(ORDER LIST: 558 U.S.)

MONDAY, NOVEMBER 30, 2009

CERTIORARI -- SUMMARY DISPOSITION

09-160 DEPT. OF DEFENSE, ET AL. V. ACLU, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of Section 565 of the Department of Homeland Security Appropriations Act, 2010, and the certification by the Secretary of Defense pursuant to that provision. Justice Sotomayor took no part in the consideration or decision of this petition.

ORDERS IN PENDING CASES

09A208 COHEN, SOLOMON B. V. HOLDER, ATT'Y GEN.

The application for stay addressed to the Chief Justice and referred to the Court is denied.

09A280 (09-6959) ALBRIGHT-LAZZARI, KIMBERLY V. CONNECTICUT

The application for stay addressed to Justice Alito and referred to the Court is denied.

09M51 VILLE, JENNEBAH S. V. UNITED AIRLINES, INC.

09M52 GARGANO, PAUL A., ET AL. V. LIBERTY INT'L UNDERWRITERS

09M53 ALVAREZ-OCANEGRA, JAIME V. UNITED STATES

09M54 REX, JOHN M. V. FAA, ET AL.

09M55 YANCEY, LISA R. V. LUDWIG, HELEN M.

09M56 MYERS, SCOTT V. SILBERMANN, JACQUELINE, ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

07-11191 BRISCOE, MARK A., ET AL. V. VIRGINIA

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

08-1224 UNITED STATES V. COMSTOCK, GRAYDON E., ET AL.

The motion of Kansas, et al. for leave to participate in oral argument as *amici curiae* and for divided argument is denied.

08-10543 KARNOFEL, DELORES M. V. GIRARD POLICE DEPT., ET AL.

08-10578 WELLS, ROBERT S. V. VASQUEZ, WARDEN

08-10650 DASISA, MIHRETU B. V. UNIV. OF MA BD. OF TRUSTEES

08-10732 IN RE CHARLES W. ALPINE

08-10847 SIMMONS, MELVIN J. V. FLECKER, T.

08-10986 STRONG, JEFF V. IL DEPT. OF HUMAN SERVICES

08-10997 WILLIAMS, PHILL J. V. CHURCH'S CHICKEN, ET AL.

09-5074 WAKEFIELD, FRANZ A. V. CORDIS CORP.

09-5111 SIMMONS, MELVIN J. V. CALIFORNIA, ET AL.

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

09-5356 CURTO, PATRICIA J. V. SIWEK, DONNA M.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied. Justice Sotomayor took no part in the consideration or decision of this motion.

09-5373 MELSON, ROBERT B. V. ALLEN, COMM'R, AL DOC

The respondent is requested to file a response to the petition for rehearing within 30 days.

09-5576 SMITH, ERIC D. V. WRIGLEY, SUPT., NEW CASTLE

09-5814 IN RE CHARLES A. TREECE

09-5920 FARRIS, HAROLD J. V. WHALEY, NANCY J., ET AL.

09-5945 IN RE GARY B. WILLIAMS

09-6035 MILLEN, KEVIN V. KANSAS CITY STAR

09-6139 IN RE JOHNNY TRAYLOR

09-6291 IN RE JAMES D. BENNETT

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

09-6636 CLINE, EARL L. V. UTAH, ET AL.

09-6764 ROYSE, JOHN A. V. CORNING GLASS WORKS, INC.

09-6985 RUCKER, FRED V. IL DEPT. OF CHILDREN SERVICES

09-7326 ISA, TARIQ V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 21, 2009, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI GRANTED

08-1191 MORRISON, ROBERT, ET AL. V. NAT. AUSTRALIA BANK LTD., ET AL.

The petition for a writ of certiorari is granted. Justice Sotomayor took no part in the consideration or decision of this petition.

09-338 RENICO, WARDEN V. LETT, REGINALD

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted.

09-5201 BARBER, MICHAEL G., ET AL. V. THOMAS, WARDEN

The motion of petitioner for leave to proceed *in forma*

pauperis and the petition for a writ of certiorari are granted.

CERTIORARI DENIED

08-1392 MASSIS, NIMATALLAH S. V. HOLDER, ATT'Y GEN., ET AL.

08-1494 ARGUELLES-OLIVARES, JOEL V. HOLDER, ATT'Y GEN.

08-1575 LINDER, JASON L. V. UNITED STATES

09-10 JOYNER, TIMOTHY J. V. ARKANSAS

09-26 HERTZ, SUSAN V. UNITED STATES

09-70 MODERN, INC., ET AL. V. ST. JOHNS RIVER WATER, ET AL.

09-86 BOULWARE, MICHAEL H. V. UNITED STATES

09-98 SCURLARK, WILMER L. V. UNITED STATES

09-102 VIRGINIA V. RUDOLPH, DEMETRES J.

09-106 PEDERNERA, ISAAC V. HOLDER, ATT'Y GEN.

09-113 PRICE, JIM G. V. UNITED STATES TRUSTEE

09-222 MATHENY, BECKY, ET AL. V. TENNESSEE VALLEY AUTHORITY

09-225 BLOCK, WINTHROP P., ET AL. V. SHINSEKI, SEC. OF VA, ET AL.

09-231 BROWN, CHARLES, ET AL. V. HOVATTER, DAVID, ET AL.

09-241 WILKINSON, LEA A. V. PALMETTO STATE TRANS., ET AL.

09-242 PYKE, JOSEPH H., ET AL. V. CUOMO, MARIO, ET AL.

09-257 CORDER, ERICA V. LEWIS PALMER SCHOOL DIST. NO. 38

09-297 FORD MOTOR COMPANY V. BUELL-WILSON, BENETTA, ET AL.

09-331 HARPER, VERA C., ET AL. V. U.S. AUTO. ASSOC., ET AL.

09-340 POWELL, GEORGE, ET AL. V. CAREY INTERNATIONAL, INC., ET AL

09-345 GERARD, GEOVING J. V. GA BD. OF REGENTS, ET AL.

09-352 WHITMORE, TIMOTHY B. V. PIERCE CTY. DCC, ET AL.

09-362) BOSTON SCIENTIFIC CORP., ET AL. V. CORDIS CORPORATION
)
09-365) CORDIS CORPORATION V. BOSTON SCIENTIFIC CORP., ET AL.

09-363 COOPER, KEVIN V. AYERS, WARDEN

09-369 MAGGARD, DAWN, ET VIR V. FORD MOTOR COMPANY

09-373 HALLINAN, SHAWN, ET AL. V. FRATERNAL ORDER OF POLICE

09-374 HOFFMAN, PETER V. UNITED AIRLINES, INC.

09-380 BELTRAN LOZANO, JOSE M. V. HOLDER, ATT'Y GEN.

09-381 CONSTANT, JAMES V. CA DEPT. OF TRANSPORTATION

09-391 WHITE, DAVID A. V. DEPT. OF DEFENSE, ET AL.

09-393 BAUMGARTNER, ELSEBETH V. OHIO

09-398 LOUISIANA V. ABSHIRE, DONALD W., ET AL.

09-399 MOORE, GARRY V. ADVENTIST HEALTH SYSTEM, ET AL.

09-411 THOMAS, OSCAR L. V. SHINSEKI, SEC. OF VA, ET AL.

