

(ORDER LIST: 576 U. S.)

MONDAY, JUNE 22, 2015

CERTIORARI -- SUMMARY DISPOSITIONS

14-902 BANK OF AMERICA, N.A. V. GLASPIE, ANGELLE C.
14-903 BANK OF AMERICA, N.A. V. MADDEN, RANDALL L., ET UX.
14-904 BANK OF AMERICA, N.A. V. BROWN, BELINDA T.

The petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Bank of America, N. A. v. Caulkett*, 575 U. S. ____ (2015).

ORDERS IN PENDING CASES

14M129 McDOWELL, CHESTER L. V. CIR

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

14-990 SHAPIRO, STEPHEN M., ET AL. V. MACK, BOBBIE S., ET AL.

The motion of petitioners to dispense with printing the joint appendix is granted.

14-7802 IN RE PURVIS HOLLOWAY

14-7899 PERRY, MOSHE V. EDD, ET AL.

14-8081 DAKER, WASEEM V. ROBINSON, JOHN, ET AL.

14-8082 DAKER, WASEEM V. DAWES, JOHN M., ET AL.

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

14-9396 JUDY, CODY R. V. OBAMA, PRESIDENT OF U.S., ET AL.

14-9747 MACAK, ROBERT V. McDONALD, SEC. OF VA

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until July 13, 2015, 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

14-916 KINGDOMWARE TECHNOLOGIES, INC. V. UNITED STATES

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

14-448 GOOGLE, INC. V. VEDERI, LLC

14-602 UMANA, ALEJANDRO E. V. UNITED STATES

14-1006 JOHNSON, SARA V. UNITED STATES

14-1037 NYAMBAL, EUGENE V. INTERNATIONAL MONETARY FUND

14-1069 ZAYAC, ANDREW V. UNITED STATES

14-1085 FORD MOTOR CO. V. UNITED STATES

14-1103 BOLDEN, SAMIR, ET AL. V. EUCLID, OH, ET AL.

14-1118 RUGIERO, PATRICK V. NATIONSTAR MORTGAGE, ET AL.

14-1131 YE GON, ZHENLI V. AYLOR, WARDEN, ET AL.

14-1138 ARANSAS PROJECT V. SHAW, BRYAN, ET AL.

14-1189 SCHWALIER, TERRY J. V. CARTER, SEC. OF DEFENSE, ET AL.

14-1190 FCA US LLC V. FOX HILLS MOTOR SALES, ET AL.

14-1204 SIMPSON, GEORGE R. V. FEUERSTEIN, ALAN

14-1205 KORO AR, S.A. V. UNIVERSAL LEATHER, LLC

14-1231 LAM, ALFRED, ET AL. V. SAN FRANCISCO, CA, ET AL.

14-1240 ZURICH AM. INS. CO., ET AL. V. TENNESSEE

14-1241 LAWRENCE, CHRISTOPHER V. GWINNETT COUNTY, GA, ET AL.

14-1246 GORSKI, JEROLD M. V. UNITED STATES, ET AL.

14-1247 HARTIGAN, CRAIG J. V. UT TRANSIT AUTHORITY
14-1253 CLADAKIS, ANNA V. MILLER, SHERRIE A.
14-1257 MOORHEAD, THOMAS E., ET AL. V. FIRST TENNESSEE BANK NATIONAL
14-1258 LEYVA, EVELYN V. WELLS FARGO BANK
14-1263 CORBETT, JONATHAN V. TRANSPORTATION SECURITY ADMIN.
14-1267 POTTS, ROBERT V. AMERICAN BOTTLING CO., ET AL.
14-1274 TZE WUNG CONSULTANTS, LTD. V. BANK OF BARODA
14-1289 WEIDMAN, RICHARD C. V. EXXON MOBIL CORPORATION, ET AL.
14-1293 HAYASHI, BRADLEY H. V. IL DEPT. OF REGULATION
14-1304 APOTEX INC., ET AL. V. UCB, INC., ET AL.
14-1329 WILSON, LOLETIA V. CLEVELAND CLINIC FOUNDATION
14-1340 LUCREE, TERESA N. V. UNITED STATES
14-1345 ACEVEDO-PEREZ, SANTIAGO, ET AL. V. UNITED STATES, ET AL.
14-1347 GAON, FRANCIS V. NEVADA
14-1349 DE RUBIO, BERTA M. V. LYNCH, ATT'Y GEN.
14-1355 SALADO-ALVA, BERNARDO V. LYNCH, ATT'Y GEN.
14-1369 TARANGO, JUAN R. V. LYNCH, ATT'Y GEN.
14-1390 ALLEGHENY FORD TRUCK, ET AL. V. FORD MOTOR COMPANY
14-8305 CATHEY, ERIC D. V. TEXAS
14-8964 SELVAN-CUPIL, BERTINO V. UNITED STATES
14-8969 FRAZIER, JAMES V. JENKINS, WARDEN
14-9349 SERRANO, RICARDO V. OREGON
14-9355 SKLYARSKY, YAROSLAV S. V. MEANS-KNAUS PARTNERS, ET AL.
14-9357 HEFFERNAN, DELORES O. V. DEPARTMENT OF HUMAN SERVICES
14-9358 SPELLER, WALTER Z. V. VIRGINIA
14-9362 PEARSON, JARED V. HAAS, WARDEN
14-9367 DUNCAN, ROY V. SHELDON, WARDEN
14-9369 GARCIA, CECIL R. V. TEXAS

14-9374 STEEDLEY, EDWARD V. CLARKE, DIR., VA DOC
14-9375 YUAN, JOHN V. GREEN CENTURY, ET AL.
14-9376 TOMASELLI, GRACEMARIE, ET AL. V. BEAULIEU, DONALD, ET AL.
14-9381 HAMPTON, LON V. TRIBLEY, WARDEN
14-9382 GREENE, FREDERICK T. V. CLARKE, DIR., VA DOC
14-9383 FREEMAN, CORKEY L. V. TEXAS
14-9388 SIMS, CHARLES V. ILLINOIS
14-9389 DANG, CHANH M. V. GIURBINO, WARDEN
14-9391 CASTRO, JOSE L. V. TANNER, WARDEN
14-9393 SMITH, PATRICK B. V. MURRAY, SEAN, ET AL.
14-9394 CANADA, RONNIE L. V. ARKANSAS
14-9395 CRISBASAN, STEFAN V. COLLINS, JUDGE, ETC.
14-9401 HODGE, ANDRE T. V. FLORIDA
14-9402 CABRERA-FLORES, JUAN V. OATES, ENNIS
14-9411 FENNEL, GUS V. JONES, SEC., FL DOC
14-9412 HESSMER, JOHN V. WILSON COUNTY, TN, ET AL.
14-9413 FAYSON, RALPH V. JONES, SEC., FL DOC
14-9414 GATEWOOD, GERALD D. V. STEPHENS, DIR., TX DCJ
14-9415 PATTON, EDGAR V. BRYANT, PHILLIP, ET AL.
14-9420 ROSS, ERIC V. LOUISIANA
14-9421 MAZIN, ELIAHU V. NORWOOD, MA
14-9422 KARGBO, ABU B. V. NEW HAMPSHIRE
14-9427 TKACHYSHYN, VOLODYMYR I. V. NEW YORK COMMISSIONER OF LABOR
14-9430 BABB, JESSICA V. MAINE
14-9435 SIMMONS, KAYLEN D. V. TEXAS
14-9439 PATTERSON, BRIAN A. V. WISCONSIN
14-9447 THOMAS, SYLVESTER V. McCULLOCH, DIR., SAND RIDGE
14-9531 SUTTON, DAVID V. COLVIN, ACTING COMM'R, SOC. SEC.

14-9549 SANTIAGO, WILFREDO V. COLLINS, ROBERT, ET AL.
14-9572 DOWLING, KEVIN B. V. PENNSYLVANIA
14-9581 HENSON, ROBERT V. CLARKE, DIR., VA DOC
14-9585 GAMBLE, RICKY V. BULLARD, WILLIAM, ET AL.
14-9604 RICHARDSON, GREGORY A. V. HUNTER, SUPT., PIEDMONT, ET AL.
14-9613 RANGREJ, SHARIF V. COLVIN, ACTING COMM'R, SOC. SEC.
14-9614 LAVENDER, DARYL V. CARROLL, MIKE, ET AL.
14-9615 MABLE, MARGARET V. USDC WD WA, ET AL.
14-9623 YUSOV, YURI V. LYNCH, ATT'Y GEN., ET AL.
14-9644 MACHEN, GERALD V. RACKLEY, WARDEN
14-9657 PATTERSON, BARRY N. V. BRODERICK, G., ET AL.
14-9664 COLLINS, BOBBY V. STEELE, WARDEN
14-9677 JOHNSON, CHARLES V. COLVIN, ACTING COMM'R, SOC. SEC.
14-9705 WHITE, DONALD V. OBAMA, PRESIDENT OF U.S., ET AL.
14-9709 SIMPSON, BARRY L. V. KELLEY, DIR., AR DOC
14-9714 SHOEMAKER, MICHELLE V. FREEMAN, WARDEN
14-9715 PEREZ, STEVEN R. V. STEPHENS, DIR., TX DCJ
14-9716 BELLON, ROBERT L. V. NEVEN, WARDEN, ET AL.
14-9722 MESSERE, JOSEPH, ET AL. V. WHITE, NANCY A., ET AL.
14-9735 THOMAS, DOROTHY V. USPS
14-9775 DONELSON, JOSEPH V. UNITED STATES
14-9788 MATTOX, MICHAEL V. PRYOR, WARDEN, ET AL.
14-9800 FLOYD, HILDA L. V. DEPT. OF HOMELAND SEC., ET AL.
14-9808 BURNS, OTIS E. V. UNITED STATES
14-9818 RAMIREZ-SALAZAR, LUCIANO V. UNITED STATES
14-9830 COX, DAVID L. V. UNITED STATES
14-9832 ELLISON, ZONTA T. V. UNITED STATES
14-9839 JOHNS, DARRELL R. V. UNITED STATES

14-9842 JOUBERT, ROBERT V. UNITED STATES
14-9857 MERCER, RILEY V. UNITED STATES
14-9859 LANDON, LONNIE V. UNITED STATES
14-9868 SUSINKA, STEPHEN V. UNITED STATES
14-9871 THOMPSON, ABRAM V. UNITED STATES
14-9874 WILLIAMS, MARTIN L. V. UNITED STATES
14-9890 KOCH, MICHAEL W. V. THOMAS, WARDEN, ET AL.
14-9892 LARACUENT, ANDY V. UNITED STATES
14-9896 VARNER, THEODORE S. V. UNITED STATES
14-9898 BAILEY, SHAWN A. V. UNITED STATES
14-9900 WATFORD, MARLON L. V. UNITED STATES
14-9901 LUMPKINS, RYAN C. V. UNITED STATES
14-9912 KOPP, MATHIAS T. V. UNITED STATES
14-9913 MCGEE, MICHAEL T. V. UNITED STATES
14-9915 DOE, LAWRENCE V. UNITED STATES
14-9917 BELL, REGIS V. UNITED STATES
14-9918 BURNEY, JEFFREY V. UNITED STATES
14-9935 ESPINDOLA-PINEDA, RUBEN V. UNITED STATES
14-9940 THOMPSON, JOHN V. UNITED STATES
14-9942 SANCHEZ-HERNANDEZ, SANTOS V. UNITED STATES
14-9944 RABANALES-CASIA, LEONARDO V. UNITED STATES
14-9950 NOLASCO-PERAZA, FLORENCIO V. UNITED STATES
14-9951 LEDEZMA-RODRIGUEZ, FATIMA V. UNITED STATES
14-9952 LUNA-SOTO, MAURICIO I. V. UNITED STATES

The petitions for writs of certiorari are denied.

14-1128 SEC. INVESTOR PROTECTION CORP. V. IDA FISHMAN REVOCABLE, ET AL.

The motion of Academics for leave to file a brief as *amici curiae* is granted. The motion of Certain "Net Loser" Customers

for leave to file a brief as *amici curiae* is granted. The motion of National Association of Bankruptcy Trustees for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

14-1129 PICARD, IRVING H. V. IDA FISHMAN REVOCABLE, ET AL.

The motion of National Association of Bankruptcy Trustees for leave to file a brief as *amicus curiae* is granted. The motion of Kenneth Krys, as Liquidator and Foreign Representative of Fairfield Sentry Limited for leave to file a brief as *amicus curiae* is granted. The motion of Academics for leave to file a brief as *amici curiae* is granted. The motion of Certain "Net Loser" Customers for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

14-1371 PENNEY, TERRY E. V. UNITED STATES

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

14-9385 ISRAEL, AARON V. BROWN, SUPT., WABASH VALLEY

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*).

14-9821 WILLIAMS, MITCHELL V. UNITED STATES, ET AL.

14-9835 COX, CLINTON D. V. O'BRIEN, WARDEN

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.

14-9838 CROSBY, JEFFREY R. V. IVES, WARDEN

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*).

HABEAS CORPUS DENIED

14-9972 IN RE FRANCISCO J. BARAJAS

14-9974 IN RE TWAIN N. AYERS

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

14-1254 IN RE ROSSI M. POTTS

The petition for a writ of mandamus is denied.

14-9840 IN RE ALEXANDER O. MATTHEWS

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus 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*).

REHEARINGS DENIED

14-950 SCHAFLER, PEPI V. HSBC BANK USA, ET AL.
14-1046 FLANDER, SUSAN V. TX DEPT OF PUBLIC SAFETY, ET AL.
14-1105 DEAN, RICHARD V. SLADE, KATIE C., ET AL.
14-7316 WHEETLEY, MARY V. TENNESSEE
14-7688 OLTEN, DALE S. V. UNITED STATES
14-8338 WILLIAMS, CLYDE B. V. CIRCUIT COURT OF WI, ET AL.
14-8367 PERRY, ADAM L. V. ENTERTAINMENT ONE, ET AL.
14-8429 TONEY, JAMES I. V. HAKALA, MICHAEL, ET AL.
14-8513 RAGIN, JOHN M. V. CIRCUIT COURT OF VA
14-8722 BOYKIN, DONCEY F. V. UNITED STATES
14-8727 L. B. V. SAN DIEGO COUNTY H&HS
14-8735 CUNNINGHAM, BENJAMIN V. DEPT. OF JUSTICE
14-8786 OKEAYAINNEH, JULIAN V. UNITED STATES
14-8834 SAYERS, JERRY D. V. VIRGINIA
14-8927 CASCIOLA, PHILLIP D. V. JONES, SEC., FL DOC, ET AL.
14-9027 WRIGHT, JULIET V. WILLIAMSBURG AREA MEDICAL ASSIST.

The petitions for rehearing are denied.

14-7102 KEARNEY, RICHARD V. GRAHAM, SUPT., AUBURN

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

ATTORNEY DISCIPLINE

D-2813 IN THE MATTER OF DISBARMENT OF JOSEPH THOMAS MONGELLI

Joseph Thomas Mongelli, of Wayne, New Jersey, having been

suspended from the practice of law in this Court by order of October 6, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Joseph Thomas Mongelli is disbarred from the practice of law in this Court.

D-2814

IN THