegedly incorrect under state law is not a basis for habeas

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[3] Meticulous compliance with CALJIC 2.50, as in effect at McGuire's trial, would have led the trial court to instruct the jury that the prior injury evidence

"was received and may be considered by you only for the limited purpose of determining if it tends to show:

"*A characteristic method, plan or scheme in the commission of criminal acts similar to the method, plan or scheme used in the commission of the offense in this case which would further tend to show* a clear connection between the other offense[s] and the one of which defendant is accused so that it may be logically concluded that if defendant committed the other offense[s] he also committed the crime charged in this case" (portion in italics was omitted from the actual jury instruction given at McGuire's trial).

relief. See *Marshall* v. *Lonberger*, 459 U. S. 422, 438, n. 6 (1983) ("[T]he Due Process Clause does not permit the federal courts to engage in a finely tuned review of the wisdom of state evidentiary rules"). Federal habeas courts therefore do not grant relief, as might a state appellate court, simply because the instruction may have been deficient in comparison to the CALJIC model. Nor do our habeas powers allow us to reverse McGuire's conviction based on a belief that the trial judge incorrectly interpreted the California Evidence Code in ruling that the prior injury evidence was admissible as bad acts evidence in this case. See Cal. Evid. Code Ann. § 1101(b) (West 1988). The only question for us is "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process." *Cupp* v. *Naughten*, 414 U. S. 141, 147 (1973); see also *Henderson* v. *Kibbe*, 431 U. S. 145, 154 (1977); *Donnelly* v. *DeChristoforo*, 416 U. S. 637, 643 (1974) (" '[I]t must be established not merely that the instruction is undesirable, erroneous, or even "universally condemned," but that it violated some [constitutional] right' "). It is well established that the instruction "may not be judged in artificial isolation," but must be considered in the context of the instructions as a whole and the trial record. *Cupp* v. *Naughten*, *supra*, at 147. In addition, in reviewing an ambiguous instruction such as the one at issue here, we inquire "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way" that violates the Constitution. *Boyde* v. *California*, 494 U. S. 370, 380 (1990).[4] And we also bear

[4] We acknowledge that language in the later cases of *Cage* v. *Louisiana*, 498 U. S. 39 (1990), and *Yates* v. *Evatt*, 500 U. S. 391 (1991), might be read as endorsing a different standard of review for jury instructions. See *Cage*, *supra*, at 41 ("In construing the instruction, we consider how reasonable jurors could have understood the charge as a whole"); *Yates*, *supra*, at 401 ("We think a reasonable juror would have understood the [instruction] to mean . . ."). In *Boyde*, however, we made it a point to settle on a single standard of review for jury instructions—the "reasonable likelihood" standard—after considering the many different phrasings that had

in mind our previous admonition that we "have defined the category of infractions that violate 'fundamental fairness' very narrowly." *Dowling* v. *United States*, 493 U. S. 342, 352 (1990). "Beyond the specific guarantees enumerated in the Bill of Rights, the Due Process Clause has limited operation." *Ibid.*

McGuire first claims that the instruction directed the jury to find that he had caused the prior injuries, thereby effectively taking that question from the jury. One might argue that the "two offense[s]" referred to in the instruction were McGuire's pinching of the child's cheeks and the lifting of the child by her arm. When read in context, however, we conclude that the most likely interpretation is that the reference was to the rectal tearing and fractured ribs. McGuire argues that, despite the lack of any direct evidence linking him to those injuries, the instruction directed the jury to find that he had committed them. This claim is clearly foreclosed, however, by the language of the instruction. The challenged portion of the instruction included the words "if the Defendant committed other offenses." App. 41. By including this phrase, the trial court unquestionably left it to the jury to determine whether McGuire committed the prior acts; *only if* the jury believed he was the perpetrator could it use the evidence in deciding whether McGuire was guilty of the crime charged. Therefore, if the jury did not believe McGuire caused the prior injuries, he was not harmed by the challenged portion of the instruction. To the extent that the jury may have believed McGuire committed the prior acts and used that as a factor in its deliberation, we observe that there was sufficient evidence to sustain such a jury

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previously been used by this Court. 494 U. S., at 379–380 (considering and rejecting standards that required examination of either what a reasonable juror "could" have done or "would" have done). So that we may once again speak with one voice on this issue, we now disapprove the standard of review language in *Cage* and *Yates*, and reaffirm the standard set out in *Boyde*.

finding by a preponderance of the evidence. Cf. *People* v. *Simon*, 184 Cal. App. 3d 125, 134, 228 Cal. Rptr. 855, 858 (1986); *Huddleston* v. *United States*, 485 U. S. 681, 690 (1988). The proof of battered child syndrome itself narrowed the group of possible perpetrators to McGuire and his wife, because they were the only two people regularly caring for Tori during her short life. See *People* v. *Jackson*, 18 Cal. App. 3d, at 507, 95 Cal. Rptr., at 921 ("Only someone regularly 'caring' for the child has the continuing opportunity to inflict these types of injuries; an isolated contact with a vicious stranger would not result in this pattern of successive injuries stretching through several months"). A neighbor testified that she had seen McGuire treat Tori roughly on two occasions, and that McGuire's wife was scared to leave Tori alone with McGuire because he "did bad things" to her; the neighbor further testified that she had never seen McGuire's wife abuse the child in any way. Futhermore, when being questioned by the police after Tori died, McGuire's wife stated that she observed bruises on the baby's body when bathing her. When asked by the police for an explanation, she replied, "I don't really know, you know, I am not the only one who is taking care of her." App. 131. The evidence described, along with other evidence in the record, convinces us that there was sufficient proof for the jury to conclude, if it so desired, that McGuire caused the prior rib and rectal injuries.

McGuire also contends that, even if the determination of the perpetrator was left to the jury, the instruction constituted a "propensity" instruction, allowing the jury to base its determination of guilt in part upon the conclusion that McGuire had committed the prior acts and therefore had a propensity to commit this type of crime. While the instruction was not as clear as it might have been, we find that there is not a "reasonable likelihood" that the jury would have concluded that this instruction, read in the context of other instructions, authorized the use of propensity evidence

pure and simple. *Boyde* v. *California*, *supra*, at 380. It seems far more likely that the jury understood the instruction, *supra*, at 71, to mean that *if* it found a "clear connection" between the prior injuries and the instant injuries, and *if* it found that McGuire had committed the prior injuries, then it could use that fact in determining that McGuire committed the crime charged. The use of the evidence of prior offenses permitted by this instruction was therefore parallel to the familiar use of evidence of prior acts for the purpose of showing intent, identity, motive, or plan. See, *e. g.*, Fed. Rule Evid. 404(b). Furthermore, the trial court guarded against possible misuse of the instruction by specifically advising the jury that the "[prior injury] evidence, if believed, was not received, and may not be considered by you[,] to prove that [McGuire] is a person of bad character or that he has a disposition to commit crimes." See n. 1, *supra*. Especially in light of this limiting provision, we reject McGuire's claim that the instruction should be viewed as a propensity instruction.[5]

We therefore hold that neither the introduction of the challenged evidence, nor the jury instruction as to its use, "so infused the trial with unfairness as to deny due process of law." *Lisenba* v. *California*, 314 U. S. 219, 228 (1941); see also *Donnelly* v. *DeChristoforo*, 416 U. S., at 643. The judgment of the Court of Appeals is therefore

Reversed.

Justice Thomas took no part in the consideration or decision of this case.

Justice O'Connor, with whom Justice Stevens joins, concurring in part and dissenting in part.

I agree with the Court that the evidence of battered child syndrome was relevant. The State had to prove that Mark

[5] Because we need not reach the issue, we express no opinion on whether a state law would violate the Due Process Clause if it permitted the use of "prior crimes" evidence to show propensity to commit a charged crime.

McGuire intended to kill his daughter, and the evidence that Tori was a battered child was probative of causation and intent. I therefore join Part I of the Court's opinion.

I do not join Part II of the opinion because I think there is a reasonable likelihood that the jury misapplied the prior acts instruction. The trial court instructed the jury that evidence of Tori's prior injuries had been admitted to show that McGuire had committed offenses similar to that for which he was on trial, and that, if the jury found a "clear connection" between the prior offenses and the charged offense, "it may be logically concluded that if the Defendant committed other offenses, he also committed the crime charged in this case." App. 41. In my view, the instruction encouraged the jury to assume that McGuire had inflicted the prior injuries and then directed the jury to conclude that the prior abuser was the murderer. Because the instruction may have relieved the State of its burden of proving the identity of Tori's murderer beyond a reasonable doubt, I would hold that the instruction was error and remand to the Court of Appeals for a determination of whether that error was harmless.

The fact that a 6-month-old child was repeatedly beaten in the course of her short life is so horrifying that a trial court should take special care to inform the jury as to the significance of that evidence. As the Court notes, the demonstration of battered child syndrome is relevant because it " 'indicates that a child found with [serious, repeated injuries] has not suffered those injuries by accidental means,' " *ante,* at 68 (quoting *People* v. *Jackson,* 18 Cal. App. 3d 504, 507; 95 Cal. Rptr. 919, 921 (1971)). I therefore agree that proof of Tori's battered child status, although "not linked by any direct evidence to McGuire," was properly admitted because "the evidence demonstrated that Tori's death was the result of an intentional act by *someone,* and not an accident." *Ante,* at 69. Precisely because the relevance of battered child syndrome is *not* tied to the identity of the abuser, however, I

believe that a jury instruction clarifying the limited probative value of that evidence was required.

Instead of an instruction limiting the use of evidence of Tori's prior injuries, the trial judge gave an instruction limiting the use of evidence of McGuire's prior bad acts. In so doing, the trial judge himself appears to have assumed that the prior injuries could be attributed to McGuire. The judge told the jury that "[e]vidence has been introduced for the purpose of showing that the Defendant committed acts similar to those constituting a crime other than that for which he is on trial." App. 40. The State concedes that this category of evidence encompasses both the acts for which McGuire was positively identified as the actor (carrying the child by one arm and roughly pinching her cheeks) and the far more brutal acts for which no actor was identified (the fractured ribs and the rectal tearing). The grouping of these two distinct classes of evidence created a reasonable likelihood that the jury would believe that McGuire had been identified—at least in the eyes of the trial judge—as the prior abuser.

The trial court's error in implying that McGuire had been identified as the prior abuser was compounded by its further instruction that, if the jury found a "clear connection" between the prior offenses and the charged offense, "it may be logically concluded that if the Defendant committed other offenses, he also committed the crime charged in this case." The Court finds it "likely" that the jury understood the instruction to mean that "*if* it found a 'clear connection' between the prior injuries and the instant injuries, and *if* it found that McGuire had committed the prior injuries, then it could use that fact in determining that McGuire committed the crime charged." *Ante*, at 75. In my view, there is a reasonable likelihood that the jury did not understand this single sentence to establish a two-step process.

The jury was instructed to "consider" the evidence that McGuire had "committed acts similar" to the crime charged

and to "determin[e]" whether there was a "clear connection" between these prior acts and the ones that resulted in Tori's death. App. 40, 41. The trial court did not instruct the jury that it must first "determine" whether McGuire had in fact inflicted the prior injuries. The part of the instruction relied upon by the Court—"it may be logically concluded that if the defendant committed other offenses, he also committed the crime charged in this case"—does not make clear that it is the jury's role to ascertain whether McGuire was the perpetrator of the prior abuse. Rather, coming as it does in the middle of what appears to be a conclusion of law, it is reasonably likely that the jury understood that such a determination had already been made and that its role was merely to determine if there was a "clear connection" between Tori's prior injuries and the injuries that killed her.

Although we "have defined the category of infractions that violate 'fundamental fairness' very narrowly," *Dowling* v. *United States*, 493 U. S. 342, 352 (1990), it is well established that the fundamental fairness guarantee of the Due Process Clause requires the prosecution to prove beyond a reasonable doubt every element of the offense. *In re Winship*, 397 U. S. 358, 364 (1970); *McMillan* v. *Pennsylvania*, 477 U. S. 79, 85 (1986). This constitutional principle "prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime." *Francis* v. *Franklin*, 471 U. S. 307, 313 (1985); *Sandstrom* v. *Montana*, 442 U. S. 510 (1979). Thus, we have held that mandatory presumptions violate the Due Process Clause if they relieve the State of the burden of persuasion on an element of the offense. *Patterson* v. *New York*, 432 U. S. 197, 215 (1977); *Sandstrom*, *supra*, at 520–524. By contrast, a permissive inference is not a violation

of due process because the State still has the burden of persuading the jury that the suggested conclusion should be inferred based on the predicate facts proved. *Ulster County Court* v. *Allen*, 442 U. S. 140, 157–163 (1979).

In this case, the instruction perhaps was intended to posit a permissive inference that whoever had inflicted Tori's prior injuries was likely to have inflicted the injuries that caused her death. But the trial court did not make clear that the State first had to prove the predicate facts from which the inference was to be drawn. Furthermore, the wording of the instruction is such that the jury may well have assumed that it had no choice but to "logically conclud[e]" that McGuire was the murderer once it found a "clear connection" between the prior injuries and the fatal ones.* Because I cannot say with any confidence that the instruction allowed a mere permissive inference drawing from proven facts, I think the instruction should be treated as a mandatory presumption that may have relieved the State of its burden of proving the identity of Tori's killer beyond a reasonable doubt.

Had the instruction been clearly worded, I would agree with the Court that there is sufficient circumstantial evidence in the record to support a finding that McGuire was the perpetrator of the prior injuries. After all, as the Court points out, "[t]he proof of battered child syndrome itself narrowed the group of possible perpetrators to McGuire and his wife, because they were the only two people regularly caring for Tori." *Ante*, at 74. In this case, however, it is important to remember that the other person regularly caring for Tori—Daisy McGuire—took the stand and testified, under a grant of immunity, that *she* was the one who inflicted the fatal injuries on the night of July 7, 1981.

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*Although not dispositive, it is worth noting that California's model jury instructions on "evidence of other crimes" has since been revised to eliminate the phrase "so that it may be logically concluded." See 1 California Jury Instructions, Criminal 2.50 (5th ed. 1987).

McGuire's jury deliberated for three days before returning a verdict of guilty. Any evaluation of the jury instruction must be conducted against the background of Daisy McGuire's surprise testimony and the dilemma it so clearly posed for the jury. In my view, the jury instruction on similar acts was so "ambiguous," *ante*, at 72, that there was a reasonable likelihood that the jury was encouraged to make assumptions and conclusions about the identity of Tori's murderer that relieved the State of having to prove that element of the offense beyond a reasonable doubt. In cases where the Court has found that jury instructions included mandatory presumptions inconsistent with the guarantees of the Due Process Clause, the Court has remanded to determine whether the erroneous instruction was harmless, which is the course that should be followed here. See, *e. g.*, *Sandstrom*, *supra*, at 526–527; *Rose* v. *Clark*, 478 U. S. 570, 584 (1986); *Carella* v. *California*, 491 U. S. 263, 266–267 (1989) *(per curiam)*.

Syllabus

SOUTHWEST MARINE, INC. *v.* GIZONI

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

No. 90–584. Argued October 15, 1991—Decided December 4, 1991

Petitioner Southwest Marine, Inc., a ship repair facility operator, owns several floating platforms that, among other things, support ship repairmen engaged in their work. Respondent Gizoni, a rigging foreman, worked on the platforms and rode them as they were towed into place. Disabled when his foot broke through a wooden sheet covering a hole in a platform's deck, he applied for, and received, medical and compensation benefits from petitioner pursuant to the Longshore and Harbor Workers' Compensation Act (LHWCA). He later brought suit against petitioner under, *inter alia*, the Jones Act, alleging that he was a seaman injured as a result of his employer's negligence. The District Court granted petitioner's motion for summary judgment, concluding that, as a matter of law, Gizoni was not a Jones Act seaman, and that he was a harbor worker precluded from bringing his action by the LHWCA, which provides the exclusive remedy for a maritime employee, 33 U. S. C. § 905(a). The term employee includes, *inter alios*, any harbor worker, including a ship repairman, but not "a master or member of a crew of any vessel," § 902(3). The Court of Appeals reversed both determinations. It held that questions of fact existed as to Gizoni's seaman status; and it rejected the notion that any employee whose work involved ship repair was necessarily restricted to remedy under the LHWCA, reasoning that coverage under the Jones Act or the LHWCA depended not on the claimant's job title, but on the nature of the claimant's work and Congress' intent in enacting those statutes.

Held: A maritime worker whose occupation is one of those enumerated in the LHWCA may be a seaman within the meaning of the Jones Act. Pp. 86–92.

(a) It cannot be the case that, as a matter of law, the LHWCA provides the exclusive remedy for all harbor workers, since the LHWCA and its exclusionary provision do not apply to a harbor worker who is also a "member of a crew of any vessel," a phrase that is a "refinement" of the term "seaman" in the Jones Act. *McDermott Int'l, Inc.* v. *Wilander*, 498 U. S. 337, 355. Although better characterized as a mixed question of law and fact, the inquiry into seaman status is fact specific and depends on the vessel's nature and the employee's precise relation to it. A maritime worker need only be doing a ship's work, not aiding

in its navigation, in order to qualify as a "seaman" under the Jones Act. *Id.*, at 349. Petitioner's argument that this fact-intensive inquiry may always be resolved as a matter of law if the claimant's job fits within one of the enumerated occupations defining the term "employee" covered by the LHWCA ignores the fact that some maritime workers may be Jones Act seamen performing a job specifically enumerated under the LHWCA. Pp. 86–89.

(b) Petitioner's several arguments to foreclose Gizoni's Jones Act suit are rejected. Decisions holding that the LHWCA provides the exclusive remedy for certain injured railroad workers otherwise permitted by the Federal Employers' Liability Act to pursue a negligence cause of action provide no meaningful guidance here, for the LHWCA contains no exclusion for railroad workers comparable to that for Jones Act seamen. Petitioner errs in arguing that, where a maritime worker is arguably covered by the LHWCA, Congress intended to preclude or stay traditional Jones Act suits in the district courts pending a final LHWCA administrative agency determination of that issue. Indeed, the LHWCA anticipates that such suits could be brought. See 33 U. S. C. § 913(d). And, unlike the Federal Employees Compensation Act, the LHWCA contains no "unambiguous and comprehensive" provisions barring any judicial review of administrative determinations of coverage. Moreover, its administrative proceedings do not require the same jurisdictional limitations that the National Labor Relations Act (NLRA) places on courts in favor of National Labor Relations Board hearings, since the LHWCA's proceedings in no way approach the NLRA's complex and interrelated federal scheme of law, remedy, and administration requiring pre-emption in those cases. Neither is it essential to the LHWCA's administration that resolution of the coverage issue be left in the first instance to agency proceedings. Petitioner's suggestion that an employee's receipt of benefits under the LHWCA precludes subsequent litigation under the Jones Act is also rejected, see *Tipton* v. *Socony Mobil Oil Co.*, 375 U. S. 34, 37, since the question of coverage has never been litigated in such cases, and since the LHWCA clearly does not comprehend such a preclusive effect, see § 903(e). Pp. 89–92.

909 F. 2d 385, affirmed.

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

George J. Tichy II argued the cause for petitioner. With him on the briefs were *Roy D. Axelrod*, *James J. McMullen, Jr.*, *Jacqueline P. McManus*, and *Lloyd A. Schwartz.*

Preston Easley argued the cause and filed briefs for respondent.

Robert A. Long, Jr., argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Starr*, *Deputy Solicitor General Shapiro*, *Allen H. Feldman*, *Kerry L. Adams*, and *Deborah Greenfield.**

JUSTICE WHITE delivered the opinion of the Court.

The question presented is whether a maritime worker whose occupation is one of those enumerated in the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, as amended, 33 U. S. C. § 901 *et seq.*, may yet be a "seaman" within the meaning of the Jones Act, 46 U. S. C. App. § 688, and thus be entitled to bring suit under that statute.

I

Petitioner Southwest Marine, Inc., operates a ship repair facility in San Diego, California. In connection with its ship repair activities, Southwest Marine owns several floating platforms, including a pontoon barge, two float barges, a rail barge, a diver's barge, and a crane barge. These platforms by themselves have no power, means of steering, navigation lights, navigation aids, or living facilities. They are moved about by tugboats, which position the platforms alongside vessels under repair at berths or in drydock at Southwest Marine's shipyard or at the nearby naval station. The platforms are used to move equipment, materials, supplies, and vessel components around the shipyard and on to and off of

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*Briefs of *amici curiae* urging reversal were filed for Global Marine, Inc., et al. by *Forrest Booth*, *Winston E. Rice*, and *Eileen R. Madrid*; and for the Shipbuilders Council of America by *John L. Wittenborn* and *Franklin W. Losey*.

John R. Hillsman filed a brief for the United Brotherhood of Carpenters and Joiners of America as *amicus curiae* urging affirmance.

the vessels under repair. Once in place, the platforms support ship repairmen engaged in their work.

Southwest Marine employed respondent Byron Gizoni as a rigging foreman. Gizoni worked on the floating platforms and rode them as they were towed into place. Gizoni occasionally served as a lookout and gave maneuvering signals to the tugboat operator when the platforms were moved. He also received lines passed to the platforms by the ships' crews to secure the platforms to the vessels under repair. Gizoni suffered disabling leg and back injuries in a fall when his foot broke through a thin wooden sheet covering a hole in the deck of a platform being used to transport a rudder from the shipyard to a floating drydock.

Gizoni submitted a claim for, and received, medical and compensation benefits from Southwest Marine pursuant to the LHWCA. He later sued Southwest Marine under the Jones Act in the United States District Court for the Southern District of California, alleging that he was a seaman injured as a result of his employer's negligence. Gizoni also pleaded causes of action for unseaworthiness and for maintenance and cure. App. IV–4, IV–5. In addition to the above facts, Gizoni alleged in his complaint that Southwest Marine's floating platforms were "a group of vessels . . . in navigable waters," and that as a rigging foreman, he was "permanently assigned to said group of vessels." *Id.*, at IV–3.

The District Court granted Southwest Marine's motion for summary judgment on two grounds. The District Court determined as a matter of law that Gizoni was not a Jones Act seaman, finding that Southwest Marine's floating platforms were not "vessels in navigation," and that Gizoni was on board to perform work as a ship repairman, not to "aid in navigation." App. to Pet. for Cert. I–1, I–2. More important to our purposes here, the District Court further concluded that Gizoni was a harbor worker precluded from bringing his action by the exclusive remedy provisions of the LHWCA, 33 U. S. C. § 905(a). App. to Pet. for Cert. I–2.

The United States Court of Appeals for the Ninth Circuit reversed the determination that Gizoni was not a seaman as a matter of law, 909 F. 2d 385, 387 (1990), holding that questions of fact existed as to seaman status, *e. g.*, whether the floating platforms were vessels in navigation, whether Gizoni's relationship to those platforms was permanent, and whether he aided in their navigation. *Id.*, at 388. The Ninth Circuit also reversed the District Court's determination that the exclusive remedy provisions of the LHWCA precluded Gizoni from pursuing his Jones Act claim. The court concluded that the LHWCA by its terms does not cover "a master or member of a crew of any vessel," 33 U. S. C. § 902(3)(G), that this phrase is the equivalent of "seaman" under the Jones Act, and that the question of his seaman status should have been presented to a jury. 909 F. 2d, at 389. The Ninth Circuit thus rejected the notion that any employee whose work involved ship repair was necessarily restricted to remedy under the LHWCA, reasoning that coverage under the Jones Act or the LHWCA depended not on the claimant's job title, but on the nature of the claimant's work and the intent of Congress in enacting these statutes. *Ibid.*

We granted certiorari, 498 U. S. 1119 (1991), to resolve the conflict among the Circuits on this issue.[1] We now affirm the judgment of the Ninth Circuit.

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[1] The Ninth Circuit in this case followed a decision by the Sixth Circuit, which held that "[a] plaintiff is not limited to the remedies available under the LHWCA unless he is unable to show that a genuine factual issue exists as to whether he was a seaman at the time of his injury." *Petersen* v. *Chesapeake & Ohio R. Co.*, 784 F. 2d 732, 739 (1986). To the contrary, the Fifth Circuit has previously held that "because longshoremen, shipbuilders and ship repairers are engaged in occupations enumerated in the LHWCA, they are unqualifiedly covered by that Act if they meet the Act's situs requirements; coverage of these workmen by the LHWCA renders them ineligible for consideration as seamen or members of the crew of a vessel entitled to claim the benefits of the Jones Act." *Pizzitolo* v. *Electro-Coal Transfer Corp.*, 812 F. 2d 977, 983 (1987). A later decision

II

The Jones Act and the LHWCA each provide a remedy to the injured maritime worker; however, each specifies different maritime workers to be within its reach. In relevant part, the Jones Act provides that "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply . . . ." 46 U. S. C. App. § 688(a). Under the LHWCA, the exclusiveness of liability provision in part states that the liability of an employer "shall be exclusive and in place of all other liability of such employer to the employee . . . ." 33 U. S. C. § 905(a). However, the term "employee," as defined in the LHWCA,[2] does *not* include "a

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by the Fifth Circuit undercut much of the reasoning in *Pizzitolo* by limiting it to cases where "the evidence is insufficient to warrant a finding of seaman's status." *Legros* v. *Panther Services Group, Inc.*, 863 F. 2d 345, 349 (1988). The Fifth Circuit granted rehearing en banc, but the parties later settled and the appeal was dismissed. *Legros* v. *Panther Services Group, Inc.*, 874 F. 2d 953 (1989). With the opinion in *Legros* vacated, *Pizzitolo* remains the law in the Fifth Circuit, although its breadth may be in some question.

[2] In full, 33 U. S. C. § 902(3) provides:

"The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

"(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

"(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

"(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

"(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer

master or member of a crew of any vessel." § 902(3)(G). The District Court was therefore plainly wrong in holding that, as a matter of law, the LHWCA provided the exclusive remedy for all harbor workers. That cannot be the case if the LHWCA and its exclusionary provision do not apply to a harbor worker who is also a "member of a crew of any vessel," a phrase that is a "refinement" of the term "seaman" in the Jones Act. *McDermott Int'l, Inc.* v. *Wilander*, 498 U. S. 337, 349 (1991).[3]

The determination of who is a "member of a crew" is "better characterized as a mixed question of law and fact," rather

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described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this chapter;

"(E) aquaculture workers;

"(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

"(G) a master or member of a crew of any vessel; or

"(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

"if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law."

[3] Southwest Marine points as well to a separate exclusiveness of liability provision regarding the negligence of a vessel, 33 U. S. C. § 905(b), and places great emphasis on a passage that states:

"If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer."

This exclusivity provision applies, however, only "[i]n the event of injury to a person covered under this chapter [the LHWCA] caused by the negligence of a vessel." § 905(b). As we have already noted, the question whether Gizoni is "a person covered under this chapter" depends upon whether he is a "seaman" under the Jones Act. Like the companion exclusivity provision of § 905(a), § 905(b) does not dictate sole recourse to the LHWCA unless Gizoni is found *not* to be "a master or member of a crew of any vessel."

than as a pure question of fact. *Id.*, at 356. Even so, "[t]he inquiry into seaman status is of necessity fact-specific; it will depend on the nature of the vessel, and the employee's precise relation to it." *Ibid.* Our decision in *Wilander* jettisoned any lingering notion that a maritime worker need aid in the navigation of a vessel in order to qualify as a "seaman" under the Jones Act. "The key to seaman status is employment-related connection to a vessel in navigation. . . . It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work." *Id.*, at 355. In arriving at this conclusion, we again recognized that "the Jones Act and the LHWCA are mutually exclusive," *id.*, at 347 (citing *Swanson* v. *Marra Brothers, Inc.*, 328 U. S. 1 (1946)), for the very reason that the LHWCA specifically precludes from its provisions any employee who is "a master or member of a crew of any vessel."

Southwest Marine suggests, in line with Fifth Circuit precedent, that this fact-intensive inquiry may always be resolved as a matter of law if the claimant's job fits within one of the enumerated occupations defining the term "employee" covered by the LHWCA. However, this argument ignores the fact that some maritime workers may be Jones Act seamen performing a job specifically enumerated under the LHWCA. Indeed, Congress foresaw this possibility, and we have previously quoted a portion of the legislative history to the 1972 amendments to the LHWCA that states: "'[T]he bill would amend the Act to provide coverage of longshoremen, harbor workers, *ship repairmen,* ship builders, shipbreakers, and other employees engaged in maritime employment *(excluding masters and members of the crew of a vessel).*'" *Northeast Marine Terminal Co.* v. *Caputo*, 432 U. S. 249, 266, n. 26 (1977) (quoting S. Rep. No. 92–1125, p. 13 (1972)) (emphasis added). As we observed in *Wilander:* "There is no indication in the Jones Act, the LHWCA, or

elsewhere, that Congress has excluded from Jones Act remedies those traditional seamen who owe allegiance to a vessel at sea, but who do not aid in navigation." 498 U. S., at 354. While in some cases a ship repairman may lack the requisite connection to a vessel in navigation to qualify for seaman status, see, *e. g.*, *Sun Ship, Inc.* v. *Pennsylvania*, 447 U. S. 715 (1980) (ship repairmen working and injured on land); *P. C. Pfeiffer Co.* v. *Ford*, 444 U. S. 69, 80, and n. 12 (1979), not all ship repairmen lack the requisite connection as a matter of law.[4] This is so because "[i]t is not the employee's particular job that is determinative, but the employee's connection to a vessel." *Wilander*, *supra*, at 354. By its terms the LHWCA preserves the Jones Act remedy for vessel crewmen, even if they are employed by a shipyard. A maritime worker is limited to LHWCA remedies only if no genuine issue of fact exists as to whether the worker was a seaman under the Jones Act.

Southwest Marine submits several arguments in an attempt to foreclose this Jones Act suit. First, Southwest Marine contends that our decision in *Wilander* will conflict with decisions holding that the LHWCA provides the exclusive remedy for certain injured railroad workers otherwise permitted by the Federal Employers' Liability Act, 45 U. S. C. § 51 *et seq.*, to pursue a negligence cause of action. See, *e. g.*, *Chesapeake & Ohio R. Co.* v. *Schwalb*, 493 U. S. 40 (1989); *Pennsylvania R. Co.* v. *O'Rourke*, 344 U. S. 334 (1953). Such cases, however, can provide no meaningful guidance on

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[4] Gizoni stipulates that he was a ship repairman for Southwest Marine and correctly notes that many ship repairmen are *excluded* from LHWCA coverage, even though ship repairmen are expressly enumerated as a category of "harborworker" *included* within its coverage. See 33 U. S. C. § 902(3)(F) (individuals employed to repair recreational vessels under 65 feet in length); § 902(3)(H) (persons engaged to repair small vessels under 18 tons net). We find it significant that such clear exclusions of certain ship repairmen fall on either side of the exclusion here at issue for "a master or member of a crew of any vessel." § 902(3)(G).

the issue here, for the LHWCA contains no exclusion for railroad workers comparable to that for Jones Act seamen.

Next, Southwest Marine advances a "primary jurisdiction" argument suggesting that, where a maritime worker is "arguably covered" by the LHWCA, the district court should stay any Jones Act proceeding pending a final LHWCA "administrative agency" determination that the worker is, in fact, a "master or member of a crew." We find no indication in the LHWCA that Congress intended to preclude or stay traditional Jones Act suits in the district courts. Indeed, the LHWCA anticipates that such suits could be brought. Title 33 U. S. C. § 913(d) tolls the time to file LHWCA claims "[w]here recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter."

Southwest Marine seeks to support its primary jurisdiction argument by pointing to the relation between the Federal Employees' Compensation Act (FECA), 5 U. S. C. § 8101 *et seq.*, and the Federal Tort Claims Act (FTCA), 28 U. S. C. § 2671 *et seq.* But FECA contains an "unambiguous and comprehensive" provision barring any judicial review of the Secretary of Labor's determination of FECA coverage. *Lindahl* v. *Office of Personnel Management*, 470 U. S. 768, 780, and n. 13 (1985); see 5 U. S. C. § 8128(b). Consequently, the courts have no jurisdiction over FTCA claims where the Secretary determines that FECA applies. The LHWCA contains no such provision. Likewise, we reject Southwest Marine's argument that agency proceedings under the LHWCA require the jurisdictional limitations we have found the National Labor Relations Act (NLRA), 29 U. S. C. § 151 *et seq.*, to place on state and federal courts in favor of the proceedings conducted by the National Labor Relations Board.

See, *e. g., Longshoremen* v. *Davis,* 476 U. S. 380, 389–390 (1986); *San Diego Building Trades Council* v. *Garmon,* 359 U. S. 236, 243–245 (1959). The administrative proceedings outlined under the LHWCA in no way approach "the NLRA's 'complex and interrelated federal scheme of law, remedy, and administration'" requiring pre-emption in those cases. *Longshoremen, supra,* at 389 (quoting *Garmon, supra,* at 243). Neither is it "essential to the administration" of the LHWCA that resolution of the question of coverage be left "'in the first instance'" to agency proceedings in the Department of Labor. *Longshoremen, supra,* at 390 (quoting *Garmon, supra,* at 244–245).

Finally, Southwest Marine suggests that an employee's receipt of benefits under the LHWCA should preclude subsequent litigation under the Jones Act. To the contrary, however, we have ruled that where the evidence is sufficient to send the threshold question of seaman status to the jury, it is reversible error to permit an employer to prove that the worker accepted LHWCA benefits while awaiting trial. *Tipton* v. *Socony Mobil Oil Co.,* 375 U. S. 34, 37 (1963). It is by now "universally accepted" that an employee who receives voluntary payments under the LHWCA without a formal award is not barred from subsequently seeking relief under the Jones Act. G. Gilmore & C. Black, Law of Admiralty 435 (2d ed. 1975); see 4 A. Larson, Workmen's Compensation Law § 90.51, p. 16–507 (1989) (collecting cases); *Simms* v. *Valley Line Co.,* 709 F. 2d 409, 412, and nn. 3 and 5 (CA5 1983). This is so, quite obviously, because the question of coverage has never actually been litigated. Moreover, the LHWCA clearly does not comprehend such a preclusive effect, as it specifically provides that any amounts paid to an employee for the same injury, disability, or death pursuant to the Jones Act shall be credited against any liability imposed by the

LHWCA.[5] 33 U. S. C. § 903(e). See Gilmore & Black, *supra*, at 435.

III

Because a ship repairman may spend all of his working hours aboard a vessel in furtherance of its mission—even one used exclusively in ship repair work—that worker may qualify as a Jones Act seaman. By ruling as a matter of law on the basis of job title or occupation alone, the District Court foreclosed Gizoni's ability to make this showing. "If reasonable persons, applying the proper legal standard, could differ as to whether the employee was a 'member of a crew,' it is a question for the jury." *Wilander*, 498 U. S., at 356. The Ninth Circuit concluded that questions of fact existed regarding whether the floating platforms were vessels in navigation, and whether Gizoni had sufficient connection to the platforms to qualify for seaman status.[6] Gizoni alleges facts in support of each of these propositions—facts which Southwest Marine disputes. Compare Brief for Respondent 11 with Brief for Petitioner 3. Summary judgment was inappropriate.

The judgment of the Court of Appeals is

Affirmed.

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

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[5] For this same reason, equitable estoppel arguments suggested by *amicus* Shipbuilders Council of America must fail. Where full compensation credit removes the threat of double recovery, the critical element of detrimental reliance does not appear. See *Heckler* v. *Community Health Services of Crawford County, Inc.*, 467 U. S. 51, 59 (1984); *Lyng* v. *Payne*, 476 U. S. 926, 935 (1986). Argument by *amicus* would force injured maritime workers to an election of remedies we do not believe Congress to have intended.

[6] The Ninth Circuit also found questions of fact to remain concerning whether Gizoni aided in the navigation of these platforms. After *McDermott Int'l, Inc.* v. *Wilander*, 498 U. S. 337 (1991), however, only "employment-related connection to a vessel in navigation" is required. *Id.*, at 355. To be a seaman, the employee need not aid in navigation.

Syllabus

WOODDELL *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 71, ET AL.

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

No. 90–967. Argued October 16, 1991—Decided December 4, 1991

Petitioner Wooddell, a member of Local 71 of the International Brotherhood of Electrical Workers (IBEW), sued respondents, the local and its officers, alleging, *inter alia*, that, because of his opposition to proposed union actions, they had violated his rights under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) by discriminating against him in job referrals in the operation of a hiring hall provided for in the local's collective-bargaining contracts with electrical contractors. He also contended that such conduct constituted violations of the IBEW Constitution and the local's bylaws, which were allegedly breaches of contract redressable under § 301 of the Labor-Management Relations Act, 1947 (LMRA). Among other things, Wooddell sought injunctive relief, lost wages and benefits, and damages. The District Court dismissed all claims against all defendants. The Court of Appeals reversed the dismissal of the LMRDA claim but otherwise affirmed the District Court, including its holding that Wooddell had no right to have the LMRDA claim tried to a jury. The Court of Appeals further held that § 301—which provides that "[s]uits for violation of contracts between . . . labor organizations . . . may be brought in . . . district court"—did not authorize a breach-of-contract action to be brought by an individual union member for an alleged violation of a union constitution.

Held:

1. Wooddell was entitled to a jury trial on the LMRDA cause of action. Although he seeks injunctive relief as well as damages, the injunctive relief is assertedly incidental to the damages. His claim for lost wages cannot be treated as restitutionary incident to an order reinstating him to a job from which he has been terminated, as the damages sought are for pay for jobs to which the union failed to refer him. Also, an LMRDA action is closely analogous to a personal injury action, a prototypical example of an action at law to which the Seventh Amendment right to jury trial applies. Thus, *Teamsters* v. *Terry*, 494 U. S. 558, 565, 570, 571—in which the Court found a right to a jury trial on a claim for an employer's breach of a collective-bargaining agreement

under § 301 and a union's breach of the duty of fair representation—controls this case. Pp. 97–98.

2. The subject-matter jurisdiction conferred on the district courts by § 301(a) extends to suits on union constitutions brought by individual union members. Wooddell charged a violation of a contract between unions within the meaning of § 301, since union constitutions are an important form of contract between labor organizations, *Plumbers and Pipefitters* v. *Plumbers and Pipefitters, Local 334*, 452 U. S. 615, 624, and since Wooddell alleged that the IBEW Constitution requires locals to live up to collective-bargaining agreements, that that constitution and the local's bylaws are contracts which are binding on the local, and that the defendants had breached such contracts by discriminating against him in referrals. Moreover, § 301 is not limited to suits brought by a party to an interunion contract, but extends to individual union members when they are the beneficiaries of such contracts. Cf. *Smith* v. *Evening News Assn.*, 371 U. S. 195, 200–201. If such members could not sue under § 301, but were required to resort to state court and state law, the possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon the negotiation and administration of interunion contracts. Cf. *ibid.* There is no merit to respondents' contention that construing § 301 in this fashion signals an unwarranted intrusion on state contract law, since there is no indication in the later enacted LMRDA that Congress meant to narrow § 301's reach. Also unconvincing is respondents' submission that this construction of § 301 will inundate the federal courts with trivial suits dealing with intraunion affairs, since there is no evidence of such a result in the various Federal Circuits that have adopted the interpretation. Pp. 98–103.

907 F. 2d 151, reversed and remanded.

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

Theodore E. Meckler argued the cause for petitioner. With him on the briefs were *Paul Alan Levy* and *Alan B. Morrison*.

Frederick G. Cloppert, Jr., argued the cause for respondents. With him on the brief were *Michael J. Hunter* and *Russell E. Carnahan.**

JUSTICE WHITE delivered the opinion of the Court.

We have before us two questions: whether a union member who sues his local union for money damages under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 519, as amended, 29 U. S. C. § 401 *et seq.*, is entitled to a jury trial, and whether under § 301(a) of the Labor-Management Relations Act, 1947 (LMRA), 61 Stat. 156, 29 U. S. C. § 185(a),[1] the District Court had jurisdiction over the breach-of-contract suit brought in this case by a union member against his local union.

I

Petitioner is a member of Local 71 of the International Brotherhood of Electrical Workers (IBEW). In the wake of a dispute arising out of petitioner's opposition to an announced dues increase and to the appointment of a union representative, the respondent president of the local (petitioner's brother) filed internal disciplinary proceedings against petitioner. No decision was finally rendered on the charges. Later, petitioner alleges, the union discriminated against him in job referrals in the operation of a hiring hall provided for in Local 71's collective-bargaining contracts with electrical contractors. Petitioner brought suit against

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**Steven R. Shapiro*, *John A. Powell*, and *Helen Hershkoff* filed a brief for the Association for Union Democracy et al. as *amici curiae* urging reversal.

[1] Section 301(a) states: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U. S. C. § 185(a).

the local and its officers in the United States District Court. Petitioner's complaint alleged violation of his rights protected by the LMRDA in that he had been discriminated against in job referrals because of his opposition to proposed union policy; violation of his right to a fair hearing under the LMRDA; violations of the IBEW Constitution and the bylaws of Local 71, which were alleged to constitute breaches of contract redressable under § 301 of the LMRA and state law; breach of the duty of fair representation redressable under § 301; and pendent state-law claims alleging interference with contractual relations and intentional infliction of emotional distress. Petitioner sought injunctive relief, lost wages and benefits, additional compensatory damages, punitive damages, and attorney's fees. App. 14–15.

In the course of acting on two summary judgment motions filed by defendants, the District Court dismissed all claims against all defendants. The Court of Appeals reversed the dismissal of the LMRDA free speech-job discrimination claim but otherwise affirmed the District Court, including its holding that petitioner had no right to have his LMRDA claim tried to a jury. Judgt. order reported at 907 F. 2d 151 (CA6 1990). With respect to the § 301 breach-of-contract claim, the Court of Appeals relied on prior Circuit precedent[2] in holding that § 301 did not authorize such an action to be brought by an individual union member. We granted certiorari to address both the jury trial and the § 301 issues. 498 U. S. 1082 (1991).

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[2] *Trail* v. *Teamsters*, 542 F. 2d 961 (CA6 1976). Other Courts of Appeals that have addressed this issue since *Plumbers and Pipefitters* v. *Plumbers and Pipefitters, Local 334*, 452 U. S. 615 (1981), have reached a contrary conclusion. See, *e. g.*, *DeSantiago* v. *Laborers Int'l Union of North America, Local No. 1140*, 914 F. 2d 125 (CA8 1990); *Pruitt* v. *Carpenters Local Union No. 225*, 893 F. 2d 1216 (CA11 1990); *Lewis* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 771*, 826 F. 2d 1310 (CA3 1987); *Kinney* v. *International Brotherhood of Electrical Workers*, 669 F. 2d 1222 (CA9 1981).

II

We first address the jury trial issue. The case below was briefed and argued before our decision in *Teamsters* v. *Terry*, 494 U. S. 558 (1990). Although *Terry* was handed down on March 20, 1990, well before the decision of the Court of Appeals for the Sixth Circuit, the decision below neither cites nor discusses *Terry*.

To determine whether a particular action will resolve legal rights, and therefore give rise to a jury trial right, we examine both the nature of the issues involved and the remedy sought. *Id.*, at 565. "'First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature.'" *Ibid.*, citing *Tull* v. *United States*, 481 U. S. 412, 417–418 (1987). The second inquiry is the more important in our analysis. *Terry*, *supra*, at 565, citing *Granfinanciera, S. A.* v. *Nordberg*, 492 U. S. 33, 42 (1989).

In *Terry*, we applied settled principles of Seventh Amendment interpretation to a claim for an employer's breach of a collective-bargaining agreement under § 301 and the union's breach of the duty of fair representation. Generally, an award of money damages was the traditional form of relief offered in the courts of law. *Terry*, *supra*, at 570, citing *Curtis* v. *Loether*, 415 U. S. 189, 196 (1974). Because we found that the damages sought were neither analogous to equitable restitutionary relief, *Tull*, 481 U. S., at 424, nor incidental to or intertwined with injunctive relief, *ibid.*, we concluded that the remedy had none of the attributes required for an exception to the general rule, and thus found the remedy sought to be legal. *Terry*, *supra*, at 570, 571.

Petitioner contends that, although he seeks injunctive relief as well as damages, the injunctive relief is incidental to the damages, and not vice versa, and that his claim for lost wages cannot be treated as restitutionary incident to an

order reinstating him to a job from which he has been terminated, as the damages sought are for pay for jobs to which the union failed to refer him. Also, this Court has recently held that actions under the LMRDA are closely analogous to personal injury actions, *Reed* v. *United Transportation Union*, 488 U. S. 319, 326–327 (1989). A personal injury action is of course a prototypical example of an action at law, to which the Seventh Amendment applies.

We agree with petitioner and hold that petitioner was entitled to a jury trial on the LMRDA cause of action, and we note that respondents now concede that *Terry* controls this case. Accordingly, we reverse the judgment below on this issue.

III

Whether the subject-matter jurisdiction conferred on the district courts by § 301 extends to suits on union constitutions brought by individual union members is strongly disputed by respondents. We agree with petitioner on this issue, however.

In *Smith* v. *Evening News Assn.*, 371 U. S. 195, 198 (1962), we held that the word "between" in § 301 refers to "contracts," not "suits," *id.*, at 200–201. Hence, a suit properly brought under § 301 must be a suit either for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce or for violation of a contract between such labor organizations. No employer-union contract is involved here; if the District Court had § 301 subject-matter jurisdiction over petitioner's suit against his union, it is because his suit alleges a violation of a contract between two unions,[3] and because § 301 is not

[3] The § 301 issue is stated as follows by both petitioner and respondents: "Does section 301 of the Labor-Management Relations Act create a federal cause of action under which a union member may sue his union for a violation of the union constitution?" Brief for Petitioner i; Brief for Respondents i. As the text makes clear, the answer to that question is in the

limited to suits brought by a party to that contract, *i. e.*, because one in petitioner's position may properly bring such a suit.[4]

The first of the two requirements is governed in part by *Plumbers and Pipefitters* v. *Plumbers and Pipefitters, Local 334*, 452 U. S. 615 (1981). In that case a local union sued the international union of which it was a part. The claim was that the international had violated a specific provision of its own constitution by ordering the consolidation of nine local unions into two. The issue was whether that constitution was a contract between labor organizations within the meaning of § 301.

Since union constitutions were at the time of enactment of Taft-Hartley (and remain) probably the most commonplace form of contract between labor organizations, we concluded that Congress would not likely have used the unqualified term "contract" without intending to encompass union constitutions. *Id.*, at 624. Certainly Congress could conclude that the enforcement of the terms of union constitutions would contribute to labor stability, and that § 301 should be enacted to provide

> "*federal* jurisdiction for enforcement of contracts made by labor organizations to counteract jurisdictional defects in many state courts that made it difficult or impossible to bring suits against labor organizations by reason of their status as unincorporated organizations." *Ibid.* (emphasis in original).

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affirmative, but only if it is charged that the breach alleged violates a contract between two labor organizations.

[4] Of course, for petitioner to bring suit, he must have personal standing. As the case comes to us, however, the sole issue is whether a suit by a union member alleging a violation of a contract between two unions is within the subject-matter jurisdiction conferred by § 301. Petitioner's standing to bring the suit is not disputed before this Court.

Therefore, we held, the suit by the local union was for a violation of a contract between two unions within the meaning of § 301.

It is clear in this case that petitioner charged a violation of a contract between two unions within the meaning of § 301.[5] His amended complaint alleged that the constitution of the IBEW requires "all Local Unions to live up to all collective bargaining agreements" and that the IBEW Constitution and the bylaws of Local 71 "are contracts which are binding upon Local 71."[6] App. 12–13. In its amended answer, Local 71 admitted these allegations, *i. e.*, conceded that it had promised to comply with the collective-bargaining contracts. Petitioner also alleged generally that the defendants had breached the above-mentioned contracts; more specifically, he alleged that he had been discriminated against in hiring-hall job referrals, contrary to the applicable collective-bargaining agreements and contrary to the IBEW Constitution.

Nevertheless, respondents submit that § 301 jurisdiction reaches only suits by the parties to the interunion contract; third-party suits seeking to enforce a violation of the contract are beyond the jurisdictional grant. *Smith* v. *Evening News*, however, is to the contrary. There an individual employee brought suit against his employer to enforce a collective-bargaining contract between the employer and the union collective-bargaining agent. We held that § 301 suits

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[5] It is not disputed that the IBEW, as well as Local 71, is a labor organization representing employees in an industry affecting commerce.

[6] The Joint Appendix 21–41 sets out selected provisions of the IBEW Constitution. Included is a section entitled "Rules for Local Unions." Among the 23 rules prescribed, in addition to the rule requiring local unions to honor their contracts, is a rule requiring IBEW approval of all bylaws adopted and all agreements entered into by local unions. There is a reference in these rules to a "charter" of a local union, but if Local 71 has a charter or a constitution, or both, neither is a part of the record in this case. The complaint refers to bylaws of the local, but the record also omits setting out the relevant bylaws.

were not limited to suits brought by the contracting parties and that an individual employee could sue under § 301 for violation of an employer-union contract. We noted:

> "The rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based." 371 U. S., at 200.

In concluding that the employee's suit was one provided for by § 301, we observed that under a contrary holding there would be "'[t]he possibility that individual contract terms might have different meanings under state and federal law [which] would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.'" *Id.*, at 200–201, quoting *Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95, 103 (1962).

Similar considerations bear on this case. Congress expressly provided in § 301(a) for federal jurisdiction over contracts between an employer and a labor organization *or between labor organizations.* Collective-bargaining agreements are the principal form of contract between an employer and a labor organization. Individual union members, who are often the beneficiaries of provisions of collective-bargaining agreements, may bring suit on these contracts under § 301. Likewise, union constitutions are an important form of contract between labor organizations. Members of a collective-bargaining unit are often the beneficiaries of such interunion contracts, and when they are, they likewise may bring suit on these contracts under § 301.

If they could not, unacceptable consequences could ensue. There is no doubt that IBEW could sue under § 301 to enforce Local 71's contract with IBEW and there is no doubt that such a suit would be governed by federal law. If suit by an employee to enforce an interunion contract is not authorized by § 301 and the employee is remitted to state court and to state law, it is plain that the same contract terms might be given different meanings based solely on the identity of the party. This would exert the disruptive influence our cases have spoken of.

Respondents contend that construing § 301 as we do signals an unwarranted intrusion on state contract law that Congress could not have intended. It is argued that the federalization of the law of union-member relationships should be limited to the specific provisions found in the LMRDA. But if § 301, fairly construed and absent a later statute such as the LMRDA, covers the suit we now have before us, we should reach that result even with the appearance of a later statute such as the LMRDA unless there is some more persuasive reason derived from the later legislation itself that Congress intended to narrow the reach of § 301. We are unable to discern any satisfactory basis for implying such a partial repeal of that section.

Neither are we impressed by respondents' submission that our construction of § 301 will result in the inundation of the federal courts with trivial suits dealing with intraunion affairs. While we are not persuaded that this argument should affect our interpretation of the language of the statute in any event, we find it unconvincing. As respondents must be aware, the interpretation we adopt today has been the law in a number of Federal Circuits for some time and was adopted 10 years ago by the Court of Appeals for the Ninth Circuit in a case specifically involving the IBEW Constitution. See *Kinney* v. *International Brotherhood of Electrical Workers*, 669 F. 2d 1222 (1981). See also, *e. g.*, *DeSantiago* v. *Laborers Int'l Union of North America*,

Local No. 1140, 914 F. 2d 125 (CA8 1990); *Pruitt* v. *Carpenters Local Union No. 225*, 893 F. 2d 1216 (CA11 1990); *Lewis* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 771*, 826 F. 2d 1310 (CA3 1987). Respondents have pointed to no evidence of the federal courts' being overwhelmed by trivial litigation in this area of the law.

We express no view on the merits of petitioner's claims for breach of contract. We need only decide here that the courts below erred in holding that federal jurisdiction under § 301(a), based on the alleged violation of a contract between labor organizations, is unavailable when an individual union member brings suit against his or her union.

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

It is so ordered.

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

Per Curiam

GIBSON *v.* FLORIDA BAR ET AL.

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

No. 90–1102. Argued November 6, 1991—Decided December 4, 1991

Certiorari dismissed. Reported below: 906 F. 2d 624.

Raymond J. LaJeunesse, Jr., argued the cause for petitioner. With him on the briefs were *Hugh L. Reilly* and *Herbert R. Kraft.*

Barry Richard argued the cause and filed briefs for respondents.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

**Anthony T. Caso* and *Ronald A. Zumbrun* filed a brief for the Pacific Legal Foundation as *amicus curiae* urging reversal.

Briefs of *amici curiae* were filed for the National Education Association et al. by *Robert H. Chanin, Bruce R. Lerner,* and *Jeremiah A. Collins;* for the State Bar of Wisconsin by *John S. Skilton* and *William M. Conley;* and for David P. Frankel et al. by *Mr. Frankel, pro se,* and *Joseph W. Little.*

Syllabus

SIMON & SCHUSTER, INC. *v.* MEMBERS OF THE NEW YORK STATE CRIME VICTIMS BOARD ET AL.

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

No. 90–1059. Argued October 15, 1991—Decided December 10, 1991

Among other things, New York's "Son of Sam" law provides that an "entity" contracting with a person "accused or convicted of a crime" for the production of a book or other work describing the crime must pay to respondent Crime Victims Board any moneys owed to that person under the contract; requires the Board to deposit such funds in an escrow account for payment to any victim who, within five years, obtains a civil judgment against the accused or convicted person and to the criminal's other creditors; and defines "person convicted of a crime" to include "any person who has voluntarily and intelligently admitted the commission of a crime for which such person is not prosecuted." After it discovered that petitioner publisher had signed an agreement with an author who had contracted with admitted organized crime figure Henry Hill for the production of a book about Hill's life, the Board, *inter alia*, determined that petitioner had violated the Son of Sam law and ordered it to turn over all money payable to Hill. Petitioner then brought suit under 42 U. S. C. § 1983, seeking a declaration that the law violates the First Amendment and an injunction barring the law's enforcement. The District Court found the law to be consistent with the Amendment, and the Court of Appeals affirmed.

Held: The Son of Sam law is inconsistent with the First Amendment. Pp. 115–123.

(a) Whether the First Amendment "speaker" is considered to be Hill, whose income the New York law places in escrow because of the story he has told, or petitioner, which can publish books about crime with the assistance of only those criminals willing to forgo remuneration for at least five years, the law singles out speech on a particular subject for a financial burden that it places on no other speech and no other income and, thus, is presumptively inconsistent with the Amendment. *Leathers* v. *Medlock*, 499 U. S. 439, 447; *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 230. The fact that the law escrows speech-derived income, rather than taxing a percentage of it outright as did the law invalidated in *Arkansas Writers' Project*, cannot serve as the basis for disparate treatment under the Amendment, since both forms of financial burden operate as disincentives to speak. Moreover, the

Board's assertion that discriminatory financial treatment is suspect only when the legislature intends to suppress certain ideas is incorrect, since this Court has long recognized that even regulations aimed at proper governmental concerns can restrict unduly the exercise of rights under the Amendment. Furthermore, the Board's claim that the law is permissible under the Amendment because it focuses generally on an "entity" rather than specifically on the *media* falters, first, on semantic grounds, since any entity that enters into a contract with a convicted person to transmit that person's speech becomes by definition a medium of communication, and, second, on constitutional grounds, since the governmental power to impose content-based financial disincentives on speech does not vary with the identity of the speaker. Accordingly, in order to justify the differential treatment imposed by the law, the State must show that its regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Id.*, at 231. Pp. 115–118.

(b) The State has a compelling interest in compensating victims from the fruits of crime. Cf. *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 629. However, contrary to the Board's assertion, the State has little if any interest in limiting such compensation to the proceeds of the wrongdoer's speech about the crime. The Board cannot explain why the State should have any greater interest in compensating victims from the proceeds of criminals' "storytelling" than from any of their other assets, nor offer any justification for a distinction between this expressive activity and any other activity in connection with its interest in transferring the fruits of crime from criminals to their victims. Cf., *e. g.*, *Arkansas Writers' Project*, *supra*, at 231. Like the governmental entities in the latter and similar cases, the Board has taken the *effect* of the statute and posited that effect as the State's interest. Pp. 118–121.

(c) The New York law is not narrowly tailored to achieve the State's objective of compensating victims from the profits of crime. The law is significantly overinclusive, since it applies to works on *any* subject provided that they express the author's thoughts or recollections about his crime, however tangentially or incidentally, and since its broad definition of "person convicted of a crime" enables the Board to escrow the income of an author who admits in his work to having committed a crime, whether or not he was ever actually accused or convicted. These two provisions combine to encompass a wide range of existing and potential works that do not enable a criminal to profit from his crime while a victim remains uncompensated. Pp. 121–123.

916 F. 2d 777, reversed.

Syllabus

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, SCALIA, and SOUTER, JJ., joined. BLACKMUN, J., *post*, p. 123, and KENNEDY, J., *post*, p. 124, filed opinions concurring in the judgment. THOMAS, J., took no part in the consideration or decision of the case.

Ronald S. Rauchberg argued the cause for petitioner. With him on the briefs were *Charles S. Sims* and *Mark C. Morril.*

Howard L. Zwickel, Assistant Attorney General of New York, argued the cause for respondents. With him on the brief were *Robert Abrams*, Attorney General, *O. Peter Sherwood*, Solicitor General, and *Susan L. Watson*, Assistant Attorney General.*

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Leon Friedman*, *Steven R. Shapiro*, *John A. Powell*, and *Arthur N. Eisenberg;* for the Association of American Publishers, Inc., by *R. Bruce Rich;* and for the Motion Picture Association of America, Inc., by *Richard M. Cooper*, *David E. Kendall*, and *Walter J. Josiah, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the State of Florida et al. by *Robert A. Butterworth*, Attorney General of Florida, and *Louis F. Hubener* and *Charles A. Finkel*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Jimmy Evans* of Alabama, *Charles E. Cole* of Alaska, *Daniel E. Lungren* of California, *Gale E. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *Charles M. Oberly III* of Delaware, *Michael J. Bowers* of Georgia, *Larry EchoHawk* of Idaho, *Roland W. Burris* of Illinois, *Linley E. Pearson* of Indiana, *Robert T. Stephan* of Kansas, *J. Joseph Curran, Jr.*, of Maryland, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *William L. Webster* of Missouri, *Marc Racicot* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *John P. Arnold* of New Hampshire, *Robert J. Del Tufo* of New Jersey, *Lacy H. Thornburg* of North Carolina, *Lee Fisher* of Ohio, *Robert H. Henry* of Oklahoma, *Ernest D. Preate, Jr.*, of Pennsylvania, *T. Travis Medlock* of South Carolina, *Mark Barnett* of South Dakota, *Charles W. Burson* of Tennessee, *Paul Van Dam* of Utah, *Jeffrey L. Amestoy* of Vermont, *Mary Sue Terry* of Virginia, and *Joseph B. Meyer* of Wyoming; and for the Council of State Governments et al. by *Richard Ruda* and *Randal S. Milch.*

Briefs of *amici curiae* were filed for the United States by *Solicitor General Starr*, *Assistant Attorneys General Gerson* and *Mueller*, *Deputy*

JUSTICE O'CONNOR delivered the opinion of the Court.

New York's "Son of Sam" law requires that an accused or convicted criminal's income from works describing his crime be deposited in an escrow account. These funds are then made available to the victims of the crime and the criminal's other creditors. We consider whether this statute is consistent with the First Amendment.

I

A

In the summer of 1977, New York was terrorized by a serial killer popularly known as the Son of Sam. The hunt for the Son of Sam received considerable publicity, and by the time David Berkowitz was identified as the killer and apprehended, the rights to his story were worth a substantial amount. Berkowitz's chance to profit from his notoriety while his victims and their families remained uncompensated did not escape the notice of New York's Legislature. The State quickly enacted the statute at issue, N. Y. Exec. Law § 632–a (McKinney 1982 and Supp. 1991).

The statute was intended to "ensure that monies received by the criminal under such circumstances shall first be made available to recompense the victims of that crime for their loss and suffering." Assembly Bill Memorandum Re: A 9019, July 22, 1977, reprinted in Legislative Bill Jacket, 1977 N. Y. Laws, ch. 823. As the author of the statute explained: "It is abhorrent to one's sense of justice and decency that an individual . . . can expect to receive large sums of money for his story once he is captured—while five people are dead, [and] other people were injured as a result of his conduct."

Solicitor General Shapiro, and *Ronald J. Mann;* for the Crime Victims Legal Clinic by *Judith Rowland;* for the National Organization for Victim Assistance et al. by *Charles G. Brown III;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo, Richard A. Samp,* and *Jonathan K. Van Patten.*

Memorandum of Sen. Emanuel R. Gold, reprinted in New York State Legislative Annual, 1977, p. 267.

The Son of Sam law, as later amended, requires any entity contracting with an accused or convicted person for a depiction of the crime to submit a copy of the contract to respondent New York State Crime Victims Board (Board), and to turn over any income under that contract to the Board. This requirement applies to all such contracts in any medium of communication:

> "Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the board and pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives." N. Y. Exec. Law § 632–a(1) (McKinney 1982).

The Board is then required to deposit the payment in an escrow account "for the benefit of and payable to any victim . . . provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such [accused or convicted] person or his representatives." *Ibid.* After five years, if no actions are pending, "the board shall immediately pay over any moneys in the escrow account to such person or his legal representatives." § 632–a(4). This 5-year period in which to bring a civil action against the convicted

person begins to run when the escrow account is established, and supersedes any limitations period that expires earlier. § 632–a(7).

Subsection (8) grants priority to two classes of claims against the escrow account. First, upon a court order, the Board must release assets "for the exclusive purpose of retaining legal representation." § 632–a(8). In addition, the Board has the discretion, after giving notice to the victims of the crime, to "make payments from the escrow account to a representative of any person accused or convicted of a crime for the necessary expenses of the production of the moneys paid into the escrow account." *Ibid.* This provision permits payments to literary agents and other such representatives. Payments under subsection (8) may not exceed one-fifth of the amount collected in the account. *Ibid.*

Claims against the account are given the following priorities: (a) payments ordered by the Board under subsection (8); (b) subrogation claims of the State for payments made to victims of the crime; (c) civil judgments obtained by victims of the crime; and (d) claims of other creditors of the accused or convicted person, including state and local tax authorities. N. Y. Exec. Law § 632–a(11) (McKinney Supp. 1991).

Subsection (10) broadly defines "person convicted of a crime" to include "any person convicted of a crime in this state either by entry of a plea of guilty or by conviction after trial *and any person who has voluntarily and intelligently admitted the commission of a crime for which such person is not prosecuted.*" § 632–a(10)(b) (emphasis added). Thus a person who has never been accused or convicted of a crime in the ordinary sense, but who admits in a book or other work to having committed a crime, is within the statute's coverage.

As recently construed by the New York Court of Appeals, however, the statute does not apply to victimless crimes. *Children of Bedford, Inc.* v. *Petromelis,* 77 N. Y. 2d 713, 726, 573 N. E. 2d 541, 548 (1991).

The Son of Sam law supplements pre-existing statutory schemes authorizing the Board to compensate crime victims for their losses, see N. Y. Exec. Law § 631 (McKinney 1982 and Supp. 1991), permitting courts to order the proceeds of crime forfeited to the State, see N. Y. Civ. Prac. Law §§ 1310–1352 (McKinney Supp. 1991), providing for orders of restitution at sentencing, N. Y. Penal Law § 60.27 (McKinney 1987), and affording prejudgment attachment procedures to ensure that wrongdoers do not dissipate their assets, N. Y. Civ. Prac. Law §§ 6201–6226 (McKinney 1980 and Supp. 1991). The escrow arrangement established by the Son of Sam law enhances these provisions only insofar as the accused or convicted person earns income within the scope of § 632–a(1).

Since its enactment in 1977, the Son of Sam law has been invoked only a handful of times. As might be expected, the individuals whose profits the Board has sought to escrow have all become well known for having committed highly publicized crimes. These include Jean Harris, the convicted killer of "Scarsdale Diet" Doctor Herman Tarnower; Mark David Chapman, the man convicted of assassinating John Lennon; and R. Foster Winans, the former Wall Street Journal columnist convicted of insider trading. Ironically, the statute was never applied to the Son of Sam himself; David Berkowitz was found incompetent to stand trial, and the statute at that time applied only to criminals who had actually been convicted. N. Y. Times, Feb. 20, 1991, p. B8, col. 4. According to the Board, Berkowitz voluntarily paid his share of the royalties from the book Son of Sam, published in 1981, to his victims or their estates. Brief for Respondents 8, n. 13.

This case began in 1986, when the Board first became aware of the contract between petitioner Simon & Schuster and admitted organized crime figure Henry Hill.

B

Looking back from the safety of the Federal Witness Protection Program, Henry Hill recalled: "At the age of twelve my ambition was to be a gangster. To be a wiseguy. To me being a wiseguy was better than being president of the United States." N. Pileggi, Wiseguy: Life in a Mafia Family 19 (1985) (hereinafter Wiseguy). Whatever one might think of Hill, at the very least it can be said that he realized his dreams. After a career spanning 25 years, Hill admitted engineering some of the most daring crimes of his day, including the 1978–1979 Boston College basketball point-shaving scandal, and the theft of $6 million from Lufthansa Airlines in 1978, the largest successful cash robbery in American history. Wiseguy 9. Most of Hill's crimes were more banausic: He committed extortion, he imported and distributed narcotics, and he organized numerous robberies.

Hill was arrested in 1980. In exchange for immunity from prosecution, he testified against many of his former colleagues. Since his arrest, he has lived under an assumed name in an unknown part of the country.

In August 1981, Hill entered into a contract with author Nicholas Pileggi for the production of a book about Hill's life. The following month, Hill and Pileggi signed a publishing agreement with Simon & Schuster, Inc. Under the agreement, Simon & Schuster agreed to make payments to both Hill and Pileggi. Over the next few years, according to Pileggi, he and Hill "talked at length virtually every single day, with not more than an occasional Sunday or holiday skipped. We spent more than three hundred hours together; my notes of conversations with Henry occupy more than six linear file feet." App. 27. Because producing the book required such a substantial investment of time and effort, Hill sought compensation. *Ibid.*

The result of Hill and Pileggi's collaboration was Wiseguy, which was published in January 1986. The book depicts, in colorful detail, the day-to-day existence of organized crime,

primarily in Hill's first-person narrative. Throughout Wiseguy, Hill frankly admits to having participated in an astonishing variety of crimes. He discusses, among other things, his conviction of extortion and the prison sentence he served. In one portion of the book, Hill recounts how members of the Mafia received preferential treatment in prison:

> "The dorm was a separate three-story building outside the wall, which looked more like a Holiday Inn than a prison. There were four guys to a room, and we had comfortable beds and private baths. There were two dozen rooms on each floor, and each of them had mob guys living in them. It was like a wiseguy convention—the whole Gotti crew, Jimmy Doyle and his guys, 'Ernie Boy' Abbamonte and 'Joe Crow' Delvecchio, Vinnie Aloi, Frank Cotroni.
>
> "It was wild. There was wine and booze, and it was kept in bath-oil or after-shave jars. The hacks in the honor dorm were almost all on the take, and even though it was against the rules, we used to cook in our rooms. Looking back, I don't think Paulie went to the general mess five times in the two and a half years he was there. We had a stove and pots and pans and silverware stacked in the bathroom. We had glasses and an ice-water cooler where we kept the fresh meats and cheeses. When there was an inspection, we stored the stuff in the false ceiling, and once in a while, if it was confiscated, we'd just go to the kitchen and get new stuff.
>
> "We had the best food smuggled into our dorm from the kitchen. Steaks, veal cutlets, shrimp, red snapper. Whatever the hacks could buy, we ate. It cost me two, three hundred a week. Guys like Paulie spent five hundred to a thousand bucks a week. Scotch cost thirty dollars a pint. The hacks used to bring it inside the walls in their lunch pails. We never ran out of booze, because we had six hacks bringing it in six days a week. Depending on what you wanted and how much you were

willing to spend, life could be almost bearable." Wiseguy 150–151.

Wiseguy was reviewed favorably: The Washington Post called it an "'amply detailed and entirely fascinating book that amounts to a piece of revisionist history,'" while New York Daily News columnist Jimmy Breslin named it "'the best book on crime in America ever written.'" App. 5. The book was also a commercial success: Within 19 months of its publication, more than a million copies were in print. A few years later, the book was converted into a film called Goodfellas, which won a host of awards as the best film of 1990.

From Henry Hill's perspective, however, the publicity generated by the book's success proved less desirable. The Crime Victims Board learned of Wiseguy in January 1986, soon after it was published.

C

On January 31, the Board notified Simon & Schuster: "It has come to our attention that you may have contracted with a person accused or convicted of a crime for the payment of monies to such person." App. 86. The Board ordered Simon & Schuster to furnish copies of any contracts it had entered into with Hill, to provide the dollar amounts and dates of all payments it had made to Hill, and to suspend all payments to Hill in the future. Simon & Schuster complied with this order. By that time, Simon & Schuster had paid Hill's literary agent $96,250 in advances and royalties on Hill's behalf, and was holding $27,958 for eventual payment to Hill.

The Board reviewed the book and the contract, and on May 21, 1987, issued a proposed determination and order. The Board determined that Wiseguy was covered by § 632–a of the Executive Law, that Simon & Schuster had violated the law by failing to turn over its contract with Hill to the Board and by making payments to Hill, and that all money owed to

Hill under the contract had to be turned over to the Board to be held in escrow for the victims of Hill's crimes. The Board ordered Hill to turn over the payments he had already received, and ordered Simon & Schuster to turn over all money payable to Hill at the time or in the future.

Simon & Schuster brought suit in August 1987, under 42 U. S. C. § 1983, seeking a declaration that the Son of Sam law violates the First Amendment and an injunction barring the statute's enforcement. After the parties filed cross-motions for summary judgment, the District Court found the statute to be consistent with the First Amendment. 724 F. Supp. 170 (SDNY 1989). A divided Court of Appeals affirmed. *Simon & Schuster, Inc.* v. *Fischetti*, 916 F. 2d 777 (CA2 1990).

Because the Federal Government and most of the States have enacted statutes with similar objectives, see 18 U. S. C. § 3681; Note, *Simon & Schuster, Inc. v. Fischetti:* Can New York's Son of Sam Law Survive First Amendment Challenge?, 66 Notre Dame L. Rev. 1075, n. 6 (1991) (listing state statutes), the issue is significant and likely to recur. We accordingly granted certiorari, 498 U. S. 1081 (1991), and we now reverse.

II

A

A statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech. *Leathers* v. *Medlock*, 499 U. S. 439, 447 (1991). As we emphasized in invalidating a content-based magazine tax: "[O]fficial scrutiny of the content of publications as the basis for imposing a tax is entirely incompatible with the First Amendment's guarantee of freedom of the press." *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 230 (1987).

This is a notion so engrained in our First Amendment jurisprudence that last Term we found it so "obvious" as to

not require explanation. *Leathers*, *supra*, at 447. It is but one manifestation of a far broader principle: "Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Regan* v. *Time, Inc.*, 468 U. S. 641, 648–649 (1984). See also *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 95 (1972). In the context of financial regulation, it bears repeating, as we did in *Leathers*, that the government's ability to impose content-based burdens on speech raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace. 499 U. S., at 448–449. The First Amendment presumptively places this sort of discrimination beyond the power of the government. As we reiterated in *Leathers:* "'The constitutional right of free expression is . . . intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us . . . in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests.'" *Id.*, at 448–449 (quoting *Cohen* v. *California*, 403 U. S. 15, 24 (1971)).

The Son of Sam law is such a content-based statute. It singles out income derived from expressive activity for a burden the State places on no other income, and it is directed only at works with a specified content. Whether the First Amendment "speaker" is considered to be Henry Hill, whose income the statute places in escrow because of the story he has told, or Simon & Schuster, which can publish books about crime with the assistance of only those criminals willing to forgo remuneration for at least five years, the statute plainly imposes a financial disincentive only on speech of a particular content.

The Board tries unsuccessfully to distinguish the Son of Sam law from the discriminatory tax at issue in *Arkansas Writers' Project.* While the Son of Sam law escrows all of the speaker's speech-derived income for at least five years,

rather than taxing a percentage of it outright, this difference can hardly serve as the basis for disparate treatment under the First Amendment. Both forms of financial burden operate as disincentives to speak; indeed, in many cases it will be impossible to discern in advance which type of regulation will be more costly to the speaker.

The Board next argues that discriminatory financial treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas. This assertion is incorrect; our cases have consistently held that "[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment." *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue,* 460 U. S. 575, 592 (1983). Simon & Schuster need adduce "no evidence of an improper censorial motive." *Arkansas Writers' Project, supra,* at 228. As we concluded in *Minneapolis Star:* "We have long recognized that even regulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment." 460 U. S., at 592.

Finally, the Board claims that even if the First Amendment prohibits content-based financial regulation specifically of the *media,* the Son of Sam law is different, because it imposes a general burden on any "entity" contracting with a convicted person to transmit that person's speech. Cf. *Cohen* v. *Cowles Media Co.,* 501 U. S. 663, 670 (1991) ("[E]nforcement of . . . general laws against the press is not subject to stricter scrutiny than would be applied to enforcement against other persons or organizations"). This argument falters on both semantic and constitutional grounds. Any "entity" that enters into such a contract becomes by definition a medium of communication, if it was not one already. In any event, the characterization of an entity as a member of the "media" is irrelevant for these purposes. The government's power to impose content-based financial disincentives on speech surely does not vary with the identity of the speaker.

The Son of Sam law establishes a financial disincentive to create or publish works with a particular content. In order to justify such differential treatment, "the State must show that its regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." *Arkansas Writers' Project*, 481 U. S., at 231.

B

The Board disclaims, as it must, any state interest in suppressing descriptions of crime out of solicitude for the sensibilities of readers. See Brief for Respondents 38, n. 38. As we have often had occasion to repeat: "'[T]he fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection.'" *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 55 (1988) (quoting *FCC* v. *Pacifica Foundation*, 438 U. S. 726, 745 (1978)). "'If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.'" *United States* v. *Eichman*, 496 U. S. 310, 319 (1990) (quoting *Texas* v. *Johnson*, 491 U. S. 397, 414 (1989)). The Board thus does not assert any interest in limiting whatever anguish Henry Hill's victims may suffer from reliving their victimization.

There can be little doubt, on the other hand, that the State has a compelling interest in ensuring that victims of crime are compensated by those who harm them. Every State has a body of tort law serving exactly this interest. The State's interest in preventing wrongdoers from dissipating their assets before victims can recover explains the existence of the State's statutory provisions for prejudgment remedies and orders of restitution. See N. Y. Civ. Prac. Law §§ 6201–6226 (McKinney 1980 and Supp. 1991); N. Y. Penal Law

§ 60.27 (McKinney 1987). We have recognized the importance of this interest before, in the Sixth Amendment context. See *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 629 (1989).

The State likewise has an undisputed compelling interest in ensuring that criminals do not profit from their crimes. Like most if not all States, New York has long recognized the "fundamental equitable principle," *Children of Bedford* v. *Petromelis*, 77 N. Y. 2d, at 727, 573 N. E. 2d, at 548, that "[n]o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime." *Riggs* v. *Palmer*, 115 N. Y. 506, 511–512, 22 N. E. 188, 190 (1889). The force of this interest is evidenced by the State's statutory provisions for the forfeiture of the proceeds and instrumentalities of crime. See N. Y. Civ. Prac. Law §§ 1310–1352 (McKinney Supp. 1991).

The parties debate whether book royalties can properly be termed the profits of crime, but that is a question we need not address here. For the purposes of this case, we can assume without deciding that the income escrowed by the Son of Sam law represents the fruits of crime. We need only conclude that the State has a compelling interest in depriving criminals of the profits of their crimes, and in using these funds to compensate victims.

The Board attempts to define the State's interest more narrowly, as "ensuring that criminals do not profit from storytelling about their crimes before their victims have a meaningful opportunity to be compensated for their injuries." Brief for Respondents 46. Here the Board is on far shakier ground. The Board cannot explain why the State should have any greater interest in compensating victims from the proceeds of such "storytelling" than from any of the criminal's other assets. Nor can the Board offer any justification for a distinction between this expressive activity and

any other activity in connection with its interest in transferring the fruits of crime from criminals to their victims. Thus even if the State can be said to have an interest in classifying a criminal's assets in this manner, that interest is hardly compelling.

We have rejected similar assertions of a compelling interest in the past. In *Arkansas Writers' Project* and *Minneapolis Star*, we observed that while the State certainly has an important interest in raising revenue through taxation, that interest hardly justified selective taxation of the press, as it was completely unrelated to a press/nonpress distinction. *Arkansas Writers' Project*, *supra*, at 231; *Minneapolis Star*, 460 U. S., at 586. Likewise, in *Carey* v. *Brown*, 447 U. S. 455, 467–469 (1980), we recognized the State's interest in preserving privacy by prohibiting residential picketing, but refused to permit the State to ban only nonlabor picketing. This was because "nothing in the content-based labor-nonlabor distinction has any bearing whatsoever on privacy." *Id.*, at 465. Much the same is true here. The distinction drawn by the Son of Sam law has nothing to do with the State's interest in transferring the proceeds of crime from criminals to their victims.

Like the government entities in the above cases, the Board has taken the *effect* of the statute and posited that effect as the State's interest. If accepted, this sort of circular defense can sidestep judicial review of almost any statute, because it makes all statutes look narrowly tailored. As Judge Newman pointed out in his dissent from the opinion of the Court of Appeals, such an argument "eliminates the entire inquiry concerning the validity of content-based discriminations. Every content-based discrimination could be upheld by simply observing that the state is anxious to regulate the designated category of speech." 916 F. 2d, at 785.

In short, the State has a compelling interest in compensating victims from the fruits of the crime, but little if any interest in limiting such compensation to the proceeds of the

wrongdoer's speech about the crime. We must therefore determine whether the Son of Sam law is narrowly tailored to advance the former, not the latter, objective.

C

As a means of ensuring that victims are compensated from the proceeds of crime, the Son of Sam law is significantly overinclusive. As counsel for the Board conceded at oral argument, the statute applies to works on *any* subject, provided that they express the author's thoughts or recollections about his crime, however tangentially or incidentally. See Tr. of Oral Arg. 30, 38; see also App. 109. In addition, the statute's broad definition of "person convicted of a crime" enables the Board to escrow the income of any author who admits in his work to having committed a crime, whether or not the author was ever actually accused or convicted. § 632–a(10)(b).

These two provisions combine to encompass a potentially very large number of works. Had the Son of Sam law been in effect at the time and place of publication, it would have escrowed payment for such works as The Autobiography of Malcolm X, which describes crimes committed by the civil rights leader before he became a public figure; Civil Disobedience, in which Thoreau acknowledges his refusal to pay taxes and recalls his experience in jail; and even the Confessions of Saint Augustine, in which the author laments "my past foulness and the carnal corruptions of my soul," one instance of which involved the theft of pears from a neighboring vineyard. See A. Haley & Malcolm X, The Autobiography of Malcolm X 108–125 (1964); H. Thoreau, Civil Disobedience 18–22 (1849, reprinted 1969); The Confessions of Saint Augustine 31, 36–37 (Franklin Library ed. 1980). *Amicus* Association of American Publishers, Inc., has submitted a sobering bibliography listing hundreds of works by American prisoners and ex-prisoners, many of which contain descriptions of the crimes for which the authors were incar-

cerated, including works by such authors as Emma Goldman and Martin Luther King, Jr. A list of prominent figures whose autobiographies would be subject to the statute if written is not difficult to construct: The list could include Sir Walter Raleigh, who was convicted of treason after a dubiously conducted 1603 trial; Jesse Jackson, who was arrested in 1963 for trespass and resisting arrest after attempting to be served at a lunch counter in North Carolina; and Bertrand Russell, who was jailed for seven days at the age of 89 for participating in a sit-down protest against nuclear weapons. The argument that a statute like the Son of Sam law would prevent publication of *all* of these works is hyperbole—some would have been written without compensation—but the Son of Sam law clearly reaches a wide range of literature that does not enable a criminal to profit from his crime while a victim remains uncompensated.*

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*Because the Son of Sam law is so overinclusive, we need not address the Board's contention that the statute is content neutral under our decisions in *Ward* v. *Rock Against Racism*, 491 U. S. 781 (1989), and *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41 (1986). In these cases, we determined that statutes were content neutral where they were intended to serve purposes unrelated to the content of the regulated speech, despite their incidental effects on some speakers but not others. Even under *Ward* and *Renton*, however, regulations must be "narrowly tailored" to advance the interest asserted by the State. *Ward*, *supra*, at 798; *Renton*, *supra*, at 52. A regulation is not "narrowly tailored"—even under the more lenient tailoring standards applied in *Ward* and *Renton*—where, as here, "a substantial portion of the burden on speech does not serve to advance [the State's content-neutral] goals." *Ward*, *supra*, at 799. Thus whether the Son of Sam law is analyzed as content neutral under *Ward* or content based under *Leathers*, it is too overinclusive to satisfy the requirements of the First Amendment. And, in light of our conclusion in this case, we need not decide whether, as JUSTICE BLACKMUN suggests, the Son of Sam law is underinclusive as well as overinclusive. Nor does this case present a need to address JUSTICE KENNEDY's discussion of what is a longstanding debate, see G. Gunther, Constitutional Law 1069–1070 (12th ed. 1991), on an issue which the parties before us have neither briefed nor argued.

Should a prominent figure write his autobiography at the end of his career, and include in an early chapter a brief recollection of having stolen (in New York) a nearly worthless item as a youthful prank, the Board would control his entire income from the book for five years, and would make that income available to all of the author's creditors, despite the fact that the statute of limitations for this minor incident had long since run. That the Son of Sam law can produce such an outcome indicates that the statute is, to say the least, not narrowly tailored to achieve the State's objective of compensating crime victims from the profits of crime.

III

The Federal Government and many of the States have enacted statutes designed to serve purposes similar to that served by the Son of Sam law. Some of these statutes may be quite different from New York's, and we have no occasion to determine the constitutionality of these other laws. We conclude simply that in the Son of Sam law, New York has singled out speech on a particular subject for a financial burden that it places on no other speech and no other income. The State's interest in compensating victims from the fruits of crime is a compelling one, but the Son of Sam law is not narrowly tailored to advance that objective. As a result, the statute is inconsistent with the First Amendment.

The judgment of the Court of Appeals is accordingly

Reversed.

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

JUSTICE BLACKMUN, concurring in the judgment.

I am in general agreement with what the Court says in its opinion. I think, however, that the New York statute is underinclusive as well as overinclusive and that we should

say so. Most other States have similar legislation and deserve from this Court all the guidance it can render in this very sensitive area.

JUSTICE KENNEDY, concurring in the judgment.

The New York statute we now consider imposes severe restrictions on authors and publishers, using as its sole criterion the content of what is written. The regulated content has the full protection of the First Amendment and this, I submit, is itself a full and sufficient reason for holding the statute unconstitutional. In my view it is both unnecessary and incorrect to ask whether the State can show that the statute "'is necessary to serve a compelling state interest and is narrowly drawn to achieve that end.'" *Ante,* at 118 (quoting *Arkansas Writers' Project, Inc.* v. *Ragland,* 481 U. S. 221, 231 (1987)). That test or formulation derives from our equal protection jurisprudence, see, *e. g., Wygant* v. *Jackson Board of Ed.,* 476 U. S. 267, 273–274 (1986) (opinion of Powell, J.); *Hirabayashi* v. *United States,* 320 U. S. 81, 100 (1943), and has no real or legitimate place when the Court considers the straightforward question whether the State may enact a burdensome restriction of speech based on content only, apart from any considerations of time, place, and manner or the use of public forums.

Here, a law is directed to speech alone where the speech in question is not obscene, not defamatory, not words tantamount to an act otherwise criminal, not an impairment of some other constitutional right, not an incitement to lawless action, and not calculated or likely to bring about imminent harm the State has the substantive power to prevent. No further inquiry is necessary to reject the State's argument that the statute should be upheld.

Borrowing the compelling interest and narrow tailoring analysis is ill advised when all that is at issue is a content-based restriction, for resort to the test might be read as a

concession that States may censor speech whenever they believe there is a compelling justification for doing so. Our precedents and traditions allow no such inference.

This said, it must be acknowledged that the compelling interest inquiry has found its way into our First Amendment jurisprudence of late, even where the sole question is, or ought to be, whether the restriction is in fact content based. Although the notion that protected speech may be restricted on the basis of content if the restriction survives what has sometimes been termed "'the most exacting scrutiny,'" *Texas* v. *Johnson*, 491 U. S. 397, 412 (1989), may seem familiar, the Court appears to have adopted this formulation in First Amendment cases by accident rather than as the result of a considered judgment. In *Johnson*, for example, we cited *Boos* v. *Barry*, 485 U. S. 312, 321 (1988), as support for the approach. *Boos* v. *Barry* in turn cited *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 45 (1983), for the proposition that to justify a content-based restriction on political speech in a public forum, the State must show that "the 'regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.'" *Boos* v. *Barry*, *supra*, at 321. Turning to the appropriate page in *Perry*, we discover that the statement was supported with a citation of *Carey* v. *Brown*, 447 U. S. 455, 461 (1980). Looking at last to *Carey*, it turns out the Court was making a statement about equal protection: "When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized." *Id.*, at 461–462. Thus was a principle of equal protection transformed into one about the government's power to regulate the content of speech in a public forum, and from this to a more general First Amendment statement about the government's power to regulate the content of speech.

The employment of the compelling interest test in the present context is in no way justified by my colleagues' citation of *Arkansas Writers' Project* v. *Ragland*. *Ante*, at 118. True, both *Ragland* and the case on which it relied, *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575 (1983), recite either the compelling interest test or a close variant, see *Ragland*, *supra*, at 231; *Minneapolis Star*, *supra*, at 585, but neither is a case in which the State regulates speech for its content.

There are, of course, other cases, some even predating the slow metamorphosis of *Carey* v. *Brown*'s equal protection analysis into First Amendment law, which apply the compelling interest test, but these authorities also address issues other than content censorship. See *Buckley* v. *Valeo*, 424 U. S. 1, 25 (1976) (upholding content-neutral limitations on financial contributions to campaigns for federal office and striking down content-neutral limitations on financial expenditures for such campaigns); *Cousins* v. *Wigoda*, 419 U. S. 477, 489 (1975) (content-neutral restriction on freedom of association); *NAACP* v. *Button*, 371 U. S. 415, 438 (1963) (content-neutral prohibition on solicitation by lawyers); *Shelton* v. *Tucker*, 364 U. S. 479, 488 (1960) (content-neutral statute compelling teachers in state-supported schools or colleges to disclose all organizations to which they belonged or contributed).

The inapplicability of the compelling interest test to content-based restrictions on speech is demonstrated by our repeated statement that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 95 (1972). See also *Ragland*, 481 U. S., at 229–230 (citing *Mosley*); *Regan* v. *Time, Inc.*, 468 U. S. 641, 648–649 (1984) ("Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment"). These

general statements about the government's lack of power to engage in content discrimination reflect a surer basis for protecting speech than does the test used by the Court today.

There are a few legal categories in which content-based regulation has been permitted or at least contemplated. These include obscenity, see, *e. g.*, *Miller* v. *California*, 413 U. S. 15 (1973), defamation, see, *e. g.*, *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749 (1985), incitement, see, *e. g.*, *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969), or situations presenting some grave and imminent danger the government has the power to prevent, see, *e. g.*, *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 716 (1931). These are, however, historic and traditional categories long familiar to the bar, although with respect to the last category it is most difficult for the government to prevail. See *New York Times Co.* v. *United States*, 403 U. S. 713 (1971). While it cannot be said with certainty that the foregoing types of expression are or will remain the only ones that are without First Amendment protection, as evidenced by the proscription of some visual depictions of sexual conduct by children, see *New York* v. *Ferber*, 458 U. S. 747 (1982), the use of these traditional legal categories is preferable to the sort of ad hoc balancing that the Court henceforth must perform in every case if the analysis here used becomes our standard test.

As a practical matter, perhaps we will interpret the compelling interest test in cases involving content regulation so that the results become parallel to the historic categories I have discussed, although an enterprise such as today's tends not to remain *pro forma* but to take on a life of its own. When we leave open the possibility that various sorts of content regulations are appropriate, we discount the value of our precedents and invite experiments that in fact present clear violations of the First Amendment, as is true in the case before us.

To forgo the compelling interest test in cases involving direct content-based burdens on speech would not, of course,

eliminate the need for difficult judgments respecting First Amendment issues. Among the questions we cannot avoid the necessity of deciding are: Whether the restricted expression falls within one of the unprotected categories discussed above, *supra*, at 127; whether some other constitutional right is impaired, see *Nebraska Press Assn.* v. *Stuart*, 427 U. S. 539 (1976); whether, in the case of a regulation of activity which combines expressive with nonexpressive elements, the regulation aims at the activity or the expression, compare *United States* v. *O'Brien*, 391 U. S. 367 (1968), with *Texas* v. *Johnson*, 491 U. S., at 406–410; whether the regulation restricts speech itself or only the time, place, or manner of speech, see *Ward* v. *Rock Against Racism*, 491 U. S. 781 (1989); and whether the regulation is in fact content based or content neutral. See *Boos* v. *Barry*, 485 U. S., at 319–321. However difficult the lines may be to draw in some cases, here the answer to each of these questions is clear.

The case before us presents the opportunity to adhere to a surer test for content-based cases and to avoid using an unnecessary formulation, one with the capacity to weaken central protections of the First Amendment. I would recognize this opportunity to confirm our past holdings and to rule that the New York statute amounts to raw censorship based on content, censorship forbidden by the text of the First Amendment and well-settled principles protecting speech and the press. That ought to end the matter.

With these observations, I concur in the judgment of the Court holding the statute invalid.

Syllabus

ARDESTANI *v.* IMMIGRATION AND NATURALIZATION SERVICE

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

No. 90–1141. Argued October 8, 1991—Decided December 10, 1991

After petitioner Ardestani prevailed in an administrative deportation proceeding brought by respondent Immigration and Naturalization Service, an Immigration Judge awarded her attorney's fees and costs under the Equal Access to Justice Act (EAJA), which permits a prevailing party in an "adversary adjudication" before an administrative agency to recover fees from the Government, 5 U. S. C. § 504(a)(1). The EAJA defines an "adversary adjudication," in relevant part, as "an adjudication under section 554 of [Title 5]," which is part of the Administrative Procedure Act (APA). § 504(b)(1)(C)(i). Section 554, in turn, applies, *inter alia*, to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing." The Board of Immigration Appeals vacated and denied Ardestani's award on the ground that deportation proceedings are not within the EAJA's scope, and the Court of Appeals affirmed.

Held: Administrative deportation proceedings are not adversary adjudications "under section 554" and thus do not fall within the category of proceedings for which the EAJA has waived sovereign immunity and authorized the award of attorney's fees and costs. Pp. 132–139.

(a) Although immigration proceedings are required by the Immigration and Nationality Act (INA) to be determined on the record after a hearing, 8 U. S. C. § 1252(b), they are not governed by the APA. *Marcello* v. *Bonds*, 349 U. S. 302. It is immaterial that regulations have been promulgated conforming deportation hearings more closely to the procedures required for APA adjudications, for *Marcello* rests in large part on the INA's prescription that it "shall be the *sole* and *exclusive* procedure for determining [an alien's] deportability," 8 U. S. C. § 1252(b) (emphasis added), and leaves open no possibility that the INA should be displaced by the APA if the regulations governing immigration proceedings become functionally equivalent to § 554's procedures. Pp. 133–134.

(b) The most natural reading of the EAJA's applicability to adjudications "under section 554," and that adopted by seven Courts of Appeals, is that those proceedings must be "subject to" or "governed by" § 554.

Syllabus

The strong presumption that the statute's plain language expresses congressional intent, *Rubin* v. *United States*, 449 U. S. 424, 430, is not rebutted by any statements in the EAJA's legislative history. Thus, the meaning of "under section 554" is unambiguous in the context of the EAJA and does not permit Ardestani's reading that, since both deportation and § 554 proceedings are required "to be determined on the record after opportunity for an agency hearing," the phrase "under section 554" encompasses all adjudications "as defined in" § 554(a), even if they are not otherwise governed by that section. This conclusion is reinforced by the limited nature of waivers of sovereign immunity. The EAJA renders the United States liable for attorney's fees and, thus, amounts to a partial waiver of sovereign immunity, which must be strictly construed in the United States' favor, see, *e. g.*, *Library of Congress* v. *Shaw*, 478 U. S. 310, 318. *United States* v. *Kubrick*, 444 U. S. 111, 118; *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95; *Sullivan* v. *Hudson*, 490 U. S. 877, 892, distinguished. Also rejected is Ardestani's argument that a functional interpretation of the EAJA is needed to further the legislative goals underlying the statute. While making the EAJA applicable to deportation proceedings would serve its broad purposes of eliminating financial disincentives for those who would defend against unjustified governmental action and deterring the unreasonable exercise of Government authority, it is the province of Congress to decide whether to bring such proceedings within the statute's scope. Pp. 134–138.

904 F. 2d 1505, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 139. THOMAS, J., took no part in the consideration or decision of the case.

David N. Soloway argued the cause for petitioner. With him on the briefs was *Carolyn F. Soloway.*

Deputy Solicitor General Wallace argued the cause for respondent. With him on the brief were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Harriet S. Shapiro*, *William Kanter*, and *John S. Koppel.**

**Lawrence H. Rudnick* filed a brief for the American Immigration Lawyers Association as *amicus curiae* urging reversal.

John J. Curtin, Jr., *Robert E. Juceam*, *Dale M. Schwartz*, and *Sandra M. Lipsman* filed a brief for the American Bar Association as *amicus curiae.*

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioner Rafeh-Rafie Ardestani prevailed in an administrative deportation proceeding brought by respondent Immigration and Naturalization Service (INS). She sought attorney's fees and costs under the Equal Access to Justice Act (EAJA), 5 U. S. C. § 504 and 28 U. S. C. § 2412, which provides that prevailing parties in certain adversarial proceedings may recover attorney's fees from the Government. We now consider whether the EAJA authorizes the award of attorney's fees and costs for administrative deportation proceedings before the INS. We conclude that it does not.

I

Ardestani is an Iranian woman of the Bahai faith who entered the United States as a visitor in December 1982. She remained in this country lawfully until the end of May 1984 and then sought asylum. The United States Department of State informed the INS that Ardestani's fear of persecution upon return to Iran was well founded. In February 1986, however, the INS denied Ardestani's asylum application on the ground that, before entering the United States, she had reached a "safe haven" in Luxembourg and had established residence there. Ardestani advised the INS that she had been in Luxembourg only three days en route to the United States, that she had stayed in a hotel, and that she had never applied for residency in that country. Nonetheless, the following month, the INS issued an order to show cause why she should not be deported.

At the deportation hearing, Ardestani successfully renewed her application for asylum. She then applied for attorney's fees and costs under the EAJA. The Immigration Judge awarded attorney's fees in the amount of $1,071.85 based on his determination that Ardestani was the "prevailing party" in the adjudication and that the position of the INS in pursuing her deportation was not "substantially justified." The INS appealed the award of fees to the Board of Immigration Appeals. The Board vacated and denied the

award on the ground that the Attorney General has determined that deportation proceedings are not within the scope of the EAJA. See 28 CFR § 24.103 (1991); 46 Fed. Reg. 48921, 48922 (1981) (interim rule). A divided Court of Appeals for the Eleventh Circuit denied Ardestani's petition for review and held that the EAJA does not apply to administrative deportation proceedings. 904 F. 2d 1505 (1990).

We granted certiorari, 499 U. S. 904 (1991), to resolve a conflict among the United States Courts of Appeals[1] and now affirm.

II

The EAJA provides that prevailing parties in certain adversary administrative proceedings may recover attorney's fees and costs from the Government. In pertinent part, 5 U. S. C. § 504(a)(1) provides that "[a]n agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust." The EAJA defines an "adversary adjudication" as "an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise." 5 U. S. C. § 504(b)(1)(C)(i). Section 554 of Title 5, in turn, delineates

[1] Five other Courts of Appeals agree with the court below that the EAJA does not apply to administrative deportation proceedings. *Hashim* v. *INS*, 936 F. 2d 711 (CA2 1991), cert. pending, No. 91–207; *Escobar* v. *INS*, 935 F. 2d 650 (CA4 1991); *Hodge* v. *United States Dept. of Justice*, 929 F. 2d 153 (CA5 1991), cert. pending, No. 91–83; *Full Gospel Portland Church* v. *Thornburgh*, 288 U. S. App. D. C. 356, 927 F. 2d 628 (1991), cert. pending, No. 91–494; *Clarke* v. *INS*, 904 F. 2d 172 (CA3 1990); accord, *Owen* v. *Brock*, 860 F. 2d 1363 (CA6 1988) (using similar analysis to hold that Federal Employees Compensation Act benefit determinations are not covered by the EAJA). The Court of Appeals for the Ninth Circuit has determined that administrative deportation proceedings are within the scope of the EAJA. *Escobar Ruiz* v. *INS*, 838 F. 2d 1020 (1988) (en banc).

the scope of proceedings governed by the formal adjudication requirements of the Administrative Procedure Act (APA), see 5 U. S. C. §§ 556, 557, and sets forth some of those requirements. As both parties agree that the United States was represented by counsel in Ardestani's deportation proceeding, the sole question presented in this case is whether that proceeding was an adversary adjudication "under section 554" within the meaning of the EAJA.

A

Section 554(a) states that the provisions of that section apply to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing," with six statutory exceptions not relevant here. Subsections (b) through (e) of § 554 establish the procedures that must be followed in the agency adjudications described in subsection (a). Although immigration proceedings are required by statute to be determined on the record after a hearing, 8 U. S. C. § 1252(b), we previously have decided that they are not governed by the APA. *Marcello* v. *Bonds,* 349 U. S. 302 (1955).

In *Marcello,* we held that Congress intended the provisions of the Immigration and Nationality Act of 1952 (INA), 66 Stat. 163, as amended, 8 U. S. C. § 1101 *et seq.,* to supplant the APA in immigration proceedings. Two years before the enactment of the INA, we had concluded that immigration proceedings *were* subject to the APA. *Wong Yang Sung* v. *McGrath,* 339 U. S. 33 (1950). Congress legislatively overruled that decision almost immediately afterward in a rider to the Supplemental Appropriation Act, 1951. 64 Stat. 1044, 1048. In *Marcello,* we had to determine whether, in revising the immigration laws in 1952 and repealing the rider, Congress had reversed its previous position and reinstated the holding of the *Wong Yang Sung* case. We held that the INA "expressly supersedes" the hearing provisions of the APA in light of "the background of the 1952 immigration

legislation, its laborious adaptation of the Administrative Procedure Act to the deportation process, the specific points at which deviations from the Administrative Procedure Act were made, the recognition in the legislative history of this adaptive technique and of the particular deviations, and the direction in the statute that the methods therein prescribed shall be the sole and exclusive procedure for deportation proceedings." 349 U. S., at 310.

Applying our precedent in *Marcello*, it is clear that Ardestani's deportation proceeding was not subject to the APA and thus not governed by the provisions of § 554. It is immaterial that the Attorney General in 1983 promulgated regulations that conform deportation hearings more closely to the procedures required for formal adjudication under the APA. 48 Fed. Reg. 8038–8040 (1983). *Marcello* does not hold simply that deportation proceedings are subject to the APA except for specific deviations sanctioned by the INA. Rather, *Marcello* rests in large part on the statute's prescription that the INA "shall be the *sole* and *exclusive* procedure for determining the deportability of an alien under this section." INA, § 242(b) (codified at 8 U. S. C. § 1252(b)) (emphasis added); *Marcello, supra,* at 309. Neither the analysis nor the decision in *Marcello* leaves open the possibility that the APA should displace the INA in the event that the regulations governing immigration proceedings become functionally equivalent to the procedures mandated for adjudications governed by § 554.

B

Ardestani's principal argument is that, for the purposes of the EAJA, deportation proceedings fall "under section 554" because, like the adjudications described in § 554(a), they are "required by statute to be determined on the record after opportunity for an agency hearing." She thus contends that the phrase "under section 554" encompasses all adjudications "as defined in" § 554(a), even if they are not governed by the procedural provisions established in the remainder of that

section. We hold that the meaning of "an adjudication under section 554" is unambiguous in the context of the EAJA and does not permit the reading that Ardestani has urged upon us.

"The starting point in statutory interpretation is 'the language [of the statute] itself.'" *United States* v. *James*, 478 U. S. 597, 604 (1986) (quoting *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 756 (1975) (Powell, J., concurring)). The word "under" has many dictionary definitions and must draw its meaning from its context. In this case, the most natural reading of the EAJA's applicability to adjudications "under section 554" is that those proceedings must be "subject to" or "governed by" § 554. Indeed, in addition to the court below, six United States Courts of Appeals have determined that the plain and ordinary meaning of "under" as it appears in the EAJA is that proceedings must be governed by the procedures mandated by the APA. See the cases cited in n. 1, *supra.* As one court has observed, the word "under" appears several times in the EAJA itself, and "[i]n other locations, no creative reading is possible—'under' means 'subject [or pursuant] to' or 'by reason of the authority of.'" *St. Louis Fuel & Supply Co.* v. *FERC*, 281 U. S. App. D. C. 329, 333, 890 F. 2d 446, 450 (1989).[2]

The "strong presumption" that the plain language of the statute expresses congressional intent is rebutted only in "rare and exceptional circumstances," *Rubin* v. *United States*, 449 U. S. 424, 430 (1981), when a contrary legislative

[2] *E. g.*, 5 U. S. C. § 504(a)(2) ("A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award *under* this section . . ."); § 504(c)(2) ("If a party other than the United States is dissatisfied with a determination of fees and other expenses made *under* subsection (a) . . ."); § 504(d) ("Fees and other expenses awarded *under* this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise") (emphases added).

intent is clearly expressed. *INS* v. *Cardoza-Fonseca,* 480 U. S. 421, 432, n. 12 (1987); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.,* 447 U. S. 102, 108 (1980). In this case, the legislative history cannot overcome the strong presumption "'that the legislative purpose is expressed by the ordinary meaning of the words used.'" *American Tobacco Co.* v. *Patterson,* 456 U. S. 63, 68 (1982) (quoting *Richards* v. *United States,* 369 U. S. 1, 9 (1962)). While it is possible, as Ardestani contends, that Congress' only intent in defining adversary adjudications was to limit EAJA fees to trial-type proceedings in which the Government is represented, Congress chose to refer to adversary adjudications "under section 554." Section 554 does not merely describe a type of agency proceeding; it also prescribes that certain procedures be followed in the adjudications that fall within its scope. We must assume that the EAJA's unqualified reference to a specific statutory provision mandating specific procedural protections is more than a general indication of the types of proceedings that the EAJA was intended to cover.

We are unable to identify *any* conclusive statement in the legislative history regarding Congress' decision to define adversary adjudications under the EAJA by reference to § 554, much less one that would undermine the ordinary understanding of the phrase "under section 554." It is not enough that the House Conference Committee Report on the EAJA states, without further comment, that adversary adjudications are "defined under" the APA. H. R. Conf. Rep. No. 96–1434, p. 23 (1980). Although it is conceivable that "defined under" means that Congress intended adversary adjudications covered by the EAJA to be those "as defined by" the APA, it could just as easily mean that covered adjudications are "defined as those conducted under" the APA. We are similarly unpersuaded that Congress meant to institute a substantive, rather than a semantic, change when, without

explanation, it changed the draft section of the EAJA defining "adversary adjudication" from "an adjudication *subject to* section 554," S. Rep. No. 96–253, p. 24 (1979) (emphasis added), to "an adjudication *under* section 554."

Our conclusion that any ambiguities in the legislative history are insufficient to undercut the ordinary understanding of the statutory language is reinforced in this case by the limited nature of waivers of sovereign immunity. The EAJA renders the United States liable for attorney's fees for which it would not otherwise be liable, and thus amounts to a partial waiver of sovereign immunity. Any such waiver must be strictly construed in favor of the United States. *Library of Congress* v. *Shaw*, 478 U. S. 310, 318 (1986); *Ruckelshaus* v. *Sierra Club*, 463 U. S. 680, 685–686 (1983).

Because we conclude that administrative immigration proceedings do not fall "under section 554" and therefore are wholly outside the scope of the EAJA, this case is distinguishable from those cases in which we have recognized that, once Congress has waived sovereign immunity over certain subject matter, the Court should be careful not to "assume the authority to narrow the waiver that Congress intended." *United States* v. *Kubrick*, 444 U. S. 111, 118 (1979); see, *e. g.*, *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95 (1990) ("Once Congress has made such a waiver, we think that making the rule of equitable tolling applicable to suits against the Government, in the same way that it is applicable to private suits, amounts to little, if any, broadening of the congressional waiver"); *Sullivan* v. *Hudson*, 490 U. S. 877, 892 (1989) (holding that Social Security administrative proceedings held on remand from a district court order "are an integral part of the 'civil action' for judicial review," and thus that attorney's fees for representation on remand are available under the civil action provisions of the EAJA, 28 U. S. C. § 2412).

Finally, we consider Ardestani's argument that a functional interpretation of the EAJA is necessary in order to

further the legislative goals underlying the statute. The clearly stated objective of the EAJA is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter the unreasonable exercise of Government authority. Congressional Findings and Purposes, 94 Stat. 2325, note following 5 U. S. C. § 504; H. R. Rep. No. 96–1418, pp. 10, 12 (1980); S. Rep. No. 96–253, *supra*, at 5; *Commissioner, INS* v. *Jean*, 496 U. S. 154, 163 (1990).

We have no doubt that the broad purposes of the EAJA would be served by making the statute applicable to deportation proceedings. We are mindful that the complexity of immigration procedures, and the enormity of the interests at stake, make legal representation in deportation proceedings especially important. We acknowledge that Ardestani has been forced to shoulder the financial and emotional burdens of a deportation hearing in which the position of the INS was determined not to be substantially justified. But we cannot extend the EAJA to administrative deportation proceedings when the plain language of the statute, coupled with the strict construction of waivers of sovereign immunity, constrain us to do otherwise.

Congress has twice expanded the EAJA's definition of "adversary adjudications" to include proceedings previously considered to be outside the EAJA's coverage. In 1985, Congress legislatively overruled *Fidelity Construction Co.* v. *United States*, 700 F. 2d 1379 (CA Fed.), cert. denied, 464 U. S. 826 (1983), by amending § 504(b)(1)(C) to add certain proceedings under the Contract Disputes Act of 1978. See Pub. L. 99–80, § 1(c)(2)(B), 99 Stat. 184. In 1986, Congress amended the same section to add proceedings under the Program Fraud Civil Remedies Act of 1986. See Pub. L. 99–509, § 6103(c), 100 Stat. 1948. In this case as well, it is the province of Congress, not this Court, to decide whether to bring administrative deportation proceedings within the scope of the statute.

III

We hold that administrative deportation proceedings are not adversary adjudications "under section 554" and thus do not fall within the category of proceedings for which the EAJA has waived sovereign immunity and authorized the award of attorney's fees and costs. We thus need not reach the Court of Appeals' alternative holding that the EAJA's fee-shifting provisions are precluded by § 292 of the INA, 8 U. S. C. § 1362, which provides that an individual in an administrative deportation proceeding may be represented by counsel "at no expense to the Government." The judgment of the Court of Appeals is affirmed.

It is so ordered.

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

JUSTICE BLACKMUN, with whom JUSTICE STEVENS joins, dissenting.

The Immigration and Naturalization Service (INS or Service) put petitioner Ardestani through the ordeal of a deportation proceeding and attempted to return her to a land in which, the State Department had already determined, she had a well-founded fear of persecution for her religious convictions. The Service has since abandoned its argument that its position in this matter was "substantially justified." Instead, it now argues only that deportation proceedings are not among the class of proceedings for which the Equal Access to Justice Act (EAJA), 5 U. S. C. § 504 and 28 U. S. C. § 2412, authorizes awards of attorney's fees. The Court today accepts this contention, relying on the purportedly "plain" meaning of the statute and the canon that waivers of sovereign immunity are to be construed strictly.

I do not find the meaning of the relevant EAJA provisions "plain," nor do I agree that the Court's canon is applicable

to the EAJA. In my view, deportation proceedings exemplify the kind of adjudications for which Congress authorized fee awards: The alien's stake in the proceeding is enormous (sometimes life or death in the asylum context); the legal rules surrounding deportation and asylum proceedings are very complex; specialized counsel are necessary but in short supply; and evidence suggests that some conduct on the part of the Government in deportation and asylum proceedings has been abusive. The Court's opinion is all the more troubling for me, because it suggests that the Court has forgotten its recent admonition that the EAJA must be construed "in light of its purpose to diminish the deterrent effect of seeking review of, or defending against, governmental action." *Sullivan* v. *Hudson*, 490 U. S. 877, 890 (1989) (internal quotation marks omitted). Indeed, notably absent in the Court's opinion is any account of the statutory purpose that could be advanced by excluding deportation proceedings from EAJA coverage.

Proper application of established principles entitles Ardestani to a fee award. Accordingly, I dissent.

I

The Court correctly observes that petitioner Ardestani's eligibility for EAJA fees depends upon whether a deportation proceeding qualifies as an "adversary adjudication." The Act defines that key term in § 504(b)(1)(C)(i): "'[A]dversary adjudication' means . . . an adjudication under [5 U. S. C.] section 554 . . . in which the position of the United States is represented by counsel or otherwise." Because all agree that the position of the United States in fact was represented by counsel, the only issue is whether a deportation proceeding can be construed as "an adjudication under section 554," which is a part of the Administrative Procedure Act (APA).

Respondent INS argues that the phrase "adjudication under section 554" is unambiguous and can refer only to an

adjudication "governed by" or "conducted under the authority of" § 554. The Service emphasizes this Court's holding in *Marcello* v. *Bonds*, 349 U. S. 302 (1955), that deportation proceedings are governed by the provisions of the Immigration and Nationality Act of 1952, rather than by § 554 or other provisions of the APA. Accordingly, the INS contends, a deportation proceeding is not an adjudication "under section 554" and therefore is not an "adversary adjudication" within the meaning of the EAJA.

The Court accepts this conclusion because it accepts the Service's crucial assumption that the statutory words "under section 554" have a single, "plain" meaning—the one that the INS urges. The statutory words might be given the interpretation the INS recommends, at least if those words are considered in isolation. That is not to say, however, that the statutory language is "plain" or "unambiguous."

In my view, the statutory context of the words "adjudication under section 554" suggests a very plausible alternative interpretation. These words appear as part of a definition for the compound term "adversary adjudication," namely, "an adjudication under section 554 . . . in which the position of the United States is represented by counsel or otherwise." This provision establishes a definition for both components of the term "adversary adjudication": The reference to representation of the Government's position "by counsel or otherwise" defines what makes an administrative proceeding *adversary;* the reference to § 554 defines what makes a procedure an *adjudication.*

The EAJA could have been drafted to specify explicitly the features that constitute an "adjudication" for fees purposes. The term "adjudication," however, already had an accepted meaning at the time the EAJA was enacted. Rather than reproduce that definition, Congress simply referred the reader, shorthand, to the features described in § 554, the APA section that defines a generic adjudication. The words "adjudication under section 554" plausibly mean

"adjudication, *as defined in* section 554," or "adjudication, *within the meaning of* section 554," or, more literally, "adjudication, *as defined under the heading of* section 554."

Because the meaning of "adjudication under section 554" is ambiguous, we consult the EAJA's legislative history and decide between the two interpretations "in light of [the EAJA's] purpose to diminish the deterrent effect of seeking review of, or defending against, governmental action." *Sullivan* v. *Hudson*, 490 U. S., at 890 (internal quotation marks omitted).

II

The EAJA's purposes are clearly stated. The Report of the House Committee on the Judiciary notes that the high cost of legal assistance and the superior resources and expertise of the Federal Government precluded private parties from challenging or defending against unreasonable governmental action. H. R. Rep. No. 96–1418, pp. 9–10 (1980) (House Report). Fee awards were intended to address this problem: "When there is an opportunity to recover costs," the Committee noted, "a party does not have to choose between acquiescing to an unreasonable Government order or prevailing to his financial detriment." *Id.*, at 12. Nor, the Committee observed, would the availability of attorney's fees vindicate only private interests. Because "a party who chooses to litigate an issue against the Government is not only representing his or her own vested interest but is also refining and formulating public policy," the Committee recognized, adjudication may ensure the "legitimacy and fairness of the law." *Id.*, at 10. Thus, removing disincentives to adjudication when the Government acts unreasonably both vindicates individual rights and curbs governmental excesses. *Id.*, at 12.

Congress' description of the scope of "adversary adjudication" focuses on the "adversariness" requirement—the presence or absence of Government representation—rather than on whether or not § 554 technically governs an adjudication.

Two of the three definitions offered in the EAJA Conference Report state only that an adversary adjudication is an adjudication where the agency has taken a position or is represented by counsel; they omit altogether any mention of § 554. See H. R. Conf. Rep. No. 96–1434, pp. 21, 23 (1980) (Conference Report). According to the third definition:

> "The conference substitute defines adversary adjudication as an agency adjudication *defined under* the Administrative Procedures *[sic]* Act where the agency takes a position through representation by counsel or otherwise. It is intended that this definition precludes an award in a situation where an agency, e. g., the Social Security Administration, does not take a position in the adjudication. If, however, the agency does take a position at some point in the adjudication, the adjudication would then become adversarial" (emphasis added). *Id.*, at 23.

This definition repeats the Report's earlier focus on the presence or absence of counsel as the decisive factor in determining whether an adjudication is adversary. More important, in its use of the words "defined under," the Report suggests that an adjudication need not be governed by the APA, but only—as deportation proceedings surely do—correspond to the definition of an adjudication given in the APA.

Nowhere in the Committee Reports or in the floor debates is there any suggestion that the words "under section 554" were intended to exclude any particular agency's adjudications (let alone the INS') from EAJA coverage. Nor was it ever discussed whether a particular agency's adjudications were or were not technically governed by § 554 or other provisions of the APA. Indeed, Congress seems to have given no attention whatsoever to whether particular administrative proceedings were *adjudications*, as opposed to, for example, rulemaking, ratemaking, or licensing proceedings. Instead, Congress' focus was on whether certain proceed-

ings, universally assumed to be adjudications, were *adversary*—that is, whether the Government was represented by counsel or had otherwise staked out a position. In short, the reference to § 554 seems to be nothing but a statutory "hook"—a convenient way to signal, in the statutory text, the essential and uncontroversial characteristics of an "adjudication."

This interpretation is confirmed by the one special case of agency proceedings that Congress examined with any particularity: Social Security Administration proceedings. This Court had refrained from deciding whether such proceedings are governed by § 554. See *Richardson* v. *Perales*, 402 U. S. 389, 409 (1971). The EAJA Conference Report makes clear that, notwithstanding this uncertainty, Congress considered a Social Security Act administrative proceeding to be covered by the EAJA if the adjudication was "adversary," that is, if the United States had staked out a position. See Conference Report, at 23, quoted *supra*, at 143. The House Judiciary Committee Report on the EAJA's 1985 reenactment is to similar but stronger effect:

> "As enacted in 1980, the Act covers 'adversary adjudication'—i. e., an adjudication under section 554 of [5 U. S. C.] 'in which the position of the United States is *represented by counsel* or otherwise'. . . . While this language generally excludes Social Security administrative hearings from the Act, Congress made clear in 1980 that 'If . . . the agency does take a position at some point in the adjudication, the adjudication would then become adversarial,' and thus be subject to the Act. It is the committee's understanding that the Secretary of Health and Human Services has implemented an experiment in five locations in which the Secretary is represented at the hearing before the administrative law judge. *This is precisely the type of situation covered by section 504(b)(1)(C).* While, generally, Social Security adminis-

> trative hearings remain outside the scope of this statute, *those in which the Secretary is represented are covered by the Act*" (footnote omitted; first emphasis in original; others supplied). H. R. Rep. No. 99–120, pp. 10–11 (1985).

Thus, despite this Court's demurral regarding whether Social Security proceedings are technically governed by § 554, and without expressing any view whatsoever on this issue, Congress nevertheless stated that EAJA fees were appropriate. This circumstance strongly indicates that Congress did not intend EAJA coverage to depend upon whether § 554, rather than some functionally equivalent provision, technically governs the proceeding.

III

As noted above, this Court recently held in *Sullivan* v. *Hudson* that the EAJA is to be "read in light of its purpose 'to diminish the deterrent effect of seeking review of, or defending against, governmental action.'" 490 U. S., at 890. In particular, the Court held that while Social Security Administration proceedings on remand from federal district courts were not adversary adjudications, because the Government's position was not represented by counsel or otherwise, *id.*, at 891, they were nevertheless "part and parcel" of the civil action, and thus were covered by the "civil action" provisions of the EAJA. *Id.*, at 888.

In so holding, the Court rejected a plain meaning argument stronger than the one advanced here. The Government had argued that the term "civil action" unambiguously excluded administrative proceedings, and that the specific exclusion of Social Security provisions from administrative EAJA coverage precluded, by the principle of *expressio unius est exclusio alterius,* their coverage under civil action

EAJA.[1] *Id.*, at 891. The Court conceded that this contention was "not without some force," but went on to say that it did not "ris[e] to the level necessary to oust what we think is the most reasonable interpretation of the statute in light of its manifest purpose." *Id.*, at 890.

The Court recognizes that there is no question that application of the EAJA to deportation proceedings would advance the Act's manifest purposes of protecting individuals' rights, deterring unjustified governmental action, and "help-[ing] assure that administrative decisions reflect informed deliberation." House Report, at 12. Indeed, unjustified INS deportation proceedings are a classic example of a situation in which persons "may be deterred from seeking review of, or defending against unreasonable governmental action because of the expense involved" and the "disparity between the resources and expertise of these individuals and their government." House Report, at 5 and 6. An alien facing deportation generally is unfamiliar with the arcane system of immigration law, is often unskilled in the English language, and sometimes is uneducated; for these reasons, "deportation hearings are difficult for aliens to fully comprehend, let alone conduct, and individuals subject to such proceedings frequently require the assistance of counsel." *Escobar Ruiz* v. *INS*, 838 F. 2d 1020, 1026 (CA9 1988) (en banc). In many areas, competent counsel is difficult to obtain. See Anker, Determining Asylum Claims in the United States, 2 Int'l J. of Refugee Law 252, 261 (1990). Evidence indicates that the INS has engaged in abusive litigation tactics. See Watson, No More "Independent Operators," Legal Times, May 14, 1990, p. 2 (quoting remark of William P. Cook, then INS General Counsel, that "I have been told that some

[1] The argument was stronger in *Hudson* because the legislative history of administrative EAJA explicitly precluded its application to the Social Security proceedings involved in that case, and because the Court's argument against application of *expressio unius* was weaker than the argument made here against application of the sovereign immunity canon.

of my offices appeal every adverse decision regardless of the merits, . . . [and] that others refuse to have stipulations"); Note, Applying the Equal Access to Justice Act to Asylum Hearings, 97 Yale L. J. 1459, 1471 (1988) (describing an INS pattern of "vigorous opposition to adjudicated asylum claims, often irrespective of the merits").

Finally, the stakes for the alien involved in deportation proceedings—particularly in asylum cases—are enormous. See, *e. g.*, *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 449 (1987). Under these circumstances, application of the EAJA to deportation proceedings clearly would fulfill the statute's purposes.

The Court states two reasons, however, for recanting on its recent recognition in *Hudson* that EAJA is to be read "in light of its manifest purpose." The first is its argument that "the plain language of the statute" compels the Court to deny fees to Ardestani. This argument, as I already have suggested above, is not persuasive, and is in any event less persuasive than the similar argument rejected in *Hudson*.

The additional reason the Court gives for departing from *Hudson* is the canon of statutory interpretation that waivers of sovereign immunity must be strictly construed. For good reason, this argument has not been accepted in any other EAJA case decided by this Court. The purposes of the canon are to protect the public fisc and to provide breathing space for legitimate Government action that might be deterred by litigation. But these purposes are *already* fulfilled by the EAJA's requirement that even prevailing parties may not be awarded fees unless the Government's position lacked substantial justification. The Report of the Senate Committee on the Judiciary makes clear that this provision was adopted precisely in order to reduce the bill's cost and to prevent "a 'chilling effect' on proper Government enforcement efforts." S. Rep. No. 96–253, p. 2 (1979). Congress therefore, in effect, already has applied the maxim on which the Court relies. The Court's reapplication of that

maxim to restrict EAJA's scope still further is not merely superfluous, but is inconsistent with congressional intent.[2]

IV

Because the Court accepts the INS' "plain meaning" and sovereign immunity arguments, it has no cause to address the Government's two remaining arguments. Both are easily resolved against the Government.

The INS suggests, first, that the Court owes deference to the Attorney General's determination that the EAJA does not apply to deportation proceedings. This Court has indicated, however, that reviewing courts do not owe deference to an agency's interpretation of statutes outside its particular expertise and special charge to administer. See *Adams Fruit Co.* v. *Barrett,* 494 U. S. 638, 649–650 (1990); see also *Professional Reactor Operator Soc.* v. *NRC,* 291 U. S. App. D. C. 219, 223, 939 F. 2d 1047, 1051 (1991) (no deference to agency interpretation of APA, because agency not assigned special role by Congress in construing that statute). Because the EAJA, like the APA, applies to all agencies and is not administered by any one in particular, deference to the interpretation by any particular agency is inappropriate.

The INS argues, second, that a fee award in this case is proscribed by § 292 of the Immigration and Nationality Act

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[2] The 1985 House Report on EAJA's reenactment observed that the actual cost of awards in administrative adjudications was only a tiny fraction of what had originally been estimated. The 1980 House Report had projected $19.4 million in fiscal year (FY) 1982, $21.3 million in FY 1983, and $22.4 million in FY 1984, for a total of $63.1 million. See House Report, at 23. The actual outlays totaled only about $158,000—roughly one-quarter of one percent of the original estimate. See H. R. Rep. No. 99–120, pp. 8–9 (1985). The 1985 Report describes this situation as a "problem in implementing the Act" caused by overly narrow judicial and agency interpretations.

of 1952, which provides that a person involved in a deportation proceeding "shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as he shall choose." 66 Stat. 235, 8 U. S. C. § 1362. The INS argues that this provision is a specific bar on fee shifting in deportation proceedings that necessarily overrides the EAJA's general fee-shifting policy. The legislative history of the EAJA clearly states, however, that the statute "applies to all civil actions except . . . those already covered by existing fee-shifting statutes." House Report, at 18. There is no reason to think that Congress would have held a different view regarding the EAJA's administrative provisions. Because the Immigration and Nationality Act of 1952 contains no fee-shifting provisions, it cannot bar the EAJA's application.

Nor is the Government correct that this interpretation would effectively repeal § 292. The purpose of § 292 is to relieve the Government of any general obligation to appoint and pay counsel for indigent aliens. See *Escobar Ruiz* v. *INS*, 838 F. 2d, at 1028. The purpose of the EAJA, on the other hand, is to reimburse persons who prevail in those cases where the Government's action was not substantially justified. By virtue of their different purposes, the two statutes may coexist. No alien has an automatic right to Government-appointed and Government-paid counsel. And in all cases where the Government's action is substantially justified—the vast majority of cases, one would hope—the alien has no claim against the Government for attorney's fees.

V

In sum, EAJA's ambiguous definition of the term "adversary adjudication" can be read to support Ardestani's position; the legislative history confirms her interpretation; and the purposes of the EAJA, in whose light the Court heretofore has interpreted the statute, strongly favor the availability of attorney's fees in deportation proceedings. I can only

hope that the Court's departure from its approach in *Hudson* signals no permanent change in its EAJA jurisprudence. I would hold that Ardestani is entitled to a fee award and would reverse the judgment of the Court of Appeals.

Syllabus

UNION BANK *v.* WOLAS, CHAPTER 7 TRUSTEE FOR THE ESTATE OF ZZZZ BEST CO., INC.

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

No. 90–1491. Argued November 5, 1991—Decided December 11, 1991

During the 90-day period preceding its filing of a petition under Chapter 7 of the Bankruptcy Code, ZZZZ Best Co., Inc. (Debtor) made two interest payments and paid a loan commitment fee on its long-term debt to petitioner, Union Bank (Bank). After he was appointed trustee of the Debtor's estate, respondent Wolas filed a complaint against the Bank to recover those payments as voidable preferences under 11 U. S. C. § 547(b). The Bankruptcy Court held that the payments were transfers made in the ordinary course of business pursuant to § 547(c)(2) and thus were excepted from § 547(b). The District Court affirmed, but the Court of Appeals reversed, holding that the ordinary course of business exception was not available to long-term creditors.

Held:

1. Payments on long-term debt, as well as those on short-term debt, may qualify for the ordinary course of business exception to the trustee's power to avoid preferential transfers. Section 547(c)(2) contains no language distinguishing between long- and short-term debt and, therefore, provides no support for Wolas' contention that its coverage extends only to short-term debt. Moreover, § 547's relevant history in part supports, and is not otherwise inconsistent with, a literal reading of the statute. While § 547(c)(2), as originally enacted, was limited to payments made within 45 days of the date a debt was incurred, Congress amended the provision in 1984 by deleting the time limitation entirely. That Congress may have intended only to address particular concerns of specific short-term creditors in the amendment or may not have foreseen all of the consequences of its statutory enactment is insufficient reason for refusing to give effect to § 547(c)(2)'s plain meaning. Also unpersuasive is Wolas' argument that Congress originally enacted § 547(c)(2) to codify a judicially crafted "current expense" rule covering contemporaneous exchanges for new value, since other § 547(c) exceptions occupy some (if not all) of the territory previously covered by that rule, and since there is no extrinsic evidence that Congress intended to codify the rule in § 547(c)(2). Nor does the fact that the exception's availability to long-term creditors may not directly further § 547's underlying policy of equality of distribution among all creditors support

limiting § 547(c)(2) to short-term debt, for it does further the provision's other policy of deterring creditors from racing to the courthouse to dismember a debtor and may indirectly further the equal distribution goal as well. Pp. 154–162.

2. The question whether the Bankruptcy Court correctly concluded that the Debtor's payments qualify for the ordinary course of business exception remains open for the Court of Appeals on remand. P. 162.

921 F. 2d 968, reversed and remanded.

STEVENS, J., delivered the opinion for a unanimous Court. SCALIA, J., filed a concurring opinion, *post*, p. 163.

John A. Graham argued the cause for petitioner. With him on the briefs were *Lesley Anne Hawes*, *Donald Robert Meyer*, and *Stephen Howard Weiss*.

Herbert Wolas, *pro se*, argued the cause for respondent. With him on the brief was *Terry A. Ickowicz*.*

JUSTICE STEVENS delivered the opinion of the Court.

Section 547(b) of the Bankruptcy Code, 11 U. S. C. § 547(b), authorizes a trustee to avoid certain property transfers made by a debtor within 90 days before bankruptcy. The Code makes an exception, however, for transfers made in the ordinary course of business, § 547(c)(2). The question presented is whether payments on long-term debt may qualify for that exception.

On December 17, 1986, ZZZZ Best Co., Inc. (Debtor), borrowed $7 million from petitioner, Union Bank (Bank).[1] On

*Briefs of *amici curiae* urging reversal were filed for the American Bankers Association by *John J. Gill III* and *Michael F. Crotty;* for the American Council of Life Insurance et al. by *Phillip E. Stano*, *Robert M. Zinman*, *Richard E. Barnsback*, *Bruce Hyman*, and *Christopher F. Graham;* for the California Bankers Association by *Robert L. Morrison* and *Kenneth N. Russak;* for the New York Clearing House Association by *Richard H. Klapper*, *John L. Warden*, *Robinson B. Lacy*, and *Michael M. Wiseman;* and for Robert Morris Associates by *Raymond K. Denworth, Jr.*

[1] The Bankruptcy Court found that the Bank and Debtor executed a revolving credit agreement on December 16, 1986, in which the Bank agreed to lend the Debtor $7 million in accordance with the terms of

July 8, 1987, the Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code. During the preceding 90-day period, the Debtor had made two interest payments totaling approximately $100,000 and had paid a loan commitment fee of about $2,500 to the Bank. After his appointment as trustee of the Debtor's estate, respondent filed a complaint against the Bank to recover those payments pursuant to § 547(b).

The Bankruptcy Court found that the loans had been made "in the ordinary course of business or financial affairs" of both the Debtor and the Bank, and that both interest payments as well as the payment of the loan commitment fee had been made according to ordinary business terms and in the ordinary course of business.[2] As a matter of law, the Bankruptcy Court concluded that the payments satisfied the requirements of § 547(c)(2) and therefore were not avoidable by the trustee.[3] The District Court affirmed the Bankruptcy Court's summary judgment in favor of the Bank.[4]

Shortly thereafter, in another case, the Court of Appeals held that the ordinary course of business exception to avoidance of preferential transfers was not available to long-term creditors. *In re CHG Int'l, Inc.*, 897 F. 2d 1479 (CA9 1990). In reaching that conclusion, the Court of Appeals relied primarily on the policies underlying the voidable preference provisions and the state of the law prior to the enactment of the 1978 Bankruptcy Code and its amendment in 1984.

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a promissory note to be executed and delivered by the Debtor. No. 87–13692 (Bkrtcy. Ct. CD Cal., Aug. 22, 1988), App. to Pet. for Cert. 12a. On December 17, 1986, the Debtor executed and delivered to the Bank a promissory note in the principal sum of $7 million. The promissory note provided that interest would be payable on a monthly basis and would accrue on the principal balance at a rate of 0.65% per annum in excess of the Bank's reference rate. *Ibid.*

[2] App. to Pet. for Cert. 14a.

[3] *Ibid.*

[4] *In re ZZZZ Best Co., Inc.*, No. 88–6285, 1989 U. S. Dist. LEXIS 17500, *1 (CD Cal., Aug. 4, 1989).

Thus, the Ninth Circuit concluded, its holding in *CHG Int'l, Inc.* dictated a reversal in this case. 921 F. 2d 968, 969 (1990).[5] The importance of the question of law decided by the Ninth Circuit, coupled with the fact that the Sixth Circuit had interpreted § 547(c)(2) in a contrary manner, *In re Finn*, 909 F. 2d 903 (1990), persuaded us to grant the Bank's petition for certiorari. 500 U. S. 915 (1991).

I

We shall discuss the history and policy of § 547 after examining its text. In subsection (b), Congress broadly authorized bankruptcy trustees to "avoid any transfer of an interest of the debtor in property" *if* five conditions are satisfied and *unless* one of seven exceptions defined in subsection (c) is applicable.[6] In brief, the five characteristics of a voidable

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[5] In so holding, the Ninth Circuit rejected the Bank's argument that the revolving line of credit in this case was not "long-term" because it was for less than one year. 921 F. 2d, at 969. Because we hold that the ordinary course of business exception applies to payments on long-term as well as short-term debt, we need not decide whether the revolving line of credit was a "long-term" debt.

[6] Title 11 U. S. C. § 547(b) provides:

"Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

"(1) to or for the benefit of a creditor;

"(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

"(3) made while the debtor was insolvent;

"(4) made—

"(A) on or within 90 days before the date of the filing of the petition; or

"(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

"(5) that enables such creditor to receive more than such creditor would receive if—

"(A) the case were a case under chapter 7 of this title;

"(B) the transfer had not been made; and

"(C) such creditor received payment of such debt to the extent provided by the provisions of this title."

preference are that it (1) benefit a creditor; (2) be on account of antecedent debt; (3) be made while the debtor was insolvent; (4) be made within 90 days before bankruptcy; and (5) enable the creditor to receive a larger share of the estate than if the transfer had not been made. Section 547 also provides that the debtor is presumed to have been insolvent during the 90-day period preceding bankruptcy. § 547(f). In this case, it is undisputed that all five of the foregoing conditions were satisfied and that the interest and loan commitment fee payments were voidable preferences unless excepted by subsection (c)(2).

The most significant feature of subsection (c)(2) that is relevant to this case is the absence of any language distinguishing between long-term debt and short-term debt.[7] That subsection provides:

> "The trustee may not avoid under this section a transfer—
>
> . . . . .
>
> "(2) to the extent that such transfer was—
>
> "(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;
>
> "(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and
>
> "(C) made according to ordinary business terms."

Instead of focusing on the term of the debt for which the transfer was made, subsection (c)(2) focuses on whether the debt was incurred, and payment made, in the "ordinary course of business or financial affairs" of the debtor and transferee. Thus, the text provides no support for respondent's contention that § 547(c)(2)'s coverage is limited to short-term debt, such as commercial paper or trade debt. Given

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[7] Nor does the definitional section of the Bankruptcy Code, which defines the term "debt" broadly as a "liability on a claim," 11 U. S. C. § 101(11), distinguish between short-term debt and long-term debt.

the clarity of the statutory text, respondent's burden of persuading us that Congress intended to create or to preserve a special rule for long-term debt is exceptionally heavy. *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241–242 (1989). As did the Ninth Circuit, respondent relies on the history and the policies underlying the preference provision.

II

The relevant history of § 547 contains two chapters, one of which clearly supports, and the second of which is not inconsistent with, the Bank's literal reading of the statute. Section 547 was enacted in 1978 when Congress overhauled the Nation's bankruptcy laws. The section was amended in 1984. For purposes of the question presented in this case, the original version of § 547 differed in one significant respect from the current version: It contained a provision that the ordinary course of business exception did not apply unless the payment was made within 45 days of the date the debt was incurred.[8] That provision presumably excluded most payments on long-term debt from the exception.[9] In 1984 Congress repealed the 45-day limitation but

[8] As enacted in 1978, § 547(c) provided, in relevant part:

"The trustee may not avoid under this section a transfer—

. . . . . .

"(2) to the extent that such transfer was—

"(A) in payment of a debt incurred in the ordinary course of business or financial affairs of the debtor and the transferee;

"(B) *made not later than 45 days after such debt was incurred;*

"(C) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

"(D) made according to ordinary business terms." 92 Stat. 2598 (emphasis added).

[9] We use the term "presumably" because it is not necessary in this case to decide whether monthly interest payments on long-term debt were protected by the initial version of § 547(c)(2). Cf. *In re Iowa Premium Serv. Co., Inc.*, 695 F. 2d 1109 (CA8 1982) (en banc) (holding that interest obligations are "incurred" when they become due, rather than when the promissory note is signed). We refer to "most" instead of "all" long-term debt

did not substitute a comparable limitation. See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353, § 462(c), 98 Stat. 378.

Respondent contends that this amendment was intended to satisfy complaints by issuers of commercial paper[10] and by trade creditors[11] that regularly extended credit for periods of more than 45 days. Furthermore, respondent continues, there is no evidence in the legislative history that Congress intended to make the ordinary course of business exception available to conventional long-term lenders. Therefore, respondent argues, we should follow the analysis of the Ninth Circuit and read § 547(c)(2) as protecting only short-term debt payments. Cf. *In re CHG Int'l*, 897 F. 2d, at 1484.

We need not dispute the accuracy of respondent's description of the legislative history of the 1984 amendment in order to reject his conclusion. For even if Congress adopted the

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payments because of the possibility that a debtor's otherwise avoidable payment was made within 45 days of the date the long-term loan was made.

[10] Because payments to a commercial paper purchaser within 90 days prior to bankruptcy may be preferential transfers under § 547(b), a purchaser could be assured that the payment would not be avoided under the prior version of § 547(c)(2) only if the commercial paper had a maturity of 45 days or less. Commercial issuers thus complained that the 45-day limitation lowered demand for commercial paper with a maturity in excess of 45 days. See Hearings on S. 3023 before the Subcommittee on Judicial Machinery of the Senate Committee on the Judiciary, 96th Cong., 2d Sess., 8–27 (1980) (statements of George Van Cleave, partner, Goldman, Sachs & Co., and James Ledinsky, Senior Vice President, A. G. Becker & Co.).

[11] Trade creditors stated that normal payment periods in many industries exceeded 45 days and complained that the arbitrary 45-day limitation in § 547(c)(2) deprived these trade creditors of the protection of the ordinary course of business exception to the trustee's power to avoid preferential transfers. See, *e. g.*, Hearings on Bankruptcy Reform Act of 1978 before the Subcommittee on Courts of the Senate Committee on the Judiciary, 97th Cong., 1st Sess., 259–260 (1981) (statement of Vyto Gestautas on behalf of the National Association of Credit Management).

1984 amendment to redress particular problems of specific short-term creditors, it remains true that Congress redressed those problems by entirely deleting the time limitation in § 547(c)(2). The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning. *Toibb* v. *Radloff,* 501 U. S. 157, 164 (1991).

Respondent also relies on the history of voidable preferences prior to the enactment of the 1978 Bankruptcy Code. The text of the preference provision in the earlier Bankruptcy Act did not specifically include an exception for payments made in the ordinary course of business.[12] The courts had, however, developed what is sometimes described as the "current expense" rule to cover situations in which a debtor's payments on the eve of bankruptcy did not diminish the net estate because tangible assets were obtained in exchange for the payment. See *Marshall* v. *Florida Nat. Bank of Jacksonville,* 112 F. 2d 380, 382 (CA5 1940); 3 Collier on Bankruptcy ¶ 60.23, p. 873 (14th ed. 1977). Without such an exception, trade creditors and other suppliers of necessary goods and services might have been reluctant to extend even short-term credit and might have required advance payment

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[12] Section 60 of the 1898 Bankruptcy Act, as amended and codified in 11 U. S. C. § 96 (1976 ed.), provided in relevant part:

"(a)(1) A preference is a transfer, as defined in this title, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this title, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class.

. . . . . .

"(b) Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent. Where the preference is voidable, the trustee may recover the property . . . ."

instead, thus making it difficult for many companies in temporary distress to have remained in business. Respondent argues that Congress enacted § 547(c)(2) in 1978 to codify that exception, and therefore the Court should construe § 547(c)(2) as limited to the confines of the current expense rule.

This argument is not compelling for several reasons. First, it is by no means clear that § 547(c)(2) should be construed as the statutory analogue of the judicially crafted current expense rule because there are other exceptions in § 547(c) that explicitly cover contemporaneous exchanges for new value.[13] Those provisions occupy some (if not all) of the territory previously covered by the current expense rule. Nor has respondent directed our attention to any extrinsic evidence suggesting that Congress intended to codify the current expense rule in § 547(c)(2).[14]

The current expense rule developed when the statutory preference provision was significantly narrower than it is today. To establish a preference under the Bankruptcy Act, the trustee had to prove that the challenged payment was made at a time when the creditor had "reasonable cause to believe that the debtor [was] insolvent." 11 U. S. C. § 96(b) (1976 ed.). When Congress rewrote the preference provision in the 1978 Bankruptcy Code, it substantially enlarged the trustee's power to avoid preferential transfers by eliminating the reasonable cause to believe requirement for transfers made within 90 days of bankruptcy and creating a presumption of insolvency during that period. See 11 U. S. C.

[13] Thus, for example, § 547(c)(1) exempts a transfer to the extent that it was a "contemporaneous exchange for new value given to the debtor," and § 547(c)(4) exempts a transfer to a creditor "to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor . . . ."

[14] In fact, the legislative history apparently does not even mention the current expense rule. See Broome, Payments on Long-Term Debt as Voidable Preferences: The Impact of the 1984 Bankruptcy Amendments, 1987 Duke L. J. 78, 97.

§§ 547(b), (c)(2), (f); H. R. Rep. No. 95–595, p. 178 (1977). At the same time, Congress created a new exception for transfers made in the ordinary course of business, 11 U. S. C. § 547(c)(2). This exception was intended to "leave undisturbed normal financial relations, because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the debtor's slide into bankruptcy." H. R. Rep. No. 95–595, at 373.

In light of these substantial changes in the preference provision, there is no reason to assume that the justification for narrowly confining the "current expense" exception to trade creditors before 1978 should apply to the ordinary course of business exception under the 1978 Code. Instead, the fact that Congress carefully reexamined and entirely rewrote the preference provision in 1978 supports the conclusion that the text of § 547(c)(2) as enacted reflects the deliberate choice of Congress.[15]

III

The Bank and the trustee agree that § 547 is intended to serve two basic policies that are fairly described in the House Committee Report. The Committee explained:

> "A preference is a transfer that enables a creditor to receive payment of a greater percentage of his claim against the debtor than he would have received if the transfer had not been made and he had participated in

[15] Indeed, the House Committee Report concludes its discussion of the trustee's avoidance powers with the observation that the language in the preference section of the earlier Bankruptcy Act was "hopelessly complex" and had been "subject to varying interpretations. The bill undoes the numerous amendments that have been heaped on section 60 during the past 40 years, and proposes a unified and coherent section to deal with the problems created by prebankruptcy preferential transfers." H. R. Rep. No. 95–595, p. 179 (1977). Respondent's assumption that § 547(c)(2) was intended to preserve pre-existing law is at war with this legislative history.

> the distribution of the assets of the bankrupt estate. The purpose of the preference section is two-fold. First, by permitting the trustee to avoid prebankruptcy transfers that occur within a short period before bankruptcy, creditors are discouraged from racing to the courthouse to dismember the debtor during his slide into bankruptcy. The protection thus afforded the debtor often enables him to work his way out of a difficult financial situation through cooperation with all of his creditors. Second, and more important, the preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor. Any creditor that received a greater payment than others of his class is required to disgorge so that all may share equally. The operation of the preference section to deter 'the race of diligence' of creditors to dismember the debtor before bankruptcy furthers the second goal of the preference section—that of equality of distribution." *Id.*, at 177–178.

As this comment demonstrates, the two policies are not entirely independent. On the one hand, any exception for a payment on account of an antecedent debt tends to favor the payee over other creditors and therefore may conflict with the policy of equal treatment. On the other hand, the ordinary course of business exception may benefit all creditors by deterring the "race to the courthouse" and enabling the struggling debtor to continue operating its business.

Respondent places primary emphasis, as did the Court of Appeals, on the interest in equal distribution. See *In re CHG Int'l*, 897 F. 2d, at 1483–1485. When a debtor is insolvent, a transfer to one creditor necessarily impairs the claims of the debtor's other unsecured and undersecured creditors. By authorizing the avoidance of such preferential transfers, § 547(b) empowers the trustee to restore equal status to all creditors. Respondent thus contends that the ordinary course of business exception should be limited to short-term

debt so the trustee may order that preferential long-term debt payments be returned to the estate to be distributed among all of the creditors.

But the statutory text—which makes no distinction between short-term debt and long-term debt—precludes an analysis that divorces the policy of favoring equal distribution from the policy of discouraging creditors from racing to the courthouse to dismember the debtor. Long-term creditors, as well as trade creditors, may seek a head start in that race. Thus, even if we accept the Court of Appeals' conclusion that the availability of the ordinary business exception to long-term creditors does not directly further the policy of equal treatment, we must recognize that it does further the policy of deterring the race to the courthouse and, as the House Report recognized, may indirectly further the goal of equal distribution as well. Whether Congress has wisely balanced the sometimes conflicting policies underlying § 547 is not a question that we are authorized to decide.

IV

In sum, we hold that payments on long-term debt, as well as payments on short-term debt, may qualify for the ordinary course of business exception to the trustee's power to avoid preferential transfers. We express no opinion, however, on the question whether the Bankruptcy Court correctly concluded that the Debtor's payments of interest and the loan commitment fee qualify for the ordinary course of business exception, § 547(c)(2). In particular, we do not decide whether the loan involved in this case was incurred in the ordinary course of the Debtor's business and of the Bank's business, whether the payments were made in the ordinary course of business, or whether the payments were made according to ordinary business terms. These questions remain open for the Court of Appeals on remand.

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, concurring.

I join the opinion of the Court, including Parts II and III, which respond persuasively to legislative-history and policy arguments made by respondent. It is regrettable that we have a legal culture in which such arguments have to be addressed (and are indeed credited by a Court of Appeals), with respect to a statute utterly devoid of language that could remotely be thought to distinguish between long-term and short-term debt. Since there was here no contention of a "scrivener's error" producing an absurd result, the plain text of the statute should have made this litigation unnecessary and unmaintainable.

Syllabus

UNITED STATES DEPARTMENT OF STATE *v.* RAY ET AL.

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

No. 90–747. Argued October 9, 1991—Decided December 16, 1991

In 1981, the Secretary of State obtained an assurance from the Haitian Government that it would not subject to prosecution for illegal departure undocumented Haitians interdicted by the United States and returned to Haiti. Personnel of petitioner State Department monitored Haiti's compliance with the assurance by conducting interviews with a "representative sample" of unsuccessful emigrants, most of whom reported no harassment or prosecution after their return. During immigration proceedings, respondents, undocumented Haitian nationals and their attorney, sought to prove that the nationals were entitled to political asylum in the United States because Haitians who immigrate illegally face a well-founded fear of persecution upon returning home. To disprove the Government's assertion that returnees have not been persecuted, respondents made Freedom of Information Act (FOIA) requests for copies of petitioner's interview reports and received, *inter alia*, 17 documents from which the names and other identifying information had been redacted. The District Court ordered petitioner to produce the redacted material, finding that the deletions were not authorized by FOIA Exemption 6, which exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The Court of Appeals affirmed. It found that the returnees' significant privacy interests—stemming from respondents' intent to use the redacted information to contact and question the returnees and from the Federal Government's promise to maintain their confidentiality—were outweighed by the public interest in learning whether the Government is adequately monitoring Haiti's compliance with its obligation and is honest when its officials opine that Haiti is adhering to its assurance. The court also concluded that the indirect benefit of giving respondents the means to locate and question returnees provided a public value requiring disclosure.

Held: Disclosure of the unredacted interview reports would constitute a clearly unwarranted invasion of the returnees' privacy. Pp. 171–182.

Syllabus

(a) In order to determine whether petitioner has met its burden of justifying the redaction, the individual's right of privacy must be balanced against the FOIA's basic policy of opening agency action to the light of public scrutiny. *Department of Air Force* v. *Rose*, 425 U. S. 352, 372. Pp. 173–175.

(b) The privacy interest at stake in this case is more substantial than the Court of Appeals recognized. The invasion of privacy from summaries containing personal details about particular returnees, while *de minimis* when the returnees' identities are unknown, is significant when the information is linked to particular individuals. In addition, disclosure would publicly identify the returnees, possibly subjecting them or their families to embarrassment in their social and community relationships or to retaliatory action that might result from a renewed interest in their aborted attempt to emigrate. The lower court also gave insufficient weight to the fact that the interviews were conducted pursuant to an assurance of confidentiality, since the returnees might otherwise have been unwilling to discuss private matters and since the risk of mistreatment gives this group an additional interest in assuring that their anonymity is maintained. Finally, respondents' intent to interview the returnees magnifies the importance of maintaining the confidentiality of their identities. Pp. 175–177.

(c) The public interest in knowing whether petitioner has adequately monitored Haiti's compliance with the assurance has been adequately served by disclosure of the redacted interview summaries, which reveal how many returnees were interviewed, when the interviews took place, the interviews' contents, and details about the returnees' status. The addition of the redacted information would shed no further light on petitioner's conduct of its obligation. Pp. 177–178.

(d) The question whether the "derivative use" of requested documents—here, the hope that the information can be used to obtain additional information outside the Government files—would ever justify release of information about private individuals need not be addressed, since there is nothing in the record to suggest that a second set of interviews would produce any additional relevant information. Nor is there a scintilla of evidence that tends to impugn the integrity of the interview reports, and, therefore, they should be accorded a presumption of legitimacy. Pp. 178–179.

908 F. 2d 1549, reversed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, BLACKMUN, O'CONNOR, and SOUTER, JJ., joined, and in all but Part III of which SCALIA and KENNEDY, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in

which KENNEDY, J., joined, *post,* p. 179. THOMAS, J., took no part in the consideration or decision of the case.

Kent L. Jones argued the cause for petitioner. With him on the briefs were *Solicitor General Starr, Assistant Attorney General Gerson, Deputy Solicitor General Roberts, Leonard Schaitman,* and *Bruce G. Forrest.*

Michael Dean Ray, pro se, argued the cause for respondents. With him on the brief were *Neil Dwight Kolner* and *Eric J. Sinrod.**

JUSTICE STEVENS delivered the opinion of the Court.

In response to a Freedom of Information Act (FOIA) request, the Department of State produced 25 documents containing information about Haitian nationals who had attempted to immigrate illegally to the United States and were involuntarily returned to Haiti. Names of individual Haitians had been deleted from 17 of the documents. The question presented is whether these deletions were authorized by FOIA Exemption 6, which provides that FOIA disclosure requirements do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(6).

I

Haiti is a densely populated nation located about 500 nautical miles southeast of Florida on the western third of the Caribbean Island of Hispaniola. Prior to 1981, its history of severe economic depression and dictatorial government

*Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Debra A. Valentine, David L. Sobel, John A. Powell, Lucas Guttentag,* and *Gary M. Stern;* for the American Newspaper Publishers Association et al. by *Robert C. Bernius, Rene P. Milam, Barbara Wartelle Wall, Jane E. Kirtley, Richard M. Schmidt, Bruce W. Sanford, James E. Grossberg,* and *George Freeman;* and for the Lawyers Committee for Human Rights et al. by *David C. Vladeck* and *Alan B. Morrison.*

motivated large numbers of its citizens to emigrate to Florida without obtaining the permission of either the Haitian Government or the Government of the United States. A small number of those undocumented aliens were eligible for asylum as political refugees,[1] but almost all of them were subject to deportation if identified and apprehended.

In response to this burgeoning "illegal migration by sea of large numbers of undocumented aliens" from Haiti and other countries, President Reagan ordered the Coast Guard and the Secretary of State to intercept vessels carrying undocumented aliens and, except for passengers who qualified for refugee status, to return them to their point of origin. See Presidential Proclamation No. 4865, 3 CFR 50 (1981 Comp.); Exec. Order No. 12324, 3 CFR 180 (1981 Comp.). The President also directed the Secretary of State to enter into "cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea." *Ibid.* Following this directive, the Secretary of State obtained an assurance from the Haitian Government that interdicted Haitians would "not be subject to

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[1] Article 1.2 of the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U. N. T. S. 268, to which the United States acceded in 1968, 19 U. S. T. 6223, 6261, T. I. A. S. No. 6577, defines a "refugee" as a person absent from his or her country due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." The Protocol obligates the United States to comply with the substantive requirements of Articles 2 through 34 of the United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U. N. T. S. 150. 19 U. S. T., at 6225. Article 33.1 of the Convention, 19 U. S. T., at 6267, states: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." See generally *INS* v. *Stevic*, 467 U. S. 407, 416–418 (1984). Article 34, 19 U. S. T., at 6267, provides that "Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. . . ." See generally *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 436–441 (1987).

prosecution for illegal departure." See Agreement on Migrants—Interdiction, Sept. 23, 1981, United States-Haiti, 33 U. S. T. 3559, 3560, T. I. A. S. No. 10241. In order to monitor compliance with that assurance, State Department personnel conducted confidential interviews with a "representative sample" of unsuccessful emigrants about six months after their involuntary return. All but one or two of the emigrants reported that they had not been harassed or prosecuted since their return to Haiti.

Respondents in this case are a Florida lawyer who represents undocumented Haitian nationals seeking political asylum in the United States and three of his clients. In immigration proceedings, respondents are attempting to prove that Haitians who immigrated illegally will face a well-founded fear of persecution if they return to their homeland and therefore are refugees entitled to asylum in this country. Relying in part on the evidence in the reports of the interviews with former passengers on vessels interdicted by the Coast Guard, the Government has taken the position in those proceedings that respondents' fear of persecution is not well founded.

In order to test the accuracy of the Government's assertion that undocumented Haitian nationals have not been persecuted upon their return to Haiti, respondents made a series of FOIA requests to three Government agencies for copies of reports of the interviews by State Department personnel with persons who had been involuntarily returned to Haiti. Insofar as relevant to the question before us, the net result of these requests was the production by the State Department of 25 documents, containing approximately 96 pages, which describe a number of interviews with specific returnees and summarize the information that had been obtained during successive periods.[2] Thus, for example, a summary

[2] Respondents also sought disclosure of an alleged list of 600 Haitians who had been returned to Haiti and had not been mistreated after their arrival. The District Court found, however, that the "record fails to dis-

prepared in March 1985 reported that since the followup program had begun 3½ years earlier, United States embassy officials in Haiti had interviewed 812 returnees, 22.83 percent of the total migrant interdictee population.[3] During that time, the report continued, "only two interdictees have mentioned a threat or mistreatment by the authorities. In one case the claim was unverifiable as there were no witnesses present, in the second case higher authorities intervened to prevent mistreatment by a rural policeman."[4] In 17 of the documents, the information related to individual interviews, but the names and other identifying information had been redacted before the documents were delivered to respondents.[5] The only issue for us to decide is whether that redaction was lawful.

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close that any documents have been improperly withheld o[r] that they, indeed, exist," *Ray* v. *United States Department of Justice*, 725 F. Supp. 502, 504 (SD Fla. 1989), and the Eleventh Circuit affirmed this finding, *Ray* v. *United States Department of Justice*, 908 F. 2d 1549, 1559–1560 (1990). We have no reason to question this finding and, therefore, we are concerned only with the 25 documents containing summaries of interviews with illegal Haitian immigrants who were involuntarily returned to Haiti.

[3] Plaintiffs' Notice of Filing Defendant State Department's Edited Documents 12.

[4] The May 1985 report, the last report in the record, states that as of that date, embassy officials had interviewed 1,052 of the returnees, 23.28 percent of the total migrant returnee population. *Id.*, at 96. The report concluded that the interviews provide "further evidence" that Haiti "is keeping its commitment under the 1981 Migrant Interdiction Agreement not to prosecute or harass returned migrants for their illegal departure," but noted that "the embassy will continue its follow-up program with the goal of reaching a 25-percent interview rate of returned migrants." *Ibid.*

[5] For example, one memorandum relates the following:

"_____ is an unemployed 21-year-old living with his mother and five younger siblings in a one-room shack in Delmas. His older brother, who is employed and living in Port-au-Prince, had paid the $100 fare for _____ to travel on the S/V Sainte Marie, interdicted enroute to Miami on 6/13/83.

"_____ explained that he had wanted to live in Miami, although he has no family there. He never went to school and has no marketable skills. _____ says that he is thinking of another attempt to reach the

The District Court found that any invasion of privacy from the "mere act of disclosure of names and addresses would be de minimis and little more than speculation" and was clearly outweighed by the public interest in the "safe relocation of returned Haitians." *Ray* v. *United States Department of Justice*, 725 F. Supp. 502, 505 (SD Fla. 1989). It therefore ordered the Department to produce the redacted information.

The Court of Appeals affirmed. *Ray* v. *United States Department of Justice*, 908 F. 2d 1549 (CA11 1990). For two reasons, however, it disagreed with the District Court's "de minimis" characterization of the privacy interest at stake. First, it noted that respondents wanted the redacted information in order to enable them to contact the interviewees directly and to question them about their treatment by the Haitian Government. *Id.*, at 1554. Second, the Court recognized that "the returnees were promised confidentiality before they talked with U. S. government officials." *Ibid.* Thus, the Court of Appeals began its balancing process "by acknowledging that there are significant privacy interests at stake." *Ibid.* It nevertheless concluded that those interests were outweighed by the public interest in learning whether the Government is "adequately monitoring Haiti's compliance with its obligation not to persecute returnees" and "is honest to the public" when its officials express the opinion that Haiti is adhering to that obligation. *Id.*, at 1555. The court recognized that the redacted information would not, in and of itself, tell respondents anything about

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States. He cannot find a job here and said that he would like to travel. The twelve days spent on board the S/V Sainte Marie were difficult, he admitted, but he is willing to take another chance. ——— emphatically said that he had had no problems from Haitian officials since his return. He has been assisted twice by the Red Cross with food and money grants totalling $50." Attachment 2 to Declaration of John Eaves, Acting Deputy Director of the Office of Mandatory Review of the Classification and Declassification Center of the Department of State 5.

Haiti's treatment of the returnees or this Government's honesty, but it concluded that the indirect benefit of giving respondents the means to locate the Haitian returnees and to cross-examine them provided a public value that required disclosure. *Id.*, at 1555–1556.

We granted certiorari to review the Court of Appeals' construction of Exemption 6, 499 U. S. 904 (1991), and now reverse.

II

It is appropriate to preface our evaluation of the narrow question that we must decide with an identification of certain matters that have been resolved in earlier stages of the litigation.

After the District Court's initial decision, the State Department filed additional affidavits in support of a claim that the redacted information was protected from disclosure by Exemption 1, the exemption for classified documents, and also by Exemption 7(C), the exemption for law enforcement records which, if released, "could reasonably be expected to constitute an unwarranted invasion of personal privacy."[6] The District Court ruled that the Government had waived those claims by not raising them until after its Exemption 6 claim had been denied, 725 F. Supp., at 505, and the Court of Appeals held that that ruling was not an abuse of discretion,

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[6] The relevant portions of Exemptions 1, 6, and 7 read as follows:

"(b) [The FOIA disclosure] section does not apply to matters that are—

"(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

. . . . . .

"(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . ." 5 U. S. C. § 552.

908 F. 2d, at 1557. We denied the Government's certiorari petition insofar as it sought review of that question, but mention it here because the Government's burden in establishing the requisite invasion of privacy to support an Exemption 6 claim is heavier than the standard applicable to Exemption 7(C). See *Department of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U. S. 749, 756 (1989). To prevail in this case under Exemption 6, the Government must establish that the invasion of the interviewees' privacy would be "clearly unwarranted."

In attempting to meet its burden, the Government relies, in part, on the fact that the interviews with the Haitian returnees were conducted pursuant to assurances of confidentiality. In this Court, respondents have suggested that the texts of some of the reported interviews do not expressly mention such assurances. Neither the District Court nor the Court of Appeals, however, questioned the fact that promises of confidentiality had actually been made; on the contrary, after finding that such assurances had been made, both courts concluded as a matter of law that they did not outweigh the public interest in disclosure.[7] Insofar as the promises of confidentiality are relevant, we of course accept the factual predicate for the Court of Appeals decision.

That court's conclusion rested, in part, on what it described as the public interest in learning "whether our government is honest to the public about Haiti's treatment of returnees." 908 F. 2d, at 1555. The Court of Appeals did not, however, suggest that there was any evidence in the

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[7] Thus, the Court of Appeals explained:

"We are also mindful, as the government points out, that the returnees were promised confidentiality before they talked with U. S. government officials. That, of course, is a factor that adds weight to the privacy interests at stake here, but it is not a factor that compels us to prohibit disclosure in this case." 908 F. 2d, at 1554; see also 725 F. Supp., at 505 ("The promise of confidentiality by the State Dept. is only one factor to be considered and, in this case, is not determinative of the outcome").

State Department records that was inconsistent with any public statement made by Government officials, or that there was any other factual basis for questioning the honesty of its officials. Thus, as with the assurances of confidentiality, we have no occasion to question the Government's version of the relevant facts.

We note, finally, that respondents have never questioned the Government's position that the documents at issue consist of "personnel and medical files and similar files" within the meaning of Exemption 6.[8] Because the 17 reports from which identifying information was deleted unquestionably apply to the particular individuals who had been returned and interviewed, they are "similar files" within the meaning of the exemption. See *Department of State* v. *Washington Post Co.*, 456 U. S. 595, 602 (1982). The only question, therefore, is whether the disclosure of the unredacted interview reports "would constitute a clearly unwarranted invasion of that person's privacy."

III

The Freedom of Information Act was enacted to facilitate public access to Government documents. *John Doe Agency* v. *John Doe Corp.*, 493 U. S. 146, 151 (1989). The statute was designed "'to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.'" *Department of Air Force* v. *Rose*, 425 U. S. 352, 361 (1976). Consistently with this purpose, as well as the plain language of the Act, the strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents. *Ibid.; Department of Justice* v. *Reporters Comm.*, 489 U. S., at 755. That burden remains with the agency when it seeks to justify the redaction of identifying information in a particular document as well as when it seeks to withhold an entire document. See 5 U. S. C. § 552(a)(4)(B).

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[8] See n. 6, *supra.*

The redaction procedure is, however, expressly authorized by FOIA.[9] Congress thus recognized that the policy of informing the public about the operation of its Government can be adequately served in some cases without unnecessarily compromising individual interests in privacy.[10] Accordingly,

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[9] As we noted in *Department of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U. S. 749, 755, n. 7 (1989):

"Congress employed . . . language [similar to that contained in Exemption 6] earlier in the statute to authorize an agency to delete identifying details that might otherwise offend an individual's privacy:

"'To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction.' § 552(a)(2)."

In addition, Congress mandated that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . ." 5 U. S. C. § 552(b).

[10] See S. Rep. No. 813, 89th Cong., 1st Sess., 7 (1965) ("The authority to delete identifying details after written justification is necessary in order to be able to balance the public's right to know with the private citizen's right to be secure in his personal affairs which have no bearing or effect on the general public. For example, it may be pertinent to know that unseasonably harsh weather has caused an increase in public relief costs; but it is not necessary that the identity of any person so affected be made public"); H. R. Rep. No. 1497, 89th Cong., 2d Sess., 8 (1966) ("The public has a need to know, for example, the details of an agency opinion or statement of policy on an income tax matter, but there is no need to identify the individuals involved in a tax matter if the identification has no bearing or effect on the general public"). These examples guided our analysis in *Department of Justice* v. *Reporters Comm.*, *supra*, in which we held that criminal identification records, or "rap sheets," were law enforcement records which, if released, "could reasonably be expected to constitute an unwarranted invasion of personal privacy" and therefore were exempt from disclosure under Exemption 7. We explained that:

"Both public relief and income tax assessments—like law enforcement—are proper subjects of public concern. But just as the identity of the individuals given public relief or involved in tax matters is irrelevant to the public's understanding of the Government's operation, so too is the identity of individuals who are the subjects of rap sheets irrelevant to the public's understanding of the system of law enforcement. For rap sheets

in the leading case interpreting Exemption 6, we held that the statute required disclosure of summaries of Air Force Academy disciplinary proceedings "with personal references or other identifying information deleted." *Rose*, 425 U. S., at 380. The question in this case is whether petitioner has discharged its burden of demonstrating that the disclosure of the contents of the interviews with the Haitian returnees adequately served the statutory purpose and that the release of the information identifying the particular interviewees would constitute a clearly unwarranted invasion of their privacy.

As we held in *Rose*, the text of the exemption requires the Court to balance "the individual's right of privacy" against the basic policy of opening "agency action to the light of public scrutiny," *id.*, at 372. The District Court and the Court of Appeals properly began their analysis by considering the significance of the privacy interest at stake. We are persuaded, however, that several factors, when considered together, make the privacy interest more substantial than the Court of Appeals recognized.

First, the Court of Appeals appeared to assume that respondents sought only the names and addresses of the interviewees. But respondents sought—and the District Court ordered that the Government disclose—the unredacted interview summaries. As the Government points out, many of these summaries contain personal details about particular interviewees.[11] Thus, if the summaries are released without the names redacted, highly personal information regarding marital and employment status, children, living conditions, and attempts to enter the United States would be linked

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reveal only the dry, chronological, personal history of individuals who have had brushes with the law, and tell us nothing about matters of substantive law enforcement policy that are properly the subject of public concern." *Id.*, at 766, n. 18.

[11] See n. 5, *supra*.

publicly with particular, named individuals. Although disclosure of such personal information constitutes only a *de minimis* invasion of privacy when the identities of the interviewees are unknown, the invasion of privacy becomes significant when the personal information is linked to particular interviewees. Cf. *id.*, at 380–381.

In addition, disclosure of the unredacted interview summaries would publicly identify the interviewees as people who cooperated with a State Department investigation of the Haitian Government's compliance with its promise to the United States Government not to prosecute the returnees. The Court of Appeals failed to acknowledge the significance of this fact.[12] As the State Department explains, disclosure of the interviewees' identities could subject them or their families to "embarrassment in their social and community relationships." App. 43. More importantly, this group of interviewees occupies a special status: They left their homeland in violation of Haitian law and are protected from prosecution by their government's assurance to the State Department. Although the Department's monitoring program indicates that that assurance has been fulfilled, it nevertheless remains true that the State Department considered the danger of mistreatment sufficiently real to necessitate that monitoring program. How significant the danger of mistreatment may now be is, of course, impossible to measure,

[12] We emphasize, however, that we are not implying that disclosure of a list of names and other identifying information is inherently and always a significant threat to the privacy of the individuals on the list. Instead, we agree with the Court of Appeals for the District of Columbia Circuit that whether disclosure of a list of names is a "'significant or a *de minimis* threat depends upon the characteristic(s) revealed by virtue of being on the particular list, and the consequences likely to ensue.'" *National Assn. of Retired Federal Employees* v. *Horner*, 279 U. S. App. D. C. 27, 31, 879 F. 2d 873, 877 (1989), cert. denied, 494 U. S. 1078 (1990). As discussed *infra*, disclosure of the interviewees' names would be a significant invasion of their privacy because it would subject them to possible embarrassment and retaliatory action.

but the privacy interest in protecting these individuals from any retaliatory action that might result from a renewed interest in their aborted attempts to emigrate must be given great weight. Indeed, the very purpose of respondents' FOIA request is to attempt to prove that such a danger is present today.

We are also persuaded that the Court of Appeals gave insufficient weight to the fact that the interviews had been conducted pursuant to an assurance of confidentiality. We agree that such a promise does not necessarily prohibit disclosure, but it has a special significance in this case. Not only is it apparent that an interviewee who had been given such an assurance might have been willing to discuss private matters that he or she would not otherwise expose to the public—and therefore would regard a subsequent interview by a third party armed with that information as a special affront to his or her privacy—but, as discussed above, it is also true that the risk of mistreatment gives this group of interviewees an additional interest in assuring that their anonymity is maintained.

Finally, we cannot overlook the fact that respondents plan to make direct contact with the individual Haitian returnees identified in the reports. As the Court of Appeals properly recognized, the intent to interview the returnees magnifies the importance of maintaining the confidentiality of their identities.

IV

Although the interest in protecting the privacy of the redacted information is substantial, we must still consider the importance of the public interest in its disclosure. For unless the invasion of privacy is "clearly unwarranted," the public interest in disclosure must prevail. As we have repeatedly recognized, FOIA's "basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' . . . focuses on the citizens' right to be informed about 'what their government is up to.' Official

information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." *Department of Justice* v. *Reporters Comm.*, 489 U. S., at 773 (quoting *Department of Air Force* v. *Rose*, 425 U. S., at 360–361) (internal citations omitted). Thus, the Court of Appeals properly recognized that the public interest in knowing whether the State Department has adequately monitored Haiti's compliance with its promise not to prosecute returnees is cognizable under FOIA. We are persuaded, however, that this public interest has been adequately served by disclosure of the redacted interview summaries and that disclosure of the unredacted documents would therefore constitute a clearly unwarranted invasion of the interviewees' privacy.

The unredacted portions of the documents that have already been released to respondents inform the reader about the State Department's performance of its duty to monitor Haitian compliance with the promise not to prosecute the returnees. The documents reveal how many returnees were interviewed, when the interviews took place, the contents of individual interviews, and details about the status of the interviewees. The addition of the redacted identifying information would not shed any additional light on the Government's conduct of its obligation.

The asserted public interest on which respondents rely stems not from the disclosure of the redacted information itself, but rather from the hope that respondents, or others, may be able to use that information to obtain additional information outside the Government files. The Government argues that such "derivative use" of requested documents is entirely beyond the purpose of the statute and that we should adopt a categorical rule entirely excluding the interest in such use from the process of balancing the public interest in disclosure against the interest in privacy. There is no need to adopt such a rigid rule to decide this case, however,

because there is nothing in the record to suggest that a second series of interviews with the already-interviewed returnees would produce any relevant information that is not set forth in the documents that have already been produced. Mere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy. Accordingly, we need not address the question whether a "derivative use" theory would ever justify release of information about private individuals.

We are also unmoved by respondents' asserted interest in ascertaining the veracity of the interview reports. There is not a scintilla of evidence, either in the documents themselves or elsewhere in the record, that tends to impugn the integrity of the reports. We generally accord Government records and official conduct a presumption of legitimacy. If a totally unsupported suggestion that the interest in finding out whether Government agents have been telling the truth justified disclosure of private materials, Government agencies would have no defense against requests for production of private information. What sort of evidence of official misconduct might be sufficient to identify a genuine public interest in disclosure is a matter that we need not address in this case. On the record before us, we are satisfied that the proposed invasion of the serious privacy interest of the Haitian returnees is "clearly unwarranted."

The judgment of the Court of Appeals is

Reversed.

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

JUSTICE SCALIA, with whom JUSTICE KENNEDY joins, concurring in part and concurring in the judgment.

I join the Court's judgment and its opinion except Part III.

Exemption 6 of the Freedom of Information Act (FOIA) provides that the Act's disclosure requirements do not apply to "personnel and medical files and similar files the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(6). As the Court recognizes, *ante,* at 175, this requires an agency to balance the interest in personal privacy against the public interest in disclosure. *Department of Air Force* v. *Rose,* 425 U. S. 352, 372 (1976). In the context of evaluating the public interest side of the balance, the parties in this case have vigorously disputed whether an agency must consider so-called "derivative" uses—*i. e.*, not only the intrinsic public value of the records, but also, in this case, the potential that additional, publicly valuable information may be generated by further investigative efforts that disclosure of the records will make possible.

The majority does not, in my view, refute the persuasive contention that consideration of derivative uses, whether to establish a public interest or to establish an invasion of privacy, is impermissible. Perhaps FOIA would be a more sensible law if the Exemption applied whenever disclosure would "*cause,*" "*produce,*" or "*lead to*" a clearly unwarranted invasion of personal privacy, see, *e. g., National Assn. of Retired Fed. Employees* v. *Horner,* 279 U. S. App. D. C. 27, 32, 879 F. 2d 873, 878 (1989), cert. denied, 494 U. S. 1078 (1990)—though the practical problems in implementing such a provision would be considerable. That is not, however, the statute Congress enacted. Since the question under 5 U. S. C. § 552(b)(6) is whether "disclosure" would "*constitute* a clearly unwarranted invasion of personal privacy" (emphasis added); and since we have repeatedly held that FOIA's exemptions "'must be narrowly construed,'" *John Doe Agency* v. *John Doe Corp.,* 493 U. S. 146, 152 (1989) (quoting *Rose, supra,* at 361); it is unavoidable that the focus, in assessing a claim under Exemption 6, must be solely upon what the requested information *reveals,* not upon what it might lead to. *Arieff* v. *United States Dept. of Navy,* 229 U. S. App. D. C. 430, 436, 712 F. 2d 1462, 1468 (1983) (Scalia, J.). That result is in accord with the general policy of FOIA,

which we referred to in *Department of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U. S. 749, 771 (1989), that the particular purposes for which a request is made are irrelevant.

The Court today pointedly abstains from deciding the derivative-use issue, saying that, since the record does not support the existence of any second-order public benefits, "we need not address the question whether a 'derivative use' theory would ever justify release of information about private individuals." *Ante*, at 179. I am content with that. It seems to me, however, that since derivative use on the public-benefits side, and derivative use on the personal-privacy side must surely go together (there is no plausible reason to allow it for the one and bar it for the other), the Court should have been consistent in its abstention. It should not, in the portion of its opinion discussing the privacy interest (Part III), have discussed such matters as the "retaliatory action that might result from a renewed interest in [the interviewees'] aborted attempts to emigrate," and "the fact that respondents plan to make direct contact with the individual Haitian returnees identified in the reports." *Ante*, at 177. This speculation is unnecessary to the decision since, as the Court notes, *ante*, at 176, each of the unredacted documents requested by respondents would disclose that a particular person had agreed, under a pledge of confidentiality, to report to a foreign power concerning the conduct of his own government. This is information that a person would ordinarily not wish to be known about himself—and thus constitutes an invasion of personal privacy. Cf. *Department of State* v. *Washington Post Co.*, 456 U. S. 595 (1982). Since there is nothing on the other side of the equation—the Court finding, quite correctly, that the public interests here have been "adequately served by disclosure of the redacted interview summaries," *ante*, at 178—the question whether this invasion of privacy is "clearly unwarranted"

must be answered affirmatively and the assertion of Exemption 6 must be sustained.

I choose to believe the Court's explicit assertion that it is not deciding the derivative-use point, despite what seem to me contrary dicta elsewhere in the opinion.

Syllabus

IMMIGRATION AND NATURALIZATION SERVICE ET AL. *v.* NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., ET AL.

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

No. 90–1090. Argued November 13, 1991—Decided December 16, 1991

Section 242(a) of the Immigration and Nationality Act (INA) authorizes the Attorney General to arrest excludable aliens and, pending a determination of their deportability, either to hold them in custody or to release them on bond containing conditions prescribed by the Attorney General. Respondent individuals and organizations filed suit in the District Court against petitioners, alleging that 8 CFR § 103.6(a)(2)(ii)—which is entitled "*Condition against unauthorized employment*" and generally requires that release bonds contain a "condition barring employment" pending a deportability determination—was invalid on its face and therefore could not be enforced even against aliens who may not lawfully accept employment in this country. Ultimately, the District Court held that the regulation was beyond the Attorney General's statutory authority. The Court of Appeals affirmed, ruling that the regulation barred all employment, whether authorized or unauthorized, and that the Attorney General exceeded his authority in promulgating it because the no-employment condition was not related to the purposes of the INA and the regulation did not provide for "individualized decisions" on the imposition of bond conditions as required by the statute.

Held: The regulation on its face is consistent with the Attorney General's statutory authority. Pp. 188–196.

(a) No "as-applied" challenges to the regulation nor any constitutional claims raised by respondents' initial complaint are before this Court. P. 188.

(b) The regulation does not contemplate the inclusion of no-work conditions in bonds issued to aliens who are authorized to work. Reading the text's generic reference to "employment" as a reference to the "*unauthorized employment*" identified in the paragraph's title helps to resolve any ambiguity in the text's language. See, *e. g.*, *Mead Corp.* v. *Tilley*, 490 U. S. 714, 723. Moreover, the agency's consistent interpretation of the regulation as applying only to unauthorized employment is due deference. This conclusion is further supported by the regulation's text, the agency's comments when the rule was promulgated, operating

instructions issued to Immigration and Naturalization Service (INS) personnel, and the absence of any evidence that INS has ever imposed the condition on any alien authorized to work. Pp. 189–191.

(c) The regulation is wholly consistent with the established concern of immigration law to preserve jobs for American workers and thus is squarely within the scope of the Attorney General's statutory authority. *United States* v. *Witkovich*, 353 U. S. 194; *Carlson* v. *Landon*, 342 U. S. 524, distinguished. Pp. 191–194.

(d) The regulation, when properly construed, and when viewed in the context of INS' administrative procedures—an initial informal determination regarding an alien's status, the right to seek discretionary relief from the INS and secure temporary authorization, and the right to seek prompt administrative and judicial review of bond conditions—provides the individualized determinations contemplated in the statute. Pp. 194–196.

913 F. 2d 1350, reversed and remanded.

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

Stephen J. Marzen argued the cause for petitioners. With him on the briefs were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Deputy Solicitor General Shapiro*, *Barbara L. Herwig*, and *John F. Daly*.

Peter A. Schey argued the cause for respondents. With him on the brief were *Michael Rubin* and *Robert Gibbs*.*

JUSTICE STEVENS delivered the opinion of the Court.

This case presents a narrow question of statutory construction. Section 242(a) of the Immigration and Nationality Act (INA) authorizes the Attorney General to arrest excludable aliens and, pending a determination of their deportability, either to hold them in custody or to release them on bond "containing such conditions as the Attorney General may prescribe." 66 Stat. 208, as amended, 8 U. S. C.

*Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *John J. Curtin, Jr.*, and *Jonathan L. Abram;* for the American Immigration Lawyers Association by *Joshua Floum*, *Maureen Callahan*, and *Lawrence H. Rudnick;* and for the International Human Rights Law Group by *Nicholas W. Fels* and *Steven M. Schneebaum*.

§ 1252(a)(1). We granted the Government's petition for certiorari to decide "[w]hether th[at] provision prohibits promulgation of a rule generally requiring that release bonds contain a condition forbidding unauthorized employment pending determination of deportability." Pet. for Cert. I.

I

Prior to 1983, the regulations of the Immigration and Naturalization Service (INS) provided that, when an alien was released from custody pending deportation or exclusion proceedings, the INS could in its discretion include in the bond obtained to secure the alien's release a condition barring unauthorized employment. 8 CFR § 103.6(a)(2)(ii) (1982). In 1983, the Attorney General amended those regulations to include the following provision:

> "(ii) *Condition against unauthorized employment.* A condition barring employment shall be included in an appearance and delivery bond in connection with a deportation proceeding or bond posted for the release of an alien in exclusion proceedings, unless the District Director determines that employment is appropriate." 8 CFR § 103.6(a)(2)(ii) (1991).[1]

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[1] The regulation further provides:

"(iii) *Factors to be considered.* Only those aliens who upon application under § 109.1(b) of this chapter establish compelling reasons for granting employment authorization may be authorized to accept employment. Among the factors which may be considered when an application is made, are the following:

"(A) Safeguarding employment opportunities for United States citizens and lawful permanent resident aliens;

"(B) Prior immigration violations by the alien;

"(C) Whether there is a reasonable basis for considering discretionary relief; and

"(D) Whether a United States citizen or lawful permanent resident spouse or children are dependent upon the alien for support, or other equities exist." § 103.6(a)(2)(iii).

In effect, the new regulation made "no-employment conditions" the rule rather than the exception.

Several individuals and organizations (respondents) filed this action challenging the validity of the new rule on statutory and constitutional grounds. Their complaint alleged that the new rule was invalid on its face and therefore could not be enforced even against aliens who may not lawfully accept employment in this country.

After finding that the plaintiffs had a fair chance of success on the merits, either on the ground that the statute did not authorize no-employment conditions because such conditions were irrelevant to securing an alien's appearance at a subsequent deportation hearing, or on the ground that the regulation violated an alien's constitutional right to due process, the District Court entered a nationwide preliminary injunction against enforcement of the rule. The Court of Appeals affirmed in part, but held that the scope of the injunction should be limited to the named plaintiffs unless the District Court granted their motion to certify a class. *National Center for Immigrants' Rights, Inc.* v. *INS*, 743 F. 2d 1365 (CA9 1984).

On remand, the District Court entered summary judgment in favor of respondents on the ground that the regulation was beyond the statutory authority of the Attorney General and also certified a class consisting of "all those persons who have been or may in the future be denied the right to work pursuant to 8 CFR § 103.6." *National Center for Immigration Rights, Inc.* v. *INS*, No. CV 83–7927–KN (CD Cal., July 9, 1985), p. 1. The Court of Appeals again affirmed, concluding that the Attorney General's statutory "authority under 8 U. S. C. § 1252(a) of the Act is limited to the imposition of bond conditions which tend to insure the alien's appearance at future deportation proceedings. The peripheral concern of the Act with the employment of illegal aliens is not sufficient to support the imposition of a no-employment condition

in every bond." *National Center for Immigrants' Rights, Inc.* v. *INS*, 791 F. 2d 1351, 1356 (CA9 1986).

The Government petitioned for certiorari raising the same question that is now before us. The Government argued that because the regulation only barred "unauthorized" work by aliens, it merely added the threat of a bond revocation to the already existing prohibition against unauthorized employment. In view of the then-recent enactment of the Immigration Reform and Control Act of 1986 (IRCA), 100 Stat. 3359, which cast serious doubt on the Court of Appeals' conclusion that employment of undocumented aliens was only a "peripheral concern" of the immigration laws, we vacated that court's judgment and remanded for further consideration in the light of IRCA. 481 U. S. 1009 (1987). On remand, the District Court adhered to its original opinion that the Attorney General's discretion to impose bond conditions is "limited to those [conditions] aimed at obtaining an undocumented worker's appearance at future immigration proceedings." App. to Pet. for Cert. 68a. The District Court noted that the enactment of employer sanctions in IRCA made the question whether the employment of undocumented aliens is merely a "peripheral concern" of the INA more difficult, but concluded that this change in the law did not broaden the Attorney General's discretion.

A divided panel of the Court of Appeals again affirmed, but the majority did not rely on the District Court's reasoning. 913 F. 2d 1350 (CA9 1990). The majority first rejected the Government's interpretation of the new regulation as merely barring "'unauthorized employment'"; the Court of Appeals construed the rule as a "blanket bond condition" applicable to aliens authorized to work as well as to those who had no such authority. *Id.*, at 1353–1358. The majority then concluded that the Attorney General exceeded his statutory authority in promulgating the regulation, ruling that the Attorney General's discretion in imposing bond conditions was subject to two constraints. First, the court

ruled, a bond condition must relate either to securing the alien's appearance at a subsequent hearing or to protecting the Nation from danger posed by active subversives. A no-employment condition was not related to either of these purposes. *Id.*, at 1358–1372. Second, the Court of Appeals concluded, bond conditions may only be imposed on an individualized basis and therefore the "blanket rule" promulgated by the Attorney General was invalid. *Id.*, at 1373–1374.

We granted certiorari, 499 U. S. 946 (1991), and now reverse.

II

It is appropriate that we preface our analysis by noting the narrowness of the question before us: We must decide whether the regulation *on its face* is invalid as inconsistent with the Attorney General's *statutory* authority.

We first observe that the plaintiffs framed their challenge to the regulation as a facial challenge. See App. 16–27. We recognize that it is possible that the no-work condition may be improperly imposed on some aliens. That the regulation may be invalid as applied in such cases, however, does not mean that the regulation is facially invalid because it is without statutory authority. Cf. *American Hospital Assn.* v. *NLRB*, 499 U. S. 606, 619 (1991); *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602, 632–633, n. 10 (1989). In this case, we need not and do not address such "as-applied" challenges to the regulation.

We also note that, in invalidating the contested regulation, the Court of Appeals relied solely on statutory grounds, and did not reach the plaintiffs' constitutional challenge. See 913 F. 2d, at 1358, n. 8. Accordingly, only the plaintiffs' statutory challenge is before us and we resolve none of the constitutional claims raised by the plaintiffs' initial complaint.

III

The threshold question in this case concerns interpretation of the regulation, which as the Government itself concedes, "is not unambiguous." Brief for Petitioners 23, n. 14. Indeed, as the dissenting judge in the Court of Appeals suggested, much of this controversy could have been avoided by a more precise drafting of the regulation, either initially or in response to any of the several lower court opinions. See 913 F. 2d, at 1375 (Trott, J., dissenting).

The most critical ambiguity in the regulation is whether the proposed no-work conditions bar all employment or only *unauthorized* employment—stated another way, whether such conditions will be imposed on all bonds or only on bonds issued for aliens who lack authorization to work. Although the relevant paragraph of the regulation is entitled "Condition against unauthorized employment," the text describes the restriction more broadly, as a "condition barring employment." Based in part on this latter phrase, the Court of Appeals interpreted the regulation as barring all employment, whether authorized or unauthorized. In contrast, the Government contends that the regulation only concerns the imposition of bond conditions in the case of aliens who lack work authorization in the first place.

We agree with the Government's interpretation of the regulation. In other contexts, we have stated that the title of a statute or section can aid in resolving an ambiguity in the legislation's text. See *Mead Corp.* v. *Tilley*, 490 U. S. 714, 723 (1989); *FTC* v. *Mandel Bros., Inc.*, 359 U. S. 385, 388–389 (1959). Such analysis obtains in this case as well. The text's generic reference to "employment" should be read as a reference to the "*unauthorized* employment" identified in the paragraph's title. Moreover, an agency's reasonable,

consistently held interpretation of its own regulation is entitled to deference. In this case, the Government has consistently maintained that the contested regulation only implicates bond conditions barring unauthorized employment.[2]

Our conclusion that the regulation does not contemplate the inclusion of no-work conditions in bonds issued to aliens who are authorized to work is further supported by the text of the regulation,[3] the agency's comments when the rule was promulgated,[4] the operating instructions issued to INS personnel,[5] and the absence of any evidence that the INS has

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[2] In this regard, it is noteworthy that the Government's 1986 petition for certiorari framed the question presented as:

"Whether 8 U. S. C. § 1252(a), which allows the Attorney General, pending determination of deportability of an alien, to release the alien under bond 'containing such conditions as the Attorney General may prescribe,' permits a condition that forbids the alien to engage in *unauthorized* employment pending determination of deportability." Pet. for Cert. in *INS* v. *National Center for Immigrants' Rights*, O. T. 1986, No. 86–1207, p. I (emphasis supplied).

This supports the Government's current representation that it has consistently taken the position that the regulation was never intended to interfere with an alien's right to engage in authorized employment.

[3] The critical sentence in the regulation states that the condition shall be included "unless the District Director determines that employment is appropriate." 8 CFR § 103.6(a)(2)(ii) (1991). This language places the burden on the alien of demonstrating that employment is appropriate, but it seems inconceivable that the District Director could determine that employment that had already been authorized was not "appropriate."

[4] In response to critical comments on the proposed rule during the rulemaking process, the agency categorically stated that "permanent resident aliens are not affected by these release conditions. Until such time as permanent resident status is lost, the permanent resident alien has the right to work in the United States, if released on bond. The Service, therefore, has no intention of applying this condition to a permanent resident alien in exclusion or deportation proceedings." 48 Fed. Reg. 51143 (1983).

[5] "Individuals maintaining a colorable claim to U. S. Citizenship and permanent resident aliens, authorized to work in the United States under 8 CFR 109.1(a)(1), shall not be subject to this general prohibition until such time as a final administrative determination of deportability has been made." INS Operating Instruction 103.6(i) (Dec. 7, 1983).

imposed such a condition on any such alien.[6] We therefore accept the Solicitor General's representation that the INS does not intend to apply the bond condition to prohibit authorized employment.

Accordingly, our decision today will not answer any of the questions concerning the validity of a regulation having the broader meaning ascribed to this regulation by the Court of Appeals. We thus have no occasion to consider whether the release of an alien who is authorized to work could be subjected to a "no-work" condition.

IV

Section 242(a) of the INA grants the Attorney General authority to release aliens under bonds "containing such conditions as the Attorney General may prescribe."[7] In ruling

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[6] The individual plaintiffs alleged that enforcement of the no-work condition would make it difficult, if not impossible, for them to employ counsel and to obtain their release pending a determination of their deportability. None of them, however, alleged that he or she had been authorized to work in the United States before commencement of his or her deportation proceeding. See App. 34–41. (Although one plaintiff alleged that he had been employed for about six years, he did not allege that he had been authorized to accept work. See *id.*, at 36.)

[7] Title 8 U. S. C. § 1252(a) provides in pertinent part—

"Apprehension and deportation of aliens

"(a) Arrest and custody; review of determination by court; aliens committing aggravated felonies; report to Congressional committees

"(1) Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Except as provided in paragraph (2) [regarding mandatory detention of aliens convicted of aggravated felonies], any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (A) be continued in custody; or (B) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (C) be released on conditional parole. But such bond or parole, whether heretofore or hereafter authorized, may be revoked at any time by the Attorney General, in his discretion, and the alien may be returned to custody under the warrant which initiated the proceedings

that the Attorney General's discretion under this section was limited, the Court of Appeals relied on two cases in which we have interpreted similarly broad language in this statutory scheme: *United States* v. *Witkovich*, 353 U. S. 194 (1957), and *Carlson* v. *Landon*, 342 U. S. 524 (1952).

In *Witkovich*, we considered the scope of the Attorney General's statutory authority to require deportable aliens to provide the INS with information about their "circumstances, habits, associations and activities, and other information . . . deemed fit and proper." 8 CFR § 242.3(c)(3) (1956). Although the challenged regulation seemed clearly authorized by the words of the statute, the Court concluded that Congress had only intended to authorize "questions reasonably calculated to keep the Attorney General advised regarding the continued availability for departure of aliens whose deportation is overdue." 353 U. S., at 202. Relying on *Witkovich*, the Court of Appeals held that § 1252(a) should also be given a narrow construction.

This case differs from *Witkovich* in important ways. Writing for the Court, Justice Frankfurter explained the reasons for placing a limiting construction on the statutory language:

> "The language of § 242(d)(3), if read in isolation and literally, appears to confer upon the Attorney General unbounded authority to require whatever information he deems desirable of aliens whose deportation has not been effected within six months after it has been commanded. The Government itself shrinks from standing on the breadth of these words. But once the tyranny

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against him and detained until final determination of his deportability. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability."

> of literalness is rejected, all relevant considerations for giving a rational content to the words become operative. A restrictive meaning for what appear to be plain words may be indicated by the Act as a whole, by the persuasive gloss of legislative history or by the rule of constitutional adjudication, relied on by the District Court, that such a restrictive meaning must be given if a broader meaning would generate constitutional doubts." *Id.*, at 199.

In this case, the Government's argument proceeds on the assumption that the "Act as a whole"—including its concern with the employment of excludable aliens—should define the scope of the Attorney General's discretion. It is respondents who would excise the interest in preventing unauthorized employment from the statutory scheme and confine the Attorney General's bonding authority to the limited purpose of ensuring the presence of aliens at their deportation hearings. Moreover, the contested regulation, when properly construed as applicable only to *unauthorized* employment, does not raise "constitutional doubts" and therefore does not militate in favor of a narrow construction of the organic statute. In short, the Court of Appeals' reliance on *Witkovich* was misplaced.

The majority below also relied on *Carlson*. In that case, the Court upheld the Attorney General's detention (under § 23 of the Internal Security Act of 1950) of deportable members of the Communist Party on the ground that they posed a threat to national security. The Court of Appeals read that case narrowly, as standing for the proposition that the Attorney General may exercise his discretion under § 1252(a) to protect the Nation from active subversion.

This reading of *Carlson* is too cramped. What was significant in *Carlson* was not simply the threat of "active subversion," but rather the fact that Congress had enacted legislation based on its judgment that such subversion posed a threat to the Nation. The Attorney General's discretion

sanctioned in *Carlson* was wholly consistent with Congress' intent: "Detention [was] part of [the Internal Security Act]. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings." 342 U. S., at 538. Thus, the statutory policy that justified the detention was the congressional determination that the presence of alien Communists constituted an unacceptable threat to the Nation.

In this case, the stated and actual purpose of no-work bond conditions was "'to protect against the displacement of workers in the United States.'" 48 Fed. Reg. 51142 (1983) (citation omitted). We have often recognized that a "primary purpose in restricting immigration is to preserve jobs for American workers." *Sure-Tan, Inc.* v. *NLRB*, 467 U. S. 883, 893 (1984); see also 8 U. S. C. § 1182(a)(14) (defining as a class of excludable aliens those "seeking to enter the United States, for the purpose of performing skilled or unskilled labor" without the appropriate authorization).[8] The contested regulation is wholly consistent with this established concern of immigration law and thus squarely within the scope of the Attorney General's statutory authority.

V

As a related ground supporting invalidation of the regulation, the Court of Appeals ruled that the regulation did not provide for "individualized decisions" as required by the Act. We agree that the lawful exercise of the Attorney General's discretion to impose a no-work condition under § 1252(a) requires some level of individualized determination. Indeed in the absence of such judgments, the legitimate exercise of

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[8] For an early statement of this policy, see H. R. Rep. No. 1365, 82d Cong., 2d Sess., 50–51 (1952) (discussing the INA's "safeguards for American labor"). This policy of immigration law was forcefully recognized most recently in the IRCA.

discretion is impossible in this context. We reached a similar conclusion with respect to the determination at issue in *Carlson*, noting that the findings of "evidence of membership plus personal activity in supporting and extending the [Communist] Party's philosophy concerning violence g[ave] adequate ground for detention." 342 U. S., at 541.

However, we believe that the no-work condition regulation, when properly construed and when viewed in the context of the complex regime of immigration law, provides the individualized determinations contemplated in the statute. As noted above, we accept the Attorney General's interpretation of the regulation as affecting only those aliens who may not lawfully accept employment in this country. In addition, the operating instructions issued to INS personnel in connection with this regulation expressly state that individuals maintaining a colorable claim of citizenship shall not be subject to the no-work condition, see n. 5, *supra*, and the INS has stated that "[a]liens who have applied for asylum will not be affected by these regulations." 48 Fed. Reg. 51143 (1983). These facts substantially narrow the reach of the regulation.

Moreover, the Solicitor General has advised us that, in enforcing the regulation, the INS will make "an initial, informal determination [as to] whether the alien holds some status that makes work 'authorized.'" Brief for Petitioners 35. The alien's burden in that proceeding is easily met,[9] for aliens who are authorized to work generally possess documents establishing that status. Some persons so authorized carry so-called "green cards," see *Saxbe* v. *Bustos*, 419 U. S. 65,

[9] The Solicitor General also notes that "in those rare cases where an alien claims work authorization by status but is unable readily to document such status[,] a preliminary showing of likely success on the merits . . . would be grounds for temporary relief." Brief for Petitioners 36, n. 26 (citing 8 CFR § 274a.12(c)(13)(iii) (1991)).

66–68 (1974), others carry employment authorization documents, see 8 CFR § 274a.12(a) (1991),[10] or registration numbers that will readily identify their status.[11]

This informal process is enhanced by two additional provisions. First, 8 CFR § 103.6(a)(2)(iii) (1991) establishes a procedure under which individual aliens can seek discretionary relief from the INS and secure temporary work authorization. Second, an alien may seek prompt administrative and judicial review of bond conditions. 8 CFR §§ 3.18, 242.2 (1991).

Taken together all of these administrative procedures are designed to ensure that aliens detained and bonds issued under the contested regulation will receive the individualized determinations mandated by the Act in this context.

For these reasons, we conclude that 8 CFR § 103.6(a)(2)(ii) (1991) is consistent with the Attorney General's statutory authority under § 242(a) of the INA. The judgment of the Court of Appeals is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[10] This section sets forth the various classes of aliens authorized to accept employment; in each case the INS issues to the alien a document confirming that authorization. Importantly, the INS regulations implementing IRCA also provide for the issuance of such a document pending the resolution of amnesty proceedings. See 8 CFR § 245a.2(n) (1991).

[11] We realize that the regulation effectively establishes a presumption that undocumented aliens taken into custody are not entitled to work. In view of the fact that over 97 percent of those aliens apparently do not contest their deportability and instead agree to voluntary deportation, *INS* v. *Lopez-Mendoza,* 468 U. S. 1032, 1044 (1984), such a presumption is reasonable. Moreover, even within the narrow subclass in which deportability is contested, there is no evidence that the presumption cannot be effectively rebutted by those aliens who are entitled to employment, or who have a colorable claim to the right to work. The fact that the rule may make it more difficult for aliens who are not entitled to work to resist deportation is, of course, not a reason for concluding that the regulation exceeds the Attorney General's statutory authority.

Syllabus

HILTON *v.* SOUTH CAROLINA PUBLIC RAILWAYS COMMISSION

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

No. 90–848. Argued October 8, 1991—Decided December 16, 1991

Respondent South Carolina Public Railways Commission, a state agency that is a common carrier engaged in interstate commerce by railroad, was sued in state court under the Federal Employers' Liability Act (FELA) by its employee, petitioner Hilton, who alleged that he was injured in the course of his employment as a result of the commission's negligence. In dismissing the complaint on the ground that FELA does not authorize a damages action against a state agency, even if suit is maintained in a state forum, the trial court acknowledged that in *Parden* v. *Terminal Railway of Alabama Docks Dept.*, 377 U. S. 184, this Court interpreted FELA to permit such actions, but held that in effect *Parden* had been overruled by subsequent decisions of the Court. The South Carolina Supreme Court affirmed.

Held: FELA creates a cause of action against a state-owned railroad, enforceable in state court. Pp. 201–207.

(a) Absent sufficient, countervailing justifications for departing from precedent, the strong considerations favoring adherence to *stare decisis* in this case compel the Court to reaffirm *Parden* insofar as it held, 377 U. S., at 187–188, that when Congress used the phrase "[e]very common carrier by railroad" to describe the class of employers subject to FELA's terms, it intended to include state-owned railroads. Weight must be accorded to the continued acceptance of the *Parden* holding by Congress, which has had almost 30 years in which to take corrective action if it disagreed with that holding, but has chosen not to do so. Moreover, overruling *Parden* would require an extensive legislative response by the many States, including South Carolina, that have specifically excluded railroad workers from workers' compensation coverage on the assumption that FELA adequately protects those workers in the event of injuries caused by an employer's negligence, and would dislodge the settled rights and expectations of employees and employers who have been acting on that assumption. Overruling *Parden* would also throw into doubt this Court's decisions holding that the entire federal scheme of railroad regulation applies to state-owned railroads. Pp. 201–203.

(b) Decisions subsequent to *Parden* do not require the Court to depart from *stare decisis* in this case. *Welch* v. *Texas Dept. of Highways and Public Transportation*, 483 U. S. 468, 478—which held that the

Jones Act, which incorporates FELA's remedial scheme, does not abrogate the States' Eleventh Amendment immunity from suit in federal court, *ibid.*, but which explicitly reserved the question whether in that Act (or in FELA) Congress intended to create a cause of action against the States, *id.*, at 476, n. 6 (plurality opinion); see also *id.*, at 495 (WHITE, J., concurring)—cannot be characterized as having considered and rejected the aforementioned arguments for following *stare decisis*, since *Welch* neither addressed nor discussed the most vital consideration of today's decision: that to confer immunity from state-court suit would strip all FELA and Jones Act protection from state-employed workers. Further, the *Welch* holding cannot be treated as determinative of the issue here presented, since *Welch*'s statement that Congress may abrogate the States' constitutionally secured immunity "only" by making its intention unmistakably clear in the statutory language, *id.*, at 471, was made in the context of establishing a rule of constitutional law based on the Eleventh Amendment, which does not apply in state courts. Nor was *Parden* effectively overruled by *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 65, which, in holding that a State is not a "person" suable under 42 U. S. C. § 1983, relied in part on the lack of any "clear statement" in the statute of a congressional intent to impose such liability. *Will*'s "clear statement" rule is not a *per se* rule of constitutional law, but only an "ordinary rule of statutory construction," *ibid.* The issue in this case, as in *Will*, is a pure question of statutory construction, where the *stare decisis* doctrine is most compelling. Thus the clear statement inquiry need not be made here and the Court need not decide whether FELA satisfies that standard, for the rule in any event does not prevail over the *stare decisis* doctrine as applied to a longstanding statutory construction implicating important reliance interests. And when the clear statement rule is either overcome or inapplicable so that a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state courts. Pp. 203–207.

Reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, and SOUTER, JJ., joined. BLACKMUN, J., concurred in the judgment. O'CONNOR, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 207. THOMAS, J., took no part in the consideration or decision of the case.

Robert J. Beckham argued the cause and filed briefs for petitioner.

Keating L. Simons III argued the cause and filed a brief for respondent.*

JUSTICE KENNEDY delivered the opinion of the Court.

In this case we must decide whether the Federal Employers' Liability Act (FELA), 53 Stat. 1404, 45 U. S. C. §§ 51–60, creates a cause of action against a state-owned railroad, enforceable in state court. We hold that it does, reaffirming in part our decision in *Parden* v. *Terminal Railway of Alabama Docks Dept.*, 377 U. S. 184 (1964).

I

Petitioner Kenneth Hilton was an employee of the South Carolina Public Railways Commission. The commission, which has some 300 employees, is a common carrier engaged in interstate commerce by railroad and is an agency of the State of South Carolina, having been created by statute in 1969. Hilton alleges he was injured in the scope and course of his employment and that the negligence of the commission was the cause of the accident. In the case now before us the commission is the respondent.

To recover for his injuries, petitioner first filed a FELA action in United States District Court. That case was pending when we announced our decision in *Welch* v. *Texas Dept. of Highways and Public Transportation*, 483 U. S. 468 (1987), which held that the Jones Act, § 33, 41 Stat. 1007, 46 U. S. C. App. § 688, does not abrogate the States' Eleventh Amendment immunity. The Jones Act incorporates the remedial scheme of FELA; and, based on his understanding that Eleventh Amendment immunity from Jones Act suits would apply as well to FELA, petitioner dismissed his

**Robert M. Weinberg, Walter Kamiat,* and *Laurence Gold* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging reversal.

Richard Ruda filed a brief for the National Governors' Association et al. as *amici curiae* urging affirmance.

federal-court action. He refiled his FELA suit in a South Carolina state court, and this is the case now before us.

The state trial court dismissed Hilton's complaint on the ground that FELA does not authorize an action for money damages against an agency of the State, even if suit is maintained in a state forum. Though acknowledging that in *Parden* v. *Terminal Railway of Alabama Docks Dept.*, *supra*, we interpreted FELA to permit those actions, the trial court said that *Parden* "has been severely limited by subsequent decisions of the Supreme Court." App. to Pet. for Cert. 22. The court held that *Parden* "is no longer good law," *id.*, at 23, and ordered the action dismissed, whereupon Hilton appealed to the South Carolina Supreme Court.

While his appeal was pending, the South Carolina Supreme Court decided *Freeman* v. *South Carolina Public Railways Commission*, 302 S. C. 51, 393 S. E. 2d 383 (1990). Addressing the same issue raised by this case, *Freeman* held that FELA does not subject States to liability in state-court suits. As did the trial court, the State Supreme Court acknowledged our *Parden* holding but concluded that in effect it had been overruled by our subsequent course of decisions.

In *Parden* we held that FELA authorizes suits for damages against state-owned railroads, and that by entering the business of operating a railroad a State waives its Eleventh Amendment immunity from suit in federal court. The latter holding was overruled in *Welch*, to accord with our more recent Eleventh Amendment jurisprudence, 483 U. S., at 478; but the *Welch* Court was explicit in declining to decide whether in the Jones Act (or in FELA) Congress intended to create a cause of action against the States. *Id.*, at 476, n. 6 (plurality opinion); see also *id.*, at 495 (WHITE, J., concurring). In other words, the *Welch* decision did not disturb the statutory-construction holding of *Parden*.

In addressing the latter issue, the South Carolina court found "dispositive" our decision in *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58 (1989). *Will* was a suit brought in

state court under 42 U. S. C. § 1983 against Michigan state officials. We held that a State is not a "person" as that term is used in § 1983, and is not suable under the statute, regardless of the forum where the suit is maintained. In so holding, we relied in part on the lack of any "clear statement" in the statute of a congressional intent to impose liability on the State. In its *Freeman* decision that controlled its ruling in the instant case, the South Carolina court read *Will* to hold that a statute will not be interpreted to create a cause of action for money damages against a State unless it contains "unmistakably clear language" showing that Congress intended to do so. Deciding that the text of FELA does not have language conforming to this standard, the *Freeman* court held that FELA does not subject the States to liability.

When petitioner's case reached the South Carolina Supreme Court, it affirmed dismissal of the action in a one-sentence *per curiam* opinion, citing *Freeman.* We granted certiorari, 498 U. S. 1081 (1991), and now reverse.

II

Our analysis and ultimate determination in this case are controlled and informed by the central importance of *stare decisis* in this Court's jurisprudence. Respondent asks us to overrule a 28-year-old interpretation, first enunciated in *Parden*, that when Congress enacted FELA and used the phrase "[e]very common carrier by railroad," 45 U. S. C. § 51, to describe the class of employers subject to its terms, it intended to include state-owned railroads. 377 U. S., at 187–188.[1] Just two Terms ago, in *Port Authority Trans-Hudson Corp.* v. *Feeney*, 495 U. S. 299 (1990), we assumed the applicability of FELA to state-owned railroads in finding that the defendant, a bistate compact corporation, had waived any

[1] Section 1 of FELA, 45 U. S. C. § 51, in pertinent part, provides:

"Every common carrier by railroad while engaging in commerce . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . ."

Eleventh Amendment immunity that it may have had. The issue here is whether we should reexamine this longstanding statutory construction. Because of the strong considerations favoring adherence to *stare decisis* in these circumstances, the answer to that question must be no. Time and time again, this Court has recognized that "the doctrine of *stare decisis* is of fundamental importance to the rule of law." *Welch*, *supra*, at 494; see also *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172 (1989); *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting). Adherence to precedent promotes stability, predictability, and respect for judicial authority. *Vasquez* v. *Hillery*, 474 U. S. 254, 265–266 (1986). For all of these reasons, we will not depart from the doctrine of *stare decisis* without some compelling justification. *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984).

In the case before us the policies in favor of following *stare decisis* far outweigh those suggesting departure. "Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson*, *supra*, at 172–173. Congress has had almost 30 years in which it could have corrected our decision in *Parden* if it disagreed with it, and has not chosen to do so. We should accord weight to this continued acceptance of our earlier holding. *Stare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response. This is so in the case before us.

Workers' compensation laws in many States specifically exclude railroad workers from their coverage because of the assumption that FELA provides adequate protection for those workers. See, *e. g.*, Colo. Rev. Stat. § 8–41–201 (Supp.

1990); D. C. Code Ann. § 36–301(9)(D) (1981); Ind. Code § 22–3–79(d) (Supp. 1991); La. Rev. Stat. Ann. § 23:1037 (West 1985); Neb. Rev. Stat. § 48–106(1) (1988). Counsel for respondent in this case conceded during oral argument that petitioner may be precluded from seeking an alternative remedy under state law for his injuries, because of a like exclusion in South Carolina law. S. C. Code Ann. § 42–1–350 (1976). Our overruling *Parden* would require these States to reexamine their statutes, meanwhile putting at risk all employees and employers who have been acting on the assumption that they are protected in the event of injuries caused by an employer's negligence. Overruling *Parden* would also throw into doubt previous decisions from this Court, cases holding that the entire federal scheme of railroad regulation applies to state-owned railroads. *United States* v. *California*, 297 U. S. 175 (1936) (Safety Appliance Act); *California* v. *Taylor*, 353 U. S. 553 (1957) (Railway Labor Act); see also *Transportation Union* v. *Long Island R. Co.*, 455 U. S. 678, 688 (1982). These factors all weigh in favor of adhering to *stare decisis*, and we cannot find here sufficient, countervailing justifications for departing from our precedents.

III

Respondent argues that the Court has already considered and rejected these arguments for following *stare decisis* in *Welch*, 483 U. S., at 478. That is not accurate; and even if it were, *Welch* is not controlling here. The characterization of *Welch* is inaccurate because the most vital consideration of our decision today, which is that to confer immunity from state-court suit would strip all FELA and Jones Act protection from workers employed by the States, was not addressed or at all discussed in the *Welch* decision. Indeed, that omission can best be explained by the assumption, made express in the concurring opinion of JUSTICE WHITE, that

the Jones Act (and so too FELA [2]) by its terms extends to the States. This coverage, and the jurisdiction of state courts to entertain a suit free from Eleventh Amendment constraints, is a plausible explanation for the absence in *Welch* of any discussion of the practical adverse effects of overruling that portion of *Parden* which pertained only to the Eleventh Amendment, since continued state-court jurisdiction made those effects minimal.

Further, we cannot treat the holding of *Welch* as determinative of the issue now presented for our decision. As we explained in *Welch*, *supra*, at 471, our Eleventh Amendment cases do indeed hold that "Congress may abrogate the States' constitutionally secured immunity from suit in federal court *only* by making its intention unmistakably clear in the language of the statute." *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985) (emphasis added). Congressional intent to abrogate Eleventh Amendment immunity must be expressed in the text of the statute; the Court will not look to legislative history in making its inquiry. *Dellmuth* v. *Muth*, 491 U. S. 223, 230 (1989). These cases establish a rule of constitutional law based on the Eleventh Amendment. That rule was developed after the *Parden* decision, and was found in *Welch* to have undercut the reasoning of *Parden* and to require *Parden*'s Eleventh Amendment holding to be overruled. But as we have stated

[2] The specific statutory construction issue reserved in *Welch* was not the precise issue before the Court today, but rather whether the language of the Jones Act ("Any seaman who shall suffer personal injury in the course of his employment," 46 U. S. C. App. § 688) was correctly interpreted by the Court in *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U. S. 275, 282–283 (1959), to afford a remedy against the States. JUSTICE WHITE's concurrence, *Welch* v. *Texas Dept. of Highways and Public Transportation*, 483 U. S., at 495, focused on this question, stating that "Congress has not disturbed this construction, and the Court, as I understand it, does not now purport to do so." The parties, however, agree that the resolution of this issue should be the same for the Jones Act and FELA. We thus assume so for the purposes of this decision.

on many occasions, "the Eleventh Amendment does not apply in state courts." *Will*, 491 U. S., at 63–64, citing *Maine* v. *Thiboutot*, 448 U. S. 1, 9, n. 7 (1980); *Nevada* v. *Hall*, 440 U. S. 410, 420–421 (1979).

The issue becomes, then, a pure question of statutory construction, where the doctrine of *stare decisis* is most compelling. Respondent argues, and the state courts in this case said, that the statutory-construction holding of *Parden* is no longer good law because of our later opinion in *Will*, *supra*. Respondent would make the result in *Will* solely a function of our Eleventh Amendment jurisprudence, reading the case to adopt a *per se* rule prohibiting the interpretation of general liability language to include the States, absent a clear statement by Congress to the effect that Congress intends to subject the States to the cause of action. Respondent argues that in light of *Will*, the same considerations which led us to a partial overruling of *Parden* in *Welch* should govern here.

We think the argument misconstrues the *Will* decision. *Will* did not import the entirety of our Eleventh Amendment jurisprudence into the area of statutory construction. It treated the Eleventh Amendment as a relevant consideration. 491 U. S., at 66–67; *Hafer* v. *Melo*, 502 U. S. 21, 30 (1991). The primary focus of *Will* was, as it should have been, on the language and history of § 1983. 491 U. S., at 64, 68–70; cf. *Dellmuth* v. *Muth*, *supra*, at 229–230. If *Will* had adopted a *per se* rule of the sort advocated by respondent, that entire discussion would have been unnecessary. The issue in *Will* and in this case is different from the issue in our Eleventh Amendment cases in a fundamental respect: The latter cases involve the application of a rule of constitutional law, while the former cases apply an "ordinary rule of statutory construction." *Will*, *supra*, at 65. This

conclusion is evident from our discussions in *EEOC* v. *Wyoming*, 460 U. S. 226, 244, n. 18 (1983), and in *Gregory* v. *Ashcroft*, 501 U. S. 452, 470 (1991), last Term. Both cases describe the plain statement rule as "a rule of statutory construction to be applied where statutory intent is ambiguous," *ibid.*, rather than as a rule of constitutional law; and neither case implicated the Eleventh Amendment. The distinction we draw is also supported by the Court's decision in *Welch*, and in particular by the fact that *Welch* in explicit terms reserved the statutory construction issue we resolve today. 483 U. S., at 476, n. 6.

When the issue to be resolved is one of statutory construction, of congressional intent to impose monetary liability on the States, the requirement of a clear statement by Congress to impose such liability creates a rule that ought to be of assistance to the Congress and the courts in drafting and interpreting legislation. The requirement also serves to make parallel two separate inquiries into state liability: Eleventh Amendment doctrine and canons of statutory interpretation. In most cases, as in *Will* and *Gregory* v. *Ashcroft*, the rule can be followed. The resulting symmetry, making a State's liability or immunity, as the case may be, the same in both federal and state courts, has much to commend it. It also avoids the federalism-related concerns that arise when the National Government uses the state courts as the exclusive forum to permit recovery under a congressional statute. This is not an inconsequential argument. Symmetry in the law is more than esthetics. It is predictability and order. But symmetry is not an imperative that must override just expectations which themselves rest upon the predictability and order of *stare decisis*.

In the case before us the clear statement inquiry need not be made and we need not decide whether FELA satisfies that standard, for the rule in any event does not prevail over the doctrine of *stare decisis* as applied to a longstanding

statutory construction implicating important reliance interests. And when the rule is either overcome or inapplicable so that a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state court. *Howlett* v. *Rose*, 496 U. S. 356, 367–368 (1990).

IV

For the reasons we have stated, the judgment of the South Carolina Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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

JUSTICE BLACKMUN concurs in the judgment.

JUSTICE O'CONNOR, with whom JUSTICE SCALIA joins, dissenting.

The Court's decision in this case is an example of the truism that hard cases make bad law. The Court's understandable reluctance to leave petitioner without a remedy leads it to contort and confuse the clear statement doctrine we have articulated in recent opinions. For this reason, I respectfully dissent.

I

The Court invokes *stare decisis* while at the same time running headlong away from it. In my view, this case is cleanly resolved by applying two recent precedents, *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58 (1989), and *Welch* v. *Texas Dept. of Highways and Public Transportation*, 483 U. S. 468 (1987), not by rehabilitating a decision we have largely repudiated, *Parden* v. *Terminal Railway of Alabama Docks Dept.*, 377 U. S. 184 (1964).

In *Will*, we held that if Congress intends to upset the "'usual constitutional balance between the States and the Federal Government,'" it must make its intention to do so unmistakably clear. *Will*, *supra*, at 65 (quoting *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985)). As we determined in that case, a federal statute requiring the States to entertain damages suits against themselves in state courts is precisely the kind of legislation that requires a clear statement, because of the long-established principle that a State cannot normally be sued in its own courts without its consent. *Will*, *supra*, at 67.

In *Welch*, we held that the language of the Jones Act, which applied the Federal Employers' Liability Act's (FELA's) remedial provisions to seamen, did not amount to a clear statement of Congress' intent to abrogate the States' Eleventh Amendment sovereign immunity. 483 U. S., at 474–476. In so holding, we expressly stated that "to the extent that *Parden* v. *Terminal Railway* . . . is inconsistent with the requirement that an abrogation of Eleventh Amendment immunity by Congress must be expressed in unmistakably clear language, it is overruled." *Id.*, at 478.

The result in this case should follow *a fortiori* from the reasoning of *Will* and *Welch*. We have already decided that a clear statement is necessary before a State may be required to entertain damages suits against itself in its own courts, and we have already decided that FELA's language does not amount to a clear statement of Congress' intent to abrogate state sovereign immunity. *Stare decisis* dictates that we follow the rules we have laid down in *Will* and *Welch*, not that we revive a substantially discredited case that litigants and lower courts had every reason to think defunct.

II

The Court tries to drive a wedge between *Will* and *Welch* by characterizing the former as a statutory interpretation

case and the latter as a constitutional case. The clear statement rule, the Court says, was required in *Welch* because the Eleventh Amendment was implicated. In *Will*, by contrast, use of the clear statement rule was somewhat discretionary, because the issue in that case was a question of statutory interpretation in which the Constitution was *not* implicated. See *ante*, at 205–207. Because this case involves state sovereign immunity in state court, not federal court, and the Eleventh Amendment does not by its terms apply, the Court holds that the clear statement rule in this "nonconstitutional" context can be trumped by *stare decisis*.

The Court's distinction is untenable. The clear statement rule is not a mere canon of statutory interpretation. Instead, it derives from the Constitution itself. The rule protects the balance of power between the States and the Federal Government struck by the Constitution. Although the Eleventh Amendment spells out one aspect of that balance of power, the principle of federalism underlying the Amendment pervades the constitutional structure: The Constitution gives Congress only limited power to govern the Nation; the States retain power to govern locally. See *Dellmuth* v. *Muth*, 491 U. S. 223, 227 (1989) ("[A]brogation of sovereign immunity upsets 'the fundamental constitutional balance between the Federal Government and the States,' . . . placing a considerable strain on '[t]he principles of federalism that inform Eleventh Amendment'") (quoting *Atascadero State Hospital* v. *Scanlon*, *supra*, at 238, and *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 100 (1984)). Recognizing this basic truth about our governmental structure under the Constitution, we have been wary of extending the effect of congressional enactments into areas traditionally governed by the States, unless Congress has directed us to do so by an unmistakably clear statement. Indeed, in the cases in which we have employed the clear statement rule

outside the Eleventh Amendment context, we have recognized the rule's constitutional dimensions. *Gregory* v. *Ashcroft*, 501 U. S. 452, 461 (1991) ("This plain statement rule is nothing more than an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere"); *Will*, 491 U. S., at 65 ("[I]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute' ") (quoting *Atascadero State Hospital* v. *Scanlon*, *supra*, at 242); *United States* v. *Bass*, 404 U. S. 336, 349 (1971) (clear statement rule "rooted in . . . concepts of American federalism"). Thus, the Court's position that we are not required to employ the clear statement rule in this context ignores the constitutional source of the rule.

The Eleventh Amendment spells out one instance, but not the only one, in which respect and forbearance is due from the national to the state governments, a respect that cements our federation in the Constitution. The clear statement rule assumes that Congress will show that respect by not lightly abridging the powers or sovereignty retained by the States. From this standpoint, it makes little sense to apply the clear statement rule to congressional enactments that make the States liable to damages suits in federal courts, but not to apply the clear statement rule to congressional enactments that make the States liable to damages suits in their own courts. Sovereign immunity, a crucial attribute of separate governments, is infringed in both cases. The suggested dichotomy makes even less sense if we consider the remarkable anomaly that these two canons of statutory construction create: a statutory scheme in which *state* courts are the exclusive avenue for obtaining recovery under a *federal* statute.

III

The Court gives no guidance to lower courts as to when it will apply the clear statement rule and when it will not. The Court's obscurity on this point does little to further the goals of stability and predictability that assertedly drive its analysis. The Court says only that *stare decisis* will prevail over the clear statement rule when Congress has manifested its acquiescence in this Court's statutory interpretation by its silence, and when citizens have "acted in reliance on a previous decision." *Ante*, at 202. Yet we have previously applied the clear statement rule despite the presence of both of these considerations.

Just four years ago, we held that Congress did not manifest its consent to allow States to be sued for FELA damages in federal court, despite congressional silence in the face of our long-established holding in *Parden*. *Welch* v. *Texas Dept. of Highways and Public Transportation*, 483 U. S. 468 (1987). Do the intervening four years make it more likely that Congress has silently consented to the remaining encroachment upon state sovereignty *Parden* sanctioned? How long must Congress remain silent before we declare its constructive consent to our statutory interpretation? The suggestion that this Court can, in some cases, better divine Congress' will to change the balance of power between the Federal Government and the States by listening to congressional silence than to a clear legislative statement substitutes telepathy for statutory interpretation.

In deciding when to ignore the requirements of the clear statement rule, the Court also considers the extent to which citizens have relied on our past decisions. This analysis looks to the reliance of the employees who may be without a remedy if FELA does not apply to their state employers. From the standpoint of the States, however, the Court ignores the fact that we generally do not assume States waive their right to challenge an abrogation of their traditional authority just because they have acquiesced in, or even relied

on, longstanding congressional regulation. See *Welch*, 483 U. S., at 473 (constructive consent to suit not sufficient). The "reliance" exception to the clear statement rule thus reinstates a theory of constructive waiver of sovereign immunity that our cases have repeatedly rejected. See *ibid.; Atascadero State Hospital* v. *Scanlon*, 473 U. S., at 241, 246–247; *Port Authority Trans-Hudson Corp.* v. *Feeney*, 495 U. S. 299, 306 (1990).

In sum, the Court's newly created exception to the clear statement rule threatens to eliminate it altogether, except when the States' Eleventh Amendment sovereign immunity is abrogated in federal court. It will be difficult, if not impossible, for lower courts to know when they should apply the rule in interpreting statutes that upset the traditional balance between the State and Federal Governments outside the context of Eleventh Amendment immunity.

IV

The Court fears that strict application of our precedents will require a clear statement for *all* congressional regulation of state railroads. *Ante*, at 203. That fear is not well founded. The clear statement doctrine recently articulated in *Gregory* and in *Will* requires a clear statement by Congress before we assume that it intends to alter the usual constitutional balance of power in areas "traditionally regulated by the States." *Gregory*, 501 U. S., at 460. States have traditionally regulated their liability to damages suits; they have not traditionally regulated interstate railroads. See *Wabash, St. L. & P. R. Co.* v. *Illinois*, 118 U. S. 557, 577 (1886); *Transportation Union* v. *Long Island R. Co.*, 455 U. S. 678, 687 (1982). The clear statement rule in this context applies to FELA because it provides for a cause of action for damages; it does not apply to other congressional regulation of state railroads.

Nor would application of the clear statement rule here overrule *Port Authority Trans-Hudson Corp.* v. *Feeney*,

supra. In *Feeney*, we held that a State could waive its sovereign immunity from suit and consent to a damages action under FELA. *Feeney*'s underlying assumption, of course, was that Congress had intended to include state-owned railroads in the class of appropriate FELA defendants. If States are not within the contemplated category of defendants, then States could not consent to suit, because they cannot "create a cause of action . . . against an entity whom Congress has not subjected to liability." *Howlett* v. *Rose*, 496 U. S. 356, 376 (1990).

Welch did not hold that railroads owned by States were outside FELA's category of "[e]very common carrier by railroad," however. 45 U. S. C. § 51. In fact, *Welch* never clarified what would count in the context of FELA as a "clear statement" of congressional intent that States submit to damages suits. Because the aspect of state sovereignty at stake here is immunity from damages suits, the clear statement required should be tailored to that concern. See *Gregory* v. *Ashcroft*, 501 U. S. 452 (1991) (when application of federal statute would change state law with respect to tenure of state judges, clear statement rule tailored to question whether Congress intended the statute to apply to state judges, not whether Congress intended the statute to apply to States generally). A "clear statement" in this context, then, should be a statement that "Congress intended to abrogate the States' immunity from suit." *Dellmuth* v. *Muth*, 491 U. S., at 231.

Congress clearly wanted "[e]very common carrier by railroad" to be subject to suit under FELA. Railroad owners, then, are clearly within the contemplated category of defendants. Congress, however, did not clearly say whether it intended to force States that happen also to be railroad owners to submit to suit without their consent. Indeed, it is quite doubtful that Congress thought it had the power to create causes of action against the States in 1908 when FELA was enacted. See *Welch*, *supra*, at 496 (SCALIA, J., concurring

in part and concurring in judgment). Since, in enacting FELA, Congress has not clearly stated that it wishes to abrogate a State's immunity from suit, but has said that it wishes to provide a damages remedy to employees of "[e]very common carrier by railroad," a State is a proper defendant *if* it consents to be sued under FELA in its capacity as a railroad owner. But unless a State agrees to be treated as a railroad owner instead of a sovereign, it may not be sued without its consent. As South Carolina has not agreed to throw off its mantle of sovereign immunity, it may not be sued under FELA. I would therefore affirm the judgment of the South Carolina Supreme Court.

The concern that South Carolina Public Railways Commission's employees will be without a remedy should not determine the result in this case. If we clarified our doctrine, instead of obfuscating it, States could allow other compensation schemes to fill the void left by FELA. We should not so quickly assume that South Carolina will callously ignore the fate of its own workers. Certainly, South Carolina has more of a stake in seeing that its employees are compensated than does Congress or this Court.

Instead of avoiding the implications of our previous decisions, I would adhere to them. The Court's holding, while premised on fairness, is unfair to the States, courts, and parties that must parse our doctrine applying the clear statement rule. Therefore, I respectfully dissent.

Syllabus

WILLIAM "SKY" KING *v.* ST. VINCENT'S HOSPITAL

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

No. 90–889. Argued October 16, 1991—Decided December 16, 1991

Petitioner King, a National Guard member, advised his civilian employer, respondent St. Vincent's Hospital, that he had accepted a 3-year full-time appointment with the Guard, and requested a leave of absence from his hospital job as ostensibly guaranteed by 38 U. S. C. § 2024(d), which provides reemployment rights to service personnel in King's position. St. Vincent's denied King's request and brought suit in the District Court, seeking a declaratory judgment that the Act does not provide reemployment rights after tours of duty as long as King's. The court granted the requested relief, ruling that service of the type in question was protected by § 2024(d), but holding, under Circuit precedent, that leave requests under that subsection must be reasonable, and that King's request for a 3-year leave was *per se* unreasonable. A panel of the Court of Appeals affirmed.

Held: Section 2024(d) does not limit the length of military service after which a member of the Armed Forces retains a right to civilian reemployment. Subsection (d)'s text—which specifies that any covered employee "shall . . . be granted a leave . . . for the period required to perform active duty [and] [u]pon . . . release from . . . such duty . . . shall be permitted to return to [his or her] position"—is utterly silent about any durational limit on the protection it provides. Reading the statute as a whole, it must be inferred that the unqualified nature of subsection (d)'s protection was deliberate, since other subsections of § 2024, protecting other classes of full-time service personnel, expressly limit the periods of their protection. St. Vincent's argument that such limits reflect a hierarchy of reemployment rights—under which reservists subject to duty under subsection (d) are entitled to the least protection and are therefore subject to an imprecise durational limit of reasonableness—is unconvincing because its conclusion rests on circular reasoning, requiring the assumption of the point at issue: that § 2024(d) reservists really do get less protection than the inductees, enlistees, and other veterans covered by the other subsections. Pp. 218–223.

901 F. 2d 1068, reversed and remanded.

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

Amy L. Wax argued the cause for petitioner. With her on the briefs were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Deputy Solicitor General Shapiro*, and *Michael Jay Singer*.

Harry L. Hopkins argued the cause and filed a brief for respondent.

JUSTICE SOUTER delivered the opinion of the Court.

The issue in this case is whether 38 U. S. C. § 2024(d), a provision of what is popularly known as the Veterans' Reemployment Rights Act, implicitly limits the length of military service after which a member of the Armed Forces retains a right to civilian reemployment. We hold that it does not.

I

In June 1987, petitioner William "Sky" King,[1] a member of the Alabama National Guard,[2] applied to become command sergeant major in the Active Guard/Reserve (AGR) program, and thereby undertook to serve the 3-year tour of duty required by Army regulations[3] of the person holding that position.[4] The next month King learned of his selection and advised his employer, respondent St. Vincent's Hospital, that he had accepted the Guard's 3-year full-time appointment.

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[1] How and why petitioner's nickname claimed a place in the caption of this case is a mystery of the record.

[2] The Alabama National Guard is a militia under state control except under certain constitutionally defined circumstances. See U. S. Const., Art. I, § 8, cl. 15. Because Congress nonetheless is authorized generally to "provide for organizing, arming, and disciplining" the Guard, cl. 16, federal law is at issue in this case.

[3] Department of Army Reg. 135–18, ch. 2, § II, 2–9. Length of periods of AD or FTD (1985).

[4] The AGR program was established by Congress in 1980. See Department of Defense Authorization Act, 1980, § 401(b), 93 Stat. 807.

He requested a leave of absence from his hospital job as ostensibly guaranteed by the Act and reported for military duty, as ordered, on August 17. Several weeks later, St. Vincent's advised him that his request was unreasonable and thus beyond the Act's guarantee.

After so informing King, St. Vincent's took the further step of bringing a declaratory judgment action in the United States District Court for the Northern District of Alabama to settle the issue whether the applicable terms of the Act provided reemployment rights after tours of duty as long as King's. Although the court held that service in the AGR program carried protection under § 2024(d),[5] it nonetheless rendered declaratory judgment for St. Vincent's on the ground that the request for a 3-year leave of absence was *per se* unreasonable. In imposing a test of reasonableness on King's request, the District Court was following the opinion of the Eleventh Circuit in *Gulf States Paper Corp.* v. *Ingram*, 811 F. 2d 1464, 1468 (1987), which had in turn interpreted a Fifth Circuit case as requiring that leave requests for protection under § 2024(d) must be reasonable. See *Lee* v. *Pensacola*, 634 F. 2d 886, 889 (1981).[6] A panel of the Eleventh Circuit affirmed, with two judges agreeing with the District Court that guaranteeing reemployment after a 3-year tour of duty would be *per se* unreasonable, thereby putting King outside the protection of § 2024(d). 901 F. 2d 1068 (1990). Judge Roney concurred separately that King's request was unreasonable, but dissented from the creation of a *per se* rule. *Id.*, at 1072–1073.

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[5] Section 2024(d) covers AGR participants. See Veterans' Rehabilitation and Education Amendments of 1980, § 511(b), 94 Stat. 2207. Neither party contests the applicability of § 2024(d) to King's leave request.

[6] *Lee* is binding precedent in the Eleventh Circuit, as it was decided on January 20, 1981, before the Eleventh Circuit was carved out of the Fifth. See *Bonner* v. *Prichard*, 661 F. 2d 1206, 1207 (CA11 1981) (en banc) (Fifth Circuit decisions handed down as of Sept. 30, 1981, adopted as Eleventh Circuit precedent).

Like the Fifth and Eleventh Circuits, the Third has engrafted a reasonableness requirement onto § 2024(d). *Eidukonis* v. *Southeastern Pennsylvania Transportation Authority*, 873 F. 2d 688, 694 (1989).[7] The Fourth Circuit, on the other hand, has declined to do so. *Kolkhorst* v. *Tilghman*, 897 F. 2d 1282, 1286 (1990), cert. pending, No. 89–1949. We granted certiorari to resolve this conflict, 498 U. S. 1081 (1991), and now reverse the judgment of the Eleventh Circuit.

II

We start with the text of § 2024(d), see *Schreiber* v. *Burlington Northern, Inc.*, 472 U. S. 1, 5 (1985), which is free of any express conditions upon the provisions in contention here:

> "[Any covered person] shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such . . . [duty] . . . such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes." 38 U. S. C. § 2024(d).

Thus, the Fourth Circuit could call the subsection's guarantee of leave and reemployment "unequivocal and unqualified," *Kolkhorst*, *supra*, at 1286, and the Eleventh Circuit itself observed that the subsection "does not address the

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[7] See also *Lemmon* v. *County of Santa Cruz*, 686 F. Supp. 797, 802 (ND Cal. 1988) (adopting reasonableness requirement set forth in *Lee* v. *Pensacola*, 634 F. 2d 886 (CA5 1981)); *Bottger* v. *Doss Aeronautical Servs., Inc.*, 609 F. Supp. 583, 585 (MD Ala. 1985) (following *Lee*); *Anthony* v. *Basic Am. Foods, Inc.*, 600 F. Supp. 352, 354–355 (ND Cal. 1984) (both parties accepting reasonableness test).

'reasonableness' of a reservist's leave request." *Gulf States*, *supra*, at 1468.

Although St. Vincent's recognizes the importance of the statute's freedom from provisos, see Brief for Respondent 9, it still argues that the text of subsection (d) favors its position. The hospital stresses that "leave" as used in subsection (d) is to be enjoyed by an "employee," whose status as such implies that the employment relationship continues during the absence. Accordingly, employees protected under subsection (d) are "returned" to their positions after military service is over, while reservists protected by other subsections of § 2024 are "restored" to theirs,[8] the difference in language attesting that the former remain employees, while the latter cease to be such during their time away. The hospital argues that the very notion of such a continuing relationship is incompatible with absences as lengthy as King's, and finds that conclusion supported by the provisions speaking to the actual mechanics for resuming employment. While the reservists subject to other subsections must reapply for employment, those protected by subsection (d) are allowed, and indeed required, to "report for work at the beginning of the next regularly scheduled working period" after the tour of military duty expires. The hospital posits the impracticality of expecting an employee to report for work immediately after a 3-year absence, "to take his apron off the peg," as the hospital's counsel put it, and go back to work as if nothing had happened. It also makes much of the difficulties of filling responsible positions that would follow if their incumbents could be turned out so abruptly after serving for so long, upon the prior incumbent's equally abrupt return.

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[8] Subsections (a), (b), (c), and (g) identify other classes of reservists, enlistees, and those called to active duty, and make applicable to those classes the reemployment protection offered inductees pursuant to 38 U. S. C. § 2021(a)(2)(A)(i), namely, "restor[ation]" to the formerly held position "or to a position of like seniority, status, and pay."

To these arguments, and others like them that we do not set out at length, two replies are in order. We may grant that the congressionally mandated leave of absence can be an ungainly perquisite of military service, when the tour of duty lasts as long as King's promises to do, and if we were free to tinker with the statutory scheme we could reasonably accord some significance to the burdens imposed on both employers and workers when long leaves of absence are the chosen means of guaranteeing eventual reemployment to military personnel.

But to grant all this is not to find equivocation in the statute's silence, so as to render it susceptible to interpretive choice. On the contrary, the verbal distinctions underlying the hospital's arguments become pallid in the light of a textual difference far more glaring than any of them: while, as noted, subsection (d) is utterly silent about any durational limit on the protection it provides, other subsections of § 2024, protecting other classes of full-time service personnel, expressly limit the periods of their protection. Thus, § 2024(a) currently gives enlistees at least four years of reemployment protection, with the possibility of an extension to five years and even longer. Again, for example, § 2024(b)(1) extends protection to those entering active duty (except for "the purpose of determining physical fitness [or] for training") for at least four years, with the possibility of a further extension beyond that.[9] Given the examples of affirmative

[9] As a counterexample, St. Vincent's might cite § 2024(g), providing reservists ordered to active duty for not more than 90 days with a guarantee of reemployment extending through their period of duty. Standing alone with subsection (d), this provision might suggest that a guarantee extending through the duration of a reservist's tour of active duty must be express; but the examples of specific durational limitations described in the text above show that Congress knew how to provide limits on its benefits when that was the intent. Even if the express examples unsettled the significance of subsection (d)'s drafting, however, we would ultimately read the provision in King's favor under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries'

limitations on reemployment benefits conferred by neighboring provisions, we infer that the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service.

In so concluding we do nothing more, of course, than follow the cardinal rule that a statute is to be read as a whole, see *Massachusetts* v. *Morash*, 490 U. S. 107, 115 (1989), since the meaning of statutory language, plain or not, depends on context. See, *e. g.*, *Shell Oil Co.* v. *Iowa Dept. of Revenue*, 488 U. S. 19, 26 (1988). "Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used . . . ." *NLRB* v. *Federbush Co.*, 121 F. 2d 954, 957 (CA2 1941) (L. Hand, J.) (quoted in *Shell Oil*, *supra*, at 25, n. 6).[10]

St. Vincent's itself embraces the same principle (though, we think, by way of misapplication) by countering the preceding textual analysis with a structural analysis of its own, in which it purports to discern a significant hierarchy of reemployment rights in the statutory scheme. As the hospital reads § 2024 together with its companion provisions, the most generous protection goes to inductees, whose reemployment rights are unqualified by any reference to duration of service.[11] Enlistees and those entering active duty in response to an order or call come next with protection so long

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favor. *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275, 285 (1946). We will presume congressional understanding of such interpretive principles, *e. g.*, *McNary* v. *Haitian Refugee Center, Inc.*, 498 U. S. 479, 496 (1991) ("It is presumable that Congress legislates with knowledge of our basic rules of statutory construction").

[10] See also *United States* v. *Hartwell*, 6 Wall. 385, 396 (1868) (in construing statute court should adopt that sense of words which best harmonizes with context and promotes policy and objectives of legislature); see generally 2A C. Sands, Sutherland on Statutory Construction § 46.05 (rev. 4th ed. 1984).

[11] See 38 U. S. C. § 2021.

as their tours of duty do not exceed five years;[12] and at what the hospital claims to be "the bottom of the employment rights scheme," Brief for Respondent 16, fall the reemployment rights protected by § 2024(d). *Ibid.* It is not unnatural, on this view, that the least protected veterans should be subject to an imprecise limit of reasonableness on the length of voluntary duty giving rise to their job protection.[13]

But the hospital's argument does not convince. While it invokes the significance of context, its conclusion rests on quite circular reasoning. There are, as we have just pointed out, differences of treatment among the various classes of service people protected by various provisions of the statute. But differences do not necessarily make hierarchies, and the differences revealed by the hospital's examples do not point inexorably downward without assuming the point at issue, that the reservists subject to training duty within the meaning of subsection (d) really do get less protection than inductees, enlistees, and so on, covered by other provisions. Without such an assumption there are simply differences of treatment, to be respected by limiting protection where the text contains a limit and leaving textually unlimited protection just where the Congress apparently chose to leave it. Because the text of § 2024(d) places no limit on the length of a tour after which King may enforce his reemployment rights against St. Vincent's, we hold it plain that no limit was implied.[14]

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[12] See 38 U. S. C. §§ 2024(a), 2024(b)(1). The basic limit here is four years, with an additional year of protection if the Government requests additional service.

[13] The hospital claims to find additional support for this declension in the legislative history of § 2024(d), relying heavily on excerpts from the House and Senate Reports on the 1960 bill that eventuated in the current statute. Brief for Respondent 17–18, and n. 31.

[14] "When we find the terms of a statute unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances." *Rubin* v. *United States*, 449 U. S. 424, 430 (1981) (internal quotation marks omit-

III

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

It is so ordered.

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

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ted). Such circumstances are not present here; as we indicate below, the hospital's invocation of legislative history does not make its case.

The hospital relies heavily on 1960 Senate and House Reports citing short-term leaves as covered by § 2024. See S. Rep. No. 1672, 86th Cong., 2d Sess., 2; H. R. Rep. No. 1263, 86th Cong., 2d Sess., 6; see also Brief for Respondent 17, n. 31. While this history may demonstrate that in 1960 § 2024(d) applied to short leaves, the significance of this is surely blunted by Congress' undoubted intention 20 years later to apply the subsection to long leaves when it brought AGR participants under § 2024(d). See Veterans' Rehabilitation and Education Amendments of 1980, § 511(b), 94 Stat. 2207.

The inference that Congress intended no such limits as the hospital espouses is buttressed by a joint House-Senate Conference Committee's disapproval of a shift in the position taken by the Department of Labor on this issue. Before 1981 the Department took the position we adopt. See United States Department of Labor, Veterans' Reemployment Rights Handbook 111 (1970). After *Lee* v. *Pensacola*, 634 F. 2d 886 (CA5 1981), the Department adopted the different view that § 2024(d) protection applied only to leaves of 90 days or less. See H. R. Rep. No. 97–782, p. 8 (1982). Subsequently, a joint House-Senate Conference Committee Report announced that the House and Senate Veterans' Affairs Committees "d[id] not believe that the 90-day limit [was] well-founded either as legislative interpretation or application of the pertinent case law." 128 Cong. Rec. 25513 (1982). Coming as it did in the aftermath of Congress' decision to place AGR participants under the coverage of § 2024(d), this statement is decidedly at odds with the hospital's position, and confirms the conclusion that enactment of the AGR program was not intended to modify the ostensibly unconditional application of § 2024(d).

Per Curiam

HUNTER ET AL. *v.* BRYANT

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

No. 90–1440. Decided December 16, 1991

Petitioner Secret Service agents arrested respondent Bryant for making threats against President Reagan in violation of federal law. At the time of the arrest, the agents knew that Bryant had written, and delivered to offices at the University of Southern California, a letter referring to a plot to assassinate the President; that a witness had identified Bryant and reported that he said that the President should have been assassinated in West Germany, where he was then traveling; and that Bryant had refused to answer the agents' questions about whether he intended to harm the President. After the criminal complaint against him was dismissed, Bryant sued the agents, *inter alios*, seeking relief under the Federal Tort Claims Act and claiming, among other things, that he had been arrested without probable cause and a warrant. The District Court denied the agents' motion for summary judgment on qualified immunity grounds. The Court of Appeals held that they were entitled to qualified immunity for arresting Bryant without a warrant but not for arresting him without probable cause, because their belief that he was plotting to kill the President was not the most reasonable reading of the letter.

Held: Petitioners are entitled to qualified immunity. They are shielded from suit because a reasonable officer could have believed the arrest to be lawful in light of clearly established law and the information the agents possessed. *Anderson* v. *Creighton*, 483 U. S. 635, 641. On the basis of that information, a Magistrate ordered Bryant held without bond. Even assuming that they erred in concluding that probable cause existed, they would nevertheless be entitled to qualified immunity because their decision was reasonable. *Ibid.* Officials should not err always on the side of caution because they fear being sued, a principle that is nowhere more important than when the specter of Presidential assassination is raised.

Certiorari granted; 903 F. 2d 717, reversed and remanded.

PER CURIAM.

On May 3, 1985, respondent James V. Bryant delivered two photocopies of a handwritten letter to two administrative

offices at the University of Southern California. The rambling letter referred to a plot to assassinate President Ronald Reagan by "Mr Image," who was described as "Communist white men within the 'National Council of Churches.'" The letter stated that "Mr Image wants to murder President Reagan on his up and coming trip to Germany," that "Mr Image had conspired with a large number of U. S. officials in the plot to murder President Reagan" and others, and that "Mr Image (NCC) still plans on murdering the President on his trip to Germany in May, 1985." See *Bryant* v. *United States Treasury Department, Secret Service*, 903 F. 2d 717, 724–727 (CA9 1990) (Bryant's letter). President Reagan was traveling in Germany at the time.

A campus police sergeant telephoned the Secret Service, and agent Brian Hunter responded to the call. After reading the letter, agent Hunter interviewed university employees. One identified James Bryant as the man who had delivered the letter and reported that Bryant had "told her '[h]e should have been assassinated in Bonn.'" Another employee said that the man who delivered the letter made statements about "'bloody coups'" and "'assassination,'" and said something about "'across the throat'" while moving his hand horizontally across his throat to simulate a cutting action. *Id.*, at 718–719.

Hunter and another Secret Service agent, Jeffrey Jordan, then visited a local address that appeared on the letter. Bryant came to the door and gave the agents permission to enter. He admitted writing and delivering the letter, but refused to identify "Mr. Image" and answered questions about "Mr. Image" in a rambling fashion. Bryant gave Hunter permission to search the apartment, and the agent found the original of the letter. While the search was underway, Jordan continued questioning Bryant, who refused to answer questions about his feelings toward the President or to state whether he intended to harm the President. *Id.*, at 719.

Hunter and Jordan arrested Bryant for making threats against the President, in violation of 18 U. S. C. § 871(a).* Bryant was arraigned and held without bond until May 17, 1985, when the criminal complaint was dismissed on the Government's motion.

Bryant subsequently sued agents Hunter and Jordan, the United States Department of the Treasury, and the Director of the Secret Service, seeking recovery under the Federal Tort Claims Act and alleging that the agents had violated his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). The District Court dismissed all defendants other than agents Hunter and Jordan and all causes of action other than Bryant's Fourth Amendment claims for arrest without probable cause and without a warrant. The court denied the agents' motion for summary judgment on qualified immunity grounds.

On appeal, a Ninth Circuit panel held that the agents were entitled to qualified immunity for arresting Bryant without a warrant because, at that time, the warrant requirement was not clearly established for situations in which the arrestee had consented to the agents' entry into a residence. 903 F. 2d, at 723–724.

However, the panel divided on the question whether the agents were entitled to immunity on the claim that they had

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*Title 18 U. S. C. § 871(a) provides:

"Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

arrested Bryant without probable cause. The majority concluded that the agents had failed to sustain the burden of establishing qualified immunity because their reason for arresting Bryant—their belief that the "Mr. Image" plotting to kill the President in Bryant's letter could be a pseudonym for Bryant—was not the most reasonable reading of Bryant's letter:

> "Even accepting the 'alter ego' theory that by warning what Mr. Image was going to do, Mr. Bryant was in fact communicating what he himself planned to do, the letter read in its entirety does not appear to make a threat against the president. Most of the letter does not even talk about President Reagan. *A more reasonable interpretation of the letter might be that Bryant was trying to convince people of the danger Mr. Image and the conspiracy posed rather than that Bryant was speaking through Mr. Image.*" *Id.*, at 722 (emphasis added).

Our cases establish that qualified immunity shields agents Hunter and Jordan from suit for damages if "a reasonable officer could have believed [Bryant's arrest] to be lawful, in light of clearly established law and the information the [arresting] officers possessed." *Anderson* v. *Creighton*, 483 U. S. 635, 641 (1987). Even law enforcement officials who "reasonably but mistakenly conclude that probable cause is present" are entitled to immunity. *Ibid.* Moreover, because "[t]he entitlement is an *immunity from suit* rather than a mere defense to liability," *Mitchell* v. *Forsyth*, 472 U. S. 511, 526 (1985), we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation. See *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982); *Davis* v. *Scherer*, 468 U. S. 183, 195 (1984); *Mitchell*, *supra*, at 526; *Malley* v. *Briggs*, 475 U. S. 335, 341 (1986); *Anderson*, *supra*, at 646, n. 6.

The decision of the Ninth Circuit ignores the import of these decisions. The Court of Appeals' confusion is evident

from its statement that "[w]hether a reasonable officer could have believed he had probable cause is a question for the trier of fact, and summary judgment . . . based on lack of probable cause is proper only if there is only one reasonable conclusion a jury could reach." 903 F. 2d, at 721. This statement of law is wrong for two reasons. First, it routinely places the question of immunity in the hands of the jury. Immunity ordinarily should be decided by the court long before trial. See *Mitchell*, *supra*, at 527–529. Second, the court should ask whether the agents acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed five years after the fact.

Under settled law, Secret Service Agents Hunter and Jordan are entitled to immunity if a reasonable officer could have believed that probable cause existed to arrest Bryant. Probable cause existed if "at the moment the arrest was made . . . the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing" that Bryant had violated 18 U. S. C. § 871. *Beck* v. *Ohio*, 379 U. S. 89, 91 (1964).

When Agents Hunter and Jordan arrested Bryant, they possessed trustworthy information that Bryant had written a letter containing references to an assassination scheme directed against the President, that Bryant was cognizant of the President's whereabouts, that Bryant had made an oral statement that "'[h]e should have been assassinated in Bonn,'" 903 F. 2d, at 719, and that Bryant refused to answer questions about whether he intended to harm the President. On the basis of this information, a Magistrate ordered Bryant to be held without bond.

These undisputed facts establish that the Secret Service agents are entitled to qualified immunity. Even if we assumed, *arguendo*, that they (*and* the magistrate) erred in concluding that probable cause existed to arrest Bryant, the

agents nevertheless would be entitled to qualified immunity because their decision was reasonable, even if mistaken. *Anderson*, *supra*, at 641.

The qualified immunity standard "gives ample room for mistaken judgments" by protecting "all but the plainly incompetent or those who knowingly violate the law." *Malley*, *supra*, at 343, 341. This accommodation for reasonable error exists because "officials should not err always on the side of caution" because they fear being sued. *Davis*, *supra*, at 196. Our national experience has taught that this principle is nowhere more important than when the specter of Presidential assassination is raised.

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

It is so ordered.

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

JUSTICE SCALIA, concurring in the judgment.

In my view the Ninth Circuit's opinion purported to apply the standard for summary judgment that today's opinion demands. Its error was in finding, on the facts before it, that the standard was not met. Since I think it worthwhile to establish that this Court will not let such a mistake stand with respect to those who guard the life of the President, I concur in the summary reversal.

JUSTICE STEVENS, dissenting.

The question in this case is *not* whether a reasonable officer could have believed that respondent posed a threat to the life of the President. Those "who guard the life of the President," *ante* this page (SCALIA, J., concurring in judgment), properly rely on the slightest bits of evidence—noth-

ing more than hunches or suspicion—in taking precautions to avoid the ever-present danger of assassination. Mere suspicion is obviously a sufficient justification for a host of protective measures such as, for example, careful surveillance of a person like respondent. The question that is presented, however, is whether a reasonable trained law enforcement officer could have concluded that the evidence available to petitioners at the time they arrested respondent constituted probable cause to believe that he had committed the crime of threatening the life of President Reagan.

The evidence on which the officers relied to support their conclusion that probable cause existed is summarized in two affidavits which they filed in support of their motion for summary judgment. That evidence includes three relevant components: (1) a rambling, confusing letter written by respondent contained statements indicating that a "Mr Image" intended to assassinate the President while he was in Germany; (2) the officers "believed that the use of the term Mr. Image may have been a pseudonym for [respondent] Bryant and that Bryant was writing in the third person," App. to Pet. for Cert. 48a, 54a; and (3) when respondent delivered a copy of the letter to Veronica Tincher in the budget office of the University of Southern California, he "said something about 'across the throat,' while simultaneously moving his hand horizontally across his throat to simulate a cutting action," *id.*, at 43a.

The affidavits explained that in addition to the above facts, the affiants were "concerned that Bryant might pose a threat to the President's well-being." *Id.*, at 48a, 54a. It is also noteworthy that when the officers visited Bryant in his apartment, he allowed them to enter and voluntarily consented to a search for weapons in plain view, and then to a second search of the entire residence. That search resulted in nothing more than the discovery of the original of the letter.

The letter is the key piece of evidence supposedly justifying a finding that the officers reasonably believed that Bryant had threatened the life of the President. Bryant freely admitted to writing the letter, and the letter does refer to, among other things, a scheme to assassinate President Reagan. The letter does not, however, state that it is Bryant who intends to assassinate the President. Rather, the letter warns that "Mr Image" intends to harm the President. Nor does the letter leave the identity of "Mr Image" in doubt. In its first sentence, the letter identifies the term parenthetically: "Mr 'Image' (Communist white men within the 'National Council of Churches).'" *Bryant* v. *United States Treasury Department, Secret Service*, 903 F. 2d 717, 724 (CA9 1990) (reprinting Bryant's letter). The letter then proceeds to explain the derivation of the term: "The name 'Image to the Beast' is a biblical name given to and identifys *[sic]* the National Council of Churches as a body . . . though the NCC is composed largely of women, it is men who really control it. So it is appropriate to respectfully address the NCC as Mr IMAGE!" *Ibid.* A postscript to the letter further specifies the Biblical origin of the term and its identification with the National Council of Churches: "Mr Image ←(NCC) is scard *[sic]* to death over the posiability *[sic]* of being exposed by the prophecy of Rev. 13:11–17 & Rev. 14:9–11."[1] *Id.*, at 727. At other places in the letter, as well, "Mr Image" is identified with the National Council of Churches through parenthetical references.

Bryant's letter advances a conspiracy theory accusing the National Council of Churches of spreading communism and

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[1] In the original, "(NCC)" is written above the word "Image," and the connecting arrow runs downward. Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment in No. CV 86–3134 (CD Cal.), p. 61. The arrow is omitted in the copy of the letter reprinted in the Court of Appeals' opinion.

scheming to assassinate the President.[2] Such a theory is of course absurd, but this absurdity does not mean that Bryant was threatening to harm the President. A vast gap separates the conclusion that a letter warning of an assassination threat is preposterous or delusional and the conclusion that the letter, itself, constitutes a threat by the author. Even if a delusional warning may serve to identify the author as mentally unstable and justify appropriate surveillance of his activities, such legitimate concern does not transform a delusional warning into a threat. As I suggested at the outset, the confusing set of facts may well have justified a trained officer in coming to the conclusion that a mentally unstable person might pose a threat to the President's well-being. No matter how reasonable such an officer's belief may have been, that kind of suspicion is not a substitute for a reasonable determination that the *evidence* established probable cause to arrest.

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[2] The National Council of Churches has at times come under attack for allegedly supporting subversive activity. In 1983, for example, such charges were leveled against the National Council of Churches in a segment of the television program "60 Minutes" and in an article appearing in the Reader's Digest, Isaac, Do You Know Where Your Church Offerings Go?, Reader's Digest, Jan. 1983, pp. 120–125. The president of the National Council of Churches responded to media reports by stating: "'[T]he National Council of Churches is not a worldwide socialist conspiracy. [It] does not supply arms to communists, revolutionaries, or anyone else. The National Council of Churches does not believe in the violent overthrow of any government.'" Christian Science Monitor, May 5, 1983, p. 3 (reporting speech of Bishop James Armstrong, president of the National Council of Churches). For reports of criticism of the National Council of Churches closer in time to the incident at issue here, see, *e. g.*, Los Angeles Times, Apr. 27, 1985, pt. 2, p. 5, col. 1 (reporting statement by Peter Reddaway of London School of Economics that "'[w]ittingly or unwittingly, the NCC is deeply involved in concealing and distorting the truth about the Soviet Union . . .'"); *id.*, Apr. 25, 1985, pt. 5, p. 1, col. 2 (reporting statement by associate professor of history at Seattle Pacific University that the National Council of Churches "has done a disservice to Christians in the Soviet Union by 'buying the Soviet line' as handed to them by official Soviet church leaders . . .").

The District Court denied the petitioners' motion for summary judgment seeking dismissal on the ground of qualified immunity because it decided that further factfinding was necessary. On such a motion, the court was of course required to resolve any disputed question of fact against the moving parties. In my opinion the Court of Appeals correctly stated the governing standards when it wrote:

> "Qualified immunity is an affirmative defense for which the government official bears the burden of proof. *Harlow* v. *Fitzgerald*, [457 U. S. 800, 815 (1982)], *Benigni* v. *City of Hemet*, 853 F. 2d 1519, 1525 (9th Cir. 1988). As with all summary judgment motions, the evidence should be viewed in the light most favorable to Bryant as the nonmoving party; to prevail on their motion for summary judgment, the defendants must show that they were reasonable in their belief that they had probable cause. Bryant, however, bears the burden of proving that the right which the defendants allegedly violated was clearly established at the time of their conduct. . . .
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> ". . . In order for a secret service agent reasonably to have believed he had cause to arrest Bryant, the agent must have been reasonable in his belief that Bryant's words and the context in which he delivered them were a serious threat against the president. *Watts* v. *United States*, [394 U. S. 705 (1969) *(per curiam)*].
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> "Whether a reasonable officer could have believed he had probable cause is a question for the trier of fact, and summary judgment or a directed verdict in a § 1983 action based on lack of probable cause is proper only if there is only one reasonable conclusion a jury could reach. *Kennedy* v. *L. A. Police Department*, 887 F. 2d 920, 924 (9th Cir. 1989), *McKenzie* v. *Lamb*, 738 F. 2d 1005, 1008 (9th Cir. 1984). Because qualified immunity protects government officials from suit as well as from

> liability, it is essential that qualified immunity claims be resolved at the earliest possible stage of litigation. *Mitchell* [v. *Forsyth*, 472 U. S. 511, 526 (1985)]. This necessarily expands the factfinding role that must be played by the district court judge. In some cases, district courts will be able to establish entitlement to qualified immunity before trial and, sometimes, even before discovery. . . . In some cases, however, further development of the record will be necessary. In this case it was proper for the court to require further development of the facts to determine whether the secret service reasonably could have interpreted the letter as violating § 871." 903 F. 2d, at 720–721.

Like JUSTICE SCALIA, I am satisfied that the Court of Appeals applied the correct legal standard when it affirmed the District Court's refusal to grant summary judgment in favor of petitioners. When the Court of Appeals opinion is read in its entirety, that conclusion is inescapable. Unlike JUSTICE SCALIA, however, I am also satisfied that when the proper legal standards are applied to this record, with the evidence examined in the light most favorable to the nonmoving party, petitioners have not yet established that a reasonable officer could have concluded that he had sufficient *evidence* to support a finding of probable cause at the time of respondent's arrest. I also think it unwise for this Court, on the basis of its *de novo* review of a question of fact, to reject a determination on which both the District Court and the Court of Appeals agreed.

Accordingly, I respectfully dissent.

JUSTICE KENNEDY, dissenting.

Petitioners in this case are agents of the Secret Service. Among the questions presented are the proper interpretation of 18 U. S. C. § 871(a), which prohibits mail threats against the President, and the proper standard for summary

judgment on grounds of qualified immunity. Whether implied or expressed, our resolution of these questions will be parsed by the Service and by later courts. The importance of these questions suggests that we should not dispose of them in summary fashion.

For the reasons stated in today's *per curiam* opinion and in the dissent by Judge Trott in the Court of Appeals, I must agree that the holding of the Court of Appeals is open to serious question. The majority opinion of that court seems not to have considered all of the facts on which the agents relied, in particular the statements made by Bryant and his responses (or nonresponses) to the agents' questions. This calls in question its determination that qualified immunity has not been established on summary judgment.

To reverse in this case, however, the Court considers an issue on which some doubt has been expressed, which is whether the Court of Appeals applied the correct legal standard to resolve the qualified immunity issue on summary judgment. Two Members of the Court disagree with the statement in the *per curiam* opinion that the Court of Appeals misstated the law. See *ante,* at 227; *ante,* at 229 (SCALIA, J., concurring in judgment); *ante,* at 234 (STEVENS, J., dissenting). Given this disagreement, as well as the precedential weight that later courts will accord to all of the questions presented in the case and addressed here in express terms or by clear implication, the case does not lend itself to summary disposition. I would set the case for full briefing and oral argument.

For these reasons, I dissent from the judgment of summary reversal in this case.

Per Curiam

IN RE BLODGETT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL.

ON PETITION FOR WRIT OF MANDAMUS

No. 91–716. Decided January 13, 1992

Charles Campbell was convicted in Washington state court of multiple murders in 1982. After his second federal habeas petition was filed and denied by the District Court in March 1989, the Court of Appeals granted an indefinite stay of execution. The case was argued and submitted to the Court of Appeals in June 1989, but no decision has been announced and the stay remains in effect. In 1990, the State Attorney General twice wrote letters to the court inquiring about the status of the case, but they went unanswered. In February 1991, the court vacated the submission of the case pending the outcome of Campbell's third state action for collateral relief. After that relief was denied, Campbell advised the court that he intended to file a third federal habeas petition. In August 1991, over two years after the case was submitted, the panel directed him to file the third petition and announced its intention to wait for the District Court's ruling on it before taking further action. The State Attorney General filed this mandamus petition.

Held: This Court declines to issue mandamus to the Court of Appeals at this time. The grant of a stay of execution directed to a State by a federal court imposes on that court the concomitant duty to take all steps necessary to ensure a prompt resolution of the matter, and the State has sustained severe prejudice by the 2½-year stay of execution. Nonetheless, as a predicate for extraordinary relief, the State should have asked the Court of Appeals to vacate or modify its August 1991 order before coming to this Court. The Court of Appeals should determine how best to expedite the appeal, given the present posture of the case. Denial of the writ is without prejudice to the State's right to again seek mandamus or other extraordinary relief if unnecessary delays or unwarranted stays occur in the panel's disposition of the matter.

Mandamus denied.

PER CURIAM.

The Court has before it a petition from the State of Washington for a writ of mandamus to the Court of Appeals for the Ninth Circuit. The petition seeks an order directing the

Court of Appeals to issue its decision on an appeal from the District Court's denial of a second federal habeas petition in a capital case. The appeal was argued and submitted to the Court of Appeals on June 27, 1989, and no decision has been forthcoming.

Charles Rodman Campbell was convicted of multiple murders in 1982 in the State of Washington and sentenced to death. After his conviction was affirmed on direct appeal and we denied certiorari, *Campbell* v. *Washington*, 471 U. S. 1094 (1985), his first federal habeas petition was filed in July 1985 in the United States District Court for the Western District of Washington. Proceedings in that matter were completed when we denied certiorari in November 1988. *Campbell* v. *Kincheloe*, 488 U. S. 948. No relief was granted.

In March 1989, Campbell filed a second federal habeas petition in the same District Court. The court acted with commendable dispatch, holding a hearing and issuing a written opinion denying a stay or other relief within days after the second petition was filed. On March 28, 1989, Campbell appealed to the Ninth Circuit. The Court of Appeals granted an indefinite stay of execution and set a briefing schedule. The case was argued and submitted in June 1989, but no decision was announced and the stay of execution remains in effect. The Washington attorney general sent letters to the panel in April and October 1990 inquiring about the status of the case, but neither letter was answered.

In January 1990, Campbell filed a motion to withdraw certain issues from consideration by the Ninth Circuit panel, and he renewed this motion in April. The panel took no action. In July 1990, Campbell filed his third state action for collateral relief, a personal restraint petition, with the Washington Supreme Court. In September, Campbell again moved the Court of Appeals to withdraw three issues from consideration in the case that it was still holding under submission, leaving eight others to be decided. The panel did not respond until by order of February 21, 1991, it noted

Campbell's motion to withdraw the issues, requested a report on the status of the state-court proceedings, and vacated its own submission of the case. Both Washington and Campbell responded that all of the issues pending before the Ninth Circuit had been exhausted. The State requested that the case be resubmitted, but the panel did not do so.

The Washington Supreme Court denied Campbell's third personal restraint petition on its merits on March 21, 1991. On June 10, 1991, Campbell filed a document advising the Court of Appeals panel that he desired to discharge his attorneys and proceed *pro se* and that he would file a third federal habeas petition in the District Court. At that point more than two years had passed since the Ninth Circuit had heard oral argument in the case. Almost two months later, on August 7, 1991, the panel granted the motion to relieve counsel, directed Campbell to file his third federal habeas petition by August 30, and announced its intention to wait for the District Court's ruling before taking further action. The District Court has set a briefing schedule for the third petition.

On October 25, 1991, the Washington attorney general filed the mandamus petition now before us, and on November 22, the Court of Appeals and the members of the panel filed a response. Neither the response nor the record reveals any plausible explanation or reason for the panel's delay in resolving the case from June 1989 until July 1990. The response addresses the events after Campbell's third personal restraint petition was filed in the Washington Supreme Court. The response indicates that the panel vacated submission in February 1991 because if the Washington Supreme Court had granted the state petition, the appeal before the Ninth Circuit would have become moot. It further stated that the panel desired to avoid piecemeal appeals by awaiting the decision of the District Court on the third federal habeas petition. The response noted that the Ninth Circuit has formed a Death Penalty Task Force with the objective of eliminating successive habeas petitions and that

the consolidation of the last two petitions is consistent with that objective.

The delay of over a year before the third personal restraint petition was filed in Washington state court remains unexplained and was in fact compounded by the events that followed. The orders by the Ninth Circuit to vacate submission of the case until completion of the state collateral proceeding and then to hold the case in abeyance pending filing and resolution of the third federal habeas proceeding in the District Court raise the very concerns regarding delay that were part of the rationale for this Court's decisions in *Rose* v. *Lundy*, 455 U. S. 509 (1982), and *McCleskey* v. *Zant*, 499 U. S. 467 (1991). Adherence to those decisions, and their prompt enforcement by the district courts and courts of appeals, will obviate in many cases what the Court of Appeals here seems to perceive to be the necessity for accommodating multiple filings.

As to the Death Penalty Task Force, reports of joint committees of the bench and bar should be of urgent concern to all persons with the responsibility for the administration of justice in the Ninth Circuit, but the ordinary course of legal proceedings and the constant duty of all judges to discharge their duties with diligence and precision cannot be suspended to await its recommendations.

None of the reasons offered in the response dispels our concern that the State of Washington has sustained severe prejudice by the 2½-year stay of execution. The stay has prevented Washington from exercising its sovereign power to enforce the criminal law, an interest we found of great weight in *McCleskey* when discussing the importance of finality in the context of federal habeas corpus proceedings. *Id.*, at 491. Given the potential for prejudice to the State of Washington, the Ninth Circuit was under a duty to consider Campbell's claim for relief without delay. Our case law suggests that expedited review of this second habeas petition would have been proper. *Barefoot* v. *Estelle*, 463 U. S. 880,

895 (1983) ("Even where it cannot be concluded that a [successive habeas] petition should be dismissed under Rule 9(b), it would be proper for the district court to expedite consideration of the petition"). The delay in this case demonstrates the necessity for the rule that we now make explicit. In a capital case the grant of a stay of execution directed to a State by a federal court imposes on that court the concomitant duty to take all steps necessary to ensure a prompt resolution of the matter, consistent with its duty to give full and fair consideration to all of the issues presented in the case.

Despite our continuing concerns, we decline to issue mandamus to the Court of Appeals at this time. While there are grounds to question both the necessity and the propriety of the Ninth Circuit's order of August 7, 1991, *Campbell* v. *Blodgett*, 940 F. 2d 549, the State did not file any objection to it. The State should have lodged its objection with the Court of Appeals, citing the cases it now cites to us. True, the State had taken some action. It wrote twice in 1990 to inquire about the status of the case. And after the panel's order vacating submission, the State objected and asked that the case be resubmitted for decision. The argument could be made that further requests for an expedited decision on the merits had little chance of success. But as a predicate for extraordinary relief, the State should have asked the Court of Appeals to vacate or modify its order of August 7, 1991, before coming here. This Court's Rule 20.1 ("To justify the granting of any writ under that provision, it must be shown . . . that adequate relief cannot be obtained in any other form or from any other court").

As we do not now issue a writ of mandamus, the Court of Appeals should determine how best to expedite the appeal, given the present posture of the case. Denial of the writ is without prejudice to the right of the State to again seek mandamus relief or to request any other extraordinary relief by motion or petition if unnecessary delays or unwarranted stays occur in the panel's disposition of the matter. In view

of the delay that has already occurred, any further postponements or extensions of time will be subject to a most rigorous scrutiny in this Court if the State of Washington files a further and meritorious petition for relief.

The motion of respondent Charles R. Campbell for leave to proceed *in forma pauperis* is granted. The petition for writ of mandamus is

Denied.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, concurring in the judgment.

In recent years, the federal judiciary has done a magnificent job of handling a truly demanding appellate workload. On a national basis, the average time between notice of appeal and disposition is now less than 11 months. Although delays that are not fully justified occasionally occur, only in the most extraordinary circumstances would it be appropriate for this Court to issue a writ of mandamus to require a court of appeals to render its decision in a case under advisement.[1]

In its petition for a writ of mandamus, the State criticizes the Court of Appeals' failure to rule on the merits of Campbell's second habeas corpus petition, which was submitted in June 1989. In their response, the judges on the panel pro-

[1] "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr* v. *United States District Court for Northern District of Cal.*, 426 U. S. 394, 402 (1976); see also *Will* v. *United States*, 389 U. S. 90, 95 (1967); *Ex parte Fahey*, 332 U. S. 258, 259 (1947). Mandamus "has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Will*, 389 U. S., at 95 (internal quotation marks omitted). Accordingly, we have required that the party seeking issuance of the writ have no other adequate means to attain the desired relief, and that he demonstrate that his "right to issuance of the writ is 'clear and indisputable.'" *Bankers Life & Casualty Co.* v. *Holland*, 346 U. S. 379, 384 (1953), quoting *United States* v. *Duell*, 172 U. S. 576, 582 (1899).

vide a completely satisfactory explanation for their July 1990 decision to defer ruling on the merits of the petition—namely, their desire to avoid piecemeal litigation and to address all of Campbell's claims in a single ruling. Because that explanation alone is sufficient to mandate denial of the State's petition, there was no occasion for the panel to explain its pre-July 1990 delay.

The panel's decision to defer its ruling on the second habeas petition pending disposition of the third personal restraint petition filed in the Washington Supreme Court in July 1990 showed proper respect for that court. Although this Court expresses its concern about the State's interest in expediting its execution of Campbell, the Court is notably silent about the fact that the Washington Supreme Court considered the claims Campbell raised in his third personal restraint petition to be substantial. Although the state court, over the dissent of Justice Utter, denied Campbell's petition, that court appointed counsel, scheduled briefing, heard oral argument, and addressed the merits of Campbell's several claims. On these facts, the Ninth Circuit's decision to delay its ruling on Campbell's second habeas petition was sound, for it enables that court to consider the entire case at one time and will not delay the ultimate disposition of the matter.[2]

Although I am sure the Court did not intend to send such a message, its opinion today may be read as an open invitation to petitions for mandamus from every State in which a federal court has stayed an execution. This is unfortunate because, as we noted in *Kerr* v. *United States District Court*

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[2] On the facts of this case, the "severe prejudice" perceived by the Court is illusory. Even were we to direct the Ninth Circuit to decide Campbell's second petition, the State would still be required to wait until that court ruled on his third petition. The State seems to recognize as much, for it asks that we both direct the Ninth Circuit to decide the second habeas petition *and* vacate the August 7 order which permitted filing of the third habeas petition. Pet. for Writ of Mandamus 9.

for Northern District of Cal., 426 U. S. 394, 403 (1976), "particularly in an era of excessively crowded lower court dockets, it is in the interest of the fair and prompt administration of justice to discourage piecemeal litigation."

Moreover, as we have so frequently recognized, mandamus is disfavored because it has "the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants [appearing] before him." *Ex parte Fahey*, 332 U. S. 258, 260 (1947). Mandamus is an "extraordinary remed[y] reserved for really extraordinary causes," *ibid.*, precisely because of the great respect we have for our fellow jurists. This is not a situation in which the Ninth Circuit has unduly delayed decision of a case, but rather a situation in which that court has chosen to avoid repetitive and piecemeal litigation by consolidating two appeals. Respect for our fellow judges means providing them latitude in the handling of their burgeoning dockets, and granting due deference to those whose dockets are less discretionary than ours.

For the foregoing reasons, and because the State has failed to comply with this Court's Rule 20.1, I believe that the State's petition should have been denied summarily.

Syllabus

SMITH *v.* BARRY ET AL.

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

No. 90–7477. Argued December 2, 1991—Decided January 14, 1992

Rule 3 of the Federal Rules of Appellate Procedure conditions federal appellate jurisdiction on the filing of a timely notice of appeal. In response to petitioner Smith's filing of a premature, and therefore invalid, notice of appeal in his action for damages against state officials under 42 U. S. C. § 1983, the Fourth Circuit's Clerk sent the parties copies of the "informal brief" that that court uses in *pro se* appeals and an explanatory order. Smith returned his informal brief within the deadline for filing a notice of appeal, but the Court of Appeals dismissed the appeal for want of jurisdiction, concluding, *inter alia*, that a brief can never be considered a notice of appeal.

Held: A document intended to serve as an appellate brief may qualify as the notice of appeal required by Rule 3. So long as such a document is filed within the time allowed by Rule 4 for a notice of appeal and satisfies Rule 3(c)'s requirements as to the content of such a notice, it may be treated as the "functional equivalent" of the formal notice demanded by Rule 3. *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, 317. The fact that Smith filed his informal brief in response to a briefing order is irrelevant, since it is the notice afforded by a document, not the litigant's motivation in filing it, that determines the document's sufficiency as a notice of appeal. Moreover, the fact that the Rules envision that the notice of appeal and the appellant's brief will be two separate filings does not preclude an appellate court from treating the brief as a notice of appeal in the appropriate circumstances. Rule 3(c) requires that an appeal not be dismissed for informality of form or title of the notice of appeal, and proper briefing is not a jurisdictional requirement under the Rules. The fact that Smith filed his brief with the Court of Appeals, rather than the District Court as required by Rule 3(a), is also irrelevant, since Rule 4(a)(1) sets out procedures to be followed when the notice of appeal is mistakenly filed with an appellate court. On remand, the Court of Appeals should determine whether Smith's brief contains the information required for a notice of appeal by Rule 3(c). Pp. 247–250.

919 F. 2d 893, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, BLACKMUN, STEVENS, KENNEDY, SOUTER, and THOMAS,

JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, *post*, p. 250.

Steven H. Goldblatt argued the cause and filed briefs for petitioner.

David H. Bamberger argued the cause for respondents. With him on the brief were *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Evelyn O. Cannon*, *Richard Kastendieck*, and *Glenn Bell*, Assistant Attorneys General, and *Glen K. Allen*.

JUSTICE O'CONNOR delivered the opinion of the Court.

Rule 3 of the Federal Rules of Appellate Procedure conditions federal appellate jurisdiction on the filing of a timely notice of appeal. In this case, we hold that a document intended to serve as an appellate brief may qualify as the notice of appeal required by Rule 3.

I

While an inmate at the Maryland State Penitentiary, petitioner William Smith filed a *pro se* action against two prison administrators, seven corrections officers, two state psychologists, and named respondent Dr. Wayne Barry, a private physician. Suing under 42 U. S. C. § 1983, Smith alleged that he suffered from a psychogenic pain disorder and that the defendants' refusal to provide him with a wheelchair constituted cruel and unusual punishment in violation of the Eighth Amendment. Smith further alleged that the officers used excessive force against him, also in violation of the Eighth Amendment.

The District Court dismissed Dr. Barry as a defendant on the ground that he did not act under color of state law when treating Smith and therefore was not subject to suit under § 1983. App. 5–6. The case proceeded to trial in 1988, following appointment of counsel. After Smith presented his case in chief, the District Court directed a verdict for the prison administrators and officers on Smith's wheelchair

claim, and for the administrators and three officers on his excessive force claim. The jury ultimately rejected Smith's excessive force claim against the four remaining officers. However, it found that the staff psychologists were deliberately indifferent to Smith's medical needs and awarded $15,000 in damages.

The two psychologists filed a timely motion for judgment notwithstanding the verdict (J. N. O. V.). Without consulting his attorney, and while the motion for J. N. O. V. was pending, Smith filed a notice of appeal. Smith's trial counsel learned of the notice of appeal after the District Court denied the psychologists' motion. In a letter dated April 21, 1988, he wrote Smith:

> "I am certain from the circumstances that [the notice of appeal] is premature and thus void.
>
> ". . . The Order denying the Motion for J. N. O. V. was entered April 13, 1988. This would give you up until May 13, 1988 before you must file an appeal. I would urge you to take by *[sic]* advice and not file an appeal, or at least seek a second legal opinion on the matter." App. 17.

Smith's notice of appeal was in fact invalid under Federal Rule of Appellate Procedure 4(a)(4), which provides that a notice of appeal filed before the disposition of a timely J. N. O. V. motion is without effect. Although the Fourth Circuit's jurisdiction had not been properly invoked, its Clerk responded to the notice of appeal by sending all of the parties copies of the "informal brief" the court uses in *pro se* appeals and an order explaining the court's procedures. The briefing forms asked the parties to answer six questions about their legal positions. Under its Rules, the Fourth Circuit reviews these responses and the record to determine whether appointment of counsel and/or oral argument are warranted. See CA4 Rule 34(b). Smith returned his infor-

mal brief to the Court of Appeals on May 4, 1988, within the deadline for filing a notice of appeal.

After appointment of appellate counsel, the Fourth Circuit dismissed Smith's appeal for want of jurisdiction. It held that Smith's notice of appeal was untimely and that his informal brief was not "the 'functional equivalent' " of the notice of appeal Rule 3 requires. *Smith* v. *Galley*, 919 F. 2d 893, 895 (1990) (quoting *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, 317 (1988)). The court reasoned that Smith filed the informal brief in response to a briefing order and that the Federal Rules envision that the notice of appeal and the appellate brief will be two separate documents. 919 F. 2d, at 895–896. In a footnote, the court listed specific omissions that might render Smith's informal brief inadequate as a notice of appeal. *Id.*, at 896, n. 7. Given its conclusion that a brief can never be considered a notice of appeal, however, the Fourth Circuit expressed no opinion on the significance of these omissions. *Ibid.*

We granted certiorari, 501 U. S. 1249 (1991), to decide whether an appellate brief may serve as the notice of appeal required by Rule 3. This question has divided the Courts of Appeals. Compare *Smith* v. *Galley*, *supra; United States* v. *Cooper*, 876 F. 2d 1192, 1196 (CA5 1989) (appellate brief cannot substitute for notice of appeal); and *Jurgens* v. *McKasy*, 905 F. 2d 382, 385, n. 4 (CA Fed. 1990) (same), with *Frace* v. *Russell*, 341 F. 2d 901, 903 (CA3) (treating brief as notice of appeal), cert. denied, 382 U. S. 863 (1965); *Allah* v. *Superior Court of California*, 871 F. 2d 887, 889–890 (CA9 1989) (same); and *Finch* v. *Vernon*, 845 F. 2d 256, 259–260 (CA11 1988) (same).

II

Federal Rule of Appellate Procedure 3(a) provides, in pertinent part, that "[a]n appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4." Rule 3(c) governs the

content of notices of appeal: Notices "shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken."

Courts will liberally construe the requirements of Rule 3. See *Torres*, *supra*, at 316; *Foman* v. *Davis*, 371 U. S. 178, 181–182 (1962). Thus, when papers are "technically at variance with the letter of [Rule 3], a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires." *Torres*, *supra*, at 316–317. This principle of liberal construction does not, however, excuse noncompliance with the Rule. Rule 3's dictates are jurisdictional in nature, and their satisfaction is a prerequisite to appellate review. *Torres*, *supra*. Although courts should construe Rule 3 liberally when determining whether it has been complied with, noncompliance is fatal to an appeal.

In this case, the Court of Appeals recognized that it was required to determine whether Smith's brief was the "functional equivalent" of the formal notice of appeal demanded by Rule 3, 919 F. 2d, at 895, but it erred in applying that standard. The court reasoned that because Smith filed his informal brief in response to a briefing order, "the document was not the result of Smith's intent to initiate an appeal." *Id.*, at 895–896. This logic is dubious, since Smith received the briefing form as a result of filing a notice of appeal, albeit a premature one.

More importantly, the court should not have relied on Smith's reasons for filing the brief. While a notice of appeal must specifically indicate the litigant's intent to seek appellate review, see *Foman*, *supra*, at 181; *Torres*, 487 U. S., at 317–318, the purpose of this requirement is to ensure that the filing provides sufficient notice to other parties and the courts. See *id.*, at 318. Thus, the notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal. If a docu-

ment filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal.

The Fourth Circuit's other ground for dismissing Smith's appeal is also insufficient. The Federal Rules do envision that the notice of appeal and the appellant's brief will be two separate filings. Compare Fed. Rule App. Proc. 3(c) (content of notice of appeal) with Fed. Rule App. Proc. 28(a) (content of appellant's brief). They do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal, however, if the filing is timely under Rule 4 and conveys the information required by Rule 3(c). Such treatment is in fact appropriate under *Torres* and under Rule 3(c)'s provision that "[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal."

Having accepted a paper as the notice of appeal required by Rule 3, an appellate court might require timely filing of a second document meeting its standards for a brief or, if the paper meets those standards, take such other action as it deems appropriate to ensure that the filing sequence contemplated by the Rules is not disturbed. See, *e. g.*, Fed. Rule App. Proc. 10(b) (time for ordering transcripts for inclusion in the record on appeal); Fed. Rule App. Proc. 31(a) (briefing schedule). Proper briefing is not, however, a jurisdictional requirement under the Federal Rules of Appellate Procedure. See Fed. Rule App. Proc. 3(a) ("Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal . . .").

Respondents make the point that Smith filed his brief with the Court of Appeals, whereas Rule 3(a) directs litigants to file their notices of appeal with district courts. The Rules themselves answer this argument. Rule 4(a)(1) sets out a transmittal procedure to be followed when the notice of appeal is mistakenly filed with an appellate court, and provides that a misfiled notice "shall be deemed filed in the district court" on the day it was received by the court of appeals.

Finally, respondents argue that Smith's brief is not an adequate notice of appeal because it lacks information required by Rule 3(c). Having held that an informal brief can never substitute for a formal notice of appeal, the Court of Appeals declined to reach this question. 919 F. 2d, at 896, n. 7. On remand, it should undertake the appropriate analysis. See, *e. g., Foman, supra; Torres, supra.*

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, concurring in the judgment.

I agree with the judgment because Federal Rule of Appellate Procedure 3(c) provides that "[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal." I do not rely on the theory that petitioner's brief was the " 'functional equivalent' " of a notice of appeal under a "liberal construction" of Rule 3. *Ante*, at 248. "[W]e should seek to interpret the rules neither liberally nor stingily, but only, as best we can, according to their apparent intent." *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, 319 (1988) (SCALIA, J., concurring in judgment).

Syllabus

COUNTY OF YAKIMA ET AL. *v.* CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION

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

No. 90–408. Argued November 5, 1991—Decided January 14, 1992*

Yakima County, Washington, imposes an ad valorem levy on taxable real property within its jurisdiction and an excise tax on sales of such land. The county proceeded to foreclose on various properties for which these taxes were past due, including certain fee-patented lands held by the Yakima Indian Nation or its members on the Tribe's reservation within the county. Contending that federal law prohibited the imposition or collection of the taxes on such lands, the Tribe filed suit for declaratory and injunctive relief and was awarded summary judgment by the District Court. The Court of Appeals agreed that the excise tax was impermissible, but held that the ad valorem tax would be impermissible only if it would have a "'demonstrably serious'" impact on the Tribe's "'political integrity, economic security or . . . health and welfare'" (quoting *Brendale* v. *Confederated Tribes and Bands of Yakima Nation*, 492 U. S. 408, 431 (opinion of WHITE, J.)), and remanded to the District Court for that determination.

Held: The Indian General Allotment Act of 1887 permits Yakima County to impose an ad valorem tax on reservation land patented in fee pursuant to the Act and owned by reservation Indians or the Yakima Indian Nation itself, but does not allow the county to enforce its excise tax on sales of such land. Pp. 257–270.

(a) As the Court held in *Goudy* v. *Meath*, 203 U. S. 146, 149, the Indian General Allotment Act authorizes taxation of fee-patented land. This determination was explicitly confirmed in a 1906 amendment to the Act, known as the Burke Act, which includes a proviso authorizing the Secretary of the Interior, "whenever . . . satisfied that any [Indian] allottee is competent . . . [,] to . . . issu[e] to such allottee a patent in fee simple," and provides that "*thereafter all restrictions as to . . . taxation of said land shall be removed.*" (Emphasis added.) Thus, the Indian General Allotment Act contains the unmistakably clear expression of intent that

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*Together with No. 90–577, *Confederated Tribes and Bands of the Yakima Indian Nation* v. *County of Yakima et al.*, also on certiorari to the same court.

is necessary to authorize state taxation of Indian lands. See, *e. g.*, *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 765. The contention of the Tribe and the United States that this explicit statutory conferral of taxing power has been repudiated by subsequent Indian legislation rests upon a misunderstanding of this Court's precedents, particularly *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U. S. 463, and a misperception of the structure of the Indian General Allotment Act. Pp. 257–266.

(b) Because, under state law, liability for the ad valorem tax flows exclusively from ownership of realty on the annual assessment date, and the tax creates a burden on the property alone, this tax constitutes "taxation of . . . land" within the meaning of the Indian General Allotment Act, and is therefore prima facie valid. Nevertheless, *Brendale*, *supra*, and its reasoning are inapplicable to the present cases, which involve an asserted restriction on a State's congressionally conferred powers over Indians rather than a proposed extension of a tribe's inherent powers over the conduct of non-Indians on reservation fee lands. Moreover, application of a balancing test under *Brendale* would contravene the *per se* approach traditionally followed by this Court in the area of state taxation of tribes and tribal members, under which taxation is categorically allowed or disallowed, as appropriate, depending exclusively upon whether it has in fact been authorized by Congress. Pp. 266–268.

(c) However, the excise tax on sales of fee-patented reservation land cannot be sustained. The Indian General Allotment Act explicitly authorizes only "taxation of . . . land," not "taxation with respect to land," "taxation of transactions involving land," or "taxation based on the value of land." Because it is eminently reasonable to interpret that language as not including a tax upon the activity of selling real estate, this Court's cases require that that interpretation be applied for the benefit of the Tribe. See, *e. g.*, *Blackfeet Tribe*, *supra*, at 766. Pp. 268–270.

(d) The factual question whether the parcels at issue were patented under the Indian General Allotment Act or some other federal allotment statute, and the legal question whether it makes any difference, are left for resolution on remand. P. 270.

903 F. 2d 1207, affirmed and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, O'CONNOR, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, *post*, p. 270.

Jeffrey C. Sullivan argued the cause for petitioners in No. 90–408 and respondents in No. 90–577. With him on the briefs was *John V. Staffan.*

R. Wayne Bjur argued the cause for respondent in No. 90–408 and petitioner in No. 90–577. With him on the brief was *Tim Weaver.*

Edwin S. Kneedler argued the cause for the United States as *amicus curiae* in support of respondent in No. 90–408 and petitioner in No. 90–577. With him on the brief were *Solicitor General Starr, Acting Assistant Attorney General Hartman, Deputy Solicitor General Wallace, Peter R. Steenland, Jr., Robert L. Klarquist,* and *Edward J. Shawaker.*†

JUSTICE SCALIA delivered the opinion of the Court.

The question presented by these consolidated cases is whether the County of Yakima may impose an ad valorem tax on so-called "fee-patented" land located within the Yakima Indian Reservation, and an excise tax on sales of such land.

I

A

In the late 19th century, the prevailing national policy of segregating lands for the exclusive use and control of the

†Briefs of *amici curiae* were filed for the State of Montana et al. by *Marc Racicot,* Attorney General of Montana, *Clay R. Smith,* Solicitor, and by the Attorneys General for their respective States as follows: *Gale A. Norton* of Colorado, *Hubert H. Humphrey III* of Minnesota, *Nicholas Spaeth* of North Dakota, and *Mark Barnett* of South Dakota; for the State of Washington by *Kenneth O. Eikenberry,* Attorney General, *Leland T. Johnson,* Senior Assistant Attorney General, and *Timothy R. Malone,* Special Assistant Attorney General; for La Plata County et al. by *Tom D. Tobin* and *Susan W. Pahlke;* for the Mashantucket Pequot Tribe et al. by *Melody L. McCoy, Yvonne Teresa Knight, Kim Jerome Gottschalk, Jeanette Wolfley, Reid P. Chambers, Jeanne S. Whiteing,* and *Robert S. Thompson III;* for the National Association of Counties et al. by *Richard Ruda* and *David J. Burman;* and for the Washington State Association of Counties by *Barnett Kalikow* and *Robert P. Dick.*

Indian tribes gave way to a policy of allotting those lands to tribe members individually. The objectives of allotment were simple and clear cut: to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large. See, *e. g.*, *In re Heff*, 197 U. S. 488, 499 (1905). Congress was selective at first, allotting lands under differing approaches on a tribe-by-tribe basis. See F. Cohen, Handbook of Federal Indian Law 129–130 (1982); Gates, Indian Allotments Preceding the Dawes Act, in The Frontier Challenge 141 (J. Clark ed. 1971). These early efforts were marked by failure, however. Because allotted land could be sold soon after it was received, see, *e. g.*, Treaty with Wyandot Nation, Apr. 1, 1850, 9 Stat. 987, 992, many of the early allottees quickly lost their land through transactions that were unwise or even procured by fraud. See Cohen, *supra*, at 130. Even if sales were for fair value, Indian allottees divested of their land were deprived of an opportunity to acquire agricultural and other self-sustaining economic skills, thus compromising Congress' purpose of assimilation.

Congress sought to solve these problems in the Indian General Allotment Act of 1887, also known as the Dawes Act, 24 Stat. 388, as amended, 25 U. S. C. § 331 *et seq.*, which empowered the President to allot most tribal lands nationwide without the consent of the Indian nations involved. The Dawes Act restricted immediate alienation or encumbrance by providing that each allotted parcel would be held by the United States in trust for a period of 25 years or longer; only then would a fee patent issue to the Indian allottee. 24 Stat. 389; see *United States* v. *Mitchell*, 445 U. S. 535, 543–544 (1980). Section 6 of the Act furthered Congress' goal of assimilation by providing that "each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside." 24 Stat. 390.

In *In re Heff, supra,* at 502–503, we held that this latter provision subjected Indian allottees to plenary state jurisdiction immediately upon issuance of a trust patent (and prior to the expiration of the 25-year trust period). Congress promptly altered that disposition in the Burke Act of 1906, 34 Stat. 182, decreeing that state civil and criminal jurisdiction would lie "at the expiration of the trust period . . . when the lands have been conveyed to the Indians by patent in fee." A proviso, however, gave the President authority, when he found an allottee "competent and capable of managing his or her affairs," to "issu[e] . . . a patent in fee simple" prior to the expiration of the relevant trust period. Upon such a premature patenting, the proviso specified (significantly for present purposes) *not* that the patentee would be subject to state civil and criminal jurisdiction but that "all restrictions as to sale, incumbrance, or taxation of said land shall be removed." *Id.*, at 183.

The policy of allotment came to an abrupt end in 1934 with passage of the Indian Reorganization Act. See 48 Stat. 984, 25 U. S. C. § 461 *et seq.* Returning to the principles of tribal self-determination and self-governance which had characterized the pre-Dawes Act era, Congress halted further allotments and extended indefinitely the existing periods of trust applicable to already allotted (but not yet fee-patented) Indian lands. See §§ 461, 462. In addition, the Act provided for restoring unallotted surplus Indian lands to tribal ownership, see § 463, and for acquiring, on behalf of the tribes, lands "within or without existing reservations." § 465. Except by authorizing reacquisition of allotted lands in trust, however, Congress made no attempt to undo the dramatic effects of the allotment years on the ownership of former Indian lands. It neither imposed restraints on the ability of Indian allottees to alienate or encumber their fee-patented lands nor impaired the rights of those non-Indians who had acquired title to over two-thirds of the Indian lands allotted

under the Dawes Act. See W. Washburn, Red Man's Land/ White Man's Law 145 (1971).

B

The Yakima Indian Reservation, which was established by treaty in 1855, see Treaty with Yakima Nation, 12 Stat. 951, covers approximately 1.3 million acres in southeastern Washington State. Eighty percent of the reservation's land is held by the United States in trust for the benefit of the Tribe or its individual members; 20 percent is owned in fee by Indians and non-Indians as a result of patents distributed during the allotment era. See *Brendale* v. *Confederated Tribes and Bands of Yakima Nation,* 492 U. S. 408, 415 (1989) (plurality opinion). Some of this fee land is owned by the Yakima Indian Nation itself.

The reservation is located almost entirely within the confines of petitioner/cross-respondent Yakima County. Pursuant to Washington law, Yakima County imposes an ad valorem levy on taxable real property within its jurisdiction and an excise tax on sales of such land. Wash. Rev. Code §§ 84.52.030, 82.45.070 (1989). According to the county, these taxes have been levied on the Yakima Reservation's fee lands and collected without incident for some time. In 1987, however, as Yakima County proceeded to foreclose on properties throughout the county for which ad valorem and excise taxes were past due, including a number of reservation parcels in which the Tribe or its members had an interest, respondent/ cross-petitioner Yakima Nation commenced this action for declaratory and injunctive relief, contending that federal law prohibited these taxes on fee-patented lands held by the Tribe or its members.

On stipulated facts, the District Court awarded summary judgment to the Tribe and entered an injunction prohibiting the imposition or collection of the taxes on such lands. On appeal, the Court of Appeals for the Ninth Circuit agreed that the excise tax was impermissible, but held that the ad

valorem tax would be impermissible only if it would have a "'demonstrably serious'" impact on the "'political integrity, economic security, or the health and welfare of the tribe,'" and remanded to the District Court for that determination to be made. 903 F. 2d 1207, 1218 (CA9 1990) (emphasis deleted) (quoting *Brendale*, *supra*, at 431). We granted certiorari. 500 U. S. 903 (1991).

II

The Court's earliest cases addressing attempts by States to exercise dominion over the reservation lands of Indians proceeded from Chief Justice Marshall's premise that the "several Indian nations [constitute] distinct political communities, having territorial boundaries, within which their authority is exclusive . . . ." *Worcester* v. *Georgia*, 6 Pet. 515, 556–557 (1832). Because Congress, pursuant to its constitutional authority both "[t]o regulate Commerce . . . with the Indian Tribes" and to make treaties, U. S. Const., Art. I, § 8, cl. 3; Art II, § 2, cl. 2, had determined by law and treaty that "all intercourse with them [would] be carried on exclusively by the [Federal Government]," *Worcester* v. *Georgia*, *supra*, at 557, the Court concluded that within reservations state jurisdiction would generally not lie. The assertion of taxing authority was not excepted from this principle. *E. g.*, *The Kansas Indians*, 5 Wall. 737, 755–757 (1867); *The New York Indians*, 5 Wall. 761, 771–772 (1867).

The "platonic notions of Indian sovereignty" that guided Chief Justice Marshall have, over time, lost their independent sway. See *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164, 172, and n. 8 (1973); *Organized Village of Kake* v. *Egan*, 369 U. S. 60, 71–73 (1962). Congress abolished treatymaking with the Indian nations in 1871, Rev. Stat. § 2079, as amended, 25 U. S. C. § 71, and has itself subjected the tribes to substantial bodies of state and federal law. This Court's more recent cases have recognized the rights of States, absent a congressional prohibition, to exercise criminal (and, implicitly, civil) jurisdiction over non-Indians lo-

cated on reservation lands. See, *e. g.*, *New York ex rel. Ray* v. *Martin*, 326 U. S. 496 (1946); see also Cohen, Handbook of Federal Indian Law, at 352, and n. 39. We have even observed that state jurisdiction over the relations between reservation Indians and non-Indians may be permitted unless the application of state laws "would interfere with reservation self-government or impair a right granted or reserved by federal law." *Organized Village of Kake*, *supra*, at 75. In the area of state taxation, however, Chief Justice Marshall's observation that "the power to tax involves the power to destroy," *McCulloch* v. *Maryland*, 4 Wheat. 316, 431 (1819), has counseled a more categorical approach: "[A]bsent cession of jurisdiction or other federal statutes permitting it," we have held, a State is without power to tax reservation lands and reservation Indians. *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 148 (1973). And our cases reveal a consistent practice of declining to find that Congress has authorized state taxation unless it has "made its intention to do so unmistakably clear." *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 765 (1985); see also *California* v. *Cabazon Band of Mission Indians*, 480 U. S. 202, 215, n. 17 (1987).

Yakima County persuaded the Court of Appeals, and urges upon us, that express authority for taxation of fee-patented land is found in § 6 of the General Allotment Act, as amended.[1] We have little doubt about the accuracy of that threshold assessment. Our decision in *Goudy* v. *Meath*, 203

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[1] Section 6 provides in pertinent part:

"At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, . . . then each and every allottee shall have the benefit of *and be subject to* the laws, both civil and criminal, of the State or Territory in which they may reside . . . . *Provided*, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, *and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed.*" 25 U. S. C. § 349 (emphasis added).

U. S. 146, 149 (1906), without even mentioning the Burke Act proviso, held that state tax laws were "[a]mong the laws to which [Indian allottees] became subject" under § 6 upon the expiration of the Dawes Act trust period. And we agree with the Court of Appeals that by specifically mentioning immunity from land taxation "as one of the restrictions that would be removed upon conveyance in fee," Congress in the Burke Act proviso "manifest[ed] a clear intention to permit the state to tax" such Indian lands. 903 F. 2d, at 1211.

Neither the Yakima Nation nor its principal *amicus*, the United States, vigorously disputes this.[2] Instead, they contend that § 6 of that Act—the Burke Act proviso included—

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[2] The Yakima Nation does, however, make a preliminary objection to the taxes on the ground that the Washington State Constitution permits land taxes to be imposed only on those Indians holding fee patents who have terminated their affiliations with the Tribe—which the Indian plaintiffs in these cases have not done. The provision at issue provides in pertinent part as follows:

"That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, *and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States . . . ; Provided*, That *nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant*, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exemption shall continue so long and to such an extent as such act of congress may prescribe." Wash. Const., Art. XXVI, Second (emphasis added).

We agree with the Court of Appeals that, under this text, the Indian lands not covered by the quoted proviso are not *exempted from taxation*, but merely committed to "the absolute jurisdiction and control of [Congress]." If Congress has permitted taxation, the provision is not violated.

is a dead letter, at least within the confines of an Indian reservation. The Tribe argues that, by terminating the allotment program and restoring tribal integrity through the Indian Reorganization Act of 1934, Congress impliedly repealed § 6's jurisdictional grant and returned the law to its pre-General Allotment Act foundations. Congress' subsequent actions, according to the Tribe, confirm this implication. In 1948, for instance, Congress defined "Indian country" to include all fee land within the boundaries of an existing reservation, whether or not held by an Indian, and pre-empted state criminal laws within "Indian country" insofar as offenses by and against Indians were concerned. See Act of June 25, 1948, 62 Stat. 757–758, as amended, 18 U. S. C. §§ 1151–1153; *Seymour* v. *Superintendent of Washington State Penitentiary,* 368 U. S. 351 (1962). And in 1953, Congress once again signaled its belief in the dormition of § 6 by enacting Pub. L. 280, which authorized States to assume criminal and civil jurisdiction over Indians within Indian country in certain circumstances. See Act of Aug. 15, 1953, 67 Stat. 588.

Though generally in agreement with the Tribe, the United States takes a slightly different tack. It claims that the General Allotment Act removed only those barriers to state jurisdiction that existed at the time of its enactment, *e. g.*, those associated with tribal sovereignty and the trust status of allotted land. The General Allotment Act did not remove—indeed, the argument goes, *could not* have removed—a jurisdictional bar arising after the Act's passage. For just such an after-arising jurisdictional bar, the United States points to the same statutes on which the Tribe rests its position. In the United States' view, these enactments must be construed to pre-empt the application "of state laws (especially state tax laws) to Indians and their property within a reservation." Brief for United States as *Amicus Curiae* 14.

In support of their convergent arguments, the Yakima Nation and the United States cite this Court's unanimous decision in *Moe* v. *Confederated Salish and Kootenai Tribes,* 425 U. S. 463 (1976), which they contend repudiates the continuing jurisdictional force of the General Allotment Act. In that case, the State of Montana sought to impose its cigarette sales and personal property taxes, as well as vendor-licensing fees, on Indian residents of a reservation located entirely within the State. It relied for jurisdiction upon § 6 of the General Allotment Act, but did not limit its claim of taxing authority to the reservation's allottees or even to those activities taking place on allotted reservation fee land. Instead, the State made an "all or nothing" claim to reservation-wide jurisdiction (trust land included), arguing that any scheme of divided jurisdiction would be inequitable. Brief for Appellants in *Moe,* O. T. 1975, No. 74–1656, p. 17. We declined Montana's invitation to ignore the plain language of § 6, which "[b]y its terms [did] not reach Indians residing" or conducting business on trust lands. *Moe,* 425 U. S., at 478. The assertion of reservation-wide jurisdiction, we said, could not be sustained. But we went much further: In light of Congress' repudiation in 1934 of the policies behind the General Allotment Act, we concluded that the Act could no longer be read to provide Montana plenary jurisdiction even over those Indians residing on reservation fee lands:

> "The State has referred us to no decisional authority—and we know of none—giving the meaning for which it contends to § 6 of the General Allotment Act in the face of the many and complex intervening jurisdictional statutes directed at the reach of state law within reservation lands . . . . Congress by its more modern legislation has evinced a clear intent to eschew any such 'checkerboard' approach within an existing Indian reservation, and our cases have in turn followed Congress' lead in this area." *Id.,* at 479.

Reasoning from *Moe*, the Yakima Nation and the United States argue that if § 6 no longer provides for *plenary* state jurisdiction over the owners of reservation fee lands, then it cannot support the exercise of the narrower jurisdiction asserted by Yakima County here. They concede, as they must, that in *Moe* the Court did not address the Burke Act proviso to § 6, which figures so prominently in Yakima County's analysis. But real property taxes were not at issue in *Moe*, they argue, making the proviso irrelevant. And because a proviso can only operate within the reach of the principal provision it modifies, cf. *United States* v. *Morrow*, 266 U. S. 531, 534–535 (1925), neither the language of § 6 proper nor the proviso can be considered effective after *Moe*.

We think this view rests upon a misunderstanding of *Moe* and a misperception of the structure of the General Allotment Act. As to the former: The Tribe's and the United States' interpretation of our opinion in *Moe* reduces ultimately to the proposition that we held § 6 to have been repealed by implication. That is not supportable, however, since it is a "cardinal rule . . . that repeals by implication are not favored," *Posadas* v. *National City Bank*, 296 U. S. 497, 503 (1936), and since we made no mention of implied repeal in our opinion. *Moe* was premised, instead, on the implausibility, in light of Congress' postallotment era legislation, of Montana's construction of § 6 that would extend the State's *in personam* jurisdiction beyond the section's literal coverage ("each and every *allottee*") to include *subsequent* Indian owners (through grant or devise) of the allotted parcels. This approach, we said, would create a "checkerboard" pattern in which an Indian's personal law would depend upon his parcel ownership; it would contradict "the many and complex intervening jurisdictional statutes" dealing with States' civil and criminal jurisdiction over reservation Indians; and it would produce almost surreal administrative problems, making the applicable law of civil relations depend not upon the locus of the transaction but upon the character of the

reservation land owned by one or both parties. See *Moe*, *supra*, at 478–479.

Thus, even as to § 6 personal jurisdiction, *Moe* in no way contradicts *Goudy* v. *Meath*, which involved the personal liability for taxes of an Indian who not merely owned an allotted parcel, but was, as the language of § 6 requires, himself an allottee. See 203 U. S., at 147, 149. But (and now we come to the misperception concerning the *structure* of the General Allotment Act) *Goudy* did not rest exclusively, or even primarily, on the § 6 grant of personal jurisdiction over allottees to sustain the land taxes at issue. Instead, it was the *alienability of the allotted lands*—a consequence produced in these cases not by § 6 of the General Allotment Act, but by § 5[3]—that the Court found of central significance. As the first basis of its decision, before reaching the "further" point of personal jurisdiction under § 6, *id.*, at 149, the *Goudy* Court said that, although it was certainly possible for Congress to "grant the power of voluntary sale, while withholding the land from taxation or forced alienation," such an intent would not be presumed unless it was "clearly manifested." *Ibid.* For "it would seem strange to withdraw [the] protection [of the restriction on alienation] and permit the Indian to dispose of his lands as he pleases, while at the same time releasing it *[sic]* from taxation." *Ibid.* Thus, when § 5 rendered the allotted lands alienable and en-

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[3] Section 5 of the General Allotment Act provides in part:

"[A]t the expiration of said [trust] period the United States will convey [the allotted lands] by patent to said Indian . . . in fee, discharged of said trust and free of all charge or incumbrance whatsoever . . . . And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void . . . ." 25 U. S. C. § 348.

The negative implication of the last quoted sentence, of course, is that a conveyance of allotted land is permitted once the patent issues.

cumberable, it also rendered them subject to assessment and forced sale for taxes.

The Burke Act proviso, enacted in 1906, made this implication of § 5 explicit, and its nature more clear. As we have explained, the purpose of the Burke Act was to change the outcome of our decision in *In re Heff*, 197 U. S. 488 (1905), so that § 6's general grant of civil and criminal jurisdiction over Indian allottees would not be effective until the 25-year trust period expired and patents were issued in fee. The proviso, however, enabled the Secretary of the Interior to issue fee patents to certain allottees *before* expiration of the trust period. Although such a fee patent would not subject its Indian owner to *plenary* state jurisdiction, fee ownership would free the *land* of "all restrictions as to sale, incumbrance, or taxation." 25 U. S. C. § 349. In other words, the proviso reaffirmed for such "prematurely" patented land what § 5 of the General Allotment Act implied with respect to patented land generally: subjection to state real estate taxes.[4] And when Congress, in 1934, while putting an end to further allotment of reservation land, see 25 U. S. C. § 461, chose *not* to return allotted land to pre-General Allotment Act status, leaving it fully alienable by the allottees, their heirs, and assigns, see *Brendale*, 492 U. S., at 423 (plurality opinion); *Hodel* v. *Irving*, 481 U. S. 704, 708–709 (1987), it chose not to terminate state taxation upon those lands as well.

The Yakima Nation and the United States deplore what they consider the impracticable, *Moe*-condemned "checkerboard" effect produced by Yakima County's assertion of ju-

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[4] Since the proviso is nothing more than an acknowledgment (and clarification) of the operation of § 5 with respect to *all* fee-patented land, it is inconsequential that the trial record does not reflect "which (if any) of the parcels owned in fee by the Yakima Nation or individual members originally passed into fee status pursuant to the proviso, rather than at the expiration of the trust period . . . ." Brief for United States as *Amicus Curiae* 13, n. 10.

risdiction over reservation fee-patented land. But because the jurisdiction is *in rem* rather than *in personam*, it is assuredly not *Moe*-condemned; and it is not impracticable either. The parcel-by-parcel determinations that the State's tax assessor is required to make on the reservation do not differ significantly from those he must make off the reservation, to take account of immunities or exemptions enjoyed, for example, by federally owned, state-owned, and church-owned lands. We cannot resist observing, moreover, that the Tribe's and the United States' favored disposition also produces a "checkerboard," and one that is *less* readily administered: They would allow state taxation of only those fee lands owned (from time to time) by nonmembers of the Tribe. See Brief for Yakima Nation 16, n. 8; Brief for United States as *Amicus Curiae* 14, n. 12. See also *Brendale*, *supra*, at 422–425 (plurality opinion) (affirming "checkerboard" with respect to zoning power over reservation fee land).

Turning away from the statutory texts altogether, the Yakima Nation argues that state jurisdiction over reservation fee land is manifestly inconsistent with the policies of Indian self-determination and self-governance that lay behind the Indian Reorganization Act and subsequent congressional enactments. This seems to us a great exaggeration. While the *in personam* jurisdiction over reservation Indians at issue in *Moe* would have been significantly disruptive of tribal self-government, the mere power to assess and collect a tax on certain real estate is not. In any case, these policy objections do not belong in this forum. If the Yakima Nation believes that the objectives of the Indian Reorganization Act are too much obstructed by the clearly retained remnant of an earlier policy, it must make that argument to Congress. Judges "are not at liberty to pick and choose among congressional enactments, and when two [or more] statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to

regard each as effective." *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974).

III

Yakima County sought to impose two separate taxes with respect to reservation fee lands, an ad valorem tax and an excise tax on sales. We discuss each in turn, in light of the principles set forth above.

A

Liability for the ad valorem tax flows exclusively from ownership of realty on the annual date of assessment. See *Timber Traders, Inc.* v. *Johnston*, 87 Wash. 2d 42, 47, 548 P. 2d 1080, 1083 (1976). The tax, moreover, creates a burden on the property alone. See Wash. Rev. Code § 84.60.020 (1989) ("The taxes assessed upon real property . . . shall be a lien thereon from and including the first day of January in the year in which they are levied until the same are paid . . ."); *Clizer* v. *Krauss*, 57 Wash. 26, 30–31, 106 P. 145, 146–147 (1910). See also *Timber Traders, Inc.*, *supra; In re Electric City, Inc.*, 43 B. R. 336, 341 (Bkrtcy. Ct. WD Wash. 1984) (dictum). The Court of Appeals held, the Tribe does not dispute, and we agree, that this ad valorem tax constitutes "taxation of . . . land" within the meaning of the General Allotment Act and is therefore prima facie valid.

The Court of Appeals, however, derived from our decision three Terms ago in *Brendale* the conclusion that the Yakima Nation has a "protectible interest" against imposition of the tax on Tribe members upon demonstration of the evils described in that opinion, and remanded to the District Court for further findings in that regard. Neither of the parties supports this aspect of the Ninth Circuit's ruling, believing that the law affords an unconditional answer to permissibility of the tax. We agree.

Brendale addressed a challenge to the Yakima Nation's assertion of authority to zone reservation fee land owned by non-Indians. The concept of "protectible interest" to which

JUSTICE WHITE's opinion in the case referred, see 492 U. S., at 431, grew out of a long line of cases exploring the very narrow powers reserved to tribes over the conduct of non-Indians within their reservations. See *Montana* v. *United States*, 450 U. S. 544, 566 (1981) (citing cases). Even though a tribe's "inherent sovereign powers . . . do not extend to the activities of nonmembers, . . . [a] tribe may . . . retain inherent power *to exercise civil authority over the conduct of non-Indians on fee lands within its reservation* when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.*, at 565–566 (emphasis added). *Brendale* and its reasoning are not applicable to the present cases, which involve not a proposed extension of a tribe's inherent powers, but an asserted restriction of a State's congressionally conferred powers. Moreover, as the Court observed recently in *California* v. *Cabazon Band of Mission Indians*, 480 U. S., at 215, n. 17, we have traditionally followed "a *per se* rule" "[i]n the special area of state taxation of Indian tribes and tribal members." Though the rule has been most often applied to produce categorical prohibition of state taxation when there has been no "cession of jurisdiction or other federal [legislative permission]," *Mescalero Apache Tribe*, 411 U. S., at 148, we think it also applies to produce categorical allowance of state taxation when it has in fact been authorized by Congress. "Either Congress intended to pre-empt the state taxing authority or it did not. Balancing of interests is not the appropriate gauge for determining validity since it is that very balancing which we have reserved to Congress." *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U. S. 134, 177 (1980) (opinion of REHNQUIST, J.). If the Ninth Circuit's *Brendale* test were the law, litigation would surely engulf the States' annual assessment and taxation process, with the validity of each levy dependent upon a multiplicity of factors that vary from year to year,

and from parcel to parcel. For reasons of practicality, as well as text, we adhere to our *per se* approach.

B

We think the excise tax on sales of fee land is another matter, as did the Court of Appeals. While the Burke Act proviso does not purport to describe the entire range of *in rem* jurisdiction States may exercise with respect to fee-patented reservation land, we think it does describe the entire range of *jurisdiction to tax.* And that description is "taxation of . . . land." Yakima County seeks to expand this text by citing our statement in *Squire* v. *Capoeman,* 351 U. S. 1 (1956), to the effect that "[t]he literal language of the [Burke Act] proviso evinces a congressional intent to subject an Indian allotment to *all* taxes" after it has been patented in fee. *Id.,* at 7–8 (emphasis added). This dictum was addressed, however, to the United States' assertion that the General Allotment Act barred only States and localities, and not the Federal Government, from levying taxes on Indian allotments during the trust period. "All taxes," in the sense of federal as well as local, in no way expands the text beyond "taxation *of . . . land.*"

It does not exceed the bounds of permissible construction to interpret "taxation of land" as including taxation of the proceeds from sale of land; and it is even true that such a construction would be fully in accord with *Goudy*'s emphasis upon the consequences of alienability, which underlay the Burke Act proviso. That is surely not, however, the phrase's unambiguous meaning—as is shown by the Washington Supreme Court's own observation that "a tax upon the sale of property is not a tax upon the subject matter of that sale." *Mahler* v. *Tremper,* 40 Wash. 2d 405, 409, 243 P. 2d 627, 629 (1952). It is quite reasonable to say, in other words, that though the object of the *sale* here is land, that does not make land the object of the *tax,* and hence does not

invoke the Burke Act proviso. When we are faced with these two possible constructions, our choice between them must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: "[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana* v. *Blackfeet Tribe*, 471 U. S., at 766. See also *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S., at 174.

To render this a "taxation of land" in the narrow sense, it does not suffice that, under Washington law, the excise tax creates "a specific lien upon each piece of real property sold from the time of sale until the tax shall have been paid . . . ." Wash. Rev. Code § 82.45.070 (1989). A lien upon real estate to satisfy a tax does not convert the tax into a tax upon real estate—otherwise all sorts of state taxation of reservation-Indian activities could be validated (even the cigarette sales tax disallowed in *Moe*) by merely making the unpaid tax assessable against the taxpayer's fee-patented real estate. Thus, we cannot even accept the county's narrower contention that the excise tax lien is enforceable against reservation fee property conveyed by an Indian seller to a non-Indian buyer. The excise tax remains a tax upon the Indian's activity of selling the land, and thus is void, whatever means may be devised for its collection. Cf., *e. g.*, *Washington* v. *Confederated Tribes of Colville Reservation*, *supra*, at 154–159 (Indian proprietors may be compelled to precollect taxes whose incidence *legally* falls on non-Indians); *Moe*, 425 U. S., at 482 (same).

The short of the matter is that the General Allotment Act explicitly authorizes only "taxation of . . . land," not "taxation with respect to land," "taxation of transactions involving land," or "taxation based on the value of land." Because it is eminently reasonable to interpret that language as not including a tax upon the sale of real estate, our cases require us to apply that interpretation for the benefit of the Tribe.

Accordingly, Yakima County's excise tax on sales of land cannot be sustained.

* * *

We hold that the General Allotment Act permits Yakima County to impose an ad valorem tax on reservation land patented in fee pursuant to the Act, but does not allow the county to enforce its excise tax on sales of such land. The Yakima Nation contends it is not clear whether the parcels at issue in these cases were patented under the General Allotment Act, rather than under some other statutes in force prior to the Indian Reorganization Act. *E. g.*, 25 U. S. C. §§ 320, 379, 404, 405. We leave for resolution on remand that factual point, and the prior legal question whether it makes any difference.

The judgment is affirmed, and the cause is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I have wandered the maze of Indian statutes and case law tracing back 100 years. Unlike the Court, however, I am unable to find an "unmistakably clear" intent of Congress to allow the States to tax Indian-owned fee-patented lands. Accordingly, while I concur with the majority's conclusion that Yakima County may not impose excise taxes, I dissent from its conclusion that the county may impose ad valorem taxes on Indian-owned fee-patented lands.

The Court correctly sets forth the "'unmistakably clear'" intent standard to be applied. *Ante*, at 258. But then, in my view, it seriously misapplies it, over the well-taken objections of the Yakima Nation and against the sound guidance of the United States as *amicus curiae.* At bottom, I believe the Court misapprehends the nature of federal pre-emption analysis and, as a result, dramatically devalues longstanding

federal policies intended to preserve the integrity of our Nation's Indian tribes. As I see it, the Court errs in three ways in arriving at its finding of "unmistakably clear" intent to allow taxation of Indian-owned fee-patented lands. First, it divines "unmistakably clear" intent from a proviso, which by its very terms applies only to land patented prematurely (and not to all patented land) and which is now orphaned, its antecedent principal clause no longer having any force of law. Second, acting on its own intuition that it would be "strange" for land to be alienable and encumberable yet not taxable, the Court *infers* "unmistakably clear" intent of Congress from an otherwise irrelevant statutory section that itself makes no mention of taxation of fee lands. Finally, misapprehending the nature of federal pre-emption of state laws taxing the Indians, the Court mistakenly assumes that it cannot give any effect to the many complex intervening statutes reflecting a complete turnabout in federal Indian policy—now aimed at preserving tribal integrity and the Indian land base—since enactment at the turn of the century of the statutory provisions upon which the Court relies. These current and now longstanding federal policies weigh decisively against the Court's finding that Congress has intended the States to tax—and, as in these cases, to foreclose upon—Indian-held lands.

1. The majority concedes that the principal clause of § 6 of the Dawes Act, which subjected allottees to the plenary civil and criminal jurisdiction of the States, can "no longer be read to provide . . . plenary jurisdiction even as to those Indians residing on reservation fee lands." *Ante*, at 261. See also *DeCoteau* v. *District County Court*, 420 U. S. 425, 427, n. 2 (1975) (recognizing that statutory definition of "Indian country," which includes all reservation land "notwithstanding the issuance of any patent," 18 U. S. C. § 1151, demarcates general boundary of civil jurisdiction of States); *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164, 177–178, and n. 17 (1973) (discussing more recent congressional enact-

ments, *i. e.*, Pub. L. 280 and the Indian Civil Rights Act of 1968, giving States civil and criminal jurisdiction over reservations but only upon consent of the affected tribe).

Rather than rely on the principal clause of § 6, the Court turns to a proviso added by the Burke Act, enacted in 1906.[1] *Ante*, at 264. It acknowledges that the proviso was not even mentioned in *Goudy* v. *Meath*, 203 U. S. 146 (1906),[2] a case upon which the majority relies. *Ante*, at 258–259. As an initial matter, the proviso's attachment to an obsolete principal clause, if anything, must diminish its force as a measure of congressional intent. Moreover, by its terms, the proviso does not remove "restrictions as to . . . taxation" from *all* allotted land. It removes restrictions solely from allotted land that happened to be patented in fee "prematurely," *i. e.*, prior to the expiration of the 25-year trust period. To be sure, the proviso could be read to suggest that Congress *possibly* intended taxation of allotted lands other than those lands patented prematurely.[3] But a possibility, or even a likelihood, does not meet this Court's demanding standard of "unmistakably clear" intent.

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[1] The proviso states in pertinent part:

"[T]he Secretary of the Interior may, in his discretion . . . whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed . . . ." 25 U. S. C. § 349.

[2] *Goudy* relied upon the principal clause of § 6. Even if this principal clause had any continuing vitality, whether *Goudy* would still be good law is questionable in light of the Court's more recent decision in *Bryan* v. *Itasca County*, 426 U. S. 373 (1976), where it declined to find a clear intent of Congress to allow a State to tax Indians on the basis of a statute, § 4(a) of Pub. L. 280, that on its face conferred upon the State general civil jurisdictional powers over Indian country.

[3] This reading, which would imply the taxability of all fee-patented lands *regardless of whether the owner was an original allottee*, is in some tension with what the majority points out to be the "literal coverage ('each and every *allottee*')" of the principal general-jurisdiction-conferring clause. *Ante*, at 262.

2. And so the Court turns to § 5 of the Dawes Act for support. The majority claims that "the proviso reaffirmed for such 'prematurely' patented land what § 5 of the [Dawes Act] *implied* with respect to patented land generally: subjection to state real estate taxes." *Ante*, at 264 (emphasis added). Because § 5 renders fee-patented lands alienable and encumberable, the majority suggests that "'it would seem strange to withdraw [the] protection [of the restriction on alienation] and permit the Indian to dispose of his lands as he pleases, while at the same time releasing it *[sic]* from taxation.'" *Ante*, at 263 (quoting *Goudy* v. *Meath*, 203 U. S., at 149).

The majority concedes that § 5 only "implied" this conclusion. *Ante*, at 263. In my view, a "mere implication" falls far short of the "unmistakably clear" intent standard. Cf. *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 260 (1991) (SCALIA, J., concurring in part and concurring in judgment) ("Given the presumption against extraterritoriality . . . and the requirement that the intent to overcome it be 'clearly expressed,' it is in my view not reasonable to give effect to mere implications from the statutory language as the EEOC has done").

Nor can what this Court finds "strange" substitute for the "unmistakably clear" intent of Congress. To impute to Congress an intent to tax Indian land because the Court thinks it "strange" not to do so overlooks the countervailing presumption that "Congress has . . . acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." *Williams* v. *Lee*, 358 U. S. 217, 220 (1959). I need not pass upon the wisdom of the majority's fiscal theory that if land is alienable and encumberable, it must be taxable. I pause only to comment that Congress has made its own agreement with this particular economic theory less than "unmistakably clear." Cf. *Lochner* v. *New York*, 198 U. S. 45, 75 (1905) (Holmes, J., dissenting) ("This case is decided upon an economic theory which a large part of the country does not entertain").

3. In any event, if "strangeness" is the benchmark of what Congress unmistakably intends, I find it stranger still to presume that Congress intends States to tax—and, as in these cases, foreclose upon—Indian-owned reservation lands. This presumption does not account for Congress' "abrupt" termination of the assimilationist policies of the Dawes Act in favor of the Indian Reorganization Act's now well-established "principles of tribal self-determination and self-governance." See *ante*, at 255.

The Court announces that the Yakima's "policy objections do not belong in this forum." *Ante*, at 265. Yet, not to consider the policies of the Indian Reorganization Act is to forget that "we previously have construed the effect of legislation affecting reservation Indians in light of 'intervening' legislative enactments." *Bryan* v. *Itasca County*, 426 U. S. 373, 386 (1976). See also *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U. S. 463, 479 (1976) (noting that State's interpretation of § 6 of the Dawes Act cannot survive "the many and complex intervening jurisdictional statutes" subsequently enacted). The majority appears to assume that these intervening enactments need not be given any effect here, because they do not rise to the level of a "repeal" of the Dawes and Burke Acts. *Ante*, at 262. I agree with the majority that implied repeals are not favored. But this is beside the point. A "repeal"—whether express or implied—need not be shown to preclude the States from taxing Indian lands.

As in all state-Indian jurisdiction cases, the relevant inquiry is whether Congress has *pre-empted* state law, not whether it has *repealed* its own law. See, *e. g.*, *California* v. *Cabazon Band of Mission Indians*, 480 U. S. 202, 216 (1987); *Bryan* v. *Itasca County*, 426 U. S., at 376, n. 2. Under established principles of pre-emption, and notwithstanding the majority's derisive characterizations, see *ante*, at 264–265, state laws may in fact give way to "mere" federal policies and interests. See *English* v. *General Electric Co.*, 496 U. S. 72, 79 (1990) (state law is pre-empted to the extent that it

"'stands as an obstacle to the accomplishment and execution of the *full purposes and objectives* of Congress'") (quoting *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941)) (emphasis added)). Thus, in the Indian context, "'[s]tate jurisdiction is pre-empted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.'" *California* v. *Cabazon Band of Mission Indians*, 480 U. S., at 216 (quoting *New Mexico* v. *Mescalero Apache Tribe*, 462 U. S. 324, 334 (1983)).[4] See also *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 143–145 (1980) (recognizing "firm federal policy" of promoting tribal self-sufficiency and economic development and noting that the pre-emption inquiry "call[s] for a particularized inquiry into the nature of the state, federal, and tribal *interests* at stake") (emphasis added).

Accordingly, this Court has made clear that "[t]he inquiry is to proceed in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." *Cabazon*, 480 U. S., at 216. In *Cabazon*, for example, the Court gave weight to recent policy statements by Congress and the President in support of Indian autonomy and self-determination, deeming them to be "particularly significant in this case." *Id.*, at 216, n. 19; see also *id.*, at 217–218, and nn. 20–21.[5]

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[4] In *Cabazon*, the Court reiterated that "the federal tradition of Indian immunity from state taxation is very strong and that the state interest in taxation is correspondingly weak." 480 U. S., at 215, n. 17.

[5] I have previously observed:

"Surely, in considering whether Congress intended tribes to enjoy civil jurisdiction, . . . this Court should direct its attention not to the intent of the Congress that passed the Dawes Act, but rather to the intent of the Congress that repudiated the Dawes Act, and established the Indian policies to which we are heir." *Brendale* v. *Confederated Tribes and Bands of Yakima Nation*, 492 U. S. 408, 464 (1989) (opinion concurring in judgment in part and dissenting in part).

I believe that if the majority were inclined to give federal policy interests any effect, its conclusion as to Congress' "unmistakably clear" intent would doubtless be different today. The nature of federal policy interests emerges clearly from a review of the effects of the Indian land-allotment policies. During the allotment period from 1887 to 1934, Indian landholdings were reduced nationwide, through a combination of sales by allottees to non-Indians and Government sales of "surplus" unallotted lands, from about 138 million acres to 48 million acres. See F. Cohen, Handbook of Federal Indian Law 138 (1982). Of the 90 million acres lost, about 27 million acres passed from Indians to non-Indians, as a result of the alienability of the newly allotted land. *Ibid.* See also Readjustment of Indian Affairs, Hearings on H. R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2d Sess., 17 (Comm. Print 1934) (Memorandum of John Collier, Commissioner of Indian Affairs) (Hearings).

For 12,000 years, the Yakima Indians have lived on their lands in eastern Washington. See H. Schuster, The Yakima 14 (1990). Because of the allotment policies, non-Indians today own more than a quarter million acres, more than half the land originally allotted to individual members of the Yakimas. *Id.*, at 83. "Allotment and the subsequent sale or lease of Indian lands accomplished what the 'genocide' of epidemics, war, and bootlegged alcohol had not been able to do: a systematic 'ethnocide' brought about by a loss of Indian identity with the loss of land." H. Schuster, The Yakimas: A Critical Bibliography 70 (1982).

It is little wonder that, as Congress moved toward repudiating the allotment system in 1934, the Commissioner of Indian Affairs informed Congress:

> "It is difficult to imagine any other system which with equal effectiveness would pauperize the Indian while impoverishing him, and sicken and kill his soul while pauperizing him, and cast him in so ruined a condition

> into the final status of a nonward dependent upon the States and counties." Hearings, at 18.

I am mystified how this Court, sifting through the wreckage of the Dawes Act, finds any "clearly retained remnant," *ante*, at 265, justifying further erosions—through tax foreclosure actions as in this litigation—to the landholdings of the Indian people.[6]

The majority deems any concerns for tribal self-determination to be a "great exaggeration." *Ante*, at 265. I myself, however, am "far from convinced that when a State imposes taxes upon reservation members without their consent, its action can be reconciled with tribal self-determination." *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S., at 179. The majority concludes that, as a practical matter, "mere" property taxes are less disruptive of tribal integrity than cigarette sales taxes and certain personal property taxes (as on automobiles) that were at issue in *Moe*. *Ante*, at 264–265. I cannot agree that paying a few more pennies for cigarettes or a tax on some personal property is more a threat to tribal integrity and self-determination than foreclosing upon and seizing tribal lands.

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[6] The Court concludes that Congress' decision in the Indian Reorganization Act not to reimpose restraints on alienation of land already patented suggests that Congress also "chose not to terminate state taxation upon those lands as well." *Ante*, at 264. In 1934, when the process of allotment was halted, 246,569 assignments had been made nationwide, totaling nearly 41 million acres (slightly less than the entire acreage of the State of Washington). Indian Heirship Land Survey, Memorandum of the Chairman to the Senate Committee on Interior and Insular Affairs, 86th Cong., 2d Sess., pt. I, p. 2 (Comm. Print 1960). In my judgment, Congress' choice not to effect a taking of this magnitude does not reflect an intent to continue other policies contributing to the loss of Indian lands. If anything, Congress' intent is to be gauged not by negative implication from what it failed to do, but from provisions in the Act that stop further allotment, that freeze in trust already allotted-but-not-yet-patented land, and that affirmatively authorize repurchases of Indian lands to rebuild the tribal land base. See generally 25 U. S. C. §§ 461–465.

Finally, the majority platitudinously suggests that the Yakima "must make [their policy] argument to Congress." *Ante*, at 265. I am less confident than my colleagues that the 31 Yakima Indian families likely to be rendered landless and homeless by today's decision are well positioned to lobby for change in the vast corridors of Congress.

Syllabus

NORMAN ET AL. *v.* REED ET AL.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 90–1126. Argued October 7, 1991—Decided January 14, 1992*

Illinois citizens wishing to establish a "new political party" may field candidates for statewide office after collecting the signatures of 25,000 eligible voters, and they may field candidates solely for offices in a large "political subdivision" upon collecting the signatures of 25,000 subdivision voters. Ill. Rev. Stat., ch. 46, § 10–2. However, when a subdivision comprises large separate districts from which some of its officers are elected, party organizers seeking to fill such offices must collect 25,000 signatures from each district. *Ibid.* A new political party becomes an "established political party" if it receives 5% of the vote in the next election, but a party that has not engaged in a statewide election can become "established" only in a subdivision where it has fielded candidates. Petitioners sought to expand the Harold Washington Party (HWP), an established party in Chicago, to Cook County, a subdivision comprising two electoral districts: a city district and a suburban district. Before the 1990 elections, they presented the county with a petition containing 44,000 signatures from the city district and 7,800 signatures from the suburban district and a slate of candidates for both at-large and district-specific seats. Respondent Reed and other voters (collectively, Reed) filed objections with the Cook County Officers Electoral Board (Board). The Board rejected Reed's claim that § 10–5—which prohibits a new party from bearing an established party's name—prevented petitioners from using the HWP name, holding that § 10–5's purpose was to prevent persons not affiliated with a party from latching on to its name, thus causing voter confusion and denigrating party cohesiveness, and that these dangers were not present here since one Evans—the only HWP candidate to run in Chicago's most recent election—had authorized petitioners to use the name. The Board also found that petitioners' failure to gather 25,000 signatures from the suburbs disqualified the HWP candidates wishing to run for suburban-district seats, but not those running for city-district and countywide offices, and that petitioners' failure to designate HWP candidates for judicial seats did not disqualify the entire slate. The County Circuit Court affirmed the Board's

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*Together with No. 90–1435, *Cook County Officers Electoral Board et al.* v. *Reed et al.*, also on certiorari to the same court.

ruling on the use of the HWP name, but held that the entire slate was doomed under § 10–2 by the failure to obtain sufficient suburban-district signatures and, alternatively, the failure to list any judicial candidates. The State Supreme Court held that § 10–5 prohibited petitioners from using the HWP name and that, under § 10–2, the failure to gather enough suburban-district signatures disqualified the entire slate. This Court granted petitioners' application for a stay, permitting them to run in the election. Although no HWP candidates were elected, several received over 5% of the vote, which would qualify the HWP as an "established political party" within all or part of the county in the next election.

Held:

1. The controversy is not moot even though the 1990 election is over, both because it is "capable of repetition, yet evading review," and because the results of that election will entitle the HWP to enter the next election as an established party in all or part of the county so long as its candidates were entitled to their places on the 1990 ballot. Pp. 287–288.

2. Sections 10–2 and 10–5, as construed by the State Supreme Court, violate petitioners' right of access to the county ballot. Pp. 288–295.

(a) The right of citizens to create and develop new political parties derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging all voters' opportunities to express their own political preferences. See, *e. g.*, *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173, 184. Therefore, a State may limit new parties' access to the ballot only to the extent that a sufficiently weighty state interest justifies the restriction. Any severe restriction must be narrowly drawn to advance a state interest of compelling importance. See *id.*, at 184, 186. Pp. 288–289.

(b) The State Supreme Court's inhospitable reading of § 10–5 is far broader than is necessary to serve the asserted state interest in preventing misrepresentation and electoral confusion. That interest could be served merely by requiring candidates to get formal permission from an established party to use its name, a simple expedient for fostering an informed electorate without suppressing small parties' growth. Reed offers no support for her apparent assumption that petitioners did not obtain such permission from the Chicago HWP, and the State Supreme Court itself found unworthy of mention any theory that Evans lacked authority under state law to authorize the HWP name's use. Pp. 289–291.

(c) Similarly, disqualifying all HWP candidates because of the failure to collect 25,000 signatures in each district is not the least restrictive

means of advancing Illinois' interest in limiting the ballot to parties with demonstrated public support, since it would require petitioners to collect twice as many signatures to field candidates in the county as they would need if they wished to field candidates for statewide office. See *Illinois Bd. of Elections* v. *Socialist Workers Party*, *supra*. Even if Illinois could have constitutionally required petitioners to demonstrate a distribution of support throughout Cook County, it could have done so without also raising the overall quantum of needed support above what the State expects of new statewide parties. Moreover, it requires elusive logic to show a serious state interest in demanding a distribution of support for new local parties when the State deems it unimportant to require such support for new statewide parties. Pp. 291–294.

(d) Nonetheless, requiring candidates for suburban-district offices to obtain 25,000 nominating signatures from the suburbs does not unduly burden their right to run under the HWP name. Just as the State may not cite the HWP's failure in the suburbs as reason for disqualifying its candidates in the city district, neither may the HWP cite its success in the city district as a sufficient condition for running candidates in the suburbs. P. 295.

3. The issue whether the HWP's failure to field judicial candidates doomed the entire slate is remanded to the State Supreme Court to consider in the first instance. Pp. 295–296.

Affirmed in part, reversed in part, and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, BLACKMUN, STEVENS, O'CONNOR, and KENNEDY, JJ., joined. SCALIA, J., filed a dissenting opinion, *post*, p. 296. THOMAS, J., took no part in the consideration or decision of the cases.

R. Eugene Pincham argued the cause and filed briefs for petitioners in No. 90–1126.

Kenneth L. Gillis argued the cause for petitioners in No. 90–1435. On the briefs were *Jack O'Malley*, *Burton Stephen Odelson*, and *Mathias William Delort*.

Gregory A. Adamski argued the cause for respondents. With him on the brief for respondents Reed et al. was *Karen Conti*. *Messrs. O'Malley*, *Odelson*, and *Delort* filed a brief

for Cook County Officers Electoral Board, respondents in No. 90–1126.†

JUSTICE SOUTER delivered the opinion of the Court.

In these consolidated cases, we review a decision of the Supreme Court of Illinois barring petitioners in No. 90–1126 (petitioners) from appearing under the name of the Harold Washington Party on the November 1990 ballot for Cook County offices. We affirm in part, reverse in part, and remand for further proceedings not inconsistent with this opinion.

I

Under Illinois law, citizens organizing a new political party must canvass the electoral area in which they wish to field candidates and persuade voters to sign their nominating petitions. Organizers seeking to field candidates for statewide office must collect the signatures of 25,000 eligible voters,[1] Ill. Rev. Stat., ch. 46, § 10–2 (1989), and, if they wish to run candidates solely for offices within a large "political subdivision" like Cook County, they need 25,000 signatures from the subdivision. *Ibid.* If, however, the subdivision itself comprises large separate districts from which some of its officers are elected, party organizers seeking to fill such offices must collect 25,000 signatures from each district. *Ibid.*[2] If the

†Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union of Illinois by *William T. Barker*, *Harvey M. Grossman*, *John A. Powell*, *Steven R. Shapiro*, and *Arthur N. Eisenberg;* and for the Committee for Party Renewal by *Robert E. Tait.*

[1] More precisely, they must collect the signatures of 25,000 voters or 1% of the number of voters at the preceding statewide general election, whichever is less. Ill. Rev. Stat., ch. 46, § 10–2 (1989). Given the State's population, the 25,000 signature requirement applies.

[2] The statute reads in relevant part:

"In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only

organizers collect enough signatures to place their candidates on the ballot, their organization becomes a "new political party" under Illinois law, and if the party succeeds in gathering 5% of the vote in the next election, it becomes an "established political party," freed from the signature requirements of § 10–2. *Ibid.* A political party that has not engaged in a statewide election, however, can be "established" only in a political subdivision where it has fielded candidates. A party is not established in Cook County, for example, merely because it has fared well in Chicago's municipal elections.

The Harold Washington Party (HWP or Party), named after the late mayor of Chicago, has been established in the city of Chicago since 1989. Petitioners were the principal organizers of an effort to expand the Party by establishing it in Cook County, and, as candidates for county office, they sought to run under the Party name in the November 1990 elections.

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within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large."

The statute caps the 5% requirement for both district and subdivision petitions at 25,000 signatures, the number effectively required on statewide petitions. Cook County and its districts are so large that this cap applies to each.

Cook County comprises two electoral districts: the area corresponding to the city of Chicago (city district) and the rest of the county (suburban district).[3] Although some county officials are elected at large by citizens of the entire county, members of the county board of commissioners are elected separately by the citizens of each district to fill county board seats specifically designated for that district. While certain petitioners wished to run for offices filled by election at large, others sought to capture the county board seats representing the city and suburban districts of Cook County.

Because the Party had previously engaged solely in Chicago municipal elections, petitioners were obliged to qualify as a "new party" in Cook County in order to run under the Party name. Accordingly, § 10–2 required them to obtain 25,000 nominating signatures in order to designate candidates for the at-large offices. And since petitioners wished to field candidates for the county board seats allocated to the separate districts, they also had to collect 25,000 signatures from each district. Petitioners gathered 44,000 signatures on the city-district component of their petition, but only 7,800 on the suburban component.

After petitioners filed the petition with the county authorities and presented their slate of candidates for both at-large and district-specific seats, respondent Dorothy Reed and several other interested voters (collectively, Reed) filed objections to the slate with the Cook County Officers Electoral Board (Board or Electoral Board). The Board rejected most

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[3] These are the current districts of Cook County. We have learned that in a November 1990 referendum, the voters of Cook County adopted an ordinance providing for the division of the county by 1994 into 17 districts, each of which will send one commissioner to the county board. This Court has been unable to secure any official record of the new ordinance, however. In any event, the parties have not treated this issue as having any bearing on our disposition of these cases, and we do not see how it could have.

of Reed's claims. First, it dismissed her contention that, because there was already an established political party named the "Harold Washington Party" in the city of Chicago, petitioners could not run under that name for the various county offices. Reed relied on the provision of Illinois law that a "new political party," which petitioners sought to form, "shall not bear the same name as, nor include the name of any established political party . . . ." Ill. Rev. Stat., ch. 46, § 10–5 (1989). The Board, however, suggested that a literal reading of § 10–5 would effectively forbid a political party established in one political subdivision to expand into others, and held that the provision's true purpose was "to prevent persons who are not affiliated with a party from 'latching on' to the popular party name, thereby promoting voter confusion and denigrating party cohesiveness." The Board found no such dangers here, as Timothy Evans, the only HWP candidate to run in Chicago's most recent municipal election, had authorized petitioners to use the Party name.

The Board also rejected Reed's claim that petitioners had failed to gather enough nominating signatures to run as a party for any Cook County office. While the Board found that their failure to gather 25,000 signatures from the suburbs disqualified those who wished to run for the suburban-district commissioner seats, it held that this failure was no reason under § 10–2 to disqualify the candidates running under the Party name for city-district and countywide offices. The Board observed that construing the statute to disqualify the entire Cook County slate on this basis would advance no valid state interest and would raise serious constitutional concerns.

Finally, the Board rejected Reed's claim that, under § 10–2, petitioners' failure to designate Party candidates for any of the judicial seats designated for either the city district, the suburban district, or the county at large disqualified the entire slate of candidates running under the Party name for all

county offices.[4] It decided, among other things, that § 10–2 did not apply because the judgeships at issue were not offices of the same "political subdivision" as nonjudicial offices within Cook County.

On appeal, the Circuit Court of Cook County affirmed the Board's ruling on the use of the HWP name, but on grounds different from the Board's. It ruled that while Evans had no statutory power to authorize the use of the Party name, § 10–2 implicitly confined the scope of § 10–5 to cases where two parties seeking to use the same name coexist in the same political subdivision. Since Cook County and the city of Chicago are separate subdivisions, the Circuit Court found no violation of the Election Code.

The Circuit Court nonetheless held that under the plain language of § 10–2, petitioners' failure to obtain 25,000 signatures for the suburban-district candidates doomed the entire slate, and it alternatively held that petitioners' failure to list Party candidates for judicial office compelled the same result. For these two independent reasons, the Circuit Court reversed the Board.[5]

On review, the Supreme Court of Illinois held in a brief written order that § 10–5 prohibited petitioners from using the HWP name, and that their failure to gather enough signatures for the candidates in the suburban-district races disqualified the entire slate. It expressly declined "to discuss other points raised on the appeal" and thus chose not to ad-

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[4] Reed based her argument on what the parties call the "complete slate requirement" of § 10–2. The parties occasionally use the same term in their discussion of a separate issue, whether petitioners' failure to collect sufficient signatures in the suburban district voids their entire slate. For clarity, we avoid using the term altogether.

[5] The Circuit Court also held that petitioners' failure to gather 25,000 signatures for the candidates running under the Party name for office in the Metropolitan Water Reclamation District disqualified those candidates, but not the rest of the slate, because the Water Reclamation District was a separate political subdivision from Cook County. This ruling was not appealed to the Illinois Supreme Court and is not before this Court.

dress the effect of petitioners' failure to list candidates for county judgeships. Three of the court's seven members dissented on the ground that the majority's construction of Illinois law irrationally and unconstitutionally suppressed the development of new political parties. The majority justices indicated that they would issue an explanatory opinion, but they never have.[6]

Petitioners then applied for a stay from JUSTICE STEVENS, who, in his capacity as Circuit Justice, ordered the mandate of the Illinois Supreme Court to be "stayed or, if necessary, recalled" pending further review by this Court. Order in No. A–309 (Oct. 22, 1990). On October 25, 1990, the full Court granted petitioners' application for stay pending the filing and disposition of a petition for certiorari, 498 U. S. 931, thereby effectively reviving the Electoral Board's decision and permitting petitioners to run under the Party name in the November 6, 1990, Cook County election. According to the undisputed representation of the Board, see Brief for Petitioners in No. 90–1435, p. 10, while none of the HWP candidates was elected, several did receive over 5% of the vote, thus fulfilling, if the election stands, a necessary and apparently sufficient condition for the Party's qualification as an "established political party" within all or part of Cook County at the next election.

In due course, petitioners filed a petition for certiorari in No. 90–1126, and the Board, a respondent in that action, filed its own petition in No. 90–1435.[7] We granted each on May 20, 1991. 500 U. S. 931 (1991).

II

We start with Reed's contention that we should treat the controversy as moot because the election is over. We should

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[6] Three of the four justices in the majority have left the court since the date of the order.

[7] Under Illinois practice, if the Board's decision is appealed, it joins the prevailing party in support of its own decision.

not. Even if the issue before us were limited to petitioners' eligibility to use the Party name on the 1990 ballot, that issue would be worthy of resolution as "'capable of repetition, yet evading review.'" *Moore* v. *Ogilvie*, 394 U. S. 814, 816 (1969). There would be every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints if we should fail to resolve the constitutional issues that arose in 1990.

The matter before us carries a potential of even greater significance, however. As we have noted, the 1990 electoral results would entitle the HWP to enter the next election as an established party in all or part of Cook County, freed from the petition requirements of § 10–2, so long as its candidates were entitled to the places on the ballot that our stay order effectively gave them. This underscores the vitality of the questions posed, even though the election that gave them life is now behind us.

III

For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties. The right derives from the First and Fourteenth Amendments[8] and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. See *Anderson* v. *Celebrezze*, 460 U. S. 780, 793–794 (1983); *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173, 184 (1979); *Williams* v. *Rhodes*, 393 U. S. 23, 30–31 (1968). To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently

[8] As in *Anderson* v. *Celebrezze*, 460 U. S. 780 (1983), "we base our conclusions directly on the First and Fourteenth Amendments and do not engage in a separate Equal Protection Clause analysis. We rely, however, on the analysis in a number of our prior election cases resting on the Equal Protection Clause of the Fourteenth Amendment." *Id.*, at 786–787, n. 7.

weighty to justify the limitation, see *Anderson*, *supra*, at 789, and we have accordingly required any severe restriction to be narrowly drawn to advance a state interest of compelling importance. See *Socialist Workers Party*, *supra*, at 184, 186. By such lights we now look to whether §§ 10–2 and 10–5, as construed by the Supreme Court of Illinois, violate petitioners' right of access to the Cook County ballot.

A

Reversing the judgment of the Circuit Court, the State Supreme Court held, under § 10–5, that the Cook County candidates could not claim to represent the HWP because there already was a party by that name in the city of Chicago. The court gave no reasons for so concluding beyond declaring that "petitioner[s'] use of the Harold Washington Party name in their petition . . . violate[d] the provisions of section 10–5," which, the court noted, "prohibits use of the name of an established political party." Thus, the issue on review is not whether the Chicago HWP and the Cook County HWP are in some sense "separate parties," but whether and how candidates running for county office may adopt the name of a party established only in the city.

While the Board based its answer to this question on a determination that the city HWP had authorized petitioners to use the Party name, the State Supreme Court's order seems to exclude the very possibility of authorization, reading the prohibition on the "use of the name of an established political party" so literally as to bar candidates running in one political subdivision from ever using the name of a political party established only in another. As both the dissent below and the opinion of the Board suggest, however, this Draconian construction of the statute would obviously foreclose the development of any political party lacking the resources to run a statewide campaign. Just as obviously, § 10–5, as the State's highest court apparently construed it,

is far broader than necessary to serve the State's asserted interests.

To prevent misrepresentation and electoral confusion, Illinois may, of course, prohibit candidates running for office in one subdivision from adopting the name of a party established in another if they are not in any way affiliated with the party. The State's interest is particularly strong where, as here, the party and its self-described candidates coexist in the same geographical area. But Illinois could avoid these ills merely by requiring the candidates to get formal permission to use the name from the established party they seek to represent, a simple expedient for fostering an informed electorate without suppressing the growth of small parties. Thus, the State Supreme Court's inhospitable reading of § 10–5 sweeps broader than necessary to advance electoral order and accordingly violates the First Amendment right of political association. See *Anderson*, *supra*, at 793–794; *Williams*, *supra*, at 30–34.

For her part, when Reed argues that the county Party, led by R. Eugene Pincham, is "different from" the Party established in the city of Chicago under the leadership of Timothy Evans, she may indeed be suggesting that the city Party failed to authorize the Cook County candidates to use the Party name. But Reed offers no support at all for that assumption, which stands at odds with what few relevant facts the record reveals. The Electoral Board found that Timothy Evans, the Party's most recent mayoral candidate in the city of Chicago, had specifically authorized petitioners' use of the Party name in Cook County. While acknowledging that Evans was not the statutory chairman of the Chicago Party, the Board ruled, and Reed does not dispute, that Evans, "as the only candidate of the Chicago HWP," was "the only person empowered by the Election Code to act in any official capacity for the HWP." We have no authoritative ruling on Illinois law to the contrary, and Reed advances no legal argument for the insufficiency of Evans' authorization.

To be sure, it is not ours to say that Illinois law lacks any constitutional procedural mechanism that petitioners might have been required to, but did not, follow before using the Party name. Our review of § 10–2 reveals the possibility that Illinois law empowers a newly established party's candidate or candidates (here, Evans) merely to appoint party "committeemen," whose authority to "manage and control the affairs" of the party might include an exclusive right to authorize the use of its name outside the party's original political subdivision. It seems unlikely, however, that the Supreme Court of Illinois had such reasoning in mind. Any limitation on Evans's power to authorize like-minded candidates to use the Party name would have had to arise under § 10–2, whereas the order below held simply that petitioners' use of the Party name "violate[d] the provisions of section 10–5." In any event, it is not this Court's role to review a state-court decision on the basis of inconclusive and unargued theories of state law that the state court itself found unworthy of mention.[9]

B

As an alternative basis for prohibiting petitioners from running together under the Party name, the Supreme Court of Illinois invoked the statutory requirement of § 10–2 that "[e]ach component of the petition for each district . . . be signed by [25,000] qualified voters of the district . . . ." The

[9] Reed did seem to make a version of this argument in her brief to the Illinois Supreme Court. See Brief for Appellees Reed et al. in No. 70833 (Sup. Ct. Ill.), pp. 20–21. Moreover, in the one sentence that it devotes to the topic, the Circuit Court makes a similar observation: "While Timothy C. Evans was the only candidate of the Harold Washington Party, his only power, pursuant to § 10–2 of the Election Code, was the ability to appoint interim committeemen." See App. to Pet. for Cert. in No. 90–1435, p. 19a. Nonetheless, these passages are inadequate to prove that the Illinois Supreme Court adopted the argument, particularly since Reed arguably waived it by not raising it in her original "Objector's Petition" to the Electoral Board. See App. 14–15. There, she claimed only that petitioners' use of the Party name violated § 10–5.

court apparently held that disqualification of a party's entire slate of candidates is the appropriate penalty for failing to meet this requirement, and it accordingly treated petitioners' failure to collect enough signatures for their suburban-district candidates as an adequate ground for disqualifying every candidate running under the HWP name in Cook County.

This is not our first time to consider the constitutionality of an Illinois law governing the number of nominating signatures the organizers of a new party must gather to field candidates in local elections. In *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173 (1979), we examined Illinois's earlier ballot-access scheme, under which party organizers seeking to field candidates in statewide elections were (as they still are) effectively required to gather 25,000 signatures. See § 10–2. At that time, the statute separately required those organizing new parties in political subdivisions to collect signatures totaling at least 5% of the number of people voting at the previous election for offices of that subdivision. In the city of Chicago, the subdivision at issue in *Socialist Workers Party*, the effect of that provision was to require many more than 25,000 signatures. Although this Court recognized the State's interest in restricting the ballot to parties with demonstrated public support, the Court took the requirement for statewide contests as an indication that the more onerous standard for local contests was not the least restrictive means of advancing that interest. *Id.*, at 186.

The Illinois Legislature responded to this ruling by amending its statute to cap the 5% requirement for "any district or political subdivision" at 25,000 signatures. Thus, if organizers of a new party wish to field candidates in a large county without separate districts, and if 5% of the number of voters at the previous county election exceeds 25,000, the party now needs to gather only 25,000 signatures.

Under the interpretation of § 10–2 rendered below, however, Illinois law retains the constitutional flaw at issue in *Socialist Workers Party* by effectively increasing the signature requirement applicable to elections for at least some offices in subdivisions with separate districts. Under that interpretation, the failure of a party's organizers to obtain 25,000 signatures for each district in which they run candidates disqualifies the party's candidates in all races within the subdivision. Thus, a prerequisite to establishing a new political party in such multidistrict subdivisions is some multiple of the number of signatures required of new statewide parties. Since petitioners chose to field candidates for the county board seats allocated to the separate districts and, as required by state law, used the "component" (*i. e.*, district-specific) form of nominating petition, the State Supreme Court's construction of § 10–2 required petitioners to accumulate 50,000 signatures (25,000 from the city district and another 25,000 from the suburbs) to run any candidates in Cook County elections. The State may not do this in the face of *Socialist Workers Party,* which forbids it to require petitioners to gather twice as many signatures to field candidates in Cook County as they would need statewide.

Reed nonetheless tries to skirt *Socialist Workers Party* by advancing what she claims to be a state interest, not addressed by the earlier case, in ensuring that the electoral support for new parties in a multidistrict political subdivision extends to every district. Accepting the legitimacy of the interest claimed would not, however, excuse the requirement's unconstitutional breadth. Illinois might have compelled the organizers of a new party to demonstrate a distribution of support throughout Cook County without at the same time raising the overall quantum of needed support above what the State expects of new parties fielding candidates only for statewide office. The State might, for example, have required some minimum number of signatures from each of the component districts while maintaining the total

signature requirement at 25,000. But cf. *Moore* v. *Ogilvie*, 394 U. S. 814 (1969). While we express no opinion as to the constitutionality of any such requirement, what we have said demonstrates that Illinois has not chosen the most narrowly tailored means of advancing even the interest that Reed suggests.

Nor is that the only weakness of Reed's rationale. Illinois does not require a new party fielding candidates solely for statewide office to apportion its nominating signatures among the various counties or other political subdivisions of the State. See § 10–2; *Communist Party of Illinois* v. *State Bd. of Elections*, 518 F. 2d 517 (CA7), cert. denied, 423 U. S. 986 (1975). Organizers of a new party could therefore win access to the statewide ballot, but not the Cook County ballot, by collecting all 25,000 signatures from the county's city district. But if the State deems it unimportant to ensure that new statewide parties enjoy any distribution of support, it requires elusive logic to demonstrate a serious state interest in demanding such a distribution for new local parties. Thus, as in *Socialist Workers Party*, the State's requirements for access to the statewide ballot become criteria in the first instance for judging whether rules of access to local ballots are narrow enough to pass constitutional muster. Reed has adduced no justification for the disparity here.[10]

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[10] To an extent, history explains the anomaly. *Moore* v. *Ogilvie*, 394 U. S. 814 (1969), together with the Seventh Circuit's decision in *Communist Party of Illinois* v. *State Bd. of Elections*, 518 F. 2d 517 (1975), left the ballot-access requirements for statewide elections less stringent, for the first time, than the requirements for any local ballot. These were the same legal developments, in fact, that led to the anomaly at issue in *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173 (1979). Yet, as we noted there, an explanation is not the same as a justification. *Id.*, at 187; see also *id.*, at 189 (STEVENS, J., concurring in part and concurring in judgment); *id.*, at 190–191 (REHNQUIST, J., concurring in judgment). "Historical accident, without more, cannot constitute a compelling state interest." *Id.*, at 187.

C

Up to this point, the positions of petitioners and the Board have coincided. They diverge on only one matter: whether requiring the candidates for the suburban-district commissioner seats to obtain 25,000 nominating signatures from the suburbs unduly burdens their right to run for those seats under the Party name. Although petitioners suggest that their showing of support in the city district should qualify their candidates to represent the Party in all races within Cook County, in the absence of any claim that the division of Cook County into separate districts is itself unconstitutional, our precedents foreclose the argument. According to the Board's uncontested arithmetic, the 25,000 signature rule requires the support of only slightly more than 2% of suburban voters, see Brief for Respondent Board in No. 90–1126, p. 9, and n. 7, a considerably more lenient restriction than the one we upheld in *Jenness* v. *Fortson*, 403 U. S. 431 (1971) (involving a 5% requirement). Just as the State may not cite the Party's failure in the suburbs as reason for disqualifying its candidates in urban Cook County, neither may the Party cite its success in the city district as a sufficient condition for running candidates in the suburbs.

IV

These cases present one final issue, which we are unable to resolve. Some of Cook County's judges are elected by citizens of the entire county, and others by citizens of the separate districts. In responding to Reed's objection that the HWP had not fielded candidates for any elected judicial offices in Cook County, the Circuit Court held that, under § 10–2, "the exclusion of judicial candidates on the slate was a failure to fulfill the 'complete slate requirement' of the Election Code." The court then overruled the Electoral Board and treated this failure as an alternative ground for invalidating the Party's entire slate.

We decline to consider whether that ruling was constitutional. The Supreme Court of Illinois itself did not address it and therefore did not decide whether, under Illinois law, the Party's omission of judicial candidates doomed the entire slate.[11] We therefore remand these cases to that court for its prompt resolution of this issue. See *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 277 (1984); see also *McCluney* v. *Jos. Schlitz Brewing Co.*, 454 U. S. 1071, 1073–1074 (1981) (STEVENS, J., dissenting).[12]

The judgment of the State Supreme Court is affirmed in part and reversed in part, and the cases are remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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

JUSTICE SCALIA, dissenting.

In the absence of an opinion by the Illinois Supreme Court defending its own judgment, and lacking any clear alternative analysis presented by respondents, the Court accepts petitioners' characterization of these cases as involving

[11] Among other possibilities, the Supreme Court of Illinois might agree with the Board's conclusion that the judgeships at issue are not offices of the same "political subdivision" as nonjudicial offices within Cook County. That court might also construe the decision in *Anderson* v. *Schneider*, 67 Ill. 2d 165, 365 N. E. 2d 900 (1977), to hold that an omission of judicial candidates should not invalidate the rest of the slate.

[12] To restate our conclusion, any rule, whether or not denominated the "complete slate" requirement, see, *e. g.*, *post*, at 298, 299 (dissenting opinion's use of the term in this context); App. to Pet. for Cert. in No. 90–1435, pp. 23a–24a (Circuit Court's use of the term in this context), that disqualifies petitioners' entire slate for failure to collect 25,000 signatures wholly from the suburban district would be unconstitutional for the reasons given in Part III–B above. We express no opinion as to the constitutionality of a "complete slate requirement" that would invalidate petitioners' slate for their failure to field judicial candidates.

straightforward application of our decision invalidating a previous version of the Illinois election law, *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U. S. 173 (1979). That characterization is in my view wrong, and leads to the wrong result. No proper basis has been established in these cases for interfering with the State of Illinois' arrangement of its elections.

Socialist Workers Party involved a challenge to Illinois' then-requirement that, in elections for offices in political subdivisions of the State, new political parties (and independent candidates) had to obtain the signatures of 5% of the number of persons who voted at the previous election for those offices, no matter how high that number might be—even though new parties could qualify for *statewide* elections by gathering only 25,000 signatures. See *id.*, at 175–176. The Socialist Workers Party objected to having to collect over 60,000 signatures to run a candidate in the Chicago mayoral election. See *id.*, at 177. We held that, although the State had a legitimate interest in ensuring that a party or independent candidate had a "'significant modicum of support,'" there was "no reason" justifying a requirement of greater support for Chicago elections than for statewide elections. *Id.*, at 185–186.

The Court contends that the current Illinois law, as interpreted by the Illinois Supreme Court, suffers from the same "constitutional flaw": It "effectively increas[es] the signature requirement applicable to elections for at least some offices in subdivisions with separate districts [because] the failure of a party's organizers to obtain 25,000 signatures for each district in which they run candidates disqualifies the party's candidates in all races within the subdivision." *Ante*, at 293. Thus, "a prerequisite to establishing a new political party in such multidistrict subdivisions is some multiple of the number of signatures required of new statewide parties." *Ibid.*

This analysis serves only to demonstrate why *Socialist Workers Party* is distinguishable. There is no heightened

signature requirement (as there was in *Socialist Workers Party*) for any single office; each candidate (and the party) for each district election and each countywide election need obtain no more than 25,000 signatures. What creates "effectively," as the Court says, a sort of heightened signature minimum is the requirement that a new party run a "complete slate," *i. e.*, a candidate in each of the subdivision's districts. By virtue of that requirement, no one can run *as a new-party candidate* in any district unless there are not only 25,000 signatures for him in his own district, but also 25,000 votes for the party's candidate in each of the other districts. Such indirect consequences of a "complete slate" requirement were, of course, not at issue in *Socialist Workers Party*, which involved a single election for an at-large position. Thus, *Socialist Workers Party* is not at all dispositive of these cases.

It seems clear that the "complete slate" rule advances a legitimate state interest. It is reasonable to require a purported "party," which presumably has policy plans for the political subdivision, to run candidates in all the districts that elect the multimember board governing the subdivision. Otherwise, it is less a "party" than an election committee for one member of the board. The Court ultimately concedes this, and concedes that this state interest was *not* involved (and therefore *not* taken into account) in *Socialist Workers Party*. *Ante*, at 293–294. It nonetheless argues that this makes no difference, because: (1) Illinois could have achieved its interest in multidistrict support for the party by requiring that some proportion of the total signatures be from each district, but requiring no more than a 25,000 total, *ibid.;* and (2) multidistrict support is not an interest that Illinois considers important, since it "does not require a new party fielding candidates solely for statewide office to apportion its nominating signatures among the various counties or other political subdivisions of the State," *ante*, at 294.

I find neither response persuasive. As to the first: We did not say in *Socialist Workers Party* that the constitutionally permissible number for qualification in the various political subdivisions of the State had to be some fraction (presumably based on population) of the statewide 25,000 figure; to the contrary, we permitted the State to require in political subdivisions any number *up to* 25,000. Illinois has simply taken us at our word. Nor does this amount to an irrational failure to "apportion." Illinois' genuine *minimum*, we must recall, is a percentage (5%) of the votes in the prior election, which of course automatically adjusts for the size of the electoral unit. The 25,000 figure is simply a *cap* upon that minimum, and it is not at all reasonable to think an "apportionment" of that cap will assure serious voter support. As to the second argument: The fact that Illinois does not require geographic distribution of support for statewide office is irrelevant. Neither does it require geographic distribution, as such, in these Cook County elections. It does not care if all of the support for the Harold Washington Party, in each districtwide election, comes from a single ward—just as it does not care, in statewide elections, if all of a new party's support comes from a single county. What the law under challenge here reflects is not concern for *geographically distributed support*, but concern for *serious support in each election;* and when some of the elections are not at large but by district, the support must exist within each district.

Perhaps there are reasons why Illinois' "complete slate" requirement for political subdivisions is constitutionally invalid. The point might be made, for example, that the absence of any such requirement in statewide elections demonstrates (to take the Court's language erroneously addressed to a different point) that Illinois "deems [the requirement] unimportant," and has no "serious state interest" in it. *Ante*, at 294. But as American political scientists have known since James Madison pointed it out, see The Federalist No. 10, pp. 62–64 (H. Dawson ed. 1876), the dangers of

factionalism decrease as the political unit becomes larger. There is not much chance the State as a whole will be hamstrung by a multitude of so-called "parties," each of which represents the sectional interest of only one or a few districts; there is a real possibility that the Cook County Board will be stalemated by an equal division between "City Party" and "County Party" members. But the litigants here have not addressed whether the "complete slate" requirement is unconstitutional, and I decline to speculate. It must be assumed to be legitimate, in which case there is no basis for saying that 25,000 signatures for each district election (if that is less than 5% of the votes in the prior district election) cannot be demanded. The Court's holding that these cases are simply governed by *Socialist Workers Party* seems to me quite wrong. I respectfully dissent.

Syllabus

MOLZOF, PERSONAL REPRESENTATIVE OF THE ESTATE OF MOLZOF *v.* UNITED STATES

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

No. 90–838. Argued November 4, 1991—Decided January 14, 1992

The District Court awarded the guardian ad litem of petitioner Molzof's since-deceased husband damages under the Federal Tort Claims Act (FTCA or Act) for supplemental medical care for injuries suffered by Mr. Molzof as a result of the negligence of federal employees, but refused to award damages for future medical expenses and for loss of enjoyment of life. The Court of Appeals affirmed, ruling that damages of the latter two types were barred by the FTCA's prohibition on "punitive damages," 28 U. S. C. § 2674.

Held:

1. Section 2674—under which "[t]he United States shall be liable [on] tort claims, in the same manner and to the same extent as a private individual under like circumstances, *but shall not be liable . . . for punitive damages*" (emphasis added)—bars the recovery only of what are *legally* considered "punitive damages" under traditional common-law principles; *i. e.*, those whose recoverability depends upon proof that the defendant has engaged in intentional or egregious misconduct and whose purpose is to punish. Pp. 304–312.

(a) This reading is consistent with the above-quoted language of § 2674, which makes clear that the extent of FTCA liability is generally determined by reference to state law, under which "punitive damages" is a legal term of art that has a widely accepted common-law meaning, of which Congress was presumably aware when it adopted the Act. In contrast, the Government's view that "punitive damages" must be defined as those "that are in excess of, or bear no relation to, compensation" is contrary to the statutory language, which suggests that to the extent that a plaintiff may be entitled to damages that are not legally considered "punitive damages," but which are for some reason above and beyond ordinary notions of compensation, the United States is liable "in the same manner and to the same extent as a private individual." Pp. 304–308.

(b) The reading adopted here is also consistent with the Act's structure and provides courts with a workable standard for determining when a plaintiff is improperly seeking "punitive damages." The Government's argument that a congressional intent to define punitive dam-

Syllabus

ages by contrasting them with "actual or compensatory damages" is demonstrated by § 2674's second clause—which limits governmental liability in States permitting only punitive damages in wrongful-death actions to "actual or compensatory damages, measured by the pecuniary injuries resulting from . . . death"—is unpersuasive, since it is undermined both by the well-established common-law meaning of "punitive damages" and by the Government's concession that the "pecuniary injuries" standard does not apply in determining compensatory damages in non-wrongful-death tort suits. Moreover, the Government's interpretation of "punitive damages" would be difficult and impractical to apply, creating enormous problems in determining the actual loss suffered in particular kinds of cases. Furthermore, the fact that this Court has not relied on the common law in interpreting some of § 2680's exceptions to FTCA liability is not persuasive evidence that it should do the same here, since many of those exceptions—*e. g.*, § 2680(a)'s exception for claims based on the performance of a "discretionary function"—simply have no common-law antecedent, while others serve a qualitatively different purpose than § 2674's bar on "punitive damages," having been designed to protect from disruption certain important governmental *functions*—*e. g.*, the handling of mail under § 2680(b). Pp. 308–312.

(c) The Court of Appeals erred in deciding that the FTCA barred Mrs. Molzof from recovering damages for her husband's future medical expenses and his loss of enjoyment of life. It is undisputed that those claims are based solely on a simple negligence theory. Thus, the damages sought are not "punitive damages" under the FTCA because they do not fall within the common-law meaning of that term. P. 312.

2. However, the case must be remanded for the lower courts to resolve in the first instance whether the damages sought are recoverable as compensatory damages under the law of Wisconsin, the State in which Mr. Molzof's injuries occurred. P. 312.

911 F. 2d 18, reversed and remanded.

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

Daniel R. Rottier argued the cause for petitioner. With him on the briefs were *Virginia M. Antoine* and *Thomas H. Geyer.*

Acting Deputy Solicitor General Wright argued the cause for the United States. With him on the brief were *Solicitor General Starr, Assistant Attorney General Gerson, Clifford M. Sloan, Anthony J. Steinmeyer*, and *Irene M. Solet.*

JUSTICE THOMAS delivered the opinion of the Court.

This case requires us to determine the scope of the statutory prohibition on awards of "punitive damages" in cases brought against the United States under the Federal Tort Claims Act, 28 U. S. C. §§ 2671–2680.

I

Petitioner Shirley Molzof is the personal representative of the estate of Robert Molzof, her late husband. On October 31, 1986, Mr. Molzof, a veteran, underwent lung surgery at a Veterans' Administration hospital in Madison, Wisconsin. After surgery, he was placed on a ventilator. For some undisclosed reason, the ventilator tube that was providing oxygen to him became disconnected. The ventilator's alarm system also was disconnected. As a result of this combination of events, Mr. Molzof was deprived of oxygen for approximately eight minutes before his predicament was discovered. Because of this unfortunate series of events, triggered by the hospital employees' conceded negligence, Mr. Molzof suffered irreversible brain damage, leaving him permanently comatose.

Mr. Molzof's guardian ad litem filed suit in District Court under the Federal Tort Claims Act (FTCA or Act) seeking damages for supplemental medical care, future medical expenses, and loss of enjoyment of life. The Government admitted liability, and the case proceeded to a bench trial on the issue of damages. The District Court determined that the free medical care being provided to Mr. Molzof by the veterans' hospital was reasonable and adequate, that Mrs. Molzof was satisfied with those services and had no intention of transferring Mr. Molzof to a private hospital, and that it was in Mr. Molzof's best interests to remain at the veterans' hospital because neighboring hospitals could not provide a comparable level of care. In addition to ordering the veterans' hospital to continue the same level of care, the court awarded Mr. Molzof damages for supplemental care—physi-

cal therapy, respiratory therapy, and weekly doctor's visits—not provided by the veterans' hospital.

The District Court refused, however, to award damages for medical care that would duplicate the free medical services already being provided by the veterans' hospital. Similarly, the court declined to award Mr. Molzof damages for loss of enjoyment of life. Mr. Molzof died after final judgment had been entered, and Mrs. Molzof was substituted as plaintiff in her capacity as personal representative of her late husband's estate.

The United States Court of Appeals for the Seventh Circuit affirmed the District Court's judgment. 911 F. 2d 18 (1990). The Court of Appeals agreed with the District Court that, given the Government's provision of free medical care to Mr. Molzof and Mrs. Molzof's apparent satisfaction with that care, any award for future medical expenses would be punitive in effect and was therefore barred by the FTCA prohibition on "punitive damages." *Id.*, at 21. With respect to the claim for Mr. Molzof's loss of enjoyment of life, the Court of Appeals stated that Wisconsin law was unclear on the question whether a comatose plaintiff could recover such damages. *Ibid.* The court decided, however, that "even if Wisconsin courts recognized the claim for loss of enjoyment of life, in this case it would be barred as punitive under the Federal Tort Claims Act," *ibid.*, because "an award of damages for loss of enjoyment of life can in no way recompense, reimburse or otherwise redress a comatose patient's uncognizable loss . . . ." *Id.*, at 22. We granted certiorari to consider the meaning of the term "punitive damages" as used in the FTCA. 499 U. S. 918 (1991).

II

Prior to 1946, the sovereign immunity of the United States prevented those injured by the negligent acts of federal employees from obtaining redress through lawsuits; compensation could be had only by passage of a private bill in Con-

gress. See *Dalehite* v. *United States*, 346 U. S. 15, 24–25 (1953). The FTCA replaced that "notoriously clumsy," *id.*, at 25, system of compensation with a limited waiver of the United States' sovereign immunity. *United States* v. *Orleans*, 425 U. S. 807, 813 (1976). In this case, we must determine the scope of that waiver as it relates to awards of "punitive damages" against the United States. The FTCA provides in pertinent part as follows:

> "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, *but shall not be liable* for interest prior to judgment or *for punitive damages*." 28 U. S. C. § 2674 (emphasis added).

As this provision makes clear, in conjunction with the jurisdictional grant over FTCA cases in 28 U. S. C. § 1346(b), the extent of the United States' liability under the FTCA is generally determined by reference to state law. See *United States* v. *Muniz*, 374 U. S. 150, 153 (1963); *Richards* v. *United States*, 369 U. S. 1, 6–7, 11 (1962); *Rayonier Inc.* v. *United States*, 352 U. S. 315, 318–319 (1957); *Indian Towing Co.* v. *United States*, 350 U. S. 61, 64–65, 68–69 (1955); *United States* v. *Aetna Casualty & Surety Co.*, 338 U. S. 366, 370 (1949).

Nevertheless, the meaning of the term "punitive damages" as used in § 2674, a federal statute, is by definition a federal question. Cf. *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204, 208 (1946) (definition of "real property" as used in a federal statute is a federal question). Petitioner argues that "§ 2674 must be interpreted so as to permit awards against the United States of those state-law damages which are intended by state law to act as compensation for injuries sustained as a result of the tort, and to preclude awards of damages which are intended to act as punishment for egregious conduct." Brief for Petitioner 8; see

also *id.*, at 12. We understand petitioner to be suggesting that the Court define the term "punitive damages" by reference to traditional common law, leaving plaintiffs free to recover any damages that cannot be characterized as "punitive" under that standard. The Government, on the other hand, suggests that we define "punitive damages" as "damages that are in excess of, or bear no relation to, compensation." Brief for United States 5. In the Government's view, there is a strict dichotomy between compensatory and punitive damages; damages that are not strictly compensatory are necessarily "punitive damages" barred by the statute. Thus, the Government contends that any damages other than those awarded for a plaintiff's *actual* loss—which the Government narrowly construes to exclude damages that are excessive, duplicative, or for an inherently noncompensable loss, *id.*, at 22—are "punitive damages" because they are punitive *in effect.*

We agree with petitioner's interpretation of the term "punitive damages," and conclude that the Government's reading of § 2674 is contrary to the statutory language. Section 2674 prohibits awards of "punitive damages," not "damages awards that may have a punitive effect." "Punitive damages" is a legal term of art that has a widely accepted common-law meaning; "[p]unitive damages have long been a part of traditional state tort law." *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 255 (1984). Although the precise nature and use of punitive damages may have evolved over time, and the size and frequency of such awards may have increased, this Court's decisions make clear that the concept of "punitive damages" has a long pedigree in the law. "It is a well-established principle of the common law, that in actions of trespass and all actions on the case for torts, a jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant, having in view the enormity of his offence rather than the measure of compensation to the plaintiff." *Day* v. *Woodworth*, 13 How. 363, 371 (1852). See

also *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 15–17 (1991); *id.*, at 25–27 (SCALIA, J., concurring in judgment).

Legal dictionaries in existence when the FTCA was drafted and enacted indicate that "punitive damages" were commonly understood to be damages awarded to punish defendants for torts committed with fraud, actual malice, violence, or oppression. See, *e. g.*, Black's Law Dictionary 501 (3d ed. 1933); The Cyclopedic Law Dictionary 292 (3d ed. 1940). On more than one occasion, this Court has confirmed that general understanding. "By definition, punitive damages are based upon the degree of the defendant's culpability." *Massachusetts Bonding & Ins. Co.* v. *United States*, 352 U. S. 128, 133 (1956); see also *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U. S. 257, 274, n. 20, 278, n. 24 (1989); *Milwaukee & St. Paul R. Co.* v. *Arms*, 91 U. S. 489, 493 (1876); *Day* v. *Woodworth*, *supra*, at 371. The common-law definition of "punitive damages" focuses on the nature of the defendant's conduct. As a general rule, the common law recognizes that damages intended to compensate the plaintiff are different in kind from "punitive damages."

A cardinal rule of statutory construction holds that:

> "[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them." *Morissette* v. *United States*, 342 U. S. 246, 263 (1952).

See also *NLRB* v. *Amax Coal Co.*, 453 U. S. 322, 329 (1981); *Braxton* v. *United States*, 500 U. S. 344, 351, n. (1991). This rule carries particular force in interpreting the FTCA. "Cer-

tainly there is no warrant for assuming that Congress was unaware of established tort definitions when it enacted the Tort Claims Act in 1946, after spending 'some twenty-eight years of congressional drafting and redrafting, amendment and counter-amendment.'" *United States* v. *Neustadt*, 366 U. S. 696, 707 (1961) (quoting *United States* v. *Spelar*, 338 U. S. 217, 219–220 (1949)).

The Government's interpretation of § 2674 appears to be premised on the assumption that the statute provides that the United States "shall be liable only for compensatory damages." But the first clause of § 2674, the provision we are interpreting, does not say that. What it clearly states is that the United States "shall not be liable . . . for punitive damages." The difference is important. The statutory language suggests that to the extent a plaintiff may be entitled to damages that are not legally considered "punitive damages," but which are for some reason above and beyond ordinary notions of compensation, the United States is liable "in the same manner and to the same extent as a private individual." These damages in the "gray" zone are not by definition "punitive damages" barred under the Act. In the ordinary case in which an award of compensatory damages is subsequently reduced on appeal, one does not say that the jury or the lower court mistakenly awarded "punitive damages" above and beyond the actual compensatory damages. It is simply a matter of excessive or erroneous compensation. Excessiveness principles affect only the amount, and not the nature, of the damages that may be recovered. The term "punitive damages," on the other hand, embodies an element of the defendant's conduct that must be proved before such damages are awarded.

The Government argues that we must construe the prohibition on "punitive damages" *in pari materia* with the second clause of § 2674 which was added by Congress just one year after the FTCA was enacted. The amendment provides as follows:

> "If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof." 28 U. S. C. § 2674.

This provision was added to the statute to address the fact that two States, Alabama and Massachusetts, permitted only punitive damages in wrongful-death actions. *Massachusetts Bonding & Ins. Co.* v. *United States*, *supra*, at 130–131. The Government contends that the second clause of § 2674 "confirms the compensatory purpose of the statute and demonstrates that Congress intended to define 'punitive damages' by contrasting them with 'actual or compensatory damages.'" Brief for United States 18–19 (footnote omitted). This argument is undermined, however, not only by the fact that "punitive damages" is a legal term of art with a well-established common-law meaning, but also by the Government's own statement that, although the second clause defines "actual or compensatory damages" as "the pecuniary injuries resulting from such death," the "pecuniary injuries" standard does not apply in determining compensatory damages in any other kind of tort suit against the United States. *Id.*, at 19, n. 13. Given this concession, which we agree to be a correct statement of the law, the second clause of § 2674 cannot be read as proving so much as the Government claims.

The Government's interpretation of "punitive damages" would be difficult and impractical to apply. Under the Government's reading, an argument could be made that Mr. Molzof's damages for future medical expenses would have to be reduced by the amount he saved on rent, meals, clothing, and other daily living expenses that he did not incur while

hospitalized. Otherwise, these duplicative damages would be "punitive damages" because they have the effect of making the United States pay twice. The difficulties inherent in attempting to prove such offsets would be enormous. That the Government has refused to acknowledge the practical implications of its theory is evidenced by its representations at oral argument that, as a general matter, it is willing to accept state-law definitions of compensatory awards for purposes of the FTCA, Tr. of Oral Arg. 28, and that "there are very few circumstances" in which States have authorized damages awards that the Government would challenge as punitive, *id.*, at 38.

The Government's reading of the statute also would create problems in liquidated damages cases and in other contexts in which certain kinds of injuries are compensated at fixed levels that may or may not correspond to a particular plaintiff's actual loss. At oral argument, however, the Government disclaimed that extension of its theory, see *id.*, at 28, 35, and instead asserted that its position was that state compensatory awards are recoverable under the Act so long as they are a "reasonable" approximation of the plaintiff's actual damages, *id.*, at 36. We agree that § 2674 surely does not prohibit any compensatory award that departs from the actual damages in a particular case. But the Government's restrictive reading of the statute would involve the federal courts in the impractical business of determining the actual loss suffered in each case and whether the damages awarded are a "reasonable" approximation of that loss.

Finally, we reject the Government's reliance on this Court's interpretations of various statutory exceptions to FTCA liability contained in § 2680, some of which depart from traditional common-law concepts, as supportive of the notion that we should adopt a definition of "punitive damages" that departs from the common law. Many of the § 2680 exceptions simply have no obvious common-law antecedent. For example, § 2680(a) provides that the United

States shall not be liable for any claim based on "the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or employee of the Government." 28 U. S. C. § 2680(a). It would have made little sense to try to incorporate common-law standards in explicating terms like "discretionary function" in the absence of any evidence that such concepts had any basis in the common law of most States or had been given some widely shared meaning. In marked contrast, the concept of "punitive damages" is deeply rooted in the common law.

An examination of the nature of the exceptions in § 2680 further demonstrates that those limitations serve a qualitatively different purpose than § 2674's bar on "punitive damages." The § 2680 exceptions are designed to protect certain important governmental functions and prerogatives from disruption. They mark "the boundary between Congress' willingness to impose tort liability upon the United States and its desire to protect certain governmental activities from exposure to suit by private individuals." *United States* v. *Varig Airlines*, 467 U. S. 797, 808 (1984). Through the § 2680 exceptions, "Congress has taken steps to protect the Government from liability that would seriously handicap efficient government operations." *United States* v. *Muniz*, 374 U. S., at 163. See also *United States* v. *Gaubert*, 499 U. S. 315, 322–323 (1991); *Berkovitz* v. *United States*, 486 U. S. 531, 536–537 (1988). For example, there are exceptions for claims involving the mishandling of mail, § 2680(b), the assessment or collection of taxes or customs duties, § 2680(c), the imposition or establishment of a quarantine, § 2680(f), damages caused by the fiscal operations of the Treasury or by regulation of the monetary system, § 2680(i), the combatant activities of the military, § 2680(j), the activities of the Tennessee Valley Authority or the Panama Canal Company, §§ 2680(l), (m), and the activities of federal land banks, § 2680(n). These examples suggest that Congress'

primary concern in enumerating the § 2680 exceptions was to retain sovereign immunity with respect to certain governmental *functions* that might otherwise be disrupted by FTCA lawsuits. That the Court has not relied on the common law in interpreting some of the exceptions in § 2680, then, is not persuasive evidence that it should do the same in interpreting § 2674.

We conclude that § 2674 bars the recovery only of what are *legally* considered "punitive damages" under traditional common-law principles. This reading of the statute is consistent with the language of § 2674 and the structure of the Act, and it provides courts with a workable standard for determining when a plaintiff is improperly seeking "punitive damages" against the United States. Our interpretation of the term "punitive damages" requires us to reverse the Court of Appeals' decision that Mrs. Molzof is not permitted to recover damages for her husband's future medical expenses and his loss of enjoyment of life. It is undisputed that the claims in this case are based solely on a simple negligence theory of liability. Thus, the damages Mrs. Molzof seeks to recover are not punitive damages under the common law or the FTCA because their recoverability does not depend upon any proof that the defendant has engaged in intentional or egregious misconduct and their purpose is not to punish. We must remand, however, because we are in no position to evaluate the recoverability of those damages under Wisconsin law. Cf. *Sheridan* v. *United States*, 487 U. S. 392, 401, and n. 6 (1988). It may be that under Wisconsin law the damages sought in this case are not recoverable as compensatory damages. This might be true because Wisconsin law does not recognize such damages, or because it requires a setoff when a defendant already has paid (or agreed to pay) expenses incurred by the plaintiff, or for some other reason. These questions were not resolved by the lower courts.

III

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

IMMIGRATION AND NATURALIZATION SERVICE *v.* DOHERTY

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

No. 90–925. Argued October 16, 1991—Decided January 15, 1992

Respondent Doherty, a citizen of both Ireland and the United Kingdom, was found guilty *in absentia* by a Northern Ireland court of, *inter alia*, the murder of a British officer in Northern Ireland. After petitioner Immigration and Naturalization Service (INS) located him in the United States and began deportation proceedings against him, he applied for asylum under the Immigration and Nationality Act (Act), but he withdrew that application and a claim for withholding of deportation in 1986, at which time he conceded deportability and, pursuant to the Act, designated Ireland as the country to which he be deported. The Immigration Judge, over the INS' challenge to the designation, ordered deportation to Ireland, and the Board of Immigration Appeals (BIA) affirmed. While an INS appeal to the Attorney General was pending, Doherty moved to reopen his deportation proceedings on the basis that the 1987 Irish Extradition Act constituted new evidence requiring reopening of his claims for withholding of deportation and asylum. The Attorney General rejected Doherty's designation, ordered him deported to the United Kingdom, and remanded his motion to reopen to the BIA. The BIA granted the motion to reopen, but the Attorney General reversed, relying on, *inter alia*, the independent grounds that (1) Doherty had not presented new evidence warranting reopening, and (2) he had waived his claims by withdrawing them in 1986. The Court of Appeals affirmed the order denying Doherty's designation, but held that the Attorney General had abused his discretion in denying the motion to reopen. Among other things, the court found that the Attorney General had used an incorrect legal standard in overturning the BIA's finding that Doherty had produced new material evidence and that, under *INS* v. *Abudu*, 485 U. S. 94, once an alien establishes a prima facie case for withholding of deportation and brings new evidence, the Attorney General is without discretion to deny a motion to reopen.

Held: The judgment is reversed.

908 F. 2d 1108, reversed.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Part I, concluding that the Attorney General did not abuse his discre-

tion in denying the motion to reopen Doherty's deportation proceedings. There is no statutory provision for reopening, and the authority for such motions derives solely from regulations promulgated by the Attorney General. *INS* v. *Rios-Pineda,* 471 U. S. 444, 446. The applicable regulation, 8 CFR §3.2, is couched solely in negative terms: It specifies that motions to reopen shall not be granted unless it appears that evidence sought to be offered is material, was not available, and could not have been discovered or presented at the former hearing, without specifying conditions under which motions should be granted. Thus, the granting of a motion to reopen is discretionary, *INS* v. *Phinpathya,* 464 U. S. 183, 188, n. 6, and the Attorney General has "broad discretion" to grant or deny such motions. *Rios-Pineda, supra,* at 449. Motions for reopening immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. When denial of a motion to reopen is based on a failure to prove a prima facie case for the relief sought or a failure to introduce previously unavailable, material evidence, abuse of discretion is the proper standard of review. *Abudu, supra,* at 105. It is the proper standard regardless of the underlying basis of the alien's request for relief, 485 U. S., at 99, n. 3, and, thus, applies equally to motions to reopen claims for asylum and claims for withholding of deportation. The proper application of these principles leads to the conclusion that the Attorney General did not abuse his discretion in denying reopening either on the ground that Doherty failed to adduce new evidence or on the ground that Doherty failed to satisfactorily explain his previous withdrawal of these claims. Pp. 322–324.

THE CHIEF JUSTICE, joined by JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE O'CONNOR, concluded in Part II that, for the reasons stated by the Attorney General, it was well within his discretion to decide that neither the denial of Doherty's designation, nor the change in Irish extradition law, qualified as new material evidence to support reopening. The Attorney General concluded that Doherty should have known that there was always a risk that deportation to Ireland would be denied, since the Attorney General is authorized to reject deportation to a country if he determines that it would be prejudicial to United States interests and since the INS objected to the designation at the hearing at which Doherty selected Ireland. He also determined that the rejection of the designated country was the ultimate decision in the administrative process and therefore cannot constitute new evidence to justify reopening. Additionally, he determined that the Irish Extradition Act's implementation was neither relevant nor new, since the treaty upon which it was based had been signed six months before Doherty with-

drew his claims and since a change in law ordinarily does not support a motion to reopen unless the change pertains to the rules of the proceeding at which deportation was ordered. Moreover, language in *Abudu*, *supra*, at 104–105, which the Court of Appeals interpreted as negating 8 CFR § 3.2's requirement of unforeseeability, cannot bear that construction, particularly when *Abudu* also sets out verbatim the applicable regulation and when it is not uncommon to require that motions to reopen be based on matter which could not reasonably have been previously adduced. Nor does the fact that the Attorney General disagrees with the BIA's conclusion support a finding that he abused his discretion. The BIA is simply a regulatory creature of the Attorney General, and he retains the final administrative authority in construing, and deciding questions under, the regulations. Pp. 324–327.

THE CHIEF JUSTICE, joined by JUSTICE KENNEDY, concluded in Part III that the Attorney General did not abuse his discretion in finding that withdrawing his claims to secure a tactical advantage in the first hearing did not constitute a reasonable explanation for failing to pursue the claims at that hearing. The INS allows aliens to plead in the alternative, and there was nothing that prevented Doherty from bringing evidence in support of his claims in case the Attorney General contested his designated country. However, he chose instead to withdraw the claims, even when expressly questioned by the Immigration Judge. Nothing in the reopening regulations forbids the Attorney General from adopting a narrow interpretation of regulations. Pp. 327–329.

REHNQUIST, C. J., announced the judgment of the Court and delivered the opinion of the Court with respect to Part I, in which WHITE, BLACKMUN, O'CONNOR, and KENNEDY, JJ., joined, an opinion with respect to Part II, in which WHITE, BLACKMUN, and O'CONNOR, JJ., joined, and an opinion with respect to Part III, in which KENNEDY, J., joined. SCALIA, J., filed an opinion concurring in the judgment in part and dissenting in part, in which STEVENS AND SOUTER, JJ., joined, *post*, p. 329. THOMAS, J., took no part in the consideration or decision of the case.

Deputy Solicitor General Mahoney argued the cause for petitioner. On the briefs were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Deputy Solicitor General Roberts*, *Edwin S. Kneedler*, *Barbara L. Herwig*, and *John C. Hoyle*.

Mary Boresz Pike argued the cause for respondent. With her on the brief was *Arthur C. Helton.**

CHIEF JUSTICE REHNQUIST announced the judgment of the Court and delivered the opinion of the Court with respect to Part I, an opinion with respect to Part II, in which JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE O'CONNOR join, and an opinion with respect to Part III, in which JUSTICE KENNEDY joins.

Respondent, Joseph Patrick Doherty, entered this country illegally in 1982. After more than eight years of proceedings concerning Doherty's status in the United States, the question presented here is whether the Attorney General abused his discretion in refusing to reopen the deportation proceedings against respondent to allow consideration of respondent's claims for asylum and withholding of deportation which he had earlier withdrawn. We conclude that the Attorney General did not abuse the broad discretion vested in him by the applicable regulations.

Respondent is a native of Northern Ireland and a citizen of both Ireland and the United Kingdom. In May 1980, he and fellow members of the Provisional Irish Republican Army ambushed a car containing members of the British Army and killed British Army Captain Herbert Richard Westmacott. He was tried for the murder of Westmacott in Northern Ireland. Before the court returned a verdict, he escaped from the maximum security prison where he was

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*Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *David W. Rivkin, Michael W. Galligan, Lucas Guttentag, Steven R. Shapiro,* and *Carolyn Patty Blum;* for Amnesty International et al. by *Paul L. Hoffman;* for the International Human Rights Law Group by *Irwin Goldbloom;* for Members of the United States Senate et al. by *Carolyn Patty Blum, Kevin R. Johnson,* and *Joseph K. Brenner;* and for the United Nations High Commissioner for Refugees by *O. Thomas Johnson, Jr., Andrew I. Schoenholtz, Julian Fleet,* and *Ralph G. Steinhardt.*

held; the court found him guilty *in absentia* of murder and related charges and sentenced him to life imprisonment.

In 1982, respondent surreptitiously entered the United States under an alias. In June 1983, he was located by the Immigration and Naturalization Service (INS), which thereupon began deportation proceedings against him. Respondent applied for asylum under § 208 of the Immigration and Nationality Act, as added by the Refugee Act of 1980, 94 Stat. 105, 8 U. S. C. § 1158.[1] The immigration proceedings were suspended to allow completion of extradition proceedings, which were initiated by the United States at the request of the United Kingdom.

In December 1984, United States District Judge Sprizzo, acting as an Extradition Magistrate under 18 U. S. C. § 3184, held that respondent was not extraditable because his crimes fell into the political offenses exception to the extradition treaty between the United States and the United Kingdom. *In re Requested Extradition of Doherty*, 599 F. Supp. 270, 272 (SDNY 1984). The attempts of the United States to attack this conclusion collaterally were rebuffed. *United States* v. *Doherty*, 615 F. Supp. 755 (SDNY 1985), aff'd, 786 F. 2d 491 (CA2 1986).[2]

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[1] Section 208 of the Immigration Act, 8 U. S. C. § 1158(a) provides, in pertinent part: "The Attorney General shall establish a procedure for an alien physically present in the United States . . . to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee . . . ." The term "refugee" is defined by 8 U. S. C. § 1101(a)(42)(A) as "any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . ."

[2] Respondent, who has been confined since his arrest by the INS, has also twice unsuccessfully filed for habeas corpus relief. *Doherty* v. *Meese*, 808 F. 2d 938 (CA2 1986); *Doherty* v. *Thornburgh*, 943 F. 2d 204 (CA2 1991).

When the extradition proceedings concluded, the deportation proceedings against respondent resumed. On September 12, 1986, at a hearing before the Immigration Judge, respondent conceded deportability and designated Ireland as the country to which he be deported pursuant to 8 U. S. C. § 1253(a).[3] In conjunction with this designation, respondent withdrew his application for asylum and withholding of deportation. The INS unsuccessfully challenged respondent's designation on the basis that Doherty's deportation to Ireland would, in the language of § 1253(a), "be prejudicial to the interests of the United States." The Immigration Judge found that the INS had produced no evidence to support its objection to the designation and ordered that respondent be deported to Ireland. App. to Pet. for Cert. 158a. On March 11, 1987, the Board of Immigration Appeals (BIA) affirmed the deportation order, concluding that the INS had never before rejected a deportee's designation and that rejection of a deportee's country of designation is improper "in the absence of clear evidence to support that conclusion." *Id.*, at 155a.

The INS appealed the BIA's determination to the Attorney General pursuant to 8 CFR § 3.1(h)(iii) (1987).[4] While the order to deport respondent to Ireland was being reviewed by the Attorney General, respondent filed a motion to reopen his deportation proceedings on the basis that the

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[3] Title 8 U. S. C. § 1253(a) provides, in part: "The deportation of an alien in the United States . . . shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States."

[4] Initially, the INS moved for reconsideration of the BIA's March 1987 decision based on new evidence in the form of an affidavit by the Associate Attorney General. The BIA reopened the appeal but refused to remand to the Immigration Judge, instead finding that the affidavit offered by the INS was not new evidence and, in any event, did not change the BIA's conclusion. App. to Pet. for Cert. 134a–142a.

Irish Extradition Act, implemented by Ireland in December 1987, constituted new evidence requiring that his claims for withholding of deportation and asylum now be reopened. In June 1988, Attorney General Meese reversed the BIA and ordered respondent deported to the United Kingdom. Respondent's designation was rejected by the Attorney General on the basis that respondent committed a serious crime in the United Kingdom and therefore to deport respondent to any country other than the United Kingdom to serve his sentence would harm the interests of the United States. The Attorney General remanded respondent's motion to reopen for consideration by the BIA.

The BIA granted respondent's motion to reopen, concluding that the 1987 Irish Extradition Act was a circumstance that respondent could not have been expected to anticipate, and that the result of his designation would now leave him to be extradited from Ireland to the United Kingdom, where he feared persecution. The BIA's decision to reopen was appealed by the INS and was reversed by Attorney General Thornburgh who found three independent grounds for denying Doherty's motion to reopen. The Court of Appeals for the Second Circuit reviewed both the order of Attorney General Meese which denied respondent's designation of Ireland as the country of deportation and Attorney General Thornburgh's order denying respondent's motion to reopen his deportation proceedings. It affirmed the Meese order, but by a divided vote reversed the Thornburgh order. *Doherty* v. *United States Dept. of Justice, INS*, 908 F. 2d 1108 (1990). Attorney General Thornburgh had abused his discretion in denying the motion to reopen, according to the Court of Appeals, because he had overturned the BIA's finding that respondent had produced new material evidence under an incorrect legal standard. The passing of the 1987 Irish Extradition Act in conjunction with Attorney General Meese's denial of Ireland as Doherty's country of deportation was

new evidence, which, according to the Court of Appeals, entitled Doherty to have his deportation proceedings reopened.

The Court of Appeals also held that Attorney General Thornburgh had erred in determining, on a motion for reopening, that respondent was not entitled to the ultimate relief requested. Citing this Court's decision in *INS* v. *Abudu*, 485 U. S. 94 (1988), the Court of Appeals held that such a determination could not be made for the mandatory relief of withholding of deportation, and that once an alien establishes a prima facie case for withholding of deportation and brings new evidence, the Attorney General is without discretion to deny the motion to reopen. In addition, the Court of Appeals held that the Attorney General had abused his discretion by relying on foreign policy concerns in denying respondent's motion to reopen his claim for asylum. After examining the legislative history of § 208 of the Immigration and Nationality Act, the Court of Appeals concluded that Congress intended foreign policy interests to play no role in asylum determinations. The Attorney General had abused his discretion "in denying Doherty's application for reasons that congress sought to eliminate from asylum cases . . . ." 908 F. 2d, at 1121.

We granted certiorari, 498 U. S. 1081 (1991), and now decide that the Court of Appeals placed a much too narrow limit on the authority of the Attorney General to deny a motion to reopen deportation proceedings. The Attorney General based his decision to deny respondent's motion to reopen on three independent grounds. First, he concluded that respondent had not presented new evidence warranting reopening; second, he found that respondent had waived his claims to asylum and withholding of deportation by withdrawing them at his deportation hearing in September 1986; and, third, he concluded that the motion to reopen was properly denied because Doherty's involvement in serious nonpolitical crimes in Northern Ireland made him statutorily ineli-

gible for withholding of deportation,[5] as well as undeserving of the discretionary relief of asylum. Because we conclude that the Attorney General did not abuse his discretion in denying the motion to reopen either on the first or second of these grounds, we reverse the Court of Appeals' decision, and need not reach the third ground for denial of reopening relied upon by the Attorney General.

I

This is the fifth case in the last decade in which we have dealt with the authority of the Attorney General and the BIA to deny a motion to reopen deportation proceedings. These cases establish several propositions. There is no statutory provision for reopening of a deportation proceeding, and the authority for such motions derives solely from regulations promulgated by the Attorney General. *INS* v. *Rios-Pineda*, 471 U. S. 444, 446 (1985). The regulation with which we deal here, 8 CFR § 3.2 (1987), is couched solely in negative terms; it requires that under certain circumstances a motion to reopen be denied, but does not specify the conditions under which it shall be granted:

"Reopening or reconsideration.

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[5] Title 8 U. S. C. § 1253(h) provides in pertinent part:

"Withholding of deportation or return

"(1) The Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(2) Paragraph (1) shall not apply to any alien if the Attorney General determines that—

"(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; [or]

. . . . . .

"(C) there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States . . . ."

> ". . . Motions to reopen in deportation proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing . . . ."

The granting of a motion to reopen is thus discretionary, *INS* v. *Phinpathya*, 464 U. S. 183, 188, n. 6 (1984), and the Attorney General has "broad discretion" to grant or deny such motions, *Rios-Pineda*, *supra*, at 449. Motions for reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS* v. *Abudu*, 485 U. S., at 107–108. This is especially true in a deportation proceeding, where, as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States. See *INS* v. *Rios-Pineda*, *supra*, at 450. In *Abudu*, *supra*, we stated that there were "at least" three independent grounds on which the BIA might deny a motion to reopen—failure to establish a prima facie case for the relief sought, failure to introduce previously unavailable, material evidence, and a determination that even if these requirements were satisfied, the movant would not be entitled to the discretionary grant of relief which he sought. *Abudu*, *supra*, at 104–105. When denial of a motion to reopen is based on the last two of these three grounds, abuse of discretion is the proper standard of review. 485 U. S., at 105.

We also noted in *Abudu* that the abuse-of-discretion standard applies to motions to reopen "regardless of the underlying basis of the alien's request [for relief]." *Id.*, at 99, n. 3.[6] In *Abudu* itself, the alien's claim for asylum was made after

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[6] This is so, in part, because every request for asylum made after institution of deportation proceedings is also considered as a request for withholding of deportation under 8 U. S. C. § 1253(h) (1988 ed. and Supp. II). 8 CFR § 208.3(b) (1983).

an order of deportation was issued, and therefore by operation of the regulations, the alien had brought a claim for withholding of deportation as well. *Ibid.*[7] The discretion which we discussed in *Abudu*, therefore, applies equally to motions to reopen claims for asylum and claims for withholding of deportation.

We think that the proper application of these principles leads inexorably to the conclusion that the Attorney General did not abuse his discretion in denying reopening either on the basis that respondent failed to adduce new material evidence or on the basis that respondent failed to satisfactorily explain his previous withdrawal of these claims.

II

The Attorney General determined that neither the denial of respondent's designation of Ireland as the country of deportation, nor the change in Irish extradition law, qualified as new material evidence to support reopening of respondent's deportation proceedings. He explained that since the very same statute which allows the alien to designate a country for deportation also authorizes the Attorney General to oppose that designation, the eventual denial of respondent's designation could not be a "new fact" which would support reopening. He stated that "it is inconceivable that anyone represented by counsel could not know that there always existed a risk that the Attorney General would deny respondent's deportation to Ireland to protect the interests of the United States." App. to Pet. for Cert. 66a. This conclusion was based on 8 U. S. C. § 1253(a), which provides that

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[7] We concluded that the BIA was within its discretion to deny respondent's motion to reopen both claims for relief because "respondent had not reasonably explained his failure to apply for asylum prior to the completion of the initial deportation proceeding," *INS* v. *Abudu*, 485 U. S., at 111, not because the alien was not entitled on the merits to the relief sought. Cf. *post*, at 333–334 (SCALIA, J., concurring in judgment in part and dissenting in part).

the Attorney General shall direct the alien be deported to the country designated by the alien "if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States." In addition, in this case, the INS had objected to respondent's designation at the very hearing at which his selection of Ireland as the country of deportation was made.[8] The Attorney General also concluded that his rejection of the designated country was not a "fact," reasoning that "[t]he ultimate decision in an administrative process cannot itself constitute 'new' evidence to justify reopening. If an adverse decision were sufficient, there could never be finality in the process." App. to Pet. for Cert. 67a. He therefore concluded that the Government's successful opposition to respondent's designation was neither "new" nor "evidence."

The Attorney General also decided that Ireland's implementation of its 1987 Extradition Act was neither relevant nor new. By the time he issued his denial of the motion to reopen, the question was whether respondent should be deported to the United Kingdom. And the treaty upon which the Irish Extradition Act was based had been signed six months *before* respondent withdrew his asylum and withholding of deportation claims in 1986. He also noted that a change in law ordinarily does not support a motion to reopen unless the change pertains to the rules of the proceeding at which deportation was ordered.

The Court of Appeals took the view that the Attorney General's insistence that the grounds adduced for reopening have been "unforeseeable" was supported by "[n]either the regulations nor the applicable decisional law." 908 F. 2d, at

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[8] At the deportation hearing, counsel for the INS stated that the INS "oppose[d] the designation of the Republic of Ireland on the ground that the respondent's deportation to the Republic of Ireland would be prejudicial to the interest of the United States" and designated the United Kingdom as "an alternate country of deportation." App. 34.

1115. But the regulation here in question, 8 CFR § 3.2 (1987), provides in part that motions to reopen in deportation proceedings "shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing . . . ." The Court of Appeals seized upon a sentence in our opinion in *Abudu* stating that the issue in such a proceeding is whether the alien has "reasonably explained his failure to apply for asylum initially" and has indeed offered "previously unavailable, material evidence," *Abudu*, 485 U. S., at 104–105, as negating a requirement of unforeseeability. But this sentence, we think, cannot bear that construction, particularly when the same opinion sets out verbatim the applicable regulation quoted above. It is not at all uncommon to require that motions to reopen proceedings be based on matter which could not reasonably have been previously adduced; see, *e. g.*, Fed. Rule Civ. Proc. 60(b)(2) ("newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) . . ."). We hold, for the reasons stated in the opinion of the Attorney General, that it was well within his broad discretion in considering motions to reopen to decide that the material adduced by respondent could have been foreseen or anticipated at the time of the earlier proceeding.[9] The alien, as we discuss more fully in Part III, *infra*, is allowed to plead inconsist-

[9] The Court of Appeals, 908 F. 2d 1108, 1115–1116 (CA2 1990), and JUSTICE SCALIA, *post*, at 338–339, suggest that the Attorney General's denial of respondent's designation of Ireland was not even foreseeable at the time of the deportation hearing. Given the statutory language of 8 U. S. C. § 1253(a) and the position taken by the INS at the deportation hearing, we find it unrealistic to assume that respondent was unaware of the possibility that his designation of Ireland might prove ineffective notwithstanding the fact that Ireland was willing to receive him. The Attorney General certainly does not abuse his discretion in failing to take such a view of the events in this case.

ently in the alternative in the original proceeding and thereby raise any claims that are foreseeable at that time.

The Court of Appeals also took the view that since the BIA had granted the motion to reopen, the Attorney General was in some way limited in his authority to overturn that decision. But the BIA is simply a regulatory creature of the Attorney General, to which he has delegated much of his authority under the applicable statutes. He is the final administrative authority in construing the regulations, and in deciding questions under them. See *INS* v. *Jong Ha Wang*, 450 U. S. 139, 140 (1981) *(per curiam)*. The mere fact that he disagrees with a conclusion of the BIA in construing or applying a regulation cannot support a conclusion that he abused his discretion.

III

The Attorney General found, as an independent basis for denying reopening, that respondent had waived his claims for relief by withdrawing them at the first hearing to obtain a tactical advantage. We disagree with the Court of Appeals' rejection of this reason to deny reopening. 908 F. 2d, at 1122. The Attorney General's reasoning as to respondent's waiver of his claims is the functional equivalent of a conclusion under 8 CFR § 208.11 (1987) that respondent has not reasonably explained his failure to pursue his asylum claim at the first hearing. In other words, the Attorney General found that withdrawing a claim for a tactical advantage is not a reasonable explanation for failing to pursue the claim at an earlier hearing.[10]

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[10] Although 8 CFR §§ 208.11 and 3.2 (1987) are nominally directed respectively at motions to reopen asylum claims and withholding of deportation claims, they are often duplicative in that an offer of material evidence which was not available at the time of the hearing would, in most cases, also be an adequate explanation for failure to pursue a claim at an earlier proceeding. As we explained in *INS* v. *Abudu*, 485 U. S. 94, 99, n. 3 (1988), the "application of 8 CFR § 208.11 (1987), which on its face applies only to asylum requests on reopening, will also usually be dispositive of

Precisely because an alien may qualify for one form of relief from deportation, but not another, the INS allows aliens to plead in the alternative in immigration proceedings.[11] There was nothing which prevented respondent from bringing evidence in support of his asylum and withholding of deportation claims at his first deportation proceeding, in case the Attorney General did contest his designation of Ireland as the country to which he be deported.[12] Respondent chose, however, to withdraw those claims, even when expressly questioned by the Immigration Judge.[13]

The Court of Appeals rejected this ground for the Attorney General's denial of reopening on the ground that his reasoning was "incompatible with any motion to reopen . . . ." 908 F. 2d, at 1122. It may be that the Attorney General has adopted a narrow, rather than a broad, construction of the

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its decision whether to reopen to permit a withholding of deportation request." See *supra*, at 324. The opportunity for the alien to plead in the alternative is an ample basis for the Attorney General to find, without abusing his discretion in a situation such as the present one, that the failure of the alien to so plead has not been reasonably explained.

[11] Indeed, in *Abudu, supra,* the alien had moved to reopen his deportation proceedings to pursue claims for asylum and withholding of deportation based on persecution he feared in his home country of Ghana in the event that his designation of England as the country of deportation proved ineffective. 485 U. S., at 97.

[12] The Immigration Judge did prevent the INS from presenting evidence of additional grounds on which respondent could be deported once respondent had conceded deportability, but there is no indication that had respondent not withdrawn his claims at the September 12, 1986, proceeding, the Immigration Judge would not have allowed respondent to bring evidence in support of his application for asylum and withholding of deportation. App. to Pet. for Cert. 157a.

[13] At the September 12, 1986, hearing, the Immigration Judge asked respondent's counsel: "I just want to be sure . . . there won't be any application for political asylum and/or withholding of deportation, correct?" to which respondent's counsel replied: "That is correct." The Immigration Judge asked again: "In other words, there is no application for relief from deportation that you will be making?" to which the response from counsel was again in the affirmative. App. 32.

regulations governing reopening, but nothing in the regulations forbids such a course. The Attorney General here held that respondent's decision to withdraw certain claims in the initial proceedings was a "deliberate tactical decision," and that under applicable regulations those claims could have been submitted at that time even though inconsistent with other claims made by respondent. We hold that this basis for the Attorney General's decision was not an abuse of discretion.

The judgment of the Court of Appeals is

Reversed.

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

JUSTICE SCALIA, with whom JUSTICE STEVENS and JUSTICE SOUTER join, concurring in the judgment in part and dissenting in part.

I agree that the Attorney General's broad discretion to deny asylum justified his refusal to reopen the proceedings so that Doherty might apply for that relief; but a similar rationale is not applicable to the denial of reopening for the withholding-of-deportation claim. (Part I, *infra.*) In my view the Immigration and Naturalization Service (INS) is wrong in asserting that there was waiver or procedural default of the withholding claim (Part II); and the Attorney General abused his discretion in decreeing that, for those or other reasons unrelated to the merits of the withholding claim, Doherty would not be allowed reopening to apply for that relief (Part III). There may be merit in the INS' alternative argument that denial of reopening for the withholding claim was proper because Doherty was statutorily ineligible for withholding; whether that is so cannot be determined without a detailed review of the factual record. (Part IV.)

I

I do not question the Court's premise that the decision whether to permit reopening of an immigration proceeding is discretionary. *Ante*, at 323. Even discretion, however, has its legal limits. The question before us here is whether the decision not to permit reopening in the present case was an abuse of discretion according to those standards of federal administration embodied in what we have described as "the 'common law' of judicial review of agency action," *Heckler* v. *Chaney*, 470 U. S. 821, 832 (1985). If it was such an abuse of discretion, courts are commanded by the judicial review provisions of the Administrative Procedure Act (APA) to "hold [it] unlawful and set [it] aside." 5 U. S. C. § 706(2). (Although the detailed hearing procedures specified by the APA do not apply to hearings under the Immigration and Nationality Act (INA), see *Marcello* v. *Bonds*, 349 U. S. 302 (1955), the judicial review provisions do, see *Shaughnessy* v. *Pedreiro*, 349 U. S. 48 (1955).)[1]

Whether discretion has been abused in a particular case depends, of course, upon the scope of the discretion. It is tempting to believe, as the Court does, that the Attorney General's discretion to deny reopening is extremely broad, simply because the term "reopening" calls to mind the reopening of a final judgment by a court—a rarely accorded matter of grace. In fact, however, the nature of the INS regulations is such that the term "reopening" also includes,

[1] *Pedreiro* remains the law, although the particular mode of APA review at issue in the case—an action for injunctive relief in federal district court—has been eliminated by § 106 of the INA, 8 U. S. C. § 1105a, which "replaced it with direct review in the courts of appeals based on the administrative record." *Agosto* v. *INS*, 436 U. S. 748, 752–753 (1978). See 5 U. S. C. § 703 ("The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction").

to a large extent, what is in the judicial context the much more common phenomenon called "remand for further proceedings." Under the INS system, reopening is the sole means of raising certain issues that acquire legal relevance or practical importance only by virtue of the decision on appeal. A remand for that purpose often requires a "reopening" of the original hearing, and may be expressly denominated as such. See, *e. g.*, *Matter of Dourai*, 18 I. & N. Dec. 37 (BIA 1981). Permission to "reopen" in this sense cannot be denied with the breadth of discretion that the Court today suggests.

A second reason that the Court mistakes the scope of the discretion at issue here is that it relies upon "broad discretion" statements in cases such as *INS* v. *Rios-Pineda*, 471 U. S. 444, 449 (1985), which involved reopening in order to apply for substantive relief that was *itself* subject to the discretion of the Attorney General. That is not the case here. Section 243(h)(1) of the INA, as amended, provides that, subject to four enumerated exceptions:

> "The Attorney General *shall not* deport or return any alien (other than an alien described in section 241(a)(4)(D) [8 U. S. C. § 1251(a)(4)(D)]) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U. S. C. § 1253(h)(1) (1988 ed., Supp. II) (emphasis added).

The imperative language of this provision is not an accident. As we recognized in *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 428–429 (1987), the nondiscretionary duty imposed by § 243(h) parallels the United States' mandatory *nonrefoulement* obligations under Article 33.1 of the United Nations Convention Relating to the Status of Refugees, 189 U. N. T. S. 150, 176 (1954), reprinted in 19 U. S. T. 6259, 6276,

T. I. A. S. No. 6577 (1968).[2] Before 1980, § 243(h) merely "authorized" the Attorney General to withhold deportation in the described circumstances, but did not require withholding in any case. 8 U. S. C. § 1253(h) (1976 ed., Supp. III). We presumed in *Cardoza-Fonseca*, *supra*, at 429, however, that after 1968, when the United States acceded to this provision of the Convention, the Attorney General "honored the dictates" of Article 33.1 in administering § 243(h). In 1980 Congress removed all doubt concerning the matter by substituting for the permissive language of § 243(h) the current mandatory provision, "basically conforming it to the language of Article 33 [of the Convention]." *INS* v. *Stevic*, 467 U. S. 407, 421 (1984).

Because of the mandatory nature of the withholding-of-deportation provision, the Attorney General's power to deny withholding claims differs significantly from his broader authority to administer discretionary forms of relief such as asylum and suspension of deportation. Our decision in *INS* v. *Abudu*, 485 U. S. 94 (1988), reflects this. We there identified three independent grounds upon which the Board of Immigration Appeals (BIA) may deny a motion to reopen:

> "First, it may hold that the movant has not established a prima facie case for the underlying substantive relief sought. . . . Second, the BIA may hold that the movant has not introduced previously unavailable, material evidence, 8 CFR § 3.2 (1987), or, in an asylum application case, that the movant has not reasonably explained his

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[2] Article 33.1 provides:

"No Contracting State shall expel or return *('refouler')* a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

The United States was not a signatory to the 1954 Convention, but agreed to comply with certain provisions, including Article 33.1, in 1968, when it acceded to the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U. S. T. 6223, 6225, T. I. A. S. No. 6577.

> failure to apply for asylum initially, 8 CFR § 208.11 (1987). . . . Third, in cases in which the ultimate grant of relief is discretionary (asylum, suspension of deportation, and adjustment of status, *but not withholding of deportation*), the BIA may leap ahead, as it were, over the two threshold concerns . . . , and simply determine that even if they were met, the movant would not be entitled to the discretionary grant of relief." *Id.*, at 104–105 (emphasis added).

The first two grounds (prima facie case and new evidence/reasonable explanation) are simply examples of, respectively, the broader grounds of statutory ineligibility and procedural default. The third ground reflects an understanding that the Attorney General's power to grant or deny, as a discretionary matter, various forms of nonmandatory relief includes within it what might be called a "merits-deciding" discretion to deny motions to reopen, even in cases where the alien is statutorily eligible and has complied with the relevant procedural requirements. This third ground validates, in my view, the Attorney General's denial of reopening with respect to Doherty's claim for asylum, which is a nonmandatory remedy, 8 U. S. C. § 1158(a). Irrespective of foreign policy concerns and regardless of whether Doherty's crimes were "political," it was within the Attorney General's discretion to conclude that Doherty is a sufficiently unsavory character not to be granted asylum in this country.

But as the emphasized phrase in the above-quoted excerpt from *Abudu* suggests, there is no analogue to this third ground in the context of mandatory relief. See also 485 U. S., at 106 ("[Our prior decisions] have served as support for an abuse-of-discretion standard of review for the third type of denial, where the BIA simply refuses to grant relief *that is itself discretionary in nature*, even if the alien has surmounted the requisite thresholds . . .") (emphasis added). There is no "merits-deciding" discretion to deny reopening in the context of withholding of deportation. The Attorney

General could not deny reopening here—as he could in *Abudu*, *Rios-Pineda*, and the other case cited by the Court, *INS* v. *Phinpathya*, 464 U. S. 183 (1984)—simply because he did not wish to provide Doherty the relief of withholding.

II

The INS puts forward three procedural bases for rejecting Doherty's motion to reopen. In my view none is valid.

A

The Attorney General asserted, as one of his reasons for denying the reopening—a reason only two Members of the Court accept, *ante*, at 327, 329—that Doherty "waived" his claims by withdrawing them at his deportation hearing. I do not see how that can be. The deportation proceeding had begun by the filing and service of an order to show cause why Doherty should not be deported, which order clearly contemplated that he would be deported to the United Kingdom. He initially responded to this order (and to the United Kingdom's simultaneous efforts to obtain extradition) by requesting asylum, and under 8 CFR § 208.3(b) (1983), this request was also treated as an application for withholding of deportation under § 243(h) of the INA. After the extradition proceedings had concluded in his favor, Doherty changed his mind and sought to withdraw the request and application, concede deportability, and designate Ireland as his country of deportation, pursuant to 8 U. S. C. § 1253(a). (Doherty's motive, apparently, was to get the deportation hearing over and himself out of the country quickly, before conclusion of a new extradition treaty between the United States and the United Kingdom.) I would agree that when this withdrawal was permitted by the Immigration Judge (IJ), it would have constituted a waiver of Doherty's right to withholding *if* some regulation precluded resubmission of a withdrawn application. No such regulation exists, however; the withdrawal of a withholding application no more prevents later

reapplication than the withdrawal of an application for Social Security benefits prevents later reapplication.

In addition to the mere fact of withdrawal, there was the following exchange between the IJ and counsel for Doherty:

> "Q. . . . I just want to be sure . . . there won't be any application for political asylum and/or withholding of deportation, correct?
>
> "A. That is correct.
>
> "Q. No application for voluntary departure?
>
> "A. That is correct.
>
> "Q. In other words, there is no application for relief from deportation that you will be making?
>
> "A. That is correct." App. 32.

The IJ engaged in this questioning in order to determine whether he would accept the proposal of Doherty's counsel to concede deportability and designate a country, instead of proceeding with further proof of deportability. In that context, the only commitment reasonably expressed by the above-quoted exchange, it seems to me, was a commitment not to seek withholding *if the proposed designation was allowed.* Doherty thereby waived, I think, the right to seek withholding if the United Kingdom should be specified as the "alternate" destination and if Ireland, though *accepted* as his designated country of deportation, should refuse to accept him. This is confirmed by the following exchange between the IJ and Doherty's counsel later in the hearing, after the Government had requested specification of the United Kingdom as the "alternate" destination:

> "Q. And, what about the other issue about the alternate designation? What if Eire doesn't accept him?
>
> "A. Your Honor, we are assured that Ireland will accept him and that there is no basis under Irish law not to accept him.

"Q. All right. So, you have no objection, then, to the United Kingdom and Colonies being designated as an alternate?

"A. That's correct, Your Honor." *Id.*, at 42.

That much of a waiver was implicit in counsel's commitment not to raise a withholding claim if the proposed concession of deportability and designation of country were accepted. But I do not think one can reasonably find in the record *any* waiver, *any* commitment as to what Doherty would do, if the proposed designation of country was *not* accepted—which is what ultimately happened here.

THE CHIEF JUSTICE, joined by JUSTICE KENNEDY, suggests another, more subtle, theory of waiver: Doherty waived his legal right to withholding because he did not apply for it as soon as possible. "There was nothing which prevented respondent" from making his withholding claim against the United Kingdom *as the specified alternate country of deportation*, *ante*, at 328; "[r]espondent chose, however, to withdraw" that claim, *ibid.;* so it was reasonable for the Attorney General to prevent him from making any withholding claim *against the United Kingdom in any context.* To state this argument is to expose its frailty; it simply does not follow. Unless there is some rule that says you must object to a country named in any capacity as soon as the opportunity presents itself, there is no apparent reason why the failure to do so should cause the loss of a legal right. THE CHIEF JUSTICE suggests that there *is* such a rule—viz., 8 CFR §208.11 (1987), which requires that aliens who request reopening for relief from deportation must "reasonably explain the failure to request" that relief "prior to the completion of the exclusion or deportation proceeding." Unfortunately, however, §208.11 applies *only to asylum.* Far from establishing a "raise-it-as-soon-as-possible" rule for withholding claims, this provision by negative implication dis-

claims it.[3] In any case, even if a "reasonable explanation" requirement did exist, it was surely arbitrary and therefore unlawful for the Attorney General to say that the following did not qualify: "I did not raise it earlier because I agreed I would abstain from doing so in exchange for acceptance of my concession of deportability and designation of Ireland; only when that acceptance was withdrawn did I withdraw my abstention; and until then the claim had absolutely no practical importance." If that is not well within the term "reasonably explain," the words of the regulation are a sham and a snare. To be sure, Doherty did, as the Attorney General said, make a "deliberate tactical decision" not to seek withholding from the United Kingdom as the specified alternate. But there is nothing unworthy about deliberate tactical decisions; waivers are not to be slapped upon them as penalties, but only to be discerned as the reasonable import

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[3] THE CHIEF JUSTICE seeks to enlist the support of *INS* v. *Abudu*, 485 U. S. 94 (1988), for the proposition that—*despite* this negative implication—the requirement applies to withholding claims as well. *Ante*, at 327–328, n. 10, quoting *Abudu*'s statement that "the . . . application of 8 CFR § 208.11 (1987), which on its face applies only to asylum requests on reopening, will also usually be dispositive of its decision whether to reopen to permit a withholding of deportation request," 485 U. S., at 99, n. 3. This misses the whole point of the *Abudu* footnote, which is that *since* reopening for an asylum request automatically reopens for a withholding claim; and *since* the other requirements for withholding are either the same as or more stringent than the requirements for asylum; the single *more rigorous* asylum requirement—the "reasonable explanation" provision of § 208.11—will normally, as a practical matter, decide not only whether reopening for asylum but also whether reopening for withholding will be granted. *Abudu* itself proved the point: The Court of Appeals had granted reopening as to the withholding claim only because it had decided that reopening was required for the asylum request. *Abudu* v. *INS*, 802 F. 2d 1096, 1102 (CA9 1986). Once we decided the latter reopening was in error because the BIA had properly denied it on § 208.11 grounds, the piggybacked reopening for withholding automatically became error as well.

of the action taken, or as the consequence prescribed by law. There was no waiver here.

B

Another reason the Attorney General gave for denying reopening—and which the plurality accepts, see *ante*, at 324, 326—is that Doherty's December 1987 motion failed to comply with the regulatory requirements that it identify "new facts to be proved at the reopened hearing," 8 CFR § 3.8(a) (1987), and that it show the "evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing," § 3.2. The Court of Appeals concluded that Doherty had satisfied this burden by establishing that there had been a material change in Irish law, and that Attorney General Meese's order had subsequently changed Doherty's designated country of deportation to one in which he believed he would be subject to persecution. 908 F. 2d 1108, 1115–1116 (CA2 1990).

I agree with the INS that the asserted change in Irish law does not satisfy the reopening requirements because it was not "material" at the time the BIA first ruled on the motion to reopen in November 1988. By then Attorney General Meese had already ordered Doherty deported to the United Kingdom instead of Ireland, and any change in Irish law was no more relevant to his withholding claim than would be a change in the law of any other country to which he was not being returned. But the Attorney General's alteration of Doherty's designated country of deportation is another matter. Of course this is not what one would normally think of as a "new fac[t] to be proved at the reopened hearing" or "evidence . . . to be offered." But the words can technically reach that far, and unless they are given such an expansive meaning, the regulations make no sense because they do not allow obviously necessary remands. Suppose, for example, that the Attorney General had changed Doherty's primary destination, not to the United Kingdom, but to some country that the IJ had not designated as an alternate destination.

Doherty would surely be entitled to reopening for the purpose of applying for withholding of deportation to that country, even though he might be able to present no "new fac[t]" or "evidence [that] . . . was not available" other than the altered disposition. The INS concedes, moreover, that a change in our immigration laws after deportation has been ordered is a proper basis for reopening—yet that is equally difficult to describe as a "new fac[t]" or "evidence."

The Attorney General argued, and the INS repeats the argument here, that "[t]he ultimate decision in an administrative process cannot itself constitute 'new' evidence to justify reopening," since "[i]f an adverse decision were sufficient, there could never be finality in the process." That would be true only if a change of outcome on appeal were *always* a basis for reopening, but the question here is whether it may *sometimes* be. There is obviously no great practical difficulty in that. This Court itself, in reversing a judgment, frequently remands for further proceedings that our new determination has made necessary.

C

The INS made at oral argument a contention that is to be found neither in the reasoning of the Attorney General in denying the reopening nor even in the INS' briefs: that under INS procedures Doherty was not only *permitted* but was actually *required* to present his claim for withholding during the deportation hearing, on pain of losing it. The belated discovery of this point renders it somewhat suspect, and the INS did not even cite any specific regulation upon which it is based. Presumably, however, it rests upon 8 CFR § 242.17(e) (1986), which provides that "[a]n application under this section shall be made only during the hearing . . . ." The section includes subsection 242.17(c), which provides that the IJ shall specify a country, or countries in the alternate, to which the respondent will be sent if he declines to designate one, or if the country of his desig-

nation will not accept him or fails to provide timely notice of acceptance.[4] It then continues: "The respondent shall be advised that pursuant to section 243(h) of the [INA] he may apply for temporary withholding of deportation to the country or countries specified by the special inquiry officer [*i. e.*, Immigration Judge] . . . ." [5] In my view this provision simply means that the respondent must accept the default specifications of the IJ unless he objects to them at the hearing. (Doherty chose not to do so because, having already received assurances from the Irish Government, he had no concern that the default specification would ever take effect and did not wish to protract the proceeding.) The provision in my view does *not* mean what the INS now asserts (if this is the regulation it has in mind): that if a respondent fails to object to a particular country as a default destination, he cannot later object when that country is substituted as his primary

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[4] The deportation order in this case faithfully followed this provision:

"IT IS ORDERED that the respondent be deported to Eire on the charge contained in the Order to Show Cause.

"IT IS FURTHER ORDERED that if Eire advises the Attorney General that it is unwilling to accept respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, respondent shall be deported to the United Kingdom and Colonies."

[5] The entire relevant portion of § 242.17(c) provides:

"The special inquiry officer shall notify the respondent that if he is finally ordered deported his deportation will in the first instance be directed pursuant to section 243(a) of the [INA] to the country designated by him and shall afford the respondent an opportunity then and there to make such designation. The special inquiry officer shall then specify and state for the record the country, or countries in the alternate, to which respondent's deportation will be directed pursuant to section 243(a) of the [INA] if the country of his designation will not accept him into its territory, or fails to furnish timely notice of acceptance, or the respondent declines to designate a country. The respondent shall be advised that pursuant to section 243(h) of the [INA] he may apply for temporary withholding of deportation to the country or countries specified by the special inquiry officer and may be granted not more than ten days in which to submit his application." 8 CFR § 242.17(c) (1986).

destination. For when he objects to a country that has been substituted as the primary destination, it is no longer "withholding of deportation to the country or countries specified by the special inquiry officer" *under § 242.17(c)* that he is applying for, and hence it is no longer "[an] application under this section."

This reading causes the provision to produce the consequence that acquiescence ordinarily produces in litigation: The litigant must live with the disposition acquiesced in, here the specification of *default* destinations. An agency wishing acquiescence to entail something more—wishing to change the normal rule from "object to the disposition now, or object never" to "object to the country you have an opportunity to object to now, or object never"—can be expected to describe that unusual arrangement with greater clarity than this provision contains. I am not prepared to find, on the basis of a default theory not mentioned by the Attorney General when he denied reopening, first put forward by counsel in oral argument at the very last stage of litigation, and never explicitly attributed to this particular regulation as its source, that this is what the INS interprets the provision to mean. Indeed, I have some doubt whether the first-ever, unforewarned adoption of that interpretation to produce the automatic cutoff of a statutorily conferred right would be lawful. Cf. *NLRB* v. *Bell Aerospace Co.*, 416 U. S. 267, 294–295 (1974). I have no doubt whatever, however, that it would be an abuse of discretion to deny reopening if such a surprise cutoff should occur.

III

I have concluded that the denial of reopening in this case was justified neither by any of the theories of waiver and procedural default asserted by the INS (Part II), nor by the Attorney General's "merits-deciding" discretion discussed in *Abudu* (Part I). Even so, it might be said, the act of reopening a concluded proceeding is *itself* a discretionary one. True—but as I discussed at the outset, it is not as discretion-

ary (*i. e.*, is not subject to as broad a *scope* of discretion) as the term "reopening" might suggest. Surely it would be unlawful to deny reopening ("remand" would be a better word) when the decision of the Attorney General substitutes for the alien's designated country of deportation a country that was not an "alternate" specified by the IJ, so that the alien was not entitled to challenge it at the hearing at all. It is also, in my view, an "abuse of discretion," if not indeed positively contrary to law, to deny "reopening" when the Attorney General's decision substitutes a country that *was* an alternate, at least where, as here, (1) the alien had assurance that the country of primary destination would accept him, and (2) there was no clear indication in the INS' rules or practice that a country not objected to as an alternate could not later be objected to as the primary designation. That this is beyond the permissible foreclosure of mandatory relief such as withholding is suggested by the negative implication of the INS' own regulation entitled "Reopening or reconsideration," which reads in part:

> "[N]or shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of *discretionary* relief be granted if it appears that the alien's right to apply for such relief was fully explained to him and an opportunity to apply therefor was afforded him at the former hearing unless the relief is sought on the basis of circumstances which have arisen subsequent to the hearing." 8 CFR § 3.2 (1987) (emphasis added).

The denial of reopening here takes on a particularly capricious coloration when one compares it with the considerable indulgence accorded to the INS' procedural defaults in the same proceeding—and when one recognizes that it was precisely that indulgence which placed Doherty in the position of being unable to present his withholding claim. During the deportation hearing, the IJ rejected the INS' request to

change Doherty's designated country of deportation, concluding that the INS had failed to come forward with any evidence supporting its contention that deporting Doherty to Ireland would be prejudicial to the interests of the United States. On appeal, the BIA affirmed this action, and rejected the INS' motion to reopen (remand) for production of such evidence, since it had been previously available. Although Attorney General Meese did not formally review the BIA's denial of this motion, he effectively reversed it by receiving the proffered evidence into the record on appeal. Had the INS not procedurally defaulted during the deportation proceedings, and had the evidence it introduced been successful in securing *at that level* a rejection of his designated country, Doherty would clearly have been entitled to apply then for withholding. What the INS is here arguing, then, is that because it prevailed on appeal (after the forgiving of its procedural default), rather than before the IJ (with the observance of proper procedures), Doherty may be denied an opportunity to apply for withholding. The term "arbitrary" does not have a very precise content, but it is precise enough to cover this.

IV

The INS asserts that, even if the Attorney General erred in denying reopening on the basis of Doherty's alleged procedural defaults, the decision must nonetheless be upheld on the ground that the Attorney General properly concluded that Doherty was statutorily ineligible for withholding of deportation. In reaching this conclusion, the Attorney General assumed *arguendo* (as do I) that Doherty had established a prima facie case of eligibility for withholding of deportation under § 243(h)(1). His finding of statutory ineligibility was based solely on the determination that there were "serious reasons for considering that [Doherty] has committed a serious nonpolitical crime," 8 U. S. C. § 1253(h)(2)(C), and that Doherty had himself "assisted, or

otherwise participated" in persecution "on account of . . . political opinion," § 1253(h)(2)(A).[6]

The Court of Appeals held that the Attorney General erred in refusing to reopen on this basis because, in its view, the Attorney General may never make such determinations without a hearing. 908 F. 2d, at 1116–1117. It based this conclusion on *Abudu*'s statement that the BIA's authority to decide a reopening motion by "'leap[ing] ahead'" to the substantive determination that the movant would in any event "'not be entitled to the discretionary grant of relief'" does *not* apply to the relief of withholding of deportation. 908 F. 2d, at 1117 (quoting 485 U. S., at 105). As my earlier discussion makes clear, however, the "leap over" substantive determination at issue in *Abudu* was the determination that the Attorney General would not exercise his discretion in favor of granting asylum. See *supra*, at 332–333. Our statement that that sort of "leap over" determination could not be made for withholding was simply a recognition of the fact that the Attorney General *has* no discretion as to that relief. Nothing in *Abudu* suggests, however, that reopening may not be denied with respect to withholding on the basis of a determination, clearly supported by the existing record, that the alien is statutorily ineligible for relief. There is no reason in principle why such a determination cannot be made (indeed, the prima facie case inquiry is simply an example of such a determination), and the Court of Appeals' statement to the contrary seems to me wrong.

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[6] Section 243(h)(2) provides in relevant part that the mandatory obligation to withhold deportation does not apply to an alien if the Attorney General determines:

"(A) [T]he alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; [or]

. . . . . .

"(C) there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States . . . ." 8 U. S. C. §§ 1253(h)(2)(A), (C).

The Court of Appeals also concluded that an evidentiary hearing is always necessary for withholding claims because the types of issues they present—for example, whether an alien's serious crimes were "political"—"raise formidable questions of fact that cannot be adequately resolved in the absence of an evidentiary record." 908 F. 2d, at 1117. That is usually true, but surely not *always;* as in the ordinary civil context, there will be cases in which the paper record presented in connection with a claim, see Fed. Rule Civ. Proc. 56, or the record of an earlier hearing, will establish uncontroverted facts showing that the claim fails as a matter of law. Indeed, we recognized in *Abudu* that an evidentiary hearing may be denied if an alien requesting reopening fails to make a prima facie case for the relief sought, 485 U. S., at 104, despite the fact-intensive nature of the questions involved.

Concluding that the Court of Appeals erred in applying a *per se* rule that withholding claims cannot be resolved without an evidentiary hearing, I would vacate that portion of its judgment which orders a hearing. Before such an order can be entered, the court must consider whether the record before the Attorney General was sufficiently developed that, taken together with matters that are properly subject to notice, it provided the requisite degree of support for the conclusion that the serious crimes Doherty has admitted committing were "nonpolitical." I would remand the case to the Court of Appeals for consideration under that standard.

Syllabus

WHITE *v.* ILLINOIS

CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

No. 90–6113. Argued November 5, 1991—Decided January 15, 1992

At petitioner White's trial on charges related to a sexual assault upon S. G., a 4-year-old girl, the trial court ruled that testimony recounting S. G.'s statements describing the crime that was offered by her babysitter, her mother, an investigating officer, an emergency room nurse, and a doctor was admissible under state-law hearsay exceptions for spontaneous declarations and for statements made in the course of securing medical treatment. The trial court also denied White's motion for a mistrial based on S. G.'s presence at trial and failure to testify. White was found guilty by a jury, and the Illinois Appellate Court affirmed his conviction, rejecting his Sixth Amendment Confrontation Clause challenge that was based on *Ohio* v. *Roberts*, 448 U. S. 56. The court concluded that this Court's later decision in *United States* v. *Inadi*, 475 U. S. 387, foreclosed any rule requiring that, as a necessary antecedent to the introduction of hearsay testimony, the prosecution must either produce the declarant at trial or show that the declarant is unavailable.

Held: The Confrontation Clause does not require that, before a trial court admits testimony under the spontaneous declaration and medical examination exceptions to the hearsay rule, either the prosecution must produce the declarant at trial or the trial court must find that the declarant is unavailable. Pp. 352–358.

(a) This Court rejects the argument of the United States as *amicus curiae* that the Confrontation Clause's limited purpose is to prevent the abusive practice of prosecuting a defendant through the presentation of *ex parte* affidavits, without the affiants ever being produced at trial, that the only situation in which the Clause would apply to the introduction of out-of-court statements admitted under an accepted hearsay exception would be those few cases where the statement was in the character of such an *ex parte* affidavit, and that S. G. was not a "witness against" White within the meaning of the Clause because her statements did not fit this description. Such a narrow reading of the Clause, which would virtually eliminate its role in restricting the admission of hearsay testimony, is foreclosed by this Court's decisions, see, *e. g.*, *Mattox* v. *United States*, 156 U. S. 237, and comes too late in the day to warrant reexamination. Pp. 352–353.

Syllabus

(b) Although *Roberts* contains language that might suggest that the Confrontation Clause generally requires that a declarant be produced at trial or be found unavailable before his out-of-court statement may be admitted into evidence, such an expansive reading was negated by the Court's decision in *Inadi*, *supra*, at 392–400. As *Inadi* recognized with respect to co-conspirator statements, the evidentiary rationale for admitting testimony regarding such hearsay as spontaneous declarations and statements made in the course of receiving medical care is that such out-of-court declarations are made in contexts that provide substantial guarantees of their trustworthiness. But those same factors that contribute to the statements' reliability cannot be recaptured by later in-court testimony. A statement that has been offered in a moment of excitement—without the opportunity to reflect on the consequences of one's exclamation—may justifiably carry more weight with a trier of fact than a similar statement offered in the relative calm of a courtroom. Similarly, a statement made in the course of procuring medical services, where the declarant knows that a false statement may cause misdiagnosis or mistreatment, carries special guarantees of credibility that a trier of fact may not think replicated by courtroom testimony. Where proffered hearsay has sufficient guarantees of reliability to come within a firmly rooted exception to the hearsay rule, the Confrontation Clause is satisfied. Establishing a generally applicable unavailability rule would have few practical benefits while imposing pointless litigation costs. Pp. 353–357.

(c) White misplaces his reliance on *Coy* v. *Iowa*, 487 U. S. 1012, and *Maryland* v. *Craig*, 497 U. S. 836, from which he draws a general rule that hearsay testimony offered by a child should be permitted only upon a showing of necessity—*i. e.*, in cases where necessary to protect the child's physical and psychological well-being. Those cases involved only the question of what *in-court* procedures are constitutionally required to guarantee a defendant's confrontation rights once a child witness is testifying, and there is no basis for importing their "necessity requirement" into the much different context of out-of-court declarations admitted under established exceptions to the hearsay rule. Pp. 357–358.

198 Ill. App. 3d 641, 555 N. E. 2d 1241, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined, and in which SCALIA and THOMAS, JJ., joined except for the discussion rejecting the United States' proposed reading of the "witness against" Confrontation Clause phrase. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, in which SCALIA, J., joined, *post*, p. 358.

Gary R. Peterson argued the cause for petitioner. With him on the briefs was *Daniel D. Yuhas.*

Arleen C. Anderson argued the cause for respondent. With her on the brief were *Roland W. Burris*, *Rosalyn B. Kaplan*, *Terence M. Madsen*, and *Douglas C. Smith.*

Stephen L. Nightingale argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Starr*, *Assistant Attorney General Mueller*, and *Deputy Solicitor General Bryson.**

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case, we consider whether the Confrontation Clause of the Sixth Amendment requires that, before a trial court admits testimony under the "spontaneous declaration" and "medical examination" exceptions to the hearsay rule,

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*Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Daniel E. Lungren*, Attorney General of California, *George Williamson*, Chief Assistant Attorney General, *Arnold O. Overoye*, Senior Assistant Attorney General, and *Karen L. Ziskind*, *Janet E. Neeley*, and *Janet G. Bangle*, Deputy Attorneys General, and by the Attorneys General for their respective States as follows: *Jimmy Evans* of Alabama, *Charles E. Cole* of Alaska, *Gale A. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *Robert A. Butterworth* of Florida, *Larry EchoHawk* of Idaho, *Bonnie Campbell* of Iowa, *Robert T. Stephan* of Kansas, *Fred Cowan* of Kentucky, *Michael E. Carpenter* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Marc Racicot* of Montana, *Frankie Sue Del Papa* of Nevada, *John P. Arnold* of New Hampshire, *Robert J. Del Tufo* of New Jersey, *Lee Fisher* of Ohio, *Ernest D. Preate, Jr.*, of Pennsylvania, *T. Travis Medlock* of South Carolina, *Paul Van Dam* of Utah, *Jeffrey L. Amestoy* of Vermont, *Mary Sue Terry* of Virginia, *Mario J. Palumbo* of West Virginia, and *Joseph B. Meyer* of Wyoming; for the City of New York by *Victor A. Kovner*, *Leonard J. Koerner*, and *Elizabeth S. Natrella;* for the New York Society for the Prevention of Cruelty to Children by *John P. Hale;* and for the Victim Assistance Centre, Inc., et al. by *David Crump.*

Natman Schaye filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae.*

the prosecution must either produce the declarant at trial or the trial court must find that the declarant is unavailable. The Illinois Appellate Court concluded that such procedures are not constitutionally required. We agree with that conclusion.

Petitioner was convicted by a jury of aggravated criminal sexual assault, residential burglary, and unlawful restraint. Ill. Rev. Stat., ch. 38, ¶¶ 12–14, 19–3, 10–3 (1989). The events giving rise to the charges related to the sexual assault of S. G., then four years old. Testimony at the trial established that in the early morning hours of April 16, 1988, S. G.'s babysitter, Tony DeVore, was awakened by S. G.'s scream. DeVore went to S. G.'s bedroom and witnessed petitioner leaving the room, and petitioner then left the house. 6 Tr. 10–11. DeVore knew petitioner because petitioner was a friend of S. G.'s mother, Tammy Grigsby. *Id.*, at 27. DeVore asked S. G. what had happened. According to DeVore's trial testimony, S. G. stated that petitioner had put his hand over her mouth, choked her, threatened to whip her if she screamed and had "touch[ed] her in the wrong places." Asked by DeVore to point to where she had been touched, S. G. identified the vaginal area. *Id.*, at 12–17.

Tammy Grigsby, S. G.'s mother, returned home about 30 minutes later. Grigsby testified that her daughter appeared "scared" and a "little hyper." *Id.*, at 77–78. Grigsby proceeded to question her daughter about what had happened. At trial, Grigsby testified that S. G. repeated her claims that petitioner had choked and threatened her. Grigsby also testified that S. G. stated that petitioner had "put his mouth on her front part." *Id.*, at 79. Grigsby also noticed that S. G. had bruises and red marks on her neck that had not been there previously. *Id.*, at 81. Grigsby called the police.

Officer Terry Lewis arrived a few minutes later, roughly 45 minutes after S. G.'s scream had first awakened DeVore. Lewis questioned S. G. alone in the kitchen. At trial, Lewis'

summary of S. G.'s statement indicated that she had offered essentially the same story as she had first reported to DeVore and to Grigsby, including a statement that petitioner had "used his tongue on her in her private parts." *Id.*, at 110–112.

After Lewis concluded his investigation, and approximately four hours after DeVore first heard S. G.'s scream, S. G. was taken to the hospital. She was examined first by Cheryl Reents, an emergency room nurse, and then by Dr. Michael Meinzen. Each testified at trial, and their testimony indicated that, in response to questioning, S. G. again provided an account of events that was essentially identical to the one she had given to DeVore, Grigsby, and Lewis.

S. G. never testified at petitioner's trial. The State attempted on two occasions to call her as a witness, but she apparently experienced emotional difficulty on being brought to the courtroom and in each instance left without testifying. App. 14. The defense made no attempt to call S. G. as a witness, and the trial court neither made, nor was asked to make, a finding that S. G. was unavailable to testify. 6 Tr. 105–106.

Petitioner objected on hearsay grounds to DeVore, Grigsby, Lewis, Reents, and Meinzen being permitted to testify regarding S. G.'s statements describing the assault. The trial court overruled each objection. With respect to DeVore, Grigsby, and Lewis the trial court concluded that the testimony could be permitted pursuant to an Illinois hearsay exception for spontaneous declarations.[1] Petitioner's objections to Reents' and Meinzen's testimony was similarly overruled, based on both the spontaneous declaration exception and an exception for statements made in the

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[1] The spontaneous declaration exception applies to "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." 198 Ill. App. 3d 641, 648, 555 N. E. 2d 1241, 1246 (1990).

course of securing medical treatment.[2] The trial court also denied petitioner's motion for a mistrial based on S. G.'s "presence [and] failure to testify." App. 14.

Petitioner was found guilty by a jury, and the Illinois Appellate Court affirmed his conviction. It held that the trial court operated within the discretion accorded it under state law in ruling that the statements offered by DeVore, Grigsby, and Lewis qualified for the spontaneous declaration exception and in ruling that the statements offered by Reents and Meinzen qualified for the medical examination exception. 198 Ill. App. 3d 641, 648–656, 555 N. E. 2d 1241, 1246–1251 (1990). The court then went on to reject petitioner's Confrontation Clause[3] challenge, a challenge based principally on language contained in this Court's decision in *Ohio* v. *Roberts*, 448 U. S. 56 (1980). It concluded that our later decision in *United States* v. *Inadi*, 475 U. S. 387 (1986), foreclosed any rule requiring that, as a necessary antecedent to the introduction of hearsay testimony, the prosecution must either produce the declarant at trial or show that the declarant is unavailable. The Illinois Supreme Court denied discretionary review, and we granted certiorari, 500 U. S. 904 (1991), limited to the constitutional question whether permitting the challenged testimony violated petitioner's Sixth Amendment Confrontation Clause right.[4]

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[2] Illinois Rev. Stat., ch. 38, ¶ 115–13 (1989), provides:

"In a prosecution for violation of Section 12–13, 12–14, 12–15 or 12–16 of the 'Criminal Code of 1961', statements made by the victim to medical personnel for purposes of medical diagnosis or treatment including descriptions of the cause of symptom, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment shall be admitted as an exception to the hearsay rule."

[3] "In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . . ." U. S. Const., Amdt. 6.

[4] We take as a given, therefore, that the testimony properly falls within the relevant hearsay exceptions.

We consider as a preliminary matter an argument not considered below but urged by the United States as *amicus curiae* in support of respondent. The United States contends that petitioner's Confrontation Clause claim should be rejected because the Confrontation Clause's limited purpose is to prevent a particular abuse common in 16th- and 17th-century England: prosecuting a defendant through the presentation of *ex parte* affidavits, without the affiants ever being produced at trial. Because S. G.'s out-of-court statements do not fit this description, the United States suggests that S. G. was not a "witness against" petitioner within the meaning of the Clause. The United States urges this position, apparently in order that we might further conclude that the Confrontation Clause generally does not apply to the introduction of out-of-court statements admitted under an accepted hearsay exception. The only situation in which the Confrontation Clause would apply to such an exception, it argues, would be those few cases where the statement sought to be admitted was in the character of an *ex parte* affidavit, *i. e.*, where the circumstances surrounding the out-of-court statement's utterance suggest that the statement has been made for the principal purpose of accusing or incriminating the defendant.

Such a narrow reading of the Confrontation Clause, which would virtually eliminate its role in restricting the admission of hearsay testimony, is foreclosed by our prior cases. The discussions in these cases, going back at least as far as *Mattox* v. *United States*, 156 U. S. 237 (1895), have included historical examination of the origins of the Confrontation Clause and of the state of the law of evidence existing at the time the Sixth Amendment was adopted and later. We have been careful "not to equate the Confrontation Clause's prohibitions with the general rule prohibiting the admission of hearsay statements." *Idaho* v. *Wright*, 497 U. S. 805, 814 (1990) (citations omitted). Nonetheless, we have consistently sought to "stee[r] a middle course," *Roberts*, *supra*, at

68, n. 9, that recognizes that "hearsay rules and the Confrontation Clause are generally designed to protect similar values," *California* v. *Green*, 399 U. S. 149, 155 (1970), and "stem from the same roots," *Dutton* v. *Evans*, 400 U. S. 74, 86 (1970). In *Mattox* itself, upon which the Government relies, the Court allowed the recorded testimony of a witness at a prior trial to be admitted. But, in the Court's view, the result was justified not because the hearsay testimony was unlike an *ex parte* affidavit, but because it came within an established exception to the hearsay rule. We think that the argument presented by the Government comes too late in the day to warrant reexamination of this approach.[5]

We therefore now turn to petitioner's principal contention that our prior decision in *Roberts* requires that his conviction be vacated. In *Roberts* we considered a Confrontation Clause challenge to the introduction at trial of a transcript containing testimony from a probable-cause hearing, where the transcript included testimony from a witness not produced at trial but who had been subject to examination by defendant's counsel at the probable-cause hearing. In the course of rejecting the Confrontation Clause claim in that case, we used language that might suggest that the Confrontation Clause generally requires that a declarant either be produced at trial or be found unavailable before his out-of-court statement may be admitted into evidence. However, we think such an expansive reading of the Clause is negated by our subsequent decision in *Inadi*, *supra*.

In *Inadi* we considered the admission of out-of-court statements made by a co-conspirator in the course of the conspiracy. As an initial matter, we rejected the proposition that *Roberts* established a rule that "no out-of-court statement would be admissible without a showing of unavailability."

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[5] We note also that the position now advanced by the United States has been previously considered by this Court but gained the support of only a single Justice. See *Dutton* v. *Evans*, 400 U. S. 74, 93–100 (1970) (Harlan, J., concurring in result).

475 U. S., at 392. To the contrary, rather than establishing "a wholesale revision of the law of evidence" under the guise of the Confrontation Clause, *ibid.*, we concluded that "*Roberts* must be read consistently with the question it answered, the authority it cited, and its own facts," *id.*, at 394. So understood, *Roberts* stands for the proposition that unavailability analysis is a necessary part of the Confrontation Clause inquiry only when the challenged out-of-court statements were made in the course of a prior judicial proceeding. *Ibid.*

Having clarified the scope of *Roberts*, the Court in *Inadi* then went on to reject the Confrontation Clause challenge presented there. In particular, we refused to extend the unavailability requirement established in *Roberts* to all out-of-court statements. Our decision rested on two factors. First, unlike former in-court testimony, co-conspirator statements "provide evidence of the conspiracy's context that cannot be replicated, even if the declarant testifies to the same matters in court," *Inadi*, 475 U. S., at 395. Also, given a declarant's likely change in status by the time the trial occurs, simply calling the declarant in the hope of having him repeat his prior out-of-court statements is a poor substitute for the full evidentiary significance that flows from statements made when the conspiracy is operating in full force. *Ibid.*

Second, we observed that there is little benefit, if any, to be accomplished by imposing an "unavailability rule."[6] Such a rule will not work to bar absolutely the introduction of the out-of-court statements; if the declarant either is unavailable, or is available and produced for trial, the statements can be introduced. *Id.*, at 396. Nor is an unavailability rule likely to produce much testimony that adds meaningfully to the trial's truth-determining process. *Ibid.*

[6] By "unavailability rule," we mean a rule which would require as a predicate for introducing hearsay testimony either a showing of the declarant's unavailability or production at trial of the declarant.

Many declarants will be subpoenaed by the prosecution or defense, regardless of any Confrontation Clause requirement, while the Compulsory Process Clause[7] and evidentiary rules permitting a defendant to treat witnesses as hostile will aid defendants in obtaining a declarant's live testimony. *Id.*, at 396–398. And while an unavailability rule would therefore do little to improve the accuracy of factfinding, it is likely to impose substantial additional burdens on the factfinding process. The prosecution would be required to repeatedly locate and keep continuously available each declarant, even when neither the prosecution nor the defense has any interest in calling the witness to the stand. An additional inquiry would be injected into the question of admissibility of evidence, to be litigated both at trial and on appeal. *Id.*, at 398–399.

These observations, although expressed in the context of evaluating co-conspirator statements, apply with full force to the case at hand. We note first that the evidentiary rationale for permitting hearsay testimony regarding spontaneous declarations and statements made in the course of receiving medical care is that such out-of-court declarations are made in contexts that provide substantial guarantees of their trustworthiness.[8] But those same factors that contribute to

[7] "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." U. S. Const., Amdt. 6.

[8] Indeed, it is this factor that has led us to conclude that "firmly rooted" exceptions carry sufficient indicia of reliability to satisfy the reliability requirement posed by the Confrontation Clause. See *Idaho* v. *Wright*, 497 U. S. 805, 817, 820–821 (1990); *Bourjaily* v. *United States*, 483 U. S. 171, 182–184 (1987). There can be no doubt that the two exceptions we consider in this case are "firmly rooted." The exception for spontaneous declarations is at least two centuries old, see 6 J. Wigmore, Evidence § 1747, p. 195 (J. Chadbourn rev. 1976), and may date to the late 17th century. See *Thompson* v. *Trevanion*, 90 Eng. Rep. 179 (K. B. 1694). It is currently recognized under Federal Rule of Evidence 803(2), and in nearly four-fifths of the States. See Brief for State of California et al. as *Amici Curiae* 15–16, n. 4 (collecting state statutes and cases). The exception

the statements' reliability cannot be recaptured even by later in-court testimony. A statement that has been offered in a moment of excitement—without the opportunity to reflect on the consequences of one's exclamation—may justifiably carry more weight with a trier of fact than a similar statement offered in the relative calm of the courtroom. Similarly, a statement made in the course of procuring medical services, where the declarant knows that a false statement may cause misdiagnosis or mistreatment, carries special guarantees of credibility that a trier of fact may not think replicated by courtroom testimony. They are thus materially different from the statements at issue in *Roberts*, where the out-of-court statements sought to be introduced were themselves made in the course of a judicial proceeding, and where there was consequently no threat of lost evidentiary value if the out-of-court statements were replaced with live testimony.

The preference for live testimony in the case of statements like those offered in *Roberts* is because of the importance of cross-examination, "the greatest legal engine ever invented for the discovery of truth." *Green*, 399 U. S., at 158. Thus courts have adopted the general rule prohibiting the receipt of hearsay evidence. But where proffered hearsay has sufficient guarantees of reliability to come within a firmly rooted exception to the hearsay rule, the Confrontation Clause is satisfied.

We therefore think it clear that the out-of-court statements admitted in this case had substantial probative value, value that could not be duplicated simply by the declarant later testifying in court. To exclude such probative statements under the strictures of the Confrontation Clause would be the height of wrongheadedness, given that the Confrontation Clause has as a basic purpose the promotion of the

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for statements made for purposes of medical diagnosis or treatment is similarly recognized in Federal Rule of Evidence 803(4), and is equally widely accepted among the States. See Brief for State of California et al. as *Amici Curiae* 31–32, n. 13 (same).

"'integrity of the factfinding process.'" *Coy* v. *Iowa*, 487 U. S. 1012, 1020 (1988) (quoting *Kentucky* v. *Stincer*, 482 U. S. 730, 736 (1987)). And as we have also noted, a statement that qualifies for admission under a "firmly rooted" hearsay exception is so trustworthy that adversarial testing can be expected to add little to its reliability. *Wright*, 497 U. S., at 820–821. Given the evidentiary value of such statements, their reliability, and that establishing a generally applicable unavailability rule would have few practical benefits while imposing pointless litigation costs, we see no reason to treat the out-of-court statements in this case differently from those we found admissible in *Inadi*. A contrary rule would result in exactly the kind of "wholesale revision" of the laws of evidence that we expressly disavowed in *Inadi*. We therefore see no basis in *Roberts* or *Inadi* for excluding from trial, under the aegis of the Confrontation Clause, evidence embraced within such exceptions to the hearsay rule as those for spontaneous declarations and statements made for medical treatment.

As a second line of argument, petitioner presses upon us two recent decisions involving child testimony in child-sexual-assault cases, *Coy* v. *Iowa*, *supra*, and *Maryland* v. *Craig*, 497 U. S. 836 (1990). Both *Coy* and *Craig* required us to consider the constitutionality of courtroom procedures designed to prevent a child witness from having to face across an open courtroom a defendant charged with sexually assaulting the child. In *Coy* we vacated a conviction that resulted from a trial in which a child witness testified from behind a screen, and in which there had been no particularized showing that such a procedure was necessary to avert a risk of harm to the child. In *Craig* we upheld a conviction that resulted from a trial in which a child witness testified via closed circuit television after such a showing of necessity. Petitioner draws from these two cases a general rule that hearsay testimony offered by a child should be permitted only upon a showing of necessity—*i. e.*, in cases where neces-

sary to protect the child's physical and psychological well-being.

Petitioner's reliance is misplaced. *Coy* and *Craig* involved only the question of what *in-court* procedures are constitutionally required to guarantee a defendant's confrontation right once a witness is testifying. Such a question is quite separate from that of what requirements the Confrontation Clause imposes as a predicate for the introduction of out-of-court declarations. *Coy* and *Craig* did not speak to the latter question. As we recognized in *Coy*, the admissibility of hearsay statements raises concerns lying at the periphery of those that the Confrontation Clause is designed to address, 487 U. S., at 1016. There is thus no basis for importing the "necessity requirement" announced in those cases into the much different context of out-of-court declarations admitted under established exceptions to the hearsay rule.

For the foregoing reasons, the judgment of the Illinois Appellate Court is

Affirmed.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in part and concurring in the judgment.

The Court reaches the correct result under our precedents. I write separately only to suggest that our Confrontation Clause jurisprudence has evolved in a manner that is perhaps inconsistent with the text and history of the Clause itself. The Court unnecessarily rejects, in dicta, the United States' suggestion that the Confrontation Clause in general may not regulate the admission of hearsay evidence. See *ante*, at 352–353. The truth may be that this Court's cases unnecessarily have complicated and confused the relationship between the constitutional right of confrontation and the hearsay rules of evidence.

The Confrontation Clause provides simply that "[i]n all criminal prosecutions, the accused shall enjoy the right . . .

to be confronted with the witnesses against him . . . ." U. S. Const., Amdt. 6. It is plain that the critical phrase within the Clause for purposes of this case is "witnesses against him." Any attempt at unraveling and understanding the relationship between the Clause and the hearsay rules must begin with an analysis of the meaning of that phrase. Unfortunately, in recent cases in this area, the Court has *assumed* that *all* hearsay declarants are "witnesses against" a defendant within the meaning of the Clause, see, *e. g.*, *Ohio* v. *Roberts*, 448 U. S. 56 (1980); *Lee* v. *Illinois*, 476 U. S. 530 (1986); *Idaho* v. *Wright*, 497 U. S. 805 (1990), an assumption that is neither warranted nor supported by the history or text of the Confrontation Clause.

There is virtually no evidence of what the drafters of the Confrontation Clause intended it to mean. See *California* v. *Green*, 399 U. S. 149, 176, n. 8 (1970) (Harlan, J., concurring); *Dutton* v. *Evans*, 400 U. S. 74, 95 (1970) (Harlan, J., concurring in result); Baker, The Right to Confrontation, The Hearsay Rules, and Due Process—A Proposal for Determining When Hearsay May be Used in Criminal Trials, 6 Conn. L. Rev. 529, 532 (1974). The strictest reading would be to construe the phrase "witnesses against him" to confer on a defendant the right to confront and cross-examine only those witnesses who actually appear and testify at trial. This was Wigmore's view:

> "The net result, then, under the constitutional rule, is that, so far as testimony is required under the hearsay rule to be taken infrajudicially, *it shall be taken in a certain way*, namely, subject to cross-examination—not secretly or ex parte away from the accused. The Constitution does not prescribe what kinds of testimonial statements (dying declarations or the like) shall be given infrajudicially—this depends on the law of evidence for the time being—but only what mode of procedure shall be followed—i. e., a cross-examining procedure—in the case of such testimony as is required by the ordinary law

> of evidence to be given infrajudicially." 5 J. Wigmore, Evidence § 1397, p. 159 (J. Chadbourn rev. 1974) (footnote omitted; emphasis modified).

The Wigmore view was endorsed by Justice Harlan in his opinion concurring in the result in *Dutton* v. *Evans*, *supra*, at 94. It also finds support in the plain language of the Clause. As JUSTICE SCALIA recently observed:

> "The Sixth Amendment does not literally contain a prohibition upon [hearsay] evidence, since it guarantees the defendant only the right to confront the 'witnesses against him.' As applied in the Sixth Amendment's context of a prosecution, the noun 'witness'—in 1791 as today—could mean either (a) one 'who knows or sees any thing; one personally present' or (b) 'one who gives testimony' or who 'testifies,' *i. e.*, '[i]n *judicial proceedings*, [one who] make[s] a solemn declaration under oath, for the purpose of establishing or making proof of some fact to a court.' 2 N. Webster, An American Dictionary of the English Language (1828) (emphasis added). See also J. Buchanan, Linguae Britannicae Vera Pronunciatio (1757). The former meaning (one 'who knows or sees') would cover hearsay evidence, but is excluded in the Sixth Amendment by the words following the noun: 'witnesses *against him*.' The phrase obviously refers to those who give testimony against the defendant at trial." *Maryland* v. *Craig*, 497 U. S. 836, 864–865 (1990) (dissenting opinion).

The difficulty with the Wigmore-Harlan view in its purest form is its tension with much of the apparent history surrounding the evolution of the right of confrontation at common law and with a long line of this Court's precedent, discussed below. For those reasons, the pure Wigmore-Harlan reading may be an improper construction of the Confrontation Clause.

Relevant historical sources and our own earlier decisions, nonetheless, suggest that a narrower reading of the Clause than the one given to it since 1980 may well be correct. In 16th-century England, magistrates interrogated the prisoner, accomplices, and others prior to trial. These interrogations were "intended only for the information of the court. The prisoner had no right to be, and probably never was, present." 1 J. Stephen, A History of the Criminal Law of England 221 (1883). At the trial itself, "proof was usually given by reading depositions, confessions of accomplices, letters, and the like; and this occasioned frequent demands by the prisoner to have his 'accusers,' *i. e.*, the witnesses against him, brought before him face to face . . . ." *Id.*, at 326. See also 5 Wigmore, *supra*, § 1364, at 13 ("[T]here was . . . no appreciation at all of the necessity of calling a person to the stand as a witness"; rather, it was common practice to obtain "information by consulting informed persons not called into court"); 9 W. Holdsworth, History of English Law 227–229 (3d ed. 1944). The infamous trial of Sir Walter Raleigh on charges of treason in 1603 in which the Crown's primary evidence against him was the confession of an alleged coconspirator (the confession was repudiated before trial and probably had been obtained by torture) is a well-known example of this feature of English criminal procedure. See Pollitt, The Right of Confrontation: Its History and Modern Dress, 8 J. Pub. L. 381, 388–389 (1959); 1 Stephen, *supra*, at 333–336; 9 Holdsworth, *supra*, at 216–217, 226–228.

Apparently in response to such abuses, a common-law right of confrontation began to develop in England during the late 16th and early 17th centuries. 5 Wigmore, *supra*, § 1364, at 23; Pollitt, *supra*, at 389–390. Justice Story believed that the Sixth Amendment codified some of this common law, 3 J. Story, Commentaries on the Constitution of the United States 662 (1833), and this Court previously has recognized the common-law origins of the right, see *Salinger* v. *United States*, 272 U. S. 542, 548 (1926) ("The right of con-

frontation did not originate with the provision in the Sixth Amendment, but was a common-law right having recognized exceptions"). The Court consistently has indicated that the primary purpose of the Clause was to prevent the abuses that had occurred in England. See *Mattox* v. *United States*, 156 U. S. 237, 242 (1895) ("The primary object of the [Confrontation Clause] was to prevent depositions or *ex parte* affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness . . ."); *California* v. *Green*, 399 U. S., at 156 ("It is sufficient to note that the particular vice that gave impetus to the confrontation claim was the practice of trying defendants on 'evidence' which consisted solely of *ex parte* affidavits or depositions secured by the examining magistrates, thus denying the defendant the opportunity to challenge his accuser in a face-to-face encounter in front of the trier of fact"); *id.*, at 179 (Harlan, J., concurring) ("From the scant information available it may tentatively be concluded that the Confrontation Clause was meant to constitutionalize a barrier against flagrant abuses, trials by anonymous accusers, and absentee witnesses"); *Dutton* v. *Evans*, 400 U. S., at 94 (Harlan, J., concurring in result) (the "paradigmatic evil the Confrontation Clause was aimed at" was "trial by affidavit").

There appears to be little if any indication in the historical record that the exceptions to the hearsay rule were understood to be limited by the simultaneously evolving common-law right of confrontation. The Court has never explored the historical evidence on this point.[1] As a matter of plain

[1] The only recent decision to address this question explicitly was *Ohio* v. *Roberts*, 448 U. S. 56 (1980), in which the Court simply stated that "[t]he historical evidence leaves little doubt, however, that the Clause was intended to exclude some hearsay," *id.*, at 63 (citing *California* v. *Green*, 399 U. S. 149, 156–157 (1970)). The cited passage in *Green* simply reiterates the previously noted point that the right of confrontation evolved as a response to the problem of trial by affidavit. Thus, the statement in *Roberts* that "the Clause was intended to exclude *some* hearsay" is correct as far as it goes (affidavits and depositions are hearsay), but the opinion

language, however, it is difficult to see how or why the Clause should apply to hearsay evidence as a general proposition. As Justice Harlan observed:

> "If one were to translate the Confrontation Clause into language in more common use today, it would read: 'In all criminal prosecutions, the accused shall enjoy the right to be present and to cross-examine the witnesses against him.' Nothing in this language or in its 18th-century equivalent would connote a purpose to control the scope of the rules of evidence. The language is particularly ill-chosen if what was intended was a prohibition on the use of any hearsay . . . ." *Id.*, at 95 (opinion concurring in result).

The standards that the Court has developed to implement its assumption that the Confrontation Clause limits admission of hearsay evidence have no basis in the text of the Sixth Amendment. Ever since *Ohio* v. *Roberts*, 448 U. S. 56 (1980), the Court has interpreted the Clause to mean that hearsay may be admitted only under a "firmly rooted" exception, *id.*, at 66, or if it otherwise bears "particularized guarantees of trustworthiness," *ibid.* See, *e. g.*, *Idaho* v. *Wright*, 497 U. S., at 816; *Bourjaily* v. *United States*, 483 U. S. 171, 183 (1987). This analysis implies that the Confrontation Clause bars only unreliable hearsay. Although the historical concern with trial by affidavit and anonymous accusers does reflect concern with the reliability of the evidence against a defendant, the Clause makes no distinction based on the reliability of the evidence presented. Nor does it seem likely that the drafters of the Sixth Amendment intended to permit a defendant to be tried on the basis of *ex parte* affidavits found to be reliable. Cf. U. S. Const., Art. III, § 3 ("No Person shall be convicted of Treason unless on the testimony of two Witnesses to the same overt Act, or on Confession in open court"). Reliability is more properly a due

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should not be read as having established that the drafters intended the Clause to encompass *all* hearsay, or even hearsay in general.

process concern. There is no reason to strain the text of the Confrontation Clause to provide criminal defendants with a protection that due process already provides them.

The United States, as *amicus curiae*, has suggested that the Confrontation Clause should apply only to those persons who provide in-court testimony or the functional equivalent, such as affidavits, depositions, or confessions that are made in contemplation of legal proceedings. This interpretation is in some ways more consistent with the text and history of the Clause than our current jurisprudence, and it is largely consistent with our cases. If not carefully formulated, however, this approach might be difficult to apply and might develop in a manner not entirely consistent with the crucial "witnesses against him" phrase.

In this case, for example, the victim's statements to the investigating police officer might be considered the functional equivalent of in-court testimony because the statements arguably were made in contemplation of legal proceedings. Attempts to draw a line between statements made in contemplation of legal proceedings and those not so made would entangle the courts in a multitude of difficulties. Few types of statements could be categorically characterized as within or without the reach of a defendant's confrontation rights. Not even statements made to the police or government officials could be deemed automatically subject to the right of confrontation (imagine a victim who blurts out an accusation to a passing police officer, or the unsuspecting social-services worker who is told of possible child abuse). It is also not clear under the United States' approach whether the declarant or the listener (or both) must be contemplating legal proceedings. The United States devotes little attention to the application of its proposed standard in this case.

Thus, we are faced with a situation in which the text of the Sixth Amendment supports the Wigmore-Harlan view but history and our earlier cases point away from that strict-

est reading of the text. Despite this tension, I believe it is possible to interpret the Confrontation Clause along the lines suggested by the United States in a manner that is faithful to both the provision's text and history. One possible formulation is as follows: The federal constitutional right of confrontation extends to any witness who actually testifies at trial, but the Confrontation Clause is implicated by extrajudicial statements only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions. It was this discrete category of testimonial materials that was historically abused by prosecutors as a means of depriving criminal defendants of the benefit of the adversary process, see, *e. g.*, *Mattox* v. *United States*, 156 U. S., at 242–243, and under this approach, the Confrontation Clause would not be construed to extend beyond the historical evil to which it was directed.

Such an approach would be consistent with the vast majority of our cases, since virtually all of them decided before *Ohio* v. *Roberts* involved prior testimony or confessions,[2] exactly the type of formalized testimonial evidence that lies at the core of the Confrontation Clause's concern. This narrower reading of the Confrontation Clause would greatly simplify the inquiry in the hearsay context. Furthermore, this interpretation would avoid the problem posed by the

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[2] See, *e. g.*, *Reynolds* v. *United States*, 98 U. S. 145, 158–161 (1879) (testimony at prior trial); *Mattox* v. *United States*, 156 U. S. 237, 240–244 (1895) (same); *Motes* v. *United States*, 178 U. S. 458, 471–474 (1900) (testimony at "preliminary trial"); *Pointer* v. *Texas*, 380 U. S. 400, 406–408 (1965) (preliminary hearing testimony); *Douglas* v. *Alabama*, 380 U. S. 415, 418–420 (1965) (codefendant's confession); *Brookhart* v. *Janis*, 384 U. S. 1, 4 (1966) (same); *Barber* v. *Page*, 390 U. S. 719, 722–725 (1968) (preliminary hearing testimony); *Bruton* v. *United States*, 391 U. S. 123, 126–128, and n. 3 (1968) (codefendant's confession); *Roberts* v. *Russell*, 392 U. S. 293, 294–295 (1968) *(per curiam)* (same); *Berger* v. *California*, 393 U. S. 314, 314–315 (1969) *(per curiam)* (preliminary hearing testimony); *California* v. *Green*, 399 U. S., at 152 (preliminary hearing testimony and statement to police); *Mancusi* v. *Stubbs*, 408 U. S. 204, 213–216 (1972) (prior testimony).

Court's current focus on hearsay exceptions that are "firmly rooted" in the common law. See *ante*, at 355–356, n. 8. The Court has never explained the Confrontation Clause implications of a State's decision to adopt an exception not recognized at common law or one not recognized by a majority of the States. Our current jurisprudence suggests that, in order to satisfy the Sixth Amendment, the State would have to establish in each individual case that hearsay admitted pursuant to the newly created exception bears "particularized guarantees of trustworthiness," and would have to continue doing so until the exception became "firmly rooted" in the common law, if that is even possible under the Court's standard. This result is difficult to square with the Clause itself. Neither the language of the Clause nor the historical evidence appears to support the notion that the Confrontation Clause was intended to constitutionalize the hearsay rule and its exceptions. Although the Court repeatedly has disavowed any intent to cause that result, see, *e. g.*, *ante*, at 352; *Idaho* v. *Wright*, 497 U. S., at 814; *United States* v. *Inadi*, 475 U. S. 387, 393, n. 5 (1986); *Dutton* v. *Evans*, 400 U. S., at 86; *California* v. *Green*, 399 U. S., at 155, I fear that our decisions have edged ever further in that direction.

For the foregoing reasons, I respectfully suggest that, in an appropriate case, we reconsider how the phrase "witness against" in the Confrontation Clause pertains to the admission of hearsay. I join the Court's opinion except for its discussion of the narrow reading of this phrase proposed by the United States.

Syllabus

RUFO, SHERIFF OF SUFFOLK COUNTY, ET AL. *v.* INMATES OF SUFFOLK COUNTY JAIL ET AL.

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

No. 90–954. Argued October 9, 1991—Decided January 15, 1992*

Years after the District Court held that conditions at the Suffolk County, Massachusetts, jail were constitutionally deficient, petitioner officials and respondent inmates entered into a consent decree providing for construction of a new jail that, among other things, would provide single occupancy cells for pretrial detainees. Work on the jail was delayed and, in the interim, the inmate population outpaced projections. While construction was still underway, petitioner sheriff moved to modify the decree to allow double bunking in a certain number of cells, thereby raising the jail's capacity. Relying on Federal Rule of Civil Procedure 60(b)—which provides, *inter alia*, that "upon such terms as are just, the court may relieve a party . . . from a . . . judgment . . . for the following reasons: . . . (5) . . . it is no longer equitable that the judgment should have prospective operation"—the sheriff argued that modification was required by a change in law, this Court's postdecree decision in *Bell* v. *Wolfish*, 441 U. S. 520, and a change in fact, the increase in pretrial detainees. The District Court denied relief, holding that Rule 60(b)(5) codified the standard of *United States* v. *Swift & Co.*, 286 U. S. 106, 119—"Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead . . . to [a] change [in] what was decreed after years of litigation with the consent of all concerned"—and that a case for modification under this standard had not been made. The court also rejected the argument that *Bell* required modification of the decree; found that the increased pretrial detainee population was "neither new nor unforeseen"; declared that relief would be inappropriate even under a more flexible modification standard because separate cells for detainees were "perhaps the most important" element of the relief sought; and held that, even if the sheriff's double celling proposal met constitutional standards, allowing modification on that basis would undermine and discourage settlement of institutional cases. The Court of Appeals affirmed.

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*Together with No. 90–1004, *Rapone, Commissioner of Correction of Massachusetts* v. *Inmates of Suffolk County Jail et al.*, also on certiorari to the same court.

Syllabus

Held:

1. The *Swift* "grievous wrong" standard does not apply to requests to modify consent decrees stemming from institutional reform litigation. That standard was formulated in the context of facts demonstrating that no genuine changes had occurred requiring modification of the decree in question, see *id.*, at 115–116, and the *Swift* Court recognized that decrees involving the supervision of changing conduct or conditions may be revised if necessary to adapt to future events, *id.*, at 114–115. Moreover, subsequent decisions have emphasized the need for flexibility to modify a decree if the circumstances, whether of law or fact, have changed or new ones have arisen. Thus, it cannot be concluded that Rule 60(b)(5) misread *Swift* and intended that decree modifications were in all cases to be governed by the "grievous wrong" standard. A less stringent standard is made all the more important by the recent upsurge in institutional reform litigation, where the extended life of decrees increases the likelihood that significant changes will occur. Furthermore, the experience of federal courts in implementing and modifying such decrees demonstrates that a flexible approach is often essential to achieving the goals of reform litigation, particularly the public's interest in the sound and efficient operations of its institutions. The contention that any rule other than the *Swift* standard would deter parties to such litigation from negotiating settlements and hence destroy the utility of consent decrees is unpersuasive. Obviously that would not be the case with respect to government officials. Moreover, plaintiffs will still wish to settle such cases, since, even if they litigate to conclusion and win, the resulting judgment may give them less than they hoped for, whereas settlement will avoid further litigation, will perhaps obtain more than would have been ordered without the local government's consent, and will eliminate the possibility of losing; and since the prospective effect of a judgment obtained after litigation will still be open to modification where deemed equitable under Rule 60(b). Pp. 378–383.

2. Under the flexible standard adopted today, a party seeking modification of an institutional reform consent decree bears the burden of establishing that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstances. Pp. 383–393.

(a) Modification may be warranted when changed factual conditions make compliance with the decree substantially more onerous, when the decree proves to be unworkable because of unforeseen obstacles, or when enforcement of the decree without modification would be detrimental to the public interest. Where a party relies upon events that actually were anticipated at the time it entered into a decree, modifica-

tion should be granted only if the party satisfies the heavy burden of convincing the court that it agreed to the decree in good faith, made a reasonable effort to comply, and should be relieved of the undertaking under Rule 60(b). Accordingly, on remand the District Court should consider whether the upsurge in inmate population was foreseen by petitioners. Despite that court's statement that it was, the decree itself and aspects of the record indicate that the increase may have been unanticipated. To relieve petitioners from the promise to provide single cells for pretrial detainees based on the increased jail population does not necessarily violate the decree's basic purpose of providing a remedy for what had been found—based on a variety of factors, including double celling—to be unconstitutional conditions in the old jail. The rule cannot be that modifications of one of a decree's terms defeats its purpose, since modification would then be all but impossible. Thus, the District Court erred in holding that, even under a standard more flexible than *Swift*'s, modification of the single cell requirement was necessarily forbidden. Pp. 383–387.

(b) A decree must be modified if one or more of the obligations placed upon the parties later becomes impermissible under federal law, and may be modified when the statutory or decisional law has changed to make legal what the decree was designed to prevent. The *Bell* holding, which made clear that double celling is not in all cases unconstitutional, was not, in and of itself, a change in law requiring modification of the decree at issue. Since that holding did not cast doubt on the legality of single celling, the possibility that such a holding would be issued must be viewed as having been immaterial to petitioners when they signed the decree; *i. e.*, they preferred even in the event of such a holding to agree to a decree which called for providing single cells in the new jail. To hold that a clarification in the law automatically opens the door for relitigation of the merits of every affected decree would undermine the finality of such agreements and could serve as a disincentive to settle institutional reform litigation. Nevertheless, a decision that merely clarifies the law could constitute a change supporting modification if the parties had based their agreement on a misunderstanding of the governing law. The decree at issue declares that it "sets forth a program which is both constitutionally adequate and constitutionally *required*" (emphasis added), and if petitioners can establish on remand that the parties believed that single celling was constitutionally mandated, this misunderstanding could form a basis for modification. Pp. 387–390.

(c) Once a moving party has established a change in fact or in law warranting modification of a consent decree, the district court should determine whether a proposed modification is suitably tailored to the

changed circumstances. A modification must not perpetuate or create a constitutional violation. Thus, if respondents are correct that *Bell* is factually distinguishable and that double celling at the new jail would violate pretrial detainees' constitutional rights, modification should not be granted. Because a consent decree is a final judgment that may be reopened only to the extent that equity requires, a proposed modification should not strive to rewrite the decree so that it conforms to the constitutional floor, but should merely resolve the problems created by the change. Within these constraints, the public interest and considerations of comity require that the district court defer to local government administrators to resolve the intricacies of implementing a modification. Although financial constraints may not be used to justify constitutional violations, they are a legitimate concern of government defendants in institutional reform litigation and therefore are appropriately considered in tailoring a modification. Pp. 390–393.

915 F. 2d 1557, vacated and remanded.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and SOUTER, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, *post,* p. 393. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post,* p. 399. THOMAS, J., took no part in the consideration or decision of the cases.

Chester A. Janiak argued the cause for petitioners in No. 90–954. With him on the briefs were *Thomas D. Burns*, *Peter J. Schneider*, *Ann E. Merryfield*, and *Robert C. Rufo*, *pro se*. *John T. Montgomery*, First Assistant Attorney General of Massachusetts, argued the cause for petitioner in No. 90–1004. With him on the briefs were *Scott Harshbarger*, Attorney General, and *Jon Laramore*, *Thomas A. Barnico*, and *Douglas H. Wilkins*, Assistant Attorneys General.

Max D. Stern argued the cause for respondents in both cases. With him on the brief were *Lynn Weissberg* and *Alan B. Morrison.*†

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†Briefs of *amici curiae* urging reversal were filed for the State of New York by *Robert Abrams*, Attorney General, *O. Peter Sherwood*, Solicitor General, *Lawrence S. Kahn*, Deputy Solicitor General, and *Barbara B. Butler*, Assistant Attorney General; for the State of Tennessee et al. by *Charles W. Burson*, Attorney General of Tennessee, *Michael W. Catalano*, Deputy Attorney General, *Joel I. Klein*, *Paul M. Smith*, and *Richard G.*

JUSTICE WHITE delivered the opinion of the Court.

In these cases, the District Court denied a motion of the sheriff of Suffolk County, Massachusetts, to modify a consent

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Taranto, *Charles Cole*, Attorney General of Alaska, *Grant Woods*, Attorney General of Arizona, *Winston Bryant*, Attorney General of Arkansas, *Dan Lungren*, Attorney General of California, *Gale Norton*, Attorney General of Colorado, *Charles M. Oberly III*, Attorney General of Delaware, *Robert A. Butterworth*, Attorney General of Florida, *Michael J. Bowers*, Attorney General of Georgia, *Elizabeth Barrett-Anderson*, Attorney General of Guam, *Warren Price III*, Attorney General of Hawaii, *Larry EchoHawk*, Attorney General of Idaho, *Roland W. Burris*, Attorney General of Illinois, *Linley E. Pearson*, Attorney General of Indiana, *Bonnie Campbell*, Attorney General of Iowa, *Robert T. Stephan*, Attorney General of Kansas, *Fred Cowan*, Attorney General of Kentucky, *William J. Guste, Jr.*, Attorney General of Louisiana, *Michael E. Carpenter*, Attorney General of Maine, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Frank J. Kelley*, Attorney General of Michigan, *Hubert H. Humphrey III*, Attorney General of Minnesota, *Mike Moore*, Attorney General of Mississippi, *William L. Webster*, Attorney General of Missouri, *Frankie Sue Del Papa*, Attorney General of Nevada, *John P. Arnold*, Attorney General of New Hampshire, *Robert J. Del Tufo*, Attorney General of New Jersey, *Tom Udall*, Attorney General of New Mexico, *Lacy H. Thornburg*, Attorney General of North Carolina, *Nicholas Spaeth*, Attorney General of North Dakota, *Lee Fisher*, Attorney General of Ohio, *Robert H. Henry*, Attorney General of Oklahoma, *Dave Frohnmayer*, Attorney General of Oregon, *Ernest D. Preate, Jr.*, Attorney General of Pennsylvania, *Hector Rivera-Cruz*, Attorney General of Puerto Rico, *James E. O'Neil*, Attorney General of Rhode Island, *T. Travis Medlock*, Attorney General of South Carolina, *Mark "Barney" Barnett*, Attorney General of South Dakota, *Paul Van Dam*, Attorney General of Utah, *Jeffrey L. Amestoy*, Attorney General of Vermont, *Rosalie Ballentine*, Acting Attorney General of the Virgin Islands, *Mary Sue Terry*, Attorney General of Virginia, *Ken Eikenberry*, Attorney General of Washington, *Mario Palumbo*, Attorney General of West Virginia, and *Joseph B. Meyer*, Attorney General of Wyoming; for the City of New York by *Victor A. Kovner*, *Leonard J. Koerner*, *Fay Leoussis*, and *Timothy J. O'Shaughnessy;* for the International City Management Association et al. by *Richard Ruda*, *Zachary D. Fasman*, and *Mark L. Gerchick;* and for Michael J. Ashe, Jr., Sheriff of Hampden County, et al. by *Edward J. McDonough, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *John A. Powell*, *Steven R. Shapiro*, *John*

decree entered to correct unconstitutional conditions at the Suffolk County Jail. The Court of Appeals affirmed. The issue before us is whether the courts below applied the correct standard in denying the motion. We hold that they did not and remand these cases for further proceedings.

I

This litigation began in 1971 when inmates sued the Suffolk County sheriff, the Commissioner of Correction for the State of Massachusetts, the mayor of Boston, and nine city councilors, claiming that inmates not yet convicted of the crimes charged against them were being held under unconstitutional conditions at what was then the Suffolk County Jail. The facility, known as the Charles Street Jail, had been constructed in 1848 with large tiers of barred cells. The numerous deficiencies of the jail, which had been treated with what a state court described as "malignant neglect," *Attorney General* v. *Sheriff of Suffolk County*, 394 Mass. 624, 625, 477 N. E. 2d 361, 362 (1985), are documented in the decision of the District Court. See *Inmates of Suffolk County Jail* v. *Eisenstadt*, 360 F. Supp. 676, 679–684 (Mass. 1973). The court held that conditions at the jail were constitutionally deficient:

> "As a facility for the pretrial detention of presumptively innocent citizens, Charles Street Jail unnecessarily and unreasonably infringes upon their most basic liberties, among them the rights to reasonable freedom of

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Reinstein, Elizabeth Alexander, Alexa P. Freeman, and *Alvin J. Bronstein;* for the Center for Dispute Settlement by *C. Lani Guinier;* for the Inmates of the Lorton Central Facility by *Peter J. Nickles, Bruce N. Kuhlik,* and *Alan A. Pemberton;* for the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association by *John C. Englander;* and for Allen F. Breed et al. by *Sheldon Krantz.*

Solicitor General Starr, Assistant Attorney General Gerson, Deputy Solicitor General Shapiro, Harriet S. Shapiro, Robert E. Kopp, and *Thomas M. Bondy* filed a brief for the United States as *amicus curiae.*

> motion, personal cleanliness, and personal privacy. The court finds and rules that the quality of incarceration at Charles Street is 'punishment' of such a nature and degree that it cannot be justified by the state's interest in holding defendants for trial; and therefore it violates the due process clause of the Fourteenth Amendment." *Id.*, at 686.[1]

The court permanently enjoined the government defendants: "(a) from housing at the Charles Street Jail after November 30, 1973 in a cell with another inmate, any inmate who is awaiting trial and (b) from housing at the Charles Street Jail after June 30, 1976 any inmate who is awaiting trial." *Id.*, at 691. The defendants did not appeal.[2]

In 1977, with the problems of the Charles Street Jail still unresolved, the District Court ordered defendants, including the Boston City Council, to take such steps and expend the funds reasonably necessary to renovate another existing facility as a substitute detention center. *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass.,

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[1] The court was of the view that cases dealing with pretrial detention are more appropriately analyzed under the Due Process Clause of the Fourteenth Amendment than under the Cruel and Unusual Punishments Clause of the Eighth Amendment, but thought that conditions at the Charles Street Jail were also vulnerable under the Eighth Amendment. *Inmates of Suffolk County Jail* v. *Eisenstadt*, 360 F. Supp., at 688.

[2] However, within five months, Suffolk County officials advised the court that they could not comply with the November 30 deadline for ending double celling at the Charles Street Jail. The District Court ordered the commissioner to transfer inmates to other institutions, and the commissioner appealed, claiming that the court lacked the power to order him to make the transfers. The First Circuit affirmed the order of the District Court, finding that the commissioner had "major statutory responsibilities" over county jails and that he had failed to appeal the District Court's decision holding that he was a proper party to the lawsuit. *Inmates of Suffolk County Jail* v. *Eisenstadt*, 494 F. 2d 1196, cert. denied, 419 U. S. 977 (1974).

June 30, 1977), App. 22. The Court of Appeals agreed that immediate action was required:

> "It is now just short of five years since the district court's opinion was issued. For all of that time the plaintiff class has been confined under the conditions repugnant to the constitution. For all of that time defendants have been aware of that fact.
>
> . . . . .
>
> "Given the present state of the record and the unconscionable delay that plaintiffs have already endured in securing their constitutional rights, we have no alternative but to affirm the district court's order to prohibit the incarceration of pretrial detainees at the Charles St. Jail." *Inmates of Suffolk County Jail* v. *Kearney*, 573 F. 2d 98, 99–100 (CA1 1978).

The Court of Appeals ordered that the Charles Street Jail be closed on October 2, 1978, unless a plan was presented to create a constitutionally adequate facility for pretrial detainees in Suffolk County.

Four days before the deadline, the plan that formed the basis for the consent decree now before this Court was submitted to the District Court. Although plans for the new jail were not complete, the District Court observed that "the critical features of confinement, such as single cells of 80 sq. ft. for inmates, are fixed and safety, security, medical, recreational, kitchen, laundry, educational, religious and visiting provisions, are included. There are unequivocal commitments to conditions of confinement which will meet constitutional standards." *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., Oct. 2, 1978), App. 51, 55. The court therefore allowed Suffolk County to continue housing its pretrial detainees at the Charles Street Jail.

Seven months later, the court entered a formal consent decree in which the government defendants expressed their "desire . . . to provide, maintain and operate as applicable a

suitable and constitutional jail for Suffolk County pretrial detainees." *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., May 7, 1979), App. to Pet. for Cert. in No. 90–954, p. 15a. The decree specifically incorporated the provisions of the Suffolk County Detention Center, Charles Street Facility, Architectural Program, which—in the words of the consent decree—"sets forth a program which is both constitutionally adequate and constitutionally required." *Id.*, at 16a.

Under the terms of the architectural program, the new jail was designed to include a total of 309 "[s]ingle occupancy rooms" of 70 square feet, App. 73, 76,[3] arranged in modular units that included a kitchenette and recreation area, inmate laundry room, education units, and indoor and outdoor exercise areas. See, *e. g.*, *id.*, at 249. The size of the jail was based on a projected decline in inmate population, from 245 male prisoners in 1979 to 226 at present. *Id.*, at 69.

Although the architectural program projected that construction of the new jail would be completed by 1983, *ibid.*, work on the new facility had not been started by 1984. During the intervening years, the inmate population outpaced population projections. Litigation in the state courts ensued, and defendants were ordered to build a larger jail. *Attorney General* v. *Sheriff of Suffolk County*, 394 Mass. 624,

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[3] The size of the cells was reduced from the September plan. The architectural program noted that:

"The single occupancy rooms have been sized to meet the minimum standards as devised by the following standard setting agencies. The Massachusetts Department of Correction's *Code of Human Services Regulations*, Chapter IX—Standards for County Correctional Facilities, Standard 972.3 calls for a minimum of 70 square feet for all new cell design. The *Manual of Standards for Adult Local Detention Facilities*, Standard 5103, as sponsored by the American Correctional Association requires at least 70 sq. ft. of floor space when confinement exceeds 10 hours per day." App. 77–78.

See also *id.*, at 63–66 (listing state and national standards consulted in preparation of the architectural program).

477 N. E. 2d 361 (1985). Thereupon, plaintiff prisoners, with the support of the sheriff, moved the District Court to modify the decree to provide a facility with 435 cells. Citing "the unanticipated increase in jail population and the delay in completing the jail," the District Court modified the decree to permit the capacity of the new jail to be increased in any amount, provided that:

> "(a) single-cell occupancy is maintained under the design for the facility;
>
> "(b) under the standards and specifications of the Architectural Program, as modified, the relative proportion of cell space to support services will remain the same as it was in the Architectural Program;
>
> "(c) any modifications are incorporated into new architectural plans;
>
> "(d) defendants act without delay and take all steps reasonably necessary to carry out the provisions of the Consent Decree according to the authorized schedule." *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., Apr. 11, 1985), App. 110, 111.

The number of cells was later increased to 453. Construction started in 1987.

In July 1989, while the new jail was still under construction, the sheriff moved to modify the consent decree to allow the double bunking of male detainees in 197 cells, thereby raising the capacity of the new jail to 610 male detainees. The sheriff argued that changes in law and in fact required the modification. The asserted change in law was this Court's 1979 decision in *Bell* v. *Wolfish*, 441 U. S. 520 (1979), handed down one week after the consent decree was approved by the District Court. The asserted change in fact was the increase in the population of pretrial detainees.

The District Court refused to grant the requested modification, holding that the sheriff had failed to meet the standard of *United States* v. *Swift & Co.*, 286 U. S. 106, 119 (1932):

> "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned."

The court rejected the argument that *Bell* required modification of the decree because the decision "did not directly overrule any legal interpretation on which the 1979 consent decree was based, and in these circumstances it is inappropriate to invoke Rule 60(b)(5) to modify a consent decree." *Inmates of Suffolk County Jail* v. *Kearney*, 734 F. Supp. 561, 564 (Mass. 1990). The court refused to order modification because of the increased pretrial detainee population, finding that the problem was "neither new nor unforeseen." *Ibid.*

The District Court briefly stated that, even under the flexible modification standard adopted by other Courts of Appeals,[4] the sheriff would not be entitled to relief because "[a] separate cell for each detainee has always been an important element of the relief sought in this litigation—perhaps even the most important element." *Id.*, at 565. Finally, the court rejected the argument that the decree should be modified because the proposal complied with constitutional standards, reasoning that such a rule "would undermine and discourage settlement efforts in institutional cases." *Ibid.* The District Court never decided whether the sheriff's proposal for double celling at the new jail would be constitutionally permissible.

The new Suffolk County Jail opened shortly thereafter.

The Court of Appeals affirmed, stating: "[W]e are in agreement with the well-reasoned opinion of the district court and see no reason to elaborate further." *Inmates of*

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[4] See, *e. g.*, *New York State Assn. for Retarded Children, Inc.* v. *Carey*, 706 F. 2d 956 (CA2) (Friendly, J.), cert. denied, 464 U. S. 915 (1983); *Philadelphia Welfare Rights Organization* v. *Shapp*, 602 F. 2d 1114 (CA3 1979), cert. denied, 444 U. S. 1026 (1980); *Plyler* v. *Evatt*, 846 F. 2d 208 (CA4), cert. denied, 488 U. S. 897 (1988); *Heath* v. *De Courcy*, 888 F. 2d 1105 (CA6 1989); *Newman* v. *Graddick*, 740 F. 2d 1513 (CA11 1984).

Suffolk County Jail v. *Kearney,* No. 90–1440 (CA1, Sept. 20, 1990), judgt. order reported at 915 F. 2d 1557, App. to Pet. for Cert. in No. 90–954, p. 2a.[5] We granted certiorari. 498 U. S. 1081 (1991).

II

In moving for modification of the decree, the sheriff relied on Federal Rule of Civil Procedure 60(b), which in relevant part provides:

> "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. . . ."

There is no suggestion in these cases that a consent decree is not subject to Rule 60(b). A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees. *Railway Employes* v. *Wright,* 364 U. S. 642, 650–651 (1961). The District Court recognized as much but held that Rule 60(b)(5) codified the "grievous wrong" standard of *United States* v. *Swift & Co., supra,* that a case for modification under this standard

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[5] Because of the overcrowding at the new Suffolk County Jail, the sheriff refused to transfer female prisoners to the new facility. He did not request modification of the decree. The District Court subsequently ordered the sheriff to house female inmates at the new jail. The sheriff appealed, and the First Circuit affirmed. *Inmates of Suffolk County Jail* v. *Kearney,* 928 F. 2d 33 (1991). That decision is not before this Court.

had not been made, and that resort to Rule 60(b)(6) was also unavailing. This construction of Rule 60(b) was error.

Swift was the product of a prolonged antitrust battle between the Government and the meat-packing industry. In 1920, the defendants agreed to a consent decree that enjoined them from manipulating the meat-packing industry and banned them from engaging in the manufacture, sale, or transportation of other foodstuffs. 286 U. S., at 111. In 1930, several meat-packers petitioned for modification of the decree, arguing that conditions in the meat-packing and grocery industries had changed. *Id.*, at 113. The Court rejected their claim, finding that the meat-packers were positioned to manipulate transportation costs and fix grocery prices in 1930, just as they had been in 1920. *Id.*, at 115–116. It was in this context that Justice Cardozo, for the Court, set forth the much-quoted *Swift* standard, requiring "[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions" . . . as a predicate to modification of the meat-packers' consent decree. *Id.*, at 119.

Read out of context, this language suggests a "hardening" of the traditional flexible standard for modification of consent decrees. *New York State Assn. for Retarded Children, Inc.* v. *Carey*, 706 F. 2d 956, 968 (CA2), cert. denied, 464 U. S. 915 (1983). But that conclusion does not follow when the standard is read in context. See *United States* v. *United Shoe Machinery Corp.*, 391 U. S. 244, 248 (1968). The *Swift* opinion pointedly distinguished the facts of that case from one in which genuine changes required modification of a consent decree, stating:

> "The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative. . . . The consent is to be read as directed toward events as they then were. It was not an abandonment of the

> right to exact revision in the future, if revision should become necessary in adaptation to events to be." 286 U. S., at 114–115.

Our decisions since *Swift* reinforce the conclusion that the "grievous wrong" language of *Swift* was not intended to take on a talismanic quality, warding off virtually all efforts to modify consent decrees. *Railway Employes* emphasized the need for flexibility in administering consent decrees, stating: "There is . . . no dispute but that a sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen." 364 U. S., at 647.

The same theme was repeated in our decision last Term in *Board of Ed. of Oklahoma City Public Schools* v. *Dowell*, 498 U. S. 237, 246–248 (1991), in which we rejected the rigid use of the *Swift* "grievous wrong" language as a barrier to a motion to dissolve a desegregation decree.

There is thus little basis for concluding that Rule 60(b) misread the *Swift* opinion and intended that modifications of consent decrees in all cases were to be governed by the standard actually applied in *Swift.* That Rule, in providing that, on such terms as are just, a party may be relieved from a final judgment or decree where it is no longer equitable that the judgment have prospective application, permits a less stringent, more flexible standard.

The upsurge in institutional reform litigation since *Brown* v. *Board of Education*, 347 U. S. 483 (1954), has made the ability of a district court to modify a decree in response to changed circumstances all the more important. Because such decrees often remain in place for extended periods of time, the likelihood of significant changes occurring during the life of the decree is increased. See, *e. g.*, *Philadelphia Welfare Rights Organization* v. *Shapp*, 602 F. 2d 1114, 1119–1121 (CA3 1979), cert. denied, 444 U. S. 1026 (1980), in which modification of a consent decree was allowed in light of

changes in circumstances that were beyond the defendants' control and were not contemplated by the court or the parties when the decree was entered.

The experience of the District Courts and Courts of Appeals in implementing and modifying such decrees has demonstrated that a flexible approach is often essential to achieving the goals of reform litigation. See, *e. g., New York State Assn. for Retarded Children, Inc.* v. *Carey*, *supra*.[6] The Courts of Appeals have also observed that the public interest is a particularly significant reason for applying a flexible modification standard in institutional reform litigation because such decrees "reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions." *Heath* v. *De Courcy*, 888 F. 2d 1105, 1109 (CA6 1989). Accord, *New York State Assn. for Retarded Children, Inc.* v. *Carey*, *supra*, at 969.

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[6] In *Carey*, the state defendants sought modification of a consent decree designed to empty a state school for the mentally retarded that had housed over 6,000 people in squalid conditions. The consent judgment contemplated transfer of residents to community placements of 15 or fewer beds. 706 F. 2d, at 959. Defendants urged that revising the decree to allow placement of some residents in larger community residences would both expedite their transfer from the state school and allow for a higher quality of care. Judge Friendly, writing for the Second Circuit, allowed the modification:

"Here, as in *Swift*, the modification is proposed by the defendants. But it is not, as in *Swift*, in derogation of the primary objective of the decree, namely, to empty such a mammoth institution . . . ; indeed defendants offered substantial evidence that, again in contrast to *Swift*, the modification was essential to attaining that goal at any reasonably early date. To be sure, the change does run counter to another objective of the decree, namely, to place the occupants . . . in small facilities bearing some resemblance to a normal home, but any modification will perforce alter some aspect of the decree." *Id.*, at 969.

In so ruling, the court recognized that "[t]he power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible." *Id.*, at 967.

Petitioner Rufo urges that these factors are present in the cases before us and support modification of the decree. He asserts that modification would actually improve conditions for some pretrial detainees, who now cannot be housed in the Suffolk County Jail and therefore are transferred to other facilities, farther from family members and legal counsel. In these transfer facilities, petitioners assert that detainees may be double celled under less desirable conditions than those that would exist if double celling were allowed at the new Suffolk County Jail. Petitioner Rufo also contends that the public interest is implicated here because crowding at the new facility has necessitated the release of some pretrial detainees and the transfer of others to halfway houses, from which many escape.

For the District Court, these points were insufficient reason to modify under Rule 60(b)(5) because its "authority [was] limited by the established legal requirements for modification . . . ." 734 F. Supp., at 566. The District Court, as noted above, also held that the suggested modification would not be proper even under the more flexible standard that is followed in some other Circuits. None of the changed circumstances warranted modification because it would violate one of the primary purposes of the decree, which was to provide for "[a] separate cell for each detainee [which] has always been an important element of the relief sought in this litigation—perhaps even the most important element." *Id.*, at 565. For reasons appearing later in this opinion, this was not an adequate basis for denying the requested modification. The District Court also held that Rule 60(b)(6) provided no more basis for relief. The District Court, and the Court of Appeals as well, failed to recognize that such rigidity is neither required by *Swift* nor appropriate in the context of institutional reform litigation.

It is urged that any rule other than the *Swift* "grievous wrong" standard would deter parties to litigation such as this from negotiating settlements and hence destroy the util-

ity of consent decrees. Obviously that would not be the case insofar as the state or local government officials are concerned. As for the plaintiffs in such cases, they know that if they litigate to conclusion and win, the resulting judgment or decree will give them what is constitutionally adequate at that time but perhaps less than they hoped for. They also know that the prospective effect of such a judgment or decree will be open to modification where deemed equitable under Rule 60(b). Whether or not they bargain for more than what they might get after trial, they will be in no worse position if they settle and have the consent decree entered. At least they will avoid further litigation and perhaps will negotiate a decree providing more than what would have been ordered without the local government's consent. And, of course, if they litigate, they may lose.

III

Although we hold that a district court should exercise flexibility in considering requests for modification of an institutional reform consent decree, it does not follow that a modification will be warranted in all circumstances. Rule 60(b)(5) provides that a party may obtain relief from a court order when "it is no longer equitable that the judgment should have prospective application," not when it is no longer convenient to live with the terms of a consent decree. Accordingly, a party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree. If the moving party meets this standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstance.[7]

[7] The standard we set forth applies when a party seeks modification of a term of a consent decree that arguably relates to the vindication of a constitutional right. Such a showing is not necessary to implement minor changes in extraneous details that may have been included in a decree (*e. g.,* paint color or design of a building's facade) but are unrelated to

A

A party seeking modification of a consent decree may meet its initial burden by showing a significant change either in factual conditions or in law.

1

Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous. Such a modification was approved by the District Court in this litigation in 1985 when it became apparent that plans for the new jail did not provide sufficient cell space. *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., Apr. 11, 1985), App. 110.[8] Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles, *New York State Assn. for Retarded Children, Inc.* v. *Carey*, 706 F. 2d, at 969 (modification allowed where State could not find appropriate housing facilities for transfer patients); *Philadelphia Welfare Rights Organization* v. *Shapp*, 602 F. 2d, at 1120–1121 (modification allowed where State could not find sufficient clients to meet decree targets); or when enforcement of the decree without modification would be detrimental to the public interest, *Duran* v. *Elrod*, 760 F. 2d 756,

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remedying the underlying constitutional violation. Ordinarily, the parties should consent to modifying a decree to allow such changes. If a party refuses to consent and the moving party has a reasonable basis for its request, the court should modify the decree. In these cases the entire architectural program became part of the decree binding on the local authorities. Hence, any change in the program technically required a change in the decree, absent a provision in the program exempting certain changes. Such a provision was furnished by the 1985 modification of the decree. Of course, the necessity of changing a decree to allow insignificant changes could be avoided by not entering an overly detailed decree.

[8] This modification was entered over the opposition of the Boston city councilors, who were parties to the litigation in the District Court.

759–761 (CA7 1985) (modification allowed to avoid pretrial release of accused violent felons).

Respondents urge that modification should be allowed only when a change in facts is both "unforeseen and unforeseeable." Brief for Respondents 35. Such a standard would provide even less flexibility than the exacting *Swift* test; we decline to adopt it. Litigants are not required to anticipate every exigency that could conceivably arise during the life of a consent decree.

Ordinarily, however, modification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree. See *Twelve John Does* v. *District of Columbia*, 274 U. S. App. D. C. 62, 65–66, 861 F. 2d 295, 298–299 (1988); *Ruiz* v. *Lynaugh*, 811 F. 2d 856, 862–863 (CA5 1987). If it is clear that a party anticipated changing conditions that would make performance of the decree more onerous but nevertheless agreed to the decree, that party would have to satisfy a heavy burden to convince a court that it agreed to the decree in good faith, made a reasonable effort to comply with the decree, and should be relieved of the undertaking under Rule 60(b).

Accordingly, on remand the District Court should consider whether the upsurge in the Suffolk County inmate population was foreseen by petitioners. The District Court touched on this issue in April 1990, when, in the course of denying the modification requested in this litigation, the court stated that "the overcrowding problem faced by the Sheriff is neither new nor unforeseen. It has been an ongoing problem during the course of this litigation, before and after entry of the consent decree." 734 F. Supp., at 564. However, the architectural program incorporated in the decree in 1979 specifically set forth projections that the jail

population would decrease in subsequent years.[9] Significantly, when the District Court modified the consent decree in 1985, the court found that the "modifications are necessary to meet the *unanticipated increase* in jail population and the delay in completing the jail." *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., Apr. 11, 1985), App. 110 (emphasis added). Petitioners assert that it was only in July 1988, 10 months after construction began, that the number of pretrial detainees exceeded 400 and began to approach the number of cells in the new jail. Brief for Petitioner Rufo in No. 90–954, p. 9.

It strikes us as somewhat strange, if a rapidly increasing jail population had been contemplated, that respondents would have settled for a new jail that would not have been adequate to house pretrial detainees.[10] There is no doubt

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[9] The architectural program included the following projections:

Year	Population Projections
1979	245
1980	243
1981	241
1982	239
1983	238
1984	236
1985–1989	232
1990–1994	226
1995–1999	216

App. 69.

[10] Respondents and the District Court have been provided with daily prison population data during this litigation. See Tr. 82 (Mar. 30, 1990). The fact that none of the parties showed alarm over fluctuations in these data undermines the dissent's argument that the ongoing population increase was "reasonably foreseeable." See *post*, at 406.

We note that the dissent's "reasonably foreseeable" standard differs significantly from that adopted by the Court today. By invoking this standard and focusing exclusively on developments following modification of the decree in 1985, see *post*, at 405, the dissent jumps to the conclusion that petitioners assumed full responsibility for responding to any increase in detainee numbers by increasing the capacity of the jail, potentially infinitely. But we do not think that, in the absence of a clear agreement and

that the decree, as originally issued and modified, called for a facility with single cells. *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., Apr. 11, 1985), App. 110.[11] It is apparent, however, that the decree itself nowhere expressly orders or reflects an agreement by petitioners to provide jail facilities having single cells sufficient to accommodate all future pretrial detainees, however large the number of such detainees might be. Petitioners' agreement and the decree appear to have bound them only to provide the specified number of single cells. If petitioners were to build a second new facility providing double cells that would meet constitutional standards, it is doubtful that they would have violated the consent decree.

Even if the decree is construed as an undertaking by petitioners to provide single cells for pretrial detainees, to relieve petitioners from that promise based on changed conditions does not necessarily violate the basic purpose of the decree. That purpose was to provide a remedy for what had been found, based on a variety of factors, including double celling, to be unconstitutional conditions obtaining in the Charles Street Jail. If modification of one term of a consent decree defeats the purpose of the decree, obviously modification would be all but impossible. That cannot be the rule. The District Court was thus in error in holding that even under a more flexible standard than its version of *Swift* required, modification of the single cell requirement was necessarily forbidden.

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a fully developed record, this Court should impose that burden on a local government by assuming that a change in circumstances was "reasonably foreseeable" and that anticipating and responding to such a change was the sole responsibility of petitioners.

[11] One of the conditions of the modification ordered in 1985 was that "single-cell occupancy is maintained under the design for the facility." App. 111.

2

A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under federal law. But modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent.

This was the case in *Railway Employes* v. *Wright*, 364 U. S. 642 (1961). A railroad and its unions were sued for violating the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, which banned discrimination against nonunion employees, and the parties entered a consent decree that prohibited such discrimination. Later, the Railway Labor Act was amended to allow union shops, and the union sought a modification of the decree. Although the amendment did not require, but purposely permitted, union shops, this Court held that the union was entitled to the modification because the parties had recognized correctly that what the consent decree prohibited was illegal under the Railway Labor Act as it then read and because a "court must be free to continue to further the objectives of th[e] Act when its provisions are amended." *Railway Employes*, *supra*, at 651. See also *Firefighters* v. *Stotts*, 467 U. S. 561, 576, and n. 9, 583, n. 17 (1984).

Petitioner Rapone urges that, without more, our 1979 decision in *Bell* v. *Wolfish*, 441 U. S. 520, was a change in law requiring modification of the decree governing construction of the Suffolk County Jail. We disagree. *Bell* made clear what the Court had not before announced: that double celling is not in all cases unconstitutional. But it surely did not cast doubt on the legality of single celling, and petitioners were undoubtedly aware that *Bell* was pending when they signed the decree. Thus, the case must be judged on the basis that it was immaterial to petitioners that double celling might be ruled constitutional, *i. e.*, they preferred even in that event to agree to a decree which called for providing only single cells in the jail to be built.

Neither *Bell* nor the Federal Constitution forbade this course of conduct. Federal courts may not order States or local governments, over their objection, to undertake a course of conduct not tailored to curing a constitutional violation that has been adjudicated. See *Milliken* v. *Bradley (Milliken II)*, 433 U. S. 267, 281 (1977). But we have no doubt that, to "save themselves the time, expense, and inevitable risk of litigation," *United States* v. *Armour & Co.*, 402 U. S. 673, 681 (1971), petitioners could settle the dispute over the proper remedy for the constitutional violations that had been found by undertaking to do more than the Constitution itself requires (almost any affirmative decree beyond a directive to obey the Constitution necessarily does that), but also more than what a court would have ordered absent the settlement. Accordingly, the District Court did not abuse its discretion in entering the agreed-upon decree, which clearly was related to the conditions found to offend the Constitution. *Milliken* v. *Bradley (Milliken I)*, 418 U. S. 717, 738 (1974). See also *Dowell*, 498 U. S., at 246–248. Cf. *Firefighters* v. *Cleveland*, 478 U. S. 501, 525 (1986).[12]

To hold that a clarification in the law automatically opens the door for relitigation of the merits of every affected consent decree would undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements in institutional reform litigation. The position urged by petitioners

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[12] Petitioner Rapone contends that the District Court was required to modify the consent decree because "the constitutional violation underlying the decree has disappeared and will not recur" and that "no constitutional violation [is] even alleged" at the new jail, "so there is no constitutional violation to serve as a predicate for the federal court's continued exercise of its equitable power." Brief for Petitioner in No. 90–1004, pp. 36–37. His argument is not well taken. The District Court did not make findings on these issues, and even if it had ruled that double celling at the new jail is constitutional and that the modification should be granted, we do not have before us the question whether the entire decree should be vacated.

> "would necessarily imply that the only *legally enforceable* obligation assumed by the state under the consent decree was that of ultimately achieving minimal constitutional prison standards. . . . Substantively, this would do violence to the obvious intention of the parties that the decretal obligations assumed by the state were not confined to meeting minimal constitutional requirements. Procedurally, it would make necessary, as this case illustrates, a constitutional decision every time an effort was made either to enforce or modify the decree by judicial action." *Plyler* v. *Evatt*, 924 F. 2d 1321, 1327 (CA4 1991).

While a decision that clarifies the law will not, in and of itself, provide a basis for modifying a decree, it could constitute a change in circumstances that would support modification if the parties had based their agreement on a misunderstanding of the governing law. For instance, in *Pasadena City Bd. of Ed.* v. *Spangler*, 427 U. S. 424, 437–438 (1976), we held that a modification should have been ordered when the parties had interpreted an ambiguous equitable decree in a manner contrary to the District Court's ultimate interpretation and the District Court's interpretation was contrary to intervening decisional law. And in *Nelson* v. *Collins*, 659 F. 2d 420, 428–429 (1981) (en banc), the Fourth Circuit vacated an equitable order that was based on the assumption that double bunking of prisoners was *per se* unconstitutional.

Thus, if the sheriff and commissioner could establish on remand that the parties to the consent decree believed that single celling of pretrial detainees was mandated by the Constitution, this misunderstanding of the law could form a basis for modification. In this connection, we note again, see *supra*, at 375, that the decree itself recited that it "sets forth a program which is both constitutionally adequate and constitutionally *required.*" (Emphasis added.)

B

Once a moving party has met its burden of establishing either a change in fact or in law warranting modification of a consent decree, the district court should determine whether the proposed modification is suitably tailored to the changed circumstance. In evaluating a proposed modification, three matters should be clear.

Of course, a modification must not create or perpetuate a constitutional violation. Petitioners contend that double celling inmates at the Suffolk County Jail would be constitutional under *Bell*. Respondents counter that *Bell* is factually distinguishable and that double celling at the new jail would violate the constitutional rights of pretrial detainees.[13] If this is the case—the District Court did not decide this issue, 734 F. Supp., at 565–566—modification should not be granted.

A proposed modification should not strive to rewrite a consent decree so that it conforms to the constitutional floor. Once a court has determined that changed circumstances warrant a modification in a consent decree, the focus should be on whether the proposed modification is tailored to resolve the problems created by the change in circumstances. A court should do no more, for a consent decree is a final judgment that may be reopened only to the extent that equity requires. The court should not "turn aside to inquire whether some of [the provisions of the decree] upon separate as distinguished from joint action could have been opposed

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[13] In the District Court, respondents introduced the report of an architectural consultant who claimed that the proposed modification would violate the standards of the American Correctional Association and the Massachusetts Division of Capital Planning and Operations by leaving detainees with inadequate cell, dayroom, and outdoor exercise space. See App. 146–179. See *Bell*, 441 U. S., at 544, n. 27 ("[W]hile the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima").

with success if the defendants had offered opposition." *Swift*, 286 U. S., at 116–117.

Within these constraints, the public interest and "[c]onsiderations based on the allocation of powers within our federal system," *Dowell*, *supra*, at 248, require that the district court defer to local government administrators, who have the "primary responsibility for elucidating, assessing, and solving" the problems of institutional reform, to resolve the intricacies of implementing a decree modification. *Brown* v. *Board of Education*, 349 U. S. 294, 299 (1955). See also *Missouri* v. *Jenkins*, 495 U. S. 33, 50–52 (1990); *Milliken II*, 433 U. S., at 281.[14] Although state and local officers in charge of institutional litigation may agree to do more than that which is minimally required by the Constitution to settle a case and avoid further litigation, a court should surely keep the public interest in mind in ruling on a request to modify based on a change in conditions making it substantially more onerous to abide by the decree. To refuse modification of a decree is to bind all future officers of the State, regardless of their view of the necessity of relief from one or more provisions of a decree that might not have been entered had the matter been litigated to its conclusion. The District Court seemed to be of the view that the problems of the fiscal officers of the State were only marginally relevant to the request for modification in this case. 734 F. Supp., at 566. Financial constraints may not be used to justify the creation or perpetuation of constitutional violations, but they are a legitimate concern of government defendants in institu-

[14] The concurrence mischaracterizes the nature of the deference that we would accord local government administrators. As we have stated, see *supra*, at 383, the moving party bears the burden of establishing that a significant change in circumstances warrants modification of a consent decree. No deference is involved in this threshold inquiry. However, once a court has determined that a modification is warranted, we think that principles of federalism and simple common sense require the court to give significant weight to the views of the local government officials who must implement any modification.

tional reform litigation and therefore are appropriately considered in tailoring a consent decree modification.

IV

To conclude, we hold that the *Swift* "grievous wrong" standard does not apply to requests to modify consent decrees stemming from institutional reform litigation. Under the flexible standard we adopt today, a party seeking modification of a consent decree must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance. We vacate the decision below and remand the cases for further proceedings consistent with this opinion.

It is so ordered.

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

JUSTICE O'CONNOR, concurring in the judgment.

I agree that these cases should be remanded so that the District Court may reconsider whether to modify the decree. I write separately to emphasize the limited nature of our review; to clarify why, despite our limited review, the cases should be returned to the District Court; and to explain my concerns with certain portions of the Court's opinion.

I

A court may modify a final judgment, such as the judgment embodied in the consent decree at issue, where the court finds that "it is no longer equitable that the judgment should have prospective application." Fed. Rule Civ. Proc. 60(b)(5). Determining what is "equitable" is necessarily a task that entails substantial discretion, particularly in a case like this one, where the District Court must make complex decisions requiring the sensitive balancing of a host of fac-

tors. As a result, an appellate court should examine primarily the *method* in which the District Court exercises its discretion, not the substantive outcome the District Court reaches. If the District Court takes into account the relevant considerations (all of which are not likely to suggest the same result) and accommodates them in a reasonable way, then the District Court's judgment will not be an abuse of its discretion, regardless of whether an appellate court would have reached the same outcome in the first instance. Cf. *Lemon* v. *Kurtzman*, 411 U. S. 192, 200 (1973) ("In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow").

Our deference to the District Court's exercise of its discretion is heightened where, as in this litigation, the District Court has effectively been overseeing a large public institution over a long period of time. Judge Keeton has been supervising the implementation of this decree since 1979; he has developed an understanding of the difficulties involved in constructing and managing a jail that an appellate court, even with the best possible briefing, could never hope to match. In reviewing the District Court's judgment, we accordingly owe substantial deference to "the trial judge's years of experience with the problem at hand." *Hutto* v. *Finney*, 437 U. S. 678, 688 (1978).

The Court devotes much of its attention to elaborating a "standard" for lower courts to apply in cases of this kind. *Ante*, at 378–384. I am not certain that the product of this effort—"A party seeking modification of a consent decree may meet its initial burden by showing a significant change either in factual conditions or in law," *ante*, at 384—makes matters any clearer than the equally general language of Rule 60(b)(5). I think we would offer more guidance to the District Court here, and to the many other courts burdened with administering complex decrees like this one, if we would simply review the District Court's exercise of its dis-

cretion and specify any shortcomings we might find in the method by which the court reached its conclusion.

II

In my view, the District Court took too narrow a view of its own discretion. The court's reasoning, as expressed in its opinion, was flawed by three different errors of law, each of which excised a portion of the range of options available to the court. I believe the sum of these erroneously self-imposed limits constituted an abuse of the court's discretion.

First, the court relied on *United States* v. *Swift & Co.*, 286 U. S. 106, 119 (1932), to determine that "new and unforeseen conditions" were a prerequisite to any modification. *Inmates of Suffolk County Jail* v. *Kearney*, 734 F. Supp. 561, 563 (Mass. 1990). Because the court found that the overcrowding at the jail was foreseen, *id.*, at 564, the court viewed *Swift* as barring modification. As the Court explains today, *ante*, at 379–380, the District Court erred in this respect. That overcrowding was foreseen should not have been a dispositive factor in the court's decision. Modification could conceivably still be "equitable" under Rule 60(b)(5) even if the rise in inmate population had been foreseen; the danger to the community from the pretrial release of inmates, for example, might outweigh the petitioners' failure to accommodate even a foreseen increase in the inmate population.

Second, the District Court concluded that it lacked the authority to consider the petitioners' budget constraints in determining whether modification would be equitable. The court held: "It is not a legally supportable basis for modification of a consent decree that public officials having fiscal authority have chosen not to provide adequate resources for the Sheriff to comply with the terms of the consent decree." 734 F. Supp., at 566. Here again, I think the court took too narrow a view of its own authority. State and local governments are responsible for providing a wide range of services.

Public officials often operate within difficult fiscal constraints; every dollar spent for one purpose is a dollar that cannot be spent for something else. While the lack of resources can never excuse a failure to obey constitutional requirements, it *can* provide a basis for concluding that continued compliance with a decree obligation is no longer "equitable," if, for instance, the obligation turns out to be significantly more expensive than anyone anticipated.

Third, although the District Court purported to apply the "flexible standard" proposed by the petitioners, the court denied modification because "[t]he type of modification sought here would not comply with the overall purpose of the consent decree; it would set aside the obligations of that decree." *Id.*, at 565. Taken literally, this conclusion deprives the "flexible standard" of any meaning; every modification, by definition, will alter an obligation of a decree. The court may have meant no more than that the plaintiff class would never have agreed to a decree without single celling, but, taking the court at its word, it held the petitioners to a standard that would never permit modification of any decree. This was another instance where the District Court, in my view, erroneously found that it lacked the authority to grant the relief requested by the petitioners.

In these three respects, the District Court felt itself bound by constraints that in fact did not exist. We do not know whether, and to what extent, the court would have modified the decree had it not placed these limits on its own authority. I would accordingly remand these cases so that the District Court may exercise the full measure of its discretion.

In doing so, however, I would emphasize that we find fault only with the *method* by which the District Court reached its conclusion. The District Court may well have been justified, for the reasons suggested by JUSTICE STEVENS, in refusing to modify the decree, and the court is free, when fully exercising its discretion, to reach the same result on remand. This is a case with no satisfactory outcome. The new jail is

simply too small. Someone has to suffer, and it is not likely to be the government officials responsible for underestimating the inmate population and delaying the construction of the jail. Instead, it is likely to be either the inmates of Suffolk County, who will be double celled in an institution designed for single celling; the inmates in counties not yet subject to court supervision, who will be double celled with the inmates transferred from Suffolk County; or members of the public, who may be the victims of crimes committed by the inmates the county is forced to release in order to comply with the consent decree. The District Court has an extraordinarily difficult decision to make. We should not be inclined to second-guess the court's sound judgment in deciding who will bear this burden.

III

The Court's opinion today removes what I see as the three barriers the District Court erroneously placed in its own path. *Ante*, at 379–380 (distinguishing *Swift*); *ante*, at 386–387 (explaining that the court applied an impossibly strict version of the petitioners' proposed "flexible standard"); *ante*, at 392–393 (permitting the court to consider the petitioners' fiscal constraints). But what the Court removes with one hand, it replaces with the other. Portions of the Court's opinion might be read to place new constraints on the District Court's discretion that are, in my view, just as misplaced as the ones with which the District Court fettered itself the first time.

Most significantly, the Court observes that the District Court recognized single celling as "'the most important element'" of the decree. *Ante*, at 382 (quoting 734 F. Supp., at 565). But the Court decides that "this was not an adequate basis for denying the requested modification." *Ante*, at 382. This conclusion is unsupported by any authority. Instead, the Court offers its own reasoning: "If modification of one term of a consent decree defeats the purpose of the decree,

obviously modification would be all but impossible. That cannot be the rule." *Ante*, at 387.

This sweeping conclusion strikes me as both logically and legally erroneous. It may be that the modification of one term of a decree does not *always* defeat the purpose of the decree. See *supra*, at 396. But it hardly follows that the modification of a single term can *never* defeat the decree's purpose, especially if that term is "the most important element" of the decree. If, for instance, the District Court finds that the respondents would never have consented to the decree (and a decade of delay in obtaining relief) without a guarantee of single celling, I should think that the court would not abuse its discretion were it to conclude that modification to permit double celling would be inequitable. Similarly, were the court to find that the jail was constructed with small cells on the assumption that each cell would hold but one inmate, I doubt that the District Court would exceed its authority under Rule 60(b)(5) by concluding that it would be inequitable to double cell the respondents. To the extent the Court suggests otherwise, it limits the District Court's discretion in what I think is an unwarranted and ill-advised fashion.

The same is true of the Court's statement that the District Court should "defer to local government administrators . . . to resolve the intricacies of implementing a decree modification." *Ante*, at 392. To be sure, the courts should defer to prison administrators in resolving the day-to-day problems in managing a prison; these problems fall within the expertise of prison officials. See, *e. g.*, *Thornburgh* v. *Abbott*, 490 U. S. 401, 407–408 (1989). But I disagree with the notion that courts must defer to prison administrators in resolving whether and how to modify a consent decree. These questions may involve details of prison management, but at bottom they require a determination of what is "equitable" to all concerned. Deference to one of the parties to a lawsuit is usually not the surest path to equity; deference to these

particular petitioners, who do not have a model record of compliance with previous court orders in this case, is particularly unlikely to lead to an equitable result. The inmates have as much claim as the prison officials to an understanding of the equities. The District Court should be free to take the views of both sides into account, without being forced to grant more deference to one side than to the other.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

Today the Court endorses the standard for modification of consent decrees articulated by Judge Friendly in *New York State Assn. for Retarded Children, Inc.* v. *Carey*, 706 F. 2d 956 (CA2), cert. denied, 464 U. S. 915 (1983). I agree with that endorsement, but under that standard I believe the findings of the District Court in this action require affirmance of its order refusing to modify this consent decree.[1]

I

When a district court determines, after a contested trial, that a state institution is guilty of a serious and persistent violation of the Federal Constitution, it typically fashions a remedy that is more intrusive than a simple order directing the defendants to cease and desist from their illegal conduct. See *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1 (1971). A district court has a duty to command a remedy that is effective, and it enjoys the broad equitable authority necessary to fulfill this obligation. See *id.*, at 15–16; *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955); see also *Missouri* v. *Jenkins*, 495 U. S. 33 (1990).

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[1] Indeed, in an alternative holding, the District Court concluded that a modification would not be warranted even under the "flexible" standard advanced in *Carey*. See *Inmates of Suffolk County Jail* v. *Kearney*, 734 F. Supp. 561, 565 (Mass. 1990).

II

In June 1973, after finding that petitioners' incarceration of pretrial detainees in the Charles Street Jail violated constitutional standards, the District Court appropriately entered an injunction that went "beyond a simple proscription against the precise conduct previously pursued." *National Society of Professional Engineers* v. *United States*, 435 U. S. 679, 698 (1978). It required petitioners to discontinue (1) the practice of double celling pretrial detainees after November 30, 1973, and (2) the use of the Charles Street Jail for pretrial detention after June 30, 1976. *Inmates of Suffolk County Jail* v. *Eisenstadt*, 360 F. Supp. 676, 691 (Mass. 1973).

Petitioners did not appeal from that injunction. When they found it difficult to comply with the double-celling prohibition, however, they asked the District Court to postpone enforcement of that requirement. The court refused and ordered petitioners to transfer inmates to other institutions. The Court of Appeals affirmed. *Inmates of Suffolk County Jail* v. *Eisenstadt*, 494 F. 2d 1196 (CA1), cert. denied, 419 U. S. 977 (1974). When petitioners found that they could not comply with the second part of the 1973 injunction, the District Court postponed the closing of the Charles Street Jail, but set another firm date for compliance. While petitioners' appeal from that order was pending, the parties entered into the negotiations that produced the 1979 consent decree. After the Court of Appeals affirmed the District Court's order and set yet another firm date for the closing of the Charles Street Jail, *Inmates of Suffolk County Jail* v. *Kearney*, 573 F. 2d 98, 101 (CA1 1978), the parties reached agreement on a plan that was entered by the District Court as a consent decree, *Inmates of Suffolk County Jail* v. *Kearney*, Civ. Action No. 71–162–G (Mass., May 7, 1979), App. to Pet. for Cert. in No. 90–954, p. 15a.

The facility described in the 1979 decree was never constructed. Even before the plan was completed, petitioners recognized that a larger jail was required. In June 1984,

the sheriff filed a motion in the District Court for an order permitting double celling in the Charles Street Jail. The motion was denied. The parties then negotiated an agreement providing for a larger new jail and for a modification of the 1979 decree. After they reached agreement, respondents presented a motion to modify, which the District Court granted on April 11, 1985. The court found that modifications were "necessary to meet the unanticipated increase in jail population and the delay in completing the jail as originally contemplated." App. 110. The District Court then ordered that nothing in the 1979 decree should prevent petitioners

> "from increasing the capacity of the new facility if the following conditions are satisfied:
>
> "(a) single-cell occupancy is maintained under the design for the facility;
>
> "(b) under the standards and specifications of the Architectural Program, as modified, the relative proportion of cell space to support services will remain the same as it was in the Architectural Program . . . ." *Id.*, at 110–111.

There was no appeal from that modification order. Indeed, although the Boston City Council objected to the modification, it appears to have been the product of an agreement between respondents and petitioners.

In 1990, 19 years after respondents filed suit, the new jail was completed in substantial compliance with the terms of the consent decree, as modified in 1985.

III

It is the terms of the 1979 consent decree, as modified and reaffirmed in 1985, that petitioners now seek to modify. The 1979 decree was negotiated against a background in which certain important propositions had already been settled. First, the litigation had established the existence of a serious

constitutional violation. Second, for a period of almost five years after the entry of the 1973 injunction—which was unquestionably valid and which petitioners had waived any right to challenge—petitioners were still violating the Constitution as well as the injunction. See *Inmates of Suffolk County Jail* v. *Kearney*, 573 F. 2d, at 99. Third, although respondents had already prevailed, they were willing to agree to another postponement of the closing of the Charles Street Jail if petitioners submitted, and the court approved, an adequate plan for a new facility.

Obviously any plan would have to satisfy constitutional standards. It was equally obvious that a number of features of the plan, such as the site of the new facility or its particular architectural design, would not be constitutionally mandated. In order to discharge their duty to provide an adequate facility, and also to avoid the risk of stern sanctions for years of noncompliance with an outstanding court order, it would be entirely appropriate for petitioners to propose a remedy that exceeded the bare minimum mandated by the Constitution. Indeed, terms such as "minimum" or "floor" are not particularly helpful in this context. The remedy is constrained by the requirement that it not perpetuate a constitutional violation, and in this sense the Constitution does provide a "floor." Beyond that constraint, however, the remedy's attempt to give expression to the underlying constitutional value does not lend itself to quantitative evaluation. In view of the complexity of the institutions involved and the necessity of affording effective relief, the remedial decree will often contain many, highly detailed commands. It might well be that the failure to fulfill any one of these specific requirements would not have constituted an independent constitutional violation, nor would the absence of any one element render the decree necessarily ineffective. The duty of the District Court is not to formulate the decree with the fewest provisions, but to consider the various interests involved and, in the sound exercise of its discretion, to

fashion the remedy that it believes to be best.[2] Similarly, a consent decree reflects the parties' understanding of the best remedy, and, subject to judicial approval, the parties to a consent decree enjoy at least as broad discretion as the District Court in formulating the remedial decree. Cf. *Firefighters* v. *Cleveland*, 478 U. S. 501, 525–526 (1986).

From respondents' point of view, even though they had won their case, they might reasonably be prepared to surrender some of the relief to which they were unquestionably entitled—such as enforcing the deadline on closing the Charles Street Jail—in exchange for other benefits to be included in an appropriate remedy, even if each such benefit might not be constitutionally required. For example, an agreement on an exercise facility, a library, or an adequate place for worship might be approved by the court in a consent decree, even if each individual feature were not essential to the termination of the constitutional violation. In

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[2] It is the difficulty in determining prospectively which remedy is best that justifies a flexible standard of modification. This relationship between the characteristics of a remedial decree in structural reform litigation and the flexible standard of modification is explained in the passage that Judge Friendly found to be the best statement of the applicable legal standard:

"'The judge must search for the "best" remedy, but since his judgment must incorporate such open-ended considerations as effectiveness and fairness, and since the threat and constitutional value that occasions the intervention can never be defined with great precision, the intervention can never be defended with any certitude. It must always be open to revision, even without the strong showing traditionally required for modification of a decree, namely, that the first choice is causing grievous hardship. A revision is justified if the remedy is not working effectively or is unnecessarily burdensome.'" *New York State Assn. for Retarded Children, Inc.* v. *Carey*, 706 F. 2d 956, 970 (CA2 1983) (quoting Fiss, The Supreme Court—1978 Term—Foreword: The Forms of Justice, 93 Harv. L. Rev. 1, 49 (1979)).

The justification for modifying a consent decree is not that the decree did "too much," but that in light of later circumstances, a modified remedy would better achieve the decree's original goals.

fact, in this action it is apparent that the two overriding purposes that informed both the District Court's interim remedy and respondents' negotiations were the prohibition against double celling and the closing of the old jail. The plan that was ultimately accepted, as well as the terms of the consent decree entered in 1979, were designed to serve these two purposes.

The consent decree incorporated all the details of the agreed upon architectural program. A recital in the decree refers to the program as "both constitutionally adequate and constitutionally required."[3] That recital, of course, does not indicate that either the court or the parties thought that every detail of the settlement—or, indeed, *any* of its specific provisions—was "constitutionally required." An adequate remedy was constitutionally required, and the parties and the court were satisfied that this program was constitutionally adequate. But that is not a basis for assuming that the parties believed that any provision of the decree, including the prohibition against double celling, was constitutionally required.[4]

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[3] The relevant passage reads in full:

"And whereas all parties agree that for the purposes of this litigation the Suffolk County Detention Center, Charles Street Facility, Architectural Program which is attached and, as modified in paragraph 3 below, incorporated in this decree, sets forth a program which is both constitutionally adequate and constitutionally required." App. to Pet. for Cert. in No. 90–954, p. 16a.

[4] Consider, for example, the following provisions of the decree:

"(d) The paragraph headed 'A.1.a. Lobby/reception' on page 8 is changed by increasing the number of visitor lockers to one-hundred (100) and the tenth sentence in that paragraph is changed to read:

'Lobby should include public telephones, drinking fountain, vending machines and bulletin boards.'

. . . . .

"(j) The following paragraph shall be added to page 37:

'Inmate laundry rooms shall be located to permit convenient access and staff supervision. Room placement and the number of laundry rooms required shall be resolved during the design phase. Each inmate laundry

IV

The motion to modify that ultimately led to our grant of certiorari was filed on July 17, 1989. As I view these cases, the proponents of that motion had the burden of demonstrating that changed conditions between 1985 and 1989 justified a further modification of the consent decree. The changes that occurred between 1979 and 1985 were already reflected in the 1985 modification. Since petitioners acquiesced in that modification, they cannot now be heard to argue that pre-1985 developments—either in the law or in the facts—provide a basis for modifying the 1985 order. It is that order that defined petitioners' obligation to construct and to operate an adequate facility.

Petitioners' reliance on *Bell* v. *Wolfish*, 441 U. S. 520 (1979), as constituting a relevant change in the law is plainly misplaced. That case was pending in this Court when the consent decree was entered in 1979. It was the authority on which the sheriff relied when he sought permission to double cell in 1984, and, of course, it was well known to all parties when the decree was modified in 1985. It does not qualify as a changed circumstance.[5]

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room shall contain high quality washing and clothes drying equipment, sink, sorting table, storage and ironing board.'" *Id.*, at 17a, 18a.

[5] As the Court agrees that *Bell* v. *Wolfish* did not constitute a change in law requiring modification of the decree, see *ante*, at 388, the Court does not define further the kind of changes in law that may merit modification. In particular, the Court has no occasion to draw a distinction between the type of change in law recognized in *Railway Employes* v. *Wright*, 364 U. S. 642 (1961), and the change in law that petitioners assert was effected by *Bell*. The distinction is nevertheless significant and deserves mention. In *Railway Employes*, the plaintiffs originally brought suit, alleging that a railroad and its unions discriminated against nonunion employees, a practice prohibited by the Railway Labor Act, 45 U. S. C. § 151 *et seq.* The defendants entered into a consent decree, promising to refrain from such discrimination. When Congress subsequently amended the Act to permit union shops, the Court concluded that a modification allowing union shops should be granted so as to further the statutory purpose. In contrast to the situation presented in *Railway Employes*, it cannot be con-

The increase in the average number of pretrial detainees is, of course, a change of fact. Because the size of that increase had not been anticipated in 1979, it was appropriate to modify the decree in 1985.[6] But in 1985, the steady progression in the detainee population surely made it foreseeable that this growth would continue. The District Court's finding that "the overcrowding problem faced by the Sheriff is neither new nor unforeseen," *Inmates of Suffolk County Jail* v. *Kearney*, 734 F. Supp. 561, 564 (Mass. 1990), is amply supported by the record.

Even if the continuing increase in inmate population had not actually been foreseen, it was reasonably foreseeable. Mere foreseeability in the sense that it was an event that "could conceivably arise" during the life of the consent decree, see *ante*, at 385, should not, of course, disqualify an unanticipated development from justifying a modification. But the parties should be charged with notice of those events that reasonably prudent litigants would contemplate when negotiating a settlement. Given the realities of today's society, it is not surprising that the District Court found a con-

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tended that *Bell* expressed a policy preference in favor of double celling. This distinction is well described by the United States, appearing as *amicus curiae:*

"*Bell* v. *Wolfish* . . . , which rejected a challenge to the constitutionality of double-celling, did not represent a policy decision *endorsing* such housing. In contrast, in amending the Railway Labor Act, Congress weighed the merits of various labor policies and specifically endorsed union shops. The amendment thus conflicted with the consent decree's *prohibition* of such clauses. *Bell*, in contrast, cast no doubt on the propriety of the single-cell requirement to which the parties here had agreed." Brief for United States as *Amicus Curiae* 20, n. 9.

[6] It should be noted that the figures cited by the Court, *ante*, at 386, n. 9, are drawn from a projection prepared before 1979. (The projection is published in a report dated January 1, 1979. See App. 61, 69.) By 1982, respondents believed that the 1979 projections underestimated the future inmate population. See Record, 2 App. 642–648. In 1985, petitioners knew that the average number of male prisoners detained in 1984 had been 320 instead of the projected number of 236. *Id.*, at 642–650.

tinued growth in inmate population to be within petitioners' contemplation.

Other important concerns counsel against modification of this consent decree. Petitioners' history of noncompliance after the 1973 injunction provides an added reason for insisting that they honor their most recent commitments. Petitioners' current claims of fiscal limitation are hardly new. These pleas reflect a continuation of petitioners' previous reluctance to budget funds adequate to avoid the initial constitutional violation or to avoid prolonged noncompliance with the terms of the original decree. The continued claims of financial constraint should not provide support for petitioners' modification requests.[7]

The strong public interest in protecting the finality of court decrees always counsels against modifications. Cf. *Teague* v. *Lane*, 489 U. S. 288, 308–310 (1989) (plurality opinion); *Mackey* v. *United States*, 401 U. S. 667, 682–683 (1971) (Harlan, J., concurring in judgments in part and dissenting in part). In the context of a consent decree, this interest is reinforced by the policy favoring the settlement of protracted litigation. To the extent that litigants are allowed to avoid their solemn commitments, the motivation for particular settlements will be compromised, and the reliability of the entire process will suffer.

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[7] The Court refers to the need to "keep the public interest in mind" when deciding whether to modify a decree. *Ante*, at 392. It is certainly true that when exercising their equitable powers, courts should properly consider the interests of the "public." See *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955). It must be noted, however, that a remedial decree may well contain provisions that are unpopular; a requirement of additional expenditures to improve jail conditions might be an example of such an unpopular order. Mere unpopularity does not constitute a sufficient reason for modification. As the Court explained in *Brown:* "Courts of equity may properly take into account the public interest . . . . But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Ibid.*

It is particularly important to apply a strict standard when considering modification requests that undermine the central purpose of a consent decree. In his opinion in *New York State Assn. for Retarded Children, Inc.* v. *Carey*, 706 F. 2d 956 (CA2 1983), Judge Friendly analyzed the requested modifications in the light of the central purpose "of transferring the population of Willowbrook, whose squalid living conditions this court has already recited, to facilities of more human dimension as quickly as possible." *Id.*, at 967. The changes that were approved were found to be consistent with that central purpose. In this action, the entire history of the litigation demonstrates that the prohibition against double celling was a central purpose of the relief ordered by the District Court in 1973, of the bargain negotiated in 1979 and embodied in the original consent decree, and of the order entered in 1985 that petitioners now seek to modify. Moreover, as the District Court found, during the history of the litigation, petitioners have been able to resort to various measures such as "transfers to state prisons, bail reviews by the Superior Court, and a pretrial controlled release program" to respond to the overcrowding problem. 734 F. Supp., at 565. The fact that double celling affords petitioners the easiest and least expensive method of responding to a reasonably foreseeable problem is not an adequate justification for compromising a central purpose of the decree. In this regard, the Court misses the point in its observation that "[i]f modification of one term of a consent decree defeats the purpose of the decree, obviously modification would be all but impossible." *Ante,* at 387. It is certainly true that modification of a consent decree would be impossible if the modification of *any* one term were deemed to defeat the purpose of the decree. However, to recognize that *some* terms are so critical that their modification would thwart the central purpose of the decree does not render the decree immutable, but rather assures that a modification will frustrate

neither the legitimate expectations of the parties nor the core remedial goals of the decree.

After a judicial finding of constitutional violation, petitioners were ordered in 1973 to place pretrial detainees in single cells. In return for certain benefits, petitioners committed themselves in 1979 to continued compliance with the single-celling requirement. They reaffirmed this promise in 1985. It was clearly not an abuse of discretion for the District Court to require petitioners to honor this commitment.

I would affirm the judgment of the Court of Appeals.

Syllabus

DEWSNUP *v.* TIMM ET AL.

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

No. 90–741. Argued October 15, 1991—Decided January 15, 1992

Petitioner Dewsnup, the debtor in a case under Chapter 7 of the Bankruptcy Code, filed an adversary proceeding, contending that the debt of approximately $120,000 that she owed to respondents exceeded the fair market value of the land securing the debt and that, therefore, the Bankruptcy Court should reduce respondents' lien on the land to the land's fair market value pursuant to 11 U. S. C. § 506(d), which provides that a lien is void "[t]o the extent that [it] secures a claim against the debtor that is not an allowed secured claim." Dewsnup reasoned that respondents would have such an "allowed secured claim" only to the extent of the judicially determined value of their collateral, since, under § 506(a), "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." The court determined that the then value of the land in question was $39,000, but refused to grant the requested relief and entered a judgment of dismissal with prejudice. The District Court and the Court of Appeals affirmed.

Held: Section 506(d) does not allow Dewsnup to "strip down" respondents' lien to the judicially determined value of the collateral, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502 and, therefore, cannot be classified as "not an allowed secured claim" for purposes of the lien-voiding provision of § 506(d). Pp. 414–420.

(a) The contrasting positions of the parties and their *amici* demonstrate that § 506(d) and its relationship to other Code provisions are ambiguous. Pp. 414–416.

(b) Although not without its difficulty, the position espoused by respondents and the United States as *amicus curiae*—that the words "allowed secured claim" in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a), but should be read term-by-term to refer to any claim that is, first, allowed, and, second, secured—generally is the better of the several approaches argued in this case. Were this Court writing on a clean slate, it might be inclined to agree with Dewsnup that the quoted words must take the same meaning in § 506(d) as in § 506(a). However, the practical effect of Dewsnup's argument is to freeze the creditor's secured interest at the judicially determined

valuation in contravention of the pre-Code rule that liens on real property pass through bankruptcy unaffected. Congress must have enacted the Code with a full understanding of the latter rule, and, given the statutory ambiguity here, to attribute to Congress the intention to grant a debtor the broad new remedy against allowed claims to the extent that they become "unsecured" for purposes of § 506(a) without mentioning the new remedy somewhere in the Code or in the legislative history is implausible and contrary to basic bankruptcy principles. Pp. 416–420.

908 F. 2d 588, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, O'CONNOR, and KENNEDY, JJ., joined. SCALIA, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 420. THOMAS, J., took no part in the consideration or decision of the case.

Timothy B. Dyk argued the cause for petitioner. With him on the briefs was *Patricia A. Dunn.*

Richard G. Taranto argued the cause for respondents. With him on the brief were *H. Bartow Farr III* and *Michael Z. Hayes.*

Ronald J. Mann argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Deputy Solicitor General Roberts*, and *Alan Charles Raul.**

JUSTICE BLACKMUN delivered the opinion of the Court.

We are confronted in this case with an issue concerning § 506(d) of the Bankruptcy Code, 11 U. S. C. § 506(d).[1] May

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**Michael Fox Mivasair* and *Henry J. Sommer* filed a brief for the Consumers Education and Protective Association, Inc., as *amicus curiae* urging reversal.

[1] Section 506 provides in full:

"(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount

a debtor "strip down" a creditor's lien on real property to the value of the collateral, as judicially determined, when that value is less than the amount of the claim secured by the lien?

I

On June 1, 1978, respondents loaned $119,000 to petitioner Aletha Dewsnup and her husband, T. LaMar Dewsnup, since deceased. The loan was accompanied by a Deed of Trust granting a lien on two parcels of Utah farmland owned by the Dewsnups.

Petitioner defaulted the following year. Under the terms of the Deed of Trust, respondents at that point could have proceeded against the real property collateral by accelerating the maturity of the loan, issuing a notice of default, and selling the land at a public foreclosure sale to satisfy the debt. See also Utah Code Ann. §§ 57–1–20 to 57–1–37 (1990 and Supp. 1991).

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so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

"(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

"(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

"(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

"(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

"(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Respondents did issue a notice of default in 1981. Before the foreclosure sale took place, however, petitioner sought reorganization under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.* That bankruptcy petition was dismissed, as was a subsequent Chapter 11 petition. In June 1984, petitioner filed a petition seeking liquidation under Chapter 7 of the Code, 11 U. S. C. § 701 *et seq.* Because of the pendency of these bankruptcy proceedings, respondents were not able to proceed to the foreclosure sale. See 11 U. S. C. § 362 (1988 ed. and Supp. II).

In 1987, petitioner filed the present adversary proceeding in the Bankruptcy Court for the District of Utah seeking, pursuant to § 506, to "avoid" a portion of respondents' lien. App. 3. Petitioner represented that the debt of approximately $120,000 then owed to respondents exceeded the fair market value of the land and that, therefore, the Bankruptcy Court should reduce the lien to that value. According to petitioner, this was compelled by the interrelationship of the security-reducing provision of § 506(a) and the lien-voiding provision of § 506(d). Under § 506(a) ("An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property"), respondents would have an "allowed secured claim" only to the extent of the judicially determined value of their collateral. And under § 506(d) ("To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void"), the court would be required to void the lien as to the remaining portion of respondents' claim, because the remaining portion was not an "allowed secured claim" within the meaning of § 506(a).

The Bankruptcy Court refused to grant this relief. *In re Dewsnup,* 87 B. R. 676 (1988). After a trial, it determined that the then value of the land subject to the Deed of Trust was $39,000. It indulged in the assumption that the property had been abandoned by the trustee pursuant to § 554,

and reasoned that once property was abandoned it no longer fell within the reach of § 506(a), which applies only to "property in which the estate has an interest," and therefore was not covered by § 506(d).

The United States District Court, without a supporting opinion, summarily affirmed the Bankruptcy Court's judgment of dismissal with prejudice. App. to Pet. for Cert. 12a.

The Court of Appeals for the Tenth Circuit, in its turn, also affirmed. *In re Dewsnup*, 908 F. 2d 588 (1990). Starting from the "fundamental premise" of § 506(a) that a claim is subject to reduction in security only when the estate has an interest in the property, the court reasoned that because the estate had no interest in abandoned property, § 506(a) did not apply (nor, by implication, did § 506(d)). *Id.*, at 590–591. The court then noted that a contrary result would be inconsistent with § 722 under which a debtor has a limited right to redeem certain personal property. *Id.*, at 592.

Because the result reached by the Court of Appeals was at odds with that reached by the Third Circuit in *Gaglia* v. *First Federal Savings & Loan Assn.*, 889 F. 2d 1304, 1306–1311 (1989), and was expressly recognized by the Tenth Circuit as being in conflict, see 908 F. 2d, at 591, we granted certiorari. 498 U. S. 1081 (1991).

II

As we read their several submissions, the parties and their *amici* are not in agreement in their respective approaches to the problem of statutory interpretation that confronts us. Petitioner-debtor takes the position that §§ 506(a) and 506(d) are complementary and to be read together. Because, under § 506(a), a claim is secured only to the extent of the judicially determined value of the real property on which the lien is fixed, a debtor can void a lien on the property pursuant to § 506(d) to the extent the claim is no longer secured and thus is not "an allowed secured claim." In other words, § 506(a) bifurcates classes of claims allowed under § 502 into secured

claims and unsecured claims; any portion of an allowed claim deemed to be unsecured under § 506(a) is not an "allowed secured claim" within the lien-voiding scope of § 506(d). Petitioner argues that there is no exception for unsecured property abandoned by the trustee.

Petitioner's *amicus* argues that the plain language of § 506(d) dictates that the proper portion of an undersecured lien on property in a Chapter 7 case is void whether or not the property is abandoned by the trustee. It further argues that the rationale of the Court of Appeals would lead to evisceration of the debtor's right of redemption and the elimination of an undersecured creditor's ability to participate in the distribution of the estate's assets.

Respondents primarily assert that § 506(d) is not, as petitioner would have it, "rigidly tied" to § 506(a), Brief for Respondents 7. They argue that § 506(a) performs the function of classifying claims by true secured status at the time of distribution of the estate to ensure fairness to unsecured claimants. In contrast, the lien-voiding § 506(d) is directed to the time at which foreclosure is to take place, and, where the trustee has abandoned the property, no bankruptcy distributional purpose is served by voiding the lien.

In the alternative, respondents, joined by the United States as *amicus curiae*, argue more broadly that the words "allowed secured claim" in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a), which by its terms is not a definitional provision. Rather, the words should be read term-by-term to refer to any claim that is, first, allowed, and, second, secured. Because there is no question that the claim at issue here has been "allowed" pursuant to § 502 of the Code and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of § 506(d), which voids only liens corresponding to claims that have *not* been allowed and secured. This reading of § 506(d), according to respondents and the United States, gives the provision the simple and sensible function

of voiding a lien whenever a claim secured by the lien itself has not been allowed. It ensures that the Code's determination not to allow the underlying claim against the debtor personally is given full effect by preventing its assertion against the debtor's property.[2]

Respondents point out that pre-Code bankruptcy law preserved liens like respondents' and that there is nothing in the Code's legislative history that reflects any intent to alter that law. Moreover, according to respondents, the "fresh start" policy cannot justify an impairment of respondents' property rights, for the fresh start does not extend to an *in rem* claim against property but is limited to a discharge of personal liability.

III

The foregoing recital of the contrasting positions of the respective parties and their *amici* demonstrates that § 506 of the Bankruptcy Code and its relationship to other provisions of that Code do embrace some ambiguities. See 3 Collier on Bankruptcy, ch. 506 and, in particular, ¶ 506.07 (15th ed. 1991). Hypothetical applications that come to mind and those advanced at oral argument illustrate the difficulty of interpreting the statute in a single opinion that would apply to all possible fact situations. We therefore focus upon the

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[2] Respondents expressly stated in their brief and twice again at oral argument that they adopted as an alternative position the United States' interpretation of § 506(d). Brief for Respondents 40, n. 33; Tr. of Oral Arg. 14, 20. In dissent, however, JUSTICE SCALIA contends that respondents have not taken the same position as the United States on this issue. According to the dissent, the United States has taken the position that "a lien only 'secures' the claim in question up to the value of the security that is the object of the lien—and only up to *that* value is the lien subject to avoidance under § 506(d)." *Post*, at 424. In fact, the United States says: "Under [petitioner's] reading, Section 506(d) would operate to reduce the creditor's lien to the value of the allowed secured claim described in Section 506(a). In our view, this reading makes no sense." Brief for United States as *Amicus Curiae* 5.

case before us and allow other facts to await their legal resolution on another day.

We conclude that respondents' alternative position, espoused also by the United States, although not without its difficulty, generally is the better of the several approaches. Therefore, we hold that § 506(d) does not allow petitioner to "strip down" respondents' lien, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502. Were we writing on a clean slate, we might be inclined to agree with petitioner that the words "allowed secured claim" must take the same meaning in § 506(d) as in § 506(a).[3] But, given the ambiguity in the text, we are not convinced that Congress intended to depart from the pre-Code rule that liens pass through bankruptcy unaffected.

1. The practical effect of petitioner's argument is to freeze the creditor's secured interest at the judicially determined valuation. By this approach, the creditor would lose the benefit of any increase in the value of the property by the time of the foreclosure sale. The increase would accrue to the benefit of the debtor, a result some of the parties describe as a "windfall."

We think, however, that the creditor's lien stays with the real property until the foreclosure. That is what was bargained for by the mortgagor and the mortgagee. The voidness language sensibly applies only to the security aspect of the lien and then only to the real deficiency in the security. Any increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor, not to the benefit of the debtor and not to the benefit of other unsecured creditors whose claims have been allowed and who had nothing to do with the mortgagor-mortgagee bargain.

Such surely would be the result had the lienholder stayed aloof from the bankruptcy proceeding (subject, of course, to

[3] Accordingly, we express no opinion as to whether the words "allowed secured claim" have different meaning in other provisions of the Bankruptcy Code.

the power of other persons or entities to pull him into the proceeding pursuant to § 501), and we see no reason why his acquiescence in that proceeding should cause him to experience a forfeiture of the kind the debtor proposes. It is true that his participation in the bankruptcy results in his having the benefit of an allowed unsecured claim as well as his allowed secured claim, but that does not strike us as proper recompense for what petitioner proposes by way of the elimination of the remainder of the lien.

2. This result appears to have been clearly established before the passage of the 1978 Act. Under the Bankruptcy Act of 1898, a lien on real property passed through bankruptcy unaffected. This Court recently acknowledged that this was so. See *Farrey* v. *Sanderfoot,* 500 U. S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive bankruptcy"); *Johnson* v. *Home State Bank,* 501 U. S. 78, 84 (1991) ("Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*").[4]

3. Apart from reorganization proceedings, see 11 U. S. C. §§ 616(1) and (10) (1976 ed.), no provision of the pre-Code

[4] Section 67d of the 1898 Act, 30 Stat. 564, made this explicit:

"Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act."

The Court, with respect to this statute, has said: "Section 67d . . . declares that liens given or accepted in good faith and not in contemplation of or in fraud upon this act, shall not be affected by it." *City of Richmond* v. *Bird,* 249 U. S. 174, 177 (1919).

This precise statutory language did not appear in a reorganization of the section in the Chandler Act of 1938, 52 Stat. 840. A respected bankruptcy authority convincingly explained that this was done not to remove the rule of validity but because "the draftsmen of the 1938 Act desired generally to specify only what should be *invalid.*" 4B Collier on Bankruptcy ¶ 70.70, p. 771 (14th ed. 1978) (emphasis in original). The alteration had no substantive effect. *Oppenheimer* v. *Oldham,* 178 F. 2d 386, 389 (CA5 1949).

statute permitted involuntary reduction of the amount of a creditor's lien for any reason other than payment on the debt. Our cases reveal the Court's concern about this. In *Long* v. *Bullard*, 117 U. S. 617, 620–621 (1886), the Court held that a discharge in bankruptcy does not release real estate of the debtor from the lien of a mortgage created by him before the bankruptcy. And in *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555 (1935), the Court considered additions to the Bankruptcy Act effected by the Frazier-Lemke Act, 48 Stat. 1289. There the Court noted that the latter Act's "avowed object is to take from the mortgagee rights in the specific property held as security; and to that end 'to scale down the indebtedness' to the present value of the property." 295 U. S., at 594. The Court invalidated that statute under the Takings Clause. It further observed: "No instance has been found, except under the Frazier-Lemke Act, of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full." *Id.*, at 579.

Congress must have enacted the Code with a full understanding of this practice. See H. R. Rep. No. 95–595, p. 357 (1977) ("Subsection (d) permits liens to pass through the bankruptcy case unaffected").

4. When Congress amends the bankruptcy laws, it does not write "on a clean slate." See *Emil* v. *Hanley*, 318 U. S. 515, 521 (1943). Furthermore, this Court has been reluctant to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history. See *United Savings Assn. of Texas* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 380 (1988). See also *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 563 (1990); *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 244–245 (1989). Of course, where the language is unambiguous, silence in the legislative history can-

not be controlling. But, given the ambiguity here, to attribute to Congress the intention to grant a debtor the broad new remedy against allowed claims to the extent that they become "unsecured" for purposes of § 506(a) without the new remedy's being mentioned somewhere in the Code itself or in the annals of Congress is not plausible, in our view, and is contrary to basic bankruptcy principles.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

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

JUSTICE SCALIA, with whom JUSTICE SOUTER joins, dissenting.

With exceptions not pertinent here, § 506(d) of the Bankruptcy Code provides: "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void . . . ." Read naturally and in accordance with other provisions of the statute, this automatically voids a lien to the extent the claim it secures is not both an "allowed claim" and a "secured claim" under the Code. In holding otherwise, the Court replaces what Congress said with what it thinks Congress ought to have said—and in the process disregards, and hence impairs for future use, well-established principles of statutory construction. I respectfully dissent.

I

This case turns solely on the meaning of a single phrase found throughout the Bankruptcy Code: "allowed secured claim." Section 506(d) unambiguously provides that to the extent a lien does not secure such a claim it is (with certain exceptions) rendered void. See 11 U. S. C. § 506(d). Congress did not leave the meaning of "allowed secured claim" to speculation. Section 506(a) says that an "allowed claim"

(the meaning of which is obvious) is also a "secured claim" "to the extent of *the value of [the] creditor's interest in the estate's interest in [the securing] property.*" (Emphasis added.) (This means, generally speaking, that an allowed claim "is secured only to the extent of the value of the property on which the lien is fixed; the remainder of that claim is considered unsecured." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 239 (1989).) When § 506(d) refers to an "allowed secured claim," it can only be referring to that allowed "secured claim" so carefully described two brief subsections earlier.

The phrase obviously bears the meaning set forth in § 506(a) when it is used in the subsections of § 506 other than § 506(d)—for example, in § 506(b), which addresses "allowed secured claim[s]" that are oversecured. Indeed, as respondents apparently concede, see Brief for Respondents 40; Tr. of Oral Arg. 29–30, even when the phrase appears outside of § 506, it invariably means what § 506(a) describes: the portion of a creditor's allowed claim that is secured after the calculations required by that provision have been performed. See, *e. g.*, 11 U. S. C. § 722 (permitting a Chapter 7 debtor to redeem certain tangible personal property from certain liens "by paying the holder of such lien the amount of the *allowed secured claim* of such holder that is secured by such lien"); § 1225(a)(5) (prescribing treatment of "*allowed secured claim[s]*" in family farmer's reorganization plan); § 1325(a)(5) (same with respect to "*allowed secured claim[s]*" in individual reorganizations). (Emphases added.) The statute is similarly consistent in its use of the companion phrase "*allowed unsecured claim*" to describe (with respect to a claim supported by a lien) that portion of the claim that is treated as "unsecured" under § 506(a). See, *e. g.*, 11 U. S. C. § 507(a)(7) (fixing priority of "*allowed unsecured claims* of governmental units"); § 726(a)(2) (providing for payment of "*allowed unsecured claim[s]*" in Chapter 7 liquidation); § 1225(a)(4) (setting standard for treatment

of "*allowed unsecured claim[s]*" in Chapter 12 plan); § 1325(a)(4) (setting standard for treatment of "*allowed unsecured claim[s]*" in Chapter 13 plan). (Emphases added.) When, on the other hand, the Bankruptcy Code means to refer to a secured party's entire allowed claim, *i. e.*, to both the "secured" and "unsecured" portions under § 506(a), it uses the term "*allowed claim*"—as in 11 U. S. C. § 363(k), which refers to "a lien that secures an allowed claim." Given this clear and unmistakable pattern of usage, it seems to me impossible to hold, as the Court does, that "the words 'allowed secured claim' in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a)." *Ante,* at 415; see *ante,* at 416–417. We have often invoked the "'normal rule of statutory construction that "'identical words used in different parts of the same act are intended to have the same meaning.'"'" *Sullivan* v. *Stroop,* 496 U. S. 478, 484 (1990) (quoting *Sorenson* v. *Secretary of Treasury,* 475 U. S. 851, 860 (1986) (quoting *Helvering* v. *Stockholms Enskilda Bank,* 293 U. S. 84, 87 (1934) (quoting *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U. S. 427, 433 (1932)))). That rule must surely apply, *a fortiori,* to use of identical words *in the same section of the same enactment.*

The Court makes no attempt to establish a textual or structural basis for overriding the plain meaning of § 506(d), but rests its decision upon policy intuitions of a legislative character,[1] and upon the principle that a text which is "am-

[1] For example: "That is what was bargained for by the mortgagor and the mortgagee. . . . Any increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor . . . . [W]e see no reason why [the lienholder's] acquiescence in [the bankruptcy] proceeding should cause him to experience a forfeiture of the kind the debtor proposes. . . . [T]he benefit of an allowed unsecured claim . . . does not strike us as proper recompense for what petitioner proposes by way of the elimination of the remainder of the lien." *Ante,* at 417–418.

Apart from the fact that these policy judgments are inappropriate, it is not at all clear that evisceration of § 506(d) is even necessary to effectuate them. The feared "windfall" to the debtor may be prevented by 11

biguous" (a status apparently achieved by being the subject of disagreement between self-interested litigants) cannot change pre-Code law without the *imprimatur* of "legislative history." Thus abandoning the normal and sensible principle that a term (and especially an artfully defined term such as "allowed secured claim") bears the same meaning throughout the statute, the Court adopts instead what might be called the one-subsection-at-a-time approach to statutory exegesis. "[W]e express no opinion," the Court amazingly says, "as to whether the words 'allowed secured claim' have different meaning in other provisions of the Bankruptcy Code." *Ante*, at 417, n. 3. "We . . . focus upon the case before us and allow other facts to await their legal resolution on another day." *Ante*, at 416–417.

II

As to the meaning of this single subsection (considered, of course, in a vacuum), the Court claims to be embracing "respondents' alternative position," *ante*, at 417, which is that "the words 'allowed secured claim' in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a)," *ante*, at 415; and that "secured claim" (for purposes

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U. S. C. § 551, which preserves liens avoided under § 506(d) and other provisions of the Code "for the benefit of the estate," *i. e.*, for the benefit of the general unsecured creditors. See Note, An Individual Debtor's Right to Avoid Liens Under Section 506(d) of the Bankruptcy Code, 12 Cardozo L. Rev. 263, 280–281 (1990). See also *In re Ward*, 42 B. R. 946, 952–953 (Bkrtcy. Ct. MD Tenn. 1984). And the creditor whose lien has been stripped may even prevail over the other unsecured creditors by reason of 11 U. S. C. § 363(k), which permits such an undersecured creditor to apply the entire amount of his allowed claim (secured and unsecured) against the purchase price of the collateral at the trustee's foreclosure sale. This appears to enable the lien-stripped creditor (at least in the context of a trustee-managed foreclosure sale) to use his "unsecured claim" to capture any postevaluation appreciation in the collateral. See Carlson, Undersecured Claims Under Bankruptcy Code Sections 506(a) and 1111(b): Second Looks at Judicial Valuations of Collateral, 6 Bankr. Dev. J. 253, 272–279 (1989). I would leave these questions for resolution on remand.

of § 506(d) alone) simply connotes an allowed claim that is "secured" in the ordinary sense, *i. e.*, that is backed up by a security interest in property, whether or not the value of the property suffices to cover the claim. The Court attributes this position to the United States as well, *ante*, at 415–416, and n. 2, but the Government's position is in fact different—and significantly so, since it *does* (as proper statutory interpretation ought to do) give the phrase "allowed secured claim" a uniform meaning. I must describe the Government's theory and explain why it does not work.

The distinctive feature of the United States' approach is that it seeks to avoid invalidation of the so-called "underwater" portion of the lien by focusing *not* upon the phrase "allowed secured claim" in § 506(d), but upon the prior phrase "secures a claim." ("To the extent that a lien *secures a claim* against the debtor that is not an allowed secured claim, such lien is void." (Emphasis added.)) Under the Government's textual theory, this phrase can be read to refer not merely to the *object* of the security, but to its *adequacy.* That is to say, a lien only "secures" the claim in question up to the value of the security that is the object of the lien—and only up to *that* value is the lien subject to avoidance under § 506(d).[2] This interpretation succeeds in giving the

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[2] The Court's insistence that the positions put forward by respondents and the United States are one and the same, see *ante*, at 417, n. 3, is simply mistaken. The following excerpts from the Government's brief, among others, are compatible only with the theory (which is not respondents') that the phrase "lien secures a claim" in § 506(d) means "lien is adequate security for a claim":

"On its face, [§ 506(d)] appears to take one set of circumstances—where 'a lien secures a claim'—and carve out of it a lesser and included set of circumstances—where that secured claim 'is not an *allowed* secured claim.' Liens in the carved-out set are void. . . .

"According to petitioner, what the provision means is that a lien securing an unsecured claim is void. But the provision is triggered only '[t]o the extent that a lien secures a claim,' and if a lien secures a claim the claim

phrase "allowed secured claim," which appears later in § 506(d), a meaning compatible with that compelled by § 506(a). But that is its only virtue.

To begin with, the interpretation renders some of the language in § 506(d) surplusage. If the phrase "[t]o the extent that a lien *secures* a claim" describes only that portion of a claim that is secured by actual economic value, then the later phrase "is not an allowed *secured* claim" should instead have read simply "is not allowed." For the phrase "allowed secured claim" *itself* describes a claim that is *actually* secured in light of § 506(a)'s calculations. Another reading of § 506(d)'s opening passage is available, one that does not assume such clumsy draftsmanship—and that employs, to boot, a much more natural reading of the phrase "lien secures a claim." The latter ordinarily describes the relationship between a lien and a claim, not the relationship between the value of the property subject to the lien and the amount of the claim. One would say that a "mortgage secures the claim" for the purchase price of a house, even if the value of the house was inadequate to satisfy the full amount of the claim. In other words, "[t]o the extent that a lien *secures* a claim" means in § 506(d) what it ordinarily means: "to the extent a lien provides its holder with a right to retain property in full or partial satisfaction of a claim." It means that

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is not, at least in common parlance, unsecured. . . . [I]t is inconsistent to say—as petitioner urges—that the prime situation at which the provision is directed is one where, because the collateral is worth less than the amount of the claim, the lien in fact *fails* to secure the claim. Under petitioner's reading, a provision that applies '[t]o the extent that a lien secures a claim' actually applies *only* to the extent that the lien does *not* secure the claim." Brief for United States as *Amicus Curiae* 9 (emphasis in original) (footnote omitted).

It is of little consequence, however, whether the Government espoused this position or not. In either event, it is a *possible* interpretation (more plausible, I think, than the one the Court adopts) that merits consideration by those concerned with text.

in § 506(d) just as it means that in § 506(a), see 11 U. S. C. § 506(a) ("An allowed claim of a creditor *secured* by a lien . . . is a secured claim to the extent . . .") (emphasis added), and just as it means that elsewhere in the Bankruptcy Code, see, *e. g.*, § 362(a)(5) ("to the extent that such lien *secures* a claim"); § 363(k) ("lien that *secures* an allowed claim"). An unnatural meaning should be disfavored at any time, but particularly when it produces a redundancy. See *Montclair* v. *Ramsdell*, 107 U. S. 147, 152 (1883).

Of course *respondents'* interpretation also creates a redundancy in § 506(d). If a "secured claim" means only a claim for which a lien has been given as security (whether or not the security is adequate), then the prologue of § 506(d) can be reformulated as follows: "To the extent that a lien secures a claim against the debtor that is not an allowed claim secured by a lien, such lien is void . . . ." Quite obviously, the phrase "secured by a lien" in that reformulation is utterly redundant and absurd—as is (on respondents' interpretation) the word "secured," which bears the same meaning. In other words, both the United States' interpretation and respondents' interpretation create a redundancy: the former by making both parts of the § 506(d) prologue refer to *adequate* security, and the latter by making both parts refer to *security plain-and-simple.* Only when one gives the words in the first part of the prologue ("[t]o the extent that a lien secures a claim") their natural meaning (as the Government does not) *and* gives the words in the second part of the prologue ("allowed secured claim") their previously established statutory meaning (as the respondents do not) does the provision make a *point* instead of a *redundancy.*

Moreover, the practical consequences of the United States' interpretation would be absurd. A secured creditor holding a lien on property that is completely worthless would not face lien avoidance under § 506(d), *even if the claim secured by that lien were disallowed entirely.* The same would be true of a lien on property that has *some* value but is obvi-

ously inadequate to cover all of the disallowed claim: the lien would be voided only to the extent of the property's value at the time of the bankruptcy court's evaluation, and could be asserted against any increase in the value of the property that might later occur, in order to satisfy the disallowed claim. Unavoided liens (or more accurately, potentials of unavoided liens, since no one knows whether or when future evaluations of the relevant property will exceed that of the bankruptcy court) would impede the trustee's management and settlement of the estate. It would be difficult, for example, to sell overencumbered property subject to outstanding liens pursuant to 11 U. S. C. § 363(b) or (c), since any postsale appreciation in the property could be levied upon by holders of disallowed secured claims. And in a sale of debtor property "free and clear" of the liens attached to it, see 11 U. S. C. § 363(f)(3), the undisturbed portion of the disallowed claimant's lien might attach to the proceeds of that sale to the extent of the collateral's postpetition appreciation, preventing the trustee from distributing some or all of the sale proceeds to creditors holding allowed claims. If possible, we should avoid construing the statute in a way that produces such absurd results.

III

Although the Court makes no effort to explain why petitioner's straightforward reading of § 506(d) is textually or structurally incompatible with other portions of the statute, respondents and the United States do so. They point out, to begin with, that the two exceptions to § 506(d)'s nullifying effect both pertain to *the disallowance of claims*, and not to *the inadequacy of security*, see 11 U. S. C. §§ 506(d)(1) and (2)—from which they conclude that the applicability of § 506(d) turns only on the allowability of the underlying claim, and not on the extent to which the claim is a "secured claim" within the meaning of § 506(a). But the fact that the statute makes no exceptions to invalidation by reason of inadequate security in no way establishes that such (plainly

expressed) invalidation does not exist. The premise of the argument—that if a statute qualifies a noun with two adjectives ("allowed" and "secured"), and provides exceptions with respect to only one of the adjectives, then the other can be disregarded—is simply false. The most that can be said is that the two exceptions in § 506(d) do not *contradict* the United States' and respondents' interpretation; but they in no way suggest or support it.

Respondents and the United States also identify supposed inconsistencies between petitioner's construction of § 506(d) and other sections of the Bankruptcy Code; they are largely illusory. The principal source of concern is § 722, which enables a Chapter 7 debtor to "redeem" narrow classes of exempt or abandoned personal property from "a lien securing a dischargeable consumer debt." The price of redemption is fixed as "the amount of the *allowed secured claim* of [the lienholder] that is secured by such lien." (Emphasis added.) This provision, we are told, would be largely superfluous if § 506(d) automatically stripped liens securing undersecured claims to the value of the collateral, *i. e.*, to the value of the allowed secured claims.

This argument is greatly overstated. Section 722 is necessary, and not superfluous, because § 506(d) is not a *redemption* provision. It reduces the value of a lienholder's equitable interest in a debtor's property to the property's liquidation value, but it does not insure the debtor an opportunity to "redeem" the property at that price, *i. e.*, to "free [the] property . . . from [the] mortgage or pledge by paying the debt for which it stood as security." Black's Law Dictionary 1278 (6th ed. 1990). Congress had good reason to be solicitous of the debtor's right to redeem personal property (the exclusive subject of § 722), since state redemption laws are typically less generous for personalty than for real property. Compare, *e. g.*, Utah Code Ann. § 57–1–31 (1990) with Uniform Commercial Code § 9–506, 3A U. L. A. 370 (1981). The most that can be said regarding § 722 is that petitioner's

construction of § 506(d) would permit a more concise formulation: Instead of describing the redemption price as "the amount of the allowed secured claim . . . that is secured by such lien" it would have been *possible* to say simply "the amount of the claim . . . that is secured by such lien"—since § 506(d) would automatically have cut back the lien to the amount of the allowed secured claim. I would hardly call the more expansive formulation a redundancy—not when it is so far removed from the section that did the "cutting back" that the reader has likely forgotten it.

Respondents and their *amicus* also make much of the need to avoid giving Chapter 7 debtors a better deal than they can receive under the other chapters of the Bankruptcy Code. They assert that, by enabling a Chapter 7 debtor to strip down a secured creditor's liens and pocket any postpetition appreciation in the property, petitioner's construction of § 506(d) will discourage debtors from using the preferred mechanisms of reorganization under Chapters 11, 12, and 13. This evaluation of the "finely reticulated" incentives affecting a debtor's behavior rests upon critical—and perhaps erroneous—assumptions about the meaning of provisions in the reorganization chapters. Respondents assume, for example, that a debtor in Chapter 13 cannot strip down a mortgage placed on the debtor's home; but that assumption may beg the very question the Court answers today. True, § 1322(b)(2) provides that Chapter 13 filers may not "modify the rights of holders of secured claims" that are "*secured only by a security interest in real property that is the debtor's principal residence.*" (Emphasis added.) But this can be (and has been) read, in light of § 506(a), to prohibit modification of the mortgagee's rights only with respect to the portion of his claim that is deemed secured under the Code, see, *e. g.*, *In re Hart*, 923 F. 2d 1410, 1415 (CA10 1991); *Wilson* v. *Commonwealth Mortgage Corp.*, 895 F. 2d 123, 127 (CA3 1990). If petitioner's construction of § 506(d) were applied consistently in this fashion to the Code's various chapters,

see 11 U. S. C. § 103(a) (providing that "chapters 1, 3, and 5 . . . [shall] apply in a case under chapter 7, 11, 12, or 13"), Chapter 7 would not appear unduly attractive. In any event, reorganization contains other enticements to lure a debtor away from Chapter 7. It not only permits him to maintain control over his personal and business assets, but affords a broader discharge from prepetition *in personam* liabilities. Compare, *e. g.*, 11 U. S. C. § 523 (listing numerous exceptions to Chapter 7 discharge) with 11 U. S. C. § 1328(a) (listing two exceptions to Chapter 13 discharge). Compare, *e. g.*, *Kelly* v. *Robinson*, 479 U. S. 36, 50 (1986) (restitution obligations imposed in criminal judgments nondischargeable in Chapter 7) with *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 563–564 (1990) (such restitution obligations dischargeable in Chapter 13).

Finally, respondents and the United States find it incongruous that Congress would so carefully protect secured creditors in the context of reorganization while allowing them to be fleeced in a Chapter 7 liquidation by operation of § 506(d). This view mistakes the generosity of treatment that creditors can count upon in reorganization. There, no more than under Chapter 7, can they demand the benefit of postevaluation increases in the value of property given as security. See 11 U. S. C. §§ 1129(b)(2)(A) and 1325(a)(5) (permitting "cram-down" of reorganization plan over objections of secured creditors if creditors are to receive payments equal in present value to the cash value of the collateral, and if creditors retain liens securing such payments).[3]

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[3] The election available to a secured creditor under § 1111(b)(2) to treat his undersecured claims as fully secured in a Chapter 11 reorganization notwithstanding § 506(a) does not affect this analysis, for an electing creditor is guaranteed under the reorganization plan only "property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims." 11 U. S. C. § 1129(a)(7)(B). In other words, "the present value of such payments [to the § 1111(b)(2) elector] need only equal the value of the secured creditor's interest in its collateral." 5 Collier on Bankruptcy ¶ 1111.02, pp. 1111–25 to 1111–26, n. 23 (15th ed. 1990).

IV

I must also address the Tenth Circuit's basis for the decision affirmed today (alluded to by the Court, *ante*, at 414, but not discussed), that § 506 does not apply to property abandoned by the bankruptcy trustee under § 554, see 11 U. S. C. § 554. Respondents' principal argument before us was a modified (and less logical) version of the same basic point—viz., that although § 506*(a)* applies to abandoned property, § 506*(d)* does not. I can address the point briefly, since the plain-language obstacles to its validity are even more pronounced than those raised by the Court's approach.

The Court of Appeals' reasoning was as follows: § 506(d) effects lien stripping only with respect to property subject to § 506(a); but by its terms § 506(a) applies only to property "in which the estate has an interest"; since "[t]he estate has no interest in, and does not administer, abandoned property," § 506(a), and hence § 506(d), does not apply to it. *In re Dewsnup,* 908 F. 2d 588, 590–591 (CA10 1990). The fallacy in this is the assumption that the application of § 506(a) (and hence § 506(d)) can be undone if and when the estate ceases to "have an interest" in property in which it "had an interest" at the outset of the bankruptcy proceeding. The text does not read that way. Section 506 automatically operates upon all property in which the estate has an interest at the time the bankruptcy petition is filed.[4] Once § 506(a)'s grant of secured-creditor rights, and § 506(d)'s elimination of the right to "underwater" liens and liens securing unallowed claims have occurred, they cannot be undone by later abandonment of the property. Nothing in the statute expressly permits such an unraveling, and it would be absurd to imagine it. If, upon the collateral's abandonment, the claim bi-

[4] The estate "has an interest," of course, even in its overencumbered property. See 11 U. S. C. § 541(d) (providing that property for which the debtor holds legal title alone is "property of the estate" to the extent of that legal title). See also § 541(a)(1) (defining the bankruptcy estate to include "all legal or equitable interests of the debtor in property as of the commencement of the [bankruptcy] case").

furcation accomplished by § 506(a) were nullified, the status of the creditor's allowed claim—*i. e.*, whether (and to what extent) it is "secured" or "unsecured" for purposes of the bankruptcy distribution—would be impossible to determine. Instead, the claim would have to be treated as either completely "secured" or completely "unsecured," neither of which disposition would accord with the Code's distribution principles. The former would deprive the secured claimant of a share in the distribution to general creditors altogether. See 11 U. S. C. § 726 (providing for distribution of property of the estate to unsecured claimants). The latter (treating the claim as completely unsecured) would permit the lienholder to share in the pro rata distribution to general creditors *to the full amount of his allowed claim* (rather than simply to the amount of the § 506(a)-defined "unsecured claim") while reserving his *in rem* claim against the security. Respondents' variation on the Tenth Circuit's holding avoids these alternative absurdities only by embracing yet another textual irrationality—asserting that, even though the language that is the *basis* for the "abandonment" theory (the phrase "in which the estate has an interest") is contained in § 506(a), and only applies to § 506(d) *through* § 506(a), nonetheless only the effects of § 506(d) and *not* the effects of § 506(a) are undone by abandonment. This hardly deserves the name of a theory.

V

As I have said, the Court does not trouble to make or evaluate the foregoing arguments. Rather, in Part II of its opinion it merely describes (uncritically) "the contrasting positions of the respective parties and their *amici*" concerning the meaning of § 506(d), *ante*, at 416, and concludes, because the positions are contrasting, that there is "ambiguity in the text," *ante*, at 417. (This mode of analysis makes every litigated statute ambiguous.) Having thus established "ambiguity," the Court is able to summon down its *deus ex machina:* "the pre-Code rule that liens pass through bank-

ruptcy unaffected"—which cannot be eliminated by an ambiguous provision, at least where the "legislative history" does not mention its demise. *Ante*, at 417, 418.

We have, of course, often consulted pre-Code behavior in the course of interpreting gaps in the express coverage of the Code, or genuinely ambiguous provisions. And we have often said in such cases that, absent a textual footing, we will not presume a departure from longstanding pre-Code practice. See, *e. g.*, *Midlantic Nat. Bank* v. *New Jersey Dept. of Environmental Protection*, 474 U. S. 494, 501 (1986); *Kelly* v. *Robinson*, 479 U. S., at 46–47. But we have *never* held pre-Code practice to be determinative in the face of what we have here: contradictory statutory text. To the contrary, where "the statutory language plainly reveals Congress' intent" to alter pre-Code regimes, *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S., at 563, we have simply enforced the new Code according to its terms, without insisting upon "at least some discussion [of the change from prior law] in the legislative history," *ante*, at 419.

For an illustration of just how plainly today's opinion is at odds with our jurisprudence, one need only examine our most recent bankruptcy decision. *Union Bank* v. *Wolas*, *ante*, p. 151. There also the parties took "contrasting positions" as to the meaning of the statutory text, but we did not shrink from finding, on the basis of our own analysis, that no ambiguity existed. There also it was urged upon us that the interpretation we adopted would overturn pre-Code practice with "no evidence in the legislative history that Congress intended to make" such a change. *Ante*, at 157. We found it unnecessary to "dispute the accuracy of [that] description of the legislative history . . . in order to reject [the] conclusion" that no change had been effected. "The fact," we said, "that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning."

Ante, at 157, 158. And "the fact that Congress carefully reexamined and entirely rewrote the preference provision in 1978 supports the conclusion that the text of § 547(c)(2) as enacted reflects the deliberate choice of Congress." *Ante*, at 160. What was true of the preference provision in *Wolas* is also true of the secured claims provisions at issue in the present case: Congress' careful reexamination *and entire rewriting* of those provisions supports the conclusion that, regardless of whether pre-Code practice is retained or abandoned, the text means precisely what it says. Indeed, the rewriting here is so complete that, no matter how deeply one admires and venerates "pre-Code law," it is impossible to interpret § 506(d) in a manner that entirely preserves it—and the Court itself, for all its protestation of fealty, does not do so. No provision of the former Bankruptcy Act, nor any pre-Code doctrine, purported to invalidate—across the board—liens securing claims disallowed in bankruptcy, see 11 U. S. C. § 107 (1976 ed.); see also 4 Collier on Bankruptcy ¶ 67 (14th ed. 1978), yet that is precisely what § 506(d), as interpreted by the Court today, accomplishes.

It is even more instructive to compare today's opinion with our decision a few years ago in *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235 (1989), which involved another subsection of § 506 itself. The issue was whether § 506(b) made postpetition interest available even to those oversecured creditors whose liens were nonconsensual. The Court of Appeals had held that it did not, because such a disposition would alter the pre-Code rule and there was no "legislative history" to support the change. We disagreed. The opinion for the Court began "where all such inquiries must begin: with the language of the statute itself." *Id.*, at 241. We did not recite the contentions of the parties and declare "ambiguity," but entered into our own careful consideration of "[t]he natural reading of the [relevant] phrase," the "grammatical structure of the statute," and the "terminology used throughout the Code." *Id.*, at 241 and 242, n. 5. Hav-

ing found a "natural interpretation of the statutory language [that] does not conflict with any significant state or federal interest, nor with any other aspect of the Code," *id.*, at 245, we deemed the pre-Code practice to be irrelevant. And whereas today's opinion announces the policy judgment that "[a]ny increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor," *ante,* at 417, in *Ron Pair* we were undeterred by the fact that our result was "arguably somewhat in tension with the desirability of paying all creditors as uniformly as practicable," 489 U. S., at 245–246. "Congress," we said, "expressly chose to create that alleged tension." *Id.,* at 246. Almost point for point, today's opinion is the methodological antithesis of *Ron Pair*—and I have the greatest sympathy for the Courts of Appeals who must predict which manner of statutory construction we shall use for the next Bankruptcy Code case.

* * *

The principal harm caused by today's decision is not the misinterpretation of § 506(d) of the Bankruptcy Code. The disposition that misinterpretation produces brings the Code closer to prior practice and is, as the Court irrelevantly observes, probably fairer from the standpoint of natural justice. (I say irrelevantly, because a bankruptcy law has little to do with natural justice.) The greater and more enduring damage of today's opinion consists in its destruction of predictability, in the Bankruptcy Code and elsewhere. By disregarding well-established and oft-repeated principles of statutory construction, it renders those principles less secure and the certainty they are designed to achieve less attainable. When a seemingly clear provision can be pronounced "ambiguous" *sans* textual and structural analysis, and when the assumption of uniform meaning is replaced by "one-subsection-at-a-time" interpretation, innumerable statutory texts become worth litigating. In the bankruptcy field

alone, for example, unfortunate future litigants will have to pay the price for our expressed neutrality "as to whether the words 'allowed secured claim' have different meaning in other provisions of the Bankruptcy Code." *Ante*, at 417, n. 3. Having taken this case to resolve uncertainty regarding one provision, we end by spawning confusion regarding scores of others. I respectfully dissent.

Syllabus

WYOMING *v.* OKLAHOMA

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 112, Orig. Argued November 4, 1991—Decided January 22, 1992

Wyoming, a major coal-producing State, does not sell coal, but does impose a severance tax on those who extract it. From 1981 to 1986, Wyoming provided virtually 100% of the coal purchased by four Oklahoma electric utilities, including the Grand River Dam Authority (GRDA), a state agency. However, after the Oklahoma Legislature passed an Act requiring coal-fired electric utilities to burn a mixture containing at least 10% Oklahoma-mined coal, the utilities reduced their purchases of Wyoming coal in favor of Oklahoma coal, and Wyoming's severance tax revenues declined. Wyoming sought leave to file a complaint under this Court's original jurisdiction, seeking a declaration that the Act violates the Commerce Clause and an injunction permanently enjoining the Act's enforcement. The motion was granted over Oklahoma's objections that Wyoming lacked standing to bring the action and should otherwise not be permitted to invoke original jurisdiction. Oklahoma's subsequently filed motion to dismiss, which raised the same issues, also was denied. After a Special Master was appointed, the States filed cross-motions for summary judgment, with Oklahoma once again asserting the standing and appropriateness issues. The Special Master filed a Report recommending that this Court hold that Wyoming has standing to sue, that this case is appropriate to original jurisdiction, and that the Act violates the Commerce Clause. It also recommended that the Court either dismiss the suit as it relates to the GRDA without prejudice to Wyoming to assert its claim in an appropriate forum, or, alternatively, find the Act severable to the extent that it may constitutionally be applied to the GRDA. Both States have filed exceptions.

Held:

1. Wyoming has standing. The prior rulings on standing in this case "should be subject to the general principles of finality and repose, absent changed circumstances or unforeseen issues not previously litigated." *Arizona* v. *California*, 460 U. S. 605, 619. Oklahoma has never suggested any change of circumstances, but has recited the same facts, cited the same cases, and constructed the same arguments in each of its briefs. Moreover, Wyoming's submission satisfies the test for standing, since the State's loss of severance tax revenues fairly can be traced to the Act. See *Maryland* v. *Louisiana*, 451 U. S. 725, 736. Cases where standing has been denied to States claiming general declines in tax rev-

enues due to federal agency actions, see, *e. g.*, *Pennsylvania* v. *Kleppe*, 533 F. 2d 668, do not involve a direct injury in the form of a loss of specific tax revenues and thus are not analogous to this case. And the type of direct injury suffered by Wyoming is cognizable in a Commerce Clause action, since Wyoming's severance tax revenues are directly linked to its coal's extraction and sale and have been demonstrably affected by the Act. See *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333, 345. *Oklahoma* v. *Atchison, T. & S. F. R. Co.*, 220 U. S. 277, 287–289, and *Louisiana* v. *Texas*, 176 U. S. 1, 16–22, distinguished. Pp. 446–450.

2. This is an appropriate case for the exercise of this Court's original jurisdiction. Wyoming's Commerce Clause challenge "implicates serious and important concerns of federalism" in accord with the purpose and reach of original jurisdiction. *Maryland* v. *Louisiana*, *supra*, at 744. In addition, there is no other forum in which Wyoming's interests will find appropriate hearing and full relief. There is no pending action to which adjudication could be deferred on this issue, since the mining companies themselves have not brought suit. Even if such an action were proceeding, Wyoming's interests would not be directly represented. See *Maryland* v. *Louisiana*, *supra*, at 743. Oklahoma's suggestion that Wyoming's interest is *de minimis* because the loss in severance tax revenues attributable to the Act is less than 1% of total taxes collected is rejected. Wyoming coal is a natural resource of great value primarily carried into other States for use, and Wyoming derives significant revenue from this interstate movement. The Act's practical effect must be evaluated not only by considering the consequences of the Act itself, but also by considering what effect would arise if many States or every State adopted similar legislation. *Healy* v. *Beer Institute*, 491 U. S. 324, 336. Pp. 450–454.

3. The Act is invalid under the Commerce Clause because it discriminates against interstate commerce and Oklahoma has advanced no purposes to justify such discrimination. The Act purports to exclude coal mined from other States based solely on its origin and, thus, discriminates both on its face and in practical effect. The small volume of commerce affected by the Act measures only the extent of the discrimination but is not relevant in determining whether there has been discrimination. Additionally, Oklahoma has not justified the discrimination in terms of the Act's local benefits and the unavailability of nondiscriminatory alternatives adequate to preserve those interests. Its argument that sustaining the Oklahoma coal-mining industry lessens the State's reliance on a single source of coal delivered over a single rail line is foreclosed by the reasoning in *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511, and *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U. S. 525.

Syllabus

Also rejected is its contention that restricting the purchase of Wyoming's cleaner coal now conserves that coal for future use, since Wyoming will have coal for several hundred years at current extraction rates, and since the argument, raised for the first time in Oklahoma's brief on the merits, is not supported by the record. Nor does the Federal Power Act's saving clause—which reserves to the States the regulation of local retail electric rates—exempt the Act from scrutiny under the Commerce Clause. There is nothing in the Federal Act or legislative history evincing a congressional intent to approve the violation of the Clause that Oklahoma seeks to justify, and this Court's decisions have uniformly subjected Commerce Clause cases implicating the Federal Power Act to scrutiny on the merits. See, *e. g.*, *New England Power Co.* v. *New Hampshire*, 455 U. S. 331. Pp. 454–459.

4. No portion of the Act is severable as to any entity touched by its mandate. This Court is the proper forum to decide issues necessary to afford Wyoming complete relief, cf. *Dorchy* v. *Kansas*, 264 U. S. 286, 291, and therefore the Special Master erred in recommending that the action against the GRDA be dismissed on the ground that the determination of severability is one of state law. The Special Master also erred in finding, in the alternative, the Act severable as to the GRDA. There are no parts or separate provisions in the invalid section of the Act, which applies to "all entities" providing electric power. Thus, nothing remains to be saved once that provision is stricken, and the Act must stand or fall as a whole. Nor does the evidence support Oklahoma's argument that its legislature intended the term "all entities" to include only "the GRDA" or "state-owned" utilities. Pp. 459–461.

5. Jurisdiction over this case is retained in the event that further proceedings are required to implement the judgment. P. 461.

Recommendations of Special Master adopted in part; exceptions of Wyoming sustained and exceptions of Oklahoma rejected; motion of Wyoming for summary judgment granted and motion of Oklahoma for summary judgment denied.

WHITE, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined, *post*, p. 461. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined, *post*, p. 473.

Mary B. Guthrie, Senior Assistant Attorney General of Wyoming, argued the cause for plaintiff. With her on the briefs were *Joseph B. Meyer*, Attorney General, and *Steve*

C. Jones and *Vicci M. Colgan*, Senior Assistant Attorneys General.

Neal Leader, Assistant Attorney General of Oklahoma, argued the cause for defendant. With him on the brief were *Robert H. Henry*, Attorney General, and *Thomas L. Spencer*, Assistant Attorney General.*

JUSTICE WHITE delivered the opinion of the Court.

On April 14, 1988, Wyoming submitted a motion for leave to file a complaint under this Court's original jurisdiction provided by Art. III, § 2, of the Constitution. The complaint challenged Okla. Stat., Tit. 45, §§ 939 and 939.1 (Supp. 1988) (Act),[1] which requires Oklahoma coal-fired electric generating plants producing power for sale in Oklahoma to burn a mixture of coal containing at least 10% Oklahoma-mined coal. Wyoming sought a declaration that the Act violates the Commerce Clause, U. S. Const., Art. I, § 8, cl. 3, and an injunction

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**Marilyn S. Kite, Lawrence J. Wolfe,* and *William E. Mooz, Jr.*, filed a brief for the Wyoming Mining Association as *amicus curiae.*

[1] Act of Mar. 26, 1986, Ch. 43, §§ 1, 2, 1986 Okla. Sess. Laws 73. In full, § 939 provides:

"Coal-fired electric generating plants—Burning Oklahoma coal

"All entities providing electric power for sale to the consumer in Oklahoma and generating said power from coal-fired plants located in Oklahoma shall burn a mixture of coal that contains a minimum of ten percent (10%) Oklahoma mined coal, as calculated on a BTU (British Thermal Unit) basis."

Section 939.1 further provides:

"Cost increases to consumers and impairment of certain contracts prohibited

"The cost to the entity shall not increase cost to the consumer or exceed the energy cost of existing long-term contracts for out-of-state coal preference including preference given Oklahoma vendors as provided in Section 85.32 of Title 74 of the Oklahoma statutes."

The referenced statute, Okla. Stat., Tit. 74, § 85.32 (1981), provides "that such preference shall not be for articles of inferior quality to those offered from outside the state, but a differential of not to exceed five percent (5%) may be allowed in the cost of Oklahoma materials, supplies and provisions of equal quality."

permanently enjoining enforcement of the Act. On June 30, 1988, we granted Wyoming leave to file its bill of complaint over Oklahoma's objections that Wyoming lacked standing to bring this action and, in any event, should not be permitted to invoke this Court's original jurisdiction. 487 U. S. 1231. Oklahoma next filed a motion to dismiss on August 29, 1988, raising these same arguments. We denied the motion to dismiss on October 31, 1988, and ordered Oklahoma to answer Wyoming's complaint within 30 days. 488 U. S. 921. We thereafter appointed the Special Master, 489 U. S. 1063 (1989), who ordered the parties to complete discovery and to file a stipulation of uncontested facts, any affidavits believed to be necessary, and a short statement of any disputed issues of material fact that may require a hearing. The parties complied, and each moved for summary judgment. Wyoming argued that the Act is a *per se* violation of the Commerce Clause. Oklahoma reasserted its arguments on standing and the appropriateness of this Court's exercise of original jurisdiction, submitting as well that the Act was constitutional.

The Report of the Special Master was received and ordered filed on October 1, 1990. 498 U. S. 803. Based on the record before him, the Special Master recommended findings of fact, to which the parties do not object, and conclusions of law generally supporting Wyoming's motion for summary judgment and rejecting Oklahoma's motion for summary judgment. More specifically, the Report recommends that we hold, first, that Wyoming has standing to sue and that this case is appropriate to our original jurisdiction; and second, that the Act discriminates against interstate commerce on its face and in practical effect, that this discrimination is not justified by any purpose advanced by Oklahoma, and that the Act therefore violates the Commerce Clause. The Report also recommends that the Court either dismiss the action as it relates to an Oklahoma-owned utility without prejudice to Wyoming to assert its claim in an appropriate forum,

or, alternatively, find the Act severable to the extent it may constitutionally be applied to that utility.

Subsequently, the parties requested the Court to enter a stipulated decree adopting the Special Master's Report and containing conclusions of law.[2] If the decree was to rule on the constitutionality of the Act, however, we preferred to have that issue briefed and argued, and the case was set down for oral argument. 501 U. S. 1215 (1991). We now adopt the Special Master's recommended findings of fact, and, with one exception, his recommended conclusions of law.

I

The salient facts, gathered from those recommended by the Special Master and from other materials in the record, are as follows.

Wyoming is a major coal-producing State and in 1988 shipped coal to 19 other States.[3] While the State of Wyoming does not itself sell coal, it does impose a severance tax upon the privilege of severing or extracting coal from land within its boundaries. Wyo. Stat. §§ 39–6–301 to 39–6–308 (1990 and Supp. 1991). The tax is assessed against the person or company extracting the coal and is payable when the coal is extracted. The valuation of the coal for severance tax purposes is based on its fair market value. Wyoming has collected severance taxes on coal extracted by eight

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[2] In the proposed decree, the parties agreed to the Special Master's findings of fact and his conclusions that the Act, as applied to the privately owned utilities, violated the Commerce Clause, but that, as applied to the Oklahoma-owned utility, the Act was constitutional. Oklahoma agreed that application of the Act to the private utilities would be enjoined, and Wyoming agreed that the Act would not be enjoined as to the state-owned utility.

[3] In 1988, just over 163.8 million tons of Wyoming coal was mined. Only 14.6% of Wyoming's coal production was sold in-state. Oklahoma purchased 8% of the coal mined, making it the third largest out-of-state consumer, behind Texas at 19.7% and Kansas at 8.3%.

mining companies that sell coal to four Oklahoma electric utilities.

The 40th Oklahoma Legislature, at its session in June 1985, adopted a concurrent resolution "requesting Oklahoma utility companies using coal-fired generating plants to consider plans to blend ten percent Oklahoma coal with their present use of Wyoming coal; effecting a result of keeping a portion of ratepayer dollars in Oklahoma and promoting economic development." Okla. S. Res. 21, 40th Leg., 1985 Okla. Sess. Laws 1694 (hereinafter Res. 21). The recitals and resolutions in relevant part stated:

> "WHEREAS, the use of Oklahoma coal would save significant freight charges on out-of-state coal from the State of Wyoming; and
>
> "WHEREAS, the savings on such freight charges could offset any possible costs associated with plant adjustments; and
>
> "WHEREAS, the coal-fired electric plants being used by Oklahoma utilities are exclusively using Wyoming coal; and
>
> "WHEREAS, the Oklahoma ratepayers are paying $300 million annually for Wyoming coal; and
>
> "WHEREAS, a 1982 Ozark Council Report states that $9 million of the ratepayers dollars was paid as severance tax to the State of Wyoming . . . .
>
> . . . . . .
>
> "NOW, THEREFORE, BE IT RESOLVED . . . :
>
> "THAT Oklahoma utilities using coal-fired generating plants seriously consider using a blend of at least ten percent Oklahoma coal with Wyoming coal and continue to meet air quality standards.
>
> "THAT the result of such a blend would assure at least a portion of the ratepayer dollars remaining in Oklahoma and enhancing the economy of the State of Oklahoma."

The four Oklahoma electric utilities subject to the requirements of the Act are Oklahoma Gas and Electric Company, Public Service Company of Oklahoma, and Western Farmers Electric Cooperative, all privately owned, and the Grand River Dam Authority (GRDA), an agency of the State of Oklahoma. None of these four heeded this precatory resolution. At its second session, the 40th Legislature adopted the Act challenged in this case, thus mandating the 10% minimum purchases that the previous resolution had requested. Fifteen months after the effective date of the Act, facing substantially less than full compliance by any of the utilities,[4] the next Oklahoma Legislature adopted a concurrent resolution directing the GRDA, Oklahoma's state-owned public utility, to comply with the Act. Okla. S. Res. 82, 41st Leg., 1988 Okla. Sess. Laws 1915.[5]

Charts set out in the Special Master's Report show the percentages of each utility's purchases of Oklahoma-mined coal and Wyoming-mined coal on an annual basis from 1981

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[4] To date, no investigations or prosecutions have taken place. However, violations of the Act can be prosecuted as a misdemeanor, and the utilities can be enjoined from further violations upon recommendation of Oklahoma's State Mining Commission. See Oklahoma's Response to Wyoming's Interrogatory No. 6.

[5] The recitals and resolutions included the following:

"WHEREAS, the passage of this law in 1986 has provided over 700 new jobs in Oklahoma's coal mining industry and related employment sectors; and

"WHEREAS, another benefit of this law is an additional $31 million of taxable income has been generated through the purchases of Oklahoma mined coal; and

. . . . . .

"WHEREAS, the Grand River Dam Authority has failed to comply with said law and has refused to recognize the intent of the Oklahoma State Legislature to utilize Oklahoma mined coal.

"NOW, THEREFORE, BE IT RESOLVED . . . :

"THAT the Oklahoma State Legislature hereby directs the Grand River Dam Authority to immediately begin purchasing Oklahoma mined coal and to comply with the law as stated in [the Act]."

through the first four months of 1989. See Report of Special Master 7–8. Those charts reveal that during the years 1981 through 1984, the four Oklahoma utilities purchased virtually 100% of their coal requirements from Wyoming sources. These purchases decreased slightly, if at all, in 1985 and 1986 following the adoption of the original concurrent resolution. After January 1, 1987, the effective date of the Act, these utilities reduced their purchases of Wyoming coal in favor of coal mined in Oklahoma.

Unrebutted evidence demonstrates that, since the effective date of the Act, Wyoming has lost severance taxes in the amounts of $535,886 in 1987, $542,352 in 1988, and $87,130 in the first four months of 1989.[6] These estimates are based on an equivalence of British Thermal Unit (BTU) ratings, thus accounting for the hotter burning propensities of Oklahoma coal.[7] Other unrebutted submissions confirm that Wyoming has a significant excess mining capacity, such that

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[6] See Affidavit of Richard J. Marble, Director, Minerals Tax Division, Wyoming Department of Revenue and Taxation 3 (Exh. B to Appendix to Motion of Wyoming for Summary Judgment). Oklahoma does not contradict these estimates. Instead, its expert, an economist familiar with energy and coal-related issues, emphasizes only that Wyoming experienced a more severe loss in severance tax revenues due to its reduction of the severance tax rate and a decline in coal market prices. Affidavit of David M. Weinstein 2–3 (Exh. G to Appendix to Motion of Oklahoma for Summary Judgment). At best, Oklahoma's counteraffidavit suggests that the estimate of lost severance tax revenues is a bit too high, pointing to the slight percentages of Oklahoma coal purchased prior to the Act as indicative that Wyoming did not provide 100% of the coal purchased. *Id.*, at 3.

[7] A coal's BTU rating reflects the heat-generating efficiency of the coal when burned. Coal extracted from Wyoming's Powder River Basin—the source of coal shipped to Oklahoma since 1980—has a lower average BTU rating than the Oklahoma coal delivered to the utilities. Accordingly it takes less Oklahoma coal by weight to generate the same amount of energy as the Wyoming coal. Because sulfur content factors into Oklahoma's later argument, we note here as well that Wyoming coal has a lower average sulfur content than Oklahoma coal, thus less sulfur escapes and pollutes the air when Wyoming coal is burned.

the loss of any market cannot be made up by sales elsewhere, where Wyoming's supply has already risen to meet demand.[8]

II

In its motion for summary judgment before the Special Master, Oklahoma again challenged Wyoming's standing, and now excepts to the Special Master's recommendation that we reject Oklahoma's submission in this respect. Having granted Wyoming leave to file its complaint over Oklahoma's objection to standing, and having denied Oklahoma's motion to dismiss for want of standing, and the parties having submitted the case on cross-motions for summary judgment, we are not at all inclined to dismiss the action at this juncture. Although we have been reluctant to import wholesale law-of-the-case principles into original actions, *Arizona* v. *California,* 460 U. S. 605, 618–619 (1983), prior rulings in such cases "should be subject to the general principles of finality and repose, absent changed circumstances or unforeseen issues not previously litigated." *Id.*, at 619. Here, Oklahoma in no way suggests any change of circumstance, whether of fact or law. In each brief submitted on the issue, Oklahoma has recited the same facts, cited the same cases, and constructed the same arguments. Of course, we surely have the power to accede to Oklahoma's request at this late date, and if convinced, which we are not, that we were clearly wrong in accepting jurisdiction of this case, we would not hesitate to depart from our prior rulings.

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[8] One affidavit, from a principal of a consulting firm conducting economic analysis of the coal industry, reflects that in 1987 the Wyoming Powder River Basin had an annual production capacity of 186.4 million tons, versus actual 1987 production of 127.1 million tons. Affidavit of Seth Schwartz (Appendix to Response to Motion to Dismiss A–2). Moreover, the Director of the Wyoming Department of Environmental Quality, who oversees programs for permitting coal mines, informs us that as of 1987, permitted capacity in the Powder River Basin was 318 million tons, whereas total production from all coal mines was 146.5 million tons. Affidavit of Randolph Wood (Appendix to Response to Motion to Dismiss A–5).

Article III, § 2, cl. 2, of the United States Constitution provides this Court with original jurisdiction in all cases "in which a State shall be a Party." Congress has seen fit to designate that this Court "shall have original and exclusive jurisdiction of all controversies between two or more States." 28 U. S. C. § 1251(a). "In order to constitute a proper 'controversy' under our original jurisdiction, 'it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence.'" *Maryland* v. *Louisiana*, 451 U. S. 725, 735–736 (1981) (quoting *Massachusetts* v. *Missouri*, 308 U. S. 1, 15 (1939)); see also *New York* v. *Illinois*, 274 U. S. 488, 490 (1927).

We are quite sure that Wyoming's submission satisfies this test. We agree with the Master's conclusion, arrived at after consideration of all the facts submitted to him, that Wyoming clearly had standing to bring this action. The Master observed:

> "The effect of the Oklahoma statute has been to deprive Wyoming of severance tax revenues. It is undisputed that since January 1, 1987, the effective date of the Act, purchases by Oklahoma electric utilities of Wyoming-mined coal, as a percentage of their total coal purchases, have declined. . . . The decline came when, in response to the adoption of the Act, those utilities began purchasing Oklahoma-mined coal. The coal that, in the absence of the Act, would have been sold to Oklahoma utilities by a Wyoming producer would have been subject to the tax when extracted. Wyoming's loss of severance tax revenues 'fairly can be traced' to the Act. See *Maryland* v. *Louisiana*, 451 U. S. 725, 736 (1981) (quoting *Simon* v. *Eastern Kentucky Welfare Rights*

Organization, 426 U. S. 26, 41–42 (1976))." Report of Special Master 11.[9]

The Master recognized that Courts of Appeals have denied standing to States where the claim was that actions taken by United States Government agencies had injured a State's economy and thereby caused a decline in general tax revenues. See, *e. g.*, *Pennsylvania* v. *Kleppe*, 174 U. S. App. D. C. 441, 533 F. 2d 668, cert. denied, 429 U. S. 977 (1976); *State of Iowa ex rel. Miller* v. *Block*, 771 F. 2d 347 (CA8 1985), cert. denied, 478 U. S. 1012 (1986). He concluded, however, that none of these cases was analogous to this one because none of them involved a direct injury in the form of a loss of specific tax revenues—an undisputed fact here. See n. 6, *supra*. In our view, the Master's conclusion about Wyoming's standing is sound.

Oklahoma argues that Wyoming is not itself engaged in the commerce affected, is not affected as a consumer, and thus has not suffered the type of direct injury cognizable in a Commerce Clause action. The authorities relied on by Oklahoma for this argument, *Oklahoma* v. *Atchison, T. & S. F. R. Co.*, 220 U. S. 277, 287–289 (1911), and *Louisiana* v. *Texas*, 176 U. S. 1, 16–22 (1900), are not helpful, however, for they involved claims of *parens patriae* standing rather than

[9] We note as well that the recitals in Oklahoma's initial concurrent resolution reflect that coal-fired electric plants within Oklahoma were exclusively using Wyoming coal, with the attendant recognition that "$9 million of the ratepayers dollars was paid as severance tax to the State of Wyoming." Res. 21. The Wyoming coal that would have been sold—but no longer will be sold due to the Act—to Oklahoma utilities by a Wyoming producer is subject to the tax when extracted. Wyoming, which stands to regain these lost revenues should its suit to overturn the Act succeed, is thus "directly affected in a 'substantial and real' way so as to justify [its] exercise of this Court's original jurisdiction." *Maryland* v. *Louisiana*, 451 U. S. 725, 737 (1981); see also *Texas* v. *Florida*, 306 U. S. 398, 407–408 (1939); *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 39 (1976) (plaintiff seeking to invoke Article III judicial power must "stand to profit in some personal interest").

allegations of direct injury to the State itself. Moreover, we have rejected a similar argument in *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333 (1977). In *Hunt*, the Washington State Apple Advertising Commission brought suit to declare as violative of the Commerce Clause a North Carolina statute requiring that all apples sold or shipped into North Carolina in closed containers be identified by no grade other than the applicable federal grade or a designation that the apples were not graded. The commission was a statutory agency designed for the promotion and protection of the Washington State apple industry and composed of 13 state growers and dealers chosen from electoral districts by their fellow growers and dealers, all of whom by mandatory assessments financed the commission's operations. The North Carolina officials named in the suit vigorously contested the commission's standing, either in its own right or on behalf of the apple industry it represented, arguing that it lacked a "personal stake" in the litigation because, as a state agency, it was "not itself engaged in the production and sale of Washington apples or their shipment into North Carolina." *Id.*, at 341. After addressing the commission's analogues to associational standing, we turned to the commission's allegations of direct injury:

> "Finally, we note that the interests of the Commission itself may be adversely affected by the outcome of this litigation. The annual assessments paid to the Commission are tied to the volume of apples grown and packaged as 'Washington Apples.' In the event the North Carolina statute results in a contraction of the market for Washington apples or prevents any market expansion that might otherwise occur, it could reduce the amount of the assessments due the Commission and used to support its activities. This financial nexus between the interests of the Commission and its constituents coalesces with the other factors noted above to 'assure that concrete adverseness which sharpens the

> presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *Baker* v. *Carr*, [369 U. S. 186, 204 (1962)]; see also *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 459–460 (1958)." *Id.*, at 345.

That the commission was allowed to proceed in *Hunt* necessarily supports Wyoming's standing against Oklahoma, where its severance tax revenues are directly linked to the extraction and sale of coal and have been demonstrably affected by the Act.

Over Oklahoma's objection, which is repeated here, the Special Master also concluded that this case was an appropriate one for the exercise of our original jurisdiction. We agree, and we obviously shared this thought when granting Wyoming leave to file its complaint in the first instance. We have generally observed that the Court's original jurisdiction should be exercised "sparingly," *Maryland* v. *Louisiana*, 451 U. S., at 739; *United States* v. *Nevada*, 412 U. S. 534, 538 (1973), and this Court applies discretion when accepting original cases, even as to actions between States where our jurisdiction is exclusive. As stated not long ago:

> "In recent years, we have consistently interpreted 28 U. S. C. § 1251(a) as providing us with substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court for particular disputes within our constitutional original jurisdiction. See *Maryland* v. *Louisiana*, 451 U. S. 725, 743 (1981); *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493, 499 (1971). We exercise that discretion with an eye to promoting the most effective functioning of this Court within the overall federal system." *Texas* v. *New Mexico*, 462 U. S. 554, 570 (1983).

Specifically, we have imposed prudential and equitable limitations upon the exercise of our original jurisdiction, and of these limitations we have said:

> "'We construe 28 U. S. C. § 1251(a)(1), as we do Art. III, § 2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases. And the question of what is appropriate concerns, of course, the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had.'" *Illinois* v. *City of Milwaukee*, 406 U. S. 91, 93 (1972), quoted in *California* v. *Texas*, 457 U. S. 164, 168 (1982).

It is beyond peradventure that Wyoming has raised a claim of sufficient "seriousness and dignity." Oklahoma, acting in its sovereign capacity, passed the Act, which directly affects Wyoming's ability to collect severance tax revenues, an action undertaken in its sovereign capacity. As such, Wyoming's challenge under the Commerce Clause precisely "implicates serious and important concerns of federalism fully in accord with the purposes and reach of our original jurisdiction." *Maryland* v. *Louisiana*, 451 U. S., at 744. Indeed, we found it not to be a "waste" of this Court's time in *Maryland* v. *Louisiana* to consider the validity of one State's "first-use tax" which served, in effect, as a severance tax on gas extracted from areas belonging to the people at large, to the detriment of other States on to whose consumers the tax passed. *Ibid.* Wyoming's claim here is no less substantial, and touches on its direct injury rather than on any interest as *parens patriae.*

Oklahoma makes much of the fact that the mining companies affected in Wyoming could bring suit raising the Commerce Clause challenge, as private parties aggrieved by state action often do. But cf. *Hunt* v. *Washington State Apple Advertising Comm'n*, *supra.* For reasons unknown, however, they have chosen neither to intervene in this action nor to file their own, whether in state or

federal court.[10] As such, no pending action exists to which we could defer adjudication on this issue. See, *e. g.*, *Illinois* v. *City of Milwaukee*, *supra*, at 98, 108; *Washington* v. *General Motors Corp.*, 406 U. S. 109, 114 (1972). Even if such action were proceeding, however, Wyoming's interests would not be directly represented. See *Maryland* v. *Louisiana*, *supra*, at 743; cf. *Arizona* v. *New Mexico*, 425 U. S. 794 (1976). Indeed, Wyoming brings suit as a sovereign seeking declaration from this Court that Oklahoma's Act is unconstitutional. The Constitution provides us original jurisdiction, and Congress has made this provision exclusive as between these parties, two States. It was proper to entertain this case without assurances, notably absent here, that a State's interests under the Constitution will find a forum for appropriate hearing and full relief.

Oklahoma points to the general requirement, reflected in the controlling principles explained above, that "[b]efore this court can be moved to exercise its extraordinary power under the Constitution to control the conduct of one State at the suit of another, the threatened invasion of rights must be of serious magnitude and it must be established by clear and convincing evidence." *New York* v. *New Jersey*, 256 U. S. 296, 309 (1921); see also *Connecticut* v. *Massachusetts*, 282 U. S. 660, 669 (1931); *Missouri* v. *Illinois*, 200 U. S. 496, 521 (1906). On this basis Oklahoma suggests that Wyoming's interest is *de minimis* solely for the reason that loss in severance tax revenues attributable to the Act has generally been less than 1% of total taxes collected. See Affidavit of Richard J. Marble (Exh. B to Appendix to Motion of Wyo-

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[10] A challenge in the Oklahoma courts brought by a group of Oklahoma consumers was dismissed for lack of standing, upon a finding that they could not suffer injury due to the Act's prohibition on cost increase to consumers. See *Northeast Oklahoma Electric Cooperative, Inc.* v. *Grand River Dam Authority*, Case No. C–88–127 (Dist. Ct. Craig Cty., Okla., Sept. 2, 1988) (Journal Entry of Judgment attached as Appendix to Reply Brief for Oklahoma on Motion for Summary Judgment).

ming for Summary Judgment). We decline any invitation to key the exercise of this Court's original jurisdiction on the amount in controversy.[11] Oklahoma's argument is, in fact, no different than the situation we faced in *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923). When Pennsylvania challenged a West Virginia statute designed to keep natural gas within its borders, there was no question but that the issue presented rose to a level suitable to our original jurisdiction:

> "The question is an important one; for what one State may do others may, and there are ten States from which natural gas is exported for consumption in other States. Besides, what may be done with one natural product may be done with others, and there are several States in which the earth yields products of great value which are carried into other States and there used." *Id.*, at 596.

And so it is here. Wyoming coal is a natural resource of great value primarily carried into other States for use, and Wyoming derives significant revenue from this interstate movement. "[T]he practical effect of [Oklahoma's] statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of the other States and what effect would arise if not

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[11] We would not, in any event, readily find the amount here to be *de minimis*. True, the taxes lost have amounted to less than 1% of revenues received by Wyoming, but even this fractional percentage exceeds $500,000 per year. Wyoming approaches this case viewing such a drain on its tax base year after year, and it aptly paraphrases a famous statement of Senator Everett Dirkson: "[A] half million dollars here and a half million dollars there, and pretty soon real money is involved." Reply Brief for Wyoming 5, n. 3. See Respectfully Quoted: A Dictionary of Quotations Requested from the Congressional Research Service 155 (S. Platt ed. 1989) ("A billion here, a billion there, and pretty soon you're talking about real money").

one, but many or every, State adopted similar legislation." *Healy* v. *Beer Institute*, 491 U. S. 324, 336 (1989).

Because of the nature of Wyoming's claim, and the absence of any other pending litigation involving the same parties or issues, we find the present case appropriate for the exercise of this Court's original jurisdiction. Accordingly, we accept the recommendation of the Special Master that Wyoming should be permitted to bring this action, and we reject Oklahoma's exceptions to the Special Master's Report.

III

We also agree with the Special Master's ultimate conclusion that the Act is invalid under the Commerce Clause.

The Commerce Clause of the United States Constitution provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States . . . ." Art. I, § 8, cl. 3. It is long established that, while a literal reading evinces a grant of power to Congress, the Commerce Clause also directly limits the power of the States to discriminate against interstate commerce. See *New Energy Co. of Indiana* v. *Limbach*, 486 U. S. 269, 273 (1988) (citing *Hughes* v. *Oklahoma*, 441 U. S. 322, 326 (1979); *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U. S. 525, 534–535 (1949); *Welton* v. *Missouri*, 91 U. S. 275 (1876)). "This 'negative' aspect of the Commerce Clause prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *New Energy Co.*, *supra*, at 273–274; see also *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 270–273 (1984); *H. P. Hood & Sons*, *supra*, at 532–533. When a state statute clearly discriminates against interstate commerce, it will be struck down, see, *e. g.*, *New Energy Co.*, *supra*, unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism, see, *e. g.*, *Maine* v. *Taylor*, 477 U. S. 131 (1986). Indeed, when the state statute amounts to simple economic protectionism, a "virtually *per se* rule of invalidity"

has applied. *Philadelphia* v. *New Jersey*, 437 U. S. 617, 624 (1978).[12]

The Special Master correctly found that the Act, on its face and in practical effect, discriminates against interstate commerce. See *Bacchus Imports, Ltd.* v. *Dias*, *supra*, at 270. Section 939 of the Act expressly reserves a segment of the Oklahoma coal market for Oklahoma-mined coal, to the exclusion of coal mined in other States. Such a preference for coal from domestic sources cannot be characterized as anything other than protectionist and discriminatory, for the Act purports to exclude coal mined in other States based solely on its origin. See *New Energy Co.*, *supra*, at 274; *Philadelphia* v. *New Jersey*, *supra*, at 626–627. The stipulated facts confirm that from 1981 to 1986 Wyoming provided virtually 100% of the coal purchased by Oklahoma utilities. In 1987 and 1988, following the effective date of the Act, the utilities purchased Oklahoma coal in amounts ranging from 3.4% to 7.4% of their annual needs, with a necessarily corresponding reduction in purchases of Wyoming coal.

As in its jurisdictional arguments, Oklahoma attempts to discount this evidence by emphasizing that the Act sets aside only a "small portion" of the Oklahoma coal market, without placing an "overall burden" on out-of-state coal producers doing business in Oklahoma. The volume of commerce affected measures only the *extent* of the discrimination; it is of no relevance to the determination whether a State has discriminated against interstate commerce. *Bacchus Im-*

[12] There are circumstances in which a less strict scrutiny is appropriate under our Commerce Clause decisions. "When . . . a statute has only indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits." *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority*, 476 U. S. 573, 579 (1986); see also *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137, 142 (1970). While we have recognized that there is no "clear line" separating close cases on which scrutiny should apply, *Brown-Forman Distillers*, *supra*, at 579, this is not a close case.

ports, Ltd. v. *Dias, supra,* at 268–269; *Maryland* v. *Louisiana,* 451 U. S., at 760; *Lewis* v. *BT Investment Managers, Inc.*, 447 U. S. 27, 39–42 (1980). As we have only recently reaffirmed:

> "Our cases . . . indicate that where discrimination is patent, as it is here, neither a widespread advantage to in-state interests nor a widespread disadvantage to out-of-state competitors need be shown. . . . Varying the strength of the bar against economic protectionism according to the size and number of in-state and out-of-state firms affected would serve no purpose except the creation of new uncertainties in an already complex field." *New Energy Co., supra,* at 276–277.

Because the Act discriminates both on its face and in practical effect, the burden falls on Oklahoma "'to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake.'" *Hughes* v. *Oklahoma, supra,* at 336 (quoting *Hunt* v. *Washington State Apple Advertising Comm'n,* 432 U. S., at 353). "At a minimum such facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives." *Hughes* v. *Oklahoma, supra,* at 337. We agree with the Special Master's recommended conclusions that Oklahoma has not met its burden in this respect. In this Court, Oklahoma argues quite briefly that the Act's discrimination against out-of-state coal is justified because sustaining the Oklahoma coal-mining industry lessens the State's reliance on a single source of coal delivered over a single rail line. This justification, as the Special Master noted, is foreclosed by the Court's reasoning in *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511 (1935), and *H. P. Hood & Sons, Inc.* v. *Du Mond, supra,* cases that the State's brief ignores. We have often examined a "presumably legitimate goal," only to find that the State at-

tempted to achieve it by "the illegitimate means of isolating the State from the national economy." *Philadelphia* v. *New Jersey*, *supra*, at 627.

The State embellishes this argument somewhat when suggesting that, by requiring the utilities to supply 10% of their needs for fuel from Oklahoma coal, which because of its higher sulfur content cannot be the primary source of supply, the State thereby conserves Wyoming's cleaner coal for future use. We have no reason to doubt Wyoming's unrebutted factual response to this argument: Reserves of low sulfur, clean-burning, sub-bituminous coal from the Powder River Basin are estimated to be in excess of 110 billion tons, thus providing Wyoming coal for several hundred years at current rates of extraction. Reply Brief for Wyoming 9, n. 4 (citing Geological Survey of Wyoming, Guidebook of the Coal Geology of the Powder River Basin, Public Information Circular No. 14, p. 126 (1980)). In any event, this contention, which is raised for the first time in Oklahoma's brief on the merits, finds no support in the records made in this case. See *Hughes* v. *Oklahoma*, 441 U. S., at 337–338, and n. 20; cf. *Maine* v. *Taylor*, 477 U. S., at 148–149.

Oklahoma argues more seriously that the "saving clause" of the Federal Power Act, 16 U. S. C. § 824(b)(1),[13] which reserves to the States the regulation of local retail electric rates, makes permissible the Act's discriminatory impact on the movement of Wyoming coal in interstate commerce. Oklahoma argues that it "has determined that effective and helpful ways of ensuring lower local utility rates include 1) reducing over-dependence on a single source of supply, a single

[13] "The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line." 16 U. S. C. § 824(b)(1).

fuel transporter, and 2) conserving needed low-sulfur coal for the future." Brief for Oklahoma 65. Even if the Act is accepted as part of the State's rate-regulating authority, we cannot accept the submission that it is exempt from scrutiny under the Commerce Clause. Congress must manifest its unambiguous intent before a federal statute will be read to permit or to approve such a violation of the Commerce Clause as Oklahoma here seeks to justify. *Maine* v. *Taylor*, *supra*, at 139; *South-Central Timber Development, Inc.* v. *Wunnicke*, 467 U. S. 82, 91 (1984). We have already examined § 824(b)(1) in *New England Power Co.* v. *New Hampshire*, 455 U. S. 331 (1982), and found nothing in the statute or legislative history "evinc[ing] a congressional intent 'to alter the limits of state power otherwise imposed by the Commerce Clause.'" *Id.*, at 341 (quoting *United States* v. *Public Utilities Comm'n of Cal.*, 345 U. S. 295, 304 (1953)). There is no hint in that opinion, as suggested by Oklahoma, that a *partial*—instead of *total*—ban would have been permissible, or that in-state purchasing quotas imposed on utilities in an effort to regulate utility rates are within the "lawful authority" of the States under § 824(b)(1). Instead, our decision turned on the recognition that "Congress did no more than leave standing whatever valid state laws then existed relating to the exportation of hydroelectric energy; by its plain terms, [§ 824(b)] simply saves from pre-emption under Part II of the Federal Power Act such state authority as was otherwise 'lawful.'" *New England Power Co.*, *supra*, at 341. Our decisions have uniformly subjected Commerce Clause cases implicating the Federal Power Act to scrutiny on the merits. See, *e. g.*, *New England Power Co.*, *supra; Arkansas Electric Cooperative Corp.* v. *Arkansas Pub. Serv. Comm'n*, 461 U. S. 375, 393 (1983).

We need say no more to conclude that Oklahoma has not met its burden of demonstrating a clear and unambiguous intent on behalf of Congress to permit the discrimination against interstate commerce occurring here. In light of the

foregoing, we adopt the Special Master's conclusion that the Act manifests fatal defects under the Commerce Clause.

IV

Finally, we address a question of severability raised in the exceptions filed by Wyoming to the Special Master's Report.

The GRDA is an agency of the State of Oklahoma, and, as such, Oklahoma acts as a market participant in directing its purchases of coal. We have recognized that the Commerce Clause does not restrict the State's action as a free market participant. *Reeves, Inc.* v. *Stake*, 447 U. S. 429, 436–437 (1980); *Hughes* v. *Alexandria Scrap Corp.*, 426 U. S. 794, 806–810 (1976). The Special Master recommends that the market-participant exception is available to Oklahoma, but only if the application of the Act to the GRDA may be considered separately, or severed, from its application to the three private utilities. As the determination of severability will in this situation be one of state law, *Hooper* v. *Bernalillo County Assessor*, 472 U. S. 612, 624 (1985), the Special Master recommends that we enter judgment with respect to the three private utilities but dismiss Wyoming's complaint as it relates to the GRDA without prejudice to the right of Wyoming to reassert the claim in an "appropriate forum." Report of Special Master 32. We sustain Wyoming's exception to these recommendations of the Special Master. This action is one between two States presented under our original jurisdiction; this Court is the appropriate forum to decide issues necessary to afford the complaining State complete relief. Cf. *Dorchy* v. *Kansas*, 264 U. S. 286, 291 (1924). We deem it proper and advisable to address the issue of severability ourselves.

In the alternative, the Special Master looked to Oklahoma law and found the Act severable as to the GRDA, a conclusion with which we disagree. It is true that Oklahoma courts have held that valid portions of a statute are severable "'unless it is evident that the Legislature would not

have enacted the valid provisions with the invalid provisions removed, if with the invalid provisions removed the rest of the act is fully operative as a law.'" *Englebrecht* v. *Day*, 201 Okla. 585, 591, 208 P. 2d 538, 544 (1949) (quoting *Sterling Refining Co.* v. *Walker*, 165 Okla. 45, 25 P. 2d 312 (1933)). It is also true that under Oklahoma law, a severability clause in a statute creates a presumption that the legislature would have adopted the statute with the unconstitutional portions omitted. 201 Okla., at 591, 208 P. 2d, at 544; see *Champlin Refining Co.* v. *Corporation Comm'n of Oklahoma*, 286 U. S. 210, 234–235 (1932) (inquiring into severability under Oklahoma law). The Act in this case contains a severability provision:

> "The provisions of this act are severable and if any part or provision shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act." Act of Mar. 26, 1986, Ch. 43, § 3, 1986 Okla. Sess. Laws 74.

But there are no parts or separate provisions in the invalid § 939 of the Act. It applies to "[a]ll entities providing electric power for sale to the consumer in Oklahoma" and commands them to purchase 10% Oklahoma-mined coal. Okla. Stat., Tit. 45, § 939 (Supp. 1988). Nothing remains to be saved once that provision is stricken. Accordingly, the Act must stand or fall as a whole.

We decline Oklahoma's suggestion that the term "all entities" be read to uphold the Act only as to the GRDA, for it is clearly not this Court's province to rewrite a state statute. If "all entities" is to mean "the GRDA" or "state-owned utilities," the Oklahoma Legislature must be the one to decide. Indeed, this argument perceives the nature of the severability clause to be much different than that written by the Oklahoma Legislature. Severability clauses may easily be written to provide that if application of a statute to some classes is found unconstitutional, severance of those classes permits

application to the acceptable classes.[14] Moreover, the statute could itself have been written to address explicitly the GRDA.[15] The legislature here chose neither course.

The State provides no additional insight into the intent of its legislature on this question. The Act would become a fundamentally different piece of legislation were it construed to apply only to the GRDA. We leave to the Oklahoma Legislature to decide whether it wishes to burden this state-owned utility when private utilities will otherwise be free of the Act's restrictions.

V

We deny Oklahoma's motion for summary judgment and grant that of Wyoming. In sum, we hold that the Act is unconstitutional under the Commerce Clause. No portion is severable as to any entity touched by its mandate. A judgment and decree to that effect and enjoining enforcement of the Act will be entered. Jurisdiction over the case is retained in the event that further proceedings are required to implement the judgment.

So ordered.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

In the almost century and a half since we first entered the business of entertaining "negative Commerce Clause" actions, see *Cooley* v. *Board of Wardens of Port of Philadelphia ex rel. Society for Relief of Distressed Pilots*, 12 How. 299 (1852), I think it safe to say that the federal courts have

[14] See, *e. g.*, *INS* v. *Chadha*, 462 U. S. 919, 932 (1983), where the severability clause provided: "'If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby'" (emphasis deleted).

[15] See, *e. g.*, Mo. Ann. Stat. § 34.080 (Vernon 1969), which expressly requires all state agencies to purchase Missouri coal if it is available at a competitive price.

never been plagued by a shortage of these suits brought by private parties, and that the nontextual elements of the Commerce Clause have not gone unenforced for lack of willing litigants. Today, however, when the coal companies with sales allegedly affected by the Oklahoma law have, for whatever reason, chosen not to litigate, the Court sees fit, for the first time, to recognize a *State's* standing to bring a negative Commerce Clause action on the basis of its consequential loss of tax revenue. That is a major step, and I think it is wrong. Even if it were correct, however, summary judgment that Wyoming suffered consequential loss of tax revenue in the present case would be unjustified. I would deny Wyoming's motion for summary judgment and grant Oklahoma's.

I

At the outset, let me address briefly the Court's suggestion that our previous rejections of Oklahoma's standing objections—when we granted Wyoming leave to file its complaint and when we denied Oklahoma's motion to dismiss for want of standing—somehow impede us from considering that objection today. *Ante*, at 446. To begin with, the "law-of-the-case principles" which the Court suggests should be persuasive albeit not necessarily binding in original actions, *ibid.*, have never to my knowledge been applied to jurisdictional issues raised (or reraised) before final judgment. To the contrary, it is a court's *obligation* to dismiss a case *whenever* it becomes convinced that it has no proper jurisdiction, no matter how late that wisdom may arrive. See Fed. Rule Civ. Proc. 12(h)(3) ("*Whenever* it appears . . . that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the action") (emphasis added). See also *Jenkins* v. *McKeithen*, 395 U. S. 411, 421 (1969). Of course, this does not mean that a court need let itself be troubled by the same jurisdictional objection raised over and over again, when it has thoroughly considered that issue once and remains convinced that it resolved the issue correctly. But that is quite

different from "law of the case," which would give effect even to an erroneous decision, simply because it has already been made.

And in the present case, we have *not* considered the standing issue thoroughly once before. We disposed of Oklahoma's preliminary standing objections summarily, without oral argument and without opinion. I considered us to be deciding at that time, not, once and for all, that standing existed, but simply that the absence of standing was not so clear that our normal practice of permitting the suit to be filed and of referring all questions *(including the standing question)* to a special master should be short circuited. The parties apparently understood our action that way, since the standing issue was raised (without "law-of-the-case" objection from Wyoming) before the Special Master. And the Master certainly did not think that we had conclusively decided the point, since he received argument on it and discussed it as the very first of the "three legal issues that require a recommendation to the Court." Report of Special Master 10. If the *Special Master* was not precluded by our prior action, it is hard to understand why we ourselves would be.

There is no unfairness to Wyoming in this. To be sure, we might have given the standing question full-dress consideration to begin with, and, if we concluded in Oklahoma's favor, could have spared the parties lengthy proceedings before the Special Master. But the same could be said of the substantive issue whether the Act violated the Commerce Clause. Our choice not to proceed in that fashion was both in accord with ordinary practice and in my view sound. Almost all other litigants must go through at least two other courts before their case receives our attention. It has become our practice in original-jurisdiction cases to require preliminary proceedings before a special master, to evaluate the facts and sharpen the issues. Wyoming has no cause for complaint that we did that here, and we should not distort

our jurisdictional holding on the basis of some misguided feeling of estoppel.

Finally, even if the Court were correct that some "change of circumstance," *ante*, at 446, ought to be presented before the jurisdictional objection that we denied so cursorily at the preliminary stage can be reraised, such a change in fact exists. The litigation has reached a *new stage*, having proceeded from a motion for judgment on the pleadings (which we denied) to cross-motions for summary judgment (which the Special Master recommended resolving in favor of Wyoming). When a district court denies the former, it need feel no compunction of consistency to deny the latter; and the same is true for us. The standing issue is obviously subject to different evaluation, depending upon the stage the litigation has reached. A plaintiff may survive a motion to dismiss for lack of injury in fact by merely alleging that a string of occurrences commencing with the challenged act has caused him injury; at that stage we presume that "general allegations embrace those specific facts that are necessary to support the claim," *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 889 (1990). See also *Whitmore* v. *Arkansas*, 495 U. S. 149, 158–159 (1990). A plaintiff cannot, however, on the basis of the same generalizations, obtain or avoid summary judgment, where a moving party must "show that there is no genuine issue as to any material fact," Fed. Rule Civ. Proc. 56(c), and where a nonmoving party cannot rest on "mere allegations" to counter a properly supported motion, but must set forth "specific facts" through affidavits or other evidence, Fed. Rule Civ. Proc. 56(e). See *Lujan*, *supra*, at 884–885. See also *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 115, and n. 31 (1979). It is the adequacy of *these* presentations that Oklahoma now asks us to evaluate—and we have not evaluated them before.

II

It is axiomatic that "a litigant first must clearly demonstrate that he has suffered an 'injury in fact'" in order to assert Article III standing to sue. *Whitmore, supra,* at 155. In assessing a claim to injury, "[w]e presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record," *Renne* v. *Geary,* 501 U. S. 312, 316 (1991) (internal quotation marks omitted). See also *Bender* v. *Williamsport Area School Dist.,* 475 U. S. 534, 546 (1986); it is accordingly "the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating" that he has been injured. *FW/PBS, Inc.* v. *Dallas,* 493 U. S. 215, 231 (1990) (internal quotation marks omitted). This burden is "substantially more difficult" to bear when the asserted injury is "highly indirect and results from the independent action of some third party not before the court"—for the simple reason that there are more variables involved. *Allen* v. *Wright,* 468 U. S. 737, 757–759 (1984). See also *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U. S. 26, 42, 44–45 (1976); *Warth* v. *Seldin,* 422 U. S. 490, 504–505 (1975). It is incumbent upon the plaintiff to eliminate those variables through "specific, concrete facts," showing that the third party actually acted as he maintains and that the injury actually occurred. *Id.,* at 508.

As I have mentioned, the plaintiff's success in meeting this burden is to be assessed under the rules governing the stage the litigation has reached. See *Lujan, supra,* at 884–885. See also *Gladstone, supra,* at 115, and n. 31; *Simon, supra,* at 45, n. 26; *Warth, supra,* at 527, and n. 6 (Brennan, J., dissenting). Wyoming's motion for summary judgment thus cannot be granted unless Wyoming has demonstrated that "there is no genuine issue" as to its injury, Fed. Rule Civ. Proc. 56(c), see *Adickes* v. *S. H. Kress & Co.,* 398 U. S. 144, 157 (1970)—which means that "[i]f reasonable minds could differ as to the import of the evidence," the motion must be

denied, *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 250–251 (1986). To be entitled to prevail at this stage, therefore, Wyoming must have submitted "specific, concrete facts," *Warth*, *supra*, at 508, which when "viewed in the light most favorable" to Oklahoma "foreclose" all reasonable inferences that Wyoming was not injured by the Act, *Adickes*, *supra*, at 157. Wyoming has not in my view remotely carried that burden, and the Special Master's recommendation to grant its motion for summary judgment must be rejected.

The Special Master apparently thought Wyoming's injury unquestionable because it is undisputed that, since the Act's effective date, Oklahoma utilities have bought less Wyoming coal as a percentage of their coal purchases. Report of Special Master 11. I am willing to assume for the sake of argument that that undisputed fact compels the inference that less Wyoming coal was sold in Oklahoma as a result of the Act. To establish injury, however, Wyoming had to show not merely that the statute caused Oklahoma *sales* to be lost, but that it prevented Wyoming "*severances*" of coal from occurring. Wyoming does not tax sales of coal to Oklahoma utilities; it taxes severances. The loss of a particular Oklahoma sale would not hurt Wyoming's treasury at all unless (1) the coal that was the subject of that sale was not severed to be sold elsewhere, or (2) if it was severed to be sold elsewhere, that latter sale (and severance) would have occurred even if the Oklahoma sale had been made.

The Court o'erleaps this inconvenient obstacle by asserting that "a loss of specific tax revenues [is] an undisputed fact here." *Ante*, at 448. I cannot imagine where this helpful concession comes from. The Special Master listed the undisputed facts, and it is not among them. See Report of Special Master 2–10, 11.

The Court also appears to believe that the second of the above described means of connecting sales loss with tax loss is established by the fact that "Wyoming has a significant

excess mining capacity"; this fact, according to the Court, necessarily means that "the loss of any market cannot be made up by sales elsewhere." *Ante*, at 445, 446. That is not so. Excess capacity *can* mean the existence of facilities capable of producing additional quantities of goods that can be sold for a profit at current market prices—in which case the loss of one sale cannot really be "replaced" by the gain of another. But excess capacity *need not* mean that. It can also mean the existence of facilities that lie fallow because, although they can produce additional quantities of goods, they cannot do so at a cost that will yield a profit at current market prices. Innumerable capped or unexploited oil wells in this country exemplify that phenomenon. If *that* is the sort of excess capacity the Wyoming coal industry has, it nonetheless has a limited capability of sales at current market prices—in which case so long as that capability has been fully achieved no tax revenue has been lost.

The excess capacity attested to by Wyoming's experts may well have been of this latter sort, since it was said to have been created in response to 1970's "forecasts of high demand growth." Affidavit of Seth Schwartz, Appendix to Response to Motion to Dismiss A–2. Higher demand generally means higher prices, and the coal companies might well have brought new, higher cost production facilities on line (for example, deep-pit mines) that are at current prices not competitive. Even if the entire "excess capacity" is competitive, since much of it came (according to Wyoming's expert) from the opening of "new mines," *ibid.*, another possibility is that the Wyoming industry responded to less-than-anticipated demand in an efficient manner—by closing down some of the mines entirely rather than leaving them all in operation at a fraction of capacity. Under these conditions, it might well not pay a particular company to make a particular additional sale, if that additional sale would require the

reopening of an additional mine, with the incremental cost that entails.*

The speculations Wyoming invites us to engage in are certainly plausible (though one must be given pause by the fact that the Wyoming coal companies themselves—who if Wyoming is right have lost not just the *tax* on the severances but the *entire profits*—have not chosen to litigate). Were this a trial on the record I might well conclude that it is more likely than not that Wyoming was injured. But "at the summary judgment stage [our] function is not to weigh the evidence." *Anderson, supra,* at 249. It has at least not been conclusively established that Wyoming coal producers would have sold coal in addition to that diverted from the (presumably) lost Oklahoma sales. A genuine issue of material fact thus exists, and the Special Master's recommendation that we grant Wyoming's motion for summary judgment must be rejected.

III

Even if Wyoming had fully established, in the manner Rule 56 provides, the "injury in fact" required by Article III, I would still conclude that it does not have standing to bring this suit, and would grant Oklahoma's cross-motion for summary judgment. "Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing." *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 474 (1982).

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*Wyoming's expert, a coal market analyst from Virginia, averred by affidavit that "[i]n [his] opinion" the lost sales could not be made up. Affidavit of Seth Schwartz, Appendix to Response to Motion to Dismiss A–3. That is not enough to establish the point. Schwartz did not, as Rule 56(e) requires, set forth the "facts" upon which he based his opinion. Just as the requirements for summary judgment are not met when a court makes unsubstantiated inferences about a third party's behavior, see, *e. g.*, *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 884–885 (1990), they are not met when the plaintiff hires an outside expert to do the same.

One of these is the requirement that the plaintiff "establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*) falls within the 'zone of interests' sought to be protected by the statut[e] [or constitutional guarantee] whose violation forms the legal basis for his complaint." *Air Courier Conference of America* v. *Postal Workers*, 498 U. S. 517, 523–524 (1991) (internal quotation marks omitted). The "zone-of-interests" formulation first appeared in cases brought under § 10 of the Administrative Procedure Act, 5 U. S. C. § 702, see *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 153 (1970), but we have subsequently made clear that the same test similarly governs claims under the Constitution in general, see, *e. g.*, *Valley Forge*, *supra*, at 475, and under the negative Commerce Clause in particular, see *Boston Stock Exchange* v. *State Tax Comm'n*, 429 U. S. 318, 320–321, n. 3 (1977). Indeed, we have indicated that it is *more* strictly applied when a plaintiff is proceeding under a "constitutional . . . provision" instead of the "generous review provisions of the APA." *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388, 400, n. 16 (1987).

The zone-of-interests test "denies a right of review if the plaintiff's interests are . . . marginally related to or inconsistent with the purposes implicit in the [constitutional provision]." *Id.*, at 394, 399. The usual starting point for zone-of-interests analysis is the text of the provision at issue, see *Air Courier Conference*, 498 U. S., at 524–525; since, however, the negative Commerce Clause is an inference rather than a text, the starting point here must be the history and purposes of the inference, see *id.*, at 526–527.

Our negative Commerce Clause jurisprudence grew out of the notion that the Constitution implicitly established a national free market, under which, in Justice Jackson's words, "every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation [and] every consumer may

look to the free competition from every producing area of the Nation to protect him from exploitation." *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U. S. 525, 539 (1949). Virtually every one of our cases in this area thus begins its analysis with some form of the incantation that "the very purpose of the Commerce Clause was to create an area of free trade among the several States . . . [and the Clause] by its own force created an area of trade free from interference by the States." *Westinghouse Electric Corp.* v. *Tully*, 466 U. S. 388, 402–403 (1984) (internal quotation marks omitted); see also *Boston Stock Exchange*, *supra*, at 328; *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266, 280 (1987). Just last Term we said that the negative Commerce Clause "confer[s] a 'right' to engage in interstate trade free from restrictive state regulation," for it "was intended to benefit those who . . . are engaged in interstate commerce." *Dennis* v. *Higgins*, 498 U. S. 439, 448, 449 (1991) (emphasis deleted).

The coal companies, of course, would pass the zone-of-interests test. So would Wyoming if it bought or sold coal, or otherwise directly participated in the coal market. It would then be "asserting [its] *right . . . to engage in interstate commerce* free of discriminat[ion]," *Boston Stock Exchange*, *supra*, at 320–321, n. 3 (emphasis added). But Wyoming's right to collect taxes presents an entirely different category of interest, only marginally related to the national market/free trade foundation of our jurisprudence in this area; indeed, it is in a sense positively antagonistic to that objective, since all state taxes, even perfectly constitutional ones, burden interstate commerce by reducing profit. Thus, when state taxes have been at issue in our prior negative Commerce Clause cases they have been the object of the plaintiff's challenge rather than the basis for his standing; and we have looked upon the State's interest in tax collection as a value to be *weighed against* the purposes of our Commerce Clause jurisprudence. Thus, Wyoming's interest in this case falls far shorter of meeting the zone-of-interests

test than did that of the plaintiff postal union in *Air Courier Conference*, *supra*, at 528: Whereas the latter's interest in securing employment for postal workers, although distinct from the statute's goal of providing postal services to the citizenry, at least coincided with that goal a good amount of the time, here the asserted interest (tax collection) and the constitutional goal invoked to vindicate it (free trade) are antithetical.

In seeming response to a zone-of-interests argument, the Court quotes, *ante*, at 449, our statement in *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333, 345 (1977), that "the interests of the [Washington State Apple Advertising] Commission itself may be" at issue in the litigation, because "[i]n the event the North Carolina statute results in a contraction of the market for Washington apples or prevents any market expansion that might otherwise occur, it could reduce the amount of the assessments due the Commission." The Court fails to note that this statement was *preceded* by the square holding that the State Apple Advertising Commission had standing to sue *as an association* on behalf of its members, the apple growers and dealers (who were in the same position as the coal companies here):

> "If the Commission were a voluntary membership organization—a typical trade association—its standing to bring this action as a representative of its constituents would be clear . . . .
>
> . . . . . .
>
> "The only question presented, therefore, is whether, on this record, the Commission's status as a state agency, rather than a traditional voluntary membership organization, precludes it from asserting the claims of the Washington apple growers and dealers who form its constituency. We think not." *Id.*, at 342–344.

Only after finding associational standing did we speculate, in the passage the Court quotes, that the commission itself

"may be" adversely affected because its revenue collections "could [be] reduce[d]." *Id.*, at 345. I hardly think that musings of this sort are grounds for disregarding the obvious application of the zone-of-interests test to the present case—particularly as the Court in *Hunt* did not purport to be applying that test. The dicta in *Hunt*, moreover, were applying a since-repudiated understanding of the purpose of the standing requirement. Compare the last sentence of the passage quoted by the Court (taking the purpose to be "to 'assure that concrete adverseness which sharpens the presentation of issues . . . ,'" *ibid.*, quoting *Baker* v. *Carr*, 369 U. S. 186, 204 (1962)), with *Allen*, 468 U. S., at 750–752 (asserting that standing performs a separation-of-powers function, restricting the courts to their traditional role).

Of course, if the state interest in collecting severance taxes does fall within the zone of interests of the Commerce Clause, so must every other state taxing interest. The zone-of-interest test, as opposed to the injury-in-fact requirement, turns on the type of interest asserted and not on its speculativeness or its degree of attenuation from its alleged source. The injury-in-fact requirement, of course, will still remain—but if and when *de facto* causality can be established, every diminution of state revenue attributable to the allegedly unconstitutional commercial regulation of a sister State will now be the basis for a lawsuit. Suits based on loss of sales tax revenue ought to become a regular phenomenon, since it is no more difficult to show that an automatic sales tax was lost on a particular sale than it is to show that the severance tax was lost here. Further expansions of standing (or irrational distinctions) lurk just around the corner: If a State has a litigable interest in the taxes that would have been paid upon an unconstitutionally obstructed sale, there is no reasonable basis for saying that a company salesman does not have a litigable interest in the commissions that would have been paid, or a union in the wages that would have been earned.

In abandoning the zone-of-interests test, the Court abandons our chosen means of giving expression, in the field of constitutional litigation, to the principle that "the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing." *Associated General Contractors of Cal., Inc.* v. *Carpenters*, 459 U. S. 519, 536 (1983). The "zone-of-interests" test performs the same role as many other judge-made rules circumscribing the availability of damages in tort and contract litigation—doctrines such as foreseeability and proximate cause, see, *e. g.*, *Palsgraf* v. *Long Island R. Co.*, 248 N. Y. 339, 162 N. E. 99 (1928); directness of injury, see, *e. g.*, *Associated General Contractors*, *supra*, at 540–541; the limitation on suits by third-party beneficiaries of contracts, see, *e. g.*, Restatement (Second) of Contracts § 302(1) (1981); and the contemporaneous ownership rule governing shareholders' derivative actions, see, *e. g.*, Fed. Rule Civ. Proc. 23.1. When courts abolish such limitations and require, as our opinion does today, nothing more than a showing of *de facto* causality, exposure to liability becomes immeasurable and the scope of litigation endless. If today's decision is adhered to, we can expect a sharp increase in state against state Commerce Clause suits; and if its rejection of the zone-of-interests test is applied logically, we can expect a sharp increase in all constitutional litigation.

* * *

Of the three points I have discussed in the three portions of this opinion, I must believe that the first is the crucial one: the Court's reluctance, in an original action, to reconsider our initial denial of a motion to dismiss for lack of standing. I shall consider that to be an essential part of the holding of the case. I respectfully dissent.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

Even if I believed that Wyoming had standing to challenge the Oklahoma statute (which, for the reasons given by JUS-

TICE SCALIA, I do not), I would decline to exercise the Court's original jurisdiction here.

The Constitution provides that "[i]n all Cases . . . in which a State shall be a Party, the supreme Court shall have original Jurisdiction." U. S. Const., Art. III, § 2, cl. 2. Congress, in turn, has provided that "[t]he Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States." 28 U. S. C. § 1251(a). Given these provisions, one might expect—assuming the existence of a "case" or "controversy"—that we would be required to exercise our original jurisdiction here, for a court having jurisdiction generally must exercise it. "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia*, 6 Wheat. 264, 404 (1821) (Marshall, C. J.). As the Court observes, however, *ante*, at 450–451, we have exercised discretion in declining to hear cases that fall within the literal terms of our original jurisdiction. See, *e. g.*, *United States* v. *Nevada*, 412 U. S. 534, 538 (1973) *(per curiam)* (controversy between the United States and individual States); *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493, 497–499 (1971) (action by a State against the citizens of other States). We exercise this discretion even with respect to controversies between two or more States, which fall within our original *and exclusive* jurisdiction.* See, *e. g.*, *Texas* v. *New Mexico*,

*JUSTICE STEVENS has stated that the Court's explanations for declining to exercise its *nonexclusive* original jurisdiction are "inapplicable" where, as here, its original jurisdiction is *exclusive* under 28 U. S. C. § 1251(a). *California* v. *West Virginia*, 454 U. S. 1027, 1027–1028 (1981) (opinion dissenting from denial of motion to file bill of complaint). Similarly, commentators have suggested that the Court's statement that "'the congressional grant of exclusive jurisdiction under § 1251(a) . . . requir[es] resort to our obligatory jurisdiction only in appropriate cases'" is "an oxymoron." P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 344 (3d ed. 1988) (quoting *Maryland* v. *Louisiana*, 451 U. S. 725, 739 (1981) (internal quotation marks omitted)). See also Shapiro, Jurisdiction and Discretion, 60

462 U. S. 554, 570 (1983); *California* v. *Texas*, 457 U. S. 164, 168 (1982) *(per curiam); Maryland* v. *Louisiana*, 451 U. S. 725, 739 (1981); *Arizona* v. *New Mexico*, 425 U. S. 794, 796–798 (1976) *(per curiam)*. I believe that the Court's decision to accept jurisdiction over this case is a misguided exercise of that discretion.

"It has long been this Court's philosophy that 'our original jurisdiction should be invoked sparingly.'" *Illinois* v. *City of Milwaukee*, 406 U. S. 91, 93 (1972) (quoting *Utah* v. *United States*, 394 U. S. 89, 95 (1969)). The sound reasons for this approach have been set forth on many occasions, see, *e. g.*, *Ohio* v. *Wyandotte Chemicals Corp.*, *supra*, at 498; *Maryland* v. *Louisiana*, *supra*, at 761–763 (REHNQUIST, J., dissenting), and I need not repeat them here. As Chief Justice Fuller aptly observed almost a century ago, our original jurisdiction "is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute." *Louisiana* v. *Texas*, 176 U. S. 1, 15 (1900). In determining which cases merit the exercise of original jurisdiction, the Court typically has focused on two considerations: the nature of the claims involved and the availability of alternative forums where they can be addressed. See, *e. g.*, *Illinois* v. *City of Milwaukee*, *supra*, at 93; *Massachusetts* v. *Missouri*, 308 U. S. 1, 18–19 (1939).

In my view, both factors cut strongly against exercising original jurisdiction here. Wyoming claims to be injured as follows: The Oklahoma statute decreases coal sales by Wyoming mining companies to Oklahoma buyers, which supposedly decreases the amount of coal those companies extract in

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N. Y. U. L. Rev. 543, 561 (1985) (calling "unanswerable" criticism of the Court's discretionary approach to cases within its exclusive original jurisdiction).

As noted in text, the Court has held otherwise and those precedents have not been challenged here. The exercise of discretion is probably inevitable as long as the Court's approach to standing is as relaxed as it is today.

Wyoming, which in turn supposedly decreases the tax revenues Wyoming collects from the companies when they extract the coal. Plainly, the primary dispute here is *not* between the States of Wyoming and Oklahoma, but between the private Wyoming mining companies and the State of Oklahoma, whose statute reduced the companies' sales to Oklahoma utilities. It is true, as the Court notes, *ante*, at 451, that Oklahoma passed the statute in its sovereign capacity and that Wyoming collects taxes in its sovereign capacity. That States act *qua* States is certainly very relevant in assessing the "seriousness and dignity" of a claim. See *Maryland* v. *Louisiana*, *supra*, at 764–766 (REHNQUIST, J., dissenting). But it is also critical to examine the extent to which the sovereigns actually have clashed. Cf. *Arizona* v. *New Mexico*, *supra*, at 797–798 ("In denying the State of Arizona leave to file, we are not unmindful that the legal incidence of [the challenged action by New Mexico] is upon the utilities"). In my view, an entirely derivative injury of the type alleged by Wyoming here—even if it met minimal standing requirements—would not justify the exercise of discretionary original jurisdiction. Additionally, of course, Wyoming has advanced no reason why the affected mining companies (hardly bashful litigants) did not or could not themselves challenge the Oklahoma statute in another, more convenient, forum. The lower federal courts and the state courts are readily available as appropriate forums "in which the *issues* tendered here may be litigated." *Id.*, at 797 (emphasis in original).

The implications of the Court's novel theory that tax-collection injury alone justifies exercise of original jurisdiction are, in my view, both sweeping and troubling. An economic burden imposed by one State on another State's taxpayers will frequently affect the other State's fisc. (That will virtually always be the case, for example, with respect to income taxes; if State A takes actions that reduce the income of the taxpayers of State B, State B will collect less

income-tax revenue.) Under today's opinion, a State that can show *any* loss in tax revenue—even a *de minimis* loss, see *ante*, at 452–453, and n. 11—that can be traced (albeit loosely) to the action of another State can apparently proceed directly to this Court to challenge that action. Perhaps the Court is not concerned about that possibility because of its "discretion" in managing its original docket. But, having extended the original jurisdiction to one State's claim based on its tax-collector status, the Court cannot, in the exercise of discretion, refuse to entertain future disputes based on the same theory. That would be the exercise not of discretion, but of caprice.

I respectfully dissent.

Syllabus

IMMIGRATION AND NATURALIZATION SERVICE *v.* ELIAS-ZACARIAS

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

No. 90–1342. Argued November 4, 1991—Decided January 22, 1992

Respondent, a native of Guatemala, was apprehended for entering the United States without inspection. In his deportation proceedings, the Board of Immigration Appeals (BIA) determined that he was ineligible for a discretionary grant of asylum. In reversing that determination, the Court of Appeals ruled that a guerrilla organization's acts of conscription constitute persecution on account of political opinion and that respondent therefore had a well-founded fear of such persecution.

Held: A guerrilla organization's attempt to coerce a person into performing military service does not necessarily constitute "persecution on account of . . . political opinion" under § 101(a)(42) of the Immigration and Nationality Act, 8 U. S. C. § 1101(a)(42). Even one who supports the political aims of a guerrilla movement might resist military combat and thus become the object of such coercion. Moreover, persecution *on account of* political opinion is not established by the fact that the coercing guerrillas had "political" motives. In order to satisfy § 101(a)(42), the persecution must be on account of the *victim's* political opinion, not the persecutor's. Since respondent did not produce evidence so compelling that no reasonable factfinder could fail to find the requisite fear of persecution on account of political opinion, the Court of Appeals had no proper basis to set aside the BIA's determination. See 8 U. S. C. § 1105a(a)(4); *NLRB* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300. Pp. 481–484.

921 F. 2d 844, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN and O'CONNOR, JJ., joined, *post*, p. 484.

Maureen E. Mahoney argued the cause for petitioner. On the briefs were *Solicitor General Starr*, *Assistant Attorney General Gerson*, *Acting Deputy Solicitor General Wright*, *Stephen J. Marzen*, and *Alice M. King*.

James Robertson argued the cause for respondent. With him on the brief were *Carol F. Lee* and *Peter A. Von Mehren.**

JUSTICE SCALIA delivered the opinion of the Court.

The principal question presented by this case is whether a guerrilla organization's attempt to coerce a person into performing military service *necessarily* constitutes "persecution on account of . . . political opinion" under § 101(a)(42) of the Immigration and Nationality Act, as added, 94 Stat. 102, 8 U. S. C. § 1101(a)(42).

I

Respondent Elias-Zacarias, a native of Guatemala, was apprehended in July 1987 for entering the United States without inspection. In deportation proceedings brought by petitioner Immigration and Naturalization Service (INS), Elias-Zacarias conceded his deportability but requested asylum and withholding of deportation.

The Immigration Judge summarized Elias-Zacarias' testimony as follows:

> "[A]round the end of January in 1987 [when Elias-Zacarias was 18], two armed, uniformed guerrillas with handkerchiefs covering part of their faces came to his home. Only he and his parents were there. . . . [T]he guerrillas asked his parents and himself to join with them, but they all refused. The guerrillas asked them why and told them that they would be back, and that they should think it over about joining them.

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*Briefs of *amici curiae* urging affirmance were filed for the American Immigration Lawyers Association by *Kevin R. Johnson, Joshua R. Floum,* and *Robert Rubin;* for the Lawyers Committee for Human Rights et al. by *Arthur C. Helton, O. Thomas Johnson, Jr.,* and *Andrew I. Schoenholtz;* and for the United Nations High Commissioner for Refugees by *Arthur L. Bentley III* and *Julian Fleet.*

> "[Elias-Zacarias] did not want to join the guerrillas because the guerrillas are against the government and he was afraid that the government would retaliate against him and his family if he did join the guerrillas. [H]e left Guatemala at the end of March [1987] . . . because he was afraid that the guerrillas would return." App. to Pet. for Cert. 40a–41a.

The Immigration Judge understood from this testimony that Elias-Zacarias' request for asylum and for withholding of deportation was "based on this one attempted recruitment by the guerrillas." *Id.*, at 41a. She concluded that Elias-Zacarias had failed to demonstrate persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, and was not eligible for asylum. See 8 U. S. C. §§ 1101(a)(42), 1158(a). She further concluded that he did not qualify for withholding of deportation.

The Board of Immigration Appeals (BIA) summarily dismissed Elias-Zacarias' appeal on procedural grounds. Elias-Zacarias then moved the BIA to reopen his deportation hearing so that he could submit new evidence that, following his departure from Guatemala, the guerrillas had twice returned to his family's home in continued efforts to recruit him. The BIA denied reopening on the ground that even with this new evidence Elias-Zacarias had failed to make a prima facie showing of eligibility for asylum and had failed to show that the results of his deportation hearing would be changed.

The Court of Appeals for the Ninth Circuit, treating the BIA's denial of the motion to reopen as an affirmance on the merits of the Immigration Judge's ruling, reversed. 921 F. 2d 844 (1990). The court ruled that acts of conscription by a nongovernmental group constitute persecution on account of political opinion, and determined that Elias-Zacarias had a "well-founded fear" of such conscription. *Id.*, at 850–852. We granted certiorari. 500 U. S. 915 (1991).

II

Section 208(a) of the Immigration and Nationality Act, 8 U. S. C. § 1158(a), authorizes the Attorney General, in his discretion, to grant asylum to an alien who is a "refugee" as defined in the Act, *i. e.*, an alien who is unable or unwilling to return to his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." § 101(a)(42)(A), 8 U. S. C. § 1101(a)(42)(A). See *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 423, 428, n. 5 (1987). The BIA's determination that Elias-Zacarias was not eligible for asylum must be upheld if "supported by reasonable, substantial, and probative evidence on the record considered as a whole." 8 U. S. C. § 1105a(a)(4). It can be reversed only if the evidence presented by Elias-Zacarias was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed. *NLRB* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300 (1939).[1]

The Court of Appeals found reversal warranted. In its view, a guerrilla organization's attempt to conscript a person into its military forces necessarily constitutes "persecution on account of . . . political opinion," because "the person resisting forced recruitment is expressing a political opinion hostile to the persecutor and because the persecutors' motive in carrying out the kidnapping is political." 921 F. 2d, at 850. The first half of this seems to us untrue, and the second half irrelevant.

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[1] Quite beside the point, therefore, is the dissent's assertion that "the record in this case is more than adequate to *support the conclusion* that this respondent's refusal [to join the guerrillas] was a form of expressive conduct that constituted the statement of a 'political opinion,'" *post*, at 488 (emphasis added). To reverse the BIA finding we must find that the evidence not only *supports* that conclusion, but *compels* it—and also compels the further conclusion that Elias-Zacarias had a well-founded fear that the guerrillas would persecute him *because of* that political opinion.

Even a person who supports a guerrilla movement might resist recruitment for a variety of reasons—fear of combat, a desire to remain with one's family and friends, a desire to earn a better living in civilian life, to mention only a few. The record in the present case not only failed to show a political motive on Elias-Zacarias' part; it showed the opposite. He testified that he refused to join the guerrillas because he was afraid that the government would retaliate against him and his family if he did so. Nor is there any indication (assuming, *arguendo*, it would suffice) that the guerrillas erroneously *believed* that Elias-Zacarias' refusal was politically based.

As for the Court of Appeals' conclusion that the guerrillas' "motive in carrying out the kidnapping is political": It apparently meant by this that the guerrillas seek to fill their ranks in order to carry on their war against the government and pursue their political goals. See 921 F. 2d, at 850 (citing *Arteaga* v. *INS*, 836 F. 2d 1227, 1232, n. 8 (CA9 1988)); 921 F. 2d, at 852. But that does not render the forced recruitment "persecution on account of . . . political opinion." In construing statutes, "we must, of course, start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." *Richards* v. *United States*, 369 U. S. 1, 9 (1962); see *Cardoza-Fonseca*, *supra*, at 431; *INS* v. *Phinpathya*, 464 U. S. 183, 189 (1984). The ordinary meaning of the phrase "persecution on account of . . . political opinion" in § 101(a)(42) is persecution on account of the *victim's* political opinion, not the persecutor's. If a Nazi regime persecutes Jews, it is not, within the ordinary meaning of language, engaging in persecution on account of political opinion; and if a fundamentalist Moslem regime persecutes democrats, it is not engaging in persecution on account of religion. Thus, the mere existence of a generalized "political" motive underlying the guerrillas' forced recruitment is inadequate to establish (and, indeed, goes far to refute) the proposition that Elias-Zacarias fears persecution *on account of* political opinion, as § 101(a)(42) requires.

Elias-Zacarias appears to argue that not taking sides with any political faction is itself the affirmative expression of a political opinion. That seems to us not ordinarily so, since we do not agree with the dissent that only a "narrow, grudging construction of the concept of 'political opinion,'" *post*, at 487, would distinguish it from such quite different concepts as indifference, indecisiveness, and risk averseness. But we need not decide whether the evidence compels the conclusion that Elias-Zacarias held a political opinion. Even if it does, Elias-Zacarias still has to establish that the record also compels the conclusion that he has a "well-founded fear" that the guerrillas will persecute him *because of* that political opinion, rather than because of his refusal to fight with them. He has not done so with the degree of clarity necessary to permit reversal of a BIA finding to the contrary; indeed, he has not done so at all.[2]

Elias-Zacarias objects that he cannot be expected to provide direct proof of his persecutors' motives. We do not require that. But since the statute makes motive critical, he must provide *some* evidence of it, direct or circumstantial. And if he seeks to obtain judicial reversal of the BIA's determination, he must show that the evidence he presented was

[2] The dissent misdescribes the record on this point in several respects. For example, it exaggerates the "well foundedness" of whatever fear Elias-Zacarias possesses, by progressively transforming his testimony that he was afraid the guerrillas would "'take me or kill me,'" *post*, at 484, into, first, "the guerrillas' *implied threat* to 'take' him or to 'kill' him," *post*, at 489 (emphasis added), and, then, into the flat assertion that the guerrillas "*responded by threatening* to 'take' or to 'kill' him," *post*, at 490 (emphasis added). The dissent also erroneously describes it as "undisputed" that the cause of the harm Elias-Zacarias fears, if that harm should occur, will be "the guerrilla organization's displeasure with his refusal to join them in their armed insurrection against the government." *Post*, at 484 (emphasis added). The record shows no such concession by the INS, and all Elias-Zacarias said on the point was that he feared being taken or killed by the guerrillas. It is quite plausible, indeed likely, that the taking would be engaged in by the guerrillas in order to augment their troops rather than show their displeasure; and the killing he feared might well be a killing in the course of resisting being taken.

so compelling that no reasonable factfinder could fail to find the requisite fear of persecution. That he has not done.

The BIA's determination should therefore have been upheld in all respects, and we reverse the Court of Appeals' judgment to the contrary.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN and JUSTICE O'CONNOR join, dissenting.

Respondent refused to join a guerrilla organization that engaged in forced recruitment in Guatemala. He fled the country because he was afraid the guerrillas would return and "take me and kill me." [1] After his departure, armed guerrillas visited his family on two occasions searching for him. In testimony that the hearing officer credited, he stated that he is still afraid to return to Guatemala because "these people" can come back to "take me or kill me." [2]

It is undisputed that respondent has a well-founded fear that he will be harmed, if not killed, if he returns to Guatemala. It is also undisputed that the cause of that harm, if it should occur, is the guerrilla organization's displeasure with his refusal to join them in their armed insurrection against the government. The question of law that the case presents is whether respondent's well-founded fear is a "fear of persecution on account of . . . political opinion" within the meaning of § 101(a)(42) of the Immigration and Nationality Act.[3]

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[1] App. to Brief in Opposition 5a.

[2] *Id.*, at 6a.

[3] Section 101(a)(42), as codified in 8 U. S. C. § 1101(a)(42), provides:

"(a) As used in this chapter—

. . . . . .

"(42) The term 'refugee' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of perse-

If respondent were to prevail, as he did in the Court of Appeals, 921 F. 2d 844 (CA9 1990), he would be classified as a "refugee" and therefore be eligible for a grant of asylum. He would not be automatically entitled to that relief, however, because "the Attorney General is *not required* to grant asylum to everyone who meets the definition of refugee." *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 428, n. 5 (1987) (emphasis in original). Instead, § 208 of the Act provides that the Attorney General may, "in [his] discretion," grant asylum to refugees.[4]

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cution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion."

[4] Section 208(a) of the Act, as codified at 8 U. S. C. § 1158(a), provides:

"The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title."

As we recognized in *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 444–445 (1987):

" 'The [House] Committee carefully considered arguments that the new definition might expand the numbers of refugees eligible to come to the United States and force substantially greater refugee admissions than the country could absorb. However, merely because an individual or group comes within the definition will not guarantee resettlement in the United States.' H. R. Rep. [96–608, p. 10 (1979)].

". . . Congress has assigned to the Attorney General and his delegates the task of making these hard individualized decisions; although Congress

Today the Court holds that respondent's fear of persecution is not "on account of . . . political opinion" for two reasons. First, he failed to prove that his refusal to join the guerrillas was politically motivated; indeed, he testified that he was at least in part motivated by a fear that government forces would retaliate against him or his family if he joined the guerrillas. See *ante*, at 482–483. Second, he failed to prove that his persecutors' motives were political. In particular, the Court holds that the persecutors' implicit threat to retaliate against respondent "because of his refusal to fight with them," *ante*, at 483, is not persecution on account of political opinion. I disagree with both parts of the Court's reasoning.

I

A political opinion can be expressed negatively as well as affirmatively. A refusal to support a cause—by staying home on election day, by refusing to take an oath of allegiance, or by refusing to step forward at an induction center—can express a political opinion as effectively as an affirmative statement or affirmative conduct. Even if the refusal is motivated by nothing more than a simple desire to continue living an ordinary life with one's family, it is the kind of political expression that the asylum provisions of the statute were intended to protect.

As the Court of Appeals explained in *Bolanos-Hernandez* v. *INS*, 767 F. 2d 1277 (CA9 1985):

> "Choosing to remain neutral is no less a political decision than is choosing to affiliate with a particular political faction. Just as a nation's decision to remain neutral is a political one, *see, e. g.*, Neutrality Act of 1939, 22 U. S. C. §§ 441–465 (1982), so is an individual's. When a person is aware of contending political forces and af-

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could have crafted a narrower definition, it chose to authorize the Attorney General to determine which, if any, eligible refugees should be denied asylum."

> firmatively chooses not to join any faction, that choice *is* a political one. A rule that one must identify with one of two dominant warring political factions in order to possess a political opinion, when many persons may, in fact, be opposed to the views and policies of both, would frustrate one of the basic objectives of the Refugee Act of 1980—to provide protection to all victims of persecution regardless of ideology. Moreover, construing 'political opinion' in so short-sighted and grudging a manner could result in limiting the benefits under the ameliorative provisions of our immigration laws to those who join one political extreme or another; moderates who choose to sit out a battle would not qualify." *Id.*, at 1286 (emphasis in original; footnote omitted).

The narrow, grudging construction of the concept of "political opinion" that the Court adopts today is inconsistent with the basic approach to this statute that the Court endorsed in *INS* v. *Cardoza-Fonseca, supra.* In that case, relying heavily on the fact that an alien's status as a "refugee" merely makes him eligible for a discretionary grant of asylum—as contrasted with the entitlement to a withholding of deportation authorized by §243(h) of the Act—the Court held that the alien's burden of proving a well-founded fear of persecution did not require proof that persecution was more likely than not to occur. We explained:

> "Our analysis of the plain language of the Act, its symmetry with the United Nations Protocol, and its legislative history, lead inexorably to the conclusion that to show a 'well-founded fear of persecution,' an alien need not prove that it is more likely than not that he or she will be persecuted in his or her home country. We find these ordinary canons of statutory construction compelling, even without regard to the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien. See *INS* v. *Errico,* 385

U. S. 214, 225 (1966); *Costello* v. *INS*, 376 U. S. 120, 128 (1964); *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10 (1948).

"Deportation is always a harsh measure; it is all the more replete with danger when the alien makes a claim that he or she will be subject to death or persecution if forced to return to his or her home country. In enacting the Refugee Act of 1980 Congress sought to 'give the United States sufficient flexibility to respond to situations involving political or religious dissidents and detainees throughout the world.' H. R. Rep. [96–608, p. 9 (1979)]. Our holding today increases that flexibility by rejecting the Government's contention that the Attorney General may not even consider granting asylum to one who fails to satisfy the strict § 243(h) standard. Whether or not a 'refugee' is eventually granted asylum is a matter which Congress has left for the Attorney General to decide. But it is clear that Congress did not intend to restrict eligibility for that relief to those who could prove that it is more likely than not that they will be persecuted if deported." 480 U. S., at 449–450.

Similar reasoning should resolve any doubts concerning the political character of an alien's refusal to take arms against a legitimate government in favor of the alien. In my opinion, the record in this case is more than adequate to support the conclusion that this respondent's refusal was a form of expressive conduct that constituted the statement of a "political opinion" within the meaning of § 208(a).[5]

[5] Here, respondent not only engaged in expressive conduct by refusing to join the guerrilla organization but also explained that he did so "[b]ecause they see very well, that if you join the guerrillas . . . then you are against the government. You are against the government and if you join them then it is to die there. And, then the government is against you and against your family." App. to Brief in Opposition 5a. Respondent thus expressed the political view that he was for the government and against the guerrillas. The statute speaks simply in terms of a political opinion and does not require that the view be well developed or elegantly expressed.

II

It follows as night follows day that the guerrillas' implied threat to "take" him or to "kill" him if he did not change his position constituted threatened persecution "on account of" that political opinion. As the Court of Appeals explained in *Bolanos-Hernandez:*

> "It does not matter to the persecutors what the individual's motivation is. The guerrillas in El Salvador do not inquire into the reasoning process of those who insist on remaining neutral and refuse to join their cause. They are concerned only with an act that constitutes an overt manifestation of a political opinion. Persecution because of that overt manifestation is persecution because of a political opinion." 767 F. 2d, at 1287.[6]

It is important to emphasize that the statute does not require that an applicant for asylum prove exactly why his persecutors would act against him; it only requires him to show that he has a "well-founded fear of persecution on account of . . . political opinion." As we recognized in *INS* v. *Cardoza-Fonseca,* the applicant meets this burden if he shows that there is a "'reasonable possibility'" that he will be perse-

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[6] The Government has argued that respondent's statement is analogous to that of a person who leaves a country to avoid being drafted into military service. The INS has long recognized, however, that the normal enforcement of Selective Service laws is not "persecution" within the meaning of the statute even if the draftee's motive is political. Thus, while holding that an Afghan soldier who refused to fight under Soviet command qualified as a political refugee, *Matter of Salim,* 18 I. & N. Dec. 311 (BIA 1982), the INS has adhered "to the long-accepted position that it is not persecution for a country to require military service of its citizens." *Matter of A–G–,* 19 I. & N. Dec. 502, 506 (BIA 1987); cf. United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status ¶ 167 (1979) ("Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the [1967 United Nations Protocol Relating to the Status of Refugees]").

cuted on account of his political opinion. 480 U. S., at 440 (quoting *INS* v. *Stevic*, 467 U. S. 407, 425 (1984)). Because respondent expressed a political opinion by refusing to join the guerrillas, and they responded by threatening to "take" or to "kill" him if he did not change his mind, his fear that the guerrillas will persecute him on account of his political opinion is well founded.[7]

Accordingly, I would affirm the judgment of the Court of Appeals.

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[7] In response to this dissent, the Court suggests that respondent and I have exaggerated the "well foundedness" of his fear. See *ante*, at 483, n. 2. The Court's legal analysis, however, would produce precisely the same result no matter how unambiguous the guerrillas' threatened retaliation might have been. Moreover, any doubts concerning the sinister character of a suggestion to "think it over" delivered by two uniformed masked men carrying machine guns should be resolved in respondent's favor.

Syllabus

PRESLEY *v.* ETOWAH COUNTY COMMISSION ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 90–711. Argued November 12, 1991—Decided January 27, 1992*

Section 5 of the Voting Rights Act of 1965 requires a covered jurisdiction to obtain either judicial or administrative preclearance before enforcing any new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." In various Alabama counties, voters elect members of county commissions whose principal function is to supervise and control county road maintenance, repair, and construction. In No. 90–711, the Etowah County Commission, without seeking preclearance, passed, *inter alia*, its "Common Fund Resolution," which altered the prior practice of allowing each commissioner full authority to determine how to spend funds allocated to his own road district. The resolution was passed by the four holdover members of the commission shortly after appellant Presley, a black man, and another new member were elected from districts established under a consent decree, the terms of which were precleared by the Attorney General. In No. 90–712, the Russell County Commission adopted a "Unit System," which abolished individual road districts and transferred responsibility for all road operations to the county engineer, a commission appointee. Neither the commission's resolution nor implementing state legislation was submitted for preclearance. Subsequent litigation led to a consent decree, which was precleared by the Justice Department without any mention of the Unit System changes, and under the terms of which appellants Mack and Gosha were elected as Russell County's first black county commissioners in modern times. They, along with Presley, filed suit in the District Court, alleging, among other things, that Etowah and Russell Counties had violated § 5 by failing to obtain preclearance for, respectively, the Common Fund Resolution and the adoption of the Unit System. A three-judge court convened pursuant to 28 U. S. C. § 2284 held that neither matter was subject to § 5 preclearance.

Held: Neither the Common Fund Resolution nor adoption of the Unit System was a change "with respect to voting" covered by § 5. Pp. 500–510.

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*Together with No. 90–712, *Mack et al.* v. *Russell County Commission et al.*, also on appeal from the same court.

Syllabus

(a) *Allen* v. *State Bd. of Elections*, 393 U. S. 544, and this Court's later decisions reveal a consistent requirement that changes subject to § 5 pertain only to voting. Without implying that the four typologies exhaust the statute's coverage, it can be said that the cases fall within one of the following contexts: (1) changes in the manner of voting; (2) changes in candidacy requirements and qualifications; (3) changes in the composition of the electorate that may vote for candidates for a given office; and (4) changes affecting the creation or abolition of an elective office. The first three categories involve changes in election procedures, while all the examples within the fourth category might be termed substantive changes as to which offices are elective. But whether the changes are of procedure or substance, each has a direct relation to voting and the election process. Pp. 500–503.

(b) The Etowah County Commission's Common Fund Resolution was not subject to § 5's preclearance requirement. It is not a change within any of the categories recognized in *Allen* or the later cases; rather, it concerns only the internal operations of an elected body and the distribution of power among officials and, thus, has no direct relation to, or impact on, voting. The view advanced by appellants and the United States—to the effect that any act diminishing or increasing a local official's power would require preclearance—would work an unconstrained expansion of § 5's coverage beyond the statutory language and congressional intent by including innumerable enactments, such as budget measures, that alter the power and decisionmaking authority of elected officials but have nothing to do with voting, and fails to provide a workable standard for distinguishing between governmental decisions that involve voting and those that do not. Some standard is necessary, for in a real sense every decision taken by government implicates voting, yet no one would contend that Congress meant the Act to subject all or even most government decisions in covered jurisdictions to federal supervision. Pp. 503–506.

(c) The Russell County Commission's adoption of the Unit System and its concomitant transfer of operations to the county engineer do not constitute a change covered by § 5. There is not even an arguable basis for saying that the Unit System's adoption fits within any of the first three categories of changes in voting rules that this Court has recognized. As to the fourth category, the argument that the delegation of authority to an appointed official is similar to the replacement of an elected official with an appointed one and is therefore subject to § 5 under *Bunton* v. *Patterson*, decided with *Allen*, *supra*, ignores the rationale for the *Bunton* holding: The practice in question changed an elective office to an appointive one. Here, the citizens of Russell County may still vote for members of the county commission. The fact that those commissioners exercise less authority than they once did is a

routine matter of governmental administration that does not in itself render the Unit System a rule governing voting. Because the county commission retains substantial authority, including the power to appoint the county engineer and set his or her budget, this Court need not consider whether an otherwise uncovered enactment might under some circumstances rise to the level of a *de facto* replacement of an elected office with an appointive one, within the *Bunton* rule. Pp. 506–508.

(d) Although the construction placed upon the Act by the Attorney General is ordinarily entitled to considerable deference, this Court need not defer to the United States' interpretation that the changes at issue are covered by § 5, since that section is unambiguous with respect to the question whether it covers changes other than changes in rules governing voting: It does not. See, *e. g.*, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–844. Pp. 508–509.

Affirmed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which WHITE and BLACKMUN, JJ., joined, *post*, p. 510.

Edward Still argued the cause for appellants in both cases. With him on the briefs were *Pamela Karlan*, *Lani Guinier*, *James U. Blacksher*, and *John C. Falkenberry*.

Robert A. Long, Jr., argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Starr*, *Assistant Attorney General Dunne*, *Deputy Solicitor General Roberts*, *Deputy Assistant Attorney General Clegg*, and *David K. Flynn*.

Paul M. Smith argued the cause for appellees in both cases. With him on the brief for appellee Etowah County Commission were *George Howell (Jack) Floyd* and *Mary Ann Ross Stackhouse*. *James W. Webb* and *Kendrick E. Webb* filed a brief for appellee Russell County Commission.†

JUSTICE KENNEDY delivered the opinion of the Court.

In various Alabama counties voters elect members of county commissions whose principal function is to supervise

†*Julius L. Chambers*, *Charles Stephen Ralston*, and *Dayna L. Cunningham* filed a brief for the NAACP Legal Defense and Educational Fund, Inc., as *amicus curiae* urging reversal.

and control the maintenance, repair, and construction of the county roads. See Ala. Code §§ 11–3–1, 11–3–10 (1975). The consolidated appeals now before us concern certain changes in the decisionmaking authority of the elected members on two different county commissions, and the question to be decided is whether these were changes "with respect to voting" within the meaning of § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U. S. C. § 1973c. These cases have significance well beyond the two county commissions; for the appellants, and the United States as *amicus curiae*, ask us to adopt a rule embracing the routine actions of state and local governments at all levels. We must interpret the provisions of § 5, which require a jurisdiction covered by the Act to obtain either judicial or administrative preclearance before enforcing any new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." *

*As set forth in 42 U. S. C. § 1973c, § 5 provides:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not

I

To determine whether there have been changes with respect to voting, we must compare the challenged practices with those in existence before they were adopted. Absent relevant intervening changes, the Act requires us to use practices in existence on November 1, 1964, as our standard of comparison.

A

We consider first the Etowah County Commission. On November 1, 1964, commission members were elected at large under a "residency district" system. The entire electorate of Etowah County voted on candidates for each of the five seats. Four of the seats corresponded to the four

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have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court."

residency districts of the county. Candidates were required to reside in the appropriate district. The fifth member, the chairman, was not subject to a district residency requirement, though residency in the county itself was a requirement.

Each of the four residency districts functioned as a road district. The commissioner residing in the district exercised control over a road shop, equipment, and road crew for that district. It was the practice of the commission to vote as a collective body on the division of funds among the road districts, but once funds were divided each commissioner exercised individual control over spending priorities within his district. The chairman was responsible for overseeing the solid waste authority, preparing the budget, and managing the courthouse building and grounds.

Under a consent decree issued in 1986, see *Dillard* v. *Crenshaw County,* Civ. Action No. 85–T–1332–N (MD Ala., Nov. 12, 1986), the commission is being restructured, so that after a transition period there will be a six-member commission, with each of the members elected by the voters of a different district. The changes required by the consent decree were precleared by the Attorney General. For present purposes, it suffices to say that when this litigation began the commission consisted of four holdover members who had been on the commission before the entry of the consent decree and two new members elected from new districts. Commissioner Williams, who is white, was elected from new district 6, and Commissioner Presley, who is black, was elected from new district 5. Presley is the principal appellant in the Etowah County case. His complaint relates not to the elections but to actions taken by the four holdover members when he and Williams first took office.

On August 25, 1987, the commission passed the "Road Supervision Resolution." It provided that each holdover commissioner would continue to control the workers and

operations assigned to his respective road shop, which, it must be remembered, accounted for all the road shops the county had. It also gave the four holdovers joint responsibility for overseeing the repair, maintenance, and improvement of all the roads of Etowah County in order to pick up the roads in the districts where the new commissioners resided. The new commissioners, now foreclosed from exercising any authority over roads, were given other functions under the resolution. Presley was to oversee maintenance of the county courthouse and Williams the operation of the engineering department. The Road Supervision Resolution was passed by a 4-to-2 margin, with the two new commissioners dissenting.

The same day the Road Supervision Resolution was passed, the commission passed a second, the so-called "Common Fund Resolution." It provides in part that

> "all monies earmarked and budgeted for repair, maintenance and improvement of the streets, roads and public ways of Etowah County [shall] be placed and maintained in common accounts, [shall] not be allocated, budgeted or designated for use in districts, and [shall] be used county-wide in accordance with need, for the repair, maintenance and improvement of all streets, roads and public ways in Etowah County which are under the jurisdiction of the Etowah County Commission." App. to Juris. Statement in No. 90–711, p. 49a.

This had the effect of altering the prior practice of allowing each commissioner full authority to determine how to spend the funds allocated to his own district. The Etowah County Commission did not seek judicial or administrative preclearance of either the Road Supervision Resolution or the Common Fund Resolution. The District Court held that the Road Supervision Resolution was subject to preclearance but that the Common Fund Resolution was not. No appeal was

taken from the first ruling, so only the Common Fund Resolution is before us in the Etowah County case.

B

We turn next to the background of the Russell County Commission. On November 1, 1964, it had three commissioners. Like the members of the Etowah County Commission before the consent decree change, Russell County Commissioners were elected at large by the entire electorate, subject to a requirement that a candidate for commissioner reside in the district corresponding to the seat he or she sought. A 1972 federal court order, see *Anthony* v. *Russell County*, No. 961–E (MD Ala., Nov. 21, 1972), required that the commission be expanded to include five members. The two new members were both elected at large from one newly created residency district for Phenix City, the largest city in Russell County. Following the implementation of the court order, each of the three rural commissioners had individual authority over his own road shop, road crew, and equipment. The three rural commissioners also had individual authority for road and bridge repair and construction within their separate residency districts. Although funding for new construction and major repair projects was subject to a vote by the entire commission, individual commissioners could authorize expenditures for routine repair and maintenance work as well as routine purchase orders without seeking approval from the entire commission.

Following the indictment of one commissioner on charges of corruption in Russell County road operations, in May 1979 the commission passed a resolution delegating control over road construction, maintenance, personnel, and inventory to the county engineer, an official appointed by the entire commission and responsible to it. The engineer's previous duties had been limited to engineering and surveying services for the separate road shops and running a small crew devoted to pothole repair. Although the May 1979 resolution

may have sufficed for the necessary delegation of authority to the county engineer, compare Ala. Code § 23–1–80 (1975) with Ala. Code § 11–6–3 (1975), the commission also requested the state legislature to pass implementing legislation. The Alabama Legislature did so on July 30, 1979, when it enacted Act No. 79–652, 1979 Ala. Acts 1132. It provides in pertinent part:

> "Section 1. All functions, duties and responsibilities for the construction, maintenance and repair of public roads, highways, bridges and ferries in Russell County are hereby vested in the county engineer, who shall, insofar as possible, construct and maintain such roads, highways, bridges and ferries on the basis of the county as a whole or as a unit, without regard to district or beat lines."

The parties refer to abolition of the individual road districts and transfer of responsibility for all road operations to the county engineer as the adoption of a "Unit System." Neither the resolution nor the statute which authorized the Unit System was submitted for preclearance under § 5.

Litigation involving the Russell County Commission led to a 1985 consent decree, see *Sumbry* v. *Russell County*, No. 84–T–1386–E (MD Ala., Mar. 17, 1985), that enlarged the commission to seven members and replaced the at-large election system with elections on a district-by-district basis. Without any mention of the Unit System changes, the consent decree was precleared by the Department of Justice under § 5. Following its implementation, appellants Mack and Gosha were elected in 1986. They are Russell County's first black county commissioners in modern times.

C

In May 1989, appellants in both cases now before us filed a single complaint in the District Court for the Middle District of Alabama, alleging racial discrimination in the

operation of the Etowah and Russell County Commissions in violation of prior court orders, the Constitution, Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, and § 2 of the Voting Rights Act, 42 U. S. C. § 1973. In a series of amended complaints, appellants added claims under § 5. The § 5 claims alleged that Etowah County had violated the Act by failing to obtain preclearance of the 1987 Road Supervision and Common Fund Resolutions, and that Russell County had failed to preclear the 1979 change to the Unit System. Pursuant to 28 U. S. C. § 2284, a three-judge District Court was convened to hear appellants' § 5 claims. The other claims still pend in the District Court.

With respect to the issues now before us, a majority of the District Court held that neither the Common Fund Resolution of the Etowah County Commission nor the adoption of the Unit System in Russell County was subject to § 5 preclearance. The court held that changes in the responsibilities of elected officials are subject to preclearance when they "effect a significant relative change in the powers exercised by governmental officials elected by, or responsible to, substantially different constituencies of voters." App. to Juris. Statement in No. 90–711, pp. 13a–14a. Applying its test, the court found that the Common Fund Resolution in Etowah County did not effect a significant change and adoption of the Unit System in Russell County did not transfer authority among officials responsible to different constituencies. We noted probable jurisdiction. 500 U. S. 914 (1991). We affirm the District Court but adopt a different interpretation of § 5 as the rationale for our decision.

II

We first considered the Voting Rights Act in *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966). Although we acknowledged that suspension of new voting regulations pending preclearance was an extraordinary departure from the traditional course of relations between the States and the

Federal Government, *id.*, at 334, we held it constitutional as a permitted congressional response to the unremitting attempts by some state and local officials to frustrate their citizens' equal enjoyment of the right to vote. See *id.*, at 308–315.

After *South Carolina* v. *Katzenbach* upheld the Voting Rights Act against a constitutional challenge, it was not until we heard *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969), that we were called upon to decide whether particular changes were covered by § 5. There we rejected a narrow construction, one which would have limited § 5 to state rules prescribing who may register to vote. We held that the section applies also to state rules relating to the qualifications of candidates and to state decisions as to which offices shall be elective. *Id.*, at 564–565. We observed that "[t]he Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race." *Id.*, at 565. Our decision, and its rationale, have proved sound, and we adhere to both.

In giving a broad construction to § 5 in *Allen*, we noted that "Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way." *Id.*, at 566. Relying on this language and its application in later cases, appellants and the United States now argue that because there is no *de minimis* exception to § 5, the changes at issue here must be subject to preclearance. *E. g.*, Brief for United States as *Amicus Curiae* 21–22. This argument, however, assumes the answer to the principal question in the case: whether the changes at issue are changes in voting, or as we phrased it in *Allen*, "election law."

We agree that all changes in voting must be precleared and with *Allen*'s holding that the scope of § 5 is expansive within its sphere of operation. That sphere comprehends all changes to rules governing voting, changes effected

through any of the mechanisms described in the statute. Those mechanisms are any "qualification or prerequisite" or any "standard, practice, or procedure with respect to voting."

The principle that § 5 covers voting changes over a wide range is well illustrated by the separate cases we considered in the single opinion for the Court in *Allen*. *Allen* involved four cases. The eponymous *Allen* v. *State Bd. of Elections* concerned a change in the procedures for the casting of write-in ballots. 393 U. S., at 570–571. In *Whitley* v. *Williams*, there were changes in the requirements for independent candidates running in general elections. *Id.*, at 551. The challenged procedure in *Fairley* v. *Patterson* resulted in a change from single-district voting to at-large voting. *Id.*, at 550. The remaining case, *Bunton* v. *Patterson*, involved a statute which provided that officials who in previous years had been elected would be appointed. *Id.*, at 550–551. We held that the changes in each of the four cases were covered by § 5.

Our cases since *Allen* reveal a consistent requirement that changes subject to § 5 pertain only to voting. Without implying that the four typologies exhaust the statute's coverage, we can say these later cases fall within one of the four factual contexts presented in the *Allen* cases. First, we have held that § 5 applies to cases like *Allen* v. *State Bd. of Elections* itself, in which the changes involved the manner of voting. See *Perkins* v. *Matthews*, 400 U. S. 379, 387 (1971) (location of polling places). Second, we have held that § 5 applies to cases like *Whitley* v. *Williams*, which involve candidacy requirements and qualifications. See *NAACP* v. *Hampton County Election Comm'n*, 470 U. S. 166 (1985) (change in filing deadline); *Hadnott* v. *Amos*, 394 U. S. 358 (1969) (same); *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32 (1978) (rule requiring board of education members to take unpaid leave of absence while campaigning for office). Third, we have applied § 5 to cases like *Fairley* v. *Patterson*,

which concerned changes in the composition of the electorate that may vote for candidates for a given office. See *Perkins* v. *Matthews*, 400 U. S., at 394 (change from ward to at-large elections); *id.*, at 388 (boundary lines of voting districts); *City of Richmond* v. *United States*, 422 U. S. 358 (1975) (same). Fourth, we have made clear that § 5 applies to changes, like the one in *Bunton* v. *Patterson*, affecting the creation or abolition of an elective office. See *McCain* v. *Lybrand*, 465 U. S. 236 (1984) (appointed officials replaced by elected officials); *Lockhart* v. *United States*, 460 U. S. 125 (1983) (increase in number of city councilors).

The first three categories involve changes in election procedures, while all the examples within the fourth category might be termed substantive changes as to which offices are elective. But whether the changes are of procedure or substance, each has a direct relation to voting and the election process.

III

A comparison of the changes at issue here with those in our prior decisions demonstrates that the present cases do not involve changes covered by the Act.

A

The Etowah County Commission's Common Fund Resolution is not a change within any of the categories recognized in *Allen* or our later cases. It has no connection to voting procedures: It does not affect the manner of holding elections, it alters or imposes no candidacy qualifications or requirements, and it leaves undisturbed the composition of the electorate. It also has no bearing on the substance of voting power, for it does not increase or diminish the number of officials for whom the electorate may vote. Rather, the Common Fund Resolution concerns the internal operations of an elected body.

Appellants argue that the Common Fund Resolution is a covered change because after its enactment each commis-

sioner has less individual power than before the resolution. A citizen casting a ballot for a commissioner today votes for an individual with less authority than before the resolution, and so, it is said, the value of the vote has been diminished.

Were we to accept appellants' proffered reading of § 5, we would work an unconstrained expansion of its coverage. Innumerable state and local enactments having nothing to do with voting affect the power of elected officials. When a state or local body adopts a new governmental program or modifies an existing one it will often be the case that it changes the powers of elected officials. So too, when a state or local body alters its internal operating procedures, for example, by modifying its subcommittee assignment system, it "implicate[s] an elected official's *decisionmaking authority.*" Brief for United States as *Amicus Curiae* 17–18 (emphasis in original).

Appellants and the United States fail to provide a workable standard for distinguishing between changes in rules governing voting and changes in the routine organization and functioning of government. Some standard is necessary, for in a real sense every decision taken by government implicates voting. This is but the felicitous consequence of democracy, in which power derives from the people. Yet no one would contend that when Congress enacted the Voting Rights Act it meant to subject all or even most decisions of government in covered jurisdictions to federal supervision. Rather, the Act by its terms covers any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." 42 U. S. C. § 1973c. A faithful effort to implement the design of the statute must begin by drawing lines between those governmental decisions that involve voting and those that do not.

A simple example shows the inadequacy of the line proffered by appellants and the United States. Under appellants' view, every time a covered jurisdiction passed a budget that differed from the previous year's budget it would be

required to obtain preclearance. The amount of funds available to an elected official has a profound effect on the power exercised. A vote for an ill-funded official is less valuable than a vote for a well-funded one.

No doubt in recognition of the unacceptable consequences of their views, appellants take the position that while "some budget changes may affect the right to vote and, under particular circumstances, would be subject to preclearance," most budget changes would not. Postargument Letter from Counsel for Appellants, Nov. 13, 1991 (available in Clerk of Court's case file). Under their interpretation of § 5, however, appellants fail to give any workable standard to determine when preclearance is required. And were we to acknowledge that a budget adjustment is a voting change in even some instances, the likely consequence is that every budget change would be covered, for it is well settled that every voting change with a "potential for discrimination" must be precleared. *Dougherty County Bd. of Ed.* v. *White*, 439 U. S., at 42.

Confronting this difficulty, at oral argument the United States suggested that we draw an arbitrary line distinguishing between budget changes and other changes, Tr. of Oral Arg. 21–23. There is no principled basis for the distinction, and it would be a marked departure from the statutory category of voting. If a diminution or increase in an elected official's powers is a change with respect to voting, then whether it is accomplished through an enactment or a budget shift should not matter. Even if we were willing to draw an unprincipled line excluding budgetary changes but not other changes in an elected official's decisionmaking authority, the result would expand the coverage of § 5 well beyond the statutory language and the intention of Congress.

Under the view advanced by appellants and the United States, every time a state legislature acts to diminish or increase the power of local officials, preclearance would be required. Governmental action decreasing the power of local

officials could carry with it a potential for discrimination against those who represent racial minorities at the local level. At the same time, increasing the power of local officials will entail a relative decrease in the power of state officials, and that too could carry with it a potential for discrimination against state officials who represent racial minorities at the state level. The all but limitless minor changes in the allocation of power among officials and the constant adjustments required for the efficient governance of every covered State illustrate the necessity for us to formulate workable rules to confine the coverage of § 5 to its legitimate sphere: voting.

Changes which affect only the distribution of power among officials are not subject to § 5 because such changes have no direct relation to, or impact on, voting. The Etowah County Commission's Common Fund Resolution was not subject to the preclearance requirement.

B

We next consider Russell County's adoption of the Unit System and its concomitant transfer of operations to the county engineer. Of the four categories of changes in rules governing voting we have recognized to date, there is not even an arguable basis for saying that adoption of the Unit System fits within any of the first three. As to the fourth category, it might be argued that the delegation of authority to an appointed official is similar to the replacement of an elected official with an appointed one, the change we held subject to § 5 in *Bunton* v. *Patterson*. This approach, however, would ignore the rationale for our holding: "[A]fter the change, [the citizen] is prohibited from electing an officer formerly subject to the approval of the voters." *Allen*, 393 U. S., at 569–570. In short, the change in *Bunton* v. *Patterson* involved a rule governing voting not because it effected a change in the relative authority of various governmental

officials, but because it changed an elective office to an appointive one.

The change in Russell County does not prohibit voters "from electing an officer formerly subject to the[ir] approval." *Allen*, *supra*, at 570. Both before and after the change the citizens of Russell County were able to vote for the members of the Russell County Commission. To be sure, after the 1979 resolution each commissioner exercised less direct authority over road operations, that authority having been delegated to an official answerable to the commission. But as we concluded with respect to Etowah County, the fact that an enactment alters an elected official's powers does not in itself render the enactment a rule governing voting.

It is a routine part of governmental administration for appointive positions to be created or eliminated and for their powers to be altered. Each time this occurs the relative balance of authority is altered in some way. The making or unmaking of an appointive post often will result in the erosion or accretion of the powers of some official responsible to the electorate, but it does not follow that those changes are covered by § 5. By requiring preclearance of changes with respect to voting, Congress did not mean to subject such routine matters of governance to federal supervision. Were the rule otherwise, neither state nor local governments could exercise power in a responsible manner within a federal system.

The District Court, wrestling with the problem we now face and recognizing the need to draw principled lines, held that Russell County's adoption of the Unit System is not a covered change because it did not transfer power among officials answerable to different constituencies. Even upon the assumption (the assumption we reject in this case) that some transfers of power among government officials could be changes with respect to voting as that term is used in the Act, we disagree with the District Court's test. The ques-

tion whether power is shifted among officials answerable to the same or different constituencies is quite distinct from the question whether the power voters exercise over elected officials is affected. Intraconstituency changes may have a large indirect effect on the voters while interconstituency changes may have a small indirect effect, but in neither case is the effect a change in voting for purposes of the Act. The test adopted by the District Court does not provide the workable rule we seek. In any event, because it proceeds from the faulty premise that reallocations of authority within government can constitute voting changes, we cannot accept its approach.

We need not consider here whether an otherwise uncovered enactment of a jurisdiction subject to the Voting Rights Act might under some circumstances rise to the level of a *de facto* replacement of an elective office with an appointive one, within the rule of *Bunton* v. *Patterson.* For present purposes it suffices to note that the Russell County Commission retains substantial authority, including the power to appoint the county engineer and to set his or her budget. The change at issue in Russell County is not a covered change.

IV

The United States urges that despite our understanding of the language of § 5, we should defer to its administrative construction of the provision. We have recognized that "the construction placed upon the [Voting Rights] Act by the Attorney General . . . is entitled to considerable deference." *NAACP* v. *Hampton County Election Comm'n*, 470 U. S., at 178–179. See also *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S. 110, 131 (1978). But the principle has its limits. Deference does not mean acquiescence. As in other contexts in which we defer to an administrative interpretation of a statute, we do so only if Congress has not expressed its intent with respect to the question, and then only if the administrative interpretation is reasonable. See, *e. g.*, *Chev-*

ron U. S. A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–844 (1984). Because the first of these conditions is not satisfied in the cases before us we do not defer to the Attorney General's interpretation of the Act.

We do not believe that in its use of the phrase "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," 42 U. S. C. § 1973c, the statute is ambiguous as to the question whether § 5 extends beyond changes in rules governing voting. To be sure, reasonable minds may differ as to whether some particular changes in the law of a covered jurisdiction should be classified as changes in rules governing voting. In that sense § 5 leaves a gap for interpretation to fill. See *Chevron*, *supra*, at 843. When the Attorney General makes a reasonable argument that a contested change should be classified as a change in a rule governing voting, we can defer to that judgment. But § 5 is unambiguous with respect to the question whether it covers changes other than changes in rules governing voting: It does not. The administrative position in the present cases is not entitled to deference, for it suggests the contrary. The United States argues that the changes are covered by § 5 because they implicate the decisionmaking authority of elected officials, even though they are not changes in rules governing voting. This argument does not meet the express requirement of the statute.

V

Nothing we say implies that the conduct at issue in these cases is not actionable under a different remedial scheme. The Voting Rights Act is not an all-purpose antidiscrimination statute. The fact that the intrusive mechanisms of the Act do not apply to other forms of pernicious discrimination does not undermine its utility in combating the specific evils it was designed to address.

Our prior cases hold, and we reaffirm today, that every change in rules governing voting must be precleared. The

legislative history we rehearsed in *South Carolina* v. *Katzenbach* was cited to demonstrate Congress' concern for the protection of voting rights. Neither the appellants nor the United States has pointed to anything we said there or in the statutes reenacting the Voting Rights Act to suggest that Congress meant other than what it said when it made § 5 applicable to changes "with respect to voting" rather than, say, changes "with respect to governance."

If federalism is to operate as a practical system of governance and not a mere poetic ideal, the States must be allowed both predictability and efficiency in structuring their governments. Constant minor adjustments in the allocation of power among state and local officials serve this elemental purpose.

Covered changes must bear a direct relation to voting itself. That direct relation is absent in both cases now before us. The changes in Etowah and Russell Counties affected only the allocation of power among governmental officials. They had no impact on the substantive question whether a particular office would be elective or the procedural question how an election would be conducted. Neither change involves a new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." 42 U. S. C. § 1973c.

The judgment of the District Court is affirmed.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE BLACKMUN join, dissenting.

In 1986, an important event occurred in each of two Alabama counties with long histories of white-dominated political processes. In Etowah County, a black commissioner was elected to the county commission for the first time in recent history, and in Russell County, two black commissioners were elected to the county commission for the first time in

"modern times." App. to Juris. Statement of Appellant Presley 4a. Because of the three resolutions at issue in these cases—two adopted in Etowah County after Commissioner Presley's election and one adopted in Russell County before the election of Commissioners Mack and Gosha—none of the three newly elected black commissioners was able to exercise the decisionmaking authority that had been traditionally associated with his office.

As I shall explain, this is a case in which a few pages of history are far more illuminating than volumes of logic and hours of speculation about hypothetical line-drawing problems. Initially, however, it is important to note that a different decision in these cases would not impose any novel or significant burden on those jurisdictions that remain covered under § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U. S. C. § 1973c.[1]

Prior to these cases, federal courts had uniformly agreed with the Attorney General's interpretation that § 5 covered transfers of decisionmaking power that had a potential for discrimination against minority voters.[2] On at least eight

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[1] Alabama, like the other States that are covered under § 5, was placed in that category because of its history of "substantial voting discrimination." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 329 (1966).

[2] See *Horry County* v. *United States*, 449 F. Supp. 990 (D. C. 1978) (statute providing for election of public officials who were formerly appointed by Governor required preclearance under § 5); *Hardy* v. *Wallace*, 603 F. Supp. 174 (ND Ala. 1985) (statute changing appointive power over local racing commission from local legislative delegation to Governor required preclearance under § 5); *County Council of Sumter County* v. *United States*, 555 F. Supp. 694 (D. C. 1983) (law that eliminated legal power of Governor and General Assembly over local affairs and vested it in county council elected at large by county voters required preclearance under § 5); *Robinson* v. *Alabama State Dept. of Ed.*, 652 F. Supp. 484 (MD Ala. 1987) (transfer of authority from Board of Education whose members were elected countywide to one whose members were appointed by the city council required § 5 preclearance).

occasions since 1975,[3] the Department of Justice has refused to preclear changes in the power of elected officials that had a potentially discriminatory[4] impact on black voters. The Department has routinely precleared numerous other transfers of authority after determining that they had no discriminatory purpose or effect.[5] There is no evidence that the pre-

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[3] The Solicitor General has advised us that the Department has objected to the following transfers of authority:

"(1) Mobile, Alabama, March 2, 1976, involving a transfer of administrative duties from the entire commission to individual commissioners; (2) Charleston, South Carolina, June 14, 1977, involving a transfer of taxing authority from the legislative delegation to the county council; (3) Edgefield County, South Carolina, February 8, 1979, involving a transfer of increased taxing power to the county council; (4) Colleton County, South Carolina, September 4, 1979, involving a transfer of authority to tax for school purposes from the legislative delegation to the county council; (5) Brunswick and Blynn County, Georgia, August 16, 1982, involving the abolition of separate city and county commissions and the transfer of their powers to a consolidated commission; (6) Hillsborough County, Florida, August 29, 1984, involving a transfer of power over municipalities from the legislative delegation to the county commission (objection was withdrawn because the county made clear that it did not intend to effect such a transfer); (7) Waycross, Georgia, February 16, 1988, involving a change in the duties of the mayor; and (8) San Patricio, Texas, May 7, 1990, involving a transfer of voter registration duties from the county clerk to the county tax assessor." Brief for United States as *Amicus Curiae* 16, n. 6.

[4] Whether a change in "any . . . standard, practice, or procedure with respect to voting," 42 U. S. C. § 1973c, must be precleared under § 5 depends, not on whether the change "resulted in impairment of the right to vote, or whether [it was] intended to have that effect," but rather, on "whether the challenged alteration has the *potential* for discrimination." *NAACP* v. *Hampton County Election Comm'n*, 470 U. S. 166, 181 (1985); see *McCain* v. *Lybrand*, 465 U. S. 236, 250, n. 17 (1984); *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32, 42 (1978) (issue "is not whether the provision is in fact innocuous and likely to be approved, but whether it has a *potential* for discrimination"); *Georgia* v. *United States*, 411 U. S. 526, 534 (1973); *Perkins* v. *Matthews*, 400 U. S. 379, 383–385 (1971); *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 555, n. 19, 558–559 (1969).

[5] Brief for United States as *Amicus Curiae* 16–17.

vailing practice imposed any special burden on covered jurisdictions. For example, in this fiscal year the Attorney General has processed over 17,000 preclearance requests, and has approved over 99 percent of them without any undue delay.[6] It is, therefore, simply hyperbole for the Court to suggest that if we adopted the Attorney General's position in this case "neither state nor local governments could exercise power in a responsible manner within a federal system." *Ante*, at 507.[7]

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[6] Tr. of Oral Arg. 27. The Attorney General's percentage has undergone little change even though the number of submissions has increased over time. For example, when *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969), was decided, the Department of Justice had received 251 submissions from States covered under § 5 and had approved over 99 percent of the submissions. *Id.*, at 549, n. 5. Figures available in 1978 indicated that the Department processed 1,800 submissions annually, and had approved over 98 percent of those submissions. *Dougherty County Bd. of Ed.* v. *White*, 439 U. S., at 41.

[7] In the past, various Members of the Court have objected to the types of changes that require preclearance under § 5 in covered States, and have predicted that the Court's construction of the statute would leave it without boundaries. In *Perkins* v. *Matthews*, for example, Justice Harlan expressed the view that the Court was mistaken in holding that annexations are within the scope of § 5 and that the Court had gone too far in its interpretation of "with respect to voting": "Given a change with an effect on voting, a set of circumstances may be conceived with respect to almost any situation in which the change will bear more heavily on one race than on another. In effect, therefore, the Court requires submission of any change which has an effect on voting." 400 U. S., at 398 (opinion concurring in part and dissenting in part). Similarly, Justice Powell, taking the view in *Dougherty* that a "personnel rule" should not fall within the scope of § 5 as the Court had held, was concerned that "if the Court truly means that any incidental impact on elections is sufficient to trigger the preclearance requirement of § 5, then it is difficult to imagine what sorts of state or local enactments would *not* fall within the scope of that section." 439 U. S., at 54 (dissenting opinion) (footnote omitted). The fears the Court expresses today, see *ante*, at 507, are no more likely to be realized than those expressed by Justice Harlan and Justice Powell years ago.

In all of our prior cases interpreting § 5 of the Voting Rights Act, the Court has agreed with the Attorney General's construction of this important statute.[8] I share the Court's view that the "considerable deference" to which the Attorney General's construction is entitled[9] does not mean automatic "acquiescence," *ante*, at 508; however, I strongly disagree with the Court that our task in these cases is "to formulate workable rules to confine the coverage of § 5 to its legitimate sphere: voting." *Ante*, at 506. For reasons that I shall explain, even if the Attorney General, participating in these cases as *amicus curiae*, has asked the Court to adopt a broader rationale than is necessary or appropriate, a narrower basis for a decision is obviously available in the Etowah County case and, in my judgment, in the Russell County case as well.

I

The original enactment of § 5, the interpretations of the Act by this Court and by the Attorney General, and the reenactment of the statute by Congress in light of those interpretations reveal a continuous process of development in response to changing conditions in the covered jurisdictions.

The central purpose of the original Act was to eliminate the various devices, such as literacy tests, requirements of "good moral character," vouchers, and poll taxes, that had excluded black voters from the registration and voting process in the southern States for decades.[10] As we explained in *McCain* v. *Lybrand*, 465 U. S. 236 (1984):

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[8] See, *e. g.*, *Perkins* v. *Matthews*, 400 U. S., at 390–391 ("Our conclusion that both the location of the polling places and municipal boundary changes come within § 5 draws further support from the interpretation followed by the Attorney General in his administration of the statute"); *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S. 110, 131 (1978); *Dougherty County Bd. of Ed.* v. *White*, 439 U. S., at 39.

[9] *NAACP* v. *Hampton County Election Comm'n*, 470 U. S., at 178–179.

[10] "Tests or devices" include

"any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or inter-

> "The Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973 *et seq.* (1976 ed. and Supp. V), was enacted by Congress as a response to the 'unremitting and ingenious defiance' of the command of the Fifteenth Amendment for nearly a century by state officials in certain parts of the Nation. *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309 (1966). Congress concluded that case-by-case litigation under previous legislation was an unsatisfactory method to uncover and remedy the systematic discriminatory election practices in certain areas: such lawsuits were too onerous and time-consuming to prepare, obstructionist tactics by those determined to perpetuate discrimination yielded unacceptable delay, and even successful lawsuits too often merely resulted in a change in methods of discrimination. *E. g.*, H. R. Rep. No. 439, 89th Cong., 1st Sess., 9–11 (1965). Congress decided 'to shift the advantage of time and inertia from the perpetrators of the evil to its victims,' 383 U. S., at 328, and enacted 'stringent new remedies' designed to 'banish the blight of racial discrimination in voting' once and for all, *id.*, at 308." *Id.*, at 243–244 (footnote omitted).

During the first few years after the enactment of § 5, the federal courts gave its text a narrow literal construction that confined its coverage to the political subdivisions that registered voters and to the practices that directly concerned the registration and voting process. Prior to the Court's decision in *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969), only three States submitted any changes to the Attorney General for preclearance and a total of only 323 changes were

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pret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U. S. C. § 1973b(c).

As this Court recognized in *South Carolina* v. *Katzenbach*, 383 U. S., at 330, "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil."

submitted during the first five years of administration.[11] At that time, the covered jurisdictions were able to respond to the increase in the number of black registered voters by means that prevented the newly registered minority voters from having a proportionate impact on the political process.

In *Allen* and its companion cases,[12] however, the Court held that some of these responses, even if not described in the literal text of the Act, were nevertheless included within the scope of § 5. Relying heavily on the statutory definition of voting as encompassing "'all action necessary to make a vote effective,'" 393 U. S., at 565–566, and the broad remedial purposes of the Act, the Court held that a change from district to at-large voting for county supervisors, a change that made an important county office appointive rather than elective, and a change that altered the requirements for independent candidates, were all covered voting practices. *Id.*, at 569–571. Thus, § 5 was not limited to changes directly affecting the casting of a ballot. *Id.*, at 569 ("The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. See *Reynolds* v. *Sims*, 377 U. S. 533, 555 (1964)"). Nothing in *Allen* implied that the Court had defined an exhaustive category of changes covered by the Act.[13] On the contrary, the Court

[11] See *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S., at 148, n. 10 (STEVENS, J., dissenting); see also U. S. Commission on Civil Rights, The Voting Rights Act: Ten Years After, p. 25, n. 53 (1975) ("In the first 6 years of the act, section 5 was hardly used at all").

[12] *Allen* was argued along with *Fairley* v. *Patterson*, 393 U. S. 544 (1969) (§ 5 applied to a change from district to at-large election of county supervisors), *Bunton* v. *Patterson*, 393 U. S. 544 (1969) (§ 5 applied to change in which the position of county officer became appointive instead of elective), and *Whitley* v. *Williams*, 393 U. S. 544 (1969) (changes aimed at increasing the difficulty for an independent candidate to gain a position on a general election ballot were subject to § 5), on appeal from the United States District Court for the Southern District of Mississippi.

[13] Although the majority today agrees that § 5 is not limited to only the changes covered in our earlier opinions, see *ante*, at 502, it nevertheless attempts to fit today's changes into one of the earlier models, see *ante*, at

described § 5 as "aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race," *id.*, at 565, and expressed, in no uncertain terms, that § 5 should be given "the broadest possible scope," *id.*, at 567. Aware of the consequences of its decision, the Court gave its broad reading of the Act "only prospective effect." *Id.*, at 572.

The Court's construction of the Act in *Allen*, as requiring preclearance of changes in covered jurisdictions that were responsive to the increase in the number of black registered voters,[14] was consistent with the concern that justified the extraordinary remedy set forth in § 5 itself, particularly the concern that recalcitrant white majorities could be expected to devise new stratagems to maintain their political power if not closely scrutinized.

> "The rationale of this 'uncommon exercise' of congressional power which sustained its constitutional validity was a presumption that jurisdictions which had 'resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees' would be likely to engage in 'similar maneuvers in the future in order to evade the remedies

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503, 506–507. The Court's approach today marks a departure from the approach we have taken in the past. For example, in *NAACP* v. *Hampton County Election Comm'n*, even though the Court recognized that it had "never addressed itself to alterations in voting procedures that exactly parallel those at issue in this case," 470 U. S., at 176, it nevertheless concluded that § 5 was broad enough to encompass a change in election date, *id.*, at 182–183.

[14] U. S. Commission on Civil Rights, The Voting Rights Act: Ten Years After, at 69 ("The end of formal barriers brought about by the Voting Rights Act resulted in an immediate increase in minority registration"); H. R. Rep. No. 94–196, p. 6 (1975) ("Prior to 1965, the black registration rate in the State of Alabama lagged behind that of whites in that state by 49.9 percentage points. In 1972, that disparity had decreased to 23.6 percentage points").

> for voting discrimination contained in the Act itself.' *South Carolina* v. *Katzenbach*, *supra*, at 334, 335 (footnote omitted). This provision must, of course, be interpreted in light of its prophylactic purpose and the historical experience which it reflects. See, *e. g.*, *McDaniel* v. *Sanchez*, 452 U. S. 130, 151 (1981)." *McCain* v. *Lybrand*, 465 U. S., at 245–246.

Thus, § 5 was understood to be "a 'vital element' of the Act," and was designed to be flexible enough to ensure that "'new subterfuges will be promptly discovered and enjoined.'" *Id.*, at 248 (citation omitted).[15] Section 5, as construed by the Court, was not limited to a "simple inventory of voting procedures," but rather, was understood to address "the reality of changed practices as they affect Negro voters." *Georgia* v. *United States*, 411 U. S. 526, 531 (1973).

In subsequent cases, this Court has reaffirmed the broad scope of § 5 coverage, as first articulated by the Court in *Allen*.[16] The Court has interpreted § 5 expansively and has said in the context of candidate qualification that a statute requiring independent candidates to declare their intention to seek office two months earlier than under the previous procedures created a barrier to candidacy and required § 5 preclearance, *Hadnott* v. *Amos*, 394 U. S. 358 (1969), and in other contexts, that preclearance is required when there is a change in polling places, *Perkins* v. *Matthews*, 400 U. S. 379 (1971), an alteration in municipal boundaries, *City of Rich-*

[15] "[I]n modern-day voting rights cases such as this one, . . . racial discrimination will more than likely not show itself in the blatant forms of the past but instead will be subtle and sophisticated . . . ." App. to Juris. Statement of Appellant Presley 37a (Thompson, J., concurring in part and dissenting in part).

[16] See *Dougherty County Bd. of Ed.* v. *White*, 439 U. S., at 38 ("In subsequent cases interpreting § 5, we have consistently adhered to the principles of broad construction set forth in *Allen*"); *NAACP* v. *Hampton County Election Comm'n*, 470 U. S., at 176 ("Our precedents recognize that to effectuate the congressional purpose, § 5 is to be given broad scope").

mond v. *United States*, 422 U. S. 358 (1975), reapportionment and redistricting plans, *Georgia* v. *United States*, 411 U. S., at 532–533, and the introduction of numbered posts and staggered terms, *Lockhart* v. *United States*, 460 U. S. 125, 131, 132, 134–135 (1983).

The reenactment of § 5 in 1970, Pub. L. 91–285, 84 Stat. 314,[17] in 1975, Pub. L. 94–73, 89 Stat. 400,[18] and in 1982, Pub. L. 97–205, 96 Stat. 131,[19] reflected congressional approval of *Allen*'s broad interpretation of the Act. Indeed, congressional comments quoted in our opinion in *Perkins* v. *Matthews*, *supra*, expressly endorsed an interpretation of § 5 that takes into account white resistance to progress in black registration.

> "One Congressman who had supported the 1965 Act observed, 'When I voted for the Voting Rights Act of 1965, I hoped that 5 years would be ample time. But resistance to progress has been more subtle and more effective than I thought possible. A whole arsenal of racist weapons has been perfected. Boundary lines have been gerrymandered, elections have been switched to an at-large basis, counties have been consolidated,

[17] "After extensive deliberations in 1970 on bills to extend the Voting Rights Act, during which the *Allen* case was repeatedly discussed, the Act was extended for five years, without any substantive modification of § 5." *Georgia* v. *United States*, 411 U. S., at 533 (footnote omitted); see *Dougherty County Bd. of Ed.* v. *White*, 439 U. S., at 38–39.

[18] "Again in 1975, both the House and Senate Judiciary Committees, in recommending extension of the Act, noted with approval the 'broad interpretations to the scope of Section 5' in *Allen* and *Perkins* v. *Matthews*." *Dougherty*, 439 U. S., at 39.

[19] "[T]he legislative history of the most recent extension of the Voting Rights Act in 1982 reveals that the congressional commitment to its continued enforcement is firm. The Senate Committee found 'virtual unanimity among those who [had] studied the record,' S. Rep. No. 97–417, p. 9 (1982), that § 5 should be extended. And, as it had in previous extensions of the Act, Congress specifically endorsed a broad construction of the provision." *NAACP* v. *Hampton County Election Comm'n*, 470 U. S., at 176 (footnote omitted).

> elective offices have been abolished where blacks had a chance of winning, the appointment process has been substituted for the elective process, election officials have withheld the necessary information for voting or running for office, and both physical and economic intimidation have been employed.
>
> "'Section 5 was intended to prevent the use of most of these devices.'" 400 U. S., at 389, n. 8.[20]

Since the decision in *Allen*, the debate on reenactment of § 5 in 1970, and the issuance of regulations by the Department of Justice,[21] it has been recognized that the replacement of an elective office that might be won by a black candidate with an appointive office is one of the methods of maintaining a white majority's political power that § 5 was designed to forestall. As a practical matter, such a change has the same effect as a change that makes an elected official a mere figurehead by transferring his decisionmaking authority to an

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[20] Congress recognized that "since the adoption of the Voting Rights Act, covered jurisdictions have substantially moved from direct, over[t] impediments to the right to vote to more sophisticated devices that dilute minority voting strength," S. Rep. No. 97–417, p. 10 (1982), and that § 5 was intended to be responsive to this shift:

"Following the dramatic rise in registration, a broad array of dilution schemes were employed to cancel the impact of the new black vote. Elective posts were made appointive; election boundaries were gerrymandered; majority runoffs were instituted to prevent victories under a prior plurality system; at-large elections were substituted for election by single-member districts, or combined with other sophisticated rules to prevent an effective minority vote. The ingenuity of such schemes seems endless. Their common purpose and effect has been to offset the gains made at the ballot box under the Act.

"Congress anticipated this response. The preclearance provisions of Section 5 were designed to halt such efforts." *Id.*, at 6.

[21] On September 10, 1971, the Department of Justice first adopted regulations implementing § 5's preclearance provisions. S. Rep. No. 94–295, p. 16 (1975); see 36 Fed. Reg. 18186 (Sept. 10, 1971); 28 CFR pt. 51 (1972); see also *Georgia* v. *United States*, 411 U. S., at 536–541 (approving regulations).

appointed official, or to a group of elected officials controlled by the majority. Although this type of response to burgeoning black registration may not have been prevalent during the early history of the Act, it has been an active concern of the Attorney General since 1976. See n. 3, *supra.* In my judgment, such a change in the reallocation of decisionmaking authority in an elective office, at least in its most blatant form, is indistinguishable from, and just as unacceptable as, gerrymandering boundary lines or switching elections from a district to an at-large basis.

II

The two resolutions adopted by the Etowah County Commission on August 25, 1987, less than nine months after the county's first black commissioner took office, were an obvious response to the redistricting of the county that produced a majority black district from which a black commissioner was elected. In my view, it was wrong for the District Court to divorce the two parts of this consolidated response and to analyze the two resolutions separately.[22] The characteriza-

[22] The District Court was also wrong to exempt the Common Fund Resolution from § 5 preclearance on the ground that "the common fund resolution was, in practical terms, insignificant in comparison to the entire Commission's authority . . . ." App. to Juris. Statement of Appellant Presley 19a. This is clearly the wrong test in light of our earlier cases, in which we have said that even "minor" changes affecting elections and voting must be precleared. *Allen* v. *State Bd. of Elections*, 393 U. S., at 566, 568 ("It is significant that Congress chose not to include even . . . minor exceptions in § 5, thus indicating an intention that all changes, no matter how small, be subjected to § 5 scrutiny"); see also *Perkins* v. *Matthews*, 400 U. S., at 387. For example, the Court has said that § 5 preclearance applies to the transfer of a polling place, *id.*, at 388, and the extension of city limits to include uninhabited territory, *Pleasant Grove* v. *United States*, 479 U. S. 462, 467 (1987), even though these changes might, at first blush, appear to be "insignificant." The District Court mistakenly blurred the distinction between whether a change is subject to preclearance, which turns on whether the change has the potential for discrimination, and whether the change should, in fact, be precleared, which turns on whether

tion of the Road Supervision Resolution as a change with a "potential for discrimination" that was "blatant and obvious," App. to Juris. Statement of Appellant Presley 20a, and that should be enjoined unless subjected to § 5 preclearance, *id.*, at 21a, 23a, applies equally to the Common Fund Resolution. Both resolutions diminished the decisionmaking authority of the newly elected black commissioner, and both were passed on the same day and in response to the districting changes effected by the consent decree.[23]

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the change would have a discriminatory purpose or effect. The distinction is important because "[t]he discriminatory potential in seemingly innocent or insignificant changes can only be determined after the specific facts of the change are analyzed in context. The present coverage formula allows for such a factual analysis." Hearings on Extension of the Voting Rights Act before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 97th Cong., 1st Sess., 2122 (1981) (testimony of Drew Days, Professor, Yale Law School and former U. S. Assistant Attorney General, Civil Rights Division, Department of Justice); see H. R. Rep. No. 97–227, p. 35 (1981); *NAACP* v. *Hampton County Election Comm'n*, 470 U. S., at 176, n. 21.

[23] The District Court approved a consent decree that provided, *inter alia*, for an increase in the number of Etowah County Commissioners in order to remedy the unlawful dilution of black voting strength caused by the prior at-large election system. See *Dillard* v. *Crenshaw County*, Civ. Action No. 85–T–1332–N (MD Ala., Nov. 12, 1986); *ante*, at 496. The decree expanded the Commission to six members, all of whom would eventually be elected from single-member districts. See App. to Juris. Statement of Appellant Presley 5a. The consent decree specified that the commissioners elected in 1986 were to have the same duties as the four holdover commissioners. *Ibid.* (decree provided that the two new commissioners "'shall have all the rights, privileges, duties and immunities of the other commissioners, who have heretofore been elected at large'"). In August 1987, however, the commission passed the Road Supervision Resolution, which authorized the four holdover commissioners to continue to exercise authority over road operations in their districts, but which assigned nonroad duties to the two new commissioners. *Id.*, at 6a. On the same day, the same commission adopted a second resolution, the Common Fund Resolution, which abolished the practice of allocating road funds to districts and created a common fund, thus transferring authority for determining funding priorities from the individual commissioners to

At the very least, I would hold that the reallocation of decisionmaking authority of an elective office that is taken (1) after the victory of a black candidate, and (2) after the entry of a consent decree designed to give black voters an opportunity to have representation on an elective body, is covered by § 5.

Similar considerations supported the Court's decision in *Dougherty County Bd. of Ed.* v. *White*, 439 U. S. 32 (1978). *Dougherty* involved a rule requiring an employee of the school system to take a leave of absence while running for, or holding, a public office. The Court recognized that the rule in question operated in effect as a filing fee, hitting hardest those who were least able to afford it, and that it implicated the political process to the same extent as had changes in the location of polling places, *Perkins* v. *Matthews*, 400 U. S. 379 (1971), and alterations in the procedures for casting a write-in vote, *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969). The *Dougherty* Court also observed that the circumstances surrounding the rule's adoption were "sufficiently suggestive of the potential for discrimination to demonstrate the need for preclearance." 439 U. S., at 42. The rule had been adopted by an area with a long history of racial discrimination in voting, after the first black to seek public office announced his candidacy. *Ibid.* In the Etowah County case, as in *Dougherty*, the circumstances surrounding the adoption of the resolutions are similarly suggestive of the potential for discrimination and should require § 5 preclearance.

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the entire commission. *Id.*, at 6a–7a. However, the Common Fund Resolution contained a grandfather clause that permitted each holdover commissioner to maintain control over unspent funds for the 1986–1987 fiscal years, and a provision that required all 1987–1988 road maintenance to be done out of the "'four present road shops.'" *Id.*, at 29a. Thus, the Common Fund Resolution, when combined with the Road Supervision Resolution, which gave the four holdover commissioners exclusive control over the road shops, meant that the four holdover commissioners could effectively have complete control over all road and bridge funds.

Although the test I propose here may not adequately implement § 5, it would certainly provide a workable rule that would result in the correct disposition of this case without opening the Pandora's box that the Court seems to fear.[24]

III

The record indicates that the resolution challenged in the Russell County case may well have had a nondiscriminatory, anticorruption purpose.[25] It would not be covered by the narrow standard that I have proposed as a "workable rule" for deciding the Etowah County case. I would, however, adopt a broader standard that would require preclearance in this case as well. The proper test, I believe, is suggested by the examples of resistance to the increase in black registration that were noted in our opinion in *Perkins* v. *Matthews*, *supra*.[26]

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[24] The Court is strangely silent about the first half of the Etowah County majority's response to the election of Commissioner Presley. The logic of its analysis would lead to the conclusion that even the Road Supervision Resolution is not covered by § 5, but one cannot be sure because the Court recognizes that an otherwise uncovered enactment "might under some circumstances rise to the level of a *de facto* replacement of an elective office with an appointive one." *Ante*, at 508. Despite the Court's overriding interest in formulating "workable rules to confine the coverage of § 5 to its legitimate sphere," *ante*, at 506, the scope of that exception must await future cases.

[25] According to one judge on the three-judge District Court, the change "was adopted to eliminate a practice that had proved inefficient and conducive to abuses . . . [and] eventually resulted in a criminal indictment of one of the commissioners." App. to Juris. Statement of Appellant Presley 25a (Hobbs, J., concurring).

[26] In addition to the comment by Congressman McCulloch quoted, *supra*, at 519–520, the Court also quoted from a then recent study of the operation of the Voting Rights Act by the United States Civil Rights Commission, as follows:

" 'The history of white domination in the South has been one of adaptiveness, and the passage of the Voting Rights Acts and the increased black

Changes from district voting to at-large voting, the gerrymandering of district boundary lines, and the replacement of an elected official with an appointed official all share the characteristic of enhancing the power of the majority over a segment of the political community that might otherwise be adequately represented. A resolution that reallocates decisionmaking power by transferring authority from an elected district representative to an official, or a group, controlled by the majority, has the same potential for discrimination against the constituents in the disadvantaged districts.[27] The Russell County Resolution satisfies that test, and therefore, like both Etowah County Resolutions, should have been precleared. To hold otherwise, as the Court does today, leaves covered States free to evade the requirements of § 5, and to undermine the purpose of the Act, simply by transferring the authority of an elected official, who happens to be black, to another official or group controlled by the majority.

The Court today rejects the Attorney General's position that transfers of authority are covered under § 5 when "they

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registration that followed has resulted in new methods to maintain white control of the political process.

"'For example, State legislatures and political party committees in Alabama and Mississippi have adopted laws or rules since the passage of the act which have had the purpose or effect of diluting the votes of newly enfranchised Negro voters. These measures have taken the form of switching to at-large elections where Negro voting strength is concentrated in particular election districts, facilitating the consolidation of predominantly Negro and predominantly white counties, and redrawing the lines of districts to divide concentrations of Negro voting strength.'" *Perkins* v. *Matthews*, 400 U. S., at 389.

[27] In Russell County, the voters continue to elect county commissioners, but the most significant power previously held by those commissioners has been shifted to the county engineer, who is appointed by the Commission. The effect of this change, as in *Bunton* v. *Patterson*, 393 U. S., at 550–551 (change in which office is made appointive rather than elective is subject to § 5 preclearance), and *McCain* v. *Lybrand*, 465 U. S., at 250, n. 17, was less power for the voters over local affairs.

implicate the decisionmaking authority of elected officials." *Ante*, at 509. It does so because it fears that such a rule creates line-drawing problems and moves too far afield from "voting." Whether or not the rationale advocated by the Attorney General in this case is appropriate, his judgment concerning the proper disposition of these two cases is unquestionably correct.

I would therefore reverse in both cases.

Syllabus

LECHMERE, INC. *v.* NATIONAL LABOR RELATIONS BOARD

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

No. 90–970. Argued November 12, 1991—Decided January 27, 1992

The National Labor Relations Act (NLRA) guarantees employees "the right to self-organization, to form, join, or assist labor organizations," § 7, and makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees" in the exercise of their § 7 rights, § 8(a)(1). Petitioner Lechmere, Inc., owns and operates a retail store located in a shopping plaza in a large metropolitan area. Lechmere is also part owner of the plaza's parking lot, which is separated from a public highway by a 46-foot-wide grassy strip, almost all of which is public property. In a campaign to organize Lechmere employees, nonemployee union organizers placed handbills on the windshields of cars parked in the employees' part of the parking lot. After Lechmere denied the organizers access to the lot, they distributed handbills and picketed from the grassy strip. In addition, they were able to contact directly some 20% of the employees. The union filed an unfair labor practice charge with respondent National Labor Relations Board (Board), alleging that Lechmere had violated the NLRA by barring the organizers from its property. An Administrative Law Judge ruled in the union's favor, recommending that Lechmere, *inter alia*, be ordered to cease and desist from barring the organizers from the parking lot. The Board affirmed, relying on its ruling in *Jean Country*, 291 N. L. R. B. 11, that in all access cases the Board should balance (1) the degree of impairment of the § 7 right if access is denied, against (2) the degree of impairment of the private property right if access is granted, taking into consideration (3) the availability of reasonably effective alternative means of exercising the § 7 right. *Id.*, at 14. The Court of Appeals enforced the Board's order.

Held: Lechmere did not commit an unfair labor practice by barring nonemployee union organizers from its property. Pp. 531–541.

(a) By its plain terms, the NLRA confers rights only on employees, not on unions or their nonemployee organizers. Thus, as a rule, an employer cannot be compelled to allow nonemployee organizers onto his property. *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 113. *Babcock*'s holding was neither repudiated nor modified by this Court's decisions in *Central Hardware Co.* v. *NLRB*, 407 U. S. 539, and *Hudgens* v.

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NLRB, 424 U. S. 507. See also *Sears, Roebuck & Co.* v. *Carpenters*, 436 U. S. 180. Pp. 531–535.

(b) At least as applied to nonemployee union organizers, *Jean Country* is inconsistent with this Court's past interpretation of § 7. *Babcock*'s teaching is straightforward: § 7 simply does not protect nonemployee union organizers *except* in the rare case where "the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels." 351 U. S., at 112. It is only when reasonable access to employees is infeasible that it becomes appropriate to balance § 7 and private property rights. Pp. 535–538.

(c) The facts in this case do not justify application of *Babcock*'s inaccessibility exception. Because Lechmere's employees do not reside on its property, they are presumptively not "beyond the reach" of the union's message. Nor does the fact that they live in a large metropolitan area render them "inaccessible." Because the union failed to establish the existence of any "unique obstacles" that frustrated access to Lechmere's employees, the Board erred in concluding that Lechmere committed an unfair labor practice by barring the nonemployee organizers from its property. Pp. 539–541.

914 F. 2d 313, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. WHITE, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post*, p. 541. STEVENS, J., filed a dissenting opinion, *post*, p. 548.

Robert P. Joy argued the cause for petitioner. With him on the briefs were *Keith H. McCown* and *Benjamin Smith.*

Michael R. Dreeben argued the cause for respondent. With him on the brief were *Solicitor General Starr, Acting Deputy Solicitor General Wright*, *Norton J. Come*, and *Linda Sher.**

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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 *John S. Irving, Stephen A. Bokat*, and *Robert J. Verdisco;* for the Council on Labor Law Equality by *Gerard C. Smetana* and *Michael E. Avakian;* for the Food Marketing Institute by *Eugene D. Ulterino;* for the International Council of Shopping Centers, Inc., by *Stephanie McEvily* and *Edward J. Sack;* and for the National Retail Federation by *John W. Noble, Jr.*, and *Edward B. Miller.*

J. William Gagne, George R. Murphy, Peter J. Ford, David Silberman, and *Laurence Gold* filed a brief for the American Federation of Labor

JUSTICE THOMAS delivered the opinion of the Court.

This case requires us to clarify the relationship between the rights of employees under § 7 of the National Labor Relations Act (NLRA or Act), 49 Stat. 452, as amended, 29 U. S. C. § 157, and the property rights of their employers.

I

This case stems from the efforts of Local 919 of the United Food and Commercial Workers Union, AFL–CIO, to organize employees at a retail store in Newington, Connecticut, owned and operated by petitioner Lechmere, Inc. The store is located in the Lechmere Shopping Plaza, which occupies a roughly rectangular tract measuring approximately 880 feet from north to south and 740 feet from east to west. Lechmere's store is situated at the Plaza's south end, with the main parking lot to its north. A strip of 13 smaller "satellite stores" not owned by Lechmere runs along the west side of the Plaza, facing the parking lot. To the Plaza's east (where the main entrance is located) runs the Berlin Turnpike, a four-lane divided highway. The parking lot, however, does not abut the Turnpike; they are separated by a 46-foot-wide grassy strip, broken only by the Plaza's entrance. The parking lot is owned jointly by Lechmere and the developer of the satellite stores. The grassy strip is public property (except for a 4-foot-wide band adjoining the parking lot, which belongs to Lechmere).

The union began its campaign to organize the store's 200 employees, none of whom was represented by a union, in June 1987. After a full-page advertisement in a local newspaper drew little response, nonemployee union organizers entered Lechmere's parking lot and began placing handbills on the windshields of cars parked in a corner of the lot used mostly by employees. Lechmere's manager immediately

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and Congress of Industrial Organizations et al. as *amici curiae* urging affirmance.

confronted the organizers, informed them that Lechmere prohibited solicitation or handbill distribution of any kind on its property,[1] and asked them to leave. They did so, and Lechmere personnel removed the handbills. The union organizers renewed this handbilling effort in the parking lot on several subsequent occasions; each time they were asked to leave and the handbills were removed. The organizers then relocated to the public grassy strip, from where they attempted to pass out handbills to cars entering the lot during hours (before opening and after closing) when the drivers were assumed to be primarily store employees. For one month, the union organizers returned daily to the grassy strip to picket Lechmere; after that, they picketed intermittently for another six months. They also recorded the license plate numbers of cars parked in the employee parking area; with the cooperation of the Connecticut Department of Motor Vehicles, they thus secured the names and addresses of some 41 nonsupervisory employees (roughly 20% of the store's total). The union sent four mailings to these employees; it also made some attempts to contact them by phone or home visits. These mailings and visits resulted in one signed union authorization card.

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[1] Lechmere had established this policy several years prior to the union's organizing efforts. The store's official policy statement provided, in relevant part:

"Non-associates [*i. e.*, nonemployees] are prohibited from soliciting and distributing literature at all times anywhere on Company property, including parking lots. Non-associates have no right of access to the non-working areas and only to the public and selling areas of the store in connection with its public use." Brief for Petitioner 7.

On each door to the store Lechmere had posted a 6- by 8-inch sign reading: "TO THE PUBLIC. No Soliciting, Canvassing, Distribution of Literature or Trespassing by Non-Employees in or on Premises." App. 115–116. Lechmere consistently enforced this policy inside the store as well as on the parking lot (against, among others, the Salvation Army and the Girl Scouts).

Alleging that Lechmere had violated the NLRA by barring the nonemployee organizers from its property, the union filed an unfair labor practice charge with respondent National Labor Relations Board (Board). Applying the criteria set forth by the Board in *Fairmont Hotel Co.*, 282 N. L. R. B. 139 (1986), an Administrative Law Judge (ALJ) ruled in the union's favor. *Lechmere, Inc.*, 295 N. L. R. B. 94 (1988). He recommended that Lechmere be ordered, among other things, to cease and desist from barring the union organizers from the parking lot and to post in conspicuous places in the store signs proclaiming in part:

> "WE WILL NOT prohibit representatives of Local 919, United Food and Commercial Workers, AFL-CIO ('the Union') or any other labor organization, from distributing union literature to our employees in the parking lot adjacent to our store in Newington, Connecticut, nor will we attempt to cause them to be removed from our parking lot for attempting to do so." *Ibid.*

The Board affirmed the ALJ's judgment and adopted the recommended order, applying the analysis set forth in its opinion in *Jean Country*, 291 N. L. R. B. 11 (1988), which had by then replaced the short-lived *Fairmont Hotel* approach. 295 N. L. R. B. 92 (1989). A divided panel of the United States Court of Appeals for the First Circuit denied Lechmere's petition for review and enforced the Board's order. 914 F. 2d 313 (1990). This Court granted certiorari, 499 U. S. 918 (1991).

II

A

Section 7 of the NLRA provides in relevant part that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations." 29 U. S. C. § 157. Section 8(a)(1) of the Act, in turn, makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in

[§ 7]." 29 U. S. C. § 158(a)(1). By its plain terms, thus, the NLRA confers rights only on *employees*, not on unions or their nonemployee organizers. In *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105 (1956), however, we recognized that insofar as the employees' "right of self-organization depends in some measure on [their] ability . . . to learn the advantages of self-organization from others," *id.*, at 113, § 7 of the NLRA may, in certain limited circumstances, restrict an employer's right to exclude nonemployee union organizers from his property. It is the nature of those circumstances that we explore today.

Babcock arose out of union attempts to organize employees at a factory located on an isolated 100-acre tract. The company had a policy against solicitation and distribution of literature on its property, which it enforced against all groups. About 40% of the company's employees lived in a town of some 21,000 persons near the factory; the remainder were scattered over a 30-mile radius. Almost all employees drove to work in private cars and parked in a company lot that adjoined the fenced-in plant area. The parking lot could be reached only by a 100-yard-long driveway connecting it to a public highway. This driveway was mostly on company-owned land, except where it crossed a 31-foot-wide public right-of-way adjoining the highway. Union organizers attempted to distribute literature from this right-of-way. The union also secured the names and addresses of some 100 employees (20% of the total) and sent them three mailings. Still other employees were contacted by telephone or home visit.

The union successfully challenged the company's refusal to allow nonemployee organizers onto its property before the Board. While acknowledging that there were alternative, nontrespassory means whereby the union could communicate with employees, the Board held that contact at the workplace was preferable. *The Babcock & Wilcox Co.*, 109 N. L. R. B. 485, 493–494 (1954). "[T]he right to distribute is not ab-

solute, but must be accommodated to the circumstances. Where it is impossible or unreasonably difficult for a union to distribute organizational literature to employees entirely off of the employer's premises, distribution on a nonworking area, such as the parking lot and the walkways between the parking lot and the gate, may be warranted." *Id.*, at 493. Concluding that traffic on the highway made it unsafe for the union organizers to distribute leaflets from the right-of-way and that contacts through the mails, on the streets, at employees' homes, and over the telephone would be ineffective, the Board ordered the company to allow the organizers to distribute literature on the company's parking lot and exterior walkways. *Id.*, at 486–487.

The Court of Appeals for the Fifth Circuit refused to enforce the Board's order, *NLRB* v. *Babcock & Wilcox Co.*, 222 F. 2d 316 (1955), and this Court affirmed. While recognizing that "the Board has the responsibility of 'applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms,'" 351 U. S., at 111–112 (quoting *NLRB* v. *Stowe Spinning Co.*, 336 U. S. 226, 231 (1949)), we explained that the Board had erred by failing to make the critical distinction between the organizing activities of employees (to whom § 7 guarantees the right of self-organization) and nonemployees (to whom § 7 applies only derivatively). Thus, while "[n]o restriction may be placed on the employees' right to discuss self-organization *among themselves*, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline," 351 U. S., at 113 (emphasis added) (citing *Republic Aviation Corp.* v. *NLRB*, 324 U. S. 793, 803 (1945)), "no such obligation is owed nonemployee organizers," 351 U. S., at 113. As a rule, then, an employer cannot be compelled to allow distribution of union literature by nonemployee organizers on his property. As with many other rules, however, we recognized an exception. Where "the location of a plant and the living quarters of the

employees place the employees beyond the reach of reasonable union efforts to communicate with them," *ibid.*, employers' property rights may be "required to yield to the extent needed to permit communication of information on the right to organize," *id.*, at 112.

Although we have not had occasion to apply *Babcock*'s analysis in the ensuing decades, we have described it in cases arising in related contexts. Two such cases, *Central Hardware Co.* v. *NLRB*, 407 U. S. 539 (1972), and *Hudgens* v. *NLRB*, 424 U. S. 507 (1976), involved activity by union supporters on employer-owned property. The principal issue in both cases was whether, based upon *Food Employees* v. *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968), the First Amendment protected such activities. In both cases we rejected the First Amendment claims, and in *Hudgens* we made it clear that *Logan Valley* was overruled. Having decided the cases on constitutional grounds, we remanded them to the Board for consideration of the union supporters' § 7 claims under *Babcock*. In both cases, we quoted approvingly *Babcock*'s admonition that accommodation between employees' § 7 rights and employers' property rights "must be obtained with as little destruction of one as is consistent with the maintenance of the other," 351 U. S., at 112. See *Central Hardware*, *supra*, at 544; *Hudgens*, *supra*, at 521, 522. There is no hint in *Hudgens* and *Central Hardware*, however, that our invocation of *Babcock*'s language of "accommodation" was intended to repudiate or modify *Babcock*'s holding that an employer need not accommodate nonemployee organizers unless the employees are otherwise inaccessible. Indeed, in *Central Hardware* we expressly noted that nonemployee organizers cannot claim even a limited right of access to a nonconsenting employer's property until "[a]fter the requisite need for access to the employer's property has been shown." 407 U. S., at 545.

If there was any question whether *Central Hardware* and *Hudgens* changed § 7 law, it should have been laid to rest by

Sears, Roebuck & Co. v. *Carpenters,* 436 U. S. 180 (1978). As in *Central Hardware* and *Hudgens,* the substantive § 7 issue in *Sears* was a subsidiary one; the case's primary focus was on the circumstances under which the NLRA pre-empts state law. Among other things, we held in *Sears* that arguable § 7 claims do not pre-empt state trespass law, in large part because the trespasses of nonemployee union organizers are "far more likely to be unprotected than protected," 436 U. S., at 205; permitting state courts to evaluate such claims, therefore, does not "create an unacceptable risk of interference with conduct which the Board, and a court reviewing the Board's decision, would find protected," *ibid.* This holding was based upon the following interpretation of *Babcock:*

> "While *Babcock* indicates that an employer may not always bar nonemployee union organizers from his property, his right to do so remains the general rule. To gain access, *the union has the burden of showing that no other reasonable means of communicating its organizational message to the employees exists* or that the employer's access rules discriminate against union solicitation. That the burden imposed on the union is a heavy one is evidenced by the fact that the balance struck by the Board and the courts under the *Babcock* accommodation principle has rarely been in favor of trespassory organizational activity." 436 U. S., at 205 (emphasis added; footnotes omitted).

We further noted that, in practice, nonemployee organizational trespassing had generally been prohibited except where "unique obstacles" prevented nontrespassory methods of communication with the employees. *Id.,* at 205–206, n. 41.

B

Jean Country, as noted above, represents the Board's latest attempt to implement the rights guaranteed by § 7. It sets forth a three-factor balancing test:

> "[I]n all access cases our essential concern will be [1] the degree of impairment of the Section 7 right if access should be denied, as it balances against [2] the degree of impairment of the private property right if access should be granted. We view the consideration of [3] the availability of reasonably effective alternative means as especially significant in this balancing process." 291 N. L. R. B., at 14.

The Board conceded that this analysis was unlikely to foster certainty and predictability in this corner of the law, but declared that "as with other legal questions involving multiple factors, the 'nature of the problem, as revealed by unfolding variant situations, inevitably involves an evolutionary process for its rational response, not a quick, definitive formula as a comprehensive answer.'" *Ibid.* (quoting *Electrical Workers* v. *NLRB*, 366 U. S. 667, 674 (1961)).

Citing its role "as the agency with responsibility for implementing national labor policy," the Board maintains in this case that *Jean Country* is a reasonable interpretation of the NLRA entitled to judicial deference. Brief for Respondent 18, and n. 8; Tr. of Oral Arg. 22. It is certainly true, and we have long recognized, that the Board has the "special function of applying the general provisions of the Act to the complexities of industrial life." *NLRB* v. *Erie Resistor Corp.*, 373 U. S. 221, 236 (1963); see also *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 196–197 (1941). Like other administrative agencies, the NLRB is entitled to judicial deference when it interprets an ambiguous provision of a statute that it administers. See, *e. g.*, *NLRB* v. *Food & Commercial Workers*, 484 U. S. 112, 123 (1987); cf. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984).

Before we reach any issue of deference to the Board, however, we must first determine whether *Jean Country*—at least as applied to nonemployee organizational trespassing—is consistent with our past interpretation of § 7. "Once we

have determined a statute's clear meaning, we adhere to that determination under the doctrine of *stare decisis*, and we judge an agency's later interpretation of the statute against our prior determination of the statute's meaning." *Maislin Industries, U. S., Inc.* v. *Primary Steel, Inc.*, 497 U. S. 116, 131 (1990).

In *Babcock*, as explained above, we held that the Act drew a distinction "of substance," 351 U. S., at 113, between the union activities of employees and nonemployees. In cases involving *employee* activities, we noted with approval, the Board "balanced the conflicting interests of employees to receive information on self-organization on the company's property from fellow employees during nonworking time, with the employer's right to control the use of his property." *Id.*, at 109–110. In cases involving *nonemployee* activities (like those at issue in *Babcock* itself), however, the Board was not permitted to engage in that same balancing (and we reversed the Board for having done so). By reversing the Board's interpretation of the statute for failing to distinguish between the organizing activities of employees and nonemployees, we were saying, in *Chevron* terms, that § 7 speaks to the issue of nonemployee access to an employer's property. *Babcock*'s teaching is straightforward: § 7 simply does not protect nonemployee union organizers *except* in the rare case where "the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels," 351 U. S., at 112. Our reference to "reasonable" attempts was nothing more than a commonsense recognition that unions need not engage in extraordinary feats to communicate with inaccessible employees—*not* an endorsement of the view (which we expressly rejected) that the Act protects "reasonable" trespasses. Where reasonable alternative means of access exist, § 7's guarantees do not authorize trespasses by nonemployee organizers, *even* (as we noted in *Babcock*, *ibid.*) "under . . . reasonable regulations" established by the Board.

Jean Country, which applies broadly to "all access cases," 291 N. L. R. B., at 14, misapprehends this critical point. Its principal inspiration derives not from *Babcock*, but from the following sentence in *Hudgens:* "[T]he locus of th[e] accommodation [between § 7 rights and private property rights] may fall at differing points along the spectrum depending on the nature and strength of the respective § 7 rights and private property rights asserted in any given context." 424 U. S., at 522. From this sentence the Board concluded that it was appropriate to approach every case by balancing § 7 rights against property rights, with alternative means of access thrown in as nothing more than an "especially significant" consideration. As explained above, however, *Hudgens* did not purport to modify *Babcock*, much less to alter it fundamentally in the way *Jean Country* suggests. To say that our cases require accommodation between employees' and employers' rights is a true but incomplete statement, for the cases also go far in establishing the *locus* of that accommodation where nonemployee organizing is at issue. So long as nonemployee union organizers have reasonable access to employees outside an employer's property, the requisite accommodation has taken place. It is *only* where such access is infeasible that it becomes necessary and proper to take the accommodation inquiry to a second level, balancing the employees' and employers' rights as described in the *Hudgens* dictum. See *Sears*, 436 U. S., at 205; *Central Hardware*, 407 U. S., at 545. At least as applied to nonemployees, *Jean Country* impermissibly conflates these two stages of the inquiry—thereby significantly eroding *Babcock*'s general rule that "an employer may validly post his property against nonemployee distribution of union literature," 351 U. S., at 112. We reaffirm that general rule today, and reject the Board's attempt to recast it as a multifactor balancing test.

C

The threshold inquiry in this case, then, is whether the facts here justify application of *Babcock*'s inaccessibility exception. The ALJ below observed that "the facts herein convince me that reasonable alternative means [of communicating with Lechmere's employees] *were* available to the Union," 295 N. L. R. B., at 99 (emphasis added).[2] Reviewing the ALJ's decision under *Jean Country,* however, the Board reached a different conclusion on this point, asserting that "there was no reasonable, effective alternative means available for the Union to communicate its message to [Lechmere's] employees." *Id.,* at 93.

We cannot accept the Board's conclusion, because it "rest[s] on erroneous legal foundations," *Babcock, supra,* at 112; see also *NLRB* v. *Brown,* 380 U. S. 278, 290–292 (1965). As we have explained, the exception to *Babcock*'s rule is a narrow one. It does not apply wherever nontrespassory access to employees may be cumbersome or less-than-ideally effective, but only where "the *location of a plant and the living quarters of the employees* place the employees *beyond the reach* of reasonable union efforts to communicate with them," 351 U. S., at 113 (emphasis added). Classic examples include logging camps, see *NLRB* v. *Lake Superior Lumber Corp.,* 167 F. 2d 147 (CA6 1948); mining camps, see *Alaska Barite Co.,* 197 N. L. R. B. 1023 (1972), enforced mem., 83 LRRM 2992 (CA9), cert. denied, 414 U. S. 1025 (1973); and mountain resort hotels, see *NLRB* v. *S & H Grossinger's Inc.,* 372 F. 2d

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[2] Under the (pre-*Jean Country*) *Fairmont Hotel* analysis applied by the ALJ, it was only where the employees' § 7 rights and an employer's property rights were deemed "relatively equal in strength," *Fairmont Hotel Co.,* 282 N. L. R. B. 139, 142 (1986), that the adequacy of nontrespassory means of communication became relevant. Because the ALJ found that the § 7 rights involved here outweighed Lechmere's property rights, he had no need to address the latter issue. He did so, he explained, only because of the possibility that his evaluation of the relative weights of the rights might not be upheld. 295 N. L. R. B. 94, 99 (1988).

26 (CA2 1967). *Babcock*'s exception was crafted precisely to protect the § 7 rights of those employees who, by virtue of their employment, are isolated from the ordinary flow of information that characterizes our society. The union's burden of establishing such isolation is, as we have explained, "a heavy one," *Sears*, *supra*, at 205, and one not satisfied by mere conjecture or the expression of doubts concerning the effectiveness of nontrespassory means of communication.

The Board's conclusion in this case that the union had no reasonable means short of trespass to make Lechmere's employees aware of its organizational efforts is based on a misunderstanding of the limited scope of this exception. Because the employees do not reside on Lechmere's property, they are presumptively not "beyond the reach," *Babcock*, 351 U. S., at 113, of the union's message. Although the employees live in a large metropolitan area (Greater Hartford), that fact does not in itself render them "inaccessible" in the sense contemplated by *Babcock*. See *Monogram Models, Inc.*, 192 N. L. R. B. 705, 706 (1971). Their accessibility is suggested by the union's success in contacting a substantial percentage of them directly, via mailings, phone calls, and home visits. Such direct contact, of course, is not a necessary element of "reasonably effective" communication; signs or advertising also may suffice. In this case, the union tried advertising in local newspapers; the Board said that this was not reasonably effective because it was expensive and might not reach the employees. 295 N. L. R. B., at 93. Whatever the merits of that conclusion, other alternative means of communication were readily available. Thus, signs (displayed, for example, from the public grassy strip adjoining Lechmere's parking lot) would have informed the employees about the union's organizational efforts. (Indeed, union organizers picketed the shopping center's main entrance for months as employees came and went every day.) *Access* to employees, not *success* in winning them over, is the critical issue—although success, or lack thereof, may be relevant in determining

whether reasonable access exists. Because the union in this case failed to establish the existence of any "unique obstacles," *Sears*, 436 U. S., at 205–206, n. 41, that frustrated access to Lechmere's employees, the Board erred in concluding that Lechmere committed an unfair labor practice by barring the nonemployee organizers from its property.

The judgment of the First Circuit is therefore reversed, and enforcement of the Board's order is denied.

It is so ordered.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

"We will uphold a Board rule so long as it is rational and consistent with the Act, . . . even if we would have formulated a different rule had we sat on the Board." *NLRB* v. *Curtin Matheson Scientific, Inc.*, 494 U. S. 775, 787 (1990). The judicial role is narrow: The Board's application of the rule, if supported by substantial evidence on the record as a whole, must be enforced. *Beth Israel Hospital* v. *NLRB*, 437 U. S. 483, 501 (1978).

In *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 112 (1956), the Court said that where nonemployee union representatives seek access to the employer's parking lot for the purpose of communicating with employees, the employer's property rights and the organizational rights of employees must be "[a]ccommodat[ed] . . . with as little destruction of one as is consistent with the maintenance of the other." Although it said that it was slow to overturn an administrative decision, the Court disagreed with the balance the Board had struck in granting access to the union because the Board had failed to recognize that access by nonemployees required a different accommodation than where employees are involved. *Id.*, at 112–113. The Court went on to say that "when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from prop-

erty has been required to yield to the extent needed to permit communication of information on the right to organize." *Ibid.* Later the Court said: "The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others. Consequently, if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property." *Id.*, at 113. The Court went on to hold that no such conditions were shown in the records of the cases before it.

In the case before us, the Court holds that *Babcock* itself stated the correct accommodation between property and organizational rights; it interprets that case as construing §§ 7 and 8(a)(1) of the National Labor Relations Act (NLRA) to contain a general rule forbidding third-party access, subject only to a limited exception where the union demonstrates that the location of the employer's place of business and the living quarters of the employees place the employees beyond the reach of reasonable efforts to communicate with them. The Court refuses to enforce the Board's order in this case, which rested on its prior decision in *Jean Country*, 291 N. L. R. B. 11 (1988), because, in the Court's view, *Jean Country* revealed that the Board misunderstood the basic holding in *Babcock*, as well as the narrowness of the exception to the general rule announced in that case.

For several reasons, the Court errs in this case. First, that *Babcock* stated that inaccessibility would be a reason to grant access does not indicate that there would be no other circumstance that would warrant entry to the employer's parking lot and would satisfy the Court's admonition that accommodation must be made with as little destruction of property rights as is consistent with the right of employees to learn the advantages of self-organization from others. Of course the union must show that its "reasonable efforts,"

without access, will not permit proper communication with employees. But I cannot believe that the Court in *Babcock* intended to confine the reach of such general considerations to the single circumstance that the Court now seizes upon. If the Court in *Babcock* indicated that nonemployee access to a logging camp would be required, it did not say that only in such situations could nonemployee access be permitted. Nor did *Babcock* require the Board to ignore the substantial difference between the entirely private parking lot of a secluded manufacturing plant and a shopping center lot which is open to the public without substantial limitation. Nor indeed did *Babcock* indicate that the Board could not consider the fact that employees' residences are scattered throughout a major metropolitan area; *Babcock* itself relied on the fact that the employees in that case lived in a compact area which made them easily accessible.

Moreover, the Court in *Babcock* recognized that actual communication with nonemployee organizers, not mere notice that an organizing campaign exists, is necessary to vindicate § 7 rights. 351 U. S., at 113. If employees are entitled to learn from others the advantages of self-organization, *ibid.*, it is singularly unpersuasive to suggest that the union has sufficient access for this purpose by being able to hold up signs from a public grassy strip adjacent to the highway leading to the parking lot.

Second, the Court's reading of *Babcock* is not the reading of that case reflected in later opinions of the Court. We have consistently declined to define the principle of *Babcock* as a general rule subject to narrow exceptions, and have instead repeatedly reaffirmed that the standard is a neutral and flexible rule of accommodation. In *Central Hardware Co.* v. *NLRB*, 407 U. S. 539, 544 (1972), we explicitly stated that the "guiding principle" for adjusting conflicts between § 7 rights and property rights enunciated in *Babcock* is that contained in its neutral "accommodation" language. *Hudgens* v. *NLRB*, 424 U. S. 507 (1976), gave this Court the

occasion to provide direct guidance to the Board on this issue. In that case, we emphasized *Babcock*'s necessity-to-accommodate admonition, pointed out the differences between *Babcock* and *Hudgens*, and left the balance to be struck by the Board. "The locus of that accommodation . . . may fall at differing points along the spectrum depending on the nature and strength of the respective § 7 rights and private property rights asserted in any given context. In each generic situation, the primary responsibility for making this accommodation must rest with the Board in the first instance." 424 U. S., at 522. *Hudgens* did not purport to modify *Babcock* and surely indicates that *Babcock* announced a more flexible rule than the narrow, ironclad rule that the Court now extracts from that case. If *Babcock* means what the Court says it means, there is no doubt tension between that case and *Hudgens*. If that is so, *Hudgens*, as the later pronouncement on the question, issued as a directive to the Board, should be controlling.*

*In *Sears, Roebuck & Co.* v. *Carpenters*, 436 U. S. 180 (1978), we once again reaffirmed the accommodation language, as refined by *Hudgens*. The language we quoted in text in *Sears* was that of *Hudgens*, not *Babcock*. Thus, notwithstanding the majority's assertion that *Sears* laid to rest any question whether *Hudgens* changed § 7 law, *ante*, at 534–535, *Sears* in fact endorsed the *Hudgens* refinement of the § 7 property rights accommodation analysis, recognizing that the accommodation may fall at differing points, and that the Board should evaluate the nature and strength of property and § 7 rights.

Sears was a pre-emption case, and only peripherally involved substantive principles of § 7 accommodation by the Board. Unlike *Hudgens*, in *Sears* we did not remand for ultimate disposition by the Board, but rather remanded to the state court. Thus, we had no occasion in that case, as we did in *Hudgens*, to provide further guidance to the Board in its interpretation of the NLRA (and of *Babcock*, *Hudgens*, and other decisions). Our "general rule" language recounting the rarity of Board decisions allowing access should be taken for what it was, a descriptive recounting of what "experience . . . teaches," *Sears*, *supra*, at 205, about the way that the Board had exercised its authority, and not any prescription from this Court as to the analysis the Board should apply. That analysis had already been cited. 436 U. S., at 204. Contrary to what the majority suggests, *Sears* did not clear up any false ambiguity created by *Hudgens;* to

The majority today asserts that "[i]t is *only* where [reasonable alternative] access is infeasible that it becomes necessary and proper to take the accommodation inquiry to a second level, balancing the employees' and employers' rights." *Ante*, at 538. Our cases, however, are more consistent with the *Jean Country* view that reasonable alternatives are an important factor in finding the least destructive accommodation between § 7 and property rights. The majority's assertion to this effect notwithstanding, our cases do not require a prior showing regarding reasonable alternatives as a precondition to any inquiry balancing the two rights. The majority can hardly fault the Board for a decision which "conflates . . . two stages of the inquiry," *ante*, at 538, when no two-stage inquiry has been set forth by this Court.

Third, and more fundamentally, *Babcock* is at odds with modern concepts of deference to an administrative agency charged with administering a statute. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). When reviewing an agency's construction of a statute, we ask first whether Congress has spoken to the precise question at issue. *Id.*, at 842. If it has not, we do not simply impose our own construction on the statute; rather, we determine if the agency's view is based on a permissible construction of the statute. *Id.*, at 843. *Babcock* did not ask if Congress had specifically spoken to the issue of access by third parties and did not purport to explain how the NLRA specifically dealt with what the access rule should be where third parties are concerned. If it had made such an inquiry, the only basis for finding statutory language that settled the issue would have been the language of § 7, which speaks only of the rights of employees; *i. e.*, the Court might have found that § 7 extends no access rights at all to union representatives. But *Babcock* itself recognized that

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the extent that it addressed the relevant issues, it reaffirmed the refined and more detailed guidance offered by *Hudgens*.

employees have a right to learn from others about self-organization, 351 U. S., at 113, and itself recognized that in some circumstances, §§ 7 and 8 required the employer to grant the union access to parking lots. So have later Courts, and so does the Court today.

That being the case, the *Babcock* Court should have recognized that the Board's construction of the statute was a permissible one and deferred to its judgment. Instead, the Court simply announced that as far as access is concerned, third parties must be treated less favorably than employees. Furthermore, after issuing a construction of the statute different from that of the Board, rather than remanding to the Board to determine how third parties should be dealt with, the *Babcock* Court essentially took over the agency's job, not only by detailing how union organizer access should be determined but also by announcing that the records before it did not contain facts that would satisfy the newly coined access rule.

Had a case like *Babcock* been first presented for decision under the law governing in 1991, I am quite sure that we would have deferred to the Board, or at least attempted to find sounder ground for not doing so. Furthermore, had the Board ruled that third parties must be treated differently than employees and held them to the standard that the Court now says *Babcock* mandated, it is clear enough that we also would have accepted that construction of the statute. But it is also clear, at least to me, that if the Board later reworked that rule in the manner of *Jean Country*, we would also accept the Board's change of mind. See *NLRB* v. *Curtin Matheson Scientific, Inc.*, 494 U. S., at 787; *NLRB* v. *J. Weingarten, Inc.*, 420 U. S. 251, 265–266 (1975).

As it is, the Court's decision fails to recognize that *Babcock* is at odds with the current law of deference to administrative agencies and compounds that error by adopting the substantive approach *Babcock* applied lock, stock, and barrel. And unnecessarily so, for, as indicated above, *Babcock* certainly

does not require the reading the Court gives it today, and in any event later cases have put a gloss on *Babcock* that the Court should recognize.

Finally, the majority commits a concluding error in its application of the outdated standard of *Babcock* to review the Board's conclusion that there were no reasonable alternative means available to the union. Unless the Court today proposes to turn back time in the law of judicial deference to administrative agencies, the proper standard for judicial review of the Board's rulings is no longer for "'erroneous legal foundations,'" *ante,* at 539, but for rationality and consistency with the statute. *Litton Financial Printing Div.* v. *NLRB,* 501 U. S. 190 (1991); *NLRB* v. *Curtin Matheson Scientific, Inc., supra; Fall River Dyeing & Finishing Corp.* v. *NLRB,* 482 U. S. 27, 42 (1987); *NLRB* v. *Financial Institution Employees,* 475 U. S. 192, 202 (1986); *Beth Israel Hospital,* 437 U. S., at 501. "The judicial role is narrow: . . . the Board's application of the rule, if supported by substantial evidence on the record as a whole, must be enforced." *Ibid.* The Board's conclusion as to reasonable alternatives in this case was supported by evidence in the record. Even if the majority cannot defer to that application, because of the depth of its objections to the rule applied by the Board, it should remand to the Board for a decision under the rule it arrives at today, rather than sitting in the place Congress has assigned to the Board.

The more basic legal error of the majority today, like that of the Court of Appeals in *Chevron,* is to adopt a static judicial construction of the statute when Congress has not commanded that construction. Cf. 467 U. S., at 842. By leaving open the question of how § 7 and private property rights were to be accommodated under the NLRA, Congress delegated authority over that issue to the Board, and a court should not substitute its own judgment for a reasonable construction by the Board. Cf. *id.,* at 844.

Under the law that governs today, it is *Babcock* that rests on questionable legal foundations. The Board's decision in *Jean Country*, by contrast, is both rational and consistent with the governing statute. The Court should therefore defer to the Board, rather than resurrecting and extending the reach of a decision which embodies principles which the law has long since passed by.

It is evident, therefore, that, in my view, the Court should defer to the Board's decision in *Jean Country* and its application of *Jean Country* in this case. With all due respect, I dissent.

JUSTICE STEVENS, dissenting.

For the first two reasons stated in JUSTICE WHITE's opinion, *ante*, at 541–545, I would affirm the judgment of the Court of Appeals enforcing the Board's order. I agree with JUSTICE WHITE that the Court's strict construction of *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105 (1956), is not consistent with *Hudgens* v. *NLRB*, 424 U. S. 507 (1976), and our other cases interpreting *Babcock*. I do not, however, join his opinion to the extent that it suggests that the *Babcock* case was incorrectly decided, *ante*, at 545–548. That decision rejected the Board's view that the rules applicable to union organizing draw no distinction between employees and nonemployees. I believe that central holding in *Babcock* was correct and is not inconsistent with the current law of deference to administrative agencies. Accordingly, I also respectfully dissent.

Reporter's Note

The next page is purposely numbered 801. The numbers between 548 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 7, 1991, THROUGH FEBRUARY 24, 1992

OCTOBER 7, 1991

Dismissal Under Rule 46

No. 91–64. ESTELLE, WARDEN *v.* WASKO. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 944 F. 2d 910.

Certiorari Granted—Vacated and Remanded

No. 90–1639. UNITED STATES *v.* WIDDOWSON ET AL. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Touby* v. *United States*, 500 U. S. 160 (1991). Reported below: 916 F. 2d 587.

No. 90–1853. NATIONWIDE CORP. ET AL. *v.* HOWING CO. ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U. S. 1083 (1991). Reported below: 927 F. 2d 263.

No. 90–1864. NEW YORK STATE DEPARTMENT OF HEALTH *v.* ANDRULONIS, INDIVIDUALLY, AND AS CONSERVATOR OF THE PROPERTY OF ANDRULONIS, ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Gaubert*, 499 U. S. 315 (1991). Reported below: 924 F. 2d 1210.

No. 90–1936. PARKER SOLVENTS CO., INC. *v.* ROYAL INSURANCE COMPANIES OF AMERICA, FORMERLY ROYAL GLOBE INSURANCE CO. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Salve Regina College* v. *Russell*, 499 U. S. 225 (1991). Reported below: 938 F. 2d 185.

No. 90–7574. BUCKLEY *v.* FITZSIMMONS ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case re-

manded for further consideration in light of *Burns* v. *Reed*, 500 U. S. 478 (1991). Reported below: 919 F. 2d 1230.

No. 90–8219. RICHARD ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Melkonyan* v. *Sullivan*, 501 U. S. 89 (1991). Reported below: 926 F. 2d 399.

No. 91–162. INABA ET AL. *v.* SOONG ET AL. Sup. Ct. Haw. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Siegert* v. *Gilley*, 500 U. S. 226 (1991). Reported below: 72 Haw. 607, 810 P. 2d 667.

Miscellaneous Orders

No. ——. ALESSI *v.* PENNSYLVANIA ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. ——. BURKE *v.* BEYER, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL. Motion to direct the Clerk to docket an appeal from the United States District Court for the District of New Jersey denied.

No. ——. DAVID *v.* AT&T ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. ——. IN RE J. S. Motion for leave to file petition for writ of certiorari under seal, or alternatively with portions deleted, denied.

No. ——. LAWRENCE *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. ——. IN RE APPLICATION OF SHAPIRO FOR READMISSION TO THE BAR OF THIS COURT. Application for readmission to the Bar of this Court, presented to JUSTICE SCALIA, and by him referred to the Court, denied. [For earlier order herein, see, *e. g.*, 469 U. S. 978.]

No. A–195. SOUTHERN LIFE & HEALTH INSURANCE CO. ET AL. *v.* TURNER. Sup. Ct. Ala. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. D–1006. IN RE DISBARMENT OF SNEED. Disbarment entered. [For earlier order herein, see 501 U. S. 1203.]

No. D–1010. IN RE DISBARMENT OF BOLTON. George J. Bolton, of North Miami Beach, Fla., 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 practice before the Bar of this Court. The rule to show cause, heretofore issued on June 17, 1991 [501 U. S. 1215], is hereby discharged.

No. D–1019. IN RE DISBARMENT OF TURNER. Disbarment entered. [For earlier order herein, see 501 U. S. 1228.]

No. D–1020. IN RE DISBARMENT OF DELLA-DONNA. Disbarment entered. [For earlier order herein, see 501 U. S. 1248.]

No. D–1022. IN RE DISBARMENT OF GELMAN. Disbarment entered. [For earlier order herein, see 501 U. S. 1268.]

No. D–1027. IN RE DISBARMENT OF SAGEN. Disbarment entered. [For earlier order herein, see 501 U. S. 1269.]

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for approval of fees and expenses granted, and the River Master is awarded $10,705.20 for the period April 1 through June 30, 1991, to be paid equally by the parties. Motion of New Mexico to review the River Master's final report for Water Year 1990 denied. [For earlier order herein, see, *e. g.*, 500 U. S. 902.]

No. 90–209. CALIFORNIA *v.* SALGADO, 500 U. S. 901. Motion of respondent to retax costs denied.

No. 90–918. FRANKLIN *v.* GWINNETT COUNTY PUBLIC SCHOOLS ET AL. C. A. 11th Cir. [Certiorari granted, 501 U. S. 1204.] Motion of petitioner to dispense with printing the joint appendix granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90–1205. UNITED STATES *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 90–6588. AYERS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S.

958.] Motions of Charles E. "Buddy" Roemer III, Governor of the State of Louisiana, et al. and Board of Trustees of the University of Alabama for leave to file briefs as *amici curiae* granted.

No. 90–1271. NORFOLK & WESTERN RAILWAY CO. *v.* ROBERSON ET AL., 500 U. S. 916. Motion of respondents for attorney's fees denied without prejudice to refiling in the United States Court of Appeals for the Fourth Circuit.

No. 90–1390. GENERAL MOTORS CORP. ET AL. *v.* ROMEIN ET AL. Sup. Ct. Mich. [Certiorari granted, 500 U. S. 915.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 90–1596. ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, ET AL. *v.* SEATTLE AUDUBON SOCIETY ET AL. C. A. 9th Cir. [Certiorari granted, 501 U. S. 1249.] Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 90–1739. FUQUA INDUSTRIES, INC., ET AL. *v.* JANDRUCKO, 501 U. S. 1252. Motion of respondent for damages denied.

No. 90–1832. PESTRAK *v.* OHIO ELECTIONS COMMISSION ET AL.; and

No. 91–9. OHIO ELECTIONS COMMISSION ET AL. *v.* PESTRAK. C. A. 6th Cir. Motion of the parties to defer consideration of petitions for writs of certiorari granted for 60 days.

No. 90–1846. DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted.

No. 90–1861. GREENVILLE PUBLIC SCHOOL DISTRICT ET AL. *v.* WESTERN LINE CONSOLIDATED SCHOOL DISTRICT ET AL. Sup. Ct. Miss.;

No. 90–1897. UNITED ARTISTS COMMUNICATIONS, INC., ET AL. *v.* THE MOVIE 1 & 2. C. A. 9th Cir.;

No. 90–1918. KRAFT GENERAL FOODS, INC. *v.* IOWA DEPARTMENT OF REVENUE AND FINANCE. Sup. Ct. Iowa;

No. 90–1977. DUPREE ET AL. *v.* MOORE, ATTORNEY GENERAL OF MISSISSIPPI, ET AL. Appeal from D. C. S. D. Miss.; and

No. 91–4. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 12, AFL–CIO *v.* WILSON ET AL. C. A. 9th Cir. The

Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 90–7225. IN RE DEMOS. Motion of petitioner for reconsideration of denial of leave to proceed *in forma pauperis* [500 U. S. 16] denied.

No. 91–5050. GOLUB *v.* UNIVERSITY OF CHICAGO ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 28, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 91–5219. BRENNAN *v.* BRENNAN. Ct. App. Ohio, Cuyahoga County. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 28, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BLACKMUN and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 91–5431. FORREST *v.* OCCIDENTAL PETROLEUM CORP. ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 28, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 90–1874. IN RE COURNOYER. Super. Ct. R. I.; and
No. 91–5262. IN RE NELSON. Super. Ct. D. C. Petitions for writs of common-law certiorari denied.

No. 91–5007. IN RE TAYLOR;
No. 91–5042. IN RE PEERNOCK;
No. 91–5110. IN RE PETERS;
No. 91–5259. IN RE EMBREY;
No. 91–5463. IN RE GREENLEES;
No. 91–5508. IN RE CHAPPELL; and
No. 91–5557. IN RE KNOWLES. Petitions for writs of habeas corpus denied.

No. 90–8103. IN RE MOSBY;
No. 90–8109. IN RE JONES;
No. 90–8178. IN RE BRUCHHAUSEN;
No. 90–8422. IN RE STICH;
No. 91–49. IN RE KARAPINKA;
No. 91–5185. IN RE GRIFFIN; and
No. 91–5434. IN RE BAEZ. Petitions for writs of mandamus denied.

No. 90–8032. IN RE COOPER ET UX.;
No. 90–8084. IN RE COOPER ET UX.;
No. 90–8341. IN RE THOMAS;
No. 90–8363. IN RE HERRERA ET AL.;
No. 91–5127. IN RE BROWN; and
No. 91–5129. IN RE BONNER. Petitions for writs of mandamus and/or prohibition denied.

No. 90–8417. IN RE SEARCY. Motion of petitioner to sanction counsel for respondent and other relief denied. Petition for writ of mandamus and/or prohibition denied.

No. 91–5176. IN RE ANTON; and
No. 91–5533. IN RE CYNTJE. Motions of petitioners to expedite consideration of petitions for writs of mandamus denied. Petitions for writs of mandamus denied.

No. 90–8117. IN RE WISE; and
No. 91–5344. IN RE RUBINS. Petitions for writs of prohibition denied.

Certiorari Granted

No. 90–1599. UNITED STATES *v.* FELIX. C. A. 10th Cir. Certiorari granted. Reported below: 926 F. 2d 1522.

No. 91–42. UNITED STATES *v.* BURKE ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 929 F. 2d 1119.

No. 91–72. FEDERAL TRADE COMMISSION *v.* TICOR TITLE INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 922 F. 2d 1122.

No. 91–126. WYATT *v.* COLE ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 928 F. 2d 718.

No. 91–159. BARNHILL *v.* JOHNSON, TRUSTEE. C. A. 10th Cir. Certiorari granted. Reported below: 931 F. 2d 689.

No. 91–164. UNITED STATES *v.* THOMPSON/CENTER ARMS CO. C. A. Fed. Cir. Certiorari granted. Reported below: 924 F. 2d 1041.

No. 90–1419. NATIONAL RAILROAD PASSENGER CORPORATION ET AL. *v.* BOSTON & MAINE CORP. ET AL.; and

No. 90–1769. INTERSTATE COMMERCE COMMISSION ET AL. *v.* BOSTON & MAINE CORP. ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 286 U. S. App. D. C. 1, 911 F. 2d 743.

No. 90–1745. UNITED STATES *v.* WILSON. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 916 F. 2d 1115.

No. 90–1859. KEENEY, SUPERINTENDENT, OREGON STATE PENITENTIARY *v.* TAMAYO-REYES. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 926 F. 2d 1492.

No. 90–1912. NORDLINGER *v.* HAHN, IN HIS CAPACITY AS TAX ASSESSOR FOR LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Motion of William K. Rentz for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 225 Cal. App. 3d 1259, 275 Cal. Rptr. 684.

No. 90–8466. RIGGINS *v.* NEVADA. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 107 Nev. 178, 808 P. 2d 535.

No. 91–119. WISCONSIN DEPARTMENT OF REVENUE *v.* WILLIAM WRIGLEY, JR., CO. Sup. Ct. Wis. Certiorari granted and case set for oral argument in tandem with No. 91–194, *Quill Corp.* v. *North Dakota, by and Through its Tax Commissioner, Heit-*

kamp, immediately *infra*. Reported below: 160 Wis. 2d 53, 465 N. W. 2d 800.

No. 91–194. QUILL CORP. *v.* NORTH DAKOTA, BY AND THROUGH ITS TAX COMMISSIONER, HEITKAMP. Sup. Ct. N. D. Certiorari granted limited to Question 1 presented by the petition and case set for oral argument in tandem with No. 91–119, *Wisconsin Department of Revenue* v. *William Wrigley, Jr., Co.*, immediately *supra*. Reported below: 470 N. W. 2d 203.

Certiorari Denied. (See also Nos. 90–1874 and 91–5262, *supra*.)

No. 90–1407. PERRY *v.* AMERACE CORP.; and
No. 90–1525. PAC-TEC, INC. *v.* PERRY. C. A. Fed. Cir. Certiorari denied. Reported below: 918 F. 2d 931.

No. 90–1428. ERNEST *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 141 Ill. 2d 412, 566 N. E. 2d 231.

No. 90–1438. KRAMER *v.* RAVELLA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 90–1482. AIR LINE PILOTS ASSN., INTERNATIONAL, AFL–CIO *v.* SHUGRUE, AS CHAPTER 11 TRUSTEE FOR EASTERN AIR LINES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 984.

No. 90–1564. TERRITORIAL COURT OF THE VIRGIN ISLANDS *v.* ESTATE THOMAS MALL, INC. C. A. 3d Cir. Certiorari denied. Reported below: 923 F. 2d 258.

No. 90–1583. DINO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 919 F. 2d 72.

No. 90–1598. KORB *v.* LEHMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 919 F. 2d 243.

No. 90–1612. JUNGHERR *v.* SAN FRANCISCO UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 743.

No. 90–1620. PEARSON ET AL. *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 581 A. 2d 347.

No. 90–1623. S. E. JOHNSON CO. ET AL. *v.* ARTHUR S. LANGENDERFER, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 917 F. 2d 1413.

No. 90–1624. AUGER ET AL. *v.* TENEYCK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 919 F. 2d 730.

No. 90–1626. ABERCROMBIE ET AL. *v.* CLARKE, COMPTROLLER OF THE CURRENCY. C. A. 7th Cir. Certiorari denied. Reported below: 920 F. 2d 1351.

No. 90–1630. ON LEONG CHINESE MERCHANTS ASSOCIATION BUILDING ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 918 F. 2d 1289.

No. 90–1631. WILSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 1064.

No. 90–1641. EARGLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 921 F. 2d 56.

No. 90–1649. ROJAS *v.* ALEXANDER'S DEPARTMENT STORE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 924 F. 2d 406.

No. 90–1656. NARAYAN *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 594.

No. 90–1666. BOYETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 378.

No. 90–1667. SPERRY CORP. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 925 F. 2d 399.

No. 90–1672. HOFFMAN *v.* KIMPTON. Sup. Ct. Mont. Certiorari denied. Reported below: 246 Mont. 52, 803 P. 2d 214.

No. 90–1674. DENENBURG ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 920 F. 2d 301.

No. 90–1677. STARNS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 34.

No. 90–1686. RODRIGUEZ-CARDONA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 924 F. 2d 1148.

No. 90–1688. RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD CO. ET AL. *v.* DAINGERFIELD ISLAND PROTECTIVE SOCIETY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 101, 920 F. 2d 32.

No. 90–1689. GAMBINO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 920 F. 2d 1108.

No. 90–1692. GLECIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 923 F. 2d 496.

No. 90–1695. SCHWIMMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 924 F. 2d 443.

No. 90–1704. OYLER *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 15 Kan. App. 2d 84, 803 P. 2d 585.

No. 90–1707. MARTIN COUNTY, FLORIDA *v.* EXECUTIVE 100, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 1536.

No. 90–1709. JEHAN-DAS, INC. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 237.

No. 90–1715. PHT, INC., DBA POLYNESIAN HOSPITALITY TOURS *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 140, 920 F. 2d 71.

No. 90–1721. NEW YORK CITY PUBLIC UTILITY SERVICE *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.;

No. 90–1725. VERMONT DEPARTMENT OF PUBLIC SERVICE *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.;

No. 90–1760. COUNTY OF WESTCHESTER PUBLIC UTILITY SERVICE AGENCY *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.; and

No. 90–1949. O'NEIL, ATTORNEY GENERAL OF RHODE ISLAND, ET AL. *v.* NEW YORK CITY PUBLIC UTILITY SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 73.

No. 90–1722. GOLDSTEIN *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 204 Ill. App. 3d 1041, 562 N. E. 2d 1183.

No. 90–1728. INGRATI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 397.

No. 90–1733. BROWN ET AL. *v.* STONE, SECRETARY OF THE ARMY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 8, 918 F. 2d 214.

No. 90–1738. PACIFIC POWER & LIGHT CO. ET AL. *v.* MONTANA DEPARTMENT OF REVENUE ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 246 Mont. 398, 804 P. 2d 397.

No. 90–1740. SAFIR *v.* NICKERSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 90–1744. RICHARDSON *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 574 So. 2d 60.

No. 90–1747. DAVIS *v.* BEXAR COUNTY SHERIFF'S CIVIL SERVICE COMMISSION. Sup. Ct. Tex. Certiorari denied. Reported below: 802 S. W. 2d 659.

No. 90–1748. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 145.

No. 90–1751. SANTONI ROIG ET AL. *v.* IBERIA LINEAS AEREAS DE ESPANA. C. A. 1st Cir. Certiorari denied.

No. 90–1752. THOMAS *v.* BLISS & LAUGHLIN STEEL CO. C. A. 7th Cir. Certiorari denied.

No. 90–1753. MICHIGAN *v.* GONDER. Ct. App. Mich. Certiorari denied.

No. 90–1755. RABEN-PASTAL *v.* CITY OF COCONUT CREEK, FLORIDA, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 573 So. 2d 298.

No. 90–1759. GESHWIND *v.* GARRICK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 594.

No. 90–1761. MONROE ET AL. *v.* CITY OF WOODVILLE, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 90–1762. WILLIAMS *v.* GARBAN LTD. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 909.

No. 90–1764. INDEPENDENT FRUIT & PRODUCE CO. ET AL. *v.* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 919 F. 2d 1343.

No. 90–1765. HOLEMAN *v.* ELLIOTT, JUDGE, 311TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90–1766. FEDERAL EXPRESS CORP. *v.* TENNESSEE PUBLIC SERVICE COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 962.

No. 90–1771. CITY OF HENDERSON ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA (NEVADA ENTERTAINMENT INDUSTRIES, INC., ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 90–1773. CORONATION SHIPPING CO. ET AL. *v.* CREPPEL. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 572 So. 2d 1051.

No. 90–1775. GARY COMMUNITY MENTAL HEALTH CENTER, INC., ET AL. *v.* TRAVIS. C. A. 7th Cir. Certiorari denied. Reported below: 921 F. 2d 108.

No. 90–1777. LOMAX *v.* ARMONTROUT, ASSISTANT DIRECTOR OF ADULT INSTITUTIONS, MISSOURI DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 574.

No. 90–1779. TELESAVER, INC., ET AL. *v.* UNITED STATES TRANSMISSION SYSTEMS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 849.

No. 90–1781. ALFLEX CORP. *v.* UNDERWRITERS LABORATORIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 914 F. 2d 261.

No. 90–1782. ALFLEX CORP. *v.* UNDERWRITERS LABORATORIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 914 F. 2d 175.

No. 90–1783. WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK *v.* CHASE. Ct. App. N. Y. Certiorari denied. Reported below: 76 N. Y. 2d 999, 565 N. E. 2d 1265.

No. 90–1784. POTTER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 722, 568 N. E. 2d 1226.

No. 90–1786. BROWN ET AL. *v.* CITY OF DORAVILLE, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 848.

No. 90–1787. LUDLOW PARK HOMEOWNERS ASSN., INC., ET AL. *v.* COUNTY OF WESTCHESTER, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 909.

No. 90–1788. KUNKLE ET AL. *v.* FULTON COUNTY, OHIO, BOARD OF COMMISSIONERS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 922 F. 2d 841.

No. 90–1789. LEHTINEN *v.* S. J. & W. RANCH, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 913 F. 2d 1538 and 924 F. 2d 1555.

No. 90–1790. SAVIC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 918 F. 2d 696.

No. 90–1793. AVON GROUP, INC. *v.* NEW YORK INSURANCE DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 593.

No. 90–1794. CHARRIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 919 F. 2d 842.

No. 90–1795. CHROMALLOY PHARMACEUTICAL, INC. *v.* BOYER, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF BOYER, DECEASED, ET AL.; and

No. 90–1817. TENNECO RESINS, INC. *v.* SIMMERS ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 394 Pa. Super. 464, 576 A. 2d 376.

No. 90–1796. INTERNATIONAL LONGSHOREMEN'S ASSN., AFL–CIO, LOCAL UNION NO. 1937 *v.* LOWER LAKE DOCK CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 900.

No. 90–1797. POLYAK *v.* BOSTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 920 F. 2d 933.

No. 90–1798. EBANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 924 F. 2d 753.

No. 90–1803. BILZERIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 1285.

No. 90–1804. QUIRK ET UX. *v.* TOWN OF SANDWICH. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 409 Mass. 380, 566 N. E. 2d 614.

No. 90–1805. LAUREL SAND & GRAVEL, INC. *v.* CSX TRANSPORTATION, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 539.

No. 90–1806. PORT CLINTON ASSOCIATES *v.* BOARD OF SELECTMEN OF TOWN OF CLINTON. Sup. Ct. Conn. Certiorari denied. Reported below: 217 Conn. 588, 587 A. 2d 126.

No. 90–1807. SIMMONS *v.* CONNECTICUT ET AL. App. Ct. Conn. Certiorari denied. Reported below: 24 Conn. App. 801, 584 A. 2d 484.

No. 90–1808. PRICE *v.* DIGITAL EQUIPMENT CORP. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 401.

No. 90–1809. WHITMER *v.* CITY OF CHICAGO ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 199 Ill. App. 3d 1100, 585 N. E. 2d 646.

No. 90–1811. MATEYKO ET UX. *v.* FELIX ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 824.

No. 90–1814. PASKAVITCH *v.* REAGAN, FORMER PRESIDENT. C. A. 2d Cir. Certiorari denied. Reported below: 916 F. 2d 708.

No. 90–1815. MURPHY, DBA THOMAS M. MURPHY & ASSOCIATES *v.* PROVIDENT MUTUAL LIFE INSURANCE COMPANY OF PHILADELPHIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 923.

No. 90–1816. MSM FARMS, INC. *v.* SPIRE, ATTORNEY GENERAL OF NEBRASKA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 330.

No. 90–1818. WELSH *v.* DELOACH. C. A. 10th Cir. Certiorari denied. Reported below: 922 F. 2d 618.

No. 90–1819. ANDERSON *v.* ENVIRONMENTAL HEALTH DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 861.

No. 90–1821. JAMCO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 614.

No. 90–1822. SANCHEZ *v.* CITY OF SANTA ANA, CALIFORNIA; and

No. 90–1979. CITY OF SANTA ANA *v.* SANCHEZ. C. A. 9th Cir. Certiorari denied. Reported below: 915 F. 2d 424.

No. 90–1825. NORTHWEST RACQUET SWIM & HEALTH CLUBS, INC. *v.* RESOLUTION TRUST CORPORATION ET AL.; and

No. 90–1851. ADAMS *v.* RESOLUTION TRUST CORPORATION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: No. 90–1825, 927 F. 2d 355; No. 90–1851, 927 F. 2d 348.

No. 90–1826. FLETCHER ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 495.

No. 90–1827. PULLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 922 F. 2d 1283.

No. 90–1829. 701 PHARMACY CORP. ET AL. *v.* PERALES, COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 163.

No. 90–1830. BOYD COUNTY BOARD OF EDUCATION *v.* UNITED STATES FIDELITY & GUARANTY CO. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 603.

No. 90–1831. MITCHELL *v.* G. SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 396.

No. 90–1833. NEW YORK *v.* BLOUNT. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 888, 571 N. E. 2d 78.

No. 90–1834. WADE ET UX. *v.* SHOOK, TRUSTEE, ET AL. C. A. 7th Cir. Certiorari denied.

No. 90–1836. MINNICKS, EXECUTRIX OF THE SUCCESSION OF MISTICH *v.* MISTICH ET AL. Ct. App. La., 4th Cir. Certiorari denied.

No. 90–1838. LUSKIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 926 F. 2d 372.

No. 90–1839. MR. FURNITURE WAREHOUSE, INC., ET AL. *v.* BARCLAYS/AMERICAN COMMERCIAL, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 919 F. 2d 1517.

No. 90–1840. KNIGHT *v.* BELL. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1470.

No. 90–1841. WANAT *v.* OSSEN. Sup. Ct. Conn. Certiorari denied. Reported below: 217 Conn. 313, 585 A. 2d 685.

No. 90–1842. PENNSYLVANIA *v.* PENN. Super. Ct. Pa. Certiorari denied. Reported below: 386 Pa. Super. 133, 562 A. 2d 833.

No. 90–1843. BLUE CROSS & BLUE SHIELD OF MARYLAND *v.* WEINER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 81.

No. 90–1845. FELKER *v.* HOULOOSE, CHIEF PROBATION OFFICER, PROBATION AND PAROLE DEPARTMENTS, 43RD JUDICIAL DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 90–1848. KALE *v.* COMBINED INSURANCE COMPANY OF AMERICA. C. A. 1st Cir. Certiorari denied. Reported below: 924 F. 2d 1161.

No. 90–1849. MCMACKIN, WARDEN *v.* HART. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 256.

No. 90–1850. PERALES *v.* MABSTOA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

No. 90–1854. CRUMLING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 397.

No. 90–1856. JUDICIAL RETIREMENT AND REMOVAL COMMISSION OF KENTUCKY *v.* COMBS, JUSTICE OF THE SUPREME COURT OF KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 803 S. W. 2d 953.

No. 90–1857. CITY OF YONKERS, NEW YORK *v.* UNITED STATES ET AL. (two cases). C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 85 (first case).

No. 90–1858. BAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 99.

No. 90–1863. CHANDLER ET AL. *v.* GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 917 F. 2d 486.

No. 90–1865. HERMES *v.* SECRETARY OF HEALTH AND HUMAN SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 926 F. 2d 789.

No. 90–1866. FAGONE *v.* FAGONE. Sup. Ct. Ohio. Certiorari denied. Reported below: 55 Ohio St. 3d 720, 564 N. E. 2d 496.

No. 90–1868. KERSEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 576 So. 2d 300.

No. 90–1869. MARZOUCA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 910.

No. 90–1870. WISHING WELL LIMITED PARTNERSHIP *v.* SECURITY PACIFIC BUSINESS FINANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 706.

No. 90–1871. AYOUB, INDEPENDENT EXECUTRIX OF THE ESTATE OF AYOUB *v.* TEXAS A & M UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 834.

No. 90–1872. EMPLOYERS INSURANCE OF WAUSAU ET AL. *v.* MISSISSIPPI STATE HIGHWAY COMMISSION ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 575 So. 2d 999.

No. 90–1873. BINGHAM ET AL. *v.* NATIONAL CREDIT UNION ADMINISTRATION BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 282.

No. 90–1876. MORRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 504.

No. 90–1877. SINGAL *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1059.

No. 90–1878. UNITED VAN LINES, INC. *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 90–1879. MISSOURI *v.* ZANCAUSKE. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 804 S. W. 2d 851.

No. 90–1882. ESTATE OF CARTER, THROUGH ITS DATIVE TESTAMENTARY EXECUTOR, TAGGART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 921 F. 2d 63.

No. 90–1884. PRUDENTIAL INSURANCE COMPANY OF AMERICA *v.* BROWN. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 90–1885. SOBERON *v.* UNITED STATES; and
No. 90–8081. PENA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 929 F. 2d 935.

No. 90–1886. RICHARDSON'S JEWELLRY (LLOYDMINSTER) LTD. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE (ORAN ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 90–1888. FOSTER MCGAW HOSPITAL OF LOYOLA UNIVERSITY OF CHICAGO ET AL. *v.* BUILDING MATERIAL CHAUFFEURS, TEAMSTERS & HELPERS WELFARE FUND OF CHICAGO, LOCAL 786. C. A. 7th Cir. Certiorari denied. Reported below: 925 F. 2d 1023.

No. 90–1889. FLUENT, INDIVIDUALLY AND AS A REPRESENTATIVE OF THE CLASS OF SALAMANCA LESSEES, ET AL. *v.* SALAMANCA INDIAN LEASE AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 542.

No. 90–1890. CLARK *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 550.

No. 90–1891. KALISH ET AL. *v.* FRANKLIN ADVISERS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 590.

No. 90–1892. UNION OIL COMPANY OF CALIFORNIA *v.* O'RILEY. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 226 Cal. App. 3d 199, 276 Cal. Rptr. 483.

No. 90–1893. HIRSH *v.* CITY OF ATLANTA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 22, 401 S. E. 2d 530.

No. 90–1894. BYRD *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 90–1895. BERGNA *v.* FINKELSTEIN. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 1449.

No. 90–1896. CITIZENS ACTION COALITION OF INDIANA, INC., ET AL. *v.* PSI ENERGY, INC., ET AL. Sup. Ct. Ind. Certiorari denied.

No. 90–1898. ABBOTT LABORATORIES *v.* KESSLER, COMMISSIONER, FOOD AND DRUG ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 190, 920 F. 2d 984.

No. 90–1899. GULF STATES UTILITIES CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 345, 922 F. 2d 873.

No. 90–1900. 11126 BALTIMORE BOULEVARD, INC., T/A WARWICK BOOKS *v.* PRINCE GEORGE'S COUNTY, MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 557.

No. 90–1901. HAYES *v.* BYER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 144.

No. 90–1904. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 648.

No. 90–1905. MARINE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 280.

No. 90–1906. GRACEY *v.* REIGLE. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 50.

No. 90–1907. DELUXE SHEET METAL, INC., ET AL. *v.* PLYMOUTH PLASTICS, INC. Ct. App. Ind. Certiorari denied. Reported below: 555 N. E. 2d 1296.

No. 90–1908. CEDAR BROOK SERVICE STATION, INC., ET AL. *v.* CHEVRON U. S. A., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 908.

No. 90–1909. WHITE, AKA CASCIO *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 464 N. W. 2d 585.

No. 90–1910. ROSEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 929 F. 2d 839.

No. 90–1911. LOEBER ET VIR, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR DAUGHTER, LOEBER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 924 F. 2d 1340.

No. 90–1913. YELLOW FREIGHT SYSTEM, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 930 F. 2d 316.

No. 90–1914. OPDAHL ET UX. *v.* VON HOFF INTERNATIONAL, INC., ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 467 N. W. 2d 927.

No. 90–1916. DEAN *v.* DEAN. Sup. Ct. Va. Certiorari denied.

No. 90–1917. WHITCOMBE ET UX. *v.* UNITED STATES DEPARTMENT OF THE TREASURY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 846.

No. 90–1919. KRAIN *v.* HICKS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 60.

No. 90–1920. DIERSCHKE ET UX. *v.* O'CHESKEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 600.

No. 90–1921. SEXTON, AN UNMARRIED INFANT, BY AND THROUGH HIS MOTHER AND NATURAL GUARDIAN, SEXTON *v.* BELL HELMETS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 926 F. 2d 331.

No. 90–1923. FEDERAL ELECTION COMMISSION *v.* KEEFER ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 928 F. 2d 468.

No. 90–1924. BALLAY ET AL. *v.* LEGG MASON WOOD WALKER, INC. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 682.

No. 90–1925. BEDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 923.

No. 90–1926. ARIZONA *v.* BUCCINI. Sup. Ct. Ariz. Certiorari denied. Reported below: 167 Ariz. 550, 810 P. 2d 178.

No. 90–1927. KORNAFEL *v.* STEWART, ASSISTANT DISTRICT ATTORNEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 417.

No. 90–1928. RUSSO ET AL. *v.* MASSULLO ET AL.; and
No. 91–118. POHLMAN *v.* RUSSO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 605.

No. 90–1929. PENNSYLVANIA POWER CO. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 526 Pa. 453, 587 A. 2d 312.

No. 90–1930. COLON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 473.

No. 90–1932. MOODY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 341.

No. 90–1933. MOSES ET AL. *v.* BUSINESS CARD EXPRESS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 1131.

No. 90–1934. TRIUMPH TANKERS LTD. *v.* KERR-MCGEE REFINING CORP. C. A. 2d Cir. Certiorari denied. Reported below: 924 F. 2d 467.

No. 90–1935. WILLIAMS ET AL. *v.* VERMONT ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 156 Vt. 42, 589 A. 2d 840.

No. 90–1938. NEW YORK TIMES CO. *v.* RAGIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 995.

No. 90–1939. CARTER ET UX. *v.* DIRECTOR OF REVENUE OF MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 805 S. W. 2d 154.

No. 90–1940. TRAPPER MINING INC. ET AL. *v.* LUJAN, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 923 F. 2d 774.

No. 90–1942. SHIPP ET UX. *v.* BYERLEIN. Ct. App. Mich. Certiorari denied. Reported below: 182 Mich. App. 39, 451 N. W. 2d 565.

No. 90–1943. PSS STEAMSHIP CO., INC. *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 565.

No. 90–1944. KRUGER ET AL. *v.* EASTERN AIR LINES, INC. C. A. 2d Cir. Certiorari denied.

No. 90–1945. KING *v.* BOARD OF REGENTS OF THE UNIVERSITY OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1475.

No. 90–1948. RAM *v.* MASSACHUSETTS DEPARTMENT OF TRANSPORTATION ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 409 Mass. 481, 567 N. E. 2d 208.

No. 90–1950. RICHARDSON *v.* JONES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 259, 925 F. 2d 490.

No. 90–1951. HASKETT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 210, 801 P. 2d 323.

No. 90–1952. FINI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 929 F. 2d 765.

No. 90–1954. 2 TUDOR CITY PLACE ASSOCIATES ET AL. *v.* 2 TUDOR CITY TENANTS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 924 F. 2d 1247.

No. 90–1955. PABON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 577 So. 2d 953.

No. 90–1956. GARRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 920.

No. 90–1957. MCMANUS *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 90–1958. WALKER *v.* SUBURBAN HOSPITAL ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 400.

No. 90–1959. WINDSOR HOUSE, INC. *v.* THORNTON, FKA ALEXANDER GRANT & CO. Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 158, 566 N. E. 2d 1220.

No. 90–1960. WRENN *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 2d Cir. Certiorari denied.

No. 90–1961. WRENN *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied.

No. 90–1962. PYRAMID SECURITIES LTD. *v.* IB RESOLUTION, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 157, 924 F. 2d 1114.

No. 90–1963. DAMER *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO (STERNS ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 90–1964. COLORADO DEPARTMENT OF SOCIAL SERVICES *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 928 F. 2d 961.

No. 90–1965. BORMAN'S, INC. *v.* MICHIGAN PROPERTY & CASUALTY GUARANTY ASSN. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 160.

No. 90–1966. LARRY HARMON PICTURES CORP. *v.* WILLIAMS RESTAURANT CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 929 F. 2d 662.

No. 90–1967. CORBITT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 924 F. 2d 1362.

No. 90–1968. CROSS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1136.

No. 90–1969. WALTON *v.* COWIN EQUIPMENT CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 90–1971. FEDERAL INSURANCE CO. *v.* SUSQUEHANNA BROADCASTING CO. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 1131.

No. 90–1973. ERBAUER CONSTRUCTION CORP. *v.* PAN AMERICAN LIFE INSURANCE CO. Sup. Ct. Tex. Certiorari denied. Reported below: 805 S. W. 2d 395.

No. 90–1975. LATTARULO *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 124, 401 S. E. 2d 516.

No. 90–1976. CENTRAL STATES MOTOR FREIGHT BUREAU, INC., ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 142, 924 F. 2d 1099.

No. 90–1978. ROY *v.* AMOCO OIL CO. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1475.

No. 90–1980. TOWERS WORLD AIRWAYS, INC., ET AL. *v.* PHH AVIATION SYSTEMS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 933 F. 2d 174.

No. 90–1981. AGUIRRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 922 F. 2d 602.

No. 90–1982. JONES, MOTHER AND GUARDIAN ON BEHALF OF JONES, AN INCOMPETENT, ET AL. *v.* DAYTON BOARD OF EDUCATION ET AL. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 90–1983. PAYNE *v.* UNITED STATES; and MEDRANO-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 1460.

No. 90–1984. GORMAN, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF GORMAN, DECEASED *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 811 S. W. 2d 542.

No. 90–1986. JENSEN *v.* HAWES ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 90–6888. LOWE *v.* JUVENILE COURT IN AND FOR THE CITY AND COUNTY OF DENVER ET AL. Sup. Ct. Colo. Certiorari denied.

No. 90–7054. EATON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 240 Va. 236, 397 S. E. 2d 385.

No. 90–7135. SMALL *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 831.

No. 90–7173. THOMAS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 201 Ill. App. 3d 255, 559 N. E. 2d 262.

No. 90–7286. PINKERTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 845.

No. 90–7305. BRYANT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 202 Ill. App. 3d 290, 559 N. E. 2d 930.

No. 90–7318. ANDERSON *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 201 Ill. App. 3d 75, 559 N. E. 2d 267.

No. 90–7348. PHILAGIOS *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 921 F. 2d 275.

No. 90–7381. BLAIR *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 916 F. 2d 1310.

No. 90–7414. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 909 F. 2d 442.

No. 90–7416. FOLEY *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 853.

No. 90–7439. WATERMAN, AKA GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 909 F. 2d 1490.

No. 90–7504. MAHURIN ET AL. *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 799 S. W. 2d 840.

No. 90–7522. HARRIGAN *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 831.

No. 90–7526. CONTRERAS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 90–7567. JONES *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied. Reported below: 920 F. 2d 936.

No. 90–7571. CAHILL *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 572 So. 2d 915.

No. 90–7599. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 921 F. 2d 59.

No. 90–7603. LAVERNIA *v.* UNITED STATES BUREAU OF PRISONS. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1475.

No. 90–7628. MEGAR *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 90–7633. FLOWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 923 F. 2d 866.

No. 90–7643. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 1053.

No. 90–7654. GEISLER *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 90–7669. DEEMER *v.* POUNDS ET AL. C. A. 5th Cir. Certiorari denied.

No. 90–7682. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 834.

No. 90–7691. WILSON *v.* LANE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 416.

No. 90–7693. RUS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 922 F. 2d 842.

No. 90–7695. DULUC DEL ROSARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 920 F. 2d 167.

No. 90–7698. YARTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 90–7702. GHASHIYAH, AKA CASTEEL *v.* CIRCUIT COURT FOR DANE COUNTY ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 157 Wis. 2d lii, 464 N. W. 2d 425.

No. 90–7718. THOMAS *v.* CHENEY, SECRETARY OF DEFENSE, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 925 F. 2d 1407.

No. 90–7722. CENATUS, AKA REMY *v.* SCHROEDER ET AL. C. A. 10th Cir. Certiorari denied.

No. 90–7730. MOON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 922 F. 2d 842.

No. 90–7732. RILEY *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 852.

No. 90–7740. NEEDLER *v.* VALLEY NATIONAL BANK OF ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 1438.

No. 90–7759. KORDOSKY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 921 F. 2d 722.

No. 90–7769. DUNN *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 166 Ariz. 506, 803 P. 2d 917.

No. 90–7777. DERDEN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 575 So. 2d 1003.

No. 90–7778. SAUNDERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 398.

No. 90–7781. TWITTY *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 918 F. 2d 181.

No. 90–7784. AURELIO *v.* LOUISIANA STEVEDORES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 924 F. 2d 1055.

No. 90–7790. MAYO *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 683 and 920 F. 2d 251.

No. 90–7800. BROWNLEE *v.* ABBEVILLE SHERIFF DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 691.

No. 90–7822. ROMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 834.

No. 90–7832. KANE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 420.

No. 90–7836. LAZARCHIK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 924 F. 2d 211.

No. 90–7847. POFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 926 F. 2d 588.

No. 90–7857. ROUNDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1530.

No. 90–7860. DONALD *v.* RAST ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 379.

No. 90–7864. CLIFTON *v.* CRAIG. C. A. 10th Cir. Certiorari denied. Reported below: 924 F. 2d 182.

No. 90–7865. MOORE *v.* WINEBRENNER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 1312.

No. 90–7866. HARRIS *v.* BURGESS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 848.

No. 90–7880. MYLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1473.

No. 90–7888. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1059.

No. 90–7894. DYE *v.* LEE, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 1051.

No. 90–7896. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 928 F. 2d 245.

No. 90–7898. KING *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 417.

No. 90–7903. ASHFORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 924 F. 2d 1416.

No. 90–7908. ORTEGA *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 90–7913. FULTON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 120, 566 N. E. 2d 1195.

No. 90–7923. BOYD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 945.

No. 90–7929. WEAVER *v.* PUNG, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 1097.

No. 90–7930. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 864.

No. 90–7950. MURCHU, AKA MURPHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 926 F. 2d 50.

No. 90–7955. DAVENPORT *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY, ET AL. C. A. 7th Cir. Certiorari denied.

No. 90–7963. DEPASQUALE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 106 Nev. 843, 803 P. 2d 218.

No. 90–7965. ROBERTS *v.* UNITED STATES;
No. 90–8094. LAVIN *v.* UNITED STATES;
No. 90–8113. DOYHARZABAL *v.* UNITED STATES;
No. 90–8339. COLLADO *v.* UNITED STATES;
No. 90–8364. DIAZ LORIGA *v.* UNITED STATES; and
No. 91–5165. BEALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1412.

No. 90–7972. MASON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 202 Ill. App. 3d 1111, 593 N. E. 2d 1176.

No. 90–7976. MEIROVITZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 918 F. 2d 1376.

No. 90–7977. CLIFTON *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 90–7983. COOPER ET UX. *v.* MERRILL LYNCH EQUITY ACCESS INC. App. Ct. Conn. Certiorari denied.

No. 90–7987. PARKER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 304 Ark. xxiv.

No. 90–7988. DOWNS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 572 So. 2d 895.

No. 90–7994. WRIGHT *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 90–7996. COULTER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 304 Ark. 527, 804 S. W. 2d 348.

No. 90–7999. HENDRICKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 204 Ill. App. 3d 1104, 598 N. E. 2d 504.

No. 90–8000. MARSH *v.* SKINNER, SECRETARY OF TRANSPORTATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 112.

No. 90–8002. JACOBS *v.* DALLMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1058.

No. 90–8003. KUKES *v.* SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY (ALLSTATE INSURANCE CO., REAL PARTY IN INTEREST). Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 90–8004. COOPER *v.* NASH ET AL. C. A. 8th Cir. Certiorari denied.

No. 90–8006. BURTON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 90–8008. TURNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 926 F. 2d 883.

No. 90–8010. RUIZ-RAVELO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 924 F. 2d 1056.

No. 90–8011. GRANT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 90–8012. WINDBUSH *v.* PERALES ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 163 App. Div. 2d 480, 559 N. Y. S. 2d 670.

No. 90–8016. TIGNER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 203 Ill. App. 3d 1104, 597 N. E. 2d 304.

No. 90–8017. RILEY *v.* PLANTIER, SUPERINTENDENT, ADULT DIAGNOSTIC AND TREATMENT CENTER. C. A. 3d Cir. Certiorari denied.

No. 90–8020. COSNER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 90–8022. STEWART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 922 F. 2d 842.

No. 90–8026. MORGAN *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 418.

No. 90–8027. JORDAN *v.* BARNETT, SUPERINTENDENT, EASTERN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 1052.

No. 90–8028. LUCAS ET AL. *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 852.

No. 90–8031. LINDGREN *v.* MCGINNIS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 925 F. 2d 198.

No. 90–8033. COOPER ET AL. *v.* FRANK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 593.

No. 90–8034. RAHMING *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 907 F. 2d 144.

No. 90–8035. THOMPSON *v.* MOORE ET AL. C. A. 8th Cir. Certiorari denied.

No. 90–8037. MEEKS *v.* O'LEARY ET AL. C. A. 7th Cir. Certiorari denied.

No. 90–8039. WOLLERMANN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 159 Wis. 2d 431, 464 N. W. 2d 680.

No. 90–8041. JOHNSON *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 107.

No. 90–8044. CARCAISE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1523.

No. 90–8046. DOTTA *v.* KEENEY. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 861.

No. 90–8050. ROBINSON *v.* YELLOW FREIGHT SYSTEM. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 849.

No. 90–8051. WILLIAMS *v.* WELLS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1467.

No. 90–8054. WINSTEAD *v.* CLARK ET AL. C. A. 3d Cir. Certiorari denied.

No. 90–8055. ZACZEK *v.* SHERIFF, FAUQUIER COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 695.

No. 90–8059. SANDERS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 801 S. W. 2d 665.

No. 90–8060. HUNT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 2d 1028 and 925 F. 2d 1181.

No. 90–8061. JONES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 260 Ga. 794, 401 S. E. 2d 1.

No. 90–8063. CARMONA *v.* ZAMORA. C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 1459.

No. 90–8066. WASHINGTON *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 930 F. 2d 919.

No. 90–8067. STEPHENS *v.* MUNCY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 920 F. 2d 927.

No. 90–8069. RINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 90–8070. PERKINS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 546 N. E. 2d 127.

No. 90–8072. PHILLIPS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 90–8073. SANCHEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 925 F. 2d 1468.

No. 90–8075. DEMOS *v.* COURT OF APPEALS OF WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 90–8076. THOMAS *v.* NEW YORK CITY POLICE DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied.

No. 90–8078. WILDER *v.* CHAIRMAN OF THE CENTRAL CLASSIFICATION BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 926 F. 2d 367.

No. 90–8079. WALKER *v.* REDMOND ET AL. C. A. 5th Cir. Certiorari denied.

No. 90–8080. WILEY *v.* O'CONNOR ET AL. C. A. 7th Cir. Certiorari denied.

No. 90–8082. CAICEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 914 F. 2d 268.

No. 90–8083. ANDERSON *v.* ALCOA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 415.

No. 90–8085. CHRISPEN *v.* TAUBE ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 573 So. 2d 6.

No. 90–8086. CHRISPEN *v.* ROBINSON, JUDGE, CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 575 So. 2d 662.

No. 90–8091. GLENN *v.* OHIO. Ct. App. Ohio, Portage County. Certiorari denied.

No. 90–8095. MAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1458.

No. 90–8098. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 109.

No. 90–8100. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 695.

No. 90–8101. MCALLISTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 927 F. 2d 136.

No. 90–8104. NOLASCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 926 F. 2d 869.

No. 90–8108. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 90–8110. LOCKHART *v.* ALASKA SALES & SERVICES CO., INC., ET AL. Sup. Ct. Alaska. Certiorari denied.

No. 90–8111. HUSKY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 924 F. 2d 223.

No. 90–8114. TYE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 141 Ill. 2d 1, 565 N. E. 2d 931.

No. 90–8118. WEATHERBY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 420.

No. 90–8121. AHFEROM *v.* MICHIGAN BUREAU OF WORKERS DISABILITY COMPENSATION, DIRECTOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 603.

No. 90–8123. ARTHUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90–8124. BRUNO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 574 So. 2d 76.

No. 90–8125. CARR ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 932 F. 2d 67.

No. 90–8127. TIMMONS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 576 So. 2d 302.

No. 90–8128. SHELEY *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 613.

No. 90–8129. QUESINBERRY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 241 Va. 364, 402 S. E. 2d 218.

No. 90–8130. WRIGHT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 367, 802 P. 2d 221.

No. 90–8134. SMITH *v.* DOUGHERTY ET AL. Ct. App. Wash. Certiorari denied. Reported below: 59 Wash. App. 1020.

No. 90–8135. AZIZ *v.* ST. LOUIS COUNTY ET AL. C. A. 8th Cir. Certiorari denied.

No. 90–8136. BRANTLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 920 F. 2d 938.

No. 90–8138. FOWLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 917.

No. 90–8139. FRESCAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 857.

No. 90–8141. ALLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 911 F. 2d 739.

No. 90–8143. ANDERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 574 So. 2d 87.

No. 90–8144. EVANS *v.* GODINAS, WARDEN. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 1119, 838 P. 2d 940.

No. 90–8145. BEYAH *v.* LAIDLAW ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

No. 90–8146. FISH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 185.

No. 90–8147. CARBALLEA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90–8149. RAINEY *v.* KERBY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 34.

No. 90–8150. SMITH *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 90–8152. TAPIA *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 926 F. 2d 1554.

No. 90–8153. PERKINS *v.* JAMAICA WATER SUPPLY CO. C. A. 2d Cir. Certiorari denied.

No. 90–8154. BURGESS *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 691.

No. 90–8157. PRETENCIO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 930 F. 2d 38.

No. 90–8158. WALKER *v.* DEEDS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 90–8160. STANO *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1125.

No. 90–8161. SHELBY *v.* BLACK, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 90–8163. GONZALEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 3d 1179, 800 P. 2d 1159.

No. 90–8164. HUNT *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 321 Md. 387, 583 A. 2d 218.

No. 90–8165. JACKSON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 29, 565 N. E. 2d 549.

No. 90–8169. NORMAN, AKA KETCHUM *v.* DUNKLEBURG ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 600.

No. 90–8171. MARTIN *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 90–8173. HOLSEY *v.* SMITH. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 1052.

No. 90–8174. GODFREE *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 609.

No. 90–8176. RAEL *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 34.

No. 90–8177. BRUCHHAUSEN *v.* CLARK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 700.

No. 90–8179. MILLSON *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 907 F. 2d 144.

No. 90–8180. LEPISCOPO *v.* TANSY, WARDEN. Dist. Ct. N. M., 1st Jud. Dist. Certiorari denied.

No. 90–8181. HELZER *v.* LAMBLE. Ct. App. Mich. Certiorari denied.

No. 90–8183. LOCKHART *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 35.

No. 90–8185. SINDRAM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 90–8186. BYNUM, AKA MARTIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 205 Ill. App. 3d 1104, 600 N. E. 2d 932.

No. 90–8187. FRIGARD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 90–8188. PLAIR *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 90–8189. HUGHES *v.* KERBY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 33.

No. 90–8190. HAYNES *v.* ARMONTROUT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 90–8192. MARTIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 343, 926 F. 2d 1216.

No. 90–8193. MARSHALL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 85 Md. App. 803.

No. 90–8195. AMUNTHAIYAKUL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

No. 90–8196. GATES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90–8197. WILLIAM *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 248 Kan. 389, 807 P. 2d 1292.

No. 90–8199. VENERI *v.* JACOBS ET AL. C. A. 3d Cir. Certiorari denied.

No. 90–8201. KAURISH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 648, 802 P. 2d 278.

No. 90–8202. MCCOURT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1229.

No. 90–8203. LUJAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90–8204. JEFFERSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 90–8205. JIMINEZ *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 90–8206. HILL *v.* CITY OF EUGENE ET AL. C. A. 9th Cir. Certiorari denied.

No. 90–8207. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 575 So. 2d 665.

No. 90–8210. ADAMS *v.* MARTIN, SECRETARY OF LABOR. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 771.

No. 90–8213. J. R. *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 567 So. 2d 1370.

No. 90–8214. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 850.

No. 90–8216. REYNOLDS-MARSHALL *v.* HALLUM. Sup. Jud. Ct. Me. Certiorari denied.

No. 90–8217. WELSH *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 932 F. 2d 981.

No. 90–8218. SOTOLONGO *v.* PROSPECT INDUSTRIES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 51.

No. 90–8220. WALKER *v.* DEROSALIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 910.

No. 90–8222. COLBERT *v.* UNITED STATES (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 397.

No. 90–8223. D'SOUZA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 128.

No. 90–8224. TAPIA *v.* SUPERINTENDENT, OSSINING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 90–8226. JONES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 90–8228. DOWNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90–8232. DEAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 605.

No. 90–8234. WRIGHT *v.* NIX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 928 F. 2d 270.

No. 90–8235. REDD *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 90–8236. EDMOND *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 17, 924 F. 2d 261.

No. 90–8237. ROWLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1021.

No. 90–8238. PIERCE *v.* NEWHART ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 693.

No. 90–8239. SIMON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 915 F. 2d 1557.

No. 90–8240. CHENAULT *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO, ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 90–8241. AIKEN *v.* BLODGETT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 214.

No. 90–8242. AVERITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 926 F. 2d 387.

No. 90–8243. ENGLEHART *v.* READER, JUDGE, COURT OF COMMON PLEAS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1463.

No. 90–8244. BORDERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 90–8245. GRIGSBY *v.* ESTELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 90–8246. BETTS *v.* RICHARDS ET AL. Ct. App. Kan. Certiorari denied.

No. 90–8247. DURHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 52.

No. 90–8248. ALLEN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 206 Ill. App. 3d 1108, 602 N. E. 2d 996.

No. 90–8249. KRISHNAN *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied.

No. 90–8250. JACKSON *v.* CLEVELAND STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1058.

No. 90–8251. JELICIC *v.* HARTFORD INSURANCE GROUP. C. A. 9th Cir. Certiorari denied. Reported below: 917 F. 2d 1307.

No. 90–8253. MUNDY *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 11 Va. App. 461, 399 S. E. 2d 29.

No. 90–8254. HARRIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 580 So. 2d 33.

No. 90–8255. MEADOWS *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 703.

No. 90–8256. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 597.

No. 90–8257. INGRAM *v.* NESBITT ET AL. Sup. Ct. S. C. Certiorari denied.

No. 90–8258. THOMAS *v.* UNITED STATES; and
No. 91–5017. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 52.

No. 90–8259. WESCOTT *v.* AMERIFIRST FEDERAL SAVINGS & LOAN ASSN. ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 564 So. 2d 166.

No. 90–8260. SATTERFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 90–8261. RAMOS SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 925 F. 2d 15.

No. 90–8262. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 612.

No. 90–8263. STONER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 927 F. 2d 45.

No. 90–8264. EICHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 605.

No. 90–8265. SIMMONDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 685.

No. 90–8266. RED BLANKET *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 90–8267. ARIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 1387.

No. 90–8268. RUFOLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 911.

No. 90–8269. BANKS, AKA BISHOP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 920.

No. 90–8270. RISTAU *v.* THALACKER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 186.

No. 90–8271. UPFALOW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 846.

No. 90–8272. SCOTT *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 90–8273. WILKINS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 802 S. W. 2d 491.

No. 90–8274. BATES *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 804 S. W. 2d 868.

No. 90–8275. ALLEN *v.* DAVIS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 706.

No. 90–8276. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 76.

No. 90–8277. ROBINSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 574 So. 2d 108.

No. 90–8278. FROSCHAUER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 927 F. 2d 607.

No. 90–8279. FRIEND *v.* WILLIAMS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 919 F. 2d 140.

No. 90–8280. BONNETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 63.

No. 90–8281. BROWN *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 90–8282. RODRIGUEZ DIAZ *v.* FLORIDA BOARD OF BAR EXAMINERS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 581 So. 2d 1309.

No. 90–8283. SPRADLEY *v.* COMBS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1473.

No. 90–8284. RICHARDSON *v.* WITKOWSKI, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 399.

No. 90–8285. SHERMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 324.

No. 90–8286. PRESCOTT *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 399.

No. 90–8287. WEISS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 185.

No. 90–8288. WILLIAMS *v.* GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 90–8289. RAY *v.* PACIFIC MISSILE TEST CENTER AGENCY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 1459.

No. 90–8290. AUBIN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 100 N. C. App. 628, 397 S. E. 2d 653.

No. 90–8291. SINGH *v.* MISSOURI DEPARTMENT OF MENTAL HEALTH. C. A. 8th Cir. Certiorari denied.

No. 90–8292. DUPARD *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 90–8293. PALLAIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 921 F. 2d 684.

No. 90–8295. KELLY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 3d 931, 800 P. 2d 516.

No. 90–8296. JETER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 90–8297. HALEY *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 924 F. 2d 735.

No. 90–8298. MCKEE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 90–8299. MAUK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90–8300. MOSBY *v.* GAMBLE ET AL. C. A. 8th Cir. Certiorari denied.

No. 90–8301. LONG *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 930 F. 2d 38.

No. 90–8302. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90–8303. KIRKSEY *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 90–8304. ARGENTINA *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 415.

No. 90–8305. GUNSBY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 574 So. 2d 1085.

No. 90–8306. DOLCE *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 923.

No. 90–8307. DOUGLAS *v.* GOMEZ. Sup. Ct. Cal. Certiorari denied.

No. 90–8308. TAYLOR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 719, 801 P. 2d 1142.

No. 90–8309. TOLEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90–8310. FLAGG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 923.

No. 90–8311. GAYDEN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 584 A. 2d 578.

No. 90–8312. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 512.

No. 90–8313. WEBER *v.* GORENFELD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 409.

No. 90–8314. CROSBY *v.* KEENE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 965.

No. 90–8315. GIPSON *v.* CASTLE ROCK POLICE DEPARTMENT ET AL. C. A. 10th Cir. Certiorari denied.

No. 90–8316. ROBERTS *v.* MANSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 186.

No. 90–8317. CHAPEL *v.* CHAPEL. Sup. Ct. Ore. Certiorari denied.

No. 90–8318. WILLIAMS *v.* FOLTZ, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 90–8319. HOUCHINS *v.* LOVE, HORRY COUNTY, SOUTH CAROLINA, ADMINISTRATOR. C. A. 4th Cir. Certiorari denied. Reported below: 920 F. 2d 926.

No. 90–8320. JONES *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 90–8321. NYBERG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 409.

No. 90–8322. O'BRIEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 696.

No. 90–8323. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 929 F. 2d 364.

No. 90–8324. MORRIS ET AL. *v.* DONREY OF NEVADA, INC., ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 90–8326. MOORE ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 90–8327. FOUT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 170.

No. 90–8328. GUTIERREZ *v.* MORIARTY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 922 F. 2d 1464.

No. 90–8329. SKAGGS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 803 S. W. 2d 573.

No. 90–8330. COWDEN *v.* O'CONNOR, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS. C. A. 10th Cir. Certiorari denied.

No. 90–8333. BROOKS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 1403.

No. 90–8334. FIELDS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 51 Cal. 3d 1063, 800 P. 2d 862.

No. 90–8335. FOUNTAIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 923.

No. 90–8336. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 405.

No. 90–8337. EZEALA *v.* ESTES, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 921 F. 2d 275.

No. 90–8338. YOUNGER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 343, 926 F. 2d 1216.

No. 90–8340. ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 409.

No. 90–8342. BERKOWITZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 927 F. 2d 1376.

No. 90–8343. STANLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 575.

No. 90–8344. TYLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 929 F. 2d 451.

No. 90–8345. WARREN *v.* RISON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 282.

No. 90–8346. MANTILLA CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 90–8347. ALEXANDER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 599.

No. 90–8348. ROSAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 409.

No. 90–8349. SANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 928 F. 2d 940.

No. 90–8350. SANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 929 F. 2d 1466.

No. 90–8351. BENNETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 35.

No. 90–8352. BRADLEY *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 236 Neb. 371, 461 N. W. 2d 524.

No. 90–8353. BOLTZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 806 P. 2d 1117.

No. 90–8354. BAXENDALE *v.* UNITED STATES; and
No. 90–8355. SIMMERMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 90–8356. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1020.

No. 90–8357. BROOKS *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 90–8358. BLACK ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 1361.

No. 90–8359. AGUIRRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 696.

No. 90–8360. ARMENTEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 90–8361. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 733.

No. 90–8362. DANIELS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 815, 802 P. 2d 906.

No. 90–8365. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 90–8366. MONTEON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 90–8367. MCLAUGHLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 701.

No. 90–8368. HAYDEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 607.

No. 90–8369. JOHNSON *v.* MCKINNA, SUPERINTENDENT, FREMONT CORRECTIONAL FACILITY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 33.

No. 90–8371. COX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 90–8372. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 929 F. 2d 1453.

No. 90–8373. MACKLIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 1272.

No. 90–8375. GILSTRAP *v.* DERWINSKI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 90–8376. RODRIGUEZ *v.* HOKE, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 804, 569 N. E. 2d 1026.

No. 90–8377. PERRY *v.* SESSIONS, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION. C. A. 9th Cir. Certiorari denied.

No. 90–8378. GREEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 927 F. 2d 1005.

No. 90–8379. DIXON *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 90–8380. PHILLIPS *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 90–8381. BOEHM *v.* BIRRANE. Ct. Sp. App. Md. Certiorari denied.

No. 90–8382. HEDRICK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 922 F. 2d 396.

No. 90–8383. DEMOS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 90–8384. ANDERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 453, 801 P. 2d 1107.

No. 90–8385. McAllister *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 596.

No. 90–8386. Schmidt *v.* Medley, Judge. C. A. 10th Cir. Certiorari denied. Reported below: 935 F. 2d 278.

No. 90–8387. Tenorio Alvarez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 90–8388. Adkins *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 400.

No. 90–8389. Clark *v.* New York. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 169 App. Div. 2d 848, 564 N. Y. S. 2d 567.

No. 90–8390. Marinkovic *v.* Casey, Gerry, Casey et al. C. A. 9th Cir. Certiorari denied. Reported below: 914 F. 2d 263.

No. 90–8391. Mobley *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90–8392. Lager *v.* Hutcherson et al. C. A. 8th Cir. Certiorari denied.

No. 90–8393. Miller *v.* County of Los Angeles Probation Department et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 90–8395. Maier *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 226 Cal. App. 3d 1670, 277 Cal. Rptr. 667.

No. 90–8396. Maroun *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 30.

No. 90–8397. Morris *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 61.

No. 90–8399. Sotelo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1138.

No. 90–8400. Chapman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90–8401. JURAS *v.* AMAN COLLECTION SERVICE, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 90–8402. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 90–8403. MCINTOSH *v.* ESTELLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 90–8404. MCCALLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 90–8406. HESTER *v.* PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY AT PARCHMAN. C. A. 5th Cir. Certiorari denied.

No. 90–8408. RUIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 932 F. 2d 1174.

No. 90–8409. AUSTIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 586 A. 2d 701.

No. 90–8410. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 918 F. 2d 1501.

No. 90–8411. LOPEZ-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1138.

No. 90–8412. BRYANT *v.* MAFFUCCI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 979.

No. 90–8413. PERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 1077.

No. 90–8414. LAIRD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 526 Pa. 578, 587 A. 2d 1367.

No. 90–8415. VEY *v.* SANTIAGO. C. A. 3d Cir. Certiorari denied.

No. 90–8416. PILLERSDORF, AS APPOINTED COUNSEL FOR CURTIS *v.* STORY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1057.

No. 90–8418. MONTANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 614.

No. 90–8419. LAPIDES *v.* CONNECTICUT APPELLATE COURT. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 909.

No. 90–8420. NYBERG *v.* BRIERTON ET AL. C. A. 11th Cir. Certiorari denied.

No. 90–8421. SAGER *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 145.

No. 90–8423. WELCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 928 F. 2d 915.

No. 90–8424. HOLSEY *v.* COLLINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 595.

No. 90–8425. SMITH *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 90–8426. DAVIS *v.* OHIO. Ct. App. Ohio, Morrow County. Certiorari denied.

No. 90–8427. CONOVER *v.* SHOVLIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 395.

No. 90–8428. BOLDER *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 921 F. 2d 1359.

No. 90–8429. CHAPA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 29.

No. 90–8430. ODOFIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 929 F. 2d 56.

No. 90–8431. O'DUSKY, AKA NEAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 977.

No. 90–8432. STEPHENS *v.* MUNCY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1457.

No. 90–8433. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 922 F. 2d 1336.

No. 90–8434. RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1021.

No. 90–8435. PROWS *v.* WARDEN, FEDERAL CORRECTIONAL INSTITUTION, ENGLEWOOD, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 34.

No. 90–8436. RAMEL *v.* ALLEN ET AL. C. A. 8th Cir. Certiorari denied.

No. 90–8438. SIMMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 695.

No. 90–8439. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 55.

No. 90–8440. SPROUSE *v.* MCMACKIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1133.

No. 90–8441. MATEO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 924 F. 2d 1061.

No. 90–8442. COX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1471.

No. 90–8444. WARD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 90–8445. GRICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1137.

No. 90–8447. VALLANTYNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 916.

No. 90–8448. ANGULO-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1137.

No. 90–8451. CASALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1523.

No. 90–8452. ALDRETE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 35.

No. 90–8453. JOHN *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 3d Cir. Certiorari denied.

No. 90–8454. VELLARO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 52.

No. 90–8455. FORCELLEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 146.

No. 90–8456. DOWNS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 90–8457. CARYL *v.* MCCORMICK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1469.

No. 90–8458. BLISSETT *v.* LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 924 F. 2d 434.

No. 90–8459. GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 970.

No. 90–8460. GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 409.

No. 90–8461. GLOVER *v.* MARSH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 692.

No. 90–8462. WILLIAMS *v.* DAVIS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 90–8463. CLOFER *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 90–8464. CARTER *v.* JONES, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1132.

No. 90–8465. DERRYBERRY *v.* BOWLES. C. A. 5th Cir. Certiorari denied.

No. 90–8467. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 740.

No. 90–8468. ERICKSON *v.* SUPREME COURT OF MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 90–8469. BROADNAX *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 90–8470. FERGUSON *v.* RJR NABISCO, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 595.

No. 90–8471. CUMMINGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1133.

No. 90–8472. COLEMAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 342, 926 F. 2d 1215.

No. 90–8473. FOORE *v.* MARRA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 830.

No. 90–8474. STEIDL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 142 Ill. 2d 204, 568 N. E. 2d 837.

No. 90–8476. CARSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 35.

No. 90–8477. BLAGMOND *v.* MURPHY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 691.

No. 90–8478. BOYD *v.* COOLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 691.

No. 90–8479. DERRICK *v.* PETERSON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 813.

No. 90–8480. EBKER *v.* TAN JAY INTERNATIONAL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 909.

No. 90–8481. ADESANYA *v.* THORNBURGH, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 279.

No. 90–8482. STEWART *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 141 Ill. 2d 107, 565 N. E. 2d 968.

No. 90–8483. LLOYD-EL ET AL. *v.* MEYER. C. A. 7th Cir. Certiorari denied.

No. 90–8484. HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 90–8485. MONROE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 923.

No. 90–8486. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 613.

No. 90–8487. NEWMAN *v.* UNITED STATES; and
No. 91–5283. NEWMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 57.

No. 90–8488. MCKENZIE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 922 F. 2d 1323.

No. 90–8489. MIDDLETON *v.* SOUTH CAROLINA. Ct. Common Pleas, Charleston County, S. C. Certiorari denied.

No. 90–8490. BARELA *v.* MUNIZ. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 32.

No. 90–8491. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1134.

No. 90–8492. LOERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 725.

No. 90–8493. NIXON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 572 So. 2d 1336.

No. 90–8494. MCMEANS *v.* TOWNSHIP OF WATERFORD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 417.

No. 90–8496. HARRINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 1371.

No. 90–8497. JIMENEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 928 F. 2d 356.

No. 90–8499. LONEDOG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 929 F. 2d 568.

No. 90–8500. BRANCOVEANU *v.* BRANCOVEANU. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 145 App. Div. 2d 395, 535 N. Y. S. 2d 86.

No. 90–8501. GIBSON *v.* NIX, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 90–8503. GARTRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 1002.

No. 90–8504. DUGAN *v.* OHIO. Ct. App. Ohio, Wayne County. Certiorari denied.

No. 90–8505. STENSTROM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 903.

No. 90–8506. SANDLIN *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 90–8507. QUINTERO-HOYOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 915.

No. 90–8509. CHRISTENSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 80, 402 S. E. 2d 41.

No. 90–8510. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 90–8511. KRAUSE *v.* GODINEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 90–8512. JUDD *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 90–8513. COREAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 585 A. 2d 1376.

No. 90–8514. MILES *v.* ESTELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–1. PHILLIPS PETROLEUM CO. ET AL. *v.* UNITED STATES; and

No. 91–34. PENNZOIL CO. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 923 F. 2d 830.

No. 91–2. TRANSPORTES AEREOS MERCANTILES PAN AMERICANOS, S. A., AKA TAMPA AIRLINES *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 924 F. 2d 1005.

No. 91–3. PELLETIER ET AL. *v.* ZWEIFEL. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1465.

No. 91–5. CAMACHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 29.

No. 91–6. G. A. B. SERVICES, INC. *v.* COOPER ET AL. C. A. 10th Cir. Certiorari denied.

No. 91–8. UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 376 *v.* OLIVETTI OFFICE U. S. A., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 181.

No. 91–11. KING *v.* PRUDENTIAL-BACHE SECURITIES, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 226 Cal. App. 3d 749, 277 Cal. Rptr. 214.

No. 91–12. MCINTYRE *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 925 F. 2d 1479.

No. 91–13. GENETICS INSTITUTE, INC., ET AL. *v.* AMGEN, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 927 F. 2d 1200.

No. 91–14. NORTHERN NATURAL GAS CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 929 F. 2d 1261.

No. 91–15. RIESBECK FOOD MARKETS, INC., ET AL. *v.* UNITED FOOD & COMMERCIAL WORKERS, LOCAL UNION 23, ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 185 W. Va. 12, 404 S. E. 2d 404.

No. 91–16. STEWART *v.* FORT WAYNE COMMUNITY SCHOOLS. Sup. Ct. Ind. Certiorari denied. Reported below: 564 N. E. 2d 274.

No. 91–18. SHARPE ET AL. *v.* ROTH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 397.

No. 91–20. STATE TAX COMMISSION OF MISSOURI ET AL. *v.* TRAILER TRAIN CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 929 F. 2d 1300.

No. 91–21. OVERNITE TRANSPORTATION CO. *v.* TIANTI, COMMISSIONER OF LABOR OF CONNECTICUT. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 220.

No. 91–22. BELCHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 1182.

No. 91–23. GRAY ET AL. *v.* TOWN OF DARIEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 69.

No. 91–24. BANK OF COUSHATTA ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 1122.

No. 91–25. SANBORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 91–26. AVANTI SERVICES, INC. *v.* GLENDEL DRILLING CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 898 F. 2d 1083.

No. 91–27. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 245.

No. 91–28. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 526.

No. 91–30. IMPERIAL IRRIGATION DISTRICT *v.* STATE WATER RESOURCES CONTROL BOARD. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 225 Cal. App. 3d 548, 275 Cal. Rptr. 250.

No. 91–33. CASTIGLIONE ET AL. *v.* HARRIS. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 408.

No. 91–35. ECKEL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied.

No. 91–37. CLEMENCE ET AL. *v.* CLEMENCE, PERSONAL REPRESENTATIVE OF THE ESTATE OF CLEMENCE, DECEASED, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 32.

No. 91–39. CIULLA *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 186.

No. 91–40. BRUSCO *v.* NEW YORK STATE DIVISION OF HOUSING & COMMUNITY RENEWAL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 170 App. Div. 2d 184, 565 N. Y. S. 2d 86.

No. 91–41. GARGALLO *v.* GARGALLO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 91–43. COOK *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 941 F. 2d 734.

No. 91–44. RADLOFF ET UX. *v.* FIRST AMERICAN NATIONAL BANK OF ST. CLOUD, N. A., ET AL. Ct. App. Minn. Certiorari denied.

No. 91–45. GIRARD ET AL. *v.* AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 738.

No. 91–46. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL–CIO *v.* NATIONAL MEDIATION BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 160, 930 F. 2d 45.

No. 91–47. FORSMAN ET UX. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 580 A. 2d 1314.

No. 91–50. WRIGHT ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 928 F. 2d 411.

No. 91–51. HALL *v.* NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 593.

No. 91–52. MIDDLETON *v.* PERALES, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 160 App. Div. 2d 800, 554 N. Y. S. 2d 71.

No. 91–53. ROBINSON *v.* ENGLAND. C. A. 11th Cir. Certiorari denied.

No. 91–54. BEACHBOARD *v.* TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 834, 567 N. E. 2d 982.

No. 91–55. FITZSIMMONS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 605.

No. 91–56. MARYLAND CHAPTER OF THE AMERICAN MASSAGE THERAPY ASSN., INC. *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 399.

No. 91–57. WOFFORD *v.* DEPARTMENT OF PUBLIC SOCIAL SERVICES, COUNTY OF LOS ANGELES, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–58. SKLODOWSKI, ADMINISTRATOR OF THE ESTATE OF SKLODOWSKI, DECEASED *v.* SCOTT PAPER CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 51.

No. 91–60. SMALIS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 527 Pa. 375, 592 A. 2d 669.

No. 91–62. BARNETT, BY HIS PARENTS AND NEXT FRIENDS, BARNETT ET AL. *v.* FAIRFAX COUNTY SCHOOL BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 146.

No. 91–63. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 702.

No. 91–65. COMBS *v.* ROCKWELL INTERNATIONAL CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 486.

No. 91–66. STEPHENS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 580 So. 2d 26.

No. 91–67. CSX TRANSPORTATION, INC., ET AL. *v.* TILLMAN. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 1023.

No. 91–68. GROCHOWSKI *v.* DEWITT-RICKARDS. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 399.

No. 91–69. BAILEY *v.* CITY OF NATIONAL CITY, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 226 Cal. App. 3d 1319, 277 Cal. Rptr. 427.

No. 91–70. BLUE FLAME, INC. *v.* METROPOLITAN DEVELOPMENT COMMISSION OF MARION COUNTY, INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 560 N. E. 2d 120.

No. 91–73. DAVIS ET AL. *v.* MORGAN GUARANTY TRUST CO. OF NEW YORK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 889.

No. 91–74. O'SHEA *v.* COMMERCIAL CREDIT CORP. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 358.

No. 91–76. LOUISVILLE EDIBLE OIL PRODUCTS, INC., ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 926 F. 2d 584.

No. 91–77. RYAN *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 806 P. 2d 935.

No. 91–78. VOGEL *v.* FRANK, POSTMASTER GENERAL OF THE UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 930 F. 2d 919.

No. 91–79. BLUE ET VIR *v.* GENESEE MEMORIAL HOSPITAL, INC., ET AL. Ct. App. Mich. Certiorari denied.

No. 91–80. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1530.

No. 91–82. JONES, TRUSTEE *v.* ATCHISON. C. A. 7th Cir. Certiorari denied. Reported below: 925 F. 2d 209.

No. 91–84. BELCASTRO-BOWEN ET AL. *v.* DELTA AIR LINES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 920 and 921.

No. 91–86. COX ET UX., DBA PIXY PALS KENNEL *v.* UNITED STATES DEPARTMENT OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 1102.

No. 91–89. CALIFORNIA ENERGY CO., INC. *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 91–90. MEYER ET AL. *v.* UNITED STATES;
No. 91–161. WILMOT *v.* UNITED STATES; and
No. 91–264. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1256.

No. 91–91. EUERLE FARMS, INC., ET AL. *v.* FARM CREDIT SERVICES OF ST. PAUL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 928 F. 2d 274.

No. 91–92. CAERNARVON TOWNSHIP ET AL. *v.* MORGANTOWN PROPERTIES. Sup. Ct. Pa. Certiorari denied. Reported below: 527 Pa. 226, 590 A. 2d 274.

No. 91–93. RISSER ET AL. *v.* THOMPSON, GOVERNOR OF WISCONSIN. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 549.

No. 91–94. LAMBERT *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 928 F. 2d 410.

No. 91–96. LUPO ET AL. *v.* COHEN. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 363.

No. 91–97. STOUT *v.* UNITED STATES (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 962.

No. 91–98. WHITE BUDD VAN NESS PARTNERSHIP *v.* MAJOR-GLADYS DRIVE JOINT VENTURE. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 798 S. W. 2d 805.

No. 91–100. ROPER *v.* CONSURVE, INC., DBA BANKAMERICARD CENTER, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 965.

No. 91–102. STUDIO 21, LTD., ET AL. *v.* VIDEO VIEWS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 925 F. 2d 1010.

No. 91–103. INDIANA *v.* DOWELL. Ct. App. Ind. Certiorari denied. Reported below: 557 N. E. 2d 1063.

No. 91–104. WEBSTER *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 911 F. 2d 679.

No. 91–105. VILLANUEVA *v.* WELLESLEY COLLEGE. C. A. 1st Cir. Certiorari denied. Reported below: 930 F. 2d 124.

No. 91–106. LOCUS *v.* FAYETTEVILLE STATE UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 922 F. 2d 836.

No. 91–107. MANCUSI *v.* AL-JUNDI, AKA DEANE, ET AL.; and No. 91–115. OSWALD, VOLUNTARY ADMINISTRATOR OF THE ESTATE OF OSWALD, DECEASED *v.* AL-JUNDI, AKA DEANE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 235.

No. 91–108. DIPILLA ET AL. *v.* AMSOUTH BANK N. A. ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–109. CLAY *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY. Ct. App. Tenn. Certiorari denied.

No. 91–111. BERNARDSVILLE QUARRY, INC. *v.* BOROUGH OF BERNARDSVILLE. C. A. 3d Cir. Certiorari denied. Reported below: 929 F. 2d 927.

No. 91–113. A/S DAMPSKIBSSELSKABET TORM *v.* BANQUE PARIBAS (SUISSE) S. A., GENEVA. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 713.

No. 91–114. WINN *v.* KOMPKOFF. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 226 Cal. App. 3d 655, 276 Cal. Rptr. 619.

No. 91–116. CARROLL ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1469.

No. 91–117. BLY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 85 Md. App. 787.

No. 91–121. BECKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 929 F. 2d 442.

No. 91–123. WILSON *v.* STATE FARM FIRE & CASUALTY CO. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 202 Ill. App. 3d 1109, 593 N. E. 2d 1175.

No. 91–127. PIRES ET UX. *v.* FROTA OCEANICA BRASILEIRA S. A. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 161 App. Div. 2d 129, 554 N. Y. S. 2d 855.

No. 91–128. ADLER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 26.

No. 91–131. PADGET ET AL. *v.* GRAPHIC COMMUNICATIONS INTERNATIONAL UNION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 1178.

No. 91–134. RIVERA-MARTINEZ, AKA EL MEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 931 F. 2d 148.

No. 91–135. ASSOCIATION OF AMERICAN MEDICAL COLLEGES *v.* CUOMO, GOVERNOR OF THE STATE OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 519.

No. 91–136. CAPIZZI, DISTRICT ATTORNEY FOR COUNTY OF ORANGE *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–137. BEARD ET UX. *v.* SOUTH CAROLINA COASTAL COUNCIL ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 304 S. C. 205, 403 S. E. 2d 620.

No. 91–138. MAHMOODIAN *v.* UNITED HOSPITAL CENTER, INC., ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 185 W. Va. 59, 404 S. E. 2d 750.

No. 91–139. CONTROL ELECTRONICS CO. ET AL. *v.* ACOUSTICAL DESIGN, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 932 F. 2d 939.

No. 91–140. BARBER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1282.

No. 91–144. SISKA *v.* THE TRAVELERS. Ct. App. Wis. Certiorari denied. Reported below: 161 Wis. 2d 14, 467 N. W. 2d 174.

No. 91–145. CHARD *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 808 P. 2d 351.

No. 91–146. MONONGAHELA POWER CO. *v.* MILLER. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 184 W. Va. 663, 403 S. E. 2d 406.

No. 91–147. GORE ET AL. *v.* LOUISIANA ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 574 So. 2d 455.

No. 91–148. LATIMER ET AL. *v.* STAINER, TRUSTEE. C. A. 10th Cir. Certiorari denied. Reported below: 918 F. 2d 136.

No. 91–149. HOLDING, DBA CLARENCE H. HOLDING & CO. *v.* SECURITIES DIVISION, STATE CORPORATION COMMISSION OF VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 91–150. LOCKHART *v.* KENOPS, FOREST SUPERVISOR, BLACK HILLS NATIONAL FOREST, UNITED STATES FOREST SERVICE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 1028.

No. 91–154. UNITED FARM WORKERS OF AMERICA, AFL–CIO *v.* MAGGIO, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 227 Cal. App. 3d 847, 278 Cal. Rptr. 250.

No. 91–156. JONES, INDIVIDUALLY AND AS WARDEN, ET AL. *v.* LONG ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 1111.

No. 91–157. TANDON CORP. *v.* QUANTUM CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 279.

No. 91–158. HARRY WOLSKY, INC., AKA HARRY WOLSKY STAIR BUILDERS, INC. *v.* INDUSTRIAL COMMISSION OF OHIO ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 58 Ohio St. 3d 222, 569 N. E. 2d 900.

No. 91–160. FIRST FEDERAL SAVINGS BANK & TRUST ET AL. *v.* DIRECTOR, OFFICE OF THRIFT SUPERVISION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 1345.

No. 91–163. GOODALL, AN INFANT, BY HIS FATHER AND NEXT FRIEND, GOODALL, ET AL. *v.* STAFFORD COUNTY SCHOOL BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 363.

No. 91–165. LIN *v.* PRUDENTIAL-BACHE SECURITIES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1137.

No. 91–166. VARNISHUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 120 and 930 F. 2d 394.

No. 91–167. PEREGOY ET AL. *v.* AMOCO PRODUCTION CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 196.

No. 91–170. HILL *v.* MISSISSIPPI STATE EMPLOYMENT SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 918 F. 2d 1233.

No. 91–171. NEIL *v.* DISTRICT COURT IN AND FOR CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 900.

No. 91–172. MAGNANO *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 941, 573 N. E. 2d 572.

No. 91–173. HARNISCHFEGER CORP. *v.* HARBOR INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 927 F. 2d 974.

No. 91–174. CENTENNIAL ET AL. *v.* PLACER DOME U. S., INC. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 1117, 838 P. 2d 938.

No. 91–175. BURCHE *v.* DEGUSSA CARBON BLACK CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 404.

No. 91–178. MELANSON *v.* UNITED AIR LINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 558.

No. 91–179. ENRIGHT *v.* CALIFORNIA STATE UNIVERSITY. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 59.

No. 91–180. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 56.

No. 91–182. WARD *v.* ROY H. PARK BROADCASTING CO., INC., ET AL. Ct. App. N. C. Certiorari denied. Reported below: 101 N. C. App. 576, 400 S. E. 2d 779.

No. 91–183. BOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 893.

No. 91–187. WILLIAMS ET UX. *v.* BOARD OF TRUSTEES OF MOUNT JEZREEL BAPTIST CHURCH ET AL. Ct. App. D. C. Certiorari denied. Reported below: 589 A. 2d 901.

No. 91–188. ABSHIRE *v.* GNOTS-RESERVE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 1073.

No. 91–189. HEMME *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 15 Kan. App. 2d 198, 806 P. 2d 472.

No. 91–190. HEFFERNAN *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Ohio. Certiorari denied. Reported below: 58 Ohio St. 3d 260, 569 N. E. 2d 1027.

No. 91–191. MURPHY ET AL. *v.* I. S. K. CON. OF NEW ENGLAND, INC. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 409 Mass. 842, 571 N. E. 2d 340.

No. 91–192. PLASENCIA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1557.

No. 91–193. KELLY *v.* HOLIDAY INN OF BLYTHEVILLE. Ct. App. Ark. Certiorari denied. Reported below: 34 Ark. App. xvii.

No. 91–196. VENET *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 103 Ore. App. 363, 797 P. 2d 1055.

No. 91–198. HARRIS TRUST & SAVINGS BANK, AS TRUSTEE, ET AL. *v.* E–II HOLDINGS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 926 F. 2d 636.

No. 91–201. SPUDICH *v.* SUPERVISOR OF LIQUOR CONTROL OF MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 931 F. 2d 1278.

No. 91–203. NEWTON *v.* NATIONAL BROADCASTING CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 662.

No. 91–204. HARRIS COUNTY, TEXAS *v.* WALSWEER. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 796 S. W. 2d 269.

No. 91–209. GILBERT ET AL. *v.* CITY OF CAMBRIDGE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 932 F. 2d 51.

No. 91–210. ABC, INC., DBA ABC BOOKS, INC., ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 952 F. 2d 155.

No. 91–211. DIPETTO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 96.

No. 91–214. TEMPLE OF THE LOST SHEEP, INC., AKA ACTION COMMITTEE TO HELP THE HOMELESS NOW, ET AL. *v.* ABRAMS, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 178.

No. 91–215. FARIAS *v.* BEXAR COUNTY BOARD OF TRUSTEES FOR MENTAL HEALTH MENTAL RETARDATION SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 866.

No. 91–218. DECLARA *v.* METROPOLITAN TRANSPORTATION AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 911.

No. 91–219. POWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (CALIFORNIA, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–220. BARLETTA *v.* VACCA. C. A. 1st Cir. Certiorari denied. Reported below: 933 F. 2d 31.

No. 91–222. HAWAII *v.* KIPI. Sup. Ct. Haw. Certiorari denied. Reported below: 72 Haw. 164, 811 P. 2d 815.

No. 91–223. DHALIWAL *v.* WOODS DIVISION, HESSTON CORP., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 547 and 931 F. 2d 58.

No. 91–224. SPARKS *v.* KENTUCKIANA FOOTBALL OFFICIALS ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 702.

No. 91–225. RUBIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 917 F. 2d 567.

No. 91–227. KLAPPER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–228. BURRIS ET AL. *v.* FIRST FINANCIAL CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 928 F. 2d 797.

No. 91–230. WIGLE *v.* CITY OF DETROIT ET AL. Ct. App. Mich. Certiorari denied.

No. 91–232. WOOLSEY *v.* HUNT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 555.

No. 91–234. DAVENPORT *v.* WHITE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 603.

No. 91–235. MCCRACKIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 695.

No. 91–236. MUHAMMAD, ADMINISTRATRIX OF THE ESTATE OF MUHAMMAD, ET AL. *v.* STRASSBURGER, MCKENNA, MESSER, SHILOBOD & GUTNICK ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 526 Pa. 541, 587 A. 2d 1346.

No. 91–237. BARRON ET AL. *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. Sup. Ct. Pa. Certiorari denied. Reported below: 526 Pa. 539, 587 A. 2d 727.

No. 91–238. RIGGS *v.* SCRIVNER, INC. C. A. 10th Cir. Certiorari denied. Reported below: 927 F. 2d 1146.

No. 91–239. PATTERSON *v.* BOLAND. Ct. App. Ohio, Greene County. Certiorari denied.

No. 91–241. DiIorio *v.* Gibson & Cushman Dredging Corp. et al. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 167 App. Div. 2d 267, 561 N. Y. S. 2d 767.

No. 91–242. Tunica-Biloxi Tribe *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 280.

No. 91–243. Enright, an Infant, by Enright, her Mother and Natural Guardian *v.* Eli Lilly & Co. et al. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 377, 570 N. E. 2d 198.

No. 91–247. Local Union 375, Plumbers International Union of America, AFL–CIO, et al. *v.* Martin, Secretary of Labor, et al. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 969.

No. 91–249. Clapp *v.* Greene et al. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 912.

No. 91–252. Longo *v.* Glime, dba Perri Auto Sales, et al. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 405.

No. 91–253. Yip *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 142.

No. 91–254. Atraqchi et vir *v.* Unknown Named Agents of the Federal Bureau of Investigation et al. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 189.

No. 91–258. Borg, Warden *v.* Robinson. C. A. 9th Cir. Certiorari denied. Reported below: 918 F. 2d 1387.

No. 91–262. Guiberson Oil Tools Division of Dresser Industries, Inc. *v.* Rhodes. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 876.

No. 91–267. Reed *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 91–268. Day *v.* Textron Corp. Ct. App. Ark. Certiorari denied. Reported below: 34 Ark. App. xv.

No. 91–275. Hunter *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 1442.

No. 91–279. CAPLETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 29.

No. 91–289. BURRELL INDUSTRIES, INC. *v.* CONTRACTORS SUPPLY CORP. Sup. Ct. App. W. Va. Certiorari denied.

No. 91–290. 24TH STREET PARTNERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 279.

No. 91–297. SHAKUR, AKA TYLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1210.

No. 91–305. WEICHERT *v.* ROBERTS. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 580 So. 2d 766.

No. 91–309. STRAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 276.

No. 91–322. COON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 405.

No. 91–326. HAMRICK ET AL. *v.* FRANKLIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 931 F. 2d 1209.

No. 91–330. CARDERIN *v.* PUNG, COMMISSIONER OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 189.

No. 91–331. ZAMAN *v.* SOUTH CAROLINA BOARD OF MEDICAL EXAMINERS. Sup. Ct. S. C. Certiorari denied. Reported below: 305 S. C. 281, 408 S. E. 2d 213.

No. 91–332. SAUCEDO-MESA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1261.

No. 91–336. SCOTT *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 177.

No. 91–343. ELLIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 935 F. 2d 385.

No. 91–350. DOE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 199.

No. 91–351. MITHUN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 631.

No. 91–5001. BLOOM *v.* EHRLICH. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 585 A. 2d 809.

No. 91–5002. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 128.

No. 91–5003. GAGER *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 259, 925 F. 2d 490.

No. 91–5004. BULLOCK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 961.

No. 91–5008. PERKINS *v.* HOGAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 928 F. 2d 1135.

No. 91–5009. COLLYMORE *v.* HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–5010. TURNER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 805 S. W. 2d 423.

No. 91–5011. RILEY *v.* WATSON, SUPERINTENDENT, LAWTEY CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 91–5012. DIAZ-REGUERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–5014. EGEDE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1022.

No. 91–5016. TAORMINA *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 56.

No. 91–5018. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 916.

No. 91–5019. CHRISPEN *v.* PARTAIN ET UX. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 577 So. 2d 951.

No. 91–5020. DUARTE *v.* UNITED STATES; and
No. 91–5043. KERRICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 924 F. 2d 209.

No. 91–5022. DONAGHE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 940.

No. 91–5024. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 36.

No. 91–5026. PITSONBARGER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 142 Ill. 2d 353, 568 N. E. 2d 783.

No. 91–5027. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 965.

No. 91–5028. PULIDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 911.

No. 91–5029. BUTLER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 167, 924 F. 2d 1124.

No. 91–5030. GARCIA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–5033. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 825.

No. 91–5034. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 930 F. 2d 919.

No. 91–5035. ORGAIN *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 55.

No. 91–5037. KORFF *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 567 N. E. 2d 1146.

No. 91–5038. HUBBARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 307.

No. 91–5039. MELROSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 402.

No. 91–5040. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 702.

No. 91–5041. SIX *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 805 S. W. 2d 159.

No. 91–5044. JAMES *v.* KINDT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 91–5045. NAVARRO-DOMINGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 30.

No. 91–5046. MCCULLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 703.

No. 91–5048. O'NEAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 599.

No. 91–5049. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 695.

No. 91–5051. RESPITO *v.* DERWINSKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 932 F. 2d 981.

No. 91–5053. PORTER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 205 Ill. App. 3d 1106, 600 N. E. 2d 933.

No. 91–5054. STEVENS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 920 F. 2d 887.

No. 91–5055. SNYDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 91–5056. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 930 F. 2d 616.

No. 91–5057. WILLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 606.

No. 91–5058. SOLOMON *v.* LONG ISLAND HOSPITAL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–5059. ATHENS *v.* EVANSTON HOSPITAL ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 205 Ill. App. 3d 1104, 600 N. E. 2d 931.

No. 91–5060. CHAIDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 919 F. 2d 1193.

No. 91–5061. WILLIAMS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–5062. BOYER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 931 F. 2d 1201.

No. 91–5063. BROWN *v.* BROWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 920 F. 2d 932 and 929 F. 2d 700.

No. 91–5064. GASSAWAY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 91–5065. CHRISTOPHER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–5066. A'GIZA *v.* SAN BERNARDINO WEST SIDE COMMUNITY DEVELOPMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1469.

No. 91–5067. GARCIA *v.* FREY ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–5068. GENNINGER *v.* BUTLER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTE, NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 91–5069. JETER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 160 Wis. 2d 333, 466 N. W. 2d 211.

No. 91–5070. TROIANI *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–5071. DEPEW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 324.

No. 91–5072. BREWSTER *v.* DERWINSKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 280.

No. 91–5073. MILLAN-ESQUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–5074. THOMPSON *v.* ARMONTROUT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1209.

No. 91–5075. DAVIS *v.* CITY OF COLUMBUS, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 404.

No. 91–5076. PIERSON *v.* POWERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 91–5077. CAGE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 583 So. 2d 1125.

No. 91–5078. CHASE *v.* OREGON COURT OF APPEALS. Sup. Ct. Ore. Certiorari denied.

No. 91–5079. MARSHALL *v.* WOOD, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 188.

No. 91–5080. HARRIS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–5081. MARTINEZ-LOYDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 889.

No. 91–5083. BERRIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 91–5085. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1003.

No. 91–5086. ELDRIDGE *v.* BERNET. Ct. App. D. C. Certiorari denied.

No. 91–5088. BARGINEAR ET AL. *v.* TIDEMANSON ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–5089. TOUSSAINT ET AL. *v.* MCCARTHY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 926 F. 2d 800.

No. 91–5090. PARKS *v.* SAFFLE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 925 F. 2d 366.

No. 91–5091. WILLIAMS *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 374.

No. 91–5092. BONES *v.* JOHNSON, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–5094. VAUGHN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 91–5095. VELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 197.

No. 91–5096. SERNA *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 167 Ariz. 373, 807 P. 2d 1109.

No. 91–5097. SANTOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 962.

No. 91–5101. DICKERSON *v.* GUSTE, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1142.

No. 91–5102. SMITH *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 797 S. W. 2d 243.

No. 91–5103. TELEPO *v.* PLANTIER, SUPERINTENDENT, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5105. PULLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 978.

No. 91–5106. SCARPA *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 940 F. 2d 646.

No. 91–5107. RIVALTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 925 F. 2d 596.

No. 91–5108. STREET *v.* JABE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1465.

No. 91–5109. WILLIAMS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 581 So. 2d 1312.

No. 91–5112. BARUTH *v.* O'TOOLE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 594.

No. 91–5113. MCLESTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 91–5114. JONES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 928 F. 2d 1020.

No. 91–5115. LAWS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 328 N. C. 550, 402 S. E. 2d 573.

No. 91–5116. NEWTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 978.

No. 91–5117. LITZENBERG *v.* MURPHY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 693.

No. 91–5119. HARVEY *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5120. LOGAN *v.* SOUTH CAROLINA. Ct. Common Pleas of Georgetown County, S. C. Certiorari denied.

No. 91–5121. LATORRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 922 F. 2d 1.

No. 91–5122. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 1387.

No. 91–5123. GOULD *v.* NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 930 F. 2d 38.

No. 91–5124. BROWN *v.* OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 70 Ohio App. 3d 72, 590 N. E. 2d 404.

No. 91–5125. CLARK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 584.

No. 91–5126. BUFFINGTON *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 801 S. W. 2d 151.

No. 91–5128. COPE *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 91–5131. CONLEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 305 Ark. 422, 808 S. W. 2d 745.

No. 91–5132. FOX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 820.

No. 91–5133. BOARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 694.

No. 91–5134. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5135. BROWN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 91–5136. LESTER *v.* BLANKENSHIP, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 887.

No. 91–5137. MOORE *v.* JARVIS, SHERIFF OF DEKALB COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 614.

No. 91–5138. MARTIN-PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 889.

No. 91–5139. MONTGOMERY *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–5140. JONES *v.* WILSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–5143. MABRY *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 911.

No. 91–5144. DARNELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 1002.

No. 91–5145. PRESTEMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 929 F. 2d 1275.

No. 91–5146. OLIVER *v.* CLEVELAND TRINIDAD PAVING CO. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 708, 566 N. E. 2d 680.

No. 91–5147. HASSAN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 91–5148. JACKSON *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5149. JEWELL *v.* JEWELL, NKA INGLE. Ct. App. Minn. Certiorari denied.

No. 91–5150. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 207 Ill. App. 3d 30, 565 N. E. 2d 240.

No. 91–5151. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 580 So. 2d 143.

No. 91–5152. HAYWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 978.

No. 91–5153. MCHENRY *v.* AETNA LIFE & CASUALTY INSURANCE CO. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 34.

No. 91–5154. LAWSON *v.* CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5155. MENDEZ-HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–5156. RUSSELL *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1260.

No. 91–5157. RICHARDSON *v.* STALDER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 91–5158. FELDER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 237, 810 P. 2d 755.

No. 91–5159. WARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 406.

No. 91–5160. GAONA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5161. GRIFFIN *v.* DAVIES, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 929 F. 2d 550.

No. 91–5162. WADE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 977.

No. 91–5164. DAWSON *v.* KEOHANE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 395.

No. 91–5168. TAYLOR *v.* HESSE, SUPERINTENDENT, ARROWHEAD CORRECTIONAL CENTER, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 900.

No. 91–5169. COMMITO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 918 F. 2d 95.

No. 91–5171. CRAWFORD *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 437 Mich. 856, 462 N. W. 2d 368.

No. 91–5172. CARGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–5173. GONZALES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 795.

No. 91–5175. ALEXANDER *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 144.

No. 91–5177. DUNNING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 929 F. 2d 579.

No. 91–5178. MASON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 909, 802 P. 2d 950.

No. 91–5179. CARTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 576 So. 2d 1291.

No. 91–5181. DONLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 891.

No. 91–5182. PALACIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 965.

No. 91–5183. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 1450.

No. 91–5186. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5187. PITTSLEY, A MINOR, BY HER MOTHER, PITTSLEY *v.* WARISH ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 927 F. 2d 3.

No. 91–5188. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 186.

No. 91–5189. MILNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 91–5190. MCKENZIE *v.* DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION. Ct. App. D. C. Certiorari denied.

No. 91–5192. CANNADY *v.* LIFE OF GEORGIA INSURANCE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 848.

No. 91–5195. TALJ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–5196. EAGLE HORSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 188.

No. 91–5197. MUMFORD ET AL. *v.* WEIDNER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 960.

No. 91–5198. FIGGANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 695.

No. 91–5199. ZELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 91–5200. DOBSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTION. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 977.

No. 91–5201. BRENNON *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 72 Haw. 608, 810 P. 2d 667.

No. 91–5202. SETIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 610.

No. 91–5203. WALLACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 978.

No. 91–5204. HOKE *v.* THOMPSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 91–5207. HAYNIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 91–5208. LOPEZ *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 157.

No. 91–5209. JOHNPOLL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–5210. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5211. OLLOH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 927 F. 2d 1.

No. 91–5212. MELGOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 891.

No. 91–5213. ALBRITTON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 91–5214. ALDRIDGE *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., San Diego County. Certiorari denied.

No. 91–5215. CURTIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 1011.

No. 91–5217. CLAY *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 91–5220. BRUCE *v.* JOHNSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 886.

No. 91–5221. FRANKLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 926 F. 2d 734.

No. 91–5222. TURNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 928 F. 2d 956.

No. 91–5223. WOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 933 F. 2d 1019.

No. 91–5224. ADAMS *v.* BUENA VISTA CITY SCHOOL BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 691.

No. 91–5225. TAYLOR *v.* CUMBERLAND COUNTY DISTRICT ATTORNEY'S OFFICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 849.

No. 91–5227. THOMAS *v.* BLANKENSHIP, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 694.

No. 91–5228. GOODGAME, AKA TUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 977.

No. 91–5229. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 977.

No. 91–5230. BANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 703.

No. 91–5231. SNYDER ET AL. *v.* ASHKENAZY ENTERPRISES, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–5232. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5233. PARRISH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 57.

No. 91–5234. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1260.

No. 91–5235. FERDIK *v.* RICHARDSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 59.

No. 91–5236. HENDERSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 142 Ill. 2d 258, 568 N. E. 2d 1234.

No. 91–5237. PYLE *v.* CITY OF TUCSON ET AL. Ct. App. Ariz. Certiorari denied.

No. 91–5238. CRANDALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 91–5239. FANT *v.* HOOKS. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 692.

No. 91–5241. BROUSSARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 916.

No. 91–5242. HOWARD *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–5243. MADDALENA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 57.

No. 91–5245. McKinney *v.* Montano et al. Ct. App. Ariz. Certiorari denied.

No. 91–5247. Hegge *v.* Alef et al. C. A. 9th Cir. Certiorari denied. Reported below: 909 F. 2d 1488.

No. 91–5248. Harwin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 977.

No. 91–5249. Hamilton *v.* Kestell, Pogue & Gould et al. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 91–5250. Higdon *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 91–5251. Ivy *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 147.

No. 91–5253. Taylor *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 307.

No. 91–5254. Sloan *v.* Roberts et al. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 399.

No. 91–5255. Hatch *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1478.

No. 91–5256. Manuel M. *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–5258. Casteel, aka Ghashiyah, et al. *v.* Kolb et al. Ct. App. Wis. Certiorari denied. Reported below: 161 Wis. 2d 934, 469 N. W. 2d 248.

No. 91–5260. Fernandez *v.* Leonardo, Superintendent, Great Meadow Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 931 F. 2d 214.

No. 91–5261. Gaston *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 91–5263. Whittington *v.* Milby et al. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 188.

No. 91–5265. White *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 577 So. 2d 1238.

No. 91–5266. EVES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 856.

No. 91–5268. BARRETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1020.

No. 91–5269. AGNEW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 1397.

No. 91–5270. GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–5271. SUMLIN *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 91–5272. SHELTON *v.* CUNNINGHAM ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 91–5273. HORTON *v.* NOTORFRANCESCO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 50.

No. 91–5274. OCHOA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 650.

No. 91–5275. MCCOY *v.* DISTRICT COURT OF APPEAL, FIRST DISTRICT, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 581 So. 2d 1309.

No. 91–5276. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 91–5277. LEVAND *v.* WALL AMBULANCE SERVICE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 860.

No. 91–5278. DIAZ *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5279. JEFFERSON *v.* UNITED STATES; and

No. 91–5280. JEFFERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 925 F. 2d 1242 and 931 F. 2d 1396.

No. 91–5281. KRUPP *v.* NEUBERT, ADMINISTRATOR, BAYSIDE STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5284. DeFusco, aka Hagen *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 413.

No. 91–5285. Guerra *v.* Ortega et al. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 609.

No. 91–5286. Turner *v.* United States Parole Commission et al. C. A. 10th Cir. Certiorari denied. Reported below: 934 F. 2d 254.

No. 91–5287. Singer *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 96.

No. 91–5289. Sprewell *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 581.

No. 91–5291. Blanks *v.* Presley. C. A. 5th Cir. Certiorari denied.

No. 91–5292. Clark *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 733.

No. 91–5294. Gilreath *v.* Zant, Warden. Sup. Ct. Ga. Certiorari denied.

No. 91–5295. Ray *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 970.

No. 91–5298. Gardner *v.* Toombs, Warden. C. A. 6th Cir. Certiorari denied.

No. 91–5299. Echols *v.* Asmuth et al. Ct. App. D. C. Certiorari denied.

No. 91–5300. Chatfield *v.* Lewis et al. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 582.

No. 91–5301. Alexander *v.* Missouri State Board of Law Examiners. Sup. Ct. Mo. Certiorari denied. Reported below: 807 S. W. 2d 70.

No. 91–5302. Dillon *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied.

No. 91–5303. Schlicher *v.* Roberts et al. C. A. 10th Cir. Certiorari denied. Reported below: 934 F. 2d 326.

No. 91–5304. BRADLEY *v.* PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–5305. HORTH *v.* MOSLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 91–5306. MORSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 320.

No. 91–5308. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 238.

No. 91–5309. KUENZEL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 577 So. 2d 531.

No. 91–5310. BASKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–5311. LUNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 91–5312. HARRIS *v.* SHARPE. C. A. 6th Cir. Certiorari denied. Reported below: 934 F. 2d 322.

No. 91–5313. OLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 931 F. 2d 1250.

No. 91–5314. HANKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 931 F. 2d 1256.

No. 91–5315. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 894.

No. 91–5316. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 400.

No. 91–5317. PLANT *v.* UNITED STATES (two cases). C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 917 (first case); 931 F. 2d 890 (second case).

No. 91–5319. RUSTEMOGLU *v.* PFEFFER ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–5320. FERNOS-LOPEZ *v.* FIGARELLA LOPEZ. C. A. 1st Cir. Certiorari denied. Reported below: 929 F. 2d 20.

No. 91–5322. CHOU *v.* UNIVERSITY OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 1062.

No. 91–5323. SINN *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–5324. BAER *v.* DAHLBERG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–5325. FORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 63.

No. 91–5326. DAVIS *v.* PHOENIX, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 648.

No. 91–5328. CORNISH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 887.

No. 91–5329. MALACOW *v.* CONSOLIDATED RAIL CORPORATION. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 167 App. Div. 2d 123, 561 N. Y. S. 2d 211.

No. 91–5330. HUNTER *v.* DICKMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 701.

No. 91–5333. JOHNSON *v.* BROOKLAND COURTS COOPERATIVE. Ct. App. D. C. Certiorari denied.

No. 91–5334. MCKEITHAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 91–5335. JOHNSON, AKA BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–5337. FRIAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–5338. WOODARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 433.

No. 91–5339. ABATECOLA *v.* SMALL CLAIMS COURT VICTORVILLE JUDICIAL DISTRICT ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–5340. BERRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 671.

No. 91–5341. DREW *v.* EADS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 696.

No. 91–5342. FRETT *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 91–5343. THOMAS *v.* WHITE, ATTORNEY GENERAL OF ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1295.

No. 91–5345. SANCHEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 964.

No. 91–5346. WADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 300.

No. 91–5347. TAYLOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 703.

No. 91–5348. CUMMINGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1133.

No. 91–5351. WETMORE *v.* ALLEN, COMMISSIONER, MAINE DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 91–5352. SEAGRAVE *v.* LAKE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 920.

No. 91–5353. SEAGRAVE *v.* LAKE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 29.

No. 91–5354. MOULTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–5355. LEONARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 91–5356. D. M. J. *v.* B. G. B. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 576 So. 2d 537.

No. 91–5357. LEBOUEF *v.* GASPARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 91–5358. MARIN *v.* HAZELTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 916 F. 2d 716.

No. 91–5359. WEBB *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 160 Wis. 2d 622, 467 N. W. 2d 108.

No. 91–5360. SCHWARTZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–5361. WHITESIDE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 437 Mich. 188, 468 N. W. 2d 504.

No. 91–5364. ANDRUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 335.

No. 91–5365. TURNER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–5366. ROSS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 87 Md. App. 814.

No. 91–5367. ROLON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 911.

No. 91–5368. BRADFORD *v.* ROWLAND, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 861.

No. 91–5369. GUEVARA, A MINOR, BY GUEVARA, HER GUARDIAN AD LITEM, ET AL. *v.* MENDOZA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–5370. BOGUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 904 F. 2d 656.

No. 91–5372. WHITLEY *v.* RENDLE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 91–5373. HADEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1282.

No. 91–5374. HASKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–5375. HICKS ET AL. *v.* HENMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 927 F. 2d 607.

No. 91–5376. HODGES *v.* UNITED STATES; and
No. 91–5448. HODGES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 766.

No. 91–5377. JOHNSON *v.* PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 445.

No. 91–5378. COOK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 581 So. 2d 141.

No. 91–5379. DANIEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 517.

No. 91–5380. DITTA *v.* BRANCH MOTOR EXPRESS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 955.

No. 91–5381. JACKSON *v.* DOMOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 91–5382. HILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 928 F. 2d 303.

No. 91–5383. WARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1004.

No. 91–5384. SAWYER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 918 F. 2d 1501.

No. 91–5385. CONCHA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 975.

No. 91–5386. FONT *v.* ALBANDOZ. Super. Ct. P. R. Certiorari denied.

No. 91–5387. CAPPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 975.

No. 91–5388. CARAWAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1260.

No. 91–5391. PRINCE *v.* VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 887.

No. 91–5392. PURVIN *v.* BERGENS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1282.

No. 91–5393. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 938 F. 2d 69.

No. 91–5396. BOWIE *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–5398. MELLOTT *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 91–5399. MEDINA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 190, 948 F. 2d 782.

No. 91–5400. HALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–5402. KETCHUM, AKA EHLER *v.* DENVER POLICE DEPARTMENT; and KETCHUM *v.* IDAHO SPRINGS POLICE DEPARTMENT. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 33.

No. 91–5403. ST. HILAIRE *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL. (two cases). C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 324 (first case); 936 F. 2d 579 (second case).

No. 91–5404. KLEINSCHMIDT *v.* FINLEY, KUMBLE, WAGNER, HEINE, UNDERBERG, MANLEY, MEYERSON & CASEY, P. A., ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 573 So. 2d 913.

No. 91–5405. WHITAKER *v.* WELLS FARGO NATIONAL ASSN. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–5407. SIMMONS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 649.

No. 91–5408. POWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 932 F. 2d 1337.

No. 91–5409. SALDANA-MEZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 932 F. 2d 973.

No. 91–5410. TRASLAVINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 91–5412. MOORE *v.* RUDIN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 403, 927 F. 2d 1258.

No. 91–5413. HUNTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 588 A. 2d 680.

No. 91–5414. MUHAMMAD *v.* COWLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 91–5415. HENTNIK *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 91–5417. ROWE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 961.

No. 91–5418. MARKKULA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1003.

No. 91–5420. RONSON *v.* DROHAN, ACTING SUPREME COURT JUDGE, BRONX COUNTY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5421. SANFORD *v.* WEST VALLEY MUNICIPAL COURT. Sup. Ct. Cal. Certiorari denied.

No. 91–5422. EARL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–5423. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 737.

No. 91–5424. CASTRO-FIERRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1016.

No. 91–5425. CASTANEDA-MADERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1021.

No. 91–5426. DEBARDELEBEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 23.

No. 91–5427. BOWDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 969.

No. 91–5430. BROWN *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 91–5432. FORTE *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied.

No. 91–5433. DEERING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–5435. ALI *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 581 A. 2d 368.

No. 91–5437. BERKOWITZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1016.

No. 91–5438. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 970.

No. 91–5439. CAMPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–5443. RECALDE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–5445. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 978.

No. 91–5449. LYNCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1017.

No. 91–5455. KHANNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 922 F. 2d 1169.

No. 91–5456. KOWALCZYK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–5457. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5459. LEGGETT *v.* ROLLINS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 693.

No. 91–5461. DUNBAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1003.

No. 91–5464. PRADA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–5466. PLANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–5468. BERKERY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 961.

No. 91–5470. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 970.

No. 91–5472. GURGONE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 1257.

No. 91–5475. HACKETT *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 700.

No. 91–5478. MCDONEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–5479. CHASE *v.* OREGON COURT OF APPEALS. Sup. Ct. Ore. Certiorari denied.

No. 91–5480. MEDINA *v.* KEANE, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 681.

No. 91–5482. DAKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1022.

No. 91–5483. MAINES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 920 F. 2d 1525.

No. 91–5485. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 613 and 614.

No. 91–5486. NOVOA-SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1004.

No. 91–5487. MCHENRY *v.* UTAH VALLEY HOSPITAL. C. A. 10th Cir. Certiorari denied. Reported below: 927 F. 2d 1125.

No. 91–5491. STATEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1004.

No. 91–5492. YERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1412.

No. 91–5493. RIVERO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 600.

No. 91–5495. SAUNDERS *v.* AMOCO PIPELINE CO. C. A. 10th Cir. Certiorari denied. Reported below: 927 F. 2d 1154.

No. 91–5496. PULLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1085.

No. 91–5497. POULNOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–5498. JOHNSON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–5499. ASAY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 580 So. 2d 610.

No. 91–5500. KEITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 91–5504. WASHINGTON *v.* LAWS. Ct. App. Ga. Certiorari denied.

No. 91–5506. LEE *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 933 F. 2d 536.

No. 91–5511. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 362.

No. 91–5512. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1022.

No. 91–5513. GRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5517. PORTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5525. DAVIS *v.* FULCOMER, DEPUTY COMMISSIONER, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1280.

No. 91–5527. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 91–5528. REEVES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 57.

No. 91–5529. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 663.

No. 91–5531. GROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 91–5532. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1261.

No. 91–5536. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1260.

No. 91–5544. ALLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5545. HUGHES, AKA RICHARDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 1125.

No. 91–5547. REEVES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 271.

No. 91–5549. DOE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 290 U. S. App. D. C. 65, 934 F. 2d 353.

No. 91–5551. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 851.

No. 91–5552. DELGADO-HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–5553. HALICKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–5554. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 1557.

No. 91–5555. BERKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 1219.

No. 91–5561. PERALTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 955.

No. 91–5575. FOSTER *v.* MCGUIRE ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5580. TAFOYA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 91–5585. PATRICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 758.

No. 91–5590. MCDONALD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 933 F. 2d 1519.

No. 91–5592. MICHEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–5593. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 928 F. 2d 1060.

No. 91–5601. GRANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–5606. LIRIANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 2d 796.

No. 91–5609. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1529.

No. 91–5612. VALENTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 970.

No. 91–5620. STALEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–5628. GRIZZLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 943.

No. 91–5634. ABREU *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 935 F. 2d 1130.

No. 91–5635. HAIDAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1133.

No. 91–5637. LATO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 1080 and 935 F. 2d 276.

No. 91–5641. MCMAHON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 935 F. 2d 397.

No. 91–5642. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1262.

No. 91–5656. MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 268.

No. 90–1487. THREE BUOYS HOUSEBOAT VACATIONS U. S. A., LTD. *v.* MORTS ET AL. C. A. 8th Cir. Motion of Maritime Law Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 921 F. 2d 775.

No. 90–1492. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION *v.* MAYO. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 893 F. 2d 683 and 920 F. 2d 251.

No. 90–1528. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* TUKES. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 911 F. 2d 508.

No. 90–1600. ALABAMA *v.* YELDER. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 575 So. 2d 137.

No. 90–1763. CITY OF OMAHA ET AL. *v.* BUFFKINS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 922 F. 2d 465.

No. 90–1860. METROPOLITAN DADE COUNTY *v.* MILES. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 916 F. 2d 1528.

No. 90–1880. LEHMAN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* LESKO. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 925 F. 2d 1527.

No. 90–1946. MICHIGAN *v.* WILCOX. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 183 Mich. App. 616, 456 N. W. 2d 421.

No. 91–197. PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. *v.* JOHNSON. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 929 F. 2d 1067.

No. 90–1581. ARTHUR S. LANGENDERFER, INC., ET AL. *v.* S. E. JOHNSON CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 917 F. 2d 1413.

No. 90–1727. WESTVACO CORP. ET AL. *v.* SWEENEY. C. A. 1st Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 926 F. 2d 29.

No. 90–1757. RUSSO ET UX. *v.* MASON-MCDUFFIE INVESTMENT CO. INC. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 927 F. 2d 610.

No. 90–1931. MASON COUNTY, WASHINGTON, ET AL. *v.* DAVIS ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 927 F. 2d 1473.

No. 90–7538. BLAIR-BEY *v.* NIX, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 919 F. 2d 1338.

No. 91–205. STONEWALL UNION ET AL. *v.* CITY OF COLUMBUS ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 931 F. 2d 1130.

No. 90–1657. MASSACHUSETTS ET AL. *v.* UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition. Reported below: 288 U. S. App. D. C. 67, 924 F. 2d 311.

No. 91–200. RICHARDS ET AL. *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition. Reported below: 134 N. H. 148, 590 A. 2d 586.

No. 91–221. FISCHER *v.* CITY OF DOVER, NEW HAMPSHIRE, ET AL. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 90–1670. CONNORS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN, JUSTICE KENNEDY, and JUSTICE SOUTER would grant certiorari, vacate the judgment, and remand the case for further consideration in light of *Salve Regina College* v. *Russell*, 499 U. S. 225 (1991). Reported below: 919 F. 2d 1079.

No. 90–1736. AMERICAN SOCIETY OF PLASTIC & RECONSTRUCTIVE SURGEONS, INC., ET AL. *v.* ANDERSON. Sup. Ct. Utah. Motion of American Medical Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 807 P. 2d 825.

No. 90–1776. CHAMBERS *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 917 F. 2d 5.

No. 90–8092. BURKE *v.* AMERICAN TELEPHONE & TELEGRAPH. C. A. 2d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 90–1778. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* BOOKER. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 922 F. 2d 633.

No. 90–1792. JOHNSON *v.* O'DONNELL, JUDGE, COURT OF COMMON PLEAS OF CUYAHOGA COUNTY, OHIO, ET AL. Sup. Ct. Ohio. Motion of petitioner to strike intervening respondent's brief denied. Certiorari denied. Reported below: 57 Ohio St. 3d 712, 568 N. E. 2d 688.

No. 90–1844. MUNN, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF MUNN, DECEASED *v.* ALGEE. C. A. 5th Cir. Motions of American Jewish Congress et al. and Watchtower Bible & Tract Society of New York, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 924 F. 2d 568.

No. 90–1852. VIRGINIA DEPARTMENT OF TAXATION *v.* CORNING, INC. Sup. Ct. Va. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 241 Va. 353, 402 S. E. 2d 35.

No. 90–1875. BARD ET AL., DBA BARD & BARD CO. *v.* CROCKETT ET AL. C. A. 8th Cir. Motion of respondents for relief from compliance with Rule 29.1 granted. Certiorari denied. Reported below: 938 F. 2d 185.

No. 90–1902. EASTERN AIR LINES, INC. *v.* AIR LINE PILOTS ASSN., INTERNATIONAL, ET AL. C. A. 11th Cir. Motion of Air Transport Association of America and Official Committee of Unsecured Creditors of Eastern Airlines, Inc., for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 920 F. 2d 722.

No. 90–1903. AALGAARD *v.* MERCHANTS NATIONAL BANK, INC., ET AL. Ct. App. Cal., 3d App. Dist. Motion of respondents to disqualify counsel for petitioner and to strike petition for writ of certiorari and for sanctions denied. Certiorari denied. Reported below: 224 Cal. App. 3d 674, 274 Cal. Rptr. 81.

No. 90–1922. SCHMIDT *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 914 F. 2d 117.

No. 90–1970. LEOPOLD *v.* INTERNATIONAL COLLEGE ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 90–1937. PATY, DIRECTOR, DEPARTMENT OF LAND AND NATURAL RESOURCES OF HAWAII *v.* NAPEAHI. C. A. 9th Cir. Motion of Office of Hawaiian Affairs for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 921 F. 2d 897.

No. 90–1985. ALBANY INSURANCE CO. *v.* ANH THI KIEU. C. A. 5th Cir. Motion of American Institute of Marine Underwriters for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 927 F. 2d 882.

No. 90–7816. SCOTT *v.* WILLIAMS. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 924 F. 2d 56.

No. 90–8021. DEMPSEY *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari before judgment denied.

No. 90–8166. HERBAGE *v.* CARLSON, WARDEN. C. A. 8th Cir. Certiorari before judgment denied.

No. 90–8122. RIVERA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 808 S. W. 2d 80.

No. 91–5036. HALE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 807 P. 2d 264.

No. 91–5184. STOCKTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 241 Va. 192, 402 S. E. 2d 196.

No. 91–5252. ROPER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 328 N. C. 337, 402 S. E. 2d 600.

No. 90–8405. ZETTLEMOYER *v.* FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari limited to Question 3 presented by the petition. Reported below: 923 F. 2d 284.

No. 90–8495. KELLEY, A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, KELLEY, ET AL. *v.* J. C. PENNEY CASUALTY INSURANCE CO. Sup. Ct. Cal. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 52 Cal. 3d 1009, 804 P. 2d 689.

No. 91–7. RICHARDSON ENGINEERING CO. *v.* WILLIAM L. CROW CONSTRUCTION CO. C. A. 2d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 930 F. 2d 908.

No. 91–36. JURGENS ET UX. *v.* MCKASY, DBA TONKA MARKETING, ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 927 F. 2d 1552.

Rehearing Denied

No. 90–7370. WILL *v.* WILL, 501 U. S. 1233;

No. 90–7893. PERRY *v.* MICHIGAN ET AL., 501 U. S. 1236; and

No. 90–7907. COSNER *v.* BEATTY, JUDGE, CIRCUIT COURT OF HENRY COUNTY, 501 U. S. 1236. Petitions for rehearing denied.

OCTOBER 10, 1991

Dismissal Under Rule 46

No. 91–61. MONROE CLINIC *v.* NELSON ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 925 F. 2d 1555.

OCTOBER 15, 1991

Certiorari Granted—Vacated and Remanded. (See also No. 90–1713, *ante*, p. 1.)

No. 91–269. HELLING ET AL. *v.* MCKINNEY. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wilson* v. *Seiter*, 501 U. S. 294 (1991). JUSTICE BLACKMUN and JUSTICE STEVENS would deny certiorari. Reported below: 924 F. 2d 1500.

Miscellaneous Orders

No. A–142. TRINSEY *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–1005. IN RE DISBARMENT OF KELLY. Motion to defer consideration denied. Disbarment entered. [For earlier order herein, see 501 U. S. 1203.]

No. 65, Orig. TEXAS *v.* NEW MEXICO. Order amending March 28, 1988 [485 U. S. 394], order appointing River Master:

It is ordered that Neil S. Grigg be and he hereby is appointed River Master of the Pecos River for the purpose of performing the duties set forth in the Amended Decree of March 28, 1988.

It is further ordered that the River Master shall have the power and authority to subpoena information or data, compiled in reasonable usable form, which he deems necessary or desirable for the proper and efficient performance of his duties.

It is further ordered that the River Master is allowed his necessary expenses, including the cost of competent legal advice deemed by him to be necessary to carry out his duties, as well as reasonable fees for his services, statements for which shall be submitted quarterly to the Court for its approval. Upon Court approval, such statements will be paid by the State of New Mexico and the State of Texas.

It is further ordered that if the position of the River Master becomes vacant during a recess of the Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have the same effect as if originally made by the Court. [For earlier order herein, see, *e. g.*, *ante*, p. 803.]

No. 111, Orig. DELAWARE *v.* NEW YORK. Motion of Oregon for leave to intervene and adopt complaint referred to the Special Master. [For earlier order herein, see, *e. g.*, 501 U. S. 1228.]

No. 90–1205. UNITED STATES *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 90–6588. AYERS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motion of respondents to strike *amicus curiae* brief of Jackson State University denied.

No. 90–1596. ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, ET AL. *v.* SEATTLE AUDUBON SOCIETY ET AL. C. A. 9th Cir. [Certiorari granted, 501 U. S. 1249.] Motion of Mountain States Legal Foundation et al. for leave to file a brief as *amici curiae* granted.

No. 90–6315. PEREZ *v.* LOUISIANA. Sup. Ct. La. Motion of petitioner to consolidate this case with No. 90–5844, *Foucha* v. *Louisiana* [certiorari granted, 499 U. S. 946], denied.

No. 90–6616. STRINGER *v.* BLACK, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. [Certiorari granted, 500 U. S. 915.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 91–261. BUILDING & CONSTRUCTION TRADES COUNCIL OF THE METROPOLITAN DISTRICT *v.* ASSOCIATED BUILDERS & CONTRACTORS OF MASSACHUSETTS/RHODE ISLAND, INC., ET AL. C. A. 1st Cir.;

No. 91–274. MASSACHUSETTS WATER RESOURCES AUTHORITY ET AL. *v.* ASSOCIATED BUILDERS & CONTRACTORS OF MASSACHUSETTS/RHODE ISLAND, INC., ET AL. C. A. 1st Cir.; and

No. 91–321. ITEL CONTAINERS INTERNATIONAL CORP. *v.* HUDDLESTON, COMMISSIONER OF REVENUE OF TENNESSEE. Sup. Ct. Tenn. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–286. BISHOP *v.* DELCHAMPS ET AL. C. A. 11th Cir. Motion of Henry F. Schaefer III et al. for leave to file a brief as *amici curiae* granted.

No. 91–293. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* HERNANDEZ. Ct. App. Tex., 4th Dist. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted.

No. 91–5591. IN RE VASTELICA. Petition for writ of mandamus denied.

No. 91–5568. IN RE HOLLINGSWORTH;
No. 91–5589. IN RE VIGIL; and
No. 91–5643. IN RE DENSON. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 90–1791. CONNECTICUT NATIONAL BANK *v.* GERMAIN, TRUSTEE FOR THE ESTATE OF O'SULLIVAN'S FUEL OIL CO., INC. C. A. 2d Cir. Certiorari granted. Reported below: 926 F. 2d 191.

No. 90–1802. NATIONWIDE MUTUAL INSURANCE CO. ET AL. *v.* DARDEN. C. A. 4th Cir. Certiorari granted. Reported below: 922 F. 2d 203.

No. 90–1972. UNITED STATES *v.* WILLIAMS. C. A. 10th Cir. Certiorari granted. Reported below: 899 F. 2d 898.

No. 90–1947. YEE ET AL. *v.* CITY OF ESCONDIDO, CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 224 Cal. App. 3d 1349, 274 Cal. Rptr. 551.

No. 91–5118. MORGAN *v.* ILLINOIS. Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 142 Ill. 2d 410, 568 N. E. 2d 755.

Certiorari Denied

No. 90–1724. WEILER *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 801 S. W. 2d 417.

No. 90–1855. PRICE ET AL. *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORK-

ERS OF AMERICA, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 88.

No. 90–1953. DARDEN *v.* NATIONWIDE MUTUAL INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 922 F. 2d 203.

No. 90–7616. CALDWELL *v.* QUINLAN, DIRECTOR, FEDERAL BUREAU OF PRISONS. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 377, 923 F. 2d 200.

No. 90–8133. BARAJAS-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90–8508. BROWN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 66, 401 S. E. 2d 492.

No. 91–29. MELTON *v.* CITY OF OKLAHOMA CITY ET AL.;
No. 91–280. MAXWELL, MAJOR, OKLAHOMA CITY POLICE DEPARTMENT, ET AL. *v.* MELTON;
No. 91–281. CITY OF OKLAHOMA CITY *v.* MELTON; and
No. 91–304. GRAMLING, CHIEF OF POLICE FOR THE CITY OF OKLAHOMA CITY *v.* MELTON. C. A. 10th Cir. Certiorari denied. Reported below: 928 F. 2d 920.

No. 91–48. AFIA/CIGNA WORLDWIDE ET AL. *v.* FELKNER, DEPUTY COMMISSIONER, OFFICE OF WORKERS' COMPENSATION PROGRAMS, EIGHTH COMPENSATION DISTRICT, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 1111.

No. 91–71. MING WAN LEUNG ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 1204.

No. 91–75. AMERICAN POSTAL WORKERS UNION, AFL–CIO *v.* UNITED STATES POSTAL SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 922 F. 2d 256.

No. 91–81. BARR LABORATORIES, INC. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and
No. 91–300. NATIONAL ASSOCIATION OF PHARMACEUTICAL MANUFACTURERS *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 187, 930 F. 2d 72.

No. 91–88. SUSSEL *v.* CITY AND COUNTY OF HONOLULU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 920 F. 2d 936.

No. 91–112. CRAMER *v.* SKINNER, SECRETARY OF TRANSPORTATION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 1020.

No. 91–120. HISPANIC BROADCASTING LIMITED PARTNERSHIP *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 91–130. HISPANIC BROADCASTING SYSTEMS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 228, 931 F. 2d 73.

No. 91–125. ACIERNO *v.* SKINNER, SECRETARY OF TRANSPORTATION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 395.

No. 91–132. LITTLEFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 1099.

No. 91–133. BROOKHURST, INC., AS SUCCESSOR BY MERGER WITH COMMERCIAL UNIFORM CO. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 554.

No. 91–143. TOBIN ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 923 F. 2d 1506.

No. 91–152. FRUHWIRTH *v.* BALTIMORE CITY POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 886.

No. 91–168. RUTANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 1155.

No. 91–181. AGRO SCIENCE CO. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 573.

No. 91–185. ANTOON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 933 F. 2d 200.

No. 91–213. MCCALL *v.* CITY OF BIRMINGHAM, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 903.

No. 91–226. KELLY KARE, LTD., ET AL. *v.* O'ROURKE, WESTCHESTER COUNTY EXECUTIVE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 170.

No. 91–248. SEHNAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 1420.

No. 91–255. BOURGUIGNON ET UX. *v.* HOLIDAY INNS OF AMERICA, INC. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 91–257. NUTMEG INSURANCE CO. *v.* CITY OF ROSE CITY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 13.

No. 91–265. POTOMAC EDISON CO. *v.* HELMICK ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 185 W. Va. 269, 406 S. E. 2d 700.

No. 91–266. MANCHESTER *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 91–278. ESTATE OF DAU VAN TRAN ET AL. *v.* TEXACO REFINING & MARKETING, INC., ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 808 S. W. 2d 61.

No. 91–283. DOUGLASS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 91–285. PASKON *v.* SALEM MEMORIAL HOSPITAL DISTRICT ET AL. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 806 S. W. 2d 417.

No. 91–287. CHESAPEAKE INSURANCE CO., LTD. *v.* FOSTER, INSURANCE COMMISSIONER OF PENNSYLVANIA, AS REHABILITATOR OF THE MUTUAL FIRE, MARINE & INLAND INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 933 F. 2d 1207.

No. 91–291. CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH ET AL. *v.* MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 599 A. 2d 412.

No. 91–292. WALKER *v.* TOWNSHIP OF TEWKSBURY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 420.

No. 91–296. INSTITUTE FOR SCIENTIFIC INFORMATION, INC. *v.* GORDON & BREACH, SCIENCE PUBLISHERS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 1002.

No. 91–302. NARUMANCHI *v.* BOARD OF TRUSTEES FOR CONNECTICUT STATE UNIVERSITIES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 91–303. JACKSON, UNION TRUSTEE OF MSSA–ILA PENSION PLAN AND TRUST, ET AL. *v.* STRATTON, EMPLOYER TRUSTEE OF MSSA–ILA PENSION PLAN AND TRUST, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 544.

No. 91–306. STEELE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1313.

No. 91–307. CITRUS COUNTY, FLORIDA *v.* REDNER ET AL.; and No. 91–316. REDNER ET AL. *v.* CITRUS COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 919 F. 2d 646.

No. 91–308. MCCOMISKEY ET AL. *v.* SOBA. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–313. DODSON ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1464.

No. 91–315. D'ONOFRIO *v.* EDWARDS, ATTORNEY GENERAL OF NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–319. BILLMAN ET AL. *v.* MARYLAND DEPOSIT INSURANCE FUND CORPORATION ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 86 Md. App. 1, 585 A. 2d 238.

No. 91–320. BARNES ET AL. *v.* MATLOCK. C. A. 7th Cir. Certiorari denied. Reported below: 932 F. 2d 658.

No. 91–325. SUPERIOR COURT, COUNTY OF SAN DIEGO *v.* COPLEY PRESS, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 228 Cal. App. 3d 77, 278 Cal. Rptr. 443.

No. 91–327. KRIVONAK *v.* MILLER. Sup. Ct. Pa. Certiorari denied.

No. 91–328. FARRELL ET AL. *v.* AUTOMOBILE CLUB OF MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 603.

No. 91–333. GREGORY ET UX. *v.* FRONTIER MATERIALS, INC., ET AL. C. A. 10th Cir. Certiorari denied.

No. 91–334. GVOZDENOVIC ET AL. *v.* UNITED AIR LINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 933 F. 2d 1100.

No. 91–335. DETRO *v.* ROEMER, GOVERNOR OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 966.

No. 91–340. BELLOWS *v.* ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 113, 928 F. 2d 1205.

No. 91–341. ROCHNA *v.* ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 929 F. 2d 13.

No. 91–346. TALLADEGA COUNTY BOARD OF EDUCATION ET AL. *v.* ELSTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1020.

No. 91–347. WEIL ET UX., INDIVIDUALLY AND ON BEHALF OF THEIR MINOR DAUGHTER, WEIL *v.* BOARD OF ELEMENTARY AND SECONDARY EDUCATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 1069.

No. 91–352. GURASICH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–378. KADLEC *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 623.

No. 91–382. RHEINSTROM, ADMINISTRATOR OF THE ESTATE OF POLLENZ, DECEASED *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 925 F. 2d 1066.

No. 91–385. PAUTZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 272.

No. 91–392. DAVIS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 95.

No. 91–393. MAJESKE *v.* BOARD OF TRUSTEES FOR REGIONAL COMMUNITY COLLEGES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–395. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1290.

No. 91–399. BRINSTON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 188.

No. 91–400. BUTLER ET UX. *v.* BUICK MOTOR CO., A DIVISION OF GENERAL MOTORS CORP. Ct. App. Tenn. Certiorari denied. Reported below: 813 S. W. 2d 454.

No. 91–404. AMERICAN TRANSMISSIONS, INC., ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 269.

No. 91–413. BOWERS *v.* UNITED STATES DEPARTMENT OF JUSTICE. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 350.

No. 91–414. MADKOUR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 234.

No. 91–420. BELLIS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 273.

No. 91–447. RAVEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 721.

No. 91–5084. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 889.

No. 91–5104. ROSA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 206 Ill. App. 3d 1074, 565 N. E. 2d 221.

No. 91–5141. JOHNS *v.* KAISER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 91–5170. EDWARDS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 27.

No. 91–5174. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 928 F. 2d 1106.

No. 91–5240. CONRAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 307.

No. 91–5267. PLUMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 908 F. 2d 978.

No. 91–5296. PERRY *v.* HOLMES ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–5327. DURR *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 58 Ohio St. 3d 86, 568 N. E. 2d 674.

No. 91–5390. SELLERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 809 P. 2d 676.

No. 91–5411. JOSEPH *v.* ZACHARY MANOR NURSING HOME ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 697.

No. 91–5428. WALL *v.* FIRST JERSEY-NATIONAL BANK & CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1284.

No. 91–5429. PIRON *v.* DE GROOTE ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–5436. BOUSHEY *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 804 S. W. 2d 148.

No. 91–5442. THOMPSON *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1542.

No. 91–5444. TOWNES *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 91–5446. PINEDA-VELASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1260.

No. 91–5450. HITCHCOCK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 578 So. 2d 685.

No. 91–5451. MILLER *v.* GOEKE, SUPERINTENDENT, RENZ CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 91–5454. MORGAN *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 469 N. W. 2d 419.

No. 91–5458. JARVI *v.* NOBLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1133.

No. 91–5462. SPIRKO *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 59 Ohio St. 3d 1, 570 N. E. 2d 229.

No. 91–5471. ANTHONY *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 24 Conn. App. 195, 588 A. 2d 214.

No. 91–5474. ARCOREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 929 F. 2d 1235.

No. 91–5484. MOORE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 809 P. 2d 63.

No. 91–5488. TANNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5489. WATT *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5490. MITCHELL *v.* GUNTER, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied.

No. 91–5503. MYERS *v.* EVATT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1286.

No. 91–5509. HOLSEY *v.* GREEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 692.

No. 91–5515. OLIVA *v.* MORGAN, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION (AND DIAGNOSTIC AND CLASSIFICATION CENTER) AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 91–5516. BRADSHAW *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 91–5519. HICKSON *v.* GARNER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1261.

No. 91–5520. WELLS *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 91–5521. WILLIAMS *v.* CHAVIS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1289.

No. 91–5522. WARMACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 400.

No. 91–5526. BERRYHILL *v.* MILLER ET AL. Super. Ct. Ga., Fulton County. Certiorari denied.

No. 91–5534. DANIELS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 581 So. 2d 536.

No. 91–5535. FULLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 942 F. 2d 454.

No. 91–5537. VIEYRA *v.* UNITED STATES; and
No. 91–5538. PAULINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 739.

No. 91–5539. WILLIAMSON *v.* SOWDERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 970.

No. 91–5540. TOSADO *v.* DANBURY HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5541. PIETSCH *v.* BUSH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–5543. HERRELL *v.* WISE. Ct. App. Kan. Certiorari denied. Reported below: 15 Kan. App. 2d xxviii, 803 P. 2d 211.

No. 91–5548. VELASQUEZ *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5558. HARR *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5562. JARVI *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–5563. HAMM *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 183.

No. 91–5564. LEDET *v.* LYNN ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–5565. LeBouef *v.* Whitley, Warden. C. A. 5th Cir. Certiorari denied.

No. 91–5566. Edwards *v.* Gramling Engineering Corp. Ct. App. Md. Certiorari denied. Reported below: 322 Md. 535, 588 A. 2d 793.

No. 91–5567. Cronen *v.* Hardy et al. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5570. Hodges *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 766.

No. 91–5571. Bressi *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 909 F. 2d 1477.

No. 91–5574. Lester *v.* Falk, Director, Department of Corrections, Hawaii. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 324.

No. 91–5576. Braun *v.* West Virginia Board of Regents et al. Sup. Ct. App. W. Va. Certiorari denied.

No. 91–5578. Housel *v.* Zant, Warden. Sup. Ct. Ga. Certiorari denied.

No. 91–5579. Bates *v.* McCaughtry, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 934 F. 2d 99.

No. 91–5582. Quigley *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–5584. Shabazz *v.* Kaiser, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 583.

No. 91–5596. Ober *v.* Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 24 Conn. App. 347, 588 A. 2d 1080.

No. 91–5598. Washington *v.* Garrett. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–5599. Christian *v.* Smith, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1007.

No. 91–5600. Lane *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 328 N. C. 598, 403 S. E. 2d 267.

No. 91–5603. RASHTY *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 91–5607. WELLS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 91–5611. VOLTZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5615. MCLAUGHLIN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 393 Pa. Super. 277, 574 A. 2d 610.

No. 91–5617. RIDINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 91–5626. FINGADO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 934 F. 2d 1163.

No. 91–5631. WHITE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 584.

No. 91–5632. YORK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 933 F. 2d 1343.

No. 91–5649. SWABY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 924 F. 2d 753.

No. 91–5651. CROW *v.* UPJOHN CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1262.

No. 91–5657. GUTIERREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1482.

No. 91–5660. NASIM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 964.

No. 91–5662. NORMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 56.

No. 91–5663. HENRIQUEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 585.

No. 91–5667. RICHARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1295.

No. 91–5669. BARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 937 F. 2d 1346.

No. 91–5670. SILVA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 937 F. 2d 619.

No. 91–5672. GUERRA-MAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 665.

No. 91–5675. ETHERIDGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 318.

No. 91–5676. GAMBLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1290.

No. 91–5677. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 937 F. 2d 32.

No. 91–5681. FIELDS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 91–5682. CHAZULLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 739.

No. 91–5693. ROSENBERG *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 86 Md. App. 782.

No. 91–5697. WEAVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 584.

No. 91–5699. VOSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 91–5702. SHACKLEFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1529.

No. 91–5704. PAYAN-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 91–5709. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 822.

No. 91–5713. ODOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 268.

No. 91–5714. MAUZONE *v.* ROLLINS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 267.

No. 91–5716. MORRIS ET UX. *v.* CARLTON. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 862.

No. 91–5719. SUTTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1009.

No. 91–5720. SCHLOSSER *v.* INTERNAL REVENUE SERVICE. C. A. 11th Cir. Certiorari denied.

No. 91–5725. GARNES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 649.

No. 91–5729. VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 2d 796.

No. 91–5731. LAWRENCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–5735. LLERENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 934 F. 2d 1264.

No. 91–5739. MELVILLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 271.

No. 91–5741. ARINAGA-FIGUEROA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1290.

No. 91–5742. RATANSI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 909.

No. 91–5745. BYARS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 614.

No. 91–5747. GILES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 358.

No. 91–5748. CODOGNOTTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 939 F. 2d 233.

No. 91–5760. EVANS *v.* ROLLINS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1286.

No. 91–5761. GASTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5762. PARKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 934 F. 2d 1265.

No. 91–5763. NIETO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 277.

No. 91–5764. CUMBER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 91–5767. LAJOIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 942 F. 2d 699.

No. 91–5772. VERDIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 650.

No. 91–5773. JIMENEZ-LOPERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–5778. CAMERON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 86 Md. App. 773.

No. 91–5779. DIAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–5781. GIRARDIN *v.* PYLE, SUPERINTENDENT, FOUR MILE CORRECTIONAL CENTER. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 582.

No. 91–5791. TOLLIVER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 1183.

No. 91–5804. MATUTE *v.* PROCOAST NAVIGATION LTD. ET AL.; and MATUTE *v.* LLOYD BERMUDA LINES, LTD., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 627 (first case); 931 F. 2d 231 (second case).

No. 91–5809. TOWNSEND *v.* HARRIS. Ct. App. N. C. Certiorari denied. Reported below: 102 N. C. App. 131, 401 S. E. 2d 132.

No. 91–5822. LITTLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 938 F. 2d 1164.

No. 91–5832. CHAPMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 964.

No. 90–1800. GRUMMAN AEROSPACE CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 927 F. 2d 575.

No. 90–1887. CONNECTICUT *v.* MOONEY. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 218 Conn. 85, 588 A. 2d 145.

No. 90–8126. EARLY *v.* UNITED STATES; and

No. 90–8184. COLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: No. 90–8126, 927 F. 2d 605; No. 90–8184, 928 F. 2d 1133.

JUSTICE WHITE, dissenting.

The question in these cases is whether an amendment to the commentary to the United States Sentencing Guidelines should govern a sentencing which occurred prior to the effective date of the amendment. A majority of the Courts of Appeals have applied such an amendment when it clarified, but did not substantively change, the operation of an existing Guideline. *E. g.*, *United States* v. *Caballero*, 290 U. S. App. D. C. 235, 242, n. 8, 936 F. 2d 1292, 1299, n. 8 (1991); *United States* v. *Urbanek*, 930 F. 2d 1512, 1514–1515 (CA10 1991); *United States* v. *Lillard*, 929 F. 2d 500, 502–503 (CA9 1991); *United States* v. *Fiala*, 929 F. 2d 285, 290 (CA7 1991); *United States* v. *Nissen*, 928 F. 2d 690, 694–695 (CA5 1991); *United States* v. *Perdomo*, 927 F. 2d 111, 116–117 (CA2 1991); *United States* v. *Fells*, 920 F. 2d 1179, 1184 (CA4 1990) (Wilkins, J.), cert. denied, 501 U. S. 1219 (1991).

In contrast, the Eighth Circuit has held that an amendment may not be applied before its effective date. See *United States* v. *Watts*, 940 F. 2d 332, 333 (1991); *United States* v. *Dortch*, 923 F. 2d 629, 632, n. 2 (1991). In these cases the Sixth Circuit did not apply an amendment that took effect after the petitioners had been sentenced in District Court. But see *United States* v. *Sanchez*, 928 F. 2d 1450, 1458–1459 (CA6 1991) (applying such an amendment).

The United States Sentencing Commission has not addressed this recurring issue. See 56 Fed. Reg. 22762–22797 (1991) (Nov. 1991 Guidelines amendments). See generally *Braxton* v. *United States*, 500 U. S. 344, 347–349 (1991). Accordingly, I would grant certiorari and consolidate these cases to resolve the conflict in the Courts of Appeals.

No. 90–8215. FAZZINI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 931 F. 2d 895.

No. 91–259. REIN ET AL. *v.* PAN AMERICAN WORLD AIRWAYS, INC. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 928 F. 2d 1267.

No. 91–359. CITY OF NEW YORK, DEPARTMENT OF PERSONNEL, ET AL. *v.* PIESCO. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 933 F. 2d 1149.

No. 91–87. SCHMIDT *v.* UNITED STATES. C. A. 7th Cir. Motion of Parish Council of Our Lady of Lourdes Catholic Church et al. for leave to file a brief as *amici curiae* denied. Certiorari denied. Reported below: 923 F. 2d 1253.

No. 91–95. REDDY *v.* LITTON INDUSTRIES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 912 F. 2d 291.

JUSTICE WHITE, dissenting.

One of the issues in this case is whether a person has standing to sue for a conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. § 1962(d), if the wrongful acts alleged do not constitute "predicate acts" as defined in § 1961(1). Following the lead of the Second Circuit in *Hecht* v. *Commerce Clearing House, Inc.*, 897 F. 2d 21 (1990), the Ninth Circuit in this case held that petitioner lacked standing to assert a conspiracy claim under § 1962(d) because he did not allege injury from overt acts which themselves are prohibited in the RICO statute. 912 F. 2d 291, 295 (1990).

The Court of Appeals recognized that a division in authority existed between the Second Circuit's view, as expressed in *Hecht*, and the Third Circuit's position propounded in *Shearin* v. *E. F. Hutton Group, Inc.*, 885 F. 2d 1162 (1989). In *Shearin*, the Third Circuit had held that a person has standing to assert a § 1962(d) violation for overt acts of conspiracy that are not defined in § 1961(1). 885 F. 2d, at 1166–1167. The Ninth Circuit explicitly rejected the Third Circuit's position and adopted the Second Circuit's rule.

Because a conflict exists among the Courts of Appeals on this important federal question, I would grant certiorari to consider it.

No. 91–101. UNIVERSAL FOODS CORP. *v.* WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION ET AL. Ct. App. Wis. Motion of respondent Damato for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 161 Wis. 2d 1, 467 N. W. 2d 793.

No. 91–124. SWOYER *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. Commw. Ct. Pa. Motion of respondent for

award of damages denied. Certiorari denied. Reported below: 142 Pa. Commw. 1, 599 A. 2d 710.

No. 91–184. WATKINS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 921 F. 2d 285.

No. 91–354. IN RE STOLLER. Sup. Ct. Ill. Motion of petitioner to disqualify respondent's counsel denied. Certiorari denied.

No. 91–5587. WHITE *v.* BELL ATLANTIC CORP. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 929 F. 2d 695.

Rehearing Denied

No. 90–1867. CLAY *v.* EXCHANGE MUTUAL INSURANCE CO., 501 U. S. 1253. Petition for rehearing denied.

No. 90–1411. BIBBS ET AL. *v.* MATANUSKA-SUSITNA BOROUGH, INC., ET AL., 499 U. S. 977; and

No. 90–1544. HATCHETT *v.* UNITED STATES, 501 U. S. 1223. Motions for leave to file petitions for rehearing denied.

OCTOBER 17, 1991

Certiorari Denied

No. 91–6079 (A–258). MCDOUGALL *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Mecklenburg County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 21, 1991

Dismissal Under Rule 46

No. 91–5868. SKILLMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 922 F. 2d 1370.

Certiorari Granted—Reversed. (See also No. 91–311, *ante*, p. 9.)

Miscellaneous Orders

No. A–150. TURNER *v.* RUNSER ET AL. Super. Ct. Cal., Santa Clara County. Application for stay, addressed to JUSTICE WHITE and referred to the Court, denied.

No. D–1040. IN RE DISBARMENT OF GAYNES. It is ordered that Alex A. Gaynes, of Tuscon, Ariz., be suspended from the practice of law in this Court and that a rule 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–1041. IN RE DISBARMENT OF SCHARF. It is ordered that Justin Norbert Scharf, of Hagerstown, Md., be suspended from the practice of law in this Court and that a rule 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–1042. IN RE DISBARMENT OF MCLELLAN. It is ordered that Donald H. McLellan, Jr., of Columbia, S. C., be suspended from the practice of law in this Court and that a rule 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. 90–1038. CIPOLLONE, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF CIPOLLONE *v.* LIGGETT GROUP, INC., ET AL. C. A. 3d Cir. [Certiorari granted, 499 U. S. 935.] Case restored to calendar for reargument.

No. 90–1279. COLLINS *v.* CITY OF HARKER HEIGHTS, TEXAS. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motion of petitioner to supplement the record granted.

No. 91–10. SPECTRUM SPORTS, INC., ET AL. *v.* MCQUILLAN ET VIR, DBA SORBOTURF ENTERPRISES; and

No. 91–32. SORBOTHANE, INC., ET AL. *v.* MCQUILLAN ET VIR, DBA SORBOTURF ENTERPRISES. C. A. 9th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 91–5785. WOOD *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 12, 1991, within which to pay the docketing fee required by Rule 38(a) and

to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 91–5510. IN RE ANDERSON, AKA IBRAHIM. Petition for writ of mandamus denied.

Certiorari Granted

No. 90–8370. MEDINA *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 51 Cal. 3d 870, 799 P. 2d 1282.

Certiorari Denied

No. 90–8252. HORTON *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 90–8294. ZATKO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 90–8437. BENSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 754, 802 P. 2d 330.

No. 90–8475. GALLEGO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 115, 802 P. 2d 169.

No. 91–38. ROMEY *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 180.

No. 91–344. BRIDGEPORT POLICE FOR EQUAL EMPLOYMENT OPPORTUNITY, INC., ET AL. *v.* BRIDGEPORT GUARDIANS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 933 F. 2d 1140.

No. 91–345. HOOSIER ENERGY RURAL ELECTRIC COOPERATIVE, INC. *v.* INDIANA DEPARTMENT OF STATE REVENUE. Sup. Ct. Ind. Certiorari denied. Reported below: 572 N. E. 2d 481.

No. 91–348. CRISMAN ET UX. *v.* ODECO, INC. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 413.

No. 91–353. C. C. *v.* P. C. ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 161 Wis. 2d 277, 468 N. W. 2d 190.

No. 91–358. HUDSON *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 570 So. 2d 504.

No. 91–360. MISSOURI ET AL. *v.* JENKINS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 931 F. 2d 1273.

No. 91–366. DEMPSEY *v.* TOWN OF BRIGHTON, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 648.

No. 91–370. PERRY *v.* SCHULZE. C. A. 9th Cir. Certiorari denied.

No. 91–376. BOSSIO ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 269.

No. 91–384. IN RE COHRAN. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 277, 403 S. E. 2d 811.

No. 91–386. PETRONE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 161 Wis. 2d 530, 468 N. W. 2d 676.

No. 91–387. TIDMORE OIL CO., INC. *v.* BP OIL CO./GULF PRODUCTS DIVISION OF BP OIL CO. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 1384.

No. 91–394. NEAL *v.* HAWLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–415. WONDERWHEEL ET AL. *v.* MENDOCINO COUNTY, CALIFORNIA, SUPERIOR COURT, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 325.

No. 91–430. WELLMAN *v.* WELLMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 215.

No. 91–450. HINTON *v.* UNITED STATES; and
No. 91–5766. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–460. THOMAS *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 281.

No. 91–463. IDONE ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 553.

No. 91–482. ROCA-SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 91–5005. JORDAN ET AL. *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 903.

No. 91–5047. KELLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 929 F. 2d 582.

No. 91–5191. BLADE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 806 P. 2d 841.

No. 91–5297. BUTLER *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 91–5321. BAGBY *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 131.

No. 91–5336. BEASLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1021.

No. 91–5469. MERIT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1003.

No. 91–5505. HILL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 91–5595. SCHLICHER *v.* ROBERTS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 934 F. 2d 326.

No. 91–5605. LAWRENCE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 437 Mich. 1027.

No. 91–5610. DOYLE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 646.

No. 91–5616. SUEING *v.* BROWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 271.

No. 91–5618. VEY *v.* CASEY. C. A. 3d Cir. Certiorari denied.

No. 91–5619. LAVERS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 168 Ariz. 376, 814 P. 2d 333.

No. 91–5624. COOPER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 210 Ill. App. 3d 427, 569 N. E. 2d 144.

No. 91–5627. FERRELL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 115, 401 S. E. 2d 741.

No. 91–5633. COTTON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–5638. MIKESELL *v.* MORGAN, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION. C. A. 3d Cir. Certiorari denied.

No. 91–5645. DEMETER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–5647. CORONADO *v.* LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5654. NITZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 143 Ill. 2d 82, 572 N. E. 2d 895.

No. 91–5683. HILL *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 340.

No. 91–5687. HOLSEY *v.* PREVENTIVE HEALTH PROGRAM. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 596.

No. 91–5694. FERGUSON *v.* GIANT FOODS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 914 F. 2d 1490.

No. 91–5701. PERCY *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 156 Vt. 468, 595 A. 2d 248.

No. 91–5708. DIAZ *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–5723. RIVERA *v.* BLACKWELL, SUPERINTENDENT, EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5736. NEWLUN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 227 Cal. App. 3d 1590, 278 Cal. Rptr. 550.

No. 91–5756. BORCHERS *v.* UNITED STATES (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1280.

No. 91–5770. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 584.

No. 91–5774. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 849.

No. 91–5790. TREMBLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 925.

No. 91–5794. POUNDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 91–5795. NEVELS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5800. WINT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 664.

No. 91–5807. AINSWORTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 358.

No. 91–5808. BILAL *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 91–5813. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 53.

No. 91–5814. HAMELL, AKA HAMELL-EL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 931 F. 2d 466.

No. 91–5823. RICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1017.

No. 91–5824. ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 581.

No. 91–5825. MCHAYLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 574.

No. 91–5826. MIRANDA-ORTIZ, AKA PACHECO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 172.

No. 91–5847. RAFFAELE *v.* MURDOCK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 913.

No. 91–5849. CAMPBELL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 39.

No. 91–5851. MOORE *v.* STOCK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 578.

No. 91–5856. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–5857. PORTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1204.

No. 91–5858. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 276.

No. 91–5860. HODGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 1002.

No. 91–5861. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–5864. BARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1325.

No. 91–5867. WERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 57.

No. 91–5869. TYLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1210.

No. 91–5874. CONTRERAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 1058.

No. 91–5877. ARMSTRONG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 570.

No. 91–5882. CULBERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1016.

No. 91–5921. GANNON *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 896.

No. 90–1668. TEXAS *v.* STEPHENS. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 806 S. W. 2d 812.

No. 90–8407. STROZIER *v.* NEWSOME, WARDEN. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 926 F. 2d 1100.

No. 91–355 (A–243). MCNAMEE ET AL. *v.* STATE BAR COURT FOR THE STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. Certiorari denied.

No. 91–5473. PENSINGER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 1210, 805 P. 2d 899.

JUSTICE O'CONNOR, with whom JUSTICE KENNEDY joins, dissenting.

Petitioner claims that the California Supreme Court reviewed his death sentence in a manner inconsistent with this Court's holding in *Clemons* v. *Mississippi*, 494 U. S. 738 (1990). I agree; I would grant the petition, vacate petitioner's death sentence, and remand to the California Supreme Court.

At the guilt phase of a capital trial in California, the trier of fact determines whether the "special circumstances" alleged by the prosecution are true. Cal. Penal Code Ann. § 190.1(a) (West 1988). At the penalty phase, the trier of fact weighs any aggravating circumstances, including the special circumstances found to be true, against any mitigating circumstances. § 190.3.

At petitioner's trial, the jury found the existence of two special circumstances—that the murder was committed in the course of a kidnaping, and that the murder was accompanied by the infliction of torture. The California Supreme Court reversed the jury's finding as to the special circumstance of torture, because the jury was not instructed that the circumstance required proof of intent to torture. 52 Cal. 3d 1210, 1255, 805 P. 2d 899, 921 (1991). The court expressly found that the instructional error was not harmless, in light of the parties' failure to focus at trial on the issue of petitioner's intent to torture and because the evidence of such intent was not overwhelming. *Ibid.* The court nevertheless upheld the death sentence. In a single paragraph added to the opinion two months after it was published, the court reasoned: "[T]he evidence of the shocking nature of the attack on the infant victim was properly before the jury. The erroneous special circumstance finding was only a 'statutory label' which

could not have affected the verdict in light of the evidence properly before the jury." 52 Cal. 3d, at 1272, 805 P. 2d, at 933.

In my view, such cursory review is clearly insufficient under *Clemons*. Mississippi, like California, requires its juries to weigh aggravating and mitigating circumstances. In *Clemons*, the jury had considered an aggravating circumstance we assumed to be unconstitutionally vague—that the murder was "'especially heinous, atrocious, or cruel.'" 494 U. S., at 743. We held that the Mississippi Supreme Court could excise the erroneously considered aggravating circumstance and reweigh the evidence on its own; we did not require the court to remand for reweighing by the jury. *Id.*, at 750. We also permitted the Mississippi Supreme Court to determine whether the jury would beyond a reasonable doubt have imposed the death sentence even in the absence of the error. *Id.*, at 752. But because it was not clear whether the Mississippi Supreme Court had actually performed an independent reweighing of the evidence, and because the court had not engaged in a sufficient harmless error analysis based on the record, we vacated Clemons' death sentence and remanded, so that the Mississippi Supreme Court could choose one course or the other. *Id.*, at 751–754.

I would do the same here. The California Supreme Court did not reweigh the aggravating and mitigating circumstances. The court instead appears to have chosen *Clemons*' second option, harmless error analysis. Rather than reviewing the record, however, to determine whether the jury would beyond a reasonable doubt have imposed the death sentence given a finding of one special circumstance rather than two, the California Supreme Court upheld the sentence based solely on the fact that the error did not alter the mix of evidence weighed by the jury at the penalty phase. This holding is irreconcilable with *Clemons:* The unconstitutional vagueness of the "especially heinous" instruction did not change the mix of evidence presented to the jury in that case either, but that fact alone did not support a finding of harmlessness. The California Supreme Court's conclusion, moreover, makes little sense: *All* jury instruction errors would be harmless under this reasoning, because none of them add to or subtract from the evidence considered by the jury.

In a different case, the California Supreme Court's brief discussion of this issue might be interpreted as a finding that the evidence of torture was so overwhelming that the instructional error

was harmless, because a properly instructed jury would beyond a reasonable doubt have found the existence of the torture special circumstance. Here, however, the California Supreme Court explicitly *refused* to make such a finding. The decision below can only be interpreted as concluding that the invalidation of a special circumstance—in this case, one out of only two—is harmless whenever the same mix of evidence would have been presented to the jury in the error's absence. Because this conclusion cannot be squared with *Clemons*, I would vacate petitioner's death sentence and direct the California Supreme Court to review that sentence under the appropriate standard.

No. 91–5542. LEBBOS *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Motions for leave to file briefs as *amici curiae* filed by the following are granted: Roger Bartels, Barry Dale Ammon, Ronald Z. Berki, Raymond Dunn, Harold Rauch, John B. Gunn, Reginald Shinn, and John Rakus. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. Certiorari denied. Reported below: 53 Cal. 3d 37, 806 P. 2d 317.

OCTOBER 30, 1991

Miscellaneous Order

No. A–267. AMERICAN NEWSPAPER PUBLISHERS ASSN. ET AL. *v.* UNITED STATES ET AL. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE O'CONNOR took no part in the consideration or decision of this application.

NOVEMBER 1, 1991

Miscellaneous Order. (For Court's order making allotment of Justices, see *ante*, p. IV.)

NOVEMBER 4, 1991

Vacated and Remanded on Appeal

No. 91–337. SHEHEEN, SPEAKER OF THE HOUSE OF REPRESENTATIVES OF SOUTH CAROLINA *v.* TISDALE ET AL. Appeal from D. C. S. C. Judgment vacated and case remanded with instructions to dismiss the appeal as moot. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 777 F. Supp. 1270.

Miscellaneous Orders. (See also Nos. 91–5052, 91–5111, 91–5166, 91–5167, 91–5244, 91–5246, 91–5307, 91–5331, 91–5332, 91–5401, 91–5416, 91–5476, 91–5583, 91–5594, 91–5692, 91–5730, and 91–5732, *ante,* p. 16.)

No. A–316 (91–6255). SIGGERS ET AL. *v.* TUNICA COUNTY BOARD OF SUPERVISORS ET AL. D. C. N. D. Miss. Application for injunction and stay pending appeal, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

JUSTICE BLACKMUN, with whom JUSTICE STEVENS and JUSTICE O'CONNOR join, dissenting.

I would grant the stay. In my judgment, appellants have shown both a reasonable likelihood that four Justices will vote to note probable jurisdiction as well as a "fair prospect" of success on the merits. *Lucas* v. *Townsend,* 486 U. S. 1301, 1304 (1988) (KENNEDY, J., in chambers). In addition, I think the equities favor the appellants. See *id.,* at 1305.

On May 14, 1991, the county submitted a reapportionment plan to the Attorney General for preclearance under § 5 of the Voting Rights Act of 1965. That section provides that if the Attorney General does not object to a proposed plan within 60 days, the plan is deemed approved. See 42 U. S. C. § 1973c.

On June 24, the Department of Justice requested additional information. On July 12, 59 days after the county originally submitted its preclearance request, the Chief of the Justice Department's Voting Rights Section dispatched a letter to appellee announcing that

> "the sixty-day period for the changes now before us will now run concurrently with receipt of all the supplemental information. Therefore, by September 3, 1991, we will make a determination on the instant changes. See the Procedures for the Administration of Section 5 (28 C. F. R. 51.39)."

On September 3, the Justice Department denied preclearance, finding that the county had not met its burden of showing that its redistricting and electoral plan "has neither a discriminatory purpose nor a discriminatory effect."

On September 13, a three-judge District Court denied appellants' motion for an injunction. Appellants filed their request for injunctive relief in this Court on October 13. Due to an error in

the Clerk's Office of this Court, the filing was not renewed here until October 31.

Section 5 requires political subdivisions to obtain either judicial or administrative preclearance before implementing a voting change. "If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the [political subdivision] from implementing the changes." *Clark* v. *Roemer*, 500 U. S. 646, 652–653 (1991).

The District Court ignored this clear directive because it erroneously believed that the plan was precleared by the Attorney General's failure to interpose an objection within 60 days. Within the original 60-day period, the Attorney General requested additional information, which reset the 60-day clock under § 5. We have upheld the Attorney General's authority to extend the time for consideration. *Georgia* v. *United States*, 411 U. S. 526, 539–541 (1973). Therefore, the Attorney General's September 3 objections were interposed in a timely fashion, and the plan was not precleared.

The District Court also erred in declining to enjoin the election on the grounds that substantial resources had already been expended. We rejected that argument last Term in *Clark* v. *Roemer*. The facts that the electoral process already had begun and candidates had expended time and resources on the election are not persuasive reasons to depart from § 5's preclearance mandate. *Clark*, 500 U. S., at 653.

The equities, in my view, also balance in favor of appellants. The Department of Justice argues that we should not grant the application for an injunction, although the District Court erred in refusing to enjoin the election, because appellants delayed too long in filing their motion to enjoin.

In July when it became apparent that Tunica County intended to move ahead with the election despite the Department of Justice's July 12 letter informing them of an ongoing investigation, appellants filed for a temporary restraining order in District Court. After the September 3 denial of preclearance, appellants immediately sought a preliminary injunction. After the September 13 decision of the three-judge District Court, appellants filed a motion for injunctive relief in this Court within 30 days. Appellants have displayed no lack of diligence in challenging this election.

Indeed, it is the county that has contributed substantially to the injury that will be caused by enjoining the election at this late date. The parties and candidates had notice on June 24 and again on July 12 that the Department of Justice was concerned, and that preclearance might not be forthcoming on September 3. Since September 3 they have known that the Department of Justice did not preclear the election. Despite this notice, the county continued with election preparations. The mere passage of time does not create a balance of equities in the county's favor in the face of the county's failure to comply with the requirements of the Voting Rights Act of 1965.

For the foregoing reasons, I would grant the application for an injunction.

No. D–984. IN RE DISBARMENT OF FLINN. Motion for reinstatement denied. [For earlier order herein, see, *e. g.*, 500 U. S. 950.]

No. D–1023. IN RE DISBARMENT OF MATNEY. Disbarment entered. [For earlier order herein, see 501 U. S. 1268.]

No. D–1024. IN RE DISBARMENT OF MOORCONES. Disbarment entered. [For earlier order herein, see 501 U. S. 1268.]

No. D–1025. IN RE DISBARMENT OF BOXER. Disbarment entered. [For earlier order herein, see 501 U. S. 1269.]

No. D–1026. IN RE DISBARMENT OF GALLAGHER. Disbarment entered. [For earlier order herein, see 501 U. S. 1269.]

No. D–1043. IN RE DISBARMENT OF FRAZER. It is ordered that Burnett Merrell Frazer, Jr., of Austin, Tex., be suspended from the practice of law in this Court and that a rule 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–1044. IN RE DISBARMENT OF WEISENSEE. It is ordered that Lawrence Anthony Weisensee, of Duluth, Ga., be suspended from the practice of law in this Court and that a rule 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–1045. IN RE DISBARMENT OF COHEN. It is ordered that Ronald Marvin Cohen, of Encino, Cal., be suspended from the practice of law in this Court and that a rule 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–1046. IN RE DISBARMENT OF JENKINS. It is ordered that Andrew James Jenkins, of Deer Park, N. Y., be suspended from the practice of law in this Court and that a rule 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. 90–889. KING *v.* ST. VINCENT'S HOSPITAL. C. A. 11th Cir. [Certiorari granted, 498 U. S. 1081.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted. JUSTICE THOMAS took no part in the consideration or decision of this motion.

No. 90–1205. UNITED STATES *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 90–6588. AYERS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motion of John F. Knight, Jr., et al. for leave to file a brief as *amici curiae* denied.

No. 90–1596. ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, ET AL. *v.* SEATTLE AUDUBON SOCIETY ET AL. C. A. 9th Cir. [Certiorari granted, 501 U. S. 1249.] Motion of Public Citizen for leave to file a brief as *amicus curiae* granted.

No. 90–1599. UNITED STATES *v.* FELIX. C. A. 10th Cir. [Certiorari granted, *ante*, p. 806.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 91–42. UNITED STATES *v.* BURKE ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 806.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 91–164. UNITED STATES *v.* THOMPSON/CENTER ARMS CO. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 807.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 90–1745. UNITED STATES *v.* WILSON. C. A. 6th Cir. [Certiorari granted, *ante*, p. 807.] Motion for appointment of counsel granted, and it is ordered that Henry A. Martin, Esq., of Nashville, Tenn., be appointed to serve as counsel for respondent in this case.

No. 91–5759. MATTIZA *v.* TEXAS. Ct. App. Tex., 14th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 25, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BLACKMUN and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 91–5788. IN RE JOHNSON. App. Ct. Mass. Petition for writ of common-law certiorari denied. Reported below: 30 Mass. App. 1102, 566 N. E. 2d 117.

No. 91–6044. IN RE REESE; and
No. 91–6046. IN RE BROWN-EL. Petitions for writs of habeas corpus denied.

No. 91–6029. IN RE DEMPSEY. Petition for writ of mandamus denied.

No. 91–5556. IN RE ANDERSON. Petition for writ of mandamus denied. JUSTICE THOMAS took no part in the consideration or decision of this petition.

Certiorari Granted

No. 90–1846. DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ. C. A. 9th Cir. Certiorari granted. Reported below: 929 F. 2d 1374.

No. 91–372. GEORGIA *v.* MCCOLLUM ET AL. Sup. Ct. Ga. Certiorari granted. Reported below: 261 Ga. 473, 405 S. E. 2d 688.

Certiorari Denied. (See also No. 91–5788, *supra.*)

No. 90–1412. ALABAMA HIGHWAY DEPARTMENT *v.* BOONE, ADMINISTRATRIX OF THE ESTATE OF BOONE, ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 572 So. 2d 389.

No. 90–1881. FRANKLIN FEDERAL SAVINGS BANK ET AL. *v.* DIRECTOR, OFFICE OF THRIFT SUPERVISION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 1332.

No. 90–8374. PEOPLES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 1082.

No. 90–8502. BRIGGMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 705.

No. 91–85. SPARKS *v.* SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO (CITY AND COUNTY OF SAN FRANCISCO, REAL PARTY IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–110. FIELDS *v.* HARTFORD CASUALTY INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 926 F. 2d 501.

No. 91–208. KITOWSKI, PERSONAL REPRESENTATIVE OF THE ESTATE OF MIRECKI, DECEASED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1526.

No. 91–216. MATTHEWS *v.* GREENEVILLE LIGHT & POWER SYSTEM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 968.

No. 91–229. ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 192, 930 F. 2d 77.

No. 91–233. LAWRENCE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 934 F. 2d 868.

No. 91–244. BARNES ET AL. *v.* LACY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 539.

No. 91–245. STEIN *v.* BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 169 App. Div. 2d 857, 564 N. Y. S. 2d 585.

No. 91–250. BLANK ET AL. *v.* BETHLEHEM STEEL CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 926 F. 2d 1090.

No. 91–256. GOTTI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 928 F. 2d 1289.

No. 91–273. ALTRAN CORP. *v.* FORD MOTOR CO. C. A. 3d Cir. Certiorari denied. Reported below: 930 F. 2d 277.

No. 91–276. ENVIRODYNE INDUSTRIES, INC. *v.* LUMPKIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 933 F. 2d 449.

No. 91–294. MARYLAND HIGHWAY CONTRACTORS ASSN., INC. *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 1246.

No. 91–301. WHITE *v.* LEIS, SHERIFF OF HAMILTON COUNTY, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–363. OLD SECOND NATIONAL BANK, TRUSTEE, ET AL. *v.* CITY OF AURORA. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 208 Ill. App. 3d 1110, 605 N. E. 2d 744.

No. 91–364. ARNOLD *v.* CONSOLIDATED RAIL CORPORATION. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 269.

No. 91–368. BROWN *v.* BROWN ET UX. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 207 Ill. App. 3d 139, 565 N. E. 2d 312.

No. 91–373. FIGUEROA VIVAS *v.* PUERTO RICO OFFICE OF THE SPECIAL PROSECUTOR. Sup. Ct. P. R. Certiorari denied. Reported below: 128 D. P. R. ——.

No. 91–379. AMERICAN ECONOMY INSURANCE CO. ET AL. *v.* SMITH ET VIR. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 794 S. W. 2d 574.

No. 91–389. KERPELMAN *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 323 Md. 136, 591 A. 2d 516.

No. 91–390. NORDSTROM *v.* NORDSTROM. Ct. App. Wash. Certiorari denied. Reported below: 60 Wash. App. 1044.

No. 91–396. GALBREATH *v.* HARRIS ET UX. Ct. App. Tenn. Certiorari denied. Reported below: 811 S. W. 2d 88.

No. 91–398. FIRST SOUTHERN INSURANCE CO. *v.* MASSEY. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1296.

No. 91–403. BROWN *v.* CURATORS OF THE UNIVERSITY OF MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 809 S. W. 2d 64.

No. 91–405. CITY OF JERSEY CITY ET AL. *v.* REDFIELD. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 598.

No. 91–407. SCHOONOVER *v.* KLAMATH COUNTY, OREGON. Ct. App. Ore. Certiorari denied. Reported below: 105 Ore. App. 611, 806 P. 2d 156.

No. 91–408. ANDERSON *v.* UNITED TELEPHONE COMPANY OF KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 933 F. 2d 1500.

No. 91–409. NAVARRO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 207 Ill. App. 3d 1108, 604 N. E. 2d 581.

No. 91–412. ROSENBAUM *v.* ROSENBAUM. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 207 Ill. App. 3d 1111, 604 N. E. 2d 583.

No. 91–417. QUIROGA *v.* HASBRO, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 934 F. 2d 497.

No. 91–418. AEROVIAS NACIONALES DE COLOMBIA, S. A., ET AL. *v.* CALDERON, PERSONAL REPRESENTATIVE OF THE ESTATE OF CALDERON, DECEASED, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 599.

No. 91–419. SOMMER, AN INFANT, BY SOMMER, HIS MOTHER *v.* BENNETT, INDIVIDUALLY, AND GUARDIAN AD LITEM FOR SOMMER, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 91–421. HANFT *v.* CAMAR REALTY CORP. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 939, 572 N. E. 2d 53.

No. 91–422. IN RE HODGE. Ct. App. N. Y. Certiorari denied.

No. 91–425. O'QUINN ET AL. *v.* RYALS, INDIVIDUALLY, AND DBA RYALS RENTALS, ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 580 So. 2d 1140.

No. 91–426. WELTMAN *v.* SILNA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 936 F. 2d 358.

No. 91–433. CAMPBELL *v.* SCHWARTZ, GRIEVANCE ADMINISTRATOR, MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied. Reported below: 437 Mich. 1250.

No. 91–435. MCKNIGHT *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–438. KROLL *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 934 F. 2d 904.

No. 91–440. GOLDBERG & FELDMAN FINE ARTS, INC., ET AL. *v.* AUTOCEPHALOUS GREEK-ORTHODOX CHURCH OF CYPRUS ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–442. WILLIAMS *v.* CITY OF NORTHPORT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 903.

No. 91–445. BOYD *v.* SCHILDKRAUT GIFTWARE CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 76.

No. 91–446. CASTELLANO ET AL. *v.* BOARD OF TRUSTEES OF THE POLICE OFFICERS' VARIABLE SUPPLEMENTS FUND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 937 F. 2d 752.

No. 91–449. STRATAGENE *v.* HUSE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 280.

No. 91–454. DEVANEY *v.* XEROX CORP. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 31.

No. 91–456. ROSSY *v.* ROCHE PRODUCTS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 936 F. 2d 43.

No. 91–461. FISHER SCIENTIFIC CO. *v.* COLGAN. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1407.

No. 91–462. FERNANDEZ *v.* BANK OF AMERICA, NATIONAL TRUST & SAVINGS ASSN. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–467. ELBAUM *v.* EBSCO INDUSTRIES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 91–476. TOLEN *v.* KENTUCKY. Cir. Ct. Ky., McCracken County. Certiorari denied.

No. 91–489. OMAHA INDIAN TRIBE *v.* AGRICULTURAL & INDUSTRIAL INVESTMENT CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 1462.

No. 91–495. WORLDWIDE CHURCH OF GOD ET AL. *v.* MCNAIR. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–504. SOMERVILLE ET AL. *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied.

No. 91–507. THOMPSON *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 593 A. 2d 621.

No. 91–508. FAHNESTOCK & CO., INC. *v.* WALTMAN. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 512.

No. 91–509. KEELS *v.* WAITES ET AL. Sup. Ct. S. C. Certiorari denied.

No. 91–514. SNYDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 1090.

No. 91–516. WHITE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 290 U. S. App. D. C. 269, 936 F. 2d 1326.

No. 91–525. HANOVER *v.* RUCH. Sup. Ct. Tenn. Certiorari denied. Reported below: 809 S. W. 2d 893.

No. 91–526. VINCENT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1458.

No. 91–541. MANES *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 112 N. M. 161, 812 P. 2d 1309.

No. 91–557. FALKNER ET UX. *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER FOR AMERIFIRST BANK, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 934 F. 2d 1264.

No. 91–564. BUTCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–566. UNDERWOOD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 1049.

No. 91–584. SOUTHERN PACIFIC TRANSPORTATION CO. ET AL. *v.* CITY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 498.

No. 91–5021. SHOUPE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 929 F. 2d 116.

No. 91–5023. BOLDEN *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 11 Va. App. 187, 397 S. E. 2d 534.

No. 91–5031. NEAL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 142 Ill. 2d 140, 568 N. E. 2d 808.

No. 91–5032. MONSANTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 924 F. 2d 1186.

No. 91–5180. SIMPSON *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 91–5218. WARNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 64.

No. 91–5282. MONSANTO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 934.

No. 91–5318. POLLARD *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 807 S. W. 2d 498.

No. 91–5350. CULBERSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 580 So. 2d 1136.

No. 91–5395. DICKEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 836.

No. 91–5406. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 1060.

No. 91–5453. NAGAC *v.* DERWINSKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 933 F. 2d 990.

No. 91–5460. SCOTT *v.* ATTORNEY GENERAL OF THE UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 271.

No. 91–5467. JENKINS *v.* DUGGER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1474.

No. 91–5523. JORDAN *v.* SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

No. 91–5629. PIKE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 568 So. 2d 392.

No. 91–5630. EVANS *v.* DOWD. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 739.

No. 91–5648. WHITAKER *v.* BAY AREA RAPID TRANSIT DISTRICT. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–5650. PERRY *v.* ALAMEDA COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 91–5658. COOPER *v.* CORDERMAN ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 809 S. W. 2d 11.

No. 91–5659. CHRISTOPHER *v.* MCMACKIN, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 967.

No. 91–5665. REGINO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–5671. CHATFIELD *v.* JOHNSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 582.

No. 91–5674. MCGILL *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 91–5678. GILL *v.* GUPTON ET UX. Ct. App. Ky. Certiorari denied.

No. 91–5684. STRICKLER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 241 Va. 482, 404 S. E. 2d 227.

No. 91–5690. SAUNDERS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 242 Va. 107, 406 S. E. 2d 39.

No. 91–5707. GAGE *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 577.

No. 91–5711. FARRELL *v.* MCGINNIS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 939 F. 2d 409.

No. 91–5712. MESSIH *v.* LEVINE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 228 Cal. App. 3d 454, 278 Cal. Rptr. 825.

No. 91–5715. BARNETT *v.* KAISER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 933 F. 2d 1019.

No. 91–5717. BILAL *v.* STEPHENS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 91–5718. ABERCROMBIE *v.* BARBOUR, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 408.

No. 91–5721. TAXEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 209 Ill. App. 3d 1108, 605 N. E. 2d 1158.

No. 91–5722. WILLIAMS *v.* STATE FARM AUTOMOBILE INSURANCE CO. Ct. App. Mich. Certiorari denied.

No. 91–5724. HUNTER *v.* CLARK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 934 F. 2d 856.

No. 91–5733. JOHNSON *v.* GUSTE, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–5737. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 242 Va. 1, 406 S. E. 2d 15.

No. 91–5743. ELLIS *v.* BALTIMORE COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT AND HOUSING OFFICE ET AL. C. A. 4th Cir. Certiorari denied.

No. 91–5744. AZIZ *v.* ST. LOUIS COUNTY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–5749. JONES *v.* CHECKETT, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF MEDICAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 91–5751. GROFF *v.* PEREZOUS ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5754. EDWARDS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 91–5755. MAXWELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–5757. WHITAKER *v.* SALVATION ARMY ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–5758. PRIDGEN *v.* BARNETT, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1287.

No. 91–5765. ZEIGLER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 580 So. 2d 127.

No. 91–5769. LIN *v.* FORDHAM UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 91–5775. CLARKE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 811 S. W. 2d 99.

No. 91–5780. HERNANDEZ *v.* CITY OF TEMPLE, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 889.

No. 91–5782. JACKSON ET AL. *v.* WARD ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–5784. MARINO *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 15 Kan. App. 2d xxxviii, 810 P. 2d 749.

No. 91–5786. MYKJAALAND *v.* HICKEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1457.

No. 91–5792. BROWN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 400 Pa. Super. 316, 583 A. 2d 805.

No. 91–5798. LEE *v.* KEMPER GROUP, T/A LUMBERMEN'S MUTUAL INSURANCE CO., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 50.

No. 91–5799. CORLEY *v.* KEOHANE, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 959.

No. 91–5801. WILEY *v.* GIBSON ET AL. Ct. App. Ind. Certiorari denied.

No. 91–5803. TETER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 91–5805. BATES ET AL. *v.* FEDERAL LAND BANK OF WICHITA, KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 975.

No. 91–5806. HILL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–5811. TERRELL *v.* FAUVER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 51.

No. 91–5815. SWIGART *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 478 N. W. 2d 641.

No. 91–5816. STEWART *v.* NUTH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1287.

No. 91–5817. TAYLOR *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 287, 404 S. E. 2d 255.

No. 91–5818. HENDERSON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–5819. EVANS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 1539.

No. 91–5820. JAMES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 91–5821. MELLAN FONSECA, AKA AVIDA MOSQUEDA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 597.

No. 91–5828. MABSON *v.* OLD HICKORY CASUALTY INSURANCE CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1014.

No. 91–5829. MONTAGUE *v.* DEPARTMENT OF AGRICULTURE. C. A. 3d Cir. Certiorari denied.

No. 91–5830. RESTREPO ET UX. *v.* FIRST NATIONAL BANK OF DONA ANA COUNTY, NEW MEXICO. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 965.

No. 91–5831. REID *v.* SCOTT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–5833. MALDONADO *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 569.

No. 91–5835. REIDT *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied.

No. 91–5837. SIMON *v.* BRENNAN. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 666.

No. 91–5838. GLOVER *v.* LEONARDO, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–5841. BUSH *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 623.

No. 91–5846. PAYTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 91–5865. CUMMINGS *v.* UNITED STATES; and
No. 91–5925. CUMMINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 941.

No. 91–5870. SIMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 574.

No. 91–5871. WAGNER *v.* WILLIFORD, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 931 F. 2d 58.

No. 91–5873. FISHER *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–5875. BARNES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 87, 946 F. 2d 1567.

No. 91–5883. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 584.

No. 91–5885. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1442.

No. 91–5886. ELLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–5890. ROMERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1317.

No. 91–5892. MCMAHON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 91–5894. PLAIR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 600.

No. 91–5895. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 91–5902. ROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 937 F. 2d 1077.

No. 91–5906. LIRIANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 585.

No. 91–5907. MAXTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 103.

No. 91–5913. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–5914. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 91–5915. PALACIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1482.

No. 91–5916. ROWE *v.* DEPARTMENT OF THE ARMY. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 113, 928 F. 2d 1205.

No. 91–5919. DEMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 220.

No. 91–5924. SEWELL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1261.

No. 91–5926. LUCAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1210.

No. 91–5927. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 937 F. 2d 620.

No. 91–5928. KEATS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 937 F. 2d 58.

No. 91–5930. ATRI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 292.

No. 91–5931. ALCAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–5932. ROJAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 268.

No. 91–5938. MARTINEZ GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 30.

No. 91–5939. RAMIREZ-ORTEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 581.

No. 91–5941. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 1223.

No. 91–5942. ELLZEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 492.

No. 91–5944. PONCE DE LEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 937 F. 2d 619.

No. 91–5945. BARKDOLL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 617.

No. 91–5946. BARNES *v.* ROLLINS, WARDEN, ET AL.; and TERRY *v.* ROLLINS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 913 (first case); 934 F. 2d 320 (second case).

No. 91–5948. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 786.

No. 91–5950. DUNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 1053.

No. 91–5951. GOCHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 629.

No. 91–5953. GUNN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 570.

No. 91–5954. JUAREZ-FIERRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 672.

No. 91–5959. DASHNEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 532.

No. 91–5960. BACHYNSKY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1349.

No. 91–5961. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–5964. MAKINDE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 663.

No. 91–5969. MEDIOUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 570.

No. 91–5983. WHALEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 1027.

No. 91–5986. PALMA-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1482.

No. 91–5988. COLSTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 312.

No. 91–5994. WILTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 617.

No. 91–6004. THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 945 F. 2d 328.

No. 91–6008. ALESSI *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1280.

No. 91–6009. DIXON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 603 and 604.

No. 91–6010. DUGGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 181.

No. 91–6011. DAVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 649.

No. 91–6028. CHLUMSKY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 617.

No. 91–6030. GRABILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6031. GROVES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 941 F. 2d 664.

No. 91–6034. MICHEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 605.

No. 91–6036. PENNINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 670.

No. 91–6040. NOLLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 90–1828. UNITED STATES *v.* DAILY ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 921 F. 2d 994.

No. 91–99. CURTIS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 32 M. J. 252.

No. 91–195. UNITED STATES *v.* WHITNEY BENEFITS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 926 F. 2d 1169.

No. 90–1835. RUST ENGINEERING CO., INC. *v.* CAMPBELL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 927 F. 2d 603.

No. 90–1883. NURSE MIDWIFERY ASSOCIATES ET AL. *v.* HENDERSONVILLE COMMUNITY HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 918 F. 2d 605 and 927 F. 2d 904.

No. 91–293. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* HERNANDEZ. Ct. App. Tex., 4th Dist. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 804 S. W. 2d 557.

No. 91–431. MURPHY *v.* KLEIN TOOLS, INC. C. A. 10th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 935 F. 2d 1127.

No. 90–1974. SPARKS *v.* CHURCHILL DOWNS ET AL. Ct. App. Ky. Certiorari denied. It is further ordered that a rule issue, returnable within 40 days, requiring petitioner to show cause why he should not be sanctioned in the amount of $1,000 for falsifying Exhibits 1 and 3 to his petition. JUSTICE THOMAS took no part in the consideration or decision of this petition and this order.

No. 91–177. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* WOODS. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 923 F. 2d 1454.

No. 91–391. KARIM *v.* BOYER. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 931 F. 2d 63.

No. 91–212 (A–263). WESTERN PALM BEACH COUNTY FARM BUREAU, INC., ET AL. *v.* UNITED STATES ET AL. C. A. 11th Cir. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied. Certiorari denied. Reported below: 922 F. 2d 704.

No. 91–282. HALAS *v.* DEPARTMENT OF ENERGY. C. A. Fed. Cir. Certiorari before judgment denied.

No. 91–470. HODGE *v.* NEW YORK STATE DEPARTMENT OF EDUCATION ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 172 App. Div. 2d 891, 568 N. Y. S. 2d 188.

No. 91–5130. SCOTT *v.* REARDON ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE KENNEDY would grant certiorari. Reported below: 922 F. 2d 845.

No. 91–5452. HARRISON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 289 U. S. App. D. C. 220, 931 F. 2d 65.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Justice Brennan (retired) to perform judicial duties in the United States Court of Appeals for the District of Columbia Circuit dur-

ing the period of November 22, 1991, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

NOVEMBER 7, 1991

Dismissal Under Rule 46

No. 90–1156. NEW ORLEANS PUBLIC SERVICE INC. *v.* COUNCIL OF THE CITY OF NEW ORLEANS ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 974.] Writ of certiorari dismissed under this Court's Rule 46.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Justice Marshall (retired) to perform judicial duties in the United States Court of Appeals for the Federal Circuit during the period of November 8, 1991, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

NOVEMBER 11, 1991

Certiorari Denied

No. 91–6337 (A–335). GREEN *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL 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. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay of execution of sentence of death. Reported below: 947 F. 2d 1230.

NOVEMBER 12, 1991

Affirming in Part and Vacating in Part on Appeal

No. 91–434. WATKINS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. Appeal from D. C. S. D. Miss. Judgment affirmed except with respect to appellants' claim that the preclearance requirements of § 5 of the Voting Rights Act apply to the changes in the absentee ballot procedures adopted for the September 17 election ordered by the District Court. The completion of the September 17 election has rendered this claim moot with regard

to the relief sought, *i. e.*, an order enjoining the September 17 election for failure to comply with preclearance requirements. Accordingly, we vacate that portion of the judgment below with instructions to dismiss the relevant part of the complaint. *Webster* v. *Reproductive Health Services*, 492 U. S. 490, 512–513 (1989); *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39–40 (1950). JUSTICE BLACKMUN and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 771 F. Supp. 789.

Certiorari Granted—Vacated and Remanded

No. 91–5518. KASHIF *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed October 21, 1991. Reported below: 930 F. 2d 35.

Miscellaneous Orders

No. A–224. HOANG *v.* SIMS ET AL. Application for leave to file petition for writ of certiorari in excess of the page limitations and an oversized appendix, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–1028. IN RE DISBARMENT OF WEBER. Disbarment entered. [For earlier order herein, see 501 U. S. 1269.]

No. D–1047. IN RE DISBARMENT OF KATZ. It is ordered that Al Katz, of Buffalo, N. Y., be suspended from the practice of law in this Court and that a rule 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–1048. IN RE DISBARMENT OF CANNAVINO. It is ordered that Pasquale G. Cannavino, of Newport News, Va., be suspended from the practice of law in this Court and that a rule 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. 90–8370. MEDINA *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 924.] Motion for appointment of counsel granted, and it is ordered that Michael Pescetta, Esq., of San Francisco, Cal., be appointed to serve as counsel for petitioner in this case.

No. 91–381. ILLINOIS EX REL. OFFICE OF PUBLIC COUNSEL ET AL. *v.* ILLINOIS COMMERCE COMMISSION ET AL. Sup. Ct. Ill.;
No. 91–471. CHEMICAL WASTE MANAGEMENT, INC. *v.* HUNT, GOVERNOR OF ALABAMA, ET AL. Sup. Ct. Ala.; and
No. 91–5397. NEGONSOTT *v.* SAMUELS, WARDEN, ET AL. C. A. 10th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–5752. IN RE HESLOP. Petition for writ of mandamus denied.

No. 91–5908. IN RE VEY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 91–122. PFZ PROPERTIES, INC. *v.* RODRIGUEZ ET AL. C. A. 1st Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 928 F. 2d 28.

Certiorari Denied

No. 90–1712. NORTH CAROLINA *v.* SMITH. Sup. Ct. N. C. Certiorari denied. Reported below: 328 N. C. 161, 400 S. E. 2d 405.

No. 90–1768. WORK ET AL. *v.* TYSON FOODS, INC., ET AL.; and
No. 90–1774. TYSON FOODS, INC. *v.* WORK ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 921 F. 2d 1394.

No. 90–7495. STUMPF *v.* OHIO. Ct. App. Ohio, Guernsey County. Certiorari denied.

No. 90–8446. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 205 Ill. App. 3d 1109, 600 N. E. 2d 935.

No. 91–186. MID-OHIO COMMUNICATIONS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 85, 946 F. 2d 1565.

No. 91–199. GAMBINO *v.* UNITED STATES; and
No. 91–439. MANNINO ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 926 F. 2d 1355.

No. 91–217. WASHINGTON DEPARTMENT OF NATURAL RESOURCES ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 926 F. 2d 1502.

No. 91–246. SAMUELS, KRAMER & CO. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 975.

No. 91–260. METZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 933 F. 2d 802.

No. 91–277. ADD VENTURES, INC. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1013.

No. 91–288. KIM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 52.

No. 91–314. CHAMP CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 688.

No. 91–317. DELORENZO ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 887 and 888.

No. 91–318. LELAND *v.* FEDERAL INSURANCE ADMINISTRATOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 524.

No. 91–338. SANCHEZ ET AL. *v.* CITY OF SANTA ANA, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 1027.

No. 91–406. SOUTHERN RAILWAY CO. *v.* WALLACE. Sup. Ct. Va. Certiorari denied.

No. 91–443. HODGE *v.* LAKE SHORE HOSPITAL, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–451. NORRIS *v.* ALABAMA STATE BAR. Sup. Ct. Ala. Certiorari denied. Reported below: 582 So. 2d 1034.

No. 91–459. NELSON ET UX. *v.* PRODUCTION CREDIT ASSOCIATION OF THE MIDLANDS. C. A. 8th Cir. Certiorari denied. Reported below: 930 F. 2d 599.

No. 91–465. ACADEMY LIFE INSURANCE CO. *v.* GUILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1286 and 1289.

No. 91–484. MICHIGAN ATTORNEY GRIEVANCE COMMISSION *v.* DOE #1. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 481.

No. 91–490. GREENING *v.* MILLER, CHIEF JUSTICE, SUPREME COURT OF ILLINOIS, ET AL. Sup. Ct. Ill. Certiorari denied.

No. 91–492. PLYMALE *v.* FREEMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 930 F. 2d 919.

No. 91–496. MAGYAR ET UX. *v.* OLAN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–530. PLEDGER, COMMISSIONER OF REVENUES OF ARKANSAS *v.* ILLINOIS TOOL WORKS, INC. Sup. Ct. Ark. Certiorari denied. Reported below: 306 Ark. 134, 812 S. W. 2d 101.

No. 91–580. KOLSTAD *v.* INTERNAL REVENUE SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 171.

No. 91–598. WICKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 284.

No. 91–602. RENFROE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–622. FOX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 599.

No. 91–629. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1290.

No. 91–5015. DOMINGUEZ-MESTAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 929 F. 2d 1379.

No. 91–5082. HAYES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 52 Cal. 3d 577, 802 P. 2d 376.

No. 91–5098. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 91–5205. MONTILLA-DAVILA, AKA KHADAFI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–5226. CONNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 1073.

No. 91–5288. TONNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 695.

No. 91–5394. CAMPBELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1473.

No. 91–5494. NELSON *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1282.

No. 91–5507. SODERLING ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–5572. BETANCOURT-ARRETUCHE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 933 F. 2d 89.

No. 91–5581. MORRIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 152, 807 P. 2d 949.

No. 91–5602. LEGER *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 208 Ill. App. 3d 333, 567 N. E. 2d 68.

No. 91–5738. LEDET *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 91–5746. DANIELS *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 273.

No. 91–5796. CHESTER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 526 Pa. 578, 587 A. 2d 1367.

No. 91–5812. WHALEN ET AL. *v.* TOWN OF LIVERMORE, MAINE, ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 588 A. 2d 319.

No. 91–5834. POLLOTTA *v.* MILES, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–5840. AL-BARI, AKA WHITE *v.* COMPTON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–5842. ZUCKERMAN *v.* HADDEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 1002.

No. 91–5844. SCHAEFER *v.* STATE BOARD OF EQUALIZATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1470.

No. 91–5848. HOLMES *v.* SHEAHAN, COOK COUNTY SHERIFF, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 930 F. 2d 1196.

No. 91–5850. REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 641.

No. 91–5853. MOORE *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 963.

No. 91–5854. HAMILTON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 891.

No. 91–5855. DIFFAY *v.* DIFFAY ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 207 Ill. App. 3d 1104, 604 N. E. 2d 577.

No. 91–5859. JOHNSON *v.* PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–5863. BAUMAN ET AL. *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 204 Ill. App. 3d 813, 562 N. E. 2d 336.

No. 91–5876. ABDUR-RAHMAN *v.* PIERON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 934 F. 2d 322.

No. 91–5879. WILLIAMS *v.* DAVIS BOAT WORKS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 888.

No. 91–5880. HARRIS *v.* GIST, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 569.

No. 91–5881. CODY *v.* JABE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 967.

No. 91–5889. LUSK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 583 So. 2d 1035.

No. 91–5898. MILLER *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 610.

No. 91–5899. GENTSCH *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 91–5900. CLARK *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 562 N. E. 2d 11.

No. 91–5904. ZICKL *v.* CARSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 932 F. 2d 964.

No. 91–5905. TYLER *v.* PEORIA COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 91–5909. WEST *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 91–5910. SANDERS *v.* DETROIT POLICE DEPARTMENT. Ct. App. Mich. Certiorari denied.

No. 91–5911. MONTOYA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 810 S. W. 2d 160.

No. 91–5917. PATTERSON *v.* COUGHLIN, COMMISSIONER, DEPARTMENT OF CORRECTIONAL SERVICES OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 91–5918. MARTEL *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 91–5935. JOHNSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 1360.

No. 91–5980. MARTINELLI *v.* CITY OF CLEVELAND POLICE DEPARTMENT. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 91–6015. HUBERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 827.

No. 91–6035. PRINCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 938 F. 2d 1092.

No. 91–6051. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 605.

No. 91–6054. BUSTAMANTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 903.

No. 91–6067. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1541.

No. 91–6068. DUDLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1542.

No. 91–6072. SAMUELS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1085.

No. 91–6073. WRIGHT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 868.

No. 90–1628. CUMMINS *v.* UNITED STATES. C. A. 8th Cir.;
No. 91–5013. TRIGG *v.* UNITED STATES. C. A. 7th Cir.; and
No. 91–5087. ENRIQUEZ-NEVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: No. 90–1628, 920 F. 2d 498; No. 91–5013, 925 F. 2d 1064; No. 91–5087, 931 F. 2d 890.

JUSTICE WHITE, dissenting.

In each of these cases, the petitioner has alleged that police used a traffic stop as a pretext for conducting a narcotics search. Gregory Cummins was stopped after he failed to proceed through an intersection when the traffic light turned green. 920 F. 2d 498 (CA8 1990). William Trigg was arrested for driving with a suspended license. 925 F. 2d 1064 (CA7 1991) (case below); *United States* v. *Trigg*, 878 F. 2d 1037 (CA7 1989). Mario Enriquez-Nevarez was pulled over after officers observed that his truck had a broken taillight. 931 F. 2d 890 (CA5 1991) (affirmance order). Each search led to the recovery of illegal drugs.

The Courts of Appeals for the Eighth, Seventh, and Fifth Circuits held that, because a reasonable police officer *could* have made the traffic stops, the evidence produced by the searches was admissible. See also *United States* v. *Causey*, 834 F. 2d 1179 (CA5 1987) (en banc). Cf. *United States* v. *Nersesian*, 824 F. 2d 1294 (CA2), cert. denied, 484 U. S. 958 (1987); *United States* v. *Hawkins*, 811 F. 2d 210 (CA3), cert. denied, 484 U. S. 833 (1987). The petitioners contend that the evidence should have been suppressed because no reasonable police officer *would* have made such traffic stops, and hence the stops were pretexts to investi-

gate other crimes for which there were not grounds to stop. See *United States* v. *Guzman*, 864 F. 2d 1512 (CA10 1988); *United States* v. *Smith*, 799 F. 2d 704 (CA11 1986).

In recent months, this Court has denied review of at least two other cases raising pretextual search claims. See, *e. g.*, *Anderson* v. *Illinois*, *ante*, p. 824; *Hope* v. *United States*, 499 U. S. 983 (1991). I would grant certiorari to address this recurring issue and to resolve the split in the Courts of Appeals.

No. 91–312. SIBEN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 930 F. 2d 1034.

No. 91–441. UNIROYAL, INC., ET AL. *v.* DUKE ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 928 F. 2d 1413.

No. 91–481. BARIS ET AL. *v.* CALTEX PETROLEUM, INC., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 932 F. 2d 1540.

No. 91–469. PARAGOULD CABLEVISION, INC. *v.* CITY OF PARAGOULD ET AL. C. A. 8th Cir. Motions of Warner Cable Communications, Inc., National Cable Television Association, Inc., and Tele-Communications, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 930 F. 2d 1310.

No. 91–472. STAMEY *v.* SOUTHERN BELL TELEPHONE & TELEGRAPH CO. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 932 F. 2d 978.

No. 91–480. CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORP. *v.* EL CAPITAN DEVELOPMENT CO. Sup. Ct. Cal. Motions of Sheet Metal Workers Trust Funds of Southern California et al., Laborers Health and Welfare Trust Fund for Northern California et al., U. A. Local No. 467 Pension Trust Fund et al., Laborers Health and Welfare Trust Fund for Southern California et al., and California Ironworkers Field Pension Trust et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 53 Cal. 3d 1041, 811 P. 2d 296.

No. 91–483. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* KENLEY. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 937 F. 2d 1298.

No. 91–498. NEW YORK CITY HOUSING AUTHORITY ET AL. *v.* OWENS. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 934 F. 2d 405.

No. 91–5264. RIVERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 929 F. 2d 136.

No. 91–5639. MCNEIL ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 290 U. S. App. D. C. 23, 933 F. 2d 1029.

No. 91–5952. HUNT *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 78 N. Y. 2d 932, 579 N. E. 2d 208.

JUSTICE WHITE, dissenting.

A key question in this case is whether the Double Jeopardy Clause applies to triallike sentence enhancement proceedings in noncapital cases. In *Bullington* v. *Missouri*, 451 U. S. 430 (1981), this Court held that the Clause was implicated in such proceedings in the capital context. We expressly declined to address the applicability of the Clause to noncapital sentence enhancement proceedings in *Lockhart* v. *Nelson*, 488 U. S. 33, 37, n. 6 (1988). The New York Court of Appeals in this case held that Double Jeopardy Clause principles did not preclude the State from seeking a second sentence enhancement after it failed to establish the requisite statutory predicate for enhancement in the first proceeding. 78 N. Y. 2d 932, 933, 579 N. E. 2d 208 (1991).

Other courts take the contrary view. See, *e. g.*, *Durosko* v. *Lewis*, 882 F. 2d 357, 359 (CA9 1989), cert. denied, 495 U. S. 907 (1990), and *Bullard* v. *Estelle*, 665 F. 2d 1347, 1361 (CA5 1982), vacated and remanded on other grounds, 459 U. S. 1139 (1983), both cases holding that double jeopardy analysis applies in sentence enhancement proceedings.

Because this division in authority should be resolved, I believe the Court should grant certiorari.

Rehearing Denied

No. 90–7462. GORELIK *v.* NI INDUSTRIES, INC., ET AL., 500 U. S. 923;

No. 90–8021. DEMPSEY *v.* MASSACHUSETTS, *ante*, p. 901;

No. 91–193. KELLY *v.* HOLIDAY INN OF BLYTHEVILLE, *ante*, p. 865;

No. 91–5117. LITZENBERG *v.* MURPHY ET AL., *ante*, p. 876;

No. 91–5303. SCHLICHER *v.* ROBERTS ET AL., *ante*, p. 885;

No. 91–5403. ST. HILAIRE *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL. (two cases), *ante*, p. 891; and

No. 91–5533. IN RE CYNTJE, *ante*, p. 806. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

NOVEMBER 14, 1991

Certiorari Granted

No. 91–6382. SAWYER *v.* WHITLEY, WARDEN. 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. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 945 F. 2d 812.

NOVEMBER 18, 1991

Miscellaneous Orders

No. D–1031. IN RE DISBARMENT OF WADE. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1032. IN RE DISBARMENT OF BRILL. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1049. IN RE DISBARMENT OF BELTRE. It is ordered that Luis Oscar Beltre, of Paramus, N. J., be suspended from the practice of law in this Court and that a rule 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–1050. IN RE DISBARMENT OF FRIEDMAN. It is ordered that Michael Friedman, of Los Alamitos, Cal., be suspended from the practice of law in this Court and that a rule 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–1051. IN RE DISBARMENT OF URROZ. It is ordered that Luis F. Urroz, of San Francisco, Cal., be suspended from the practice of law in this Court and that a rule 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–1052. IN RE DISBARMENT OF CAVACOS. It is ordered that Theodore Andrew Cavacos, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule 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–1053. IN RE DISBARMENT OF MICHALEK. It is ordered that James J. Michalek, of Lackawanna, N. Y., be suspended from the practice of law in this Court and that a rule 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. 90–1846. DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ. C. A. 9th Cir. [Certiorari granted, *ante*, p. 937.] Motion for appointment of counsel granted, and it is ordered that Richard W. Nichols, Esq., of Sacramento, Cal., be appointed to serve as counsel for respondent in this case.

No. 90–1947. YEE ET AL. *v.* CITY OF ESCONDIDO, CALIFORNIA. Ct. App. Cal., 4th App. Dist. [Certiorari granted, *ante*, p. 905.] Motion of petitioners to consolidate this case with No. 90–1824, *Palomar Mobilehome Park Assn.* v. *City of San Marcos, California*, denied.

No. 91–522. SAUDI ARABIA ET AL. *v.* NELSON ET UX. C. A. 11th Cir.; and

No. 91–540. CHANCE *v.* SOUTH CAROLINA. Sup. Ct. S. C. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–6084. IN RE KARNA. Petition for writ of mandamus denied.

Certiorari Granted

No. 91–453. LUCAS *v.* SOUTH CAROLINA COASTAL COUNCIL. Sup. Ct. S. C. Certiorari granted. Reported below: 304 S. C. 376, 404 S. E. 2d 895.

No. 91–5843. SOCHOR *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 2 and 4 presented by the petition. Reported below: 580 So. 2d 595.

Certiorari Denied

No. 90–1941. AKAKA ET AL. *v.* PRICE, AKA LOA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 824.

No. 90–8107. HUFFSTETLER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 402 S. E. 2d 841.

No. 90–8398. DEKOVEN *v.* BROWN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 919 F. 2d 140.

No. 91–176. R. V. DOCTOR ET AL. *v.* GENERAL ELECTRIC CAPITAL CORP. Ct. App. Ore. Certiorari denied. Reported below: 105 Ore. App. 414, 804 P. 2d 1231.

No. 91–240. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 926 F. 2d 763.

No. 91–324. MISSOURI ET AL. *v.* JENKINS ET AL. (two cases). C. A. 8th Cir. Certiorari denied. Reported below: 931 F. 2d 470 (first case); 942 F. 2d 487 (second case).

No. 91–377. FRIESON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 320.

No. 91–410. MUNOZ *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 359.

No. 91–436. BAIR *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 404.

No. 91–486. HECKMAN *v.* MCCULLION, REGISTRAR, OHIO BUREAU OF MOTOR VEHICLES. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 91–488. KPMG PEAT MARWICK ET AL. *v.* ABBEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 616.

No. 91–493. RICE ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 920.

No. 91–500. MATTEI ET AL. *v.* LABORERS COMBINED FUNDS OF WESTERN PENNSYLVANIA ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 402 Pa. Super. 486, 587 A. 2d 354.

No. 91–511. DOW CHEMICAL, U. S. A. *v.* PINION ET UX. C. A. 11th Cir. Certiorari denied. Reported below: 928 F. 2d 1522.

No. 91–513. NORTHCUTT ET UX. *v.* FARM CREDIT BANK. Ct. App. Okla. Certiorari denied. Reported below: 811 P. 2d 1368.

No. 91–517. FORREST ET AL. *v.* WASHINGTON STATE ELECTRICAL CONTRACTORS ASSN., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 736.

No. 91–518. BRAHMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 955.

No. 91–524. WILSON *v.* KAUFFMAN. Ct. App. Ind. Certiorari denied. Reported below: 563 N. E. 2d 610.

No. 91–528. PICINIC *v.* SEATRAIN LINES, INC., ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 169 App. Div. 2d 409, 564 N. Y. S. 2d 139.

No. 91–529. ABUNDANT LIFE CHRISTIAN CENTRE, INC. *v.* MARKHAM, BROWARD COUNTY PROPERTY APPRAISER. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 575 So. 2d 1307.

No. 91–531. KHASHOGGI *v.* NATIONAL DEVELOPMENT CO. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 253.

No. 91–534. COLONEL *v.* BUTEAU ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 580 So. 2d 754.

No. 91–536. BETHKE ET AL. *v.* BAKER MOTORS ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 91–539. LORD *v.* FARM CREDIT BANK OF SAINT PAUL, FKA FEDERAL LAND BANK OF ST. PAUL, ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 162 Wis. 2d 226, 470 N. W. 2d 265.

No. 91–559. ROBINSON *v.* CLEVELAND STATE UNIVERSITY. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 969.

No. 91–565. ADAMS *v.* CITY OF DETROIT, MICHIGAN, ET AL. Ct. App. Mich. Certiorari denied. Reported below: 184 Mich. App. 589, 458 N. W. 2d 903.

No. 91–607. MCDONALD *v.* PIEDMONT AVIATION, INC. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 220.

No. 91–623. TAYLOR *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1203.

No. 91–639. WOGAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 1446.

No. 91–5100. CARROLL, AKA SHIYR *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 806 S. W. 2d 716.

No. 91–5257. HOLLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1458.

No. 91–5362. VISMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 1390.

No. 91–5389. COATS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 91–5501. LINDSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 965.

No. 91–5502. LINDSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 916.

No. 91–5514. CLARK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 91–5530. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–5559. MOONEYHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 938 F. 2d 139.

No. 91–5560. PAREDES-MOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 665.

No. 91–5569. JENNINGS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 334, 807 P. 2d 1009.

No. 91–5573. HARPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1073.

No. 91–5597. MCCALLUM ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 891.

No. 91–5625. ASTORRI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 91–5646. SISSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5653. JIMENEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 648.

No. 91–5680. GENTRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 931 F. 2d 894.

No. 91–5691. WHITE *v.* STONE, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 321.

No. 91–5700. BURKE *v.* UNITED STATES; and
No. 91–5710. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 91–5734. LAWHORN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 581 So. 2d 1179.

No. 91–5768. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–5897. ROBISON *v.* MAYNARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 922.

No. 91–5903. HUBBERT *v.* ELKINS, DEPUTY WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1463.

No. 91–5912. HANRAHAN *v.* THIERET, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 933 F. 2d 1328.

No. 91–5920. BROWN ET AL. *v.* KERR GLASS MANUFACTURING INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 273.

No. 91–5923. SHUMATE *v.* SIGNET BANK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 320.

No. 91–5929. TURNER *v.* SHIMODA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–5933. HUITT *v.* EVANS, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 91–5934. ZGURO *v.* COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF VETERANS' SERVICES ET AL. App. Ct. Mass. Certiorari denied. Reported below: 30 Mass. App. 1111, 570 N. E. 2d 1049.

No. 91–5940. COLEMAN *v.* DELAWARE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 596.

No. 91–5943. HOGAN *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 187.

No. 91–5949. TYLER *v.* ASHCROFT, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 729.

No. 91–5955. JOHNSTON *v.* TORRES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–5956. HARPER *v.* STENBERG, ATTORNEY GENERAL OF NEBRASKA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 189.

No. 91–5958. FOX *v.* CUEVOS ET AL. C. A. 11th Cir. Certiorari denied.

No. 91–5963. DEMOS *v.* SUPREME COURT OF WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 91–5970. BOYD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 811 S. W. 2d 105.

No. 91–5976. RUSSELL *v.* CITY OF EAST POINT. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 213, 403 S. E. 2d 50.

No. 91–5978. ROBINSON *v.* FERENCHIK ET AL. Ct. App. Ohio, Stark County. Certiorari denied.

No. 91–5979. LYLE *v.* SAGINAW COUNTY CIRCUIT COURT STENOGRAPHER. Ct. App. Mich. Certiorari denied.

No. 91–5982. RICHARDSON *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 91–5992. HUDSPETH *v.* HUDSPETH. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 672.

No. 91–6001. WILLIAMS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 271.

No. 91–6012. BEARDSLEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 68, 806 P. 2d 1311.

No. 91–6053. MORALES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 396.

No. 91–6062. NIELSEN *v.* SOCIETY OF THE NEW YORK HOSPITAL. C. A. 2d Cir. Certiorari denied.

No. 91–6081. YILDIRIM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1317.

No. 91–6083. KIRBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 868.

No. 91–6088. WILLIAMSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–6089. SNYDER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 617.

No. 91–6095. BANDIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 669.

No. 91–6102. HAYES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 581 So. 2d 121.

No. 91–6105. LAUZON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 326.

No. 91–6108. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 941 F. 2d 267.

No. 91–6119. MORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 91–6124. HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 946 F. 2d 897.

No. 91–6125. PARKER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 590 A. 2d 504.

No. 91–6128. BENARY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1003.

No. 91–6140. DILORETO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1203.

No. 91–6141. ROGERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 911 F. 2d 740.

No. 91–6143. EARL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 90–1173. PUBLIC SERVICE COMPANY OF COLORADO ET AL. *v.* THOMPSON. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 800 P. 2d 1299.

No. 91–153. MARYLAND *v.* OWENS. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 322 Md. 616, 589 A. 2d 59.

No. 91–574. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* JACKSON. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 931 F. 2d 712.

No. 91–485. PIERRE *v.* CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1552.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

This lawsuit stems from a denial of accident insurance benefits by the administrator of an Employee Retirement Income Security Act of 1974 (ERISA) plan. See 88 Stat. 891, 29 U. S. C. § 1132 (a)(1)(B). In *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U. S. 101,

115 (1989), we reasoned that "the validity of a claim to benefits under an ERISA plan is likely to turn on the interpretation of terms in the plan" and therefore held that decisions of a plan administrator concerning eligibility for benefits ordinarily should be subject to *de novo* review.

Since our decision in *Bruch*, a disagreement has developed in the Courts of Appeals concerning the standard of review to be applied when a benefits decision turns on the facts of the case, rather than the interpretation of the terms in the ERISA plan. The Third and Fourth Circuits have held that a decision of a plan administrator should be reviewed *de novo*. *Luby* v. *Teamsters Health, Welfare, and Pension Trust Funds*, 944 F. 2d 1176 (CA3 1991); *Reinking* v. *Philadelphia American Life Ins. Co.*, 910 F. 2d 1210 (CA4 1990). See also *Petrilli* v. *Drechsel*, 910 F. 2d 1441 (CA7 1990) (dicta). However, in the present case, the Fifth Circuit ruled that an abuse of discretion standard should be applied. 932 F. 2d 1552 (1991).

I would grant certiorari to resolve the conflict in the Courts of Appeals on this important issue.

No. 91–503. SCHULTZ *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 288 U. S. App. D. C. 403, 927 F. 2d 1258.

No. 91–506. ENVIRONMENTAL DEFENSE FUND, INC. *v.* WHEELABRATOR TECHNOLOGIES, INC., ET AL. C. A. 2d Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 931 F. 2d 211.

No. 91–512. KAMEN *v.* KEMPER FINANCIAL SERVICES, INC., ET AL. C. A. 7th Cir. Motion of respondent Kemper Financial Services, Inc., for damages and costs denied. Certiorari denied. Reported below: 939 F. 2d 458.

No. 91–527. NATIONAL STEEL CORP. *v.* WHITE ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 938 F. 2d 474.

No. 91–5977. HAUGEN *v.* BRADY ET AL.; and HAUGEN *v.* CLARK COUNTY, NEVADA, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 90–1752. THOMAS *v.* BLISS & LAUGHLIN STEEL CO., *ante*, p. 811;

No. 90–1797. POLYAK *v.* BOSTON ET AL., *ante*, p. 813;

No. 90–8017. RILEY *v.* PLANTIER, SUPERINTENDENT, ADULT DIAGNOSTIC AND TREATMENT CENTER, *ante*, p. 830;

No. 90–8123. ARTHUR *v.* UNITED STATES, *ante*, p. 833;

No. 90–8134. SMITH *v.* DOUGHERTY ET AL., *ante*, p. 834;

No. 90–8195. AMUNTHAIYAKUL *v.* UNITED STATES, *ante*, p. 837;

No. 90–8289. RAY *v.* PACIFIC MISSILE TEST CENTER AGENCY ET AL., *ante*, p. 842;

No. 90–8363. IN RE HERRERA ET AL., *ante*, p. 806;

No. 90–8371. COX *v.* UNITED STATES, *ante*, p. 847;

No. 90–8401. JURAS *v.* AMAN COLLECTION SERVICE, INC., ET AL., *ante*, p. 849;

No. 90–8422. IN RE STICH, *ante*, p. 806;

No. 91–12. MCINTYRE *v.* DEPARTMENT OF THE ARMY, *ante*, p. 856;

No. 91–5068. GENNINGER *v.* BUTLER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTE, NORFOLK, *ante*, p. 873;

No. 91–5086. ELDRIDGE *v.* BERNET, *ante*, p. 874;

No. 91–5102. SMITH *v.* TEXAS, *ante*, p. 875;

No. 91–5382. HILL *v.* UNITED STATES, *ante*, p. 890;

No. 91–5595. SCHLICHER *v.* ROBERTS ET AL., *ante*, p. 926;

No. 91–5598. WASHINGTON *v.* GARRETT, *ante*, p. 915; and

No. 91–5714. MAUZONE *v.* ROLLINS, WARDEN, ET AL., *ante*, p. 917. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

No. 90–1479. GROVER *v.* ROCHELEAU ET AL., 500 U. S. 918;

No. 90–5842. DARLINGTON *v.* UNITED STATES, 498 U. S. 961; and

No. 90–7530. DELFIN *v.* OFFICE OF PERSONNEL MANAGEMENT, 500 U. S. 924. Motions for leave to file petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these motions.

NOVEMBER 26, 1991

Dismissal Under Rule 46

No. 90–1372. MAIN HURDMAN *v.* FINE ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 919 F. 2d 290.

Miscellaneous Order

No. A–379. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION *v.* MAY. Application of the Attorney General of Texas for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE SCALIA, and by him referred to the Court, denied. THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS would grant the application to vacate the stay.

NOVEMBER 27, 1991

Miscellaneous Order

No. 90–857. DOGGETT *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 498 U. S. 1119.] Case restored to calendar for reargument. Counsel are directed to submit supplemental briefs on the question whether the history of the Speedy Trial Clause of the Sixth Amendment supports the view that the Clause protects a right of citizens to repose, free from the fear of secret or unknown indictments for past crimes, independent of any interest in preventing lengthy pretrial incarceration or prejudice to the case of a criminal defendant. JUSTICE THOMAS took no part in the consideration or decision of this order.

Certiorari Granted

No. 90–1604. MORALES, ATTORNEY GENERAL OF TEXAS *v.* TRANS WORLD AIRLINES, INC., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 949 F. 2d 141.

No. 91–571. TAYLOR *v.* FREELAND & KRONZ ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 938 F. 2d 420.

No. 91–594. AMERICAN NATIONAL RED CROSS *v.* S. G. ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 938 F. 2d 1494.

No. 91–615. ALLIED-SIGNAL, INC., AS SUCCESSOR-IN-INTEREST TO THE BENDIX CORP. *v.* DIRECTOR, DIVISION OF TAXATION. Sup. Ct. N. J. Certiorari granted. Reported below: 125 N. J. 20, 592 A. 2d 536.

No. 91–611. BARKER ET AL. *v.* KANSAS ET AL. Sup. Ct. Kan. Motion of Retired Officers Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 249 Kan. 186, 815 P. 2d 46.

DECEMBER 2, 1991

Certiorari Granted—Vacated and Remanded

No. 91–627. ARIZONA *v.* MULLEN. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Florida* v. *Bostick*, 501 U. S. 429 (1991). Reported below: 168 Ariz. 246, 812 P. 2d 1064.

Miscellaneous Orders

No. ——. RAUTENBERG ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (UNITED STATES, REAL PARTY IN INTEREST). Motion of petitioners to file a redacted petition for writ of certiorari publicly and motion to file motion under seal granted.

No. A–128. HAMPEL ET AL. *v.* AUTORIDAD DE ENERGIA ELECTRICA DE PUERTO RICO. Application for injunction, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A–218 (91–792). SARGENT, WARDEN *v.* HENDERSON. C. A. 8th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A–373 (91–836). UNION BANK OF SWITZERLAND *v.* UNITED STATES. Application for stay of mandate of the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

No. D–1029. IN RE DISBARMENT OF KESSLER. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1030. IN RE DISBARMENT OF GULLER. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1033. IN RE DISBARMENT OF ROBBINS. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1034. IN RE DISBARMENT OF OSTROWE. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1035. IN RE DISBARMENT OF MARCUS. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1036. IN RE DISBARMENT OF GOERLICH. Disbarment entered. [For earlier order herein, see 501 U. S. 1274.]

No. D–1037. IN RE DISBARMENT OF DELLORFANO. Disbarment entered. [For earlier order herein, see 501 U. S. 1275.]

No. D–1038. IN RE DISBARMENT OF NOLAN. Disbarment entered. [For earlier order herein, see 501 U. S. 1275.]

No. D–1039. IN RE DISBARMENT OF TOWNSEND. Disbarment entered. [For earlier order herein, see 501 U. S. 1279.]

No. D–1054. IN RE DISBARMENT OF NORRIS. It is ordered that Robert McKim Norris, Jr., of Birmingham, Ala., be suspended from the practice of law in this Court and that a rule 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–1055. IN RE DISBARMENT OF ROGERS. It is ordered that John Joseph Rogers, Jr., of Jamaica Plain, Mass., be suspended from the practice of law in this Court and that a rule 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–1056. IN RE DISBARMENT OF TAUB. It is ordered that Martyn Taub, of Middletown, N. Y., be suspended from the practice of law in this Court and that a rule 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–1057. IN RE DISBARMENT OF BERMAN. It is ordered that Brian Murray Berman, of Hollywood, Fla., be suspended from

the practice of law in this Court and that a rule 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–1058. IN RE DISBARMENT OF BONNER. It is ordered that James Luther Bonner, of Pittsboro, Miss., be suspended from the practice of law in this Court and that a rule 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. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for approval of fees and expenses granted, and the River Master is awarded $7,203 for the period July 1 through September 30, 1991, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 903.]

No. 91–545. BURLINGTON NORTHERN RAILROAD CO. *v.* BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION ET AL. C. A. 9th Cir.; and

No. 91–569. WASHINGTON ET AL. *v.* CONFEDERATED TRIBES OF COLVILLE RESERVATION ET AL. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–5947. DE CACERES *v.* SCHOLL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 23, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BLACKMUN and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis.*

No. 91–6057. SCHULZ *v.* WASHINGTON COUNTY ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept.; and

No. 91–6061. OSEI-AFRIYIE *v.* MEDICAL COLLEGE OF PENNSYLVANIA ET AL. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 23, 1991, within which to pay the docketing fee

required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petitions for writs of certiorari without reaching the merits of the motions to proceed *in forma pauperis.*

No. 91–6126. MAXEY *v.* CITY OF LUFKIN, TEXAS. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 23, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 91–6306. IN RE MORRIS. Petition for writ of habeas corpus denied.

No. 91–6016. IN RE VERNON;
No. 91–6060. IN RE LEDBETTER; and
No. 91–6078. IN RE COOMBS. Petitions for writs of mandamus denied.

Certiorari Denied

No. 91–59. CHRISTIE *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 932 F. 2d 980.

No. 91–129. DORSEY *v.* CITY OF DETROIT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 923 F. 2d 854.

No. 91–231. WILLINGHAM *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 198 Ga. App. 178, 401 S. E. 2d 63.

No. 91–263. FOOD GIANT, INC. *v.* PORTER. Ct. App. Ga. Certiorari denied. Reported below: 198 Ga. App. 736, 402 S. E. 2d 766.

No. 91–270. CITY OF NEWPORT BEACH, CALIFORNIA *v.* HAMMER. C. A. 9th Cir. Certiorari denied. Reported below: 932 F. 2d 842.

No. 91–271. MALINOVSKY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 60 Ohio St. 3d 20, 573 N. E. 2d 22.

No. 91–298. ROSA ET AL. *v.* RESOLUTION TRUST CORPORATION, IN ITS CORPORATE CAPACITY AND AS RECEIVER. C. A. 3d Cir. Certiorari denied. Reported below: 938 F. 2d 383.

No. 91–361. HOSKINSON, DECEASED, THROUGH THE PERSONAL REPRESENTATIVE OF HER ESTATE, FLEMING, ET AL. *v.* CALIFORNIA ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 168 Ariz. 250, 812 P. 2d 1068.

No. 91–362. DIALAMERICA MARKETING, INC. *v.* MARTIN, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1281.

No. 91–365. KACZMARCZYK ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 933 F. 2d 588.

No. 91–369. CHESSON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 298.

No. 91–371. TAMPAM, INC. *v.* OGLE COUNTY BOARD OF REVIEW ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 208 Ill. App. 3d 127, 566 N. E. 2d 905.

No. 91–374. CASO *v.* UNITED STATES; and
No. 91–626. KIELY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–388. POWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 1190.

No. 91–402. ALABAMA ET AL. *v.* BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL.; and
No. 91–416. MINNESOTA ET AL. *v.* BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 290 U. S. App. D. C. 166, 935 F. 2d 332.

No. 91–411. STRUMINIKOVSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 931 F. 2d 1186.

No. 91–427. STOUT *v.* BORG-WARNER CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 331.

No. 91–428. BARNES, COMMISSIONER OF TEXAS STATE BOARD OF INSURANCE, ET AL. *v.* E-SYSTEMS, INC. GROUP HOSPITAL

MEDICAL & SURGICAL INSURANCE PLAN ET AL. (two cases). C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 1100 (first case); 933 F. 2d 1004 (second case).

No. 91–478. SHINCHOSHA CO. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (SHIMIZU, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–499. HANESWORTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 583.

No. 91–523. ELLERY *v.* COUNTY OF SAN DIEGO. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–533. CHARLES J. ROGERS CONSTRUCTION *v.* TRUSTEES FOR MICHIGAN CARPENTERS COUNCIL HEALTH AND WELFARE FUND. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 376.

No. 91–544. CAMPBELL'S MOVING CO., INC. *v.* GOOZMAN, TRUSTEE. C. A. 4th Cir. Certiorari denied. Reported below: 936 F. 2d 567.

No. 91–546. LATROBE BREWING CO. ET AL. *v.* TONY SAVATT, INC. Super. Ct. Pa. Certiorari denied. Reported below: 400 Pa. Super. 296, 583 A. 2d 796.

No. 91–550. MILLIGAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 1129, 838 P. 2d 951.

No. 91–551. DAVIS *v.* KAMBARA KISEN CO., LTD. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 416.

No. 91–555. LINDSEY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 91–561. UBEROI *v.* UNIVERSITY OF COLORADO ET AL. Ct. App. Colo. Certiorari denied.

No. 91–562. BANKS *v.* CITY OF SAN JOSE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1469.

No. 91–567. WALTON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 392, 405 S. E. 2d 29.

No. 91–568. COOK ET UX. *v.* ATLANTIC RICHFIELD CO. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 616.

No. 91–570. PMI INDUSTRIES, INC., ET AL. *v.* FOLGER ADAM CO. C. A. 2d Cir. Certiorari denied. Reported below: 938 F. 2d 1529.

No. 91–572. ALLRIGHT, COLORADO, INC., ET AL. *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 1502.

No. 91–573. PIRELA *v.* VILLAGE OF NORTH AURORA. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 909.

No. 91–578. WHITE *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–582. LAYMAN *v.* XEROX CORP. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 605.

No. 91–585. STOCKLER ET AL. *v.* CITY OF DETROIT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–588. TRELL *v.* SENTEX SYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 623.

No. 91–593. SIMON *v.* THIBODAUX ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 574 So. 2d 554.

No. 91–599. CALLIHAN, DBA S. H. E. VIDEO, ET AL. *v.* OHIO. Ct. App. Ohio, Fairfield County. Certiorari denied.

No. 91–600. EVANS *v.* GOODMAN, CHAIR, BOARD OF TRUSTEES, CLEVELAND STATE UNIVERSITY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 934 F. 2d 322.

No. 91–601. ROMERO *v.* AGUAYO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 934 F. 2d 326.

No. 91–603. PEPSICO, INC., ET AL. *v.* USELTON ET AL.; and
No. 91–613. ALCOX ET AL. *v.* USELTON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 564.

No. 91–604. O'LEARY *v.* CALIFORNIA HIGHWAY PATROL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 862.

No. 91–606. DI MARTINO *v.* AMERICAN MOTORISTS INSURANCE CO. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–608. N. W. ENTERPRISES, INC. *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 91–609. F. & J. M. CARRERA, INC., ET AL. *v.* PINEIRO CRESPO ET AL. Sup. Ct. P. R. Certiorari denied.

No. 91–612. WOODARD *v.* VERMONT ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 156 Vt. 42, 589 A. 2d 840.

No. 91–621. PLANTE *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 134 N. H. 585, 594 A. 2d 165.

No. 91–628. LERMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 939 F. 2d 44.

No. 91–638. SANTOS *v.* RODRIGUEZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 605.

No. 91–648. GALE *v.* HOME SAVINGS OF AMERICA F. A., AS SUCCESSOR IN INTEREST TO HYDE PARK FEDERAL SAVINGS & LOAN ASSOCIATION OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 665.

No. 91–651. VORSHECK ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 757.

No. 91–653. ZIMMERMAN *v.* H. E. BUTT GROCERY CO. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 469.

No. 91–658. GLENN *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 91–662. ZEBERT *v.* BOARD OF BAR ADMISSIONS OF THE STATE OF MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 582 So. 2d 377.

No. 91–703. GUSTO RECORDS, INC., ET AL. *v.* THOMAS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 939 F. 2d 395.

No. 91–705. DEBERRY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 185 W. Va. 512, 408 S. E. 2d 91.

No. 91–709. LOWRANCE *v.* HACKER. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 665.

No. 91–711. ZEICHICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 670.

No. 91–725. SCHMITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 189.

No. 91–5099. GIBBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 919 F. 2d 142.

No. 91–5419. SANTOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 932 F. 2d 244.

No. 91–5440. STRIPLING *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 1, 401 S. E. 2d 500.

No. 91–5481. MCKINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 1412.

No. 91–5546. HUFFINGTON *v.* MARYLAND. Cir. Ct. Md., Frederick County. Certiorari denied.

No. 91–5614. POLLOCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 926 F. 2d 1044.

No. 91–5640. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 648.

No. 91–5644. SPREITZER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 143 Ill. 2d 210, 572 N. E. 2d 931.

No. 91–5666. RUSNOV ET AL. *v.* CITY OF CLEVELAND, OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 91–5673. HARPER *v.* THAMES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1262.

No. 91–5686. LEECH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 599.

No. 91–5689. PUENTES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 600.

No. 91–5695. CROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 928 F. 2d 1030.

No. 91–5696. BUSACCA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 232.

No. 91–5698. CABRERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 648.

No. 91–5706. DEAN *v.* UNITED STATES; and
No. 91–5753. HUDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 932 F. 2d 976.

No. 91–5728. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 585.

No. 91–5740. BENTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–5750. TISDALE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 921 F. 2d 1095.

No. 91–5789. VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 569.

No. 91–5802. SUTTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1009.

No. 91–5839. HODGE *v.* COLON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–5872. SEIBEL *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 163 Wis. 2d 164, 471 N. W. 2d 226.

No. 91–5878. STEVENSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 942 F. 2d 1111.

No. 91–5937. JONES *v.* MYERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 91–5962. CHASE *v.* PETERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1533.

No. 91–5967. WILLS *v.* WHITLEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 612.

No. 91–5971. PERALTA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 91–5974. VALLE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 581 So. 2d 40.

No. 91–5981. KAFFENBERGER *v.* CITY OF BULLHEAD, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 578.

No. 91–5984. KOFF *v.* KOFF. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 573 So. 2d 844.

No. 91–5985. ZILIGH *v.* SUPERIOR COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 91–5993. SUTTON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 562 N. E. 2d 1310.

No. 91–5996. MARTIN *v.* GREENSBORO HEALTH CARE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1541.

No. 91–5999. FORGIONE *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1278.

No. 91–6000. BATES *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 904.

No. 91–6002. WION *v.* LYNAUGH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 569.

No. 91–6003. WOZNISKI *v.* CLYMER, DEPUTY COMMISSIONER, EASTERN REGION, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1205.

No. 91–6013. ARGENTINA *v.* DEBENEDICTUS. Super. Ct. Pa. Certiorari denied.

No. 91–6014. BOYD *v.* TOWN OF CABOT, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 726.

No. 91–6018. PALERMO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 91–6019. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 939 F. 2d 135.

No. 91–6020. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 936 F. 2d 568.

No. 91–6021. WAINSCOTT *v.* MARMAG INVESTMENTS, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–6022. CONNELLY *v.* KOVACHEVICH. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–6023. SMITH *v.* HATFIELD. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1207.

No. 91–6025. WILLIAMS *v.* CANNER & BLOOM, P. C. Ct. App. Mich. Certiorari denied.

No. 91–6027. BYRD *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 91–6033. HUSSEY *v.* MASSACHUSETTS (two cases). Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 410 Mass. 664, 574 N. E. 2d 995 (first case); 410 Mass. 1007, 574 N. E. 2d 1000 (second case).

No. 91–6038. QUINTANA *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 126 N. J. 315, 598 A. 2d 877.

No. 91–6039. PORTNOY *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6043. GARRETT *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 91–6045. LEGRAND *v.* KELLEY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 91–6047. MCCLAIN *v.* REID, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied.

No. 91–6048. FUGEL *v.* MYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–6049. WALKER *v.* INDEPENDENCE FEDERAL SAVINGS & LOAN ASSN. ET AL. Ct. App. D. C. Certiorari denied.

No. 91–6052. MONGER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1008.

No. 91–6055. HILL *v.* BINGAMAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–6056. HILL *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 91–6058. MOSIER *v.* WILLIAMS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1020.

No. 91–6059. REED *v.* BELEW, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–6063. HOLLOMAN *v.* THORNTON, SUPERINTENDENT, JOHNSTON CORRECTIONAL CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 319.

No. 91–6064. KIRKSEY *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 499, 814 P. 2d 1008.

No. 91–6069. MURPHY *v.* DOWD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 187.

No. 91–6070. MALIK *v.* PHILLIPS ET AL. Sup. Ct. Haw. Certiorari denied.

No. 91–6071. LEBBOS *v.* STATE BAR OF CALIFORNIA ET AL.; and LEBBOS *v.* JUDGES, SANTA CLARA COUNTY SUPERIOR COURT. C. A. 9th Cir. Certiorari before judgment denied.

No. 91–6075. SAWDON *v.* ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 91–6080. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 936 F. 2d 568.

No. 91–6082. KELLY *v.* TRICKEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 183.

No. 91–6087. SIDES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 2d 1554.

No. 91–6092. DENNIS *v.* DOWDLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 612.

No. 91–6094. STEVENS *v.* OHIO ET AL. C. A. D. C. Cir. Certiorari denied.

No. 91–6098. TORO ARISTIZABAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 940 F. 2d 722.

No. 91–6104. HERBAGE *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 84, 946 F. 2d 1564.

No. 91–6107. HILL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 899.

No. 91–6111. BILLINGS *v.* MARTIN, SECRETARY OF LABOR. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 572.

No. 91–6114. LARGO-MONTENEGRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 943 F. 2d 58.

No. 91–6115. BROWN ET AL. *v.* CASSCELLS, TRUSTEE FOR CASSCELLS. C. A. 3d Cir. Certiorari denied.

No. 91–6116. MORENO MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 30.

No. 91–6117. LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 606.

No. 91–6131. PARIKH *v.* CHOY. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 613.

No. 91–6132. LOS *v.* WARDELL ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–6133. PUCKETT *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 801 S. W. 2d 188.

No. 91–6135. ROBBINS *v.* LYNN. C. A. 5th Cir. Certiorari denied. Reported below: 933 F. 2d 1004.

No. 91–6137. NAVE *v.* DELAWARE. C. A. 3d Cir. Certiorari denied.

No. 91–6144. LOMELINO *v.* MCDONNELL DOUGLAS AIRCRAFT CORP. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6147. SHELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 140.

No. 91–6151. HODGES *v.* RAFFERTY, SUPERINTENDENT, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 597.

No. 91–6154. ALEXANDER, aka WASHINGTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1203.

No. 91–6163. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 1508.

No. 91–6164. ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 669.

No. 91–6165. LUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1017.

No. 91–6166. ANDINO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 91–6171. SCHILLACI *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied.

No. 91–6172. FLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 673.

No. 91–6175. O'DELL ET AL. *v.* THOMPSON, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

No. 91–6176. GARRETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6177. MARTIN ET AL. *v.* MEDICAL CENTER OF DELAWARE. C. A. 3d Cir. Certiorari denied.

No. 91–6179. JOHNSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 47.

No. 91–6180. SHAKUR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1210.

No. 91–6185. ROGERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 939 F. 2d 591.

No. 91–6186. NUNN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 1148.

No. 91–6187. WEBB *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 787.

No. 91–6192. BOURQUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1016.

No. 91–6196. ESIEKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 29.

No. 91–6197. MADDOX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 1223.

No. 91–6198. HENDRICKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 320.

No. 91–6201. DIAZ-VALENZUELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 656.

No. 91–6202. BERNAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1529.

No. 91–6203. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1313.

No. 91–6206. BROWN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 1482.

No. 91–6207. BLACKSTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 940 F. 2d 877.

No. 91–6210. CLARK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 931 F. 2d 900.

No. 91–6217. SHUPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1542.

No. 91–6218. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 2d 896.

No. 91–6219. VEREB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 899.

No. 91–6221. TURNER *v.* RUNSER ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–6222. DANIEL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 84, 946 F. 2d 1564.

No. 91–6229. SMITH *v.* UNITED STATES; and
No. 91–6261. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 1243.

No. 91–6231. MURRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 669.

No. 91–6232. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 1243.

No. 91–6233. MCGHEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 934 F. 2d 1265.

No. 91–6234. PRIOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 427.

No. 91–6235. YOVEV *v.* NORTHROP CORP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6238. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 348.

No. 91–6243. MOUNT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 940 F. 2d 647.

No. 91–6247. FONDER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 162 Wis. 2d 591, 469 N. W. 2d 922.

No. 91–6251. STRICKLAND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 941 F. 2d 1047.

No. 91–6264. BAUER *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–6266. STARK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 942 F. 2d 1298.

No. 91–6276. LOVE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 1183.

No. 91–6277. MARINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1275.

No. 91–6278. MAN CHIU LI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1529.

No. 91–6283. ASHLEY *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–6284. POINDEXTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 2d 354.

No. 91–6285. POTEET *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 654.

No. 91–6289. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–6292. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 786.

No. 91–6295. BOGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 286.

No. 91–6305. INGRAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–251. DOOLEY ET AL. *v.* KOREAN AIR LINES CO., LTD.; and

No. 91–547. KOREAN AIR LINES CO., LTD. *v.* DOOLEY ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions. Reported below: 289 U. S. App. D. C. 391, 932 F. 2d 1475.

No. 91–397. CITIZENS AGAINST BURLINGTON, INC., ET AL. *v.* BUSEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 290 U. S. App. D. C. 371, 938 F. 2d 190.

No. 91–329. REBEL MOTOR FREIGHT, INC. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 933 F. 2d 1009.

No. 91–548. CHOATE *v.* FARM CREDIT BANK OF WICHITA. Ct. App. Okla. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 91–575. BHAN *v.* NME HOSPITALS, INC., ET AL. C. A. 9th Cir. Motion of American Association of Nurse Anesthetists for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 929 F. 2d 1404.

No. 91–583. BOSWORTH ET AL. *v.* LEATHERS, COMMISSIONER OF REVENUES OF ARKANSAS, ET AL. Sup. Ct. Ark. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 305 Ark. 598, 810 S. W. 2d 918.

No. 91–5604. IRVIN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. JUSTICE WHITE would grant certiorari.

No. 91–5655. O'DELL *v.* THOMPSON, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

Opinion of JUSTICE BLACKMUN, with whom JUSTICE STEVENS and JUSTICE O'CONNOR join, respecting the denial of the petition for writ of certiorari.

This is a capital case. Since the present Term began on October 7, 1991, the Court has considered 102 capital petitions, each seeking review of a decision of a State's highest court. Even if practical considerations did not preclude review on the merits of all such petitions, another consideration often argues against granting certiorari: In many of these cases, a federal habeas proceeding is necessary to develop further the petitioner's claims, both factually and legally. This is one such case. Because I believe the evidence raises serious questions about whether petitioner was guilty of the charged crime or was capable of representing himself, I write to underscore the importance of affording petitioner meaningful federal habeas review.

On February 5, 1985, a woman was murdered in a field behind the After Midnight Club in Virginia Beach, Va. Petitioner O'Dell had been at that bar during the evening. There was no evidence that he previously had known the woman or that they had spoken or departed together. O'Dell left the bar some time after the victim did and went to another bar where he got into a fight. The following day, O'Dell arrived at his former girlfriend's house. Thereafter, the former girlfriend found bloodstained clothing in her garage and turned it over to the police. O'Dell was charged with murder.

Shortly before the trial, the court excused O'Dell's public defender because of an unspecified conflict. A new attorney was appointed, but O'Dell sought permission to proceed *pro se* after the attorney acquiesced in the Commonwealth's motion to have

O'Dell examined by a court-appointed psychiatrist.[1] Following his examination by a local psychiatrist, the court found O'Dell competent to proceed *pro se* and ordered the attorney to act as standby counsel. Several times during the trial, the judge commented on O'Dell's inability to "emotionally control" himself, see, *e. g.*, 22 Tr. 44, and on one occasion informed O'Dell that his outbursts "concern me as to whether you are in fact in need of a reevaluation." 23 Tr. 21. Despite entreaties by standby counsel, the court refused to order a reevaluation.

The Commonwealth's evidence at trial consisted of tire tracks that were "similar" to those left by petitioner's car, blood tests, and testimony by a fellow inmate that O'Dell had confessed to committing the murder. The court refused O'Dell's request for a hearing on the reliability of the blood tests and allowed the technician to opine that the blood samples taken from O'Dell's shirt and jacket were consistent with samples taken from the victim. The court also denied O'Dell's proffer of evidence that the informant had offered to manufacture evidence in other trials as a means of avoiding prison terms.[2] O'Dell was convicted and sentenced to death. The conviction and sentence were upheld on appeal.

O'Dell continued to maintain his innocence during state habeas proceedings. He introduced the results of DNA testing that demonstrated that the blood found on his shirt either was not the victim's or could not reliably be linked to the victim. O'Dell also argued that the trial court erred in allowing him to represent himself, given his history of mental illness and his behavior at trial. See *Faretta* v. *California*, 422 U. S. 806 (1975); *Drope* v. *Missouri*, 420 U. S. 162, 181 (1975). The Virginia Circuit Court denied state habeas relief, specifically holding that the fact that current testing methods would have produced a different result does not justify the issuance of a writ of habeas corpus. The state court also ruled that O'Dell had been competent to represent himself.[3]

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[1] O'Dell previously had been diagnosed as a paranoid schizophrenic and had engaged in erratic behavior prior to trial.

[2] Subsequent to O'Dell's trial, the informant was given three years' probation on a breaking and entering charge, despite contrary assurances by the prosecution to petitioner's counsel and the court.

[3] Petitioner raised a number of other substantial federal claims, including a challenge to remarks made in the prosecutor's closing argument that petitioner previously had violated his parole. Standby counsel had complained

Following the denial of state habeas relief by the Virginia Circuit Court, O'Dell filed a timely notice of appeal with the Virginia Supreme Court. Having interpreted the relevant subsection of the Virginia Code as providing for an appeal as of right, O'Dell's counsel then filed timely assignments of error.[4] On March 6, 1991, a week after the filing deadline, the Deputy Clerk of the Virginia Supreme Court and the attorney for the Commonwealth informed petitioner's counsel that, in their opinion, O'Dell did not have an appeal as of right and thus O'Dell also needed to file a petition for appeal. At the same time, the Commonwealth's attorney allegedly informed petitioner's counsel that he would not oppose O'Dell's supplementation of his filings with the additional document. Two days later, however, when O'Dell filed a motion to perfect his appeal, the Commonwealth opposed the motion. On March 15, O'Dell filed his petition for appeal. On April 1, the Virginia Supreme Court denied O'Dell's motion and rejected his appeal. The Commonwealth now argues that the Virginia Supreme Court's rejection of O'Dell's appeal bars review of the merits of the federal questions raised by O'Dell in the Commonwealth's courts.

The Virginia Supreme Court's dismissal of O'Dell's habeas petition should not deprive a federal habeas court of jurisdiction.

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to the trial court that the argument was made in such a way as to convince the jury that it had only two options: either sentence petitioner to death or turn him loose on the streets to kill again. In fact, petitioner could receive only the death sentence or life without parole. The trial court refused petitioner's request for a curative instruction or a chance to rebut the prosecutor's misleading statements. In his state habeas proceedings, petitioner argued that the trial court had violated *Gardner* v. *Florida*, 430 U. S. 349 (1977), which held that a defendant is denied due process of law when his death sentence is imposed, at least in part, on the basis of information that he had no opportunity to deny or explain. The Virginia Circuit Court held that this challenge was barred by res judicata under *Hawks* v. *Cox*, 211 Va. 91, 175 S. E. 2d 271 (1970).

[4] A Virginia statute provides that a habeas decision in a capital case is appealable directly to the Virginia Supreme Court. See Va. Code Ann. § 17–116.05:1(B) (1988); *Hill* v. *Commonwealth*, 8 Va. App. 60, 69, 379 S. E. 2d 134, 139 (1989). The wording of this statute—"appeals lie directly to the Supreme Court"—suggests an appeal as of right, rather than a discretionary petition for appeal. The other categories of cases listed in this subsection require the filing of assignments of error, not a petition for appeal.

Under *Ake* v. *Oklahoma*, 470 U. S. 68, 74–75 (1985), the Virginia Supreme Court's rejection may not be based on an independent state ground because *Tharp* v. *Commonwealth*, 211 Va. 1, 175 S. E. 2d 277 (1970), requires the Virginia Supreme Court to consider whether a constitutional right was abridged before denying an extension of time for filing a petition for appeal.[5] The Virginia Supreme Court's rejection of O'Dell's appeal may also be an inadequate state ground. In *James* v. *Kentucky*, 466 U. S. 341 (1984), this Court held that only firmly established state procedural rules interpose a bar to the adjudication of federal constitutional claims. The ambiguity of the Virginia statute, Va. Code Ann. § 17–116.05:1B (1988), as to whether capital appeals are discretionary or as of right may preclude its use as a procedural bar.[6] See also *Ford* v. *Georgia*, 498 U. S. 411 (1991) (state practice must be firmly established and regularly followed in order to prevent subsequent review by this Court); *NAACP* v. *Alabama ex rel. Flowers*, 377 U. S. 288, 297 (1964) (application of procedural rule was pointless, severe, and consequently inadequate as jurisdictional bar to review).

Finally, federal review of O'Dell's claims is possible if it is necessary to prevent a fundamental miscarriage of justice, see *Coleman* v. *Thompson*, 501 U. S. 722, 757 (1991), or if the constitutional violation caused the conviction of an innocent person. See *McCleskey* v. *Zant*, 499 U. S. 467, 502 (1991).

In short, there are serious questions as to whether O'Dell committed the crime or was capable of representing himself—questions rendered all the more serious by the fact that O'Dell's life depends upon their answers. Because of the gross injustice that

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[5] While this Court rejected a similar argument in *Coleman* v. *Thompson*, 501 U. S. 722, 742 (1991), this case may be distinguishable. *Coleman* dealt with an untimely *notice* of appeal, not an untimely *petition* for appeal. Since the notice and assignments were timely, the Commonwealth was not unaware of petitioner's arguments, as it arguably was in *Coleman*. The Commonwealth's initial willingness to extend petitioner's time to perfect his appeal provides additional evidence that Virginia can waive the untimeliness rule when fundamental constitutional issues are at stake.

[6] As has been noted, see n. 4, *supra*, the wording of this statute—"appeals lie directly to the Supreme Court"—suggests an appeal as of right, rather than a discretionary petition for appeal. According to petitioner's counsel, even the Clerk's office and the Commonwealth's attorney were uncertain as to whether petitioner was entitled to an appeal as of right.

would result if an innocent man were sentenced to death, O'Dell's substantial federal claims can, and should, receive careful consideration from the federal court with habeas corpus jurisdiction over the case.

No. 91–5852. MARTIN *v.* KNOX ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 395.

Opinion of JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, respecting the denial of the petition for writ of certiorari.

On November 4, 1991, the Court applied its recently amended Rule 39.8 to eight petitions filed by James L. Martin. Instead of simply denying those certiorari petitions on the ground that they lacked merit, the Court denied Martin leave to proceed *in forma pauperis* on the ground that the petitions were repetitive and frivolous. *Zatko* v. *California*, *ante*, p. 16. I dissented from that action, in part, because drawing distinctions between those petitions that are frivolous and those that are merely meritless is a wasteful use of this Court's resources. The Court should simply deny certiorari once a determination is made that the petition lacks merit; there is no reason for the Court to make an additional inquiry into whether the petition is frivolous and thus the motion for leave to proceed *in forma pauperis* should be denied instead. The point is illustrated by the Court's correct disposition of this petition filed by Martin.

The petition is not frivolous because it raises a question on which the Courts of Appeals are in conflict. Compare *In re Beard*, 811 F. 2d 818, 827 (CA4 1987) (district judge's failure to disqualify himself can be reviewed by a petition for writ of mandamus); *Union Carbide Corp.* v. *U. S. Cutting Service, Inc.*, 782 F. 2d 710, 713 (CA7 1986) (same), with *Pittsburgh* v. *Simmons*, 729 F. 2d 953, 954 (CA3 1984) (judge's failure to recuse himself is reviewable only after final judgment); *Cleveland* v. *Krupansky*, 619 F. 2d 576, 578 (CA6) (same), cert. denied, 449 U. S. 834 (1980). Accordingly, it would be inappropriate to invoke Rule 39.8 and deny Martin's motion for leave to proceed *in forma pauperis.* I nevertheless agree that it is proper to deny the certiorari petition because it appears that the underlying recusal motion has no merit.

Rehearing Denied

No. 90–1649. ROJAS *v.* ALEXANDER'S DEPARTMENT STORE, INC., *ante,* p. 809;

No. 90–1670. CONNORS ET AL. *v.* UNITED STATES, *ante,* p. 899;

No. 90–1674. DENENBURG ET UX. *v.* UNITED STATES, *ante,* p. 809;

No. 90–1740. SAFIR *v.* NICKERSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, *ante,* p. 811;

No. 90–1771. CITY OF HENDERSON ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA (NEVADA ENTERTAINMENT INDUSTRIES, INC., ET AL., REAL PARTIES IN INTEREST), *ante,* p. 812;

No. 90–1857. CITY OF YONKERS, NEW YORK *v.* UNITED STATES ET AL. (two cases), *ante,* p. 816;

No. 90–1945. KING *v.* BOARD OF REGENTS OF THE UNIVERSITY OF GEORGIA ET AL., *ante,* p. 821;

No. 90–7054. EATON *v.* VIRGINIA, *ante,* p. 824;

No. 90–7781. TWITTY *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY, *ante,* p. 827;

No. 90–8059. SANDERS *v.* KENTUCKY, *ante,* p. 831;

No. 90–8083. ANDERSON *v.* ALCOA ET AL., *ante,* p. 832;

No. 90–8281. BROWN *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA, *ante,* p. 841;

No. 90–8295. KELLY *v.* CALIFORNIA, *ante,* p. 842;

No. 90–8324. MORRIS ET AL. *v.* DONREY OF NEVADA, INC., ET AL., *ante,* p. 844;

No. 90–8405. ZETTLEMOYER *v.* FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL., *ante,* p. 902;

No. 90–8417. IN RE SEARCY, *ante,* p. 806;

No. 90–8471. CUMMINGS *v.* UNITED STATES, *ante,* p. 852;

No. 90–8480. EBKER *v.* TAN JAY INTERNATIONAL ET AL., *ante,* p. 853;

No. 91–41. GARGALLO *v.* GARGALLO, *ante,* p. 857;

No. 91–66. STEPHENS *v.* ALABAMA, *ante,* p. 859;

No. 91–116. CARROLL ET AL. *v.* UNITED STATES, *ante,* p. 862;

No. 91–160. FIRST FEDERAL SAVINGS BANK & TRUST ET AL. *v.* DIRECTOR, OFFICE OF THRIFT SUPERVISION, ET AL., *ante,* p. 864;

No. 91–174. CENTENNIAL ET AL. *v.* PLACER DOME U. S., INC., *ante,* p. 864;

No. 91–223. DHALIWAL *v.* WOODS DIVISION, HESSTON CORP., ET AL., *ante,* p. 867;

No. 91–5042. IN RE PEERNOCK, *ante,* p. 806;

No. 91–5046. MCCULLEY *v.* UNITED STATES, *ante,* p. 872;

No. 91–5066. A'GIZA *v.* SAN BERNARDINO WEST SIDE COMMUNITY DEVELOPMENT CORP. ET AL., *ante,* p. 873;

No. 91–5090. PARKS *v.* SAFFLE, WARDEN, *ante,* p. 874;

No. 91–5096. SERNA *v.* ARIZONA, *ante,* p. 875;

No. 91–5115. LAWS *v.* NORTH CAROLINA, *ante,* p. 876;

No. 91–5170. EDWARDS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL., *ante,* p. 911;

No. 91–5171. CRAWFORD *v.* MICHIGAN, *ante,* p. 879;

No. 91–5178. MASON *v.* CALIFORNIA, *ante,* p. 879;

No. 91–5190. MCKENZIE *v.* DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION, *ante,* p. 880;

No. 91–5235. FERDIK *v.* RICHARDSON ET AL., *ante,* p. 882;

No. 91–5237. PYLE *v.* CITY OF TUCSON ET AL., *ante,* p. 882;

No. 91–5294. GILREATH *v.* ZANT, WARDEN, *ante,* p. 885;

No. 91–5301. ALEXANDER *v.* MISSOURI STATE BOARD OF LAW EXAMINERS, *ante,* p. 885;

No. 91–5391. PRINCE *v.* VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES, *ante,* p. 890;

No. 91–5392. PURVIN *v.* BERGENS ET AL., *ante,* p. 890;

No. 91–5404. KLEINSCHMIDT *v.* FINLEY, KUMBLE, WAGNER, HEINE, UNDERBERG, MANLEY, MEYERSON & CASEY, P. A., ET AL., *ante,* p. 891;

No. 91–5432. FORTE *v.* MASSACHUSETTS, *ante,* p. 893;

No. 91–5458. JARVI *v.* NOBLE ET AL., *ante,* p. 913;

No. 91–5498. JOHNSON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 895;

No. 91–5557. IN RE KNOWLES, *ante,* p. 806;

No. 91–5562. JARVI *v.* UNITED STATES ET AL., *ante,* p. 914; and

No. 91–5616. SUEING *v.* BROWN ET AL., *ante,* p. 926. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

No. 90–1776. CHAMBERS *v.* SOUTHWESTERN BELL TELEPHONE CO., *ante,* p. 900. Petition for rehearing denied. JUSTICE

O'CONNOR and JUSTICE THOMAS took no part in the consideration or decision of this petition.

No. 90–7134. STANKEWITZ *v.* CALIFORNIA, 499 U. S. 954. Motion for leave to file petition for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of this motion.

DECEMBER 9, 1991

Miscellaneous Orders

No. ——–——. BORRE *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A–372. VASQUEZ, WARDEN *v.* HARRIS. Application to vacate the order of the United States Court of Appeals for the Ninth Circuit granting a stay of mandate, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. 90–1745. UNITED STATES *v.* WILSON. C. A. 6th Cir. [Certiorari granted, *ante*, p. 807.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 90–1846. DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ. C. A. 9th Cir. [Certiorari granted, *ante*, p. 937.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 90–1859. KEENEY, SUPERINTENDENT, OREGON STATE PENITENTIARY *v.* TAMAYO-REYES. C. A. 9th Cir. [Certiorari granted, *ante*, p. 807.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 91–142. TIDEWATER MARINE SERVICE, INC., ET AL. *v.* AUBRY ET AL. C. A. 9th Cir.;

No. 91–349. PACIFIC MERCHANT SHIPPING ASSN. ET AL. *v.* AUBRY, LABOR COMMISSIONER, DIVISION OF LABOR STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL RELATIONS OF CALIFORNIA. C. A. 9th Cir.;

No. 91–356. MEAD CORP. *v.* TILLEY ET AL. C. A. 4th Cir.; and

No. 91–610. LOCAL 144 NURSING HOME PENSION FUND ET AL. *v.* DEMISAY ET AL. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–5450. HITCHCOCK *v.* FLORIDA, *ante*, p. 912. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 91–6109. GILBERTSON *v.* GRAHAM ET AL. Dist. Ct. App. Fla., 4th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 30, 1991, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 91–6391. IN RE ESTES; and
No. 91–6423. IN RE REARDON. Petitions for writs of habeas corpus denied.

No. 91–6127. IN RE JERSIMSKI. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 91–17. ESTATE OF COWART *v.* NICKLOS DRILLING CO. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 927 F. 2d 828.

No. 91–535. BURDICK *v.* TAKUSHI, DIRECTOR OF ELECTIONS OF HAWAII, ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 937 F. 2d 415.

No. 91–5771. WADE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 936 F. 2d 169.

Certiorari Denied

No. 91–323. FELDMAN ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., Orange County. Certiorari denied.

No. 91–357. LOUISIANA *v.* BRUCE. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 577 So. 2d 209.

No. 91–437. SMALLS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 398.

No. 91–444. LIVINGSTON CARE CENTERS, INC., ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 934 F. 2d 719.

No. 91–455. CRUDE CO. *v.* DEPARTMENT OF ENERGY ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 943 F. 2d 59.

No. 91–458. RIVERSIDE MARKET LIMITED PARTNERSHIP ET AL. *v.* PRESCOTT. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 327.

No. 91–464. TEAMSTERS LOCAL NO. 71 *v.* WALKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 376.

No. 91–473. GULF STATES UTILITIES CO. *v.* LOUISIANA PUBLIC SERVICE COMMISSION ET AL. Sup. Ct. La. Certiorari denied. Reported below: 578 So. 2d 71.

No. 91–479. MASSACHUSETTS *v.* REOPELL. C. A. 1st Cir. Certiorari denied. Reported below: 936 F. 2d 12.

No. 91–491. CONSOLIDATED FREIGHTWAYS, INC. *v.* WALKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 930 F. 2d 376.

No. 91–501. APONTE, MAYOR OF THE MUNICIPALITY OF CAROLINA, ET AL. *v.* HIRALDO-CANCEL ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 925 F. 2d 10.

No. 91–579. MIN-CHUAN KU *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 1052.

No. 91–624. ALEXANDER *v.* LOS ANGELES COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 917 F. 2d 27.

No. 91–625. E–V CO. ET AL. *v.* URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH. Sup. Ct. Pa. Certiorari denied. Reported below: 527 Pa. 550, 594 A. 2d 1375.

No. 91–632. MILLSPAUGH ET AL. *v.* COUNTY DEPARTMENT OF PUBLIC WELFARE OF WABASH COUNTY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 1172.

No. 91–634. INDEPENDENT NURSING HOME ASSN. ET AL. *v.* SMITH, DIRECTOR, MISSISSIPPI DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 793.

No. 91–641. FENN ET AL. *v.* ALFADDA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 475.

No. 91–643. BRYANT *v.* BROOKLYN BARBECUE CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 697.

No. 91–645. BUCHANAN *v.* FIRST GIBRALTAR BANK, FSB. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 83.

No. 91–646. INVESTACORP, INC. *v.* ARABIAN INVESTMENT BANKING CORP. (INVESTCORP) E. C., DBA INVESTCORP, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1519.

No. 91–647. ASKEW ET AL., DBA T & T PRODUCTION CO. *v.* CHILES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 655.

No. 91–649. GREENE ET AL. *v.* TOWN OF BLOOMING GROVE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 507.

No. 91–654. CAFARO *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 91–660. DOWNTOWN AUTO PARKS, INC. *v.* CITY OF MILWAUKEE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 938 F. 2d 705.

No. 91–663. CLARK *v.* CLARK, EXECUTOR OF THE ESTATE OF CLARK. Sup. Ct. Iowa. Certiorari denied. Reported below: 476 N. W. 2d 367.

No. 91–665. GELB *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–673. BLOCK, SHERIFF OF LOS ANGELES COUNTY, ET AL. *v.* BOUMAN. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1211.

No. 91–696. WILSON *v.* SECURITY INSURANCE CO. Sup. Ct. Conn. Certiorari denied.

No. 91–738. SCHALTENBRAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 1554.

No. 91–5093. REED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 934 F. 2d 1387.

No. 91–5623. BERINGER *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 934 F. 2d 110.

No. 91–5776. RODRIGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 595.

No. 91–5810. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 569.

No. 91–5884. TOWE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 655.

No. 91–5987. VINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 320.

No. 91–6005. PEREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 574.

No. 91–6096. PANTOJA *v.* CLERK OF COMMON PLEAS COURT. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 898.

No. 91–6099. BURTON, AKA JOHNSON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 131.

No. 91–6100. DAILEY *v.* KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 91–6103. GIBBS *v.* HOFBAUER ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–6106. HANSBOROUGH *v.* INDIANA UNIVERSITY BLOOMINGTON BOARD OF TRUSTEES. C. A. 7th Cir. Certiorari denied.

No. 91–6112. AUGUSTUS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 91–6123. BREWSTER (JOHNSON) *v.* BOARD OF REVIEW. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–6129. DOWLING *v.* KAMBER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–6130. LORD *v.* ATTORNEY GENERAL OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 650.

No. 91–6136. BYERS *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 727.

No. 91–6138. MURRAY *v.* DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. Sup. Ct. Fla. Certiorari denied. Reported below: 583 So. 2d 1036.

No. 91–6146. SHUMATE *v.* SIGNET BANK. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1287.

No. 91–6149. SEATON-EL *v.* FITZNER ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–6152. FELTON *v.* BARNETT, SUPERINTENDENT, EASTERN CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 652.

No. 91–6153. TURNER *v.* MCCARTHY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 29.

No. 91–6155. SMITH *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 890.

No. 91–6156. HOWARD *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 91–6158. JOYCE *v.* WALKER ET AL. Ct. App. D. C. Certiorari denied. Reported below: 593 A. 2d 199.

No. 91–6162. PARROTT *v.* SOWDERS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1134.

No. 91–6167. BURNLEY *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 900.

No. 91–6168. DAVIS *v.* HARRIS, SUPERINTENDENT, GREENE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 91–6169. BAKER *v.* LOPATIN, MILLER, FREEDMAN, BLUESTONE, ERLICH, ROSEN & BARTNICK, ATTORNEYS AT LAW, P. C. C. A. 6th Cir. Certiorari denied. Reported below: 937 F. 2d 608.

No. 91–6183. PERRY *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 623.

No. 91–6265. ALLGOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 663.

No. 91–6280. KUTNYAK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 2d 1001.

No. 91–6298. HALL *v.* JABE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 1209.

No. 91–6303. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 944 F. 2d 396.

No. 91–6311. TYLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 420.

No. 91–6317. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–6323. COHNERLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–6332. BENDER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 899.

No. 91–6347. PEREZ BUSTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 91–6353. KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 477.

No. 91–6357. GILKEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 786.

No. 91–6359. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 941 F. 2d 1300.

No. 91–6387. LARETTE *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 91–401. HOLTZMAN *v.* GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT. Ct. App. N. Y. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 78 N. Y. 2d 184, 577 N. E. 2d 30.

No. 91–429. IN RE WESTFALL. Sup. Ct. Mo. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 808 S. W. 2d 829.

No. 91–5827. MAHECHA ONOFRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 936 F. 2d 623.

No. 91–474. MARTIN *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 932 F. 2d 1273.

No. 91–633. PRINCIPAL FINANCIAL GROUP, AKA PRINCIPAL MUTUAL LIFE INSURANCE CO. *v.* THOMAS. Sup. Ct. Ala. Motion of American Council of Life Insurance et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 585 So. 2d 816.

Rehearing Denied

No. 91–5835. REIDT *v.* DEPARTMENT OF VETERANS AFFAIRS, *ante*, p. 948. Petition for rehearing denied.

No. 90–1983. PAYNE *v.* UNITED STATES; and MEDRANO-PEREZ *v.* UNITED STATES, *ante*, p. 824;

No. 90–8318. WILLIAMS *v.* FOLTZ, WARDEN, *ante*, p. 844;

No. 90–8475. GALLEGO *v.* CALIFORNIA, *ante*, p. 924;

No. 90–8508. BROWN *v.* GEORGIA, *ante*, p. 906;

No. 91–44. RADLOFF ET UX. *v.* FIRST AMERICAN NATIONAL BANK OF ST. CLOUD, N. A., ET AL., *ante*, p. 858;

No. 91–181. AGRO SCIENCE CO. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 907;

No. 91–5005. JORDAN ET AL. *v.* THOMAS, WARDEN, *ante*, p. 926;

No. 91–5249. HAMILTON *v.* KESTELL, POGUE & GOULD ET AL., *ante*, p. 883;

No. 91–5489. WATT *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL., *ante*, p. 913;

No. 91–5521. WILLIAMS *v.* CHAVIS, WARDEN, ET AL., *ante*, p. 914;

No. 91–5564. LEDET *v.* LYNN ET AL., *ante*, p. 914;

No. 91–5632. YORK *v.* UNITED STATES, *ante*, p. 916;

No. 91–5660. NASIM *v.* UNITED STATES, *ante*, p. 916;

No. 91–5716. MORRIS ET UX. *v.* CARLTON, *ante*, p. 917; and

No. 91–5720. SCHLOSSER *v.* INTERNAL REVENUE SERVICE, *ante*, p. 918. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

DECEMBER 16, 1991

Certiorari Granted—Reversed and Remanded. (See No. 90–1440, *ante*, p. 224.)

Miscellaneous Orders

No. A–350. TAYLOR *v.* UNITED STATES. Application for bond pending appeal, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. D–1042. IN RE DISBARMENT OF MCLELLAN. Disbarment entered. [For earlier order herein, see *ante*, p. 923.]

No. D–1059. IN RE DISBARMENT OF MARQUARDT. It is ordered that Philip Walter Marquardt, of Phoenix, Ariz., be suspended from the practice of law in this Court and that a rule 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–1060. IN RE DISBARMENT OF BLUMENFELD. It is ordered that Todd Eric Blumenfeld, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule 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–1061. IN RE DISBARMENT OF WALDRON. It is ordered that Kenneth L. Waldron, of Jackson, Mo., be suspended from the practice of law in this Court and that a rule 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–1062. IN RE DISBARMENT OF TAVOLACCI. It is ordered that Peter P. Tavolacci, of Carmel, N. Y., be suspended from the practice of law in this Court and that a rule 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–1063. IN RE DISBARMENT OF WEISS. It is ordered that Paul A. Weiss, of Garden City, N. Y., be suspended from the practice of law in this Court and that a rule 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–1064. IN RE DISBARMENT OF SOLOMON. It is ordered that Norman F. Solomon, of Miami, Fla., be suspended from the practice of law in this Court and that a rule 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. 118, Orig. UNITED STATES *v.* ALASKA. Motion of Alabama et al. for leave to file a brief as *amici curiae* granted. Cross-motions for summary judgment set for oral argument in due course. [For earlier order herein, see, *e. g.*, 501 U. S. 1275.]

No. 90–1419. NATIONAL RAILROAD PASSENGER CORPORATION ET AL. *v.* BOSTON & MAINE CORP. ET AL.; and

No. 90–1769. INTERSTATE COMMERCE COMMISSION ET AL. *v.* BOSTON & MAINE CORP. ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 807.] Motion of the Solicitor General for divided argument denied. JUSTICE BLACKMUN would grant this motion.

No. 90–1802. NATIONWIDE MUTUAL INSURANCE CO. ET AL. *v.* DARDEN. C. A. 4th Cir. [Certiorari granted, *ante*, p. 905.] Motion of National Association of Independent Insurers for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90–1832. PESTRAK *v.* OHIO ELECTIONS COMMISSION ET AL.; and

No. 91–9. OHIO ELECTIONS COMMISSION ET AL. *v.* PESTRAK. C. A. 6th Cir. Motion of the parties to further defer consideration of petitions for writs of certiorari granted.

No. 90–6616. STRINGER *v.* BLACK, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. [Certio-

rari granted, 500 U. S. 915.] Motion for appointment of counsel granted, and it is ordered that Kenneth J. Rose, Esq., of Durham, N. C., be appointed to serve as counsel for petitioner in this case.

No. 91–594. AMERICAN NATIONAL RED CROSS *v.* S. G. ET AL. C. A. 1st Cir. [Certiorari granted, *ante,* p. 976.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 91–680. FAIRWAY SPRING CO., INC., ET AL. *v.* SOVRAN BANK/MARYLAND. C. A. 2d Cir.;

No. 91–681. CHEMUNG CANAL TRUST CO., AS TRUSTEE OF THE FAIRWAY SPRING CO., INC., RESTATED PENSION PLAN *v.* SOVRAN BANK/MARYLAND. C. A. 2d Cir.; and

No. 91–6255. SIGGERS ET AL. *v.* TUNICA COUNTY BOARD OF SUPERVISORS ET AL. Appeal from D. C. N. D. Miss. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–702. IN RE HOUCK. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 91–860. UNITED STATES DEPARTMENT OF COMMERCE ET AL. *v.* MONTANA ET AL. Appeal from D. C. Mont. Probable jurisdiction noted. Motion of appellees for expedited briefing schedule and oral argument granted. Opening brief for appellants is to be filed with the Clerk on or before January 15, 1992. Brief for appellees is to be filed with the Clerk on or before February 12, 1992. Reply brief for appellants is to be filed with the Clerk on or before February 21, 1992. Case set for oral argument during the session beginning February 24, 1992. Reported below: 775 F. Supp. 1358.

Certiorari Granted

No. 90–1676. GADE, DIRECTOR, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY *v.* NATIONAL SOLID WASTES MANAGEMENT ASSN. C. A. 7th Cir. Certiorari granted. Reported below: 918 F. 2d 671.

No. 91–542. WRIGHT, WARDEN, ET AL. *v.* WEST. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pau-*

peris granted. Certiorari granted.* Reported below: 931 F. 2d 262.

Certiorari Denied

No. 91–424. HILLIARD *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 1516.

No. 91–616. DILLER *v.* SELVIN & WEINER ET AL.; and
No. 91–635. DILLER *v.* SELVIN & WEINER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–671. SANDERS ET AL. *v.* CITY OF BRADY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 212.

No. 91–672. NEW YORK CITY HEALTH & HOSPITALS CORPORATION ET AL. *v.* EZEKWO. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 775.

No. 91–675. SAGAN *v.* DISCIPLINARY COUNSEL. Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 3d 62, 572 N. E. 2d 658.

No. 91–677. SIMON *v.* SIMON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 698.

No. 91–679. T. HARRIS YOUNG & ASSOCIATES, INC. *v.* MARQUETTE ELECTRONICS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 816.

No. 91–682. SPECTRONICS CORP. *v.* H. B. FULLER CO., INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 940 F. 2d 631.

No. 91–684. STOUDER MEMORIAL HOSPITAL *v.* CHRISTOPHER. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 870.

No. 91–686. GEORGIA *v.* ASHLEY. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 488, 405 S. E. 2d 657.

No. 91–688. AEROVIAS NACIONALES DE COLOMBIA, S. A., ET AL. *v.* ALVAREZ, PERSONAL REPRESENTATIVE OF THE ESTATE OF ALVAREZ, DECEASED, ET AL. C. A. 11th Cir. Certiorari denied.

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*[REPORTER'S NOTE: For amendment of this order, see *post*, p. 1021.]

No. 91–720. TRINSEY *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 224.

No. 91–729. GARZIANO ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 230 Cal. App. 3d 241, 281 Cal. Rptr. 307.

No. 91–735. COHEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 599.

No. 91–743. KING *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 91–757. B. E. ROCK CORP., DBA RAINBOW *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1278.

No. 91–782. JENKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 943 F. 2d 167.

No. 91–5216. COWART *v.* PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 889.

No. 91–5363. STANLEY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 167 Ariz. 519, 809 P. 2d 944.

No. 91–5371. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 1044.

No. 91–5441. ROSENTHAL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 406 Pa. Super. 665, 583 A. 2d 835.

No. 91–5577. FERNANDEZ, AKA PAULINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 739.

No. 91–5608. BRADEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 969.

No. 91–5622. ADAMS *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 91–5668. BARTEE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 208 Ill. App. 3d 105, 566 N. E. 2d 855.

No. 91–5777. PARKINSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 584.

No. 91–5785. WOOD *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 7th Cir. Certiorari denied.

No. 91–5866. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1260.

No. 91–5888. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1275.

No. 91–5893. LONDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 937 F. 2d 619.

No. 91–5936. VAN TASSEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 600.

No. 91–5968. LONG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 482.

No. 91–6017. SHOUP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 91–6085. WEST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 614.

No. 91–6093. WHITSEL *v.* NIX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 727.

No. 91–6110. DOKES *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 91–6150. HOOPER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 484.

No. 91–6161. GREEN, AKA LANCASTER *v.* DEEDS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 27.

No. 91–6174. LADNER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 584 So. 2d 743.

No. 91–6178. MARTIN *v.* KNOX ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 395.

No. 91–6188. HUMAN *v.* CITY OF SANTA MONICA, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6190. HARTFORD *v.* HASKELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 51.

No. 91–6191. DIRDEN *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 655.

No. 91–6200. BURKES *v.* LYDAY ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 465, 405 S. E. 2d 472.

No. 91–6204. COOPER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 771, 809 P. 2d 865.

No. 91–6208. BORYSIAK ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 610.

No. 91–6211. BELL *v.* CITY AND COUNTY OF DENVER. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 582.

No. 91–6213. TILLEY *v.* WELLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–6227. BULLOCK *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–6230. WALKER *v.* WALKER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1204.

No. 91–6273. MAJOR *v.* PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–6301. FINCHUM *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 668.

No. 91–6329. EGBERT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 1539.

No. 91–6330. GEURIN *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied.

No. 91–6339. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 176.

No. 91–6346. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 903.

No. 91–6350. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–6369. WILSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 592 A. 2d 1009.

No. 91–6393. INGRAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 592 A. 2d 992.

No. 91–6399. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 795.

No. 91–6408. BATES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 383.

No. 91–6450. WEEKS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 90–7347. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 919 F. 2d 734.

Opinion of JUSTICE STEVENS, respecting the denial of the petition for writ of certiorari.

For the reasons stated in JUSTICE BLACKMUN's dissenting opinion, there is no escape from the conclusion that the Court of Appeals committed error in this case. I write only to note that I find it difficult to articulate an acceptable theory of discretionary review that would explain both the Court's denial of certiorari in this case and its summary reversal in *Mireles* v. *Waco*, *ante*, p. 9 *(per curiam)*, and *Hunter* v. *Bryant*, *ante*, p. 224 *(per curiam)*.

JUSTICE BLACKMUN, with whom JUSTICE O'CONNOR and JUSTICE SOUTER join, dissenting.

Petitioner Roy Smith claims that the Court of Appeals for the Fourth Circuit reviewed his conviction in a manner inconsistent with this Court's precedents on the application of harmless-error analysis. I agree. I would grant the petition, summarily vacate the judgment, and remand the case to the Court of Appeals.

Petitioner and a codefendant, Slade Miller, were tried jointly for federal murder and conspiracy to commit murder, in violation of 18 U. S. C. §§ 1111 and 1117, on charges arising from the killing of a fellow inmate at Lorton Reformatory in Virginia. The Government's case relied in significant part on the testimony of Cor-

nell Warren, another co-conspirator who had entered into a cooperating plea agreement. Warren established the link between Smith and Miller and introduced statements by still another co-conspirator (who did not testify) that Smith had obtained shanks (prison-made knives) in preparation for the killing. Warren also testified that Smith had used a shank to stab the victim. Other witnesses testified that Miller stabbed the victim, while Smith restrained the only guard in the room.

On cross-examination, the court pre-empted defense counsel's attempt to question Warren about his possible incentives for testifying as a Government witness. In response to the judge's questioning, Warren gave contradictory testimony as to whether or not his lawyer had told him that he would probably receive a lesser sentence by pleading guilty than if he were tried and convicted. Over defense counsel's objections, the court then refused to permit further questions. The jury convicted Smith of conspiracy to commit murder and second-degree murder.

Smith appealed, asserting that the court had violated his rights under the Confrontation Clause of the Sixth Amendment by denying him the ability to show bias or self-interest in the witness. For purposes of the appeal, the Court of Appeals assumed that constitutional error was committed and that reversal was required unless the error could be found to be harmless beyond a reasonable doubt.

In reviewing the Government's evidence against Smith, the Court of Appeals explained that it was "[e]ssentially discounting Warren's testimony except as it is corroborated by other evidence, and considering all that remains in the light most favorable to the government . . . ." See *United States* v. *Smith*, No. 89–5475 (CA4, Dec. 10, 1990), App. to Pet. for Cert. 12, affirmance order, 919 F. 2d 734. The court found that this evidence, "obviously sufficient to convict if believed," was contradicted only by "Smith's facially implausible testimony that he held the guard only to protect him." App. to Pet. for Cert. 13. Accordingly, the Court of Appeals held that any error in restricting Smith's impeachment of Warren was harmless beyond a reasonable doubt.

As we made clear in *Satterwhite* v. *Texas*, 486 U. S. 249 (1988), the question "is not whether the legally admitted evidence was sufficient to support" the verdict; rather, the question is "whether the [prosecution] has proved 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'"

Id., at 258–259, quoting *Chapman* v. *California*, 386 U. S. 18, 24 (1967). In short, the adequacy of the legally admitted evidence is only one of the factors to be considered in determining the influence that the error had upon the jury. See, *e. g.*, *Arizona* v. *Fulminante*, 499 U. S. 279, 297–300 (1991) (focusing on the contribution of the coerced confession); *Satterwhite*, 486 U. S., at 259–260 (focusing on the contribution of testimony on future dangerousness).

In my view, the Court of Appeals misapplied harmless-error analysis in two respects. First, it gave only cursory consideration to how the error contributed to the verdict, summarily stating that Warren's testimony, "though undoubtedly helpful to the prosecution because he was a charged co-conspirator, was to a large extent either cumulative or generally corroborated by other testimony." App. to Pet. for Cert. 13. Rather, the Court of Appeals relied on its conclusion that the legally admitted evidence was "obviously sufficient to convict if believed." *Ibid.* The Court of Appeals' focus on the adequacy of the legally admitted evidence was error.

The Court of Appeals then compounded this error by considering the legally admitted evidence "in the light most favorable to the government." *Id.*, at 12. We have consistently held since *Chapman* that constitutional error "casts on someone other than the person prejudiced by it a burden to show that it was harmless." 386 U. S., at 24. See also *Fulminante*, 499 U. S., at 296 (prosecution has burden of demonstrating that admission of confession did not contribute to conviction); *Satterwhite*, 486 U. S., at 258–259. The Court of Appeals' review of the evidence in the light most favorable to the Government improperly shifted the burden to Smith.

In sum, focusing on the legally admitted evidence in the light most favorable to the Government "preserves" the factfinder's weighing of the evidence. Such preservation is desirable when the reviewing court is examining the legal sufficiency of the evidence. See *Jackson* v. *Virginia*, 443 U. S. 307, 319 (1979). Once the reviewing court has identified a constitutional error, however, it should not preserve the factfinder's tainted deliberation—it should dissect it. The reviewing court then must require "the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Chapman*, 386 U. S., at 24. Because the Court

of Appeals' unpublished opinion* cannot be squared with our harmless-error precedents, I would vacate the judgment and direct the Court of Appeals to review the sentence under the proper standard.

No. 91–151. TEXAS *v.* SLOAN. Ct. App. Tex., 12th Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 809 S. W. 2d 234.

No. 91–448. WILLNER *v.* BARR, ACTING ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 289 U. S. App. D. C. 93, 928 F. 2d 1185.

No. 91–475. METROPOLITAN LIFE INSURANCE CO. *v.* CARLAND. C. A. 10th Cir. Motion of American Council of Life Insurance for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 935 F. 2d 1114.

Rehearing Denied

No. 91–5467. JENKINS *v.* DUGGER ET AL., *ante*, p. 943. Petition for rehearing denied.

No. 90–8304. ARGENTINA *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL., *ante*, p. 843;

No. 91–109. CLAY *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, *ante*, p. 861;

No. 91–150. LOCKHART *v.* KENOPS, FOREST SUPERVISOR, BLACK HILLS NATIONAL FOREST, UNITED STATES FOREST SERVICE, ET AL., *ante*, p. 863;

No. 91–5108. STREET *v.* JABE, WARDEN, *ante*, p. 875;

No. 91–5329. MALACOW *v.* CONSOLIDATED RAIL CORPORATION, *ante*, p. 887;

No. 91–5578. HOUSEL *v.* ZANT, WARDEN, *ante*, p. 915;

No. 91–5651. CROW *v.* UPJOHN CO. ET AL., *ante*, p. 916; and

No. 91–5756. BORCHERS *v.* UNITED STATES (two cases), *ante*, p. 928. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

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*The fact that the Court of Appeals' opinion is unpublished is irrelevant. Nonpublication must not be a convenient means to prevent review. An unpublished opinion may have a lingering effect in the Circuit and surely is as important to the parties concerned as is a published opinion.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Justice Marshall (retired) to perform judicial duties in the United States Court of Appeals for the Second Circuit during the period of January 21 through January 23, 1992, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

DECEMBER 17, 1991

Miscellaneous Order

No. A–442. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION *v.* HOLLAND. Application of the Attorney General of Texas for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE SCALIA took no part in the consideration or decision of this application.

DECEMBER 18, 1991

Dismissal Under Rule 46

No. 91–791. MCDERMOTT INC. *v.* SALYER, JUDGE, 130TH JUDICIAL DISTRICT COURT OF MATAGORDA COUNTY, TEXAS. Sup. Ct. Tex. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 91–542. WRIGHT, WARDEN, ET AL. *v.* WEST. C. A. 4th Cir. The order of December 16, 1991 [*ante*, p. 1012], granting the petition for writ of certiorari is amended as follows: Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the questions presented by the petition, the parties are requested to brief and argue the following question: "In determining whether to grant a petition for writ of habeas corpus by a person in custody pursuant to the judgment of a state court, should a federal court give deference to the state court's application of law to the specific facts of the petitioner's case or should it review the state court's determination *de novo*?" JUSTICE BLACKMUN and JUSTICE STEVENS dissent.

DECEMBER 27, 1991

Dismissals Under Rule 46

No. 90–1832. PESTRAK *v.* OHIO ELECTIONS COMMISSION ET AL.; and

No. 91–9. OHIO ELECTIONS COMMISSION ET AL. *v.* PESTRAK. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 926 F. 2d 573.

JANUARY 8, 1992

Miscellaneous Order

No. A–474 (91–980). COLORADO ET AL. *v.* KUHN ET AL. Application for stay of mandate of the Supreme Court of Colorado, case Nos. 90SA299 and 90SA300, presented to JUSTICE WHITE, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

JANUARY 10, 1992

Miscellaneous Order

No. 91–1084. COTLOW ET AL. *v.* EMISON ET AL. Appeal from D. C. Minn. Motion of appellants to expedite consideration of the jurisdictional statement granted. The order entered December 5, 1991, by the United States District Court for the District of Minnesota staying state court proceedings is vacated.

Certiorari Granted

No. 91–155. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., ET AL. *v.* LEE, SUPERINTENDENT OF PORT AUTHORITY POLICE; and

No. 91–339. LEE, SUPERINTENDENT OF PORT AUTHORITY POLICE *v.* INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Petitioners' briefs and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Respondents' briefs are to be filed with the Clerk and

served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply brief is to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 925 F. 2d 576.

No. 91–367. ANKENBRANDT, AS NEXT FRIEND AND MOTHER OF L. R. ET AL. *v.* RICHARDS ET AL. C. A. 5th Cir. Certiorari granted limited to the following questions: "(1) Is there a domestic relations exception to federal jurisdiction? (2) If so, does it permit a district court to abstain from exercising diversity jurisdiction over a tort action for damages? (3) Did the District Court in this case err in abstaining from exercising jurisdiction under the doctrine of *Younger* v. *Harris*, 401 U. S. 37 (1971)?" Petitioner's brief and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply brief is to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 934 F. 2d 1262.

No. 91–543. NEW YORK *v.* UNITED STATES ET AL.;

No. 91–558. COUNTY OF ALLEGANY, NEW YORK *v.* UNITED STATES ET AL.; and

No. 91–563. COUNTY OF CORTLAND, NEW YORK *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Petitioners' briefs and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply briefs are to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 942 F. 2d 114.

No. 91–538. FORSYTH COUNTY, GEORGIA *v.* NATIONALIST MOVEMENT. C. A. 11th Cir. Certiorari granted. Petitioner's brief and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Re-

spondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply brief is to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 913 F. 2d 885 and 934 F. 2d 1482.

No. 91–636. FORT GRATIOT SANITARY LANDFILL, INC. *v.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES ET AL. C. A. 6th Cir. Motion of Environmental Transportation Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. Petitioner's brief and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply brief is to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 931 F. 2d 413.

No. 91–712. UNITED STATES *v.* ALVAREZ-MACHAIN. C. A. 9th Cir. Certiorari granted. Petitioner's brief and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply brief is to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 946 F. 2d 1466.

No. 91–763. REPUBLIC OF ARGENTINA ET AL. *v.* WELTOVER, INC., ET AL. C. A. 2d Cir. Certiorari granted. Petitioners' brief and the joint appendix are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., February 14, 1992. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., March 5, 1992. Any reply brief is to be filed with the Clerk and served upon opposing counsel in accordance with this Court's Rule 25.3. Oral argument is scheduled for the March session beginning March 23, 1992. Reported below: 941 F. 2d 145.

JANUARY 13, 1992

Appointment of Deputy Clerk

It is ordered that Gary Kemp be, and he is hereby, appointed Deputy Clerk of this Court, effective January 6, 1992.

Certiorari Granted—Vacated and Remanded

No. 90–722. CAMPO *v.* ELECTRO-COAL TRANSFER CORP., INC.; and

No. 90–956. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA *v.* CAMPO ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Southwest Marine, Inc.* v. *Gizoni*, *ante*, p. 81. Reported below: 909 F. 2d 1480.

No. 90–1223. IMMIGRATION AND NATURALIZATION SERVICE *v.* RAMIREZ RIVAS. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ardestani* v. *INS*, *ante*, p. 129.

No. 90–1258. GOMEZ, WARDEN, DEUEL VOCATIONAL INSTITUTION OF CALIFORNIA *v.* MCKINNEY. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Estelle* v. *McGuire*, *ante*, p. 62. Reported below: 914 F. 2d 262.

No. 91–206. CHILDREN OF BEDFORD, INC., ET AL. *v.* PETROMELIS ET AL. Ct. App. N. Y. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, *ante*, p. 105. Reported below: 77 N. Y. 2d 713, 573 N. E. 2d 541.

Miscellaneous Orders. (See also No. 91–716, *ante*, p. 236.)

No. ——. DESIMONE *v.* FRANK, POSTMASTER GENERAL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. ——. JENKINS *v.* GOLDEN ET AL. Motion of petitioner to file petition for writ of certiorari that does not comply with this Court's Rule 33 denied.

No. A–294. OLSON *v.* KANSAS. Application for bond, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A–367. WINSLOW ET UX. *v.* COLORADO SUPREME COURT. Sup. Ct. Colo. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. A–423. EUSTIS ENGINEERING CO. ET AL. *v.* NICHOLSON & LOUP, INC. Sup. Ct. La. Application for stay or injunction, addressed to JUSTICE WHITE and referred to the Court, denied.

No. D–1040. IN RE DISBARMENT OF GAYNES. Disbarment entered. [For earlier order herein, see *ante*, p. 923.]

No. D–1044. IN RE DISBARMENT OF WEISENSEE. Disbarment entered. [For earlier order herein, see *ante*, p. 935.]

No. D–1046. IN RE DISBARMENT OF JENKINS. Disbarment entered. [For earlier order herein, see *ante*, p. 936.]

No. D–1065. IN RE DISBARMENT OF SOLOWITCH. It is ordered that Eric Steven Solowitch, of University Heights, Ohio, be suspended from the practice of law in this Court and that a rule 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–1066. IN RE DISBARMENT OF KROS. It is ordered that James John Kros, of Aurora, Ill., be suspended from the practice of law in this Court and that a rule 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–1067. IN RE DISBARMENT OF CARDIN. It is ordered that Jerome Stanley Cardin, of Stevenson, Md., be suspended from the practice of law in this Court and that a rule 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–1068. IN RE DISBARMENT OF WHITE. It is ordered that Donnie Howard White, of Georgetown, Ky., be suspended from the practice of law in this Court and that a rule 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–1069. IN RE DISBARMENT OF BAKER. It is ordered that David Baker, of Avalon, N. J., be suspended from the practice

of law in this Court and that a rule 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–1070. IN RE DISBARMENT OF DUNN. It is ordered that Vincent Mosser Dunn, of Detroit, Mich., be suspended from the practice of law in this Court and that a rule 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. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for Interim Fees and Expenses granted, and the Special Master is awarded $429,457.39 to be paid in accordance with the allocation order filed by the Special Master on October 9, 1989. JUSTICE THOMAS took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, 498 U. S. 933.]

No. 109, Orig. OKLAHOMA ET AL. *v.* NEW MEXICO. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $14,499.45 for the period December 1, 1990, through October 31, 1991, to be paid one-third by each party. [For earlier order herein, see, *e. g.*, 501 U. S. 1277.]

No. 90–1974. SPARKS *v.* CHURCHILL DOWNS ET AL., *ante*, p. 953. A response to the rule to show cause has been filed. Petitioner is sanctioned in the amount of $1,000 to be paid to the Clerk of the Court on or before March 13, 1992. JUSTICE BLACKMUN and JUSTICE SOUTER dissent.

No. 91–497. MICHIGAN EMPLOYMENT SECURITY COMMISSION *v.* WOLVERINE RADIO CO., INC. C. A. 6th Cir.;

No. 91–689. CITIBANK, N. A. *v.* WELLS FARGO ASIA LTD. C. A. 2d Cir.; and

No. 91–707. LENNES, COMMISSIONER, DEPARTMENT OF LABOR AND INDUSTRY OF MINNESOTA, ET AL. *v.* BOISE CASCADE CORP. ET AL. C. A. 8th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 91–703. GUSTO RECORDS, INC., ET AL. *v.* THOMAS ET AL., *ante*, p. 984. Motions of Dominion Entertainment, Inc., and Rhino Records, Inc., for leave to file briefs as *amici curiae* granted.

No. 91–794. HARPER ET AL. *v.* VIRGINIA DEPARTMENT OF TAXATION. Sup. Ct. Va. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 91–5244. MARTIN *v.* MRVOS. C. A. 3d Cir.;
No. 91–5246. MARTIN *v.* SMITH ET AL. C. A. 3d Cir.;
No. 91–5307. MARTIN *v.* DELAWARE LAW SCHOOL OF WIDENER UNIVERSITY, INC., ET AL. C. A. 3d Cir.;
No. 91–5331. MARTIN *v.* WALMER ET AL. C. A. 3d Cir.;
No. 91–5332. MARTIN *v.* TOWNSEND ET AL. C. A. 3d Cir.;
No. 91–5401. MARTIN *v.* SUPREME COURT OF NEW JERSEY. Sup. Ct. N. J.;
No. 91–5476. MARTIN *v.* BAR OF THE DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C.; and
No. 91–5583. MARTIN *v.* HUYETT. C. A. 3d Cir. Motions of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 16] denied.

No. 91–5771. WADE *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante,* p. 1003.] Motion for appointment of counsel granted, and it is ordered that J. Matthew Martin, Esq., of Hillsborough, N. C., be appointed to serve as counsel for petitioner in this case.

No. 91–6341. CROMARTIE *v.* DEPARTMENT OF THE AIR FORCE. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 3, 1992, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 91–6537. IN RE KALTENBACH; and
No. 91–6635. IN RE SPEARMAN. Petitions for writs of habeas corpus denied.

No. 91–5586. IN RE SEAGRAVE. Motion of petitioner to strike brief of respondent denied. Petition for writ of habeas corpus denied.

No. 91–898. IN RE WELT;
No. 91–6224. IN RE WILLIAMS;
No. 91–6268. IN RE ANDERSON;
No. 91–6288. IN RE SEATON;
No. 91–6293. IN RE MITCHELL;

No. 91–6294. IN RE PIERRE;
No. 91–6319. IN RE DAVIS; and
No. 91–6384. IN RE RETTIG. Petitions for writs of mandamus denied.

No. 91–6307. IN RE MINDEK ET AL. Petition for writ of mandamus and/or prohibition denied.

No. 91–6248. IN RE GINTER ET UX. Petition for writ of prohibition denied.

Certiorari Denied

No. 89–1949. TILGHMAN ET AL. *v.* KOLKHORST. C. A. 4th Cir. Certiorari denied. Reported below: 897 F. 2d 1282.

No. 90–1470. COLEGIO DE ABOGADOS DE PUERTO RICO *v.* SCHNEIDER ET AL.;
No. 90–1513. CULPEPER ET AL. *v.* SCHNEIDER ET AL.; and
No. 90–1651. SCHNEIDER ET AL. *v.* COLEGIO DE ABOGADOS DE PUERTO RICO. C. A. 1st Cir. Certiorari denied. Reported below: 917 F. 2d 620.

No. 90–1897. UNITED ARTISTS COMMUNICATIONS, INC., ET AL. *v.* THE MOVIE 1 & 2. C. A. 9th Cir. Certiorari denied. Reported below: 909 F. 2d 1245.

No. 91–83. HODGE *v.* UNITED STATES DEPARTMENT OF JUSTICE; ESCOBEDO GONZALEZ *v.* IMMIGRATION AND NATURALIZATION SERVICE; and AMADOR-CASTILLO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 929 F. 2d 153 (first case); 932 F. 2d 965 (second case); 930 F. 2d 916 (third case).

No. 91–202. LAUGHINGHOUSE *v.* NORTH CAROLINA EX REL. NORTH CAROLINA PORTS RAILWAY COMMISSION. Ct. App. N. C. Certiorari denied. Reported below: 101 N. C. App. 375, 399 S. E. 2d 587.

No. 91–207. HASHIM *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 711.

No. 91–295. DOYLE ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 931 F. 2d 1546.

No. 91–380. HOGAN ET AL. *v.* MUSOLF ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 163 Wis. 2d 1, 471 N. W. 2d 216.

No. 91–457. NUTBROWN ET AL. *v.* MUNN ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 311 Ore. 328, 811 P. 2d 131.

No. 91–466. HAGER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–494. FULL GOSPEL PORTLAND CHURCH ET AL. *v.* ATTORNEY GENERAL OF THE UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 288 U. S. App. D. C. 356, 927 F. 2d 628.

No. 91–510. TIFFANY, ADMINISTRATRIX AND PERSONAL REPRESENTATIVE OF THE ESTATE OF TIFFANY, DECEASED *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 271.

No. 91–520. VILLAGE OF PALESTINE ET AL. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 290 U. S. App. D. C. 278, 936 F. 2d 1335.

No. 91–532. RODRIGUEZ-MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 929 F. 2d 780.

No. 91–537. GARCIA ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 938 F. 2d 12.

No. 91–549. MCELWAIN *v.* COUNTY OF FLATHEAD. Sup. Ct. Mont. Certiorari denied. Reported below: 248 Mont. 231, 811 P. 2d 1267.

No. 91–552. COLEMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1280.

No. 91–553. THOMPSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 581 So. 2d 1216.

No. 91–554. REINER *v.* TOLEDO HOTEL INVESTORS LIMITED PARTNERSHIP. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–556. JANA, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 936 F. 2d 1265.

No. 91–581. GREENE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GREENE *v.* DAVID GRANT UNITED STATES AIR FORCE MEDICAL CENTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 59.

No. 91–586. KAHOK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–587. INDEPENDENT INSURANCE AGENTS OF AMERICA, INC., ET AL. *v.* CITICORP. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 66.

No. 91–590. UNION NATIONAL BANK OF LITTLE ROCK ET AL. *v.* MOSBACHER, SECRETARY OF COMMERCE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 1440.

No. 91–592. OWEN ET AL., INDIVIDUALLY AND AS NEXT FRIENDS FOR OWEN, A MINOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 734.

No. 91–596. ESTELLE, WARDEN *v.* ROSA COLLAZO. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 411.

No. 91–620. ILLINOIS *v.* SIMMS; and
No. 91–5664. SIMMS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 143 Ill. 2d 154, 572 N. E. 2d 947.

No. 91–637. WILLIAMS TILE & TERRAZZO CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1249.

No. 91–642. GILMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 933 F. 2d 143.

No. 91–644. DAVENPORT *v.* UNITED STATES; and
No. 91–6097. DAVENPORT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 929 F. 2d 1169.

No. 91–657. RIVERSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 957.

No. 91–666. SWANSON ET AL. *v.* POWERS, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF REVENUE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 965.

No. 91–668. MEKSS *v.* WYOMING GIRLS' SCHOOL. Sup. Ct. Wyo. Certiorari denied. Reported below: 813 P. 2d 185.

No. 91–683. CITY OF JAMESTOWN *v.* JAMES CABLE PARTNERS, DBA BIG SOUTH FORK CABLEVISION. Ct. App. Tenn. Certiorari denied. Reported below: 818 S. W. 2d 338.

No. 91–692. RHODES, PERSONAL REPRESENTATIVE OF ESTATE OF WEST, DECEASED *v.* MCDANNEL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 945 F. 2d 117.

No. 91–693. FEDERAL INSURANCE CO. *v.* CITY OF LAKELAND. C. A. 11th Cir. Certiorari denied.

No. 91–695. THOMPSON *v.* THOMPSON. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 271.

No. 91–708. CHAMPION *v.* CHAMPION. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 582 So. 2d 632.

No. 91–710. RISHEL *v.* UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 598.

No. 91–722. NL INDUSTRIES, INC. *v.* GHR ENERGY CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 957.

No. 91–727. AMALGAMATED CLOTHING & TEXTILE WORKERS UNION, AFL–CIO, CLC *v.* NICHOLS. Sup. Ct. S. C. Certiorari denied. Reported below: 305 S. C. 323, 408 S. E. 2d 237.

No. 91–732. SNIDER, ACTING SECRETARY OF THE DEPARTMENT OF PUBLIC WELFARE OF PENNSYLVANIA, ET AL. *v.* TEMPLE UNIVERSITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 201.

No. 91–737. ALABAMA *v.* PRINCE. Ct. Crim. App. Ala. Certiorari denied. Reported below: 584 So. 2d 889.

No. 91–739. LIBERTY MUTUAL INSURANCE CO. *v.* STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 1179.

No. 91–741. MANN *v.* RIGTRUP ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 935 F. 2d 278.

No. 91–742. KRISHER *v.* SHARPE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 897.

No. 91–747. OCEAN DRILLING & EXPLORATION CO. (ODECO) *v.* DIMENSIONAL OILFIELD SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 393.

No. 91–749. ASAM *v.* CITY OF TUSCALOOSA ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 585 So. 2d 60.

No. 91–752. DADE ET AL. *v.* CANNATELLA ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–753. ABICK ET AL. *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 91–754. HOME BOX OFFICE, INC., ET AL. *v.* Z CHANNEL LIMITED PARTNERSHIP. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 1338.

No. 91–755. CORAL CONSTRUCTION CO. ET AL. *v.* KING COUNTY, WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 941 F. 2d 910.

No. 91–756. WHITMER ET UX. *v.* JOHN HANCOCK MUTUAL LIFE INSURANCE CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–759. BALL ET AL. *v.* JOY TECHNOLOGIES, INC., FORMERLY JOY MANUFACTURING CO. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 651.

No. 91–764. CONWAY *v.* STATESMAN MORTGAGE CO., FKA FEDERATED FINANCIAL CORP., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1534.

No. 91–765. ISAACS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 274.

No. 91–770. JOSEPH C. KIRCHDORFER, INC. *v.* RICE, SECRETARY OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 944 F. 2d 912.

No. 91–773. GIDDENS *v.* SHAKLEE U. S., INC. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 324.

No. 91–775. KLEINMANN *v.* CUOMO, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 593.

No. 91–783. OWENS-ILLINOIS, INC. *v.* GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION, AFL–CIO, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1202.

No. 91–784. CARPENTER *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 220 Conn. 169, 595 A. 2d 881.

No. 91–786. CLARKE *v.* LOMA LINDA FOODS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 933 F. 2d 1013.

No. 91–787. RENBARGER *v.* WEISS. C. A. 10th Cir. Certiorari denied. Reported below: 921 F. 2d 1032.

No. 91–788. INAFUKU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 938 F. 2d 972.

No. 91–789. GRUNST *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 91–793. MICHIGAN *v.* HARRIS. Ct. App. Mich. Certiorari denied.

No. 91–795. COLLINS MUSIC CO., INC., ET AL. *v.* SOUTH CAROLINA TAX COMMISSION. Sup. Ct. S. C. Certiorari denied. Reported below: 305 S. C. 183, 407 S. E. 2d 627.

No. 91–799. DATTILO *v.* HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 91–800. CUMBERLAND & OHIO CO. OF TEXAS, INC., SUCCESSOR CORPORATION OF HERBERT MATERIALS, INC. *v.* FIRST AMERICAN NATIONAL BANK. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 846.

No. 91–801. CREAMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1275.

No. 91–802. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY *v.* EIDUKONIS. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 896.

No. 91–805. SAVERS *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 91–806. CAMPIERE ET AL. *v.* LOUISIANA POWER & LIGHT CO. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 655.

No. 91–807. MCNATT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 931 F. 2d 251.

No. 91–808. MURPHY ET AL. *v.* RAGSDALE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 941 F. 2d 501.

No. 91–811. AMES *v.* GHERINI. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–818. ADLER, A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM, ADLER, ET UX. *v.* KAISER FOUNDATION HEALTH PLAN, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–820. RISK, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR RISK ET AL. *v.* KINGDOM OF NORWAY. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 393.

No. 91–821. CAVAZOS *v.* CITY OF SUNNYSIDE. Ct. App. Wash. Certiorari denied.

No. 91–822. KRANK *v.* FULTON BANK. C. A. 3d Cir. Certiorari denied. Reported below: 915 F. 2d 1561.

No. 91–823. HOLLEY *v.* SCHREIBECK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 897.

No. 91–831. BURKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 898.

No. 91–834. CASHMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 26.

No. 91–842. BLAKENEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 2d 1001.

No. 91–852. OPTIMISM, INC., ET AL. *v.* MOUZON, INDIVIDUALLY AND DBA MOUZON MUSIC CO., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 792.

No. 91–856. COCHRAN *v.* AMERICAN ABRASIVE METALS CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1533.

No. 91–857. CUSUMANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 943 F. 2d 305.

No. 91–858. AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, BY ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1207.

No. 91–862. MINNESOTA *v.* MCKOWN ET VIR. Sup. Ct. Minn. Certiorari denied. Reported below: 475 N. W. 2d 63.

No. 91–876. VARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 943 F. 2d 236.

No. 91–919. BRIGHT *v.* HOUSTON NORTHWEST MEDICAL CENTER SURVIVOR, INC. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 671.

No. 91–5163. ESPARSEN *v.* UNITED STATES; and
No. 91–5206. MCFADDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 1461.

No. 91–5349. WEIDNER *v.* THIERET, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 932 F. 2d 626.

No. 91–5524. BANKS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 810 P. 2d 1286.

No. 91–5588. PAULINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 739.

No. 91–5621. COE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 228 Cal. App. 3d 526, 279 Cal. Rptr. 362.

No. 91–5679. BABBEL *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 813 P. 2d 86.

No. 91–5726. STRICKLAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 822.

No. 91–5783. MILLER *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 104 Ore. App. 305, 800 P. 2d 1093.

No. 91–5793. LIVINGSTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 333.

No. 91–5896. MITRAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 610.

No. 91–5922. SHEWMAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 1124.

No. 91–5957. CEPHAS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 937 F. 2d 816.

No. 91–5966. RAMIREZ ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 605.

No. 91–5972. LYNCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 934 F. 2d 1226.

No. 91–5973. MCCRORY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 178, 930 F. 2d 63.

No. 91–5989. DANIEL *v.* OHIO. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 91–5991. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 201.

No. 91–5995. HODGE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 809 S. W. 2d 835.

No. 91–5998. DENNISON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 559.

No. 91–6006. SWARTZ *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 91–6007. TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 1469.

No. 91–6032. KNOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 928 F. 2d 97.

No. 91–6037. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1472.

No. 91–6041. RODRICK *v.* SINGLETARY. Sup. Ct. Fla. Certiorari denied. Reported below: 584 So. 2d 2.

No. 91–6042. KALTENBACH *v.* WARDEN, WADE CORRECTIONAL CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 605.

No. 91–6050. WHARTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 522, 809 P. 2d 290.

No. 91–6065. FLORES, AKA COLON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1275.

No. 91–6074. CASTENEDA-ABARCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 932 F. 2d 973.

No. 91–6091. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 932 F. 2d 1085.

No. 91–6134. MAY ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 936 F. 2d 176.

No. 91–6193. BELL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 305 S. C. 11, 406 S. E. 2d 165.

No. 91–6195. ABRAMS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 168 Ariz. 134, 811 P. 2d 1071.

No. 91–6209. BERGELSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 581 So. 2d 918.

No. 91–6212. BAILEY *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–6220. WATERS *v.* WATSON. Ct. App. Tenn. Certiorari denied.

No. 91–6226. SPENCER *v.* BROWN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 586.

No. 91–6228. WELSCH *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–6236. GARGALLO *v.* QUICK & REILLY CLEARING CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 929 F. 2d 701.

No. 91–6241. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 935 F. 2d 1283.

No. 91–6245. JOHNSON *v.* PETERSON. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 580 So. 2d 765.

No. 91–6249. SMITH *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 52.

No. 91–6250. SPRY *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1295.

No. 91–6252. AZIZ *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 951 F. 2d 354.

No. 91–6256. JONES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6257. FULLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 942 F. 2d 454.

No. 91–6258. HILL *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–6259. HOWELL *v.* ROBERDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 274.

No. 91–6260. GRAHAM *v.* HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 2d 982.

No. 91–6269. BETHEL *v.* KERBY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 946 F. 2d 900.

No. 91–6270. DIAZ *v.* SUPREME COURT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 91–6271. CZAJKA *v.* CASPARI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 726.

No. 91–6272. PRESSLER *v.* UNITED STATES FIDELITY & GUARANTY CO. ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 921, 572 N. E. 2d 38.

No. 91–6274. MASON *v.* GROOSE, SUPERINTENDENT, CENTRAL MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 942 F. 2d 515.

No. 91–6275. RAO *v.* NEW YORK CITY HEALTH AND HOSPITALS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 2d 883.

No. 91–6279. JOHNSON *v.* BUINNO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 395.

No. 91–6286. WENNERSTROM *v.* CALIFORNIA; and
No. 91–6409. WENNERSTROM *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–6299. GOULDING ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 928 F. 2d 1135.

No. 91–6302. EVANS *v.* LOWE, CHIEF OF POLICE, RIVERSIDE, ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 91–6304. GIFFORD *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 595 A. 2d 1049.

No. 91–6309. PATTERSON *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 91–6310. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 91–6313. LIDMAN *v.* NEWARK REDEVELOPMENT AND HOUSING AUTHORITY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–6314. ROGERS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 91–6316. JOHNSTON *v.* BARR, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 2d 911.

No. 91–6318. CHOICE *v.* BEYER ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–6321. KIM-HYE CHUNG *v.* NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 172 App. Div. 2d 524, 568 N. Y. S. 2d 626.

No. 91–6326. WINTERS *v.* IOWA DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–6327. MCQUILLION *v.* KOENIG, CHAIRMAN, CALIFORNIA BOARD OF PRISON TERMS. C. A. 9th Cir. Certiorari denied. Reported below: 932 F. 2d 973.

No. 91–6328. OTEY *v.* HOPKINS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 951 F. 2d 354.

No. 91–6334. CHALK *v.* HARRISON ET AL. Sup. Ct. S. C. Certiorari denied.

No. 91–6335. DICK *v.* SAWYER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 665.

No. 91–6336. CERVEN *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 91–6343. BOUVIER-MOORE *v.* TRANS WORLD AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 667.

No. 91–6345. BELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 1209.

No. 91–6348. THOMAS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 811 P. 2d 1337.

No. 91–6351. BONHAM *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 949 F. 2d 403.

No. 91–6352. CARTER *v.* PAULDING COUNTY COURT ET AL. Ct. App. Ohio, Paulding County. Certiorari denied.

No. 91–6354. KELLY *v.* COWLEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 1538.

No. 91–6355. JONES *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 91–6356. HUBBARD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 584 So. 2d 895.

No. 91–6364. HAYES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 939 F. 2d 509.

No. 91–6367. HAWKINS *v.* HUNTINGTON PARK REDEVELOPMENT AGENCY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6368. BORSCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 658.

No. 91–6370. PHENICIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–6372. MADDOX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 53.

No. 91–6379. ONUNKA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–6380. RANSOM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 942 F. 2d 775.

No. 91–6383. ROSS *v.* TERRELL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 396.

No. 91–6388. MOORE *v.* O'MALLEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1295.

No. 91–6389. LAMASNEY *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1201.

No. 91–6390. KENT *v.* DEPARTMENT OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 904.

No. 91–6395. DAVIS *v.* STONE CONTAINER CORP. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 602.

No. 91–6396. LANDAW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 666.

No. 91–6400. WILLIAMS ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 91–6401. MADDOX, AKA GREENWOOD *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6402. ROMERO *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 91–6403. OGUNLEYE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 671.

No. 91–6404. ROY *v.* CONNECTICUT DEPARTMENT OF CORRECTIONS ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6405. PINE *v.* BUNNELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 793.

No. 91–6406. PERRY *v.* BARROWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 579.

No. 91–6407. COLWELL *v.* BOWLEN, WARDEN, ET AL. Sup. Ct. Tenn. Certiorari denied.

No. 91–6410. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 899.

No. 91–6411. TUCKER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–6413. BYRD *v.* WARDEN, LOUISIANA STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 91–6415. HECK, AKA JOHNSTON *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 304 S. C. 345, 404 S. E. 2d 514.

No. 91–6416. JIMENEZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1536.

No. 91–6418. WILLIAMSON *v.* CARD, ASSISTANT SUPERINTENDENT, ANGOLA CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 936 F. 2d 1000.

No. 91–6419. CHAYKIN *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 589 So. 2d 1326.

No. 91–6420. CARROLL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 579 So. 2d 706.

No. 91–6421. CRAUN *v.* UNITED STATES;
No. 91–6487. HOLT *v.* UNITED STATES; and
No. 91–6494. YOUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 787.

No. 91–6422. CAHAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 91–6426. NELSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 941 F. 2d 1213.

No. 91–6427. LUCAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–6431. LODATO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 1431.

No. 91–6432. TOWNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 654.

No. 91–6433. HARRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 2d 784.

No. 91–6434. GREENE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 52.

No. 91–6436. MUNN *v.* MICHIGAN NATIONAL BANK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 661.

No. 91–6437. PREUSS *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied.

No. 91–6438. NEWCOMB *v.* INGLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 2d 1534.

No. 91–6439. NEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 729.

No. 91–6440. OGLESBY *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6441. DIXON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 588 So. 2d 903.

No. 91–6442. MACHADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 938.

No. 91–6443. FIGUEREDO-ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–6445. SWINGLER *v.* GOLDBERG, COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied.

No. 91–6446. BANKS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1469.

No. 91–6447. BANKS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 576.

No. 91–6448. CHRISTIAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 2d 363.

No. 91–6451. ROQUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1482.

No. 91–6452. RATLIFF *v.* DEEDS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–6453. ROCHETTE *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 25 Conn. App. 298, 594 A. 2d 1006.

No. 91–6458. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 941 F. 2d 1213.

No. 91–6459. BLACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 413.

No. 91–6460. FIELDS *v.* CITY OF WEST PALM BEACH ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 91–6464. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 899.

No. 91–6466. SAMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 903.

No. 91–6467. EASTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 160.

No. 91–6470. ALANIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 945 F. 2d 1032.

No. 91–6471. FERGUSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 862.

No. 91–6473. ROSARIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1317.

No. 91–6475. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 787.

No. 91–6477. MAY *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 948 F. 2d 162.

No. 91–6478. ACUNA *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 611.

No. 91–6482. ARMSTRONG *v.* WATERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1206.

No. 91–6483. BLANTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 2d 796.

No. 91–6488. HEAD *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 932 F. 2d 981.

No. 91–6491. YARDEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 940 F. 2d 722.

No. 91–6497. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 414.

No. 91–6500. MIRAMONTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 891.

No. 91–6501. DUDLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 260.

No. 91–6503. MAESTAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 941 F. 2d 273.

No. 91–6509. COLLIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 673.

No. 91–6518. SLATER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–6521. ROGGIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 672.

No. 91–6525. CALLOWAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 50.

No. 91–6526. BROWN *v.* DEPARTMENT OF COMMERCE. C. A. Fed. Cir. Certiorari denied. Reported below: 944 F. 2d 913.

No. 91–6530. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1413.

No. 91–6533. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 887.

No. 91–6534. EMBREY *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 953 F. 2d 647.

No. 91–6539. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 91–6548. PALACIOS-CEBALLOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 413.

No. 91–6549. MAGPIONG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 91–6550. ROBINETTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1325.

No. 91–6551. LEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 917 F. 2d 1286 and 935 F. 2d 194.

No. 91–6552. MARSHALL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 85 Md. App. 320, 583 A. 2d 1109.

No. 91–6553. AHMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 53.

No. 91–6624. DAVIS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 814 S. W. 2d 593.

No. 90–1915. REED *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 288 U. S. App. D. C. 394, 927 F. 2d 1249.

No. 91–595. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION *v.* AVECOR, INC., ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 289 U. S. App. D. C. 286, 931 F. 2d 924.

No. 91–342. UBEROI *v.* BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO. Ct. App. Colo. Motion of Public Citizen for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 91–452. FULANI ET AL. *v.* BRADY, SECRETARY OF THE TREASURY, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 290 U. S. App. D. C. 205, 935 F. 2d 1324.

No. 91–515. MCCORMICK *v.* AT&T TECHNOLOGIES, INC., ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 934 F. 2d 531.

No. 91–730. HILTON *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 936 F. 2d 823.

No. 91–591. INSLAW, INC. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 289 U. S. App. D. C. 383, 932 F. 2d 1467.

No. 91–617. CHRISTIC INSTITUTE *v.* HULL ET AL.;

No. 91–618. SHEEHAN *v.* HULL ET AL.; and

No. 91–619. AVIRGAN ET AL. *v.* HULL ET AL. C. A. 11th Cir. Motions of Trial Lawyers for Public Justice and National Council of Churches of Christ et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 932 F. 2d 1572.

No. 91–704. RAY *v.* CONSOLIDATED RAIL CORPORATION, AKA CONRAIL. C. A. 7th Cir.; and

No. 91–6253. CARROLL *v.* CONSOLIDATED RAIL CORPORATION. C. A. 3d Cir. Certiorari denied. Reported below: No. 91–704, 938 F. 2d 704; No. 91–6253, 941 F. 2d 1200.

JUSTICE WHITE, with whom JUSTICE THOMAS joins, dissenting.

These cases raise the issue whether the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. §§ 51–60, creates a cause of action for emotional injury brought about by acts that lack any physical contact or threat of physical contact. We had expressly reserved this question in *Atchison, T. & S. F. R. Co.* v. *Buell*, 480 U. S. 557, 570–571 (1987). In both cases the Courts of Appeals held that FELA authorizes no such claim.

By contrast with the approach undertaken by the Courts of Appeals in these cases, the Court of Appeals for the Fifth Circuit has propounded a contrary rule. In *Plaisance* v. *Texaco, Inc.*, 937 F. 2d 1004, 1009 (1991), after fully canvassing the decisions of the Courts of Appeals since *Buell*, the court stated: "We [are] persuaded that an emotional injury can be every bit as harmful, debilitating, and destructive of the quality of one's life as a physical injury. We therefore hold that a claim for an emotional injury caused by emotional distress negligently inflicted, even without an accompanying physical injury or physical contact, is cognizable under the FELA."

Because a uniform rule should be announced by this Court on this important and recurring issue, I would grant the petitions.

No. 91–713. ACUNA CASTILLO ET AL. *v.* SHELL OIL CO. ET AL. (two cases). C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 932 F. 2d 1518 (first case) and 1523 (second case).

No. 91–5661. TOWNSEND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 932 F. 2d 1529.

No. 91–5836. BOOTH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 936 F. 2d 573.

No. 91–728. PREFERRED RESEARCH, INC. *v.* WRIGHT. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 937 F. 2d 1556.

No. 91–736. MASSACHUSETTS *v.* MOREAU. App. Ct. Mass. Motion of respondent for leave to proceed *in forma pauperis*

granted. Certiorari denied. Reported below: 30 Mass. App. 677, 572 N. E. 2d 1382.

No. 91–776. TENNESSEE *v.* TURNER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 940 F. 2d 1000.

No. 91–792. SARGENT, WARDEN *v.* HENDERSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 926 F. 2d 706 and 939 F. 2d 586.

No. 91–812. PACIFIC BELL ET AL. *v.* PALLAS, AKA HUBBS. C. A. 9th Cir. Motions of Equal Employment Advisory Council and California Employment Law Council for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions and this petition. Reported below: 940 F. 2d 1324.

No. 91–6312. DAMIAN *v.* FEDERAL EXPRESS CORP. C. A. 5th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 91–407. SCHOONOVER *v.* KLAMATH COUNTY, OREGON, *ante*, p. 940;

No. 91–412. ROSENBAUM *v.* ROSENBAUM, *ante*, p. 940;

No. 91–440. GOLDBERG & FELDMAN FINE ARTS, INC., ET AL. *v.* AUTOCEPHALOUS GREEK-ORTHODOX CHURCH OF CYPRUS ET AL., *ante*, p. 941;

No. 91–496. MAGYAR ET UX. *v.* OLAN ET AL., *ante*, p. 958;

No. 91–5734. LAWHORN *v.* ALABAMA, *ante*, p. 970;

No. 91–5751. GROFF *v.* PEREZOUS ET AL., *ante*, p. 945;

No. 91–5769. LIN *v.* FORDHAM UNIVERSITY ET AL., *ante*, p. 946;

No. 91–5780. HERNANDEZ *v.* CITY OF TEMPLE, TEXAS, ET AL., *ante*, p. 946;

No. 91–5782. JACKSON ET AL. *v.* WARD ET AL., *ante*, p. 946;

No. 91–5817. TAYLOR *v.* GEORGIA, *ante*, p. 947;

No. 91–5829. MONTAGUE *v.* DEPARTMENT OF AGRICULTURE, *ante*, p. 947;

No. 91–5830. RESTREPO ET UX. *v.* FIRST NATIONAL BANK OF DONA ANA COUNTY, NEW MEXICO, *ante*, p. 947;

No. 91–5897. ROBISON *v.* MAYNARD, WARDEN, ET AL., *ante*, p. 970;

No. 91–5920. BROWN ET AL. *v.* KERR GLASS MANUFACTURING INC. ET AL., *ante,* p. 970;

No. 91–6029. IN RE DEMPSEY, *ante,* p. 937; and

No. 91–6177. MARTIN ET AL. *v.* MEDICAL CENTER OF DELAWARE, *ante,* p. 991. Petitions for rehearing denied.

No. 90–7860. DONALD *v.* RAST ET AL., *ante,* p. 827;

No. 90–8223. D'SOUZA *v.* UNITED STATES, *ante,* p. 838;

No. 90–8436. RAMEL *v.* ALLEN ET AL., *ante,* p. 851;

No. 90–8453. JOHN *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL., *ante,* p. 851;

No. 91–91. EUERLE FARMS, INC., ET AL. *v.* FARM CREDIT SERVICES OF ST. PAUL ET AL., *ante,* p. 860;

No. 91–209. GILBERT ET AL. *v.* CITY OF CAMBRIDGE ET AL., *ante,* p. 866;

No. 91–5075. DAVIS *v.* CITY OF COLUMBUS, OHIO, ET AL., *ante,* p. 873;

No. 91–5231. SNYDER ET AL. *v.* ASHKENAZY ENTERPRISES, INC., *ante,* p. 882;

No. 91–5320. FERNOS-LOPEZ *v.* FIGARELLA LOPEZ, *ante,* p. 886;

No. 91–5380. DITTA *v.* BRANCH MOTOR EXPRESS ET AL., *ante,* p. 890;

No. 91–5473. PENSINGER *v.* CALIFORNIA, *ante,* p. 930;

No. 91–5475. HACKETT *v.* UNITED STATES ET AL., *ante,* p. 894;

No. 91–5522. WARMACK *v.* UNITED STATES, *ante,* p. 914;

No. 91–5603. RASHTY *v.* MICHIGAN, *ante,* p. 916;

No. 91–5627. FERRELL *v.* GEORGIA, *ante,* p. 927;

No. 91–5808. BILAL *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante,* p. 928; and

No. 91–5847. RAFFAELE *v.* MURDOCK ET AL., *ante,* p. 928. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

No. 91–5299. ECHOLS *v.* ASMUTH ET AL., *ante,* p. 885. Motion for leave to file petition for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of this motion.

JANUARY 16, 1992

Miscellaneous Order

No. A–498. RICHARDS, GOVERNOR OF TEXAS, ET AL. *v.* TERRAZAS ET AL. D. C. W. D. Tex. Application for stay pending ap-

peal, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

JANUARY 17, 1992

Certiorari Denied

No. 91–7018 (A–506). CLARK *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL 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. The order heretofore entered by JUSTICE SCALIA is vacated. Reported below: 953 F. 2d 642.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

The direct review of petitioner's conviction was not completed until November 18, 1991, when this Court denied certiorari. See *ante*, p. 969. Petitioner's lawyer, a solo practitioner, was unable to represent petitioner in postconviction proceedings. Meanwhile, an execution date of January 17, 1992, had already been set by the trial court. Petitioner, who is indigent, was unable to find a lawyer to represent him until December 27, 1991. On January 3, 1992, petitioner's new lawyer requested a modification of the execution date so that he could familiarize himself with the record; however, his request was denied.

On January 15, 1992, petitioner filed an application for postconviction writ of habeas corpus in the trial court and the Texas Court of Criminal Appeals. The next day, the trial court denied a stay of execution. Within the span of a few hours, the Court of Criminal Appeals adopted the trial court's findings and denied the application; the District Court denied petitioner's first federal habeas petition an hour after it was filed; and the Court of Appeals for the Fifth Circuit affirmed the denial of federal habeas corpus relief by a divided court.

Writing in dissent, Judge Davis explained that he would "grant the stay in this initial federal habeas petition" because he was "unable to adequately assess Clark's claim of ineffective assistance of counsel without reviewing the pertinent portions of the trial record, which are not now available to [him]." No. 92–2036 (CA5, Jan. 16, 1992), p. 7, judgt. order reported at 953 F. 2d 642.

As a matter of policy, I believe that we should routinely grant the stay application in all first federal habeas corpus cases "in order to be sure that a death row inmate may have the same

opportunity to have his or her federal claims considered by this Court as does any other applicant." *Kyles* v. *Whitley*, 498 U. S. 931 (1990) (STEVENS, J., concurring in denial of application). This case, however, presents an extreme example of why this is so. The compressed schedule has denied state and federal courts the opportunity to review filings with adequate time for reflection, much less to review the record, or even to receive a full response from the State.* Indeed, it is doubtful that counsel has had a fair opportunity to discharge his professional obligations. Thus, the more prudent approach is to grant a stay and to have procedures follow in their proper course. Accordingly, I respectfully dissent.

JANUARY 21, 1992

Certiorari Granted—Vacated and Remanded

No. 91–907. DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK ET AL. *v.* MILHELM ATTEA & BROS., INC., ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Oklahoma Tax Comm'n* v. *Citizen Band of Potawatomi Tribe of Okla.*, 498 U. S. 505 (1991). Reported below: 164 App. Div. 2d 300, 564 N. Y. S. 2d 491.

Miscellaneous Orders

No. ——. BLUESTEIN ET AL. *v.* GROOVER ET AL.; and

No. ——. NUSS *v.* OFFICE OF PERSONNEL MANAGEMENT. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A–277 (91–963). COLORADO *v.* GARCIA. Sup. Ct. Colo. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A–353. MICELI, AKA GUAGLIERI *v.* GUAGLIERI. Sup. Ct. N. J. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

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*The State, in response to petitioner's federal habeas petition, said that its "non-opposition" was based "on the recognition that additional time may be necessary in order for the Court to resolve the claims asserted by Clark," and also because the State has had to prepare for several executions in the space of a week and "simply has not adequately digested the record in light of Clark's claims, received only this morning." Respondent's Response to Petitioner's Request for Stay of Execution 9–10.

No. D–1047. IN RE DISBARMENT OF KATZ. Disbarment entered. [For earlier order herein, see *ante,* p. 955.]

No. D–1048. IN RE DISBARMENT OF CANNAVINO. Disbarment entered. [For earlier order herein, see *ante,* p. 955.]

No. D–1049. IN RE DISBARMENT OF BELTRE. Disbarment entered. [For earlier order herein, see *ante,* p. 965.]

No. D–1050. IN RE DISBARMENT OF FRIEDMAN. Disbarment entered. [For earlier order herein, see *ante,* p. 965.]

No. D–1052. IN RE DISBARMENT OF CAVACOS. Disbarment entered. [For earlier order herein, see *ante,* p. 966.]

No. D–1053. IN RE DISBARMENT OF MICHALEK. Disbarment entered. [For earlier order herein, see *ante,* p. 966.]

No. D–1063. IN RE DISBARMENT OF WEISS. Motion to defer further consideration granted. [For earlier order herein, see *ante,* p. 1011.]

No. D–1071. IN RE DISBARMENT OF WILEY. It is ordered that Buford B. Wiley, Jr., of San Diego, Cal., be suspended from the practice of law in this Court and that a rule 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–1072. IN RE DISBARMENT OF TRUDGEON. It is ordered that Jeffrey C. Trudgeon, of Upland, Cal., be suspended from the practice of law in this Court and that a rule 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–1073. IN RE DISBARMENT OF ZADAN. It is ordered that Michael E. Zadan, of San Diego, Cal., be suspended from the practice of law in this Court and that a rule 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–1074. IN RE DISBARMENT OF CLEMENTS. It is ordered that James F. Clements, of Landover, Md., be suspended from the practice of law in this Court and that a rule 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–1075. IN RE DISBARMENT OF PACK. It is ordered that Edward E. Pack, of Livingston, N. J., be suspended from the practice of law in this Court and that a rule 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–1076. IN RE DISBARMENT OF RATLIFF. It is ordered that John Herbert Ratliff, of Somerville, N. J., be suspended from the practice of law in this Court and that a rule 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–1077. IN RE DISBARMENT OF SWICKLE. It is ordered that Harvey S. Swickle, of North Miami Beach, Fla., be suspended from the practice of law in this Court and that a rule 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–1078. IN RE DISBARMENT OF BEHRENDT. It is ordered that Melville Herman Behrendt, Jr., of Alameda, Cal., be suspended from the practice of law in this Court and that a rule 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–1079. IN RE DISBARMENT OF MCNAMEE. It is ordered that Robert P. McNamee, of San Jose, Cal., be suspended from the practice of law in this Court and that a rule 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–1080. IN RE DISBARMENT OF BRYAN. It is ordered that Locksley Hugh Bryan, of Lawrence, Mass., be suspended from the practice of law in this Court and that a rule 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. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of Basin Electric Power Cooperative for leave to file a brief granted. Motion of Central Nebraska Public Power and Irrigation District for leave to file a brief as *amicus curiae* granted. [For earlier order herein, see, *e. g.*, 500 U. S. 950.]

No. 90–1038. CIPOLLONE, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF CIPOLLONE *v.* LIGGETT GROUP, INC., ET

AL. C. A. 3d Cir. [Certiorari granted, 499 U. S. 935.] Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 90–1676. GADE, DIRECTOR, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY *v.* NATIONAL SOLID WASTES MANAGEMENT ASSN. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1012.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 90–1912. NORDLINGER *v.* HAHN, IN HIS CAPACITY AS TAX ASSESSOR FOR LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. [Certiorari granted, *ante*, p. 807.] Motion of Howard Jarvis Taxpayers Association et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied.

No. 91–122. PFZ PROPERTIES, INC. *v.* RODRIGUEZ ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 956.] Motion of National Association of Home Builders for leave to file a brief as *amicus curiae* granted.

No. 91–372. GEORGIA *v.* MCCOLLUM ET AL. Sup. Ct. Ga. [Certiorari granted, *ante*, p. 937.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 90–1918. KRAFT GENERAL FOODS, INC. *v.* IOWA DEPARTMENT OF REVENUE AND FINANCE. Sup. Ct. Iowa. Certiorari granted. Reported below: 465 N. W. 2d 664.

No. 91–872. UNITED STATES *v.* SALERNO ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 937 F. 2d 797 and 952 F. 2d 623.

No. 91–744. PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA ET AL. *v.* CASEY, GOVERNOR OF PENNSYLVANIA, ET AL.; and

No. 91–902. CASEY, GOVERNOR OF PENNSYLVANIA, ET AL. *v.* PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari granted limited to the following questions:

"1. Did the Court of Appeals err in upholding the constitutionality of the following provisions of the Pennsylvania Abortion Control Act:

"a. 18 Pa. Cons. Stat. § 3203 (1990) (definition of medical emergency)

"b. 18 Pa. Cons. Stat. § 3205 (1990) (informed consent)

"c. 18 Pa. Cons. Stat. § 3206 (1990) (parental consent)

"d. 18 Pa. Cons. Stat. §§ 3207 and 3214 (1990) (reporting requirements)?

"2. Did the Court of Appeals err in holding 18 Pa. Cons. Stat. § 3209 (1990) (spousal notice) unconstitutional?" Cases consolidated and a total of one hour allotted for oral argument. Reported below: 947 F. 2d 682.

No. 91–913. PATTERSON, TRUSTEE *v.* SHUMATE. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 943 F. 2d 362.

Certiorari Denied

No. 90–8498. MARTIN *v.* BARR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 931 F. 2d 58.

No. 91–423. HUYGE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 623.

No. 91–519. DOSSETT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 362, 404 S. E. 2d 548.

No. 91–640. PIZZACO OF NEBRASKA, INC., DBA DOMINOS PIZZA, ET AL. *v.* BRADLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 939 F. 2d 610.

No. 91–652. 281–300 JOINT VENTURE *v.* ONION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 938 F. 2d 35.

No. 91–655. MICHIGAN *v.* WATKINS ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 438 Mich. 627, 475 N. W. 2d 727.

No. 91–661. CALIFORNIA SAND & GRAVEL, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 624.

No. 91–678. GREY ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 935 F. 2d 281.

No. 91–700. OLIVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 656.

No. 91–706. MESA OPERATING LIMITED PARTNERSHIP *v.* DEPARTMENT OF THE INTERIOR. C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 318.

No. 91–718. HARRISON *v.* DOW CHEMICAL CO. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–731. KERSTING *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1535.

No. 91–771. MEYERS ET AL. *v.* IDEAL BASIC INDUSTRIES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 1379.

No. 91–797. CARIBE SHIPPING CO., INC. *v.* SOTO ET AL. Sup. Ct. P. R. Certiorari denied. Reported below: 128 D. P. R. ——.

No. 91–803. BROWN *v.* AMERICAN HONDA MOTOR CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 939 F. 2d 946.

No. 91–813. FARMER *v.* MABUS, GOVERNOR OF MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 921.

No. 91–814. AMATO *v.* NEW YORK; AMATO *v.* NEW YORK; and RAFFA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 173 App. Div. 2d 714, 570 N. Y. S. 2d 817 (first case); 173 App. Div. 2d 717, 570 N. Y. S. 2d 1017 (second case); 173 App. Div. 2d 748, 570 N. Y. S. 2d 819 (third case).

No. 91–815. SANDLIN ET AL. *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 230 Cal. App. 3d 1310, 281 Cal. Rptr. 702.

No. 91–816. NEW YORK ET AL. *v.* ASSOCIATION OF SURROGATES AND SUPREME COURT REPORTERS WITHIN THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 766.

No. 91–817. STAFFORD *v.* BROTMAN MEDICAL CENTER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–824. RALLY'S, INC. *v.* INTERNATIONAL SHORTSTOP, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 939 F. 2d 1257.

No. 91–825. HEAVRIN *v.* JEFFERS. C. A. 6th Cir. Certiorari denied. Reported below: 932 F. 2d 1160.

No. 91–826. SCHULDT ET VIR, ON BEHALF OF THEMSELVES AND THEIR MINOR DAUGHTER, SCHULDT *v.* MANKATO INDEPENDENT SCHOOL DISTRICT NO. 77. C. A. 8th Cir. Certiorari denied. Reported below: 937 F. 2d 1357.

No. 91–827. FARMERS GROUP, INC., ET AL. *v.* AMERICAN ASSOCIATION OF RETIRED PERSONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 943 F. 2d 996.

No. 91–828. VANDENBERG *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 91–830. AVALA OF TEXAS, INC., DBA THE AVALA GROUP, ET AL. *v.* WEST, JUDGE, 269TH DISTRICT COURT, HARRIS COUNTY, TEXAS, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 91–832. REYER *v.* TODD ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–835. CALDER *v.* JOB. Sup. Ct. Utah. Certiorari denied.

No. 91–839. SORO, AKA CITICORP MORTGAGE CO. INC. *v.* CITICORP ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1541.

No. 91–847. JOHNSON *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 660.

No. 91–853. DONAGHY *v.* CITY OF OMAHA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 1448.

No. 91–861. TODD *v.* SMITH, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS FORMER CITY MANAGER OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 305 S. C. 227, 407 S. E. 2d 644.

No. 91–863. BARBE *v.* GREAT ATLANTIC & PACIFIC TEA CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 651.

No. 91–864. First American Artificial Flowers, Inc. *v.* Promisel. C. A. 2d Cir. Certiorari denied. Reported below: 943 F. 2d 251.

No. 91–869. Campbell *v.* Daugherty. C. A. 6th Cir. Certiorari denied. Reported below: 935 F. 2d 780.

No. 91–889. McCoy et al. *v.* Hearst Corp. et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 91–892. Calhoun et al. *v.* Odinet et al. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 172.

No. 91–893. Duluth, Winnipeg & Pacific Railway Co. *v.* Smalley. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 296.

No. 91–895. Hayes *v.* Community General Osteopathic Hospital. C. A. 3d Cir. Certiorari denied. Reported below: 940 F. 2d 54.

No. 91–899. Sloan *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 939 F. 2d 499.

No. 91–909. In re Bucknam. C. A. Fed. Cir. Certiorari denied. Reported below: 944 F. 2d 912.

No. 91–911. Mickens *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 1323.

No. 91–924. Pardasani *v.* Siemens Energy & Automation, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1313.

No. 91–938. Bevan et ux. *v.* Township of Brandon et al. Sup. Ct. Mich. Certiorari denied. Reported below: 438 Mich. 385, 475 N. W. 2d 37.

No. 91–957. Baez et al. *v.* Wells Fargo Armored Service Corp. C. A. 11th Cir. Certiorari denied. Reported below: 938 F. 2d 180.

No. 91–5613. Wade *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 105, 401 S. E. 2d 701.

No. 91–5636. Lodge *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 928 F. 2d 1030.

No. 91–5652. LEAR *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 143 Ill. 2d 138, 572 N. E. 2d 876.

No. 91–5797. HORNICK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 942 F. 2d 105.

No. 91–5887. HIGUERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–6024. SORENSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 614.

No. 91–6077. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 53.

No. 91–6090. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 939 F. 2d 135.

No. 91–6113. LUCAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 617.

No. 91–6118. PARKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 614.

No. 91–6120. HOM SUI CHING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 940 F. 2d 650.

No. 91–6121. TOMMASI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 937 F. 2d 1077.

No. 91–6139. CABALLERO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 290 U. S. App. D. C. 235, 936 F. 2d 1292.

No. 91–6142. SCHEETS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 670.

No. 91–6148. MARTINS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 228 Cal. App. 3d 1632, 279 Cal. Rptr. 687.

No. 91–6181. VALLES-VALDIVIESO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 655.

No. 91–6182. FRIERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 730, 808 P. 2d 1197.

No. 91–6184. ROLLINS *v.* LEONARDO, SUPERINTENDENT, COMSTOCK CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 938 F. 2d 380.

No. 91–6205. COX *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 618, 809 P. 2d 351.

No. 91–6214. CORTEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 935 F. 2d 135.

No. 91–6215. DURON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 669.

No. 91–6216. ADAIR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1314.

No. 91–6225. AHMED *v.* STONE, SECRETARY, DEPARTMENT OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 318.

No. 91–6237. EVANS *v.* CLARK. C. A. 7th Cir. Certiorari denied.

No. 91–6242. BOWERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6246. HARRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 936 F. 2d 568.

No. 91–6254. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 938 F. 2d 785.

No. 91–6281. KERLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 91–6287. BRANDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 1434.

No. 91–6308. QUINONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 672.

No. 91–6315. JONES, AKA HILTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 91–6360. EMBREY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 953 F. 2d 647.

No. 91–6412. CASTRO *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 814 P. 2d 158.

No. 91–6417. ZILICH *v.* NICHOLS. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 397.

No. 91–6429. MADDOX *v.* UNITED STATES;
No. 91–6499. RUTHERFORD *v.* UNITED STATES; and
No. 91–6558. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 1223.

No. 91–6435. JOHNSON *v.* RODRIGUEZ ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 943 F. 2d 104.

No. 91–6456. STREET *v.* VOSE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 936 F. 2d 38.

No. 91–6463. BARRIOS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 91–6468. CURTIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 174 App. Div. 2d 899, 571 N. Y. S. 2d 595.

No. 91–6469. SMYTHE *v.* GREEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 573.

No. 91–6472. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 953 F. 2d 648.

No. 91–6474. STONE *v.* DALLMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 1210.

No. 91–6479. DEYOUNG *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 943 F. 2d 55.

No. 91–6480. CASTLE *v.* URQUHART ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–6481. VON CRONEY *v.* GARRETT, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 577.

No. 91–6485. HEARN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 604.

No. 91–6486. FELKER *v.* ZANT, WARDEN. Super. Ct. Ga., Butts County. Certiorari denied.

No. 91–6489. GLEASON *v.* DE ANDA, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1529.

No. 91–6493. SGARAGLINO *v.* STATE FARM FIRE & CASUALTY CO. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 275.

No. 91–6498. MINTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1529.

No. 91–6505. WORTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 91–6506. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–6507. OOSTENDORP *v.* KHANNA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 1177.

No. 91–6508. WHITAKER *v.* WELLS FARGO NATIONAL BANK. Sup. Ct. Cal. Certiorari denied.

No. 91–6511. TIPPINS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 173 App. Div. 2d 512, 570 N. Y. S. 2d 581.

No. 91–6513. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1325.

No. 91–6515. WALKER *v.* MICHIGAN DEPARTMENT OF SOCIAL SERVICES. Ct. App. Mich. Certiorari denied. Reported below: 189 Mich. App. 6, 472 N. W. 2d 13.

No. 91–6517. VILLANUEVA *v.* NOONAN ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–6522. MARTIN *v.* TRIEWEILER ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–6523. LOMBARD *v.* NEW YORK CITY BOARD OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 594.

No. 91–6529. HILL *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–6531. THORNTON *v.* OGDEN ALLIED AVIATION FUELING CO., INC. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–6536. KALTENBACH *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1543.

No. 91–6540. SHIELDS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 812 S. W. 2d 152.

No. 91–6556. TWO BULLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 380.

No. 91–6559. ROBINSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 91–6564. DEVINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1325.

No. 91–6566. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 941 F. 2d 1213.

No. 91–6569. FONT RAMIREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 944 F. 2d 42.

No. 91–6572. LOWRY *v.* W. R. GRACE & CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 930 F. 2d 24.

No. 91–6579. DEERE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 3d 705, 808 P. 2d 1181.

No. 91–6582. CAPEHART *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 583 So. 2d 1009.

No. 91–656. MICHIGAN *v.* BANKS. Sup. Ct. Mich. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 438 Mich. 408, 475 N. W. 2d 769.

No. 91–5997. EPPERSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 809 S. W. 2d 835.

No. 91–6322. BELTRAN-FELIX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 934 F. 2d 1075.

No. 91–6502. RESTREPO-CONTRERAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 942 F. 2d 96.

No. 91–669. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* GORE. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 933 F. 2d 904.

No. 91–906. SAFFLE, WARDEN, ET AL. *v.* LILES. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 945 F. 2d 333.

No. 91–694. WILLIAM E. SCHRAMBLING ACCOUNTANCY CORP. ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE THOMAS would grant certiorari. Reported below: 937 F. 2d 1485.

No. 91–819. RUTGERS, THE STATE UNIVERSITY, ET AL. *v.* BENNUN. C. A. 3d Cir. Motion of American Council on Education et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 941 F. 2d 154.

No. 91–849. BOARD OF EDUCATION OF COMMUNITY CONSOLIDATED SCHOOL DISTRICT NO. 21 *v.* ILLINOIS STATE BOARD OF EDUCATION ET AL.; and

No. 91–865. ILLINOIS STATE BOARD OF EDUCATION *v.* BOARD OF EDUCATION OF COMMUNITY CONSOLIDATED SCHOOL DISTRICT NO. 21 ET AL. C. A. 7th Cir. Motions of Illinois Association of School Boards and National School Boards Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 938 F. 2d 712.

No. 91–875. TALLUTO ET AL. *v.* PLANNED PARENTHOOD MARGARET SANGER CLINIC (MANHATTAN) ET AL. C. A. 2d Cir. Certiorari before judgment denied.

No. 91–5703. RODRIGUEZ *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 202 Ill. App. 3d 839, 560 N. E. 2d 434.

No. 91–6199. KENNEDY *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certio-

rari denied. JUSTICE BLACKMUN, JUSTICE O'CONNOR, and JUSTICE KENNEDY would grant certiorari. Reported below: 933 F. 2d 905.

No. 91–7045 (A–509). HOPKINSON *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 954 F. 2d 609.

No. 91–7061 (A–514). CORDOVA *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL 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. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay of execution. Reported below: 953 F. 2d 167.

Rehearing Denied

No. 91–5955. JOHNSTON *v.* TORRES ET AL., *ante,* p. 971;

No. 91–5996. MARTIN *v.* GREENSBORO HEALTH CARE, INC., *ante,* p. 987;

No. 91–6021. WAINSCOTT *v.* MARMAG INVESTMENTS, INC., ET AL., *ante,* p. 988;

No. 91–6022. CONNELLY *v.* KOVACHEVICH, *ante,* p. 988;

No. 91–6264. BAUER *v.* UNITED STATES ET AL., *ante,* p. 993; and

No. 91–6330. GEURIN *v.* DEPARTMENT OF VETERANS AFFAIRS, *ante,* p. 1016. Petitions for rehearing denied.

No. 91–5549. DOE *v.* UNITED STATES, *ante,* p. 896. Motion of petitioner for leave to file petition for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of this motion.

JANUARY 23, 1992

Dismissal Under Rule 46

No. 91–1013. RLI INSURANCE CO. *v.* COE. Sup. Ct. Ark. Certiorari dismissed under this Court's Rule 46. Reported below: 306 Ark. 337, 813 S. W. 2d 783.

JANUARY 24, 1992

Miscellaneous Order

No. A–522. RECTOR *v.* CLINTON, GOVERNOR OF ARKANSAS, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied.

Certiorari Denied

No. 91–7107 (A–530). RECTOR *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. Certiorari denied. Reported below: 971 F. 2d 751.

JANUARY 27, 1992

Appeal Dismissed

No. 91–1084. COTLOW ET AL. *v.* EMISON ET AL. Appeal from D. C. Minn. The order of January 10, 1992 [*ante,* p. 1022], having vacated the order from which the appeal is taken, the appeal is dismissed as moot.

Certiorari Granted—Vacated and Remanded

No. 90–1136. ARIZONA *v.* LENGYEL ET AL. Ct. App. Ariz. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *White* v. *Illinois, ante,* p. 346.

No. 91–724. GERSMAN ET AL. *v.* GROUP HEALTH ASSN., INC. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the Civil Rights Act of 1991. Reported below: 289 U. S. App. D. C. 332, 931 F. 2d 1565.

No. 91–5705. PROWS *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 *Smith* v. *Barry, ante,* p. 244.

Miscellaneous Orders

No. ——. ABLES *v.* OFFICE OF PERSONNEL MANAGEMENT;
No. ——. ANNIS ET AL. *v.* DAYTON, OHIO; and
No. ——. HUDSON LIGHT AND POWER DEPARTMENT ET AL. *v.* MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC CO.

Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A–320. MOORE *v.* UNITED STATES. Application for bail, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. 119, Orig. CONNECTICUT ET AL. *v.* NEW HAMPSHIRE. Motion to file bill of complaint granted. Defendant is allowed 60 days in which to file an answer. THE CHIEF JUSTICE and JUSTICE SCALIA would set the motion for oral argument. JUSTICE SOUTER took no part in the consideration or decision of this motion.

No. 90–1604. MORALES, ATTORNEY GENERAL OF TEXAS *v.* TRANS WORLD AIRLINES, INC., ET AL. C. A. 5th Cir. [Certiorari granted, *ante,* p. 976.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90–6297. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 499 U. S. 918.] The parties are directed to file supplemental memoranda after argument addressing the following questions:

"1. When a district court departs from a properly constructed sentencing guideline range, and it relies on a factor disapproved by a policy statement that guides departures, has the district court for that reason or otherwise made an 'incorrect application of the sentencing guidelines' within the meaning of 18 U. S. C. §§ 3742(e)(2) and (f)(1)?

"2. Are the appellate 'decision and disposition' provisions, subsections (f)(1) and (f)(2) of 18 U. S. C. § 3742, which group the separate considerations of § 3742(e), mutually exclusive?

"3. When a district court bases a departure decision on an aggravating or mitigating circumstance that the court of appeals later determines is improper under 18 U. S. C. § 3553(b), has the district court imposed a sentence 'in violation of law' within the meaning of §§ 3742(e)(1) and (f)(1)?"

The briefs are to be filed simultaneously with the Clerk on or before Friday, February 14, 1992.

No. 90–8370. MEDINA *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante,* p. 924.] Motion of Committee on Legal Prob-

lems of the Mentally Ill of the Association of the Bar of the City of New York for leave to file a brief as *amicus curiae* granted.

No. 91–269. HELLING ET AL. *v.* MCKINNEY, *ante*, p. 903. Motion of respondent to retax costs granted.

No. 91–594. AMERICAN NATIONAL RED CROSS *v.* S. G. ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 91–611. BARKER ET AL. *v.* KANSAS ET AL. Sup. Ct. Kan. [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. 91–6382. SAWYER *v.* WHITLEY, WARDEN. C. A. 5th Cir. [Certiorari granted, *ante*, p. 965.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 91–6634. DEMOS *v.* WASHINGTON. Sup. Ct. Wash. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 18, 1992, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. JUSTICE BLACKMUN and JUSTICE STEVENS would deny the petition for writ of certiorari.

No. 91–6584. IN RE BAILEY. Petition for writ of mandamus denied.

No. 91–6538. IN RE JARRETT; and

No. 91–6562. IN RE JARVI. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 91–779. BURLINGTON NORTHERN RAILROAD CO. *v.* FORD ET AL. Sup. Ct. Mont. Certiorari granted. Reported below: 250 Mont. 188, 819 P. 2d 169.

No. 91–471. CHEMICAL WASTE MANAGEMENT, INC. *v.* HUNT, GOVERNOR OF ALABAMA, ET AL. Sup. Ct. Ala. Motions of American Iron & Steel Institute et al. and Hazardous Waste Treatment Council et al. for leave to file briefs as *amici curiae*

granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 584 So. 2d 1367.

No. 91–810. CITY OF BURLINGTON *v.* DAGUE ET AL. C. A. 2d Cir. Certiorari granted limited to the following question: "May a court, in determining a reasonable attorney's fee award under § 7002(e) of the Solid Waste Disposal Act, 90 Stat. 2826, as amended, 42 U. S. C. § 6972(e), or § 505(d) of the Federal Water Pollution Control Act (Clean Water Act), 86 Stat. 889, as amended, 33 U. S. C. § 1365(d), enhance the fee award above the lodestar amount in order to reflect the fact that the attorneys had taken the case on a contingent-fee basis, thus assuming the risk of receiving no attorney's fees at all?" Reported below: 935 F. 2d 1343.

No. 91–971. TWO PESOS, INC. *v.* TACO CABANA, INC. C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 932 F. 2d 1113.

Certiorari Denied

No. 90–1499. ROWLAND, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* THOMPSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 915 F. 2d 1383.

No. 90–7940. ROY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 201 Ill. App. 3d 166, 558 N. E. 2d 1208.

No. 91–487. LARSON *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 472 N. W. 2d 120.

No. 91–576. SCHNEIDER ET AL. *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 956.

No. 91–589. GAF CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 932 F. 2d 947.

No. 91–605. CHERIF ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 933 F. 2d 403.

No. 91–630. RICE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 614.

No. 91–667. GULF COAST HELICOPTERS, INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1290.

No. 91–697. DIAL INFORMATION SERVICES CORPORATION OF NEW YORK ET AL. *v.* BARR, ATTORNEY GENERAL OF THE UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 938 F. 2d 1535.

No. 91–698. BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND OF INDIANA *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 988.

No. 91–721. DAVIS *v.* RICE, SECRETARY OF THE AIR FORCE. C. A. 10th Cir. Certiorari denied. Reported below: 932 F. 2d 975.

No. 91–726. LUNAAS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 936 F. 2d 1277.

No. 91–750. KRABBENHOFT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 939 F. 2d 529.

No. 91–751. ALLIBHAI ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 939 F. 2d 244.

No. 91–769. FAMBRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1296.

No. 91–838. CHRISTIAN *v.* BUSEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1290.

No. 91–840. COLLINS *v.* BAPTIST MEMORIALS GERIATRIC CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 190.

No. 91–854. GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, KINGS COUNTY (HAMILTON, REAL PARTY IN INTEREST). Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 230 Cal. App. 3d 1592, 281 Cal. Rptr. 900.

No. 91–866. ADAMS ET AL. *v.* LTV STEEL MINING CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 936 F. 2d 368.

No. 91–868. ROBINSON *v.* POURCIAU ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1313.

No. 91–870. PEIGHTAL *v.* METROPOLITAN DADE COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1394.

No. 91–874. BELLEVILLE INDUSTRIES, INC. *v.* LUMBERMENS MUTUAL CASUALTY CO. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 1423.

No. 91–878. JOYNER ET AL. *v.* HEWITT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1561.

No. 91–879. KOREAN UNITED PRESBYTERIAN CHURCH OF LOS ANGELES *v.* PRESBYTERY OF THE PACIFIC ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 230 Cal. App. 3d 480, 281 Cal. Rptr. 396.

No. 91–881. TONY P. SELLITTI CONSTRUCTION CO. *v.* CARYL, TAX COMMISSIONER, STATE TAX DEPARTMENT OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 185 W. Va. 584, 408 S. E. 2d 336.

No. 91–890. FARBER *v.* COMMITTEE ON LEGAL ETHICS OF THE WEST VIRGINIA STATE BAR. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 185 W. Va. 522, 408 S. E. 2d 274.

No. 91–901. MADERO DEVELOPMENT & CONSTRUCTION CO., INC., ET AL. *v.* CITY OF EL PASO, TEXAS, ET AL. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 803 S. W. 2d 396.

No. 91–903. MURRAY ET AL. *v.* STUCKEY'S INC. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 939 F. 2d 614.

No. 91–912. ULVIN ET AL. *v.* NORTHWESTERN NATIONAL LIFE INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 943 F. 2d 862.

No. 91–920. ROWLAND ET VIR *v.* PATTERSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 652.

No. 91–921. ATUN, C. A. *v.* LUCAS. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 432.

No. 91–923. GEARY DISTRIBUTING CO., INC. *v.* ALL BRAND IMPORTERS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 1431.

No. 91–925. GREATER SOUTH SUBURBAN BOARD OF REALTORS ET AL. *v.* CITY OF BLUE ISLAND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 868.

No. 91–927. TE-CHIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–928. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 218.

No. 91–930. FOSTER ET UX. *v.* NORTH TEXAS PRODUCTION CREDIT ASSN. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 2d 400.

No. 91–935. DEFRIES ET AL. *v.* LICENSED DIVISION, DISTRICT NO. 1—MEBA/NMU, AFL–CIO. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 474.

No. 91–936. THOMPSON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 218.

No. 91–939. DELGADO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 303.

No. 91–940. COUNTY OF SAN DIEGO ET AL. *v.* REDMAN. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 1435.

No. 91–945. OSADCHY *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 898.

No. 91–951. OKSANEN *v.* PAGE MEMORIAL HOSPITAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 945 F. 2d 696.

No. 91–955. PROPST *v.* WEIR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 338.

No. 91–958. STAY, INC. *v.* CHENEY, SECRETARY OF DEFENSE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1457.

No. 91–960. MASTRANDREA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 942 F. 2d 1291.

No. 91–970. RYDEEN *v.* QUIGG, COMMISSIONER OF PATENTS AND TRADEMARKS. C. A. Fed. Cir. Certiorari denied. Reported below: 937 F. 2d 623.

No. 91–978. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–984. ADAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 96.

No. 91–1000. CROOK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 936 F. 2d 1012.

No. 91–1008. ROBINSON *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 945 F. 2d 405.

No. 91–1012. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 91–1029. ANDERSON ET AL. *v.* CONSOL-PENNSYLVANIA COAL CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 394, 395, and 396.

No. 91–1033. CASCADE DEVELOPMENT CO., INC. *v.* MADIGAN, SECRETARY OF AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 91–1046. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 1249.

No. 91–1051. CASHMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 896.

No. 91–1054. SHUTZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 845.

No. 91–5290. SCHAAL *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 806 S. W. 2d 659.

No. 91–5477. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 927 F. 2d 406.

No. 91–5891. BOLES *v.* MCGINNIS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTION. C. A. 7th Cir. Certiorari denied.

No. 91–6057. SCHULZ *v.* WASHINGTON COUNTY ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 164 App. Div. 2d 469, 565 N. Y. S. 2d 239.

No. 91–6066. VURAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 268.

No. 91–6122. WHITAKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 938 F. 2d 1551.

No. 91–6159. GOMEZ *v.* NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 616.

No. 91–6223. NEWSOME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 673.

No. 91–6240. SANCHEZ-BERRIDI *v.* MONCUR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 275.

No. 91–6244. LEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 1388.

No. 91–6291. SHAID *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 228.

No. 91–6297. MUNOZ HERRERA *v.* UNITED STATES;
No. 91–6375. MARIN-PINEDA *v.* UNITED STATES; and
No. 91–6398. SEGURA PRETEL ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 939 F. 2d 233.

No. 91–6320. PADRON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 935 F. 2d 1277.

No. 91–6333. BURKES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 937 F. 2d 603.

No. 91–6514. WHITE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 587 So. 2d 1236.

No. 91–6543. STURGILL *v.* THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 934 F. 2d 320.

No. 91–6544. THOMAS *v.* PARCEL OF REAL PROPERTY KNOWN AS 3201 CAUGHEY ROAD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 397.

No. 91–6546. BERENS *v.* CHAIKEN. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1200.

No. 91–6547. BARNETT *v.* COLLINS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–6554. STOWE *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION (AND DIAGNOSTIC AND CLASSIFICATION CENTER) AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 91–6563. BRYMER *v.* HESSON, ACTING WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 572.

No. 91–6568. O'NEILL ET UX. *v.* TOWAMENSING TOWNSHIP, PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 135 Pa. Commw. 670, 582 A. 2d 439.

No. 91–6573. BARRIOS *v.* FOLTZ. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 51.

No. 91–6574. RANA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 123.

No. 91–6575. HEATH *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 941 F. 2d 1126.

No. 91–6577. TUFAIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 414.

No. 91–6581. ANTOINE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 413.

No. 91–6583. SCHAEFER *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 157 Vt. 339, 599 A. 2d 337.

No. 91–6585. SCOTT ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 935 F. 2d 1294.

No. 91–6589. HALL *v.* KNOTT COUNTY BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 402.

No. 91–6590. HALEY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 91–6594. FERRITTO *v.* OHIO DEPARTMENT OF HIGHWAY SAFETY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 404.

No. 91–6595. GIBBS *v.* LAJOYE, SHERIFF, ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–6596. HANSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 91–6598. HERDMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6599. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 669.

No. 91–6600. MUCA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 945 F. 2d 88.

No. 91–6604. PUCKETT *v.* SOCIAL SECURITY OFFICE OF DISABILITY AND INTERNAL OPERATION. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 652.

No. 91–6605. BROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 944 F. 2d 396.

No. 91–6606. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 599.

No. 91–6608. BEAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 614.

No. 91–6609. COLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 943 F. 2d 55.

No. 91–6610. ASHLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 53.

No. 91–6612. DUNAGAN *v.* COWLEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 946 F. 2d 900.

No. 91–6613. RAPHELD *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 324.

No. 91–6614. ARLEDGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 91–6615. DIAZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6617. SMYLIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 949 F. 2d 1161.

No. 91–6622. CASTROMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1317.

No. 91–6623. BARLATIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 414.

No. 91–6625. NGUYEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 892.

No. 91–6626. NATANEL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 302.

No. 91–6628. NIMROD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 1186.

No. 91–6629. LOWERY ET AL. *v.* FERNWOOD INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1314.

No. 91–6630. BLEGEN *v.* UNITED TRUCK MAINTENANCE ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 91–6632. WOODS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 806 S. W. 2d 205.

No. 91–6636. HUTCHINGS VON LUDWITZ *v.* COMMONS ET AL. Sup. Ct. Ore. Certiorari denied.

No. 91–6641. HART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 902.

No. 91–6642. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 947 F. 2d 1490.

No. 91–6643. GOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 50.

No. 91–6645. GLOVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 946 F. 2d 1354.

No. 91–6647. FAZZINI *v.* UNITED STATES DEPARTMENT OF JUSTICE. C. A. 7th Cir. Certiorari denied.

No. 91–6648. ENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 946 F. 2d 881.

No. 91–6649. GREENE *v.* TELEDYNE ELECTRONICS. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 577.

No. 91–6650. NUNES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 943 F. 2d 56.

No. 91–6651. BAILEY, AKA NICHOLSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 2d 911.

No. 91–6652. ROEMMICH *v.* WASHINGTON; and CARTER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 60 Wash. App. 1041 (first case) and 1049 (second case).

No. 91–6654. FREEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 2d 896.

No. 91–6656. HOLLOWAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 395.

No. 91–6657. SCOTT *v.* NEW YORK. Sup. Ct. N. Y., Kings County. Certiorari denied.

No. 91–6660. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 873.

No. 91–6664. NICHOLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 937 F. 2d 1257.

No. 91–6665. CALVO RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 899.

No. 91–6667. RESTREPO ET UX. *v.* UNITED STATES SMALL BUSINESS ADMINISTRATION. C. A. 5th Cir. Certiorari denied.

No. 91–6670. ERNEST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 902.

No. 91–6671. ELMENDORF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 945 F. 2d 989.

No. 91–6675. TYLER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 904.

No. 91–6678. SWEENEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 933 F. 2d 1002.

No. 91–6680. VANTREES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 664.

No. 91–6683. GRECNI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 663.

No. 91–6688. CUMMINGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 2d 1290.

No. 91–6752. LUBRANO *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 91–577. PASCHAL ET AL. *v.* DIDRICKSON, DIRECTOR, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 936 F. 2d 940.

JUSTICE WHITE, dissenting.

This case presents the question whether the Eleventh Amendment bars a suit for retroactive monetary relief against a State, if recovery is sought from funds which are segregated from the general revenues or which come from the Federal Government. Two forms of unemployment benefits are at issue in this case. Both are paid from funds segregated from general state funds. One is wholly financed by the Federal Government. The Court of Appeals for the Seventh Circuit took the position that the source of state funds should be disregarded and declined to follow the "'trust fund doctrine.'" *Paschal* v. *Jackson*, 936 F. 2d 940, 944 (1991). The court held that a claim for retroactive monetary relief against the State was barred by the Eleventh Amendment, notwithstanding the segregation of funds and the fact of federal financing. *Id.*, at 945. In another case involving a suit seeking payment of unemployment benefits, the Court of Appeals for the Tenth Circuit has similarly rejected the view that a State's sovereign immunity may be abrogated where relief would be paid out of a special revenue fund. *Esparza* v. *Valdez*, 862 F. 2d 788, 794 (1988). That court held that, no matter what fund a judgment for past damages comes from, it is still a judgment against the State and as such is barred by the Eleventh Amendment. *Id.*, at 795.

Other Courts of Appeals have taken a contrary view of the effect of the Eleventh Amendment in similar circumstances. In

Brown v. *Porcher*, the Court of Appeals for the Fourth Circuit held that a federal court could award a judgment against the South Carolina unemployment compensation fund, because that fund was segregated from general state revenues. 660 F. 2d 1001 (1981), cert. denied, 459 U. S. 1150 (1983) (WHITE, Powell, and REHNQUIST, JJ., dissenting). The Court of Appeals for the Third Circuit has held that a federal court could order retroactive relief against the Pennsylvania Department of Public Welfare (DPW), at least to the extent that the DPW would be reimbursed by the Federal Government. *Bennett* v. *White*, 865 F. 2d 1395, 1408, cert. denied, 492 U. S. 920 (1989). In *Foggs* v. *Block*, the Court of Appeals for the First Circuit found that the Eleventh Amendment did not bar a federal court from ordering the restoration of food stamp benefits where the Federal Government bore the cost of the program. 722 F. 2d 933, 941, n. 6 (1983), rev'd on other grounds *sub nom. Atkins* v. *Parker*, 472 U. S. 115 (1985).

The issue is important. I would grant certiorari to resolve this conflict among the Courts of Appeals.

No. 91–745. KARR ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 924 F. 2d 1018.

No. 91–6376. LEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 940 F. 2d 663.

No. 91–959. SHELL OIL CO. *v.* PEDRAZA ET AL. C. A. 1st Cir. Motion of Chemical Manufacturers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 942 F. 2d 48.

Rehearing Denied

No. 91–371. TAMPAM, INC. *v.* OGLE COUNTY BOARD OF REVIEW ET AL., *ante*, p. 981;

No. 91–509. KEELS *v.* WAITES ET AL., *ante*, p. 942;

No. 91–572. ALLRIGHT, COLORADO, INC., ET AL. *v.* CITY AND COUNTY OF DENVER ET AL., *ante*, p. 983; and

No. 91–5798. LEE *v.* KEMPER GROUP, T/A LUMBERMEN'S MUTUAL INSURANCE CO., ET AL., *ante*, p. 946. Petitions for rehearing denied.

JANUARY 28, 1992

Dismissal Under Rule 46

No. 91–917. ALABAMA GREAT SOUTHERN RAILROAD CO. *v.* JACKSON. Sup. Ct. Ala. Certiorari dismissed under this Court's Rule 46. Reported below: 587 So. 2d 959.

JANUARY 31, 1992

Miscellaneous Order

No. A–551. BAKER, SECRETARY OF STATE, ET AL. *v.* HAITIAN REFUGEE CENTER, INC., ET AL. Application of the Solicitor General for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, granted. It is ordered that the order of the United States District Court for the Southern District of Florida, case No. 91–2635–CIV–Atkins, filed December 20, 1991, is stayed pending disposition of the appeal by the United States Court of Appeals for the Eleventh Circuit. JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE THOMAS would deny the application.

FEBRUARY 7, 1992

Dismissal Under Rule 46

No. 91–1050. DIVERSITECH GENERAL, INC. *v.* SIMPSON. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 945 F. 2d 156.

FEBRUARY 10, 1992

Certiorari Denied

No. 91–7233 (A–570). GARRETT *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL 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. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay of execution. Reported below: 951 F. 2d 57.

No. 91–7248 (A–578). GARRETT *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay of execution. Reported below: 831 S. W. 2d 304.

No. 91–7270 (A–583). GARRETT *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition.

FEBRUARY 11, 1992

Miscellaneous Order

No. A–581 (91–1292). HAITIAN REFUGEE CENTER, INC., ET AL. *v.* BAKER, SECRETARY OF STATE, ET AL. C. A. 11th Cir. Application for stay of mandate of the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, has been referred to the Court by him. Motion of petitioners for temporary waiver of this Court's Rule 33 granted. The Solicitor General is directed to file a response to the application for stay and the petition for writ of certiorari on or before 3 p.m., Friday, February 14, 1992. JUSTICE BLACKMUN would grant the application for stay at this time.

FEBRUARY 15, 1992

Miscellaneous Order

No. A–587 (91–1270). RICHARDS, GOVERNOR OF TEXAS, ET AL. *v.* TERRAZAS ET AL. Appeal from D. C. W. D. Tex. Application for limited stay, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE STEVENS would grant the application.

FEBRUARY 18, 1992

Dismissals Under Rule 46

No. 91–272. FELIX ET AL. *v.* INDIANA DEPARTMENT OF STATE REVENUE ET AL. Sup. Ct. Ind. Certiorari dismissed under this Court's Rule 46. Reported below: 571 N. E. 2d 287.

No. 91–855. KISSICK, PERSONAL REPRESENTATIVE OF THE ESTATE OF KISSICK *v.* SCHMIERER, PERSONAL REPRESENTATIVE OF THE ESTATE OF SCHMIERER, ET AL. Sup. Ct. Alaska. Certiorari dismissed under this Court's Rule 46. Reported below: 816 P. 2d 188.

Assignment Order

Pursuant to the authority conferred by the Constitution and Statutes of the United States, and more particularly by 28 U. S. C.

§ 42, the Court hereby assigns and allots ASSOCIATE JUSTICE CLARENCE THOMAS as a Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit for the day of February 19, 1992.

FEBRUARY 19, 1992

Miscellaneous Orders

No. A–599. SLAGLE *v.* TERRAZAS ET AL. D. C. W. D. Tex. Application for stay pending appeal, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

No. A–604. HERRERA *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE BLACKMUN, JUSTICE STEVENS, JUSTICE O'CONNOR, and JUSTICE SOUTER would grant the application for stay of execution.

No. A–604. HERRERA *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Motion to treat the application for stay of execution as a petition for writ of certiorari denied. JUSTICE BLACKMUN, JUSTICE STEVENS, JUSTICE O'CONNOR, and JUSTICE SOUTER would grant the motion and would grant the petition for writ of certiorari.

Certiorari Granted

No. 91–7328 (A–604). HERRERA *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. The order of this date denying the application for stay of execution of sentence of death is to remain in effect. Reported below: 954 F. 2d 1029.

Certiorari Denied

No. 91–7146 (A–586). HERRERA *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay of execution and the petition for writ of certiorari. Reported below: 819 S. W. 2d 528.

FEBRUARY 23, 1992

Miscellaneous Order

No. A–615. DUKE ET AL. *v.* CLELAND, SECRETARY OF STATE OF GEORGIA, ET AL. Application for injunction and stay, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

FEBRUARY 24, 1992

Certiorari Granted—Vacated and Remanded

No. 90–1246. IMMIGRATION AND NATURALIZATION SERVICE *v.* CANAS-SEGOVIA ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *INS* v. *Elias-Zacarias*, *ante*, p. 478. Reported below: 902 F. 2d 717.

No. 91–974. HOLLAND *v.* FIRST VIRGINIA BANKS, INC., ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the Civil Rights Act of 1991. Reported below: 937 F. 2d 603.

No. 91–5447. JONES *v.* MILLER. 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 *Smith* v. *Barry*, *ante*, p. 244. Reported below: 956 F. 2d 269.

Miscellaneous Orders

No. ——. DAVIS *v.* CLERK OF THE SUPREME COURT OF THE UNITED STATES ET AL. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. ——. DOE *v.* GROSS ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. ——. GOLSTON *v.* ATTORNEY GENERAL OF ALABAMA. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. ——. STOUFFER *v.* OKLAHOMA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. A–541 (91–1193). NEW BERLIN GRADING CO., INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–1045. IN RE DISBARMENT OF COHEN. Disbarment entered. [For earlier order herein, see *ante,* p. 935.]

No. D–1051. IN RE DISBARMENT OF URROZ. Disbarment entered. [For earlier order herein, see *ante,* p. 966.]

No. D–1054. IN RE DISBARMENT OF NORRIS. Disbarment entered. [For earlier order herein, see *ante,* p. 978.]

No. D–1055. IN RE DISBARMENT OF ROGERS. Disbarment entered. [For earlier order herein, see *ante,* p. 978.]

No. D–1081. IN RE DISBARMENT OF STELLA. It is ordered that Michael J. Stella, of Harrison, N. Y., be suspended from the practice of law in this Court and that a rule 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–1082. IN RE DISBARMENT OF SOLODKY. It is ordered that Lawrence Wayne Solodky, of Longwood, Fla., be suspended from the practice of law in this Court and that a rule 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–1083. IN RE DISBARMENT OF GATTSEK. It is ordered that Harold Jack Gattsek, of Annandale, Va., be suspended from the practice of law in this Court and that a rule 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–1084. IN RE DISBARMENT OF GREENSPAN. It is ordered that Jeffrey Lee Greenspan, of Rockville, Md., be suspended from the practice of law in this Court and that a rule 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. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for approval of fees and expenses granted, and the River Master is awarded $7,644 for the period October 1 through De-

cember 31, 1991, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 979.]

No. 111, Orig. DELAWARE *v.* NEW YORK. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies, if any, may be filed within 30 days. [For earlier order herein, see, *e. g.*, *ante*, p. 904.]

No. 90–1488. SUTER ET AL. *v.* ARTIST M. ET AL. C. A. 7th Cir. [Certiorari granted, 500 U. S. 915.] Motion of respondents for leave to file a supplemental brief after argument granted. Motion of petitioners for leave to file a supplemental brief after argument granted.

No. 90–1604. MORALES, ATTORNEY GENERAL OF TEXAS *v.* TRANS WORLD AIRLINES, INC., ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 976.] Motion of Public Citizen et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied.

No. 90–1676. GADE, DIRECTOR, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY *v.* NATIONAL SOLID WASTES MANAGEMENT ASSN. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1012.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 91–542. WRIGHT, WARDEN, ET AL. *v.* WEST. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1012.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90–1745. UNITED STATES *v.* WILSON. C. A. 6th Cir. [Certiorari granted, *ante*, p. 807.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

No. 90–1912. NORDLINGER *v.* HAHN, IN HIS CAPACITY AS TAX ASSESSOR FOR LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. [Certiorari granted, *ante*, p. 807.] Motions of United States Justice Foundation et al. and People's Advocate, Inc., et al. for leave to file briefs as *amici curiae* granted.

No. 90–1918. KRAFT GENERAL FOODS, INC. *v.* IOWA DEPARTMENT OF REVENUE AND FINANCE. Sup. Ct. Iowa. [Certiorari

granted, *ante*, p. 1056.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 91–501. APONTE, MAYOR OF THE MUNICIPALITY OF CAROLINA, ET AL. *v.* HIRALDO-CANCEL ET AL., *ante*, p. 1004. Motion of respondents for attorney's fees denied.

No. 91–860. UNITED STATES DEPARTMENT OF COMMERCE ET AL. *v.* MONTANA ET AL. D. C. Mont. [Probable jurisdiction noted, *ante*, p. 1012.] Motion of Attorney General of Washington for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied. Motion of Attorney General of Massachusetts for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

No. 91–1270. RICHARDS, GOVERNOR OF TEXAS, ET AL. *v.* TERRAZAS ET AL. Appeal from D. C. W. D. Tex. Motion of appellants to expedite consideration of the statement as to jurisdiction denied.

No. 91–5771. WADE *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1003.] Motion of National Association of Criminal Defense Lawyers for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

No. 91–6734. NESHEWAT *v.* HAGSTROM ET AL. Ct. App. N. Y.; and

No. 91–6854. INGALLS *v.* ROOSEVELT COUNTY, NEW MEXICO, ET AL. Sup. Ct. N. M. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 16, 1992, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petitions for writs of certiorari without reaching the merits of the motions to proceed *in forma pauperis.*

No. 91–6444. IN RE CARROLL;

No. 91–6578. IN RE HALL ET AL.;

No. 91–6696. IN RE ARTEAGA; and
No. 91–6714. IN RE ANDERSON. Petitions for writs of mandamus denied.

No. 91–6687. IN RE BURKE; and
No. 91–6695. IN RE ARTEAGA. Petitions for writs of prohibition denied.

Certiorari Granted

No. 91–321. ITEL CONTAINERS INTERNATIONAL CORP. *v.* HUDDLESTON, COMMISSIONER OF REVENUE OF TENNESSEE. Sup. Ct. Tenn. Certiorari granted. Reported below: 814 S. W. 2d 29.

No. 91–740. NIXON *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 290 U. S. App. D. C. 420, 938 F. 2d 239.

No. 91–767. REPUBLIC NATIONAL BANK OF MIAMI *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Reported below: 932 F. 2d 1433.

No. 91–886. REVES ET AL. *v.* ERNST & YOUNG. C. A. 8th Cir. Certiorari granted. Reported below: 937 F. 2d 1310.

No. 91–990. FARRAR ET AL., COADMINISTRATORS OF ESTATE OF FARRAR, DECEASED *v.* HOBBY. C. A. 5th Cir. Certiorari granted. Reported below: 941 F. 2d 1311.

Certiorari Denied

No. 91–521. BANCO POPULAR DE PUERTO RICO *v.* MUNICIPALITY OF MAYAGUEZ. Sup. Ct. P. R. Certiorari denied. Reported below: 120 D. P. R. 692 and 126 D. P. R. _____.

No. 91–597. HOUSTON BUILDING SERVICE, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 936 F. 2d 178.

No. 91–650. MARYLAND CLASSIFIED EMPLOYEES ASSN., INC., ET AL. *v.* SCHAEFER, GOVERNOR OF MARYLAND, ET AL. Ct. App. Md. Certiorari denied. Reported below: 325 Md. 19, 599 A. 2d 91.

No. 91–659. FARMIGONI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 63.

No. 91–674. CHAVES COUNTY HOME HEALTH SERVICES, INC., ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 289 U. S. App. D. C. 276, 931 F. 2d 914.

No. 91–714. PUGET SOUND POWER & LIGHT CO. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 944 F. 2d 912.

No. 91–715. HERZFELD & RUBIN *v.* ROBINSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 1369.

No. 91–717. SENESE ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 941 F. 2d 1292.

No. 91–723. AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 934 F. 2d 1288.

No. 91–733. FRIEOUF *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 938 F. 2d 1099.

No. 91–760. PETRONE *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 428.

No. 91–762. BAGLEY *v.* CMC REAL ESTATE CORP., AKA CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 758.

No. 91–766. COLEMAN ET AL. *v.* CORPORATE RISK MANAGEMENT CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 936 F. 2d 572.

No. 91–768. GREMLICH *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 937 F. 2d 597.

No. 91–778. HELMSLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 941 F. 2d 71.

No. 91–780. CURTIS ET AL., ADMINISTRATORS OF THE ESTATES OF GOFF ET UX., ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1318.

No. 91–804. MOGAN *v.* MONTANA. Sup. Ct. Mont. Certiorari denied.

No. 91–809. GRIFFIN *v.* FIRST GIBRALTAR BANK, FSB. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 691.

No. 91–829. ESTATE OF JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 1210.

No. 91–833. CROWLEY *v.* BARNETT BANK OF PASCO COUNTY. C. A. 11th Cir. Certiorari denied.

No. 91–836. UNION BANK OF SWITZERLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 904.

No. 91–837. KRESS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 155.

No. 91–841. COLORADO *v.* AULD. Ct. App. Colo. Certiorari denied. Reported below: 815 P. 2d 956.

No. 91–845. VOGT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 91–846. MILZMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1325.

No. 91–848. ROANOKE RIVER BASIN ASSN. ET AL. *v.* HUDSON, NORFOLK DISTRICT ENGINEER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 58.

No. 91–850. ENGLAND *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 37.

No. 91–867. ESTATE OF MCALLISTER, DECEASED, ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 1473.

No. 91–877. ERNST & YOUNG *v.* REVES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 937 F. 2d 1310.

No. 91–880. PUMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 151.

No. 91–887. KRUGLIAK ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 2d 1055.

No. 91–888. WERME *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 939 F. 2d 108.

No. 91–894. MAXIE ET AL. *v.* FELIX. C. A. 9th Cir. Certiorari denied. Reported below: 939 F. 2d 699.

No. 91–896. PERRY *v.* COMMAND PERFORMANCE. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 395.

No. 91–897. RHODES *v.* LUMMUS INDUSTRIES, INC. C. A. 9th Cir. Certiorari denied.

No. 91–910. SUMMERS ET AL. *v.* JOHNSON. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 411 Mass. 82, 577 N. E. 2d 301.

No. 91–916. COCHRAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 939 F. 2d 337.

No. 91–922. STROH BREWERY CO. *v.* DIRECTOR OF THE NEW MEXICO DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL ET AL. Sup. Ct. N. M. Certiorari denied. Reported below: 112 N. M. 468, 816 P. 2d 1090.

No. 91–926. LINDE *v.* CARRIER COAL ENTERPRISES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 943 F. 2d 335.

No. 91–931. STEPHENS ET AL. *v.* MCKINNEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 934 F. 2d 1265.

No. 91–932. JAMES *v.* SUBSEQUENT INJURY TRUST FUND ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 548, 406 S. E. 2d 77.

No. 91–933. UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST ET AL. *v.* LTV STEEL CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 945 F. 2d 1205.

No. 91–937. STEIGERWALD *v.* RODEHEAVER, COUNTY CLERK OF HARRIS COUNTY, TEXAS, ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 807 S. W. 2d 790.

No. 91–943. UNITED STATES *v.* WALKER. C. A. 10th Cir. Certiorari denied. Reported below: 933 F. 2d 812.

No. 91–949. HOLLAENDER MANUFACTURING CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 942 F. 2d 321.

No. 91–950. KOMEN, TRUSTEE IN BANKRUPTCY FOR SHENKER *v.* ROBBINS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 937 F. 2d 613.

No. 91–953. ANTELOPE VALLEY HOSPITAL DISTRICT *v.* LANCASTER COMMUNITY HOSPITAL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 397.

No. 91–954. SANTIAGO *v.* NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 945 F. 2d 25.

No. 91–964. DOHERTY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 411 Mass. 95, 578 N. E. 2d 411.

No. 91–965. CHRIST COLLEGE, INC., ET AL. *v.* BOARD OF SUPERVISORS, FAIRFAX COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 901.

No. 91–968. JIM BEAM BRANDS CO. *v.* BEAMISH & CRAWFORD, LTD. C. A. 2d Cir. Certiorari denied. Reported below: 937 F. 2d 729.

No. 91–972. AMERICAN TRAIN DISPATCHERS ASSN. ET AL. *v.* CSX TRANSPORTATION, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 290 U. S. App. D. C. 405, 938 F. 2d 224.

No. 91–973. ILLINOIS EX REL. BURRIS, ATTORNEY GENERAL OF ILLINOIS *v.* PANHANDLE EASTERN PIPE LINE CO. C. A. 7th Cir. Certiorari denied. Reported below: 935 F. 2d 1469.

No. 91–975. SONNENBURG ET AL. *v.* BAYH, GOVERNOR OF INDIANA, ET AL. Sup. Ct. Ind. Certiorari denied. Reported below: 573 N. E. 2d 398.

No. 91–979. LARSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–981. CODAY ET AL. *v.* CITY OF SPRINGFIELD, MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 939 F. 2d 666.

No. 91–985. ROZBICKI *v.* STATEWIDE GRIEVANCE COMMITTEE. Sup. Ct. Conn. Certiorari denied. Reported below: 219 Conn. 473, 595 A. 2d 819.

No. 91–988. FINLEY ET AL. *v.* HOECHST CELANESE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1206.

No. 91–989. CRYTES ET AL. *v.* SCHAFER, DIRECTOR OF MENTAL HEALTH OF MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 1182.

No. 91–993. TOLOKAN, DBA JOE & MIKE'S SERVICE STATION *v.* MOBIL OIL CORP. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 2d 882.

No. 91–1003. MCGLOTHLIN *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 91–1004. SCHEETZ ET VIR *v.* THE MORNING CALL, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 946 F. 2d 202.

No. 91–1005. KIDWELL ET AL. *v.* WAKEFIELD PROPERTIES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 2d 895.

No. 91–1011. HALE ET AL. *v.* CARLSON. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 186.

No. 91–1015. TEMKIN ET VIR *v.* FREDERICK COUNTY COMMISSIONERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 945 F. 2d 716.

No. 91–1016. INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA *v.* BIG HORN COAL CO. C. A. 10th Cir. Certiorari denied. Reported below: 916 F. 2d 1499.

No. 91–1017. HOWE *v.* GOLDCORP INVESTMENTS LTD. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 946 F. 2d 944.

No. 91–1018. NORTHERN TRUST CO., SUCCESSOR GUARDIAN OF THE ESTATE OF MORAN *v.* UPJOHN CO. ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 213 Ill. App. 3d 390, 572 N. E. 2d 1030.

No. 91–1020. ROSE *v.* FULTZ ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–1022. YOUNG ET AL. *v.* MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 939 F. 2d 19.

No. 91–1023. CLARK ET AL. *v.* VELSICOL CHEMICAL CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 196.

No. 91–1024. GUERRERO *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 295.

No. 91–1027. WALDRON-SHAH *v.* BOARD OF RETIREMENT OF LOS ANGELES COUNTY EMPLOYEES' RETIREMENT ASSN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–1028. MILLER ET AL. *v.* CAMPBELL COUNTY, WYOMING, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 945 F. 2d 348.

No. 91–1031. STUART HACK CO. ET AL. *v.* SHOFER. Ct. App. Md. Certiorari denied. Reported below: 324 Md. 92, 595 A. 2d 1078.

No. 91–1034. GENERAL DYNAMICS CORP. ET AL. *v.* BAREFORD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 891.

No. 91–1037. GENUINE PARTS CO., INC., ET AL. *v.* CRAWFORD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 947 F. 2d 1405.

No. 91–1038. ALPHA LYRACOM SPACE COMMUNICATIONS, INC., ET AL. *v.* COMMUNICATIONS SATELLITE CORP. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 2d 168.

No. 91–1039. WALTER FULLER AIRCRAFT SALES, INC. *v.* FAYSOUND LTD. C. A. 8th Cir. Certiorari denied. Reported below: 940 F. 2d 339.

No. 91–1042. DOYLE ET AL. *v.* PECSI. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 661.

No. 91–1044. NEWPORT LTD. *v.* SEARS, ROEBUCK & CO. C. A. 5th Cir. Certiorari denied. Reported below: 941 F. 2d 302.

No. 91–1047. HOSPITAL AUTHORITY OF GWINNETT COUNTY, GEORGIA, INDIVIDUALLY AND DBA GWINNETT AMBULANCE SERVICES *v.* JONES, ADMINISTRATOR OF ESTATE OF O'KELLEY, DECEASED. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 613, 409 S. E. 2d 501.

No. 91–1049. RUCKER ET AL. *v.* HARFORD COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 278.

No. 91–1053. SPROULL *v.* UNION TEXAS PRODUCTS CORP., DBA UNION TEXAS PETROLEUM. C. A. 10th Cir. Certiorari denied. Reported below: 944 F. 2d 911.

No. 91–1055. RWM ENTERPRISES, INC., ET AL. *v.* ES DEVELOPMENT, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 939 F. 2d 547.

No. 91–1056. NEILSON *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Kern. Certiorari denied.

No. 91–1057. FOXWORTH *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 91–1060. DARLING, DBA DARLING ENTERPRISES *v.* STANDARD ALASKA PRODUCTION CO. ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 818 P. 2d 677.

No. 91–1061. CURTIS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 101.

No. 91–1063. KNUBBE ET AL. *v.* N. S. ASSOCIATES, DBA NORTH SHORE APARTMENTS CO. Ct. App. Mich. Certiorari denied.

No. 91–1064. LOZIER ET AL. *v.* SCOTT. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 655.

No. 91–1065. THOMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 944 F. 2d 1331.

No. 91–1066. YAMAHA CORPORATION OF AMERICA ET AL. *v.* ABC INTERNATIONAL TRADERS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1537.

No. 91–1067. SHROY, DEPUTY SHERIFF, ET AL. *v.* SHOOP. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 396.

No. 91–1069. J. G. BOSWELL CO. *v.* WEGIS ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 91–1070. MESSA *v.* FRANKFORD QUAKER GROCERY ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 406 Pa. Super. 671, 583 A. 2d 839.

No. 91–1071. STANTON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 589 A. 2d 425.

No. 91–1077. WILLIAMS, EXECUTOR OF THE ESTATE OF WEBSTER, DECEASED *v.* HARDY ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 214 Ill. App. 3d 1014, 574 N. E. 2d 245.

No. 91–1078. ATTORNEY Q *v.* MISSISSIPPI STATE BAR. Sup. Ct. Miss. Certiorari denied. Reported below: 587 So. 2d 228.

No. 91–1079. SELINGER *v.* CITY OF REDLANDS. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 91–1080. PESCE *v.* COUNTY OF DUPAGE. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 213 Ill. App. 3d 1107, 621 N. E. 2d 305.

No. 91–1086. ALABAMA *v.* SIMS. Ct. Crim. App. Ala. Certiorari denied. Reported below: 587 So. 2d 1271.

No. 91–1087. PRINCE GEORGE'S COUNTY, MARYLAND *v.* KOPF, PERSONAL REPRESENTATIVE OF THE ESTATE OF CASELLA. C. A. 4th Cir. Certiorari denied. Reported below: 942 F. 2d 265.

No. 91–1088. UNITED MINE WORKERS OF AMERICA *v.* ADKINS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 392.

No. 91–1089. ELYSIUM INSTITUTE, INC., ET AL. *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 232 Cal. App. 3d 408, 283 Cal. Rptr. 688.

No. 91–1091. ALCAN ALUMINIO DO BRASIL, S. A. *v.* ROBLES PEREZ ET AL. Super. Ct. P. R. Certiorari denied.

No. 91–1092. BEEKMAN PAPER CO. *v.* CRANE & CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1276.

No. 91–1093. BOSEK *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 210 Ill. App. 3d 573, 569 N. E. 2d 551.

No. 91–1094. FIGUEROA-SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 938 F. 2d 1015.

No. 91–1096. COBIN ET AL. *v.* CASTLEBERRY, CO-EXECUTOR OF ESTATE OF CASTLEBERRY, DECEASED, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 185.

No. 91–1098. ALFORD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 945 F. 2d 417.

No. 91–1099. WALTON, DBA WALTON BACKHOE SERVICE, ET AL. *v.* OPERATING ENGINEERS PENSION TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 668.

No. 91–1101. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 76 *v.* FOWLKES ET UX. Ct. App. Wash. Certiorari denied. Reported below: 58 Wash. App. 759, 795 P. 2d 137.

No. 91–1105. CIT GROUP/EQUIPMENT FINANCING, INC., ET AL. *v.* VILLAGE OF GERMANTOWN, WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 163 Wis. 2d 426, 471 N. W. 2d 610.

No. 91–1107. BIDWILL ET AL. *v.* GARVEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 498.

No. 91–1112. CULLEN CENTER BANK & TRUST *v.* BARCLAYS BANK PLC. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 91–1115. DIERNISSE *v.* BUSINESS COMMUNICATIONS CO., INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–1120. ASSOCIATES IN ADOLESCENT PSYCHIATRY, S. C., ET AL. *v.* HOME LIFE INSURANCE COMPANY OF NEW YORK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 941 F. 2d 561.

No. 91–1134. SLEDGE *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 923 F. 2d 870.

No. 91–1138. HUGHES DEVELOPMENT CO., INC., ET AL. *v.* GREAT PLAINS CAPITAL CORP. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 889.

No. 91–1142. FELDMAN, AKA FLEMING, AKA GIVNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 673.

No. 91–1157. COUNTY OF LOS ANGELES *v.* MEILICKE. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–1163. MANNELLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 396.

No. 91–1164. NEVADA ET AL. *v.* SCOTSMAN MANUFACTURING CO., INC. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 127, 808 P. 2d 517.

No. 91–1169. JARAMILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1543.

No. 91–1170. SNOWSHOE CO. ET AL. *v.* BRAY ET AL.;
No. 91–1171. SNOWSHOE CO. ET AL. *v.* BRAY ET AL.; and
No. 91–1172. SNOWSHOE CO. *v.* BRAY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 948 F. 2d 1283.

No. 91–1173. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 938.

No. 91–1185. RATCHFORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 942 F. 2d 702.

No. 91–5727. WALTON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 933 F. 2d 1010.

No. 91–5975. TAYLOR *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 821 S. W. 2d 72.

No. 91–6026. WION *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1261.

No. 91–6086. SOTELO-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 931 F. 2d 1317.

No. 91–6101. DISHEROON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 935 F. 2d 1291.

No. 91–6145. DILORETO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 941 F. 2d 1203.

No. 91–6170. SHAKUR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 932 F. 2d 1210.

No. 91–6173. EDMUNDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 937 F. 2d 609.

No. 91–6267. BARNES *v.* FIRST NATIONAL BANK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 658.

No. 91–6325. BUTTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6331. SPOTTED WAR BONNET *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 933 F. 2d 1471.

No. 91–6338. ATHERTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 936 F. 2d 728.

No. 91–6340. TIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–6342. SALEM *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 2d 796.

No. 91–6349. ZOLICOFFER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 91–6361. GIBSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 313, 404 S. E. 2d 781.

No. 91–6363. HALEY *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 1210.

No. 91–6366. HOLSEY *v.* AIKENS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 940 F. 2d 665.

No. 91–6371. MORGENSTERN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 933 F. 2d 1108.

No. 91–6377. WILLIAMS *v.* UNITED STATES; and
No. 91–6455. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 935 F. 2d 1531.

No. 91–6381. RUTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 946 F. 2d 110.

No. 91–6394. LIERA-JUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 936 F. 2d 580.

No. 91–6397. NICHOLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 787.

No. 91–6414. FOX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 941 F. 2d 480.

No. 91–6424. MORGAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 1561.

No. 91–6425. PAVLICO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6430. RICANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 933 F. 2d 1021.

No. 91–6449. TANNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 941 F. 2d 574.

No. 91–6454. ALLEN *v.* MADIGAN, SECRETARY OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 951 F. 2d 355.

No. 91–6457. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–6484. GREEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 583 So. 2d 647.

No. 91–6492. BASEMORE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 525 Pa. 512, 582 A. 2d 861.

No. 91–6495. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 842.

No. 91–6496. CHASE *v.* PETERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1533.

No. 91–6504. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 941 F. 2d 1210.

No. 91–6512. TRACY ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 91–6519. MCBRIDE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 91–6520. PECINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 910.

No. 91–6527. ANDRESS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 622.

No. 91–6528. GRIMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 945 F. 2d 414.

No. 91–6532. SIMS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 304 S. C. 409, 405 S. E. 2d 377.

No. 91–6535. JIMENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1542.

No. 91–6541. WILLIAMS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 91–6545. WILHITE *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 817 P. 2d 1017.

No. 91–6555. WHITE *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 813 S. W. 2d 862.

No. 91–6557. HAIRABEDIAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 186.

No. 91–6565. BROWN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 87, 946 F. 2d 1567.

No. 91–6567. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1413.

No. 91–6570. WILSON *v.* JACKSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–6580. PEREZ AZCUY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–6588. SANTOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 1413.

No. 91–6591. ONALAJA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1278.

No. 91–6592. RICCHE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 938.

No. 91–6593. MAHONEY *v.* VONDERGRITT. C. A. 1st Cir. Certiorari denied. Reported below: 938 F. 2d 1490.

No. 91–6597. EGNER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 936 F. 2d 582.

No. 91–6601. MCMILLER *v.* HARTMAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–6602. RYAN *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 91–6603. O'CONNOR ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 935 F. 2d 275.

No. 91–6618. D. S. A. *v.* CIRCUIT COURT BRANCH 1 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 942 F. 2d 1143.

No. 91–6620. ZULIANI *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 91–6621. BRANCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1313.

No. 91–6631. HUTCHINGS VON LUDWITZ *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1534.

No. 91–6637. DAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1306.

No. 91–6639. CULLUM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 934 F. 2d 1325.

No. 91–6640. BROWN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 207 Ill. App. 3d 1105, 604 N. E. 2d 578.

No. 91–6644. FULLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 669.

No. 91–6655. KYLE *v.* STORY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 905.

No. 91–6662. SPENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 903.

No. 91–6669. HALL *v.* KELNHOFER, ARKANSAS DEPARTMENT OF CORRECTIONS SCHOOL DISTRICT, ET AL. C. A. 8th Cir. Certiorari denied.

No. 91–6673. SPENCE *v.* NIX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 945 F. 2d 1030.

No. 91–6674. YOUNG *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 579 So. 2d 721.

No. 91–6677. STRANGE *v.* SAFFEL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 940 F. 2d 1539.

No. 91–6679. SCHULTZ ET UX. *v.* DIVERSIFIED SERVICES CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 943 F. 2d 54.

No. 91–6684. CARPENTER *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 813 S. W. 2d 33.

No. 91–6689. CASEY ET AL. *v.* HARRELL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 937 F. 2d 619.

No. 91–6691. TEJADA *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 941 F. 2d 1551.

No. 91–6692. WHITE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 168 Ariz. 500, 815 P. 2d 869.

No. 91–6697. TURNER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 87, 946 F. 2d 1567.

No. 91–6698. SAUNDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 388.

No. 91–6699. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 946 F. 2d 883.

No. 91–6701. TAYLOR *v.* DOMOVICH ET AL. C. A. 3d Cir. Certiorari denied.

No. 91–6702. BROOME *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 200 Ga. App. 64, 406 S. E. 2d 537.

No. 91–6704. AKANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 910.

No. 91–6705. WILLIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 941 F. 2d 1384.

No. 91–6706. WHORF *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 91–6707. BERTRAM *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 790.

No. 91–6708. WHITEHEAD *v.* SENKOWSKI, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 943 F. 2d 230.

No. 91–6710. BURDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6711. CARRANDI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 902.

No. 91–6713. DIXON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 586 So. 2d 300.

No. 91–6715. EDWARDS *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 904.

No. 91–6716. COZZETTI *v.* ALASKA. Super. Ct. Alaska, 3d Jud. Dist. Certiorari denied.

No. 91–6718. D'AMARIO *v.* RUSSO ET AL. C. A. 1st Cir. Certiorari denied.

No. 91–6719. BERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 902.

No. 91–6720. DAVENPORT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 173 App. Div. 2d 633, 570 N. Y. S. 2d 219.

No. 91–6721. RYCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 903.

No. 91–6723. HORN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 2d 402.

No. 91–6725. O'BRIEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 952 F. 2d 394.

No. 91–6727. FUSSELL *v.* PRICE. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 712.

No. 91–6728. MICHEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 937 F. 2d 606.

No. 91–6729. LONG *v.* PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 897.

No. 91–6730. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 947 F. 2d 942.

No. 91–6731. DOWELL *v.* BRUNSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 945 F. 2d 401.

No. 91–6733. LEDBETTER *v.* WEST SACRAMENTO POLICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 792.

No. 91–6735. LAVOLD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 91–6736. FOREMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1276.

No. 91–6737. GIBBS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 819 S. W. 2d 821.

No. 91–6738. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 949 F. 2d 1161.

No. 91–6739. ASSET ET VIR *v.* HAHN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1536.

No. 91–6740. BONNELL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 3d 179, 573 N. E. 2d 1082.

No. 91–6741. JONES *v.* PUCKETT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 91–6743. ANGLIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 91–6744. LEACH *v.* IOWA DISTRICT COURT FOR POLK COUNTY. Sup. Ct. Iowa. Certiorari denied.

No. 91–6746. STEADING *v.* THOMPSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 941 F. 2d 498.

No. 91–6747. MORRIS *v.* UNIVERSITY OF ARKANSAS ET AL. C. A. 8th Cir. Certiorari denied.

No. 91–6748. MCGORE *v.* GEARIN ET AL. C. A. 6th Cir. Certiorari denied.

No. 91–6749. NORTON *v.* MYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 943 F. 2d 55.

No. 91–6753. MILBURN *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 947 F. 2d 1486.

No. 91–6754. MARTIN *v.* LARSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 91–6755. PECORARO *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 144 Ill. 2d 1, 578 N. E. 2d 942.

No. 91–6756. MYERS *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1137.

No. 91–6759. MUSSES-TORRES ET AL. *v.* PEREZ-MATOS ET AL. Sup. Ct. P. R. Certiorari denied.

No. 91–6760. RESTREPO ET UX. *v.* FIRST NATIONAL BANK OF DONA ANA COUNTY, NEW MEXICO. C. A. 5th Cir. Certiorari denied.

No. 91–6761. RESTREPO ET UX. *v.* FIRST NATIONAL BANK OF DONA ANA COUNTY, NEW MEXICO. C. A. 5th Cir. Certiorari denied.

No. 91–6764. AGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 910.

No. 91–6765. HALSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1288.

No. 91–6766. MEDINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 903.

No. 91–6767. KREBS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–6768. ROBINSON *v.* CHAMBERS ET AL. Sup. Ct. Va. Certiorari denied.

No. 91–6769. GABRIC *v.* HIGHLAND FEDERAL SAVINGS & LOAN ASSN. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 91–6770. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 2d 1042.

No. 91–6772. WATKINS *v.* COMMISSIONER OF SOCIAL SERVICES OF THE CITY OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 78 N. Y. 2d 1006, 580 N. E. 2d 1059.

No. 91–6773. BARTON *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 71 Ohio App. 3d 455, 594 N. E. 2d 702.

No. 91–6776. DRIVER, AKA MOUSSEAUX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 945 F. 2d 1410.

No. 91–6777. STAPLETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–6778. SIMPSON *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 813 S. W. 2d 323.

No. 91–6779. CHASE *v.* PETERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 940 F. 2d 1533.

No. 91–6780. ROSARIO *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 78 N. Y. 2d 583, 585 N. E. 2d 766.

No. 91–6782. KYLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 902.

No. 91–6783. WOODARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 938 F. 2d 1255.

No. 91–6786. SIMMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 50.

No. 91–6787. SMITH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 3d 284, 574 N. E. 2d 510.

No. 91–6789. TORBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 1547.

No. 91–6790. BRUNDRIDGE *v.* OREGON BOARD OF PAROLE. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 908.

No. 91–6791. SCHIMMEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 943 F. 2d 802.

No. 91–6792. MAYNARD *v.* DIXON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 407.

No. 91–6793. GARCIA-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 890.

No. 91–6794. BIBBS *v.* ARMONTROUT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 943 F. 2d 26.

No. 91–6795. BRITTAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1542.

No. 91–6796. DUNCAN *v.* LYNN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 891.

No. 91–6797. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 2d 351.

No. 91–6798. ANTONIO CONTRERAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 2d 1543.

No. 91–6799. BASS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1313.

No. 91–6800. WASHINGTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 1106.

No. 91–6802. ANDREWS *v.* DELAND, DIRECTOR, UTAH DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 943 F. 2d 1162.

No. 91–6803. CERVANTES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 815 S. W. 2d 569.

No. 91–6804. SANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 937 F. 2d 1495.

No. 91–6807. JAMES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 818 P. 2d 918.

No. 91–6808. JOHNSON *v.* MILLER BREWING CO. C. A. 11th Cir. Certiorari denied. Reported below: 940 F. 2d 673.

No. 91–6812. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 891.

No. 91–6813. JOHNSON *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 438 Mich. 55, 475 N. W. 2d 231.

No. 91–6815. BLOCKER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 33 M. J. 349.

No. 91–6818. COLEMAN *v.* KOPF ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 656.

No. 91–6819. MONTGOMERY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 3d 410, 575 N. E. 2d 167.

No. 91–6820. TOLBERT *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 60 Ohio St. 3d 89, 573 N. E. 2d 617.

No. 91–6826. MCCORMACK *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 117 Wash. 2d 141, 812 P. 2d 483.

No. 91–6827. MILLER *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 934 F. 2d 1161.

No. 91–6829. PORTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 91–6831. PARMAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 87, 946 F. 2d 1567.

No. 91–6832. ROMMANN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 945 F. 2d 405.

No. 91–6834. LOHR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–6835. McMahon *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 945 F. 2d 412.

No. 91–6836. O'Connell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 940 F. 2d 653.

No. 91–6838. Mahlerwein *v.* Federal Land Bank of Louisville et al. C. A. 6th Cir. Certiorari denied.

No. 91–6840. Maurer *v.* Los Angeles County. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 909.

No. 91–6841. Citron *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 2d 1288.

No. 91–6842. Cobbins *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 50.

No. 91–6843. Chambers *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 1253.

No. 91–6844. Tabois *v.* New York Telephone Co. C. A. 2d Cir. Certiorari denied.

No. 91–6845. Bugh *v.* Ohio. Ct. App. Ohio, Carroll County. Certiorari denied.

No. 91–6846. Ham, aka Hamm, aka Brewer *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 902.

No. 91–6847. Evenstad *v.* Las Vegas Metropolitan Police Department et al. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 844.

No. 91–6848. Egan *v.* Runda. C. A. 6th Cir. Certiorari denied. Reported below: 945 F. 2d 404.

No. 91–6851. Baez *v.* Government of the Virgin Islands. C. A. 3d Cir. Certiorari denied. Reported below: 800 F. 2d 1133.

No. 91–6852. Fitzgerald *v.* Thompson, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 943 F. 2d 463.

No. 91–6855. Fennell *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 945 F. 2d 411.

No. 91–6856. BARNES *v.* SAUNDERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 935 F. 2d 1285.

No. 91–6857. WESTERN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 1223.

No. 91–6860. LUCKETT *v.* ILLINOIS HUMAN RIGHTS COMMISSION ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 141 Ill. 2d 543, 580 N. E. 2d 117.

No. 91–6861. MURRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 1547.

No. 91–6862. REESE *v.* NIX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 942 F. 2d 1276.

No. 91–6863. PETERS *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 937.

No. 91–6864. HUDSON *v.* HILL ET AL.; and HUDSON *v.* PULLIN ET AL. C. A. 5th Cir. Certiorari denied.

No. 91–6865. GIANO *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6866. HENLEY *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 940 F. 2d 1530.

No. 91–6867. GREER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 2d 896.

No. 91–6868. FLEMING *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 817 P. 2d 985.

No. 91–6870. HAWTHORNE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 195 Ill. App. 3d 1106, 582 N. E. 2d 324.

No. 91–6871. HUNTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 91–6873. BOYD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 91–6874. ELDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 943 F. 2d 53.

No. 91–6875. GORE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 212 Ill. App. 3d 984, 571 N. E. 2d 1041.

No. 91–6877. JOKINEN *v.* UNITED STATES (two cases). C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 663 (first case).

No. 91–6880. DAVIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 190, 948 F. 2d 782.

No. 91–6882. VARELA *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6883. TORRES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 944 F. 2d 899.

No. 91–6884. SEKANDARY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 903.

No. 91–6885. COUTIN *v.* PRESIDENT OF HASTINGS COLLEGE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 408.

No. 91–6888. BERRIO-LONDONO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 946 F. 2d 158.

No. 91–6889. CORTEZ-GOMEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 946 F. 2d 901.

No. 91–6892. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 934 F. 2d 322.

No. 91–6893. DEMPSEY *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 953 F. 2d 633.

No. 91–6895. DUVE *v.* DUVE. App. Ct. Conn. Certiorari denied. Reported below: 25 Conn. App. 262, 594 A. 2d 473.

No. 91–6896. BURGE *v.* WHITLEY, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 585 So. 2d 562.

No. 91–6897. COX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 91–6898. LEWIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 594 A. 2d 542.

No. 91–6900. MOSELY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 888.

No. 91–6901. MACFADDEN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 37, 946 F. 2d 127.

No. 91–6902. ROULAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 934 F. 2d 325.

No. 91–6903. LONDONO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 887.

No. 91–6904. MALDONADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 945 F. 2d 396.

No. 91–6906. NICHOLS *v.* MCCORMICK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 929 F. 2d 507.

No. 91–6907. MILLER *v.* DIGGS. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 901.

No. 91–6908. MICHEAUX *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied. Reported below: 944 F. 2d 231.

No. 91–6909. JONES *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied. Reported below: 952 F. 2d 1392.

No. 91–6911. SMITH *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 91–6914. BROFFORD *v.* TATE, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 62 Ohio St. 3d 1452, 579 N. E. 2d 1391.

No. 91–6915. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 945 F. 2d 409.

No. 91–6916. REILLY *v.* WARDEN, FEDERAL CORRECTIONS INSTITUTION, PETERSBURG. C. A. 2d Cir. Certiorari denied. Reported below: 947 F. 2d 43.

No. 91–6917. LANE *v.* PARRIS ET AL.; LANE *v.* STARR, JUDGE; and LANE *v.* TUNNELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 943 F. 2d 1314 (first case); 946 F. 2d 892 (second and third cases).

No. 91–6918. MOTON *v.* CASPARI. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 725.

No. 91–6919. OLUWA *v.* KOENIG, CHAIRMAN, BOARD OF PRISON TERMS. C. A. 9th Cir. Certiorari denied. Reported below: 942 F. 2d 791.

No. 91–6920. LAUREANO *v.* SULLIVAN, SUPERINTENDENT, OSSINING CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 91–6921. CUDEJKO *v.* OVERTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–6922. WEBB *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 945 F. 2d 967.

No. 91–6923. HICKS *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1277.

No. 91–6924. CRAWFORD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 91–6925. PETERSON ET UX. *v.* KAHN. C. A. 9th Cir. Certiorari denied.

No. 91–6927. REID *v.* CITY OF FLINT. Sup. Ct. Mich. Certiorari denied. Reported below: 437 Mich. 1013.

No. 91–6928. ELORTEGUI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1317.

No. 91–6932. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 947 F. 2d 1490.

No. 91–6935. PARTEE *v.* LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 926 F. 2d 694.

No. 91–6936. FLETCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 945 F. 2d 725.

No. 91–6940. AMIRI *v.* WUSA–TV, CHANNEL NINE. C. A. D. C. Cir. Certiorari denied. Reported below: 292 U. S. App. D. C. 83, 946 F. 2d 1563.

No. 91–6941. MAXWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 947 F. 2d 1487.

No. 91–6942. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 948 F. 2d 1276.

No. 91–6954. ALEXANDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 2d 1002.

No. 91–6956. SINGLETON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 23.

No. 91–6958. CRANFILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1543.

No. 91–6959. ANDERSON *v.* KIRK, SUPERINTENDENT, WALLKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 91–6961. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 2d 1290.

No. 91–6968. HILLNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1543.

No. 91–6969. TROUTMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 942 F. 2d 786.

No. 91–6970. ROCHA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1543.

No. 91–6973. JACKSON ET AL. *v.* DIXON-BOOKMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 951 F. 2d 344.

No. 91–6977. PLATT ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 888.

No. 91–6978. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 939.

No. 91–6979. STIKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 585.

No. 91–6986. BRADFORD-BEY *v.* TOOMBS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 91–6991. RISON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 946 F. 2d 1497.

No. 91–6996. SHUMATE *v.* CREASY. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1207.

No. 91–6999. WEST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 947 F. 2d 943.

No. 91–7001. SWINICK *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 91–7004. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 888.

No. 91–7008. BLAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 947 F. 2d 1320.

No. 91–7012. GORDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 947 F. 2d 942.

No. 91–7014. HINES, AKA MURRAY *v.* SHANNON ET AL. C. A. 1st Cir. Certiorari denied.

No. 91–7016. SANTAMARIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 946 F. 2d 899.

No. 91–7019. MONTGOMERY *v.* CLARK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 91–7021. MAUWEE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 107 Nev. 1127, 838 P. 2d 949.

No. 91–7023. RUB ET AL. *v.* PRODUCTION CREDIT ASSOCIATION OF MANDAN. Sup. Ct. N. D. Certiorari denied. Reported below: 475 N. W. 2d 532.

No. 91–7027. DEFOREST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 946 F. 2d 523.

No. 91–7028. WELCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 945 F. 2d 1378.

No. 91–7030. TRAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 940 F. 2d 662.

No. 91–7031. DRINNON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 945 F. 2d 405.

No. 91–7034. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 887.

No. 91–7036. GONZALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 2d 896.

No. 91–7038. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1542.

No. 91–7039. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–7040. HATHAWAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 949 F. 2d 609.

No. 91–7041. OSAMOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 888.

No. 91–7047. WALTERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 888.

No. 91–7049. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 1543.

No. 91–7059. KING *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 91–7067. GIAMPA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 938.

No. 91–7069. HOYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 941 F. 2d 1208.

No. 91–7073. THORNTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 950 F. 2d 1223.

No. 91–7076. MATTISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 946 F. 2d 896.

No. 91–7077. MANLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 887.

No. 91–7078. MUHAMMAD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 948 F. 2d 1449.

No. 91–7080. LIPSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 936 F. 2d 1243.

No. 91–7086. PLEWNIAK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 947 F. 2d 1284.

No. 91–7087. JACKSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 946 F. 2d 1546.

No. 91–7092. ROGERS *v.* FRANK, POSTMASTER GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 950 F. 2d 728.

No. 91–7097. BAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 946 F. 2d 890.

No. 91–7105. ROSSY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 953 F. 2d 321.

No. 91–7106. COLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 910.

No. 91–7108. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 938.

No. 91–7109. GROOM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 943 F. 2d 1317.

No. 91–7116. FEARON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 951 F. 2d 350.

No. 91–7119. COX, AKA PILIERE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 949 F. 2d 399.

No. 91–7124. BORCHERS *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 947 F. 2d 934.

No. 91–540. CHANCE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 304 S. C. 406, 405 S. E. 2d 375.

No. 91–699. WALTMAN *v.* FAHNESTOCK & CO., INC. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 935 F. 2d 512.

No. 91–772. PRINSKI *v.* TERMAR NAVIGATION CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 944 F. 2d 898.

No. 91–777. CENAC TOWING CO., INC. *v.* SOUTH TEXAS TOWING CO., INC. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 938 F. 2d 599.

No. 91–844. BENNETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 941 F. 2d 1210.

No. 91–6324. DETRICH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 940 F. 2d 37.

No. 91–690. THOMAS ET AL. *v.* ELLIOTT. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 937 F. 2d 338.

No. 91–963. COLORADO *v.* GARCIA. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 815 P. 2d 937.

No. 91–1048. KENTUCKY *v.* TAYLOR. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 821 S. W. 2d 72.

No. 91–1180. ARIZONA *v.* DANIEL. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 169 Ariz. 73, 817 P. 2d 18.

No. 91–746 (A–344). BEST ET AL. *v.* UNITED STATES; and

No. 91–748. CONARTY *v.* UNITED STATES. C. A. 7th Cir. Application for an order to direct the Clerk of the United States Court of Appeals for the Seventh Circuit to transmit certain looseleaf binders to the Court for use during consideration of the petitions for writs of certiorari, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 939 F. 2d 425.

No. 91–798. SOUTH DAKOTA PUBLIC UTILITIES COMMISSION ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Motion of National Association of Regulatory Utility Commissioners et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 290 U. S. App. D. C. 58, 934 F. 2d 346.

No. 91–983. ALLSTATE INSURANCE CO. *v.* FORTUNATO, COMMISSIONER OF INSURANCE OF NEW JERSEY. Super. Ct. N. J.,

App. Div. Motion of National Association of Independent Insurers et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 248 N. J. Super. 367, 591 A. 2d 631.

No. 91–999. GARMAN CONSTRUCTION CO. *v.* MARTIN ET AL. C. A. 7th Cir. Motion of Associated Builders & Contractors, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 945 F. 2d 1000.

No. 91–1021. CURRY *v.* NASCO, INC. C. A. 5th Cir. Motion of David L. Hoskins et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 945 F. 2d 401.

No. 91–1059. VIACOM INTERNATIONAL, INC. *v.* ICAHN ET AL. C. A. 2d Cir. Motion of petitioner to seal part of petition for writ of certiorari granted. Certiorari denied. Reported below: 946 F. 2d 998.

No. 91–1073. ARIZONA *v.* MULLET. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 168 Ariz. 594, 816 P. 2d 251.

No. 91–1132. FREEPORT-MCMORAN INC. ET AL. *v.* K N ENERGY, INC. C. A. 10th Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition. Reported below: 942 F. 2d 765.

No. 91–1292 (A–581). HAITIAN REFUGEE CENTER, INC., ET AL. *v.* BAKER, SECRETARY OF STATE, ET AL. (two cases). C. A. 11th Cir. Application for stay of mandates, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 953 F. 2d 1498 (first case); 949 F. 2d 1109 (second case).

JUSTICE STEVENS, respecting the denial of certiorari.

It is important to emphasize that the denial of the petition for writ of certiorari is not a ruling on any of the unsettled and important questions of law presented in the petition. See *Singleton* v. *Commissioner*, 439 U. S. 940, 942 (1978) (STEVENS, J., respecting denial of certiorari).

JUSTICE THOMAS, respecting the denial of certiorari.

On January 31, 1992, I voted to deny the Government's application to stay the District Court's injunctions in this case because, in my view, the petitioners deserved the additional 24 hours they had requested for the purpose of taking depositions and filing a response. *Ante*, p. 1083. The petitioners have since briefed the merits of their petition for certiorari, and I now conclude that under the standards this Court has traditionally employed, cf. this Court's Rule 10.1, the petition should be denied.

The affidavits filed throughout this litigation have sought to describe the conditions in Haiti and the treatment the returnees have received there. I am deeply concerned about these allegations. However, this matter must be addressed by the political branches, for our role is limited to questions of law. Because none of the legal issues presented in this petition provides a basis for review, I join the Court's denial of certiorari.

JUSTICE BLACKMUN, dissenting from denial of certiorari.

The world has followed with great concern the fate of thousands of individuals who fled Haiti in the wake of that country's September 1991 military coup. As the complex procedural history of this case reveals, the legal issues surrounding the rights of Haitians interdicted on the high seas by the United States Coast Guard have deeply divided the four federal judges who have considered their claims. Each of the issues presented—whether the United States Government is violating the First Amendment by denying lawyers from the Haitian Refugee Center a right of access to the Haitians held at Guantanamo Bay; whether international or domestic law affords the Haitians a substantive right not to be returned to a country where they face possible persecution; and whether the Haitians may challenge the adequacy of procedures employed by the United States Government to identify those facing political persecution—is difficult and susceptible to competing interpretations.

A quick glance at this Court's docket reveals not only that we have room to consider these issues, but that they are at least as significant as any we have chosen to review today. If indeed the Haitians are to be returned to an uncertain future in their strife-torn homeland, that ruling should come from this Court, after full and careful consideration of the merits of their claims.

I dissent from the Court's decision to deny a writ of certiorari.

No. 91–6607. BURNS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 934 F. 2d 1157.

No. 91–6653. SALEEM *v.* 3–M Co. C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 945 F. 2d 396.

Rehearing Denied

No. 91–282. HALAS *v.* DEPARTMENT OF ENERGY, *ante*, p. 953;
No. 91–388. POWELL *v.* UNITED STATES, *ante*, p. 981;
No. 91–541. MANES *v.* NEW MEXICO, *ante*, p. 942;
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No. 91–616. DILLER *v.* SELVIN & WEINER ET AL., *ante*, p. 1013;
No. 91–635. DILLER *v.* SELVIN & WEINER, *ante*, p. 1013;
No. 91–654. CAFARO *v.* NEW YORK, *ante*, p. 1005;
No. 91–5440. STRIPLING *v.* GEORGIA, *ante*, p. 985;
No. 91–5586. IN RE SEAGRAVE, *ante*, p. 1028;
No. 91–5597. MCCALLUM ET UX. *v.* UNITED STATES, *ante*, p. 970;
No. 91–5604. IRVIN *v.* KENTUCKY, *ante*, p. 995;
No. 91–5721. TAXEY *v.* ILLINOIS, *ante*, p. 945;
No. 91–5810. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 1006;
No. 91–5852. MARTIN *v.* KNOX ET AL., *ante*, p. 999;
No. 91–5977. HAUGEN *v.* BRADY ET AL.; and HAUGEN *v.* CLARK COUNTY, NEVADA, ET AL., *ante*, p. 974;
No. 91–5981. KAFFENBERGER *v.* CITY OF BULLHEAD, ARIZONA, ET AL., *ante*, p. 987;
No. 91–6013. ARGENTINA *v.* DEBENEDICTUS, *ante*, p. 987;
No. 91–6014. BOYD *v.* TOWN OF CABOT, ARKANSAS, ET AL., *ante*, p. 987;
No. 91–6039. PORTNOY *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 988;
No. 91–6059. REED *v.* BELEW, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, ET AL., *ante*, p. 989;
No. 91–6094. STEVENS *v.* OHIO ET AL., *ante*, p. 989;
No. 91–6110. DOKES *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, *ante*, p. 1015;
No. 91–6129. DOWLING *v.* KAMBER ET AL., *ante*, p. 1007;

No. 91–6144. LOMELINO *v.* MCDONNELL DOUGLAS AIRCRAFT CORP. ET AL., *ante*, p. 990;

No. 91–6169. BAKER *v.* LOPATIN, MILLER, FREEDMAN, BLUESTONE, ERLICH, ROSEN & BARTNICK, ATTORNEYS AT LAW, P. C., *ante*, p. 1008;

No. 91–6178. MARTIN *v.* KNOX ET AL., *ante*, p. 1015;

No. 91–6208. BORYSIAK ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1016;

No. 91–6210. CLARK *v.* UNITED STATES, *ante*, p. 992;

No. 91–6224. IN RE WILLIAMS, *ante*, p. 1028;

No. 91–6245. JOHNSON *v.* PETERSON, *ante*, p. 1039;

No. 91–6336. CERVEN *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA, *ante*, p. 1041; and

No. 91–6389. LAMASNEY *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 1042. Petitions for rehearing denied.

No. 90–1809. WHITMER *v.* CITY OF CHICAGO ET AL., *ante*, p. 814;

No. 90–6352. GRIFFIN *v.* UNITED STATES, *ante*, p. 46;

No. 90–8020. COSNER *v.* ILLINOIS, *ante*, p. 830; and

No. 90–8199. VENERI *v.* JACOBS ET AL., *ante*, p. 837. Petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these petitions.

No. 90–1877. SINGAL *v.* GENERAL MOTORS CORP., *ante*, p. 817; and

No. 90–8473. FOORE *v.* MARRA ET AL., *ante*, p. 853. Motions for leave to file petitions for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of these motions.

Reporter's Note

The next page is purposely numbered 1301. The numbers between 1125 and 1301 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

CAMPOS ET AL. *v.* CITY OF HOUSTON ET AL.

ON APPLICATION FOR INJUNCTION AND STAY

No. A–301. Decided October 29, 1991

The application seeking an injunction and stay stopping imminent elections for the Houston City Council is denied because there is no legal basis for such an original order. Assuming that the applicants would desire the lesser relief of a mere stay of the District Court's order implementing a redistricting plan for the elections, that too must be denied. There is no evidence that the city was acting in bad faith in seeking that order, and both the applicants and the United States share some responsibility for this matter's having been presented and decided in inordinate haste. Relying on the judgment of those federal judges on the scene, who have declined the stay, it also cannot be said with certainty that more good than harm to the public interest will be achieved by staying the District Court's order.

JUSTICE SCALIA, Circuit Justice.

The application before me seeks "an injunction and stay from the Court stopping the entire City election process" with respect to elections for the Houston City Council scheduled for November 5. Application 11. As the *amicus* United States points out, there is no basis in law for such an original order, and the application must be denied.

Assuming that the applicants would desire the lesser relief of a mere stay of the District Court's order, I would nonetheless deny it. The issuance by a circuit justice of a stay pending appeal calls for consideration of not only the probability that the district court was wrong, but also the nature of (including responsibility for) the alleged injury that will occur absent a stay, and the effect that a stay would have upon the public interest. See *Republican State Central Comm. of*

Arizona v. *Ripon Society Inc.*, 409 U. S. 1222, 1224 (1972) (REHNQUIST, J., in chambers). Like the Court of Appeals, I am doubtful of the District Court's authority to issue the present order. However, while the city may have been guilty of overimaginative lawyering in obtaining it, I have no reason to believe the city was acting in bad faith in the sense of seeking to frustrate the purposes of the Voting Rights Act of 1965. Moreover, in my view both the applicants and the United States share some responsibility, by their delay, for this matter's having been presented and decided in inordinate haste. Finally, and most important, I am not certain that more good than harm to the public interest will be achieved by staying the District Court's order, making the imminent elections (in which some people have already cast absentee ballots) impossible. On this last point, which seems to me in the present case the determinative one, I am inclined to rely upon the judgment of those federal judges on the scene, who have declined the stay.

For the foregoing reasons, the application is denied.

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CIVIL RIGHTS ACT OF 1871.

1. *Immunity from suit—Actions taken in judicial capacity.*—Actions of a judge in ordering police to seize and bring respondent attorney into courtroom when he failed to appear for calling of calendar were taken in judge's judicial capacity, and thus he enjoyed absolute immunity from respondent's suit for money damages under 42 U. S. C. § 1983. Mireles v. Waco, p. 9.

2. *Personal liability for actions taken in official capacity.*—State officers may be held personally liable for damages under 42 U. S. C. § 1983 based on actions taken in their official capacities. Hafer v. Melo, p. 21.

COAL-FIRED ELECTRIC UTILITIES. See **Constitutional Law,** II; **Standing.**

COMMERCE CLAUSE. See **Constitutional Law,** II; **Standing.**

CONFRONTATION CLAUSE. See **Constitutional Law,** I.

CONSENT DECREES.

Correction of unconstitutional jail conditions—Modification of decree.—A party seeking modification of an institutional reform consent decree bears burden of establishing that a significant change in facts or law warrants decree's revision and that proposed modification is arguably tailored to changed circumstances; grievous wrong standard of *United States* v. *Swift & Co.*, 286 U. S. 106, 119, does not apply to such cases. Rufo v. Inmates of Suffolk County Jail, p. 367.

CONSPIRACIES. See **Constitutional Law,** III, 2.

CONSTITUTIONAL LAW. See also **Standing.**

I. Confrontation of Witnesses.

Admission of hearsay.—Sixth Amendment's Confrontation Clause does not require that, before a trial court admits testimony under spontaneous declaration and medical examination exceptions to hearsay rule, either prosecution must produce declarant—here a 4-year-old girl who had been sexually assaulted—at trial or trial court must find that declarant is unavailable. White v. Illinois, p. 346.

II. Discrimination against Interstate Commerce.

Oklahoma law—Coal-fired utilities.—Oklahoma law requiring coal-fired electric utilities to burn a mixture containing at least 10% Oklahoma-mined coal was invalid under Commerce Clause because it discriminated against interstate commerce and Oklahoma advanced no purpose to justify such discrimination. Wyoming v. Oklahoma, p. 437.

III. Due Process.

1. *Admission of evidence of battered child syndrome—Jury instructions.*—Neither admission of prior injury evidence as proof of battered child syndrome nor jury instruction as to its use so infused respondent's California murder trial with unfairness as to deny due process. Estelle v. McGuire, p. 62.

2. *Multiple-object conspiracy—General verdict.*—Neither Fifth Amendment's Due Process Clause nor this Court's precedents require, in a federal prosecution, that a general guilty verdict on a multiple-object conspiracy be set aside if evidence is inadequate to support conviction as to one of objects. Griffin v. United States, p. 46.

IV. Freedom of Speech.

Son of Sam law.—New York's Son of Sam law—which requires that an accused or convicted criminal's income from works describing crime be deposited in an escrow account to be made available to victims of crime and criminal's other creditors—is inconsistent with First Amend-

CONSTITUTIONAL LAW—Continued.

ment. Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd., p. 105.

V. Right of Access to Ballot.

New political party—Cook County, Illinois.—Petitioners' right of access to county ballot under First Amendment was violated by State Supreme Court's construction of Illinois law to prohibit petitioners from using Harold Washington Party name in county elections because it is an established party in Chicago, and to disqualify both city and suburban candidates because party failed to secure a sufficient number of signatures in suburban areas. Norman v. Reed, p. 279.

COUNTY TAXES. See **Taxes.**

COURTS OF APPEALS. See **Appeals; Jurisdiction; Supreme Court,** 5.

CREDITORS AND DEBTORS. See **Bankruptcy,** 1.

CRIMINAL LAW. See **Appeals; Constitutional Law,** I; III; **Supreme Court,** 5.

CRIMINALS' INCOME FROM WORKS DESCRIBING THEIR CRIMES. See **Constitutional Law,** IV.

DAMAGES. See **Civil Rights Act of 1871; Federal Tort Claims Act,** 2; **Jones Act; Labor,** 1.

DEBTORS AND CREDITORS. See **Bankruptcy,** 1.

DEBTS. See **Bankruptcy,** 2.

DECREES. See **Consent Decrees.**

DEPORTATION. See **Equal Access to Justice Act; Immigration and Nationality Act.**

DISCLOSURE OF INFORMATION. See **Freedom of Information Act.**

DISCRIMINATION AGAINST INTERSTATE COMMERCE. See **Constitutional Law,** II; **Standing.**

DISTRICT COURTS. See **Financial Institutions Supervisory Act of 1966.**

DUE PROCESS. See **Constitutional Law,** III.

ELECTIONS. See **Constitutional Law,** V; **Stays.**

ELECTRIC UTILITIES. See **Constitutional Law,** II; **Standing.**

EMPLOYER AND EMPLOYEES. See **Labor,** 2.

EMPLOYMENT. See **Veterans' Reemployment Rights Act.**

EQUAL ACCESS TO JUSTICE ACT.

Attorney's fees—Administrative deportation proceedings.—Administrative deportation proceedings are not adversary adjudications for which EAJA has waived sovereign immunity and authorized award of attorney's fees and costs. Ardestani v. INS, p. 129.

EVIDENCE. See **Constitutional Law,** I; III, 1.

EXCISE TAXES. See **Taxes.**

EXEMPTION 6. See **Freedom of Information Act.**

EXTRAORDINARY WRITS. See **Supreme Court,** 5.

FEDERAL DISTRICT COURTS. See **Financial Institutions Supervisory Act of 1966.**

FEDERAL EMPLOYEES' NEGLIGENCE. See **Federal Tort Claims Act,** 2.

FEDERAL EMPLOYERS' LIABILITY ACT.

Causes of action—State-owned railroad.—FELA creates a cause of action against a state-owned railroad, enforceable in state court. Hilton v. South Carolina Public Railways Comm'n, p. 197.

FEDERAL RULES OF APPELLATE PROCEDURE. See **Jurisdiction.**

FEDERAL TORT CLAIMS ACT.

1. *Immunity from suit—Secret Service agents.*—Agents who arrested respondent for making threats against President were entitled to qualified immunity from suit under Act for allegedly arresting respondent without probable cause or a warrant. Hunter v. Bryant, p. 224.

2. *Punitive damages—Federal employees' negligence.*—Title 28 U. S. C. § 2674—under which United States is liable on tort claims to same extent as a private individual under like circumstances, "*but shall not be liable . . . for punitive damages*" (emphasis added)—bars recovery only of what are legally considered "punitive damages" under traditional common-law principles, *i. e.*, those whose recoverability depends upon proof that defendant has engaged in intentional or egregious misconduct and whose purpose is to punish; thus, FTCA did not bar petitioner from recovering damages for her husband's future medical expenses and his loss of enjoyment of life, which were based on a simple negligence theory. Molzof v. United States, p. 301.

FIFTH AMENDMENT. See **Constitutional Law,** III, 2.

FINANCIAL INSTITUTIONS SUPERVISORY ACT OF 1966.

District court jurisdiction—Regulatory proceedings.—District Court lacked jurisdiction to enjoin prosecution of two administrative proceedings pending against respondent—a bank holding company—when it filed for bankruptcy. Board of Governors, Federal Reserve System v. MCorp Financial, Inc., p. 32.

FIRST AMENDMENT. See **Constitutional Law,** IV; V.

FOURTEENTH AMENDMENT. See **Constitutional Law,** III, 1.

FREEDOM OF INFORMATION ACT.

Exemption 6—Haitian nationals—Disclosure of unredacted interview reports.—Deletion from interview reports of names of Haitian nationals who had attempted to immigrate illegally to United States and were involuntarily returned to Haiti were authorized by FOIA Exemption 6, since their disclosure would constitute a clearly unwarranted invasion of returnees' privacy. Department of State v. Ray, p. 164.

FREEDOM OF SPEECH. See **Constitutional Law,** IV.

GRIEVOUS WRONG STANDARD FOR MODIFYING DECREES. See **Consent Decrees.**

GUILTY VERDICTS. See **Constitutional Law,** III, 2.

HABEAS CORPUS. See **Supreme Court,** 5.

HAITIANS. See **Freedom of Information Act.**

HAROLD WASHINGTON PARTY. See **Constitutional Law,** V.

HEARSAY EVIDENCE. See **Constitutional Law,** I.

ILLINOIS. See **Constitutional Law,** I; V.

IMMIGRATION AND NATIONALITY ACT. See also **Equal Access to Justice Act; Freedom of Information Act.**

1. *Arrest of excludable aliens—Release bond conditions.*—Regulation generally requiring that release bonds for excludable aliens pending a determination of their deportability contain a condition that forbids unauthorized employment is, on its face, consistent with Attorney General's statutory authority. INS v. National Center for Immigrants' Rights, Inc., p. 183.

2. *Deportation—Attorney General's authority to reopen proceedings.*—Attorney General did not abuse his discretion in denying a motion to reopen Doherty's deportation proceedings either on ground that Doherty failed to adduce new evidence or on ground that he failed to satisfactorily explain his previous withdrawal of claims for withholding of deportation and asylum. INS v. Doherty, p. 314.

IMMIGRATION AND NATIONALITY ACT—Continued.

3. *Deportation—Request for asylum—Persecution on account of political opinion.*—A guerrilla organization's attempt to coerce a person into performing military service does not necessarily constitute "persecution on account of . . . political opinion" under § 101(a)(42) of Act justifying a grant of asylum. INS v. Elias-Zacarias, p. 478.

IMMUNITY FROM SUIT. See **Civil Rights Act of 1871,** 1; **Equal Access to Justice Act; Federal Tort Claims Act,** 1.

INDIAN GENERAL ALLOTMENT ACT OF 1887. See **Taxes.**

IN FORMA PAUPERIS. See **Supreme Court,** 4.

INJUNCTIONS. See **Financial Institutions Supervisory Act of 1966; Stays.**

INTERSTATE COMMERCE. See **Constitutional Law,** II; **Standing.**

INVASIONS OF PRIVACY. See **Freedom of Information Act.**

JAIL CONDITIONS. See **Consent Decrees.**

JONES ACT.

Harbor workers as seamen.—A maritime worker whose occupation is one of those enumerated in Longshore and Harbor Workers' Compensation Act may be a seaman within meaning of Jones Act and thus entitled to bring suit under Jones Act for injuries caused by an employer's negligence. Southwest Marine, Inc. v. Gizoni, p. 81.

JUDGES. See **Civil Rights Act of 1871,** 1.

JUDICIAL IMMUNITY. See **Civil Rights Act of 1871,** 1.

JURISDICTION. See also **Financial Institutions Supervisory Act of 1966; Labor,** 1.

Courts of appeals—Notice of appeal.—A document intended to serve as an appellate brief may qualify as notice of appeal required by Federal Rule of Appellate Procedure 3. Smith v. Barry, p. 244.

JURY INSTRUCTIONS. See **Constitutional Law,** III, 1.

LABOR.

1. *Labor-Management Reporting and Disclosure Act of 1959—Labor Management Relations Act, 1947.*—A union member who sues his local union for money damages under Title I of LMRDA is entitled to a jury trial; under § 301(a) of LMRA, District Court had jurisdiction over breach-of-contract suit brought by a union member against local union. Wooddell v. Electrical Workers, p. 93.

LABOR—Continued.

2. *National Labor Relations Act—Unfair labor practice—Barring nonemployee union organizers from employer's property.*—Lechmere did not commit an unfair labor practice by barring nonemployee union organizers from its property, since NLRA confers rights on employees, not unions or their nonemployee organizers. Lechmere, Inc. v. NLRB, p. 527.

LABOR MANAGEMENT RELATIONS ACT, 1947. See **Labor,** 1.

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959. See **Labor,** 1.

LIENS. See **Bankruptcy,** 1.

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT. See **Jones Act.**

LONG-TERM DEBTS. See **Bankruptcy,** 2.

MANDAMUS. See **Supreme Court,** 5.

MARITIME WORKERS. See **Jones Act.**

MEDICAL EXCEPTION TO HEARSAY RULE. See **Constitutional Law,** I.

MILITARY SERVICE. See **Veterans' Reemployment Rights Act.**

MODIFICATION OF CONSENT DECREES. See **Consent Decrees.**

MULTIPLE-OBJECT CONSPIRACIES. See **Constitutional Law,** III, 2.

MURDER. See **Constitutional Law,** III, 1; **Supreme Court,** 5.

NATIONAL LABOR RELATIONS ACT. See **Labor,** 2.

NATIVE AMERICANS. See **Taxes.**

NEGLIGENCE OF FEDERAL EMPLOYEES. See **Federal Tort Claims Act,** 2.

NEW YORK. See **Constitutional Law,** IV.

NOTICES OF APPEAL. See **Jurisdiction.**

OKLAHOMA. See **Constitutional Law,** II; **Standing.**

ORDINARY COURSE OF BUSINESS EXCEPTION. See **Bankruptcy,** 2.

PERSECUTION ON ACCOUNT OF POLITICAL OPINION. See **Immigration and Nationality Act,** 3.

PERSONAL LIABILITY FOR OFFICIAL ACTIONS. See **Civil Rights Act of 1871,** 2.

POLITICAL OPINION PERSECUTION. See **Immigration and Nationality Act,** 3.

POLITICAL PARTIES. See **Constitutional Law,** V.

PRECLEARANCE. See **Voting Rights Act of 1965.**

PREFERENTIAL TRANSFERS. See **Bankruptcy,** 2.

PRIOR INJURY EVIDENCE. See **Constitutional Law,** III, 1.

PRIVACY. See **Freedom of Information Act.**

PROBABLE CAUSE. See **Federal Tort Claims Act,** 1.

PUNITIVE DAMAGES. See **Federal Tort Claims Act,** 2.

QUALIFIED IMMUNITY. See **Federal Tort Claims Act,** 1.

RAILROADS. See **Federal Employers' Liability Act.**

REDACTED INTERVIEW REPORTS. See **Freedom of Information Act.**

REDISTRICTING PLANS. See **Stays.**

REEMPLOYMENT RIGHTS OF VETERANS. See **Veterans' Reemployment Rights Act.**

REHEARING MOTIONS. See **Appeals.**

RELEASE BONDS. See **Immigration and Nationality Act,** 1.

REPETITIOUS FILINGS. See **Supreme Court,** 4.

RESERVATION LAND. See **Taxes.**

REVISION OF CONSENT DECREES. See **Consent Decrees.**

RIGHT OF ACCESS TO BALLOT. See **Constitutional Law,** V.

RIGHT TO VOTE. See **Voting Rights Act of 1965.**

ROAD DISTRICTS. See **Voting Rights Act of 1965.**

SEAMAN. See **Jones Act.**

SECRET SERVICE AGENTS. See **Federal Tort Claims Act,** 1.

SECTION 1983. See **Civil Rights Act of 1871.**

SECURED CLAIMS. See **Bankruptcy,** 1.

SIXTH AMENDMENT. See **Constitutional Law,** I.

SON OF SAM LAW. See **Constitutional Law,** IV.

SOUTH CAROLINA. See **Federal Employers' Liability Act.**

SOVEREIGN IMMUNITY. See **Equal Access to Justice Act.**

SPONTANEOUS DECLARATION EXCEPTION TO HEARSAY RULE. See **Constitutional Law,** I.

STANDING.

Commerce Clause challenge.—Wyoming had standing to challenge Oklahoma law requiring coal-fired electric utilities to burn a mixture containing at least 10% Oklahoma-mined coal, since there were no changed circumstances or unforeseen standing issues not previously litigated in this case and since Wyoming's loss of severance tax revenues was directly linked to its coal's extraction and sale, which had been demonstrably affected by Oklahoma's law. Wyoming v. Oklahoma, p. 437.

STAYS.

City council election.—An application for an injunction and stay to stop imminent elections for Houston City Council was denied in a case where District Court had ordered implementation of a redistricting plan for elections, because there was no legal basis for such an order (SCALIA, J., in chambers). Campos v. Houston, p. 1301.

SUPREME COURT.

1. Retirement of JUSTICE MARSHALL, p. VII.

2. Appointment of JUSTICE THOMAS, p. XI.

3. Presentation of Attorney General, p. XV.

4. *In forma pauperis—Repetitious filings—Abuse of system.*—Petitioners are denied *in forma pauperis* status under this Court's Rule 39.8 on ground that their patterns of repetitious filings have resulted in an extreme abuse of system. Zatko v. California, p. 16.

5. *Mandamus—Federal habeas petition—Decision on appeal.*—A petition seeking an order directing Court of Appeals to issue a decision on an appeal from a denial of a second federal habeas petition that was submitted to that court in 1989 was denied, since before seeking extraordinary relief in this Court, State of Washington should have asked Court of Appeals to vacate or modify its order delaying action on appeal. In re Blodgett, p. 236.

TAXES.

Ad valorem and excise taxes—Fee-patented reservation land.—Indian General Allotment Act of 1887 permits Yakima County to impose an ad valorem tax on reservation land patented in fee under Act and owned by reservation Indians or Yakima Nation itself, but does not allow county to

TAXES—Continued.

enforce its excise tax on sales of such land. County of Yakima v. Confederated Tribes and Bands of Yakima Nation, p. 251.

TIMELINESS OF APPEALS. See **Appeals.**

TRANSFERS OF PROPERTY. See **Bankruptcy,** 2.

UNFAIR LABOR PRACTICES. See **Labor,** 2.

UNIONS. See **Labor.**

UNREDACTED INTERVIEW REPORTS. See **Freedom of Information Act.**

UTILITIES. See **Constitutional Law,** II.

VERDICTS. See **Constitutional Law,** III, 2.

VETERANS' REEMPLOYMENT RIGHTS ACT.

Retention of right to reemployment—Limit on tour of duty's length.—Act does not limit length of military service after which a member of Armed Forces retains a right to civilian employment. King v. St. Vincent's Hospital, p. 215.

VOTING RIGHTS ACT OF 1965.

Section 5—Preclearance—Change with respect to voting.—Neither a "Common Fund Resolution"—which altered an Alabama county's prior practice of allowing each commissioner full authority to determine how to spend funds allocated to his own road district—nor adoption of a "Unit System"—which abolished individual road districts and transferred responsibility for all road operations from commissioners to county engineer—was a change "with respect to voting" covered by § 5. Presley v. Etowah County Comm'n, p. 491.

WARRANTLESS ARRESTS. See **Federal Tort Claims Act,** 1.

WASHINGTON. See **Supreme Court,** 5.

WITHHOLDING OF DEPORTATION. See **Immigration and Nationality Act,** 2.

WITNESSES. See **Constitutional Law,** I.

WORDS AND PHRASES.

1. "*Persecution on account of . . . political opinion.*" Immigration and Nationality Act, § 101(a)(42), 8 U. S. C. § 1101(a)(42). INS v. Elias-Zacarias, p. 478.

2. "*Persons.*" Civil Rights Act of 1871, 42 U. S. C. § 1983. Hafer v. Melo, p. 21.

WORDS AND PHRASES—Continued.

3. "*Punitive damages.*" Federal Tort Claims Act, 28 U. S. C. § 2674. Molzof v. United States, p. 301.

4. "*Seaman.*" Jones Act, 46 U. S. C. App. § 688. Southwest Marine, Inc. v. Gizoni, p. 81.

5. "*With respect to voting.*" Voting Rights Act of 1965, § 5, 42 U. S. C. § 1973c. Presley v. Etowah County Comm'n, p. 491.

WYOMING. See **Constitutional Law,** II; **Standing.**