09-415 ANDERSON-TULLY COMPANY V. McDANIEL, ATT'Y GEN. OF AR

09-428 WASHINGTON, CAROLYN L. V. DEPT. OF DEFENSE

09-431 CITY OF ALBANY POLICE, ET AL. V. LEWIS, PHILLIP

09-449 PATRICK, LESTER E. V. SHINSEKI, SEC. OF VA

09-462 THOMAS, SAMUEL V. UNITED STATES

09-463 BROOKENS, BENOIT V. SOLIS, SEC. OF LABOR

09-464 BENSON, WILLIAM J. V. UNITED STATES

09-478 TRIVEDI, RAMNIK V. UNITED STATES, ET AL.

09-486 HARLEY, RICHARD J., ET UX. V. SEC

09-496 BROWN, JAMES A. V. UNITED STATES

09-5027 McNEILL, MICHAEL V. STAMPER, FRANK, ET AL.

09-5035 SMITH, JERRY V. UNITED STATES

09-5305 CORINES, PETER J. V. BROWARD CTY. SHERIFF'S DEPT.

09-5429 BENALLY, KERRY D. V. UNITED STATES

09-5434 ABEBE, YEWHALA E. V. CALIFORNIA

09-5480 BARRIOS-BELTRAN, JOSE L. V. UNITED STATES

09-5496 ABBEY, CHARLES G. V. UNITED STATES

09-5542 SHELTON, KENNETH G. V. ROPER, SUPT., POTOSI

09-5547 JOHNSON, TIMOTHY T. V. UNITED STATES

09-5583 PARACHA, SAIFULLAH V. GATES, SEC. OF DEFENSE

09-5597 GARCIA-ECHAVERRIA, MARCO A. V. UNITED STATES

09-5615 OLIVER, JEFFERY L. V. UNITED STATES

09-5715 MIRANDA, DAVID V. UNITED STATES

09-5728 HOLLIS, DARREN V. UNITED STATES

09-5739 DEL GALLO, RINALDO V. PARENT, ROGER, ET AL.

09-5747 FLICK, MICHAEL J. V. KENTUCKY

09-5780 HOJAN, GERHARD V. FLORIDA

09-6133 CARRUTH, MICHAEL D. V. ALABAMA

09-6302 SMITH, KENNETH W. V. MITCHELL, WARDEN

09-6379 GARY, CARLTON M. V. HALL, WARDEN

09-6392 ROUSE, LEON R. V. DEPT. OF STATE, ET AL.

09-6518 WALTER, SHONDA V. PENNSYLVANIA

09-6579 ENDENCIA, FRANCES V. ADT SECURITY SERVICES, INC.

09-6580 ENSEY, GARY D. V. OKLAHOMA

09-6583 WARE, ERIC V. GARNETT, JASON, ET AL.

09-6585 KILPATRICK, KENNETH V. HERNANDEZ, SERGEANT, ET AL.

09-6590 SMITH, KEITH P. V. FLORIDA

09-6591 RAINES, DAVID V. OKLAHOMA

09-6592 TORRES, LUCIANO V. THALER, DIR., TX DCJ

09-6594 SKINNER, GORDON T. V. OKLAHOMA

09-6602 WHITE, TYRONE V. SCH. DIST. OF PHILADELPHIA

09-6617 NITSCHKE, GARY V. COASTAL TANK CLEANING, ET AL.

09-6621 JOHNSTON, JOSEPH M. V. ALLEN, KRISTIAN N.

09-6623 LARSON, HARVEY E. V. GONZALEZ, WARDEN, ET AL.

09-6631 EDWARDS, JULIUS V. ROZUM, SUPT., SOMERSET, ET AL.

09-6641 LaMARCA, ANTHONY V. McNEIL, SEC., FL DOC

09-6651 McCREARY, JODY F. V. TEXAS

09-6654 COLEMAN, STUART V. OTT, WARDEN

09-6662 CUTTS, RUSSELL W. V. HETZEL, WARDEN, ET AL.

09-6665 CARDENAS, ANTHONY V. FIGUEROA, WARDEN

09-6666 CORONA-CUEVAS, ROGELIO V. HALL, WARDEN

09-6669 MOORE, JULIUS J. V. ARIZONA

09-6672 VEALE, SCOTT W. V. NEW HAMPSHIRE

09-6674 MILLEN, KEVIN V. FLORIDA

09-6676 MOSLEY, WILLIE J. V. UPTON, WARDEN

09-6683 FALSO, ANTHONY V. ABLEST STAFFING SERVICES, ET AL.

09-6689 JOHNSON, KEVIN V. MISSOURI

09-6690 HOLGUIN, SCOTT D. V. ARIZONA

09-6693 STARKS, RICKY D. V. THALER, DIR., TX DCJ

09-6696 BUNDRANT, CRAIG V. THALER, DIR., TX DCJ

09-6698 RIPPY, CHARLES A. V. BURKETT, THOMAS

09-6699 SPIVEY, REGINALD R. V. THALER, DIR., TX DCJ

09-6701 RUNGE, LORN L. V. MINNESOTA

09-6703 BERRY, WILLIE L. V. PORTERFIELD, M. TIMOTHY

09-6707 THOMAS, TERRY T. V. TELEGRAPH PUBLISHING CO., ET AL.

09-6709 BROWN, KERRY L. V. HATHAWAY, WARDEN

09-6711 STREATER, THEODORE V. GREGORY, SUE A., ET AL.

09-6712 BROWER, WILLIAM S. V. McNEIL, SEC., FL DOC

09-6718 LEONARD, STEPHEN C. V. IOWA

09-6723 TRIMBLE, JAMES V. OHIO

09-6726 WALKER, JERMAINE V. McCANN, TERRY, ET AL.

09-6729 DALY, JAMES E. V. CALIFORNIA

09-6734 WILSON, DAWN V. HAUCK, ADM'R, EDNA MAHAN, ET AL.

09-6740 MABE, TIMOTHY V. ILLINOIS

09-6751 CULBERO, LORENZO V. NEW YORK

09-6752 DAVIS, WILLIAM F. V. CORR. MEDICAL SYSTEMS, ET AL.

09-6754 PARKER, JONATHAN J. V. BD. OF SUPERVISORS

09-6771 GROVES, GENE S. V. SHINSEKI, SEC. OF VA

09-6788 NEGRETE, JESUS C. V. HOLDER, ATT'Y GEN.

09-6794 OGUAGHA, INNOCENT V. CRAVENER, RICHARD

09-6797 HARTMAN, KENNETH J. V. VA DOC

09-6803 HRUSOVSKY, ROBERT V. SJOLUND, NURIA

09-6806 McCALL, HARRY L. V. CROSTHWAIT, H. G., ET AL.

09-6830 MERRITT, CLAIBORNE V. SCHINSEKI, SEC. OF VA

09-6877 JARDINE, HECTOR L. V. NEVADA

09-6883 CRAVER, ANDRE R. V. FRANCO, LISA M.

09-6890 BURNES, JOHNNIE V. ROGERS, WARDEN

09-6924 KRZYWKOWSKI, GRADY V. BOBBY, WARDEN

09-6948 GOMEZ, YOURY G. V. CLARK, WARDEN

09-6968 HARTMANN, DETLEF F. V. DELAWARE

09-6986 ALSTON, KEVIN V. COURT OF APPEALS OF WI

09-6993 SLAUGHTER, JODON A. V. EPPS, COMM'R, MS DOC, ET AL.

09-7017 WRIGHT, ANTHONY V. McNEIL, SEC., FL DOC, ET AL.

09-7062 DE JESUS, HECTOR V. ACEVEDO, WARDEN

09-7069 GARNETT, JAMES S. V. UTTECHT, SUPT., WA

09-7071 PARMELEE, ALLAN V. McKENNA, ATT'Y GEN. OF WA

09-7074 PRENDERGAST, MELANIE V. UNITED STATES

09-7079 CHAVIS, MICHAEL V. FISCHER, COMM'R, NY DOC, ET AL.

09-7083 POWELL, ROBERT L. V. KENTUCKY

09-7094 LOPEZ, JULIAN V. THURMER, WARDEN

09-7099 WILLIAMS, LETRENIA L. V. GEITHNER, SEC. OF TREASURY

09-7145 RIVERA, AMADOR V. RIOS, WARDEN

09-7148 NAILOR, LARRY V. CASTILLO, WARDEN

09-7154 DOE, JOHN V. UNITED STATES

09-7155 DAVIS, JAWAN M. V. UNITED STATES

09-7157 MURPHY, MILES V. UNITED STATES

09-7159 PABLO-GONZALEZ, TOMAS V. UNITED STATES

09-7162 SANCHEZ, GABRIEL V. UNITED STATES

09-7163 AMREYA, MOTAZ W. V. UNITED STATES

09-7164 ARMSTRONG, EVERETT D. V. UNITED STATES

09-7166 JUAREZ-GALVAN, AUDON V. UNITED STATES

09-7169 WILLIAMS, RICHARD V. UNITED STATES

09-7171 BROCK, DAVID C. V. UNITED STATES

09-7176 KING, WILLIE F. V. UNITED STATES

09-7177 LOWE, EVERETT V. MATHY, WARDEN

09-7178 WARRICK, ANTHONY L. V. UNITED STATES

09-7179 SMITH, STEVEN J. V. UNITED STATES

09-7180 SUAREZ, DANILO I. V. UNITED STATES

09-7181 COX, DONYELL D. V. UNITED STATES

09-7182 DOTSON, GLEN T. V. UNITED STATES

09-7183 COOPER, DERRICK V. UNITED STATES

09-7184 CONTRERA-AGUILAR, JAVIER V. UNITED STATES

09-7185 GILDEN, ANTWAUN V. UNITED STATES

09-7187 BOYD, DEWAYNE V. UNITED STATES

09-7189 BRIONES, RILEY V. UNITED STATES

09-7190 BILLUE, MARTIN J. V. UNITED STATES

09-7192 GRANT, TYRONE T. V. UNITED STATES

09-7193 FROST, MATT V. UNITED STATES

09-7195 GALLOWAY, MICHAEL D. V. UNITED STATES

09-7198 HERRERA, EMANUEL V. UNITED STATES

09-7200 AVERY, ARTHUR L. V. UNITED STATES

09-7204 BARNETT, TRACY A. V. UNITED STATES

09-7207 WATSON, YAHYA A. V. UNITED STATES

09-7208 JOHNSON, JESSE. V. UNITED STATES

09-7213 BUSH, KENNETH V. UNITED STATES

09-7214 PITA, MIGUEL V. UNITED STATES

09-7215 McAFFEE, CURTIS V. UNITED STATES

09-7216 POWELL, DEWEY B. V. UNITED STATES

09-7217 BROWN, LEWIS V. UNITED STATES

09-7221 ALLAN-SELVIN, ALBERTO V. UNITED STATES

09-7222 SPAULDING, KARLTON V. UNITED STATES

09-7226 PETTIFORD, MARIO F. V. UNITED STATES

09-7227 WADE, JOHNATHAN W. V. UNITED STATES

09-7230 WRIGHT, MICHAUD V. UNITED STATES

09-7231 WEATHERSPOON, KEVIN V. UNITED STATES

09-7234 SANCHEZ, ROSALIO V. UNITED STATES

09-7235 LUNA, DANIEL L. V. UNITED STATES

09-7237 MARTINEZ, OSCAR V. UNITED STATES

09-7238 LIBMAN, ALAN D. V. UNITED STATES

09-7240 MACKEY, BAKARI D. V. UNITED STATES

09-7248 WASHINGTON, GEORGE V. UNITED STATES

09-7249 TIMLEY, DONNELL F. V. UNITED STATES

09-7251 MADRIGAL-DIAZ, JOSE J. V. UNITED STATES

09-7253 PIRTLE, JERRY V. UNITED STATES

09-7254 ANDERSON, KURT D. V. UNITED STATES

09-7256 WILSON, DAVID V. UNITED STATES

09-7261 STRICKLIN, DERRICK U. V. UNITED STATES

09-7269 MURPHY, DESHAUN R. V. UNITED STATES

09-7271 PARRA-GONZALEZ, LIBARDO V. UNITED STATES

09-7273 LEE, JAMES R. V. UNITED STATES

09-7274 KATTARIA, MOHAMMED A. V. UNITED STATES

09-7285 LNU, ARTURO V. UNITED STATES

09-7288 SMITH, THOMAS J. V. UNITED STATES

09-7289 MITCHELL, TRAYVONNE V. UNITED STATES

09-7295 EREME, EMMANUEL T. V. UNITED STATES

09-7296 DONOVAN, DENISE V. VIRGIN ISLANDS

09-7298 PERAZA-CARRILLO, JUAN C. V. UNITED STATES

09-7299 COFFMAN, MICHAEL R. V. UNITED STATES

09-7300 CHILDRESS, JAMES M. V. UNITED STATES

09-7301 DANIELS, JEROME V. UNITED STATES

09-7303 BELTRAN-GARCIA, EDGAR V. UNITED STATES

09-7304 LOPEZ, EDWARD V. UNITED STATES

09-7310 JACKSON, JONATHAN V. UNITED STATES

09-7312 GONZALEZ, RICHARD V. UNITED STATES

09-7314 HOLMES, ERIC V. UNITED STATES

09-7315 HARRIS, DERRICK V. UNITED STATES

09-7316 GUERRERO, MANUEL D. V. UNITED STATES

09-7317 GLADNEY, TRAUSE V. UNITED STATES

09-7318 FELAN, GARY C. V. UNITED STATES

09-7321 HALL, STEVEN A. V. UNITED STATES

09-7323 HAYMAN, THOMAS S. V. UNITED STATES

09-7324 HOLYCROSS, ROBERT D. V. UNITED STATES

09-7327 PEGUERO, TONY A. V. UNITED STATES

09-7331 ORTIZ-RUIZ, LUIS F. V. UNITED STATES

09-7332 PEREIRA, LUIS M. V. UNITED STATES

09-7334 MARTINEZ, LEONEL A. V. UNITED STATES

09-7335 LEWIS, WILLIAM A. V. UNITED STATES

09-7336 JACKSON, ERIC L. V. UNITED STATES

09-7337 JOHNSON, DONNIE V. UNITED STATES

09-7340 BOUDREAU, ALVIN P. V. UNITED STATES

09-7341 BANKS, ROBERT V. UNITED STATES

09-7342 ANGULO-HERNANDEZ, ALBERTO V. UNITED STATES

09-7343 BENTON, NORRIS V. UNITED STATES

09-7344 BERKEFELT, RANDALL E. V. UNITED STATES

09-7345 BOOKER, EDWARD V. UNITED STATES

09-7346 BRYANT, MICHAEL A. V. UNITED STATES

09-7348 BEVERLY, KENNETH D. V. UNITED STATES

09-7349 BUTLER, JOHNNY R. V. UNITED STATES

The petitions for writs of certiorari are denied.

09-348 TRADIN ORGANICS USA, INC. V. MARYLAND CASUALTY COMPANY

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

09-376 PITKINS, SUPT., LAUREL HIGHLANDS V. HUMMEL, EDWARD V.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

09-383 PARK MINI STORAGE CENTER CO. V. SAM'S EAST, INC.

The petition for a writ of certiorari is denied. Justice Breyer took no part in the consideration or decision of this petition.

09-5217 SCOTT, DAVID M. V. UNITED STATES

09-5553 BRISCO, FRANK V. ERCOLE, SUPT., GREEN HAVEN

The petitions for writs of certiorari are denied. Justice Sotomayor took no part in the consideration or decision of these

petitions.

09-6600 SIKORA, MATTHEW J. V. CLANDESTINE ATTACKERS, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (*per curiam*). Justice Stevens dissents. See *id.,* at 4, and cases cited therein.

09-6609 DIXON, ECHO W. V. GRANT, LEROY, ET AL.

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

09-6645 WILLIAMS, PERCY A. V. JONES, SUPT., HYDE

The petition for a writ of certiorari before judgment is denied.

09-6686 BAUMER, WILLIAM V. CATE, SEC., CA DOC

09-6697 SMITH, BENNY R. V. McKUNE, DAVID R.

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

09-6721 WAKEFIELD, FRANZ A. V. WALT DISNEY CO., ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. Justice Alito took no part in the

consideration or decision of this motion and this petition.

09-6738 JONES, LARRY V. V. SCRIBNER, WARDEN, ET AL.

The petition for a writ of certiorari before judgment is denied.

09-6741 HURST, JERRY A. V. STATE FARM AUTO. INS., ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (*per curiam*). Justice Stevens dissents. See *id.*, at 4, and cases cited therein.

09-6750 DAVIS, MAYRDAWNA A. V. BAY AREA RAPID TRANSIT DISTRICT

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

09-7146 REYES, MAXIMO V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

09-6442 IN RE JAMES E. LEAF

09-7258 IN RE ANDREW E. NEWMAN

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

09-351 IN RE JEFFREY S. PESARIK

09-7229 IN RE BARRY J. WALSHE

The petitions for writs of mandamus are denied.

09-7050 IN RE OSCAR DANTZLER

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

08-1172 NACCHIO, JOSEPH P. V. UNITED STATES

08-1348 RAILSBACK, DONALD E. V. WASHINGTON

08-1421 VAN AUKEN, RICHARD A. V. CATRON, CATRON & POTTOW, ET AL.

08-1485 BROWN, CAROLYN, ET AL. V. ONE BEACON INSURANCE CO., INC.

08-1491 WAGENKNECHT, CARL R. V. LEVIN, OH TAX COMM'R

08-1533 MEHEN, DANA L. V. DELTA AIR LINES, INC., ET AL.

08-1576 LINAM, ROSALINA V. LINAM, DANIEL

08-9887 SAMPATH, KRISHNASWAMY V. CONCURRENT TECHNOLOGIES

08-10257 HAWKINS, JOSEPH V. HAMLET, LTD., ET AL.

08-10358 SWIFT, ANTHONY D. V. STANFORD, BARRY

08-10361 MONACELLI, KATHALINA V. UPS STORE, ET AL.

08-10431 DAVIS, RONNIE J. V. THALER, DIR., TX DCJ

08-10444 WARE, JARVIS A. V. LANEY, LT., ET AL.

08-10451 O'KELLEY, DORIAN F. V. HALL, WARDEN

08-10497 DORSEY, JAMES E. V. COLEMAN, SUPT., FAYETTE

08-10575 DINKINS, WYLENE V. SEBELIUS, SEC. OF H&HS

08-10617 AYRES, SAMUEL E. V. VIRGINIA

08-10636 WILSON, GREGORY V. SIMPSON, WARDEN

08-10824 JONES, LEONARD T. V. UNITED STATES

08-10829 MURRAY, REBECCA V. LOCKE, J. LA RON, ET AL.

08-10956 BLACKSHEAR, JEROME V. DOWLING, T., ET AL.

08-10978 WHITE, VINCENT V. DONLEY, SEC. OF AIR FORCE

08-11007 IN RE STANLEY E. BROWN

08-11036 DIAZ, ANGEL G. V. FLORIDA

08-11066 SHIRAISHI, THOM V. UNITED STATES

08-11084 WILLIAMS, IDA V. WILLIAM BEAUMONT HOSPITAL

09-7 STEVENS, JAMES V. VONS COMPANIES, INC.

09-19 HILL, REGINALD V. UNITED STATES, ET AL.

09-44 CANO, RAMON V. INDUSTRIAL COMMISSION OF ARIZONA

09-46 UNITED STATES, EX REL. VUYYURU V. JADHAV, GOPINATH, ET AL.

09-72 BROCAIL, DOUGLAS K. V. DETROIT TIGERS, INC.

09-99 PATTERSON, STACY A. V. AFSCME #2456

09-116 SECAREA, VALER V. V. REGENTS OF THE UNIV. OF CA

09-130 OWENS, GAILE K. V. STEELE, WARDEN

09-133 MORTERS, RONALD W. V. BARR, CHARLES H., ET AL.

09-5046 HAYWOOD, CORA M. V. TRIBECA LENDING CORP., ET AL.

09-5047 HOGUES, SCOTT D. V. THALER, DIR., TX DCJ

09-5058 PATTERSON, ERWIN B. V. CHESAPEAKE, VA, ET AL.

09-5072 ZAHN, LAURA D. V. SAN DIEGO, CA

09-5082 WEEKS, RICHARD O. V. WHITE'S MILL COLONY, INC.

09-5087 GREENE, TINA L. V. FLDDSO, ET AL.

09-5145 BROWN, GERALD A. V. UNITED STATES

09-5198 GORMAN, MICHAEL V. NTSB, ET AL.

09-5235 HARRIS, ROGER S. V. FLORIDA

09-5238 HUNT, ANTHONY G. V. WOLFENBARGER, WARDEN

09-5282 BEST, WILLIAM V. GEICO CASUALTY COMPANY

09-5287 MULLINS, BEN J. V. UNITED STATES

09-5312 MONACELLI, KATHALINA V. HEARTLAND ED. CONSORTIUM, ET AL.

09-5328 HOLLAND, WELLS V. HOLLAND, RENEE

09-5359 TOMPKINS, STUART W. V. MITCHELL, ADM'R, MOUNTAIN VIEW

09-5406 POWELL, CARMEN V. SAN DIEGO COUNTY H&HS

09-5438 GRIFFIN, APRIL V. SEBULIBA, MATTHEW

09-5518 CREUSERE, FREDERICK M. V. WEAVER, ROSA L., ET AL.

09-5552 TATUM, WAYNE V. UNITED STATES

09-5582 PHILLIPS, MURLIN R. V. MISSOURI

09-5643 HANKS, JEFFREY D. V. WRIGHT, WARDEN, ET AL.

09-5707 WHITE, MARY E. V. SUPREME COURT OF NJ, ET AL.

09-5735 LOPEZ, JESUS M. V. WALLACE, MICHAEL, ET AL.

09-5770 ANTONSSON, ANNA K. V. KAST, JOHN

09-5921 HAQUE, SERAJUL V. IMMIGRATION AND CUSTOMS

09-5979 RAMIREZ-PONCE, JORGE V. McNEIL, SEC., FL DOC, ET AL.

The petitions for rehearing are denied.

08-1354 DeSALVO, ANN M. V. VOLHARD, JOACHIM J., ET AL.

The petition for rehearing is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

08-1511 GILLEY, WENDELL F. V. MONSANTO CO., INC., ET AL.

The motion of petitioner to defer consideration of the petition for rehearing is denied. The petition for rehearing is denied.

08-8135 SIMS, CARLAYNE V. NEW YORK, NY, ET AL.

The motion for leave to file a petition for rehearing is denied. Justice Sotomayor took no part in the consideration or decision of this motion.

09-5692 NJOKU, REMI C. V. HOLDER, ATT'Y GEN., ET AL.

The motion for leave to file a petition for rehearing is denied.

ATTORNEY DISCIPLINE

D-2457 IN THE MATTER OF DISCIPLINE OF ANTHONY J. SICILIANO

Anthony J. Siciliano, of West Springfield, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2458 IN THE MATTER OF DISCIPLINE OF LEO P. DeMARCO, II

Leo P. DeMarco, II, of Malden, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2459 IN THE MATTER OF DISCIPLINE OF J. LINCOLN PASSMORE

J. Lincoln Passmore, of Dover, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2460 IN THE MATTER OF DISCIPLINE OF JEFFREY NEIL BERMAN

Jeffrey Neil Berman, of Newton Center, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2461 IN THE MATTER OF DISCIPLINE OF THOMAS E. FINNERTY

Thomas E. Finnerty, of South Boston, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this

Court.

D-2462 IN THE MATTER OF DISCIPLINE OF STAFFORD SHEEHAN

Stafford Sheehan, of Fall River, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2463 IN THE MATTER OF DISCIPLINE OF BRUCE N. SACHAR

Bruce N. Sachar, of Lynn, Massachusetts, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

Per Curiam

SUPREME COURT OF THE UNITED STATES

GEORGE PORTER, JR. *v.* BILL MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL.

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

No. 08–10537. Decided November 30, 2009

PER CURIAM.

Petitioner George Porter is a veteran who was both wounded and decorated for his active participation in two major engagements during the Korean War; his combat service unfortunately left him a traumatized, changed man. His commanding officer's moving description of those two battles was only a fraction of the mitigating evidence that his counsel failed to discover or present during the penalty phase of his trial in 1988.

In this federal postconviction proceeding, the District Court held that Porter's lawyer's failure to adduce that evidence violated his Sixth Amendment right to counsel and granted his application for a writ of habeas corpus. The Court of Appeals for the Eleventh Circuit reversed, on the ground that the Florida Supreme Court's determination that Porter was not prejudiced by any deficient performance by his counsel was a reasonable application of *Strickland* v. *Washington*, 466 U. S. 668 (1984). Like the District Court, we are persuaded that it was objectively unreasonable to conclude there was no reasonable probability the sentence would have been different if the sentencing judge and jury had heard the significant mitigation evidence that Porter's counsel neither uncovered nor presented. We therefore grant the petition for certiorari in part and reverse the judgment of the Court of Appeals.[1]

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[1] We deny the petition insofar as it challenges his conviction.

Per Curiam

I

Porter was convicted of two counts of first-degree murder for the shooting of his former girlfriend, Evelyn Williams, and her boyfriend Walter Burrows. He was sentenced to death on the first count but not the second.

In July 1986, as his relationship with Williams was ending, Porter threatened to kill her and then left town. When he returned to Florida three months later, he attempted to see Williams but her mother told him that Williams did not want to see him. He drove past Williams' house each of the two days prior to the shooting, and the night before the murder he visited Williams, who called the police. Porter then went to two cocktail lounges and spent the night with a friend, who testified Porter was quite drunk by 11 p.m. Early the next morning, Porter shot Williams in her house. Burrows struggled with Porter and forced him outside where Porter shot him.

Porter represented himself, with standby counsel, for most of the pretrial proceedings and during the beginning of his trial. Near the completion of the State's case in chief, Porter pleaded guilty. He thereafter changed his mind about representing himself, and his standby counsel was appointed as his counsel for the penalty phase. During the penalty phase, the State attempted to prove four aggravating factors: Porter had been "previously convicted" of another violent felony (*i.e.*, in Williams' case, killing Burrows, and in his case, killing Williams);[2] the murder was committed during a burglary; the murder was committed in a cold, calculated, and premeditated man-

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[2] It is an aggravating factor under Florida law that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person." Fla. Stat. §921.141(5)(b) (1987). In Porter's case, the State established that factor by reference to Porter's contemporaneous convictions stemming from the same episode: two counts of murder and one count of aggravated assault. Tr. 5 (Mar. 4, 1988).

ner; and the murder was especially heinous, atrocious, or cruel. The defense put on only one witness, Porter's ex-wife, and read an excerpt from a deposition. The sum total of the mitigating evidence was inconsistent testimony about Porter's behavior when intoxicated and testimony that Porter had a good relationship with his son. Although his lawyer told the jury that Porter "has other handicaps that weren't apparent during the trial" and Porter was not "mentally healthy," he did not put on any evidence related to Porter's mental health. 3 Tr. 477–478 (Jan. 22, 1988).

The jury recommended the death sentence for both murders. The trial court found that the State had proved all four aggravating circumstances for the murder of Williams but that only the first two were established with respect to Burrows' murder. The trial court found no mitigating circumstances and imposed a death sentence for Williams' murder only. On direct appeal, the Florida Supreme Court affirmed the sentence over the dissent of two justices, but struck the heinous, atrocious, or cruel aggravating factor. *Porter* v. *State*, 564 So. 2d 1060 (1990) *(per curiam)*. The court found the State had not carried its burden on that factor because the "record is consistent with the hypothesis that Porter's was a crime of passion, not a crime that was meant to be deliberately and extraordinarily painful." *Id.*, at 1063 (emphasis deleted). The two dissenting justices would have reversed the penalty because the evidence of drunkenness, "combined with evidence of Porter's emotionally charged, desperate, frustrated desire to meet with his former lover, is sufficient to render the death penalty disproportional punishment in this instance." *Id.*, at 1065–1066 (Barkett, J., concurring in part and dissenting in part).

In 1995, Porter filed a petition for postconviction relief in state court, claiming his penalty-phase counsel failed to investigate and present mitigating evidence. The court

conducted a 2-day evidentiary hearing, during which Porter presented extensive mitigating evidence, all of which was apparently unknown to his penalty-phase counsel. Unlike the evidence presented during Porter's penalty hearing, which left the jury knowing hardly anything about him other than the facts of his crimes, the new evidence described his abusive childhood, his heroic military service and the trauma he suffered because of it, his long-term substance abuse, and his impaired mental health and mental capacity.

The depositions of his brother and sister described the abuse Porter suffered as a child. Porter routinely witnessed his father beat his mother, one time so severely that she had to go to the hospital and lost a child. Porter's father was violent every weekend, and by his siblings' account, Porter was his father's favorite target, particularly when Porter tried to protect his mother. On one occasion, Porter's father shot at him for coming home late, but missed and just beat Porter instead. According to his brother, Porter attended classes for slow learners and left school when he was 12 or 13.

To escape his horrible family life, Porter enlisted in the Army at age 17 and fought in the Korean War. His company commander, Lieutenant Colonel Sherman Pratt, testified at Porter's postconviction hearing. Porter was with the 2d Division, which had advanced above the 38th parallel to Kunu-ri when it was attacked by Chinese forces. Porter suffered a gunshot wound to the leg during the advance but was with the unit for the battle at Kunuri. While the Eighth Army was withdrawing, the 2d Division was ordered to hold off the Chinese advance, enabling the bulk of the Eighth Army to live to fight another day. As Colonel Pratt described it, the unit "went into position there in bitter cold night, terribly worn out, terribly weary, almost like zombies because we had been in constant—for five days we had been in constant contact with

the enemy fighting our way to the rear, little or no sleep, little or no food, literally as I say zombies." 1 Tr. 138 (Jan. 4, 1996). The next morning, the unit engaged in a "fierce hand-to-hand fight with the Chinese" and later that day received permission to withdraw, making Porter's regiment the last unit of the Eighth Army to withdraw. *Id.*, at 139–140.

Less than three months later, Porter fought in a second battle, at Chip'yong-ni. His regiment was cut off from the rest of the Eighth Army and defended itself for two days and two nights under constant fire. After the enemy broke through the perimeter and overtook defensive positions on high ground, Porter's company was charged with retaking those positions. In the charge up the hill, the soldiers "were under direct open fire of the enemy forces on top of the hill. They immediately came under mortar, artillery, machine gun, and every other kind of fire you can imagine and they were just dropping like flies as they went along." *Id.*, at 150. Porter's company lost all three of its platoon sergeants, and almost all of the officers were wounded. Porter was again wounded and his company sustained the heaviest losses of any troops in the battle, with more than 50% casualties. Colonel Pratt testified that these battles were "very trying, horrifying experiences," particularly for Porter's company at Chip'yong-ni. *Id.*, at 152. Porter's unit was awarded the Presidential Unit Citation for the engagement at Chip'yong-ni, and Porter individually received two Purple Hearts and the Combat Infantryman Badge, along with other decorations.

Colonel Pratt testified that Porter went absent without leave (AWOL) for two periods while in Korea. He explained that this was not uncommon, as soldiers sometimes became disoriented and separated from the unit, and that the commander had decided not to impose any punishment for the absences. In Colonel Pratt's experience, an "awful lot of [veterans] come back nervous

wrecks. Our [veterans'] hospitals today are filled with people mentally trying to survive the perils and hardships [of] . . . the Korean War," particularly those who fought in the battles he described. *Id.*, at 153.

When Porter returned to the United States, he went AWOL for an extended period of time.[3] He was sentenced to six months' imprisonment for that infraction, but he received an honorable discharge. After his discharge, he suffered dreadful nightmares and would attempt to climb his bedroom walls with knives at night.[4] Porter's family eventually removed all of the knives from the house. According to Porter's brother, Porter developed a serious drinking problem and began drinking so heavily that he would get into fights and not remember them at all.

In addition to this testimony regarding his life history, Porter presented an expert in neuropsychology, Dr. Dee, who had examined Porter and administered a number of psychological assessments. Dr. Dee concluded that Porter suffered from brain damage that could manifest in impulsive, violent behavior. At the time of the crime, Dr. Dee testified, Porter was substantially impaired in his ability to conform his conduct to the law and suffered from an extreme mental or emotional disturbance, two statutory mitigating circumstances, Fla. Stat. §921.141(6). Dr. Dee also testified that Porter had substantial difficulties with

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[3] Porter explained to one of the doctors who examined him for competency to stand trial that he went AWOL in order to spend time with his son. Record 904.

[4] Porter's expert testified that these symptoms would "easily" warrant a diagnosis of posttraumatic stress disorder (PTSD). 2 Tr. 233 (Jan. 5, 1996). PTSD is not uncommon among veterans returning from combat. See Hearing on Fiscal Year 2010 Budget for Veterans' Programs before the Senate Committee on Veterans' Affairs, 111th Cong., 1st Sess., 63 (2009) (uncorrected copy) (testimony of Eric K. Shinseki, Secretary of Veterans Affairs (VA), reporting that approximately 23 percent of the Iraq and Afghanistan war veterans seeking treatment at a VA medical facility had been preliminarily diagnosed with PTSD).

reading, writing, and memory, and that these cognitive defects were present when he was evaluated for competency to stand trial. 2 Tr. 227–228 (Jan. 5, 1996); see also Record 904–906. Although the State's experts reached different conclusions regarding the statutory mitigators,[5] each expert testified that he could not diagnose Porter or rule out a brain abnormality. 2 Tr. 345, 382 (Jan. 5, 1996); 3 *id.*, at 405.

The trial judge who conducted the state postconviction hearing, without determining counsel's deficiency, held that Porter had not been prejudiced by the failure to introduce any of that evidence. Record 1203, 1206. He found that Porter had failed to establish any statutory mitigating circumstances, *id.*, at 1207, and that the nonstatutory mitigating evidence would not have made a difference in the outcome of the case, *id.*, at 1210. He discounted the evidence of Porter's alcohol abuse because it was inconsistent and discounted the evidence of Porter's abusive childhood because he was 54 years old at the time of the trial. He also concluded that Porter's periods of being AWOL would have reduced the impact of Porter's military service to "inconsequential proportions." *Id.*, at 1212. Finally, he held that even considering all three categories of evidence together, the "trial judge and jury still would have imposed death." *Id.*, at 1214.

The Florida Supreme Court affirmed. It first accepted the trial court's finding that Porter could not have established any statutory mitigating circumstances, based on the trial court's acceptance of the State's experts' conclusions in that regard. *Porter* v. *State*, 788 So. 2d 917, 923 (2001) *(per curiam).* It then held the trial court was cor-

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[5]The State presented two experts, Dr. Riebsame and Dr. Kirkland. Neither of the State's experts had examined Porter, but each testified that based upon their review of the record, Porter met neither statutory mitigating circumstance.

rect to find "the additional nonstatutory mitigation to be lacking in weight because of the specific facts presented." *Id.*, at 925. Like the postconviction court, the Florida Supreme Court reserved judgment regarding counsel's deficiency. *Ibid.*[6] Two justices dissented, reasoning that counsel's failure to investigate and present mitigating evidence was "especially harmful" because of the divided vote affirming the sentence on direct appeal—"even without the substantial mitigation that we now know existed"—and because of the reversal of the heinous, atrocious, and cruel aggravating factor. *Id.*, at 937 (Anstead, J., concurring in part and dissenting in part).

Porter thereafter filed his federal habeas petition. The District Court held Porter's penalty-phase counsel had been ineffective. It first determined that counsel's performance had been deficient because "penalty-phase counsel did little, if any investigation . . . and failed to effectively advocate on behalf of his client before the jury." *Porter* v. *Crosby*, No. 6:03–cv–1465–Orl–31KRS, 2007 WL 1747316, *23 (MD Fla., June 18, 2007). It then determined that counsel's deficient performance was prejudicial, finding that the state court's decision was contrary to clearly established law in part because the state court failed to consider the entirety of the evidence when re-

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[6]The postconviction court stated defense counsel "was not ineffective for failing to pursue mental health evaluations and . . . [Porter] has thus failed to show sufficient evidence that any statutory mitigators could have been presented." Record 1210. It is not at all clear whether this stray comment addressed counsel's deficiency. If it did, then it was at most dicta, because the court expressly "decline[d] to make a determination regarding whether or not Defense Counsel was in fact deficient here." *Id.*, at 1206. The Florida Supreme Court simply paraphrased the postconviction court when it stated "trial counsel's decision not to pursue mental evaluations did not exceed the bounds for competent counsel." *Porter* v. *State*, 788 So. 2d 917, 923–924 (2001) *(per curiam)*. But that court also expressly declined to answer the question of deficiency. *Id.*, at 925.

weighing the evidence in mitigation, including the trial evidence suggesting that "this was a crime of passion, that [Porter] was drinking heavily just hours before the murders, or that [Porter] had a good relationship with his son." *Id.*, at *30.

The Eleventh Circuit reversed. It held the District Court had failed to appropriately defer to the state court's factual findings with respect to Porter's alcohol abuse and his mental health. 552 F. 3d 1260, 1274, 1275 (2008) *(per curiam)*. The Court of Appeals then separately considered each category of mitigating evidence and held it was not unreasonable for the state court to discount each category as it did. *Id.*, at 1274. Porter petitioned for a writ of certiorari. We grant the petition and reverse with respect to the Court of Appeals' disposition of Porter's ineffective-assistance claim.

II

To prevail under *Strickland*, Porter must show that his counsel's deficient performance prejudiced him. To establish deficiency, Porter must show his "counsel's representation fell below an objective standard of reasonableness." 466 U. S., at 688. To establish prejudice, he "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at 694. Finally, Porter is entitled to relief only if the state court's rejection of his claim of ineffective assistance of counsel was "contrary to, or involved an unreasonable application of" *Strickland*, or it rested "on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. §2254(d).

Because the state court did not decide whether Porter's counsel was deficient, we review this element of Porter's *Strickland* claim *de novo*. *Rompilla* v. *Beard*, 545 U. S. 374, 390 (2005). It is unquestioned that under the prevail-

ing professional norms at the time of Porter's trial, counsel had an "obligation to conduct a thorough investigation of the defendant's background." *Williams* v. *Taylor*, 529 U. S. 362, 396 (2000). The investigation conducted by Porter's counsel clearly did not satisfy those norms.

Although Porter had initially elected to represent himself, his standby counsel became his counsel for the penalty phase a little over a month prior to the sentencing proceeding before the jury. It was the first time this lawyer had represented a defendant during a penalty-phase proceeding. At the postconviction hearing, he testified that he had only one short meeting with Porter regarding the penalty phase. He did not obtain any of Porter's school, medical, or military service records or interview any members of Porter's family. In *Wiggins* v. *Smith*, 539 U. S. 510, 524, 525 (2003), we held counsel "fell short of . . . professional standards" for not expanding their investigation beyond the presentence investigation report and one set of records they obtained, particularly "in light of what counsel actually discovered" in the records. Here, counsel did not even take the first step of interviewing witnesses or requesting records. Cf. *Bobby* v. *Van Hook*, *ante*, at 6–8 (holding performance not deficient when counsel gathered a substantial amount of information and then made a reasonable decision not to pursue additional sources); *Strickland*, 466 U. S., at 699 ("[Counsel's] decision not to seek more character or psychological evidence than was already in hand was . . . reasonable"). Beyond that, like the counsel in *Wiggins*, he ignored pertinent avenues for investigation of which he should have been aware. The court-ordered competency evaluations, for example, collectively reported Porter's very few years of regular school, his military service and wounds sustained in combat, and his father's "over-disciplin[e]." Record 902–906. As an explanation, counsel described Porter as fatalistic and uncooperative. But he acknowledged that

although Porter instructed him not to speak with Porter's ex-wife or son, Porter did not give him any other instructions limiting the witnesses he could interview.

Counsel thus failed to uncover and present any evidence of Porter's mental health or mental impairment, his family background, or his military service. The decision not to investigate did not reflect reasonable professional judgment. *Wiggins*, *supra*, at 534. Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation. See *Rompilla*, *supra*, at 381–382.

III

Because we find Porter's counsel deficient, we must determine whether the Florida Supreme Court unreasonably applied *Strickland* in holding Porter was not prejudiced by that deficiency. Under *Strickland*, a defendant is prejudiced by his counsel's deficient performance if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. In Florida, the sentencing judge makes the determination as to the existence and weight of aggravating and mitigating circumstances and the punishment, Fla. Stat. §921.141(3), but he must give the jury verdict of life or death "great weight," *Tedder* v. *State*, 322 So. 2d 908, 910 (Fla. 1975) *(per curiam)*. Porter must show that but for his counsel's deficiency, there is a reasonable probability he would have received a different sentence. To assess that probability, we consider "the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding"—and "reweig[h] it against the evidence in aggravation." *Williams*, *supra*, at 397–398.

This is not a case in which the new evidence "would barely have altered the sentencing profile presented to the

sentencing judge." *Strickland*, *supra*, at 700. The judge and jury at Porter's original sentencing heard almost nothing that would humanize Porter or allow them to accurately gauge his moral culpability. They learned about Porter's turbulent relationship with Williams, his crimes, and almost nothing else. Had Porter's counsel been effective, the judge and jury would have learned of the "kind of troubled history we have declared relevant to assessing a defendant's moral culpability." *Wiggins*, *supra*, at 535. They would have heard about (1) Porter's heroic military service in two of the most critical—and horrific—battles of the Korean War, (2) his struggles to regain normality upon his return from war, (3) his childhood history of physical abuse, and (4) his brain abnormality, difficulty reading and writing, and limited schooling. See *Penry* v. *Lynaugh*, 492 U. S. 302, 219 (1989) ("'[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable'"). Instead, they heard absolutely none of that evidence, evidence which "might well have influenced the jury's appraisal of [Porter's] moral culpability." *Williams*, 529 U. S., at 398.

On the other side of the ledger, the weight of evidence in aggravation is not as substantial as the sentencing judge thought. As noted, the sentencing judge accepted the jury's recommendation of a death sentence for the murder of Williams but rejected the jury's death-sentence recommendation for the murder of Burrows. The sentencing judge believed that there were four aggravating circumstances related to the Williams murder but only two for the Burrows murder. Accordingly, the judge must have reasoned that the two aggravating circumstances that were present in both cases were insufficient to warrant a death sentence but that the two additional aggravating

circumstances present with respect to the Williams murder were sufficient to tip the balance in favor of a death sentence. But the Florida Supreme Court rejected one of these additional aggravating circumstances, *i.e.*, that Williams' murder was especially heinous, atrocious, or cruel, finding the murder "consistent with . . . a crime of passion" even though premeditated to a heightened degree. 564 So. 2d, at 1063–1064. Had the judge and jury been able to place Porter's life history "on the mitigating side of the scale," and appropriately reduced the ballast on the aggravating side of the scale, there is clearly a reasonable probability that the advisory jury—and the sentencing judge—"would have struck a different balance," *Wiggins*, 539 U. S., at 537, and it is unreasonable to conclude otherwise.

The Florida Supreme Court's decision that Porter was not prejudiced by his counsel's failure to conduct a thorough—or even cursory—investigation is unreasonable. The Florida Supreme Court either did not consider or unreasonably discounted the mitigation evidence adduced in the postconviction hearing. Under Florida law, mental health evidence that does not rise to the level of establishing a statutory mitigating circumstance may nonetheless be considered by the sentencing judge and jury as mitigating. See, *e.g.*, *Hoskins* v. *State*, 965 So. 2d 1, 17–18 (Fla. 2007) *(per curiam)*. Indeed, the Constitution requires that "the sentencer in capital cases must be permitted to consider any relevant mitigating factor." *Eddings* v. *Oklahoma*, 455 U. S. 104, 112 (1982). Yet neither the postconviction trial court nor the Florida Supreme Court gave any consideration for the purpose of nonstatutory mitigation to Dr. Dee's testimony regarding the existence of a brain abnormality and cognitive defects.[7] While the State's

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[7]The Florida Supreme Court acknowledged that Porter had presented evidence of "statutory and nonstatutory mental mitigation," 788

experts identified perceived problems with the tests that Dr. Dee used and the conclusions that he drew from them, it was not reasonable to discount entirely the effect that his testimony might have had on the jury or the sentencing judge.

Furthermore, the Florida Supreme Court, following the state postconviction court, unreasonably discounted the evidence of Porter's childhood abuse and military service. It is unreasonable to discount to irrelevance the evidence of Porter's abusive childhood, especially when that kind of history may have particular salience for a jury evaluating Porter's behavior in his relationship with Williams. It is also unreasonable to conclude that Porter's military service would be reduced to "inconsequential proportions," 788 So. 2d, at 925, simply because the jury would also have learned that Porter went AWOL on more than one occasion. Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did.[8] Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter.[9]

So. 2d, at 921, but it did not consider Porter's mental health evidence in its discussion of nonstatutory mitigating evidence, *id.*, at 924.

[8] See Abbott, The Civil War and the Crime Wave of 1865–70, 1 Soc. Serv. Rev. 212, 232–234 (1927) (discussing the movement to pardon or parole prisoners who were veterans of the Civil War); Rosenbaum, The Relationship Between War and Crime in the United States, 30 J. Crim. L. & C. 722, 733–734 (1940) (describing a 1922 study by the Wisconsin Board of Control that discussed the number of veterans imprisoned in the State and considered "the greater leniency that may be shown to ex-service men in court").

[9] Cf. Cal. Penal Code Ann. §1170.9(a) (West Supp. 2009) (providing a special hearing for a person convicted of a crime "who alleges that he or she committed the offense as a result of post-traumatic stress disorder,

The evidence that he was AWOL is consistent with this theory of mitigation and does not impeach or diminish the evidence of his service. To conclude otherwise reflects a failure to engage with what Porter actually went through in Korea.

As the two dissenting justices in the Florida Supreme Court reasoned, "there exists too much mitigating evidence that was not presented to now be ignored." *Id.*, at 937 (Anstead, J., concurring in part and dissenting in part). Although the burden is on petitioner to show he was prejudiced by his counsel's deficiency, the Florida Supreme Court's conclusion that Porter failed to meet this burden was an unreasonable application of our clearly established law. We do not require a defendant to show "that counsel's deficient conduct more likely than not altered the outcome" of his penalty proceeding, but rather that he establish "a probability sufficient to undermine confidence in [that] outcome." *Strickland*, 466 U. S., at 693–694. This Porter has done.

The petition for certiorari is granted in part, and the motion for leave to proceed *in forma pauperis* 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.

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substance abuse, or psychological problems stemming from service in a combat theater in the United States military"); Minn. Stat. §609.115, Subd. 10 (2008) (providing for a special process at sentencing if the defendant is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist).

SUPREME COURT OF THE UNITED STATES

WINSTON WEBSTER *v.* LYNN COOPER, WARDEN

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

No. 08–10314. Decided November 30, 2009

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Jimenez* v. *Quarterman,* 555 U. S. ___ (2009).

JUSTICE SCALIA, dissenting.

Petitioner was convicted and sentenced in Louisiana state court. His motion for reconsideration of the sentence was denied on April 15, 2003, and he did not appeal. After initiating postconviction relief, he filed in the trial court a "motion to vacate sentence and resentence defendant" on the ground that he had not had a lawyer present at the sentencing. That motion was granted, and on June 2, 2004, petitioner was resentenced, this time with a lawyer, to the same term of incarceration.

After the conclusion of state postconviction relief, petitioner filed a petition in federal court for habeas corpus under 28 U. S. C. §2254. The District Court thought that the 1-year statute of limitations provided by §2244(d)(1)(A) started to run on May 15, 2003, 30 days after the Louisiana trial court denied petitioner's motion for reconsideration of sentence. Accordingly, it concluded that the statute had expired before petitioner filed his federal habeas petition. The Fifth Circuit denied a certificate of appealability.

Our recent decision in *Jimenez* v. *Quarterman*, 555 U. S. ___ (2009), held that the statute of limitations of §2244(d)(1)(A) does not begin to run until the expiration of

the time allowed to seek direct appeal, even if the state court allows an out-of-time appeal during state collateral review. *Id.,* at ___–___ (slip op., at 8). The parties do not agree, and it is not clear, whether under Louisiana law petitioner's motion to vacate would be regarded as restarting the clock for his direct appeal. If so, then the *Jimenez* error is obvious; if not, there is no error. Today, without request by (or even warning to) the parties, the Court grants certiorari, vacates the Fifth Circuit's judgment without determination of the merits, and remands for further consideration in light of *Jimenez*.

I certainly agree that we have the power to GVR "where an intervening factor has arisen that has a legal bearing upon the decision." *Lawrence* v. *Chater*, 516 U. S. 163, 191–192 (1996) (SCALIA, J., dissenting). The purpose of such an "intervening-factor" GVR is to give the court to which we remand the first opportunity to consider the factor—in this case a new decision of ours. Though we have sometimes GVR'd in light of decisions that *preceded* the decision vacated, see, *e.g., Grier* v. *United States*, 419 U. S. 989 (1974), I have acquiesced in this expansion of "intervening-factor" GVRs only when (as in *Grier*) our decision came so soon before the judgment in question "that the lower court might have been unaware of it." *Lawrence*, *supra*, at 181 (SCALIA, J., dissenting). This is not such a case: We decided *Jimenez* on January 13, 2009, more than two months before the Fifth Circuit denied the certificate. There is thus no basis for regarding that decision as an "intervening" factor—that is, one that the Court of Appeals did not have before it.

This is not, of course, the first time the Court has GVR'd on the basis of a case decided long before the Court of Appeals ruled, see, *e.g., Robinson* v. *Story*, 469 U. S. 1081 (1984) (three months), nor the first time I have protested, see *Lawrence*, *supra*, at 184 (SCALIA, J., dissenting) (more than a year). This practice has created a new mode of

disposition, a sort of ersatz summary reversal. We do not say that the judgment below was wrong, but since we suspect that it *may* be wrong and do not want to waste *our* time figuring it out, we instruct the Court of Appeals to do the job again, with a particular issue prominently in mind.

It surely suggests something is amiss that this case would be over, and petitioner would be worse off, if he had *asked* us to reverse the judgment below on the basis of *Jimenez*. Since he did not argue that ground to the Court of Appeals, and since that court did not address it, we would almost certainly deny certiorari. See *Adarand Constructors, Inc.* v. *Mineta*, 534 U. S. 103, 108–109 (2001) *(per curiam)* (dismissing a writ as improvidently granted because the question at issue was not raised or considered below). Have we established a new system in which a party's repetition before this Court of his failure below (here, the failure to invoke *Jimenez*) cures—and causes us to reward—his earlier failure? Or perhaps we are developing a new system in which *all* arguably valid points not raised and not discussed below—*whether or not* belatedly raised here—will be sent back for a redo by the Court of Appeals. And if we can apply this failure-friendly practice to a neglected precedent two months old, there is no reason in principle not to apply it to a neglected precedent two years old.

In my view we have no power to set aside the duly recorded judgments of lower courts unless we find them to be in error, or unless they are cast in doubt by a factor arising after they were rendered. The GVR for consideration of a day's old Supreme Court case is already a technical violation of sound practice and should not be extended further. Since we review judgments rather than opinions, a lower court's failure to discuss a pre-existing factor it *should* have discussed is no basis for reversal. Once we disregard the logic (and the attendant limits) of "intervening-factor" GVRs, they metastasize into today's monster.

We should at least give it a new and honest name—not GVR, but perhaps SRMEOPR: Summary Remand for a More Extensive Opinion than Petitioner Requested. If the acronym is ugly, so is the monster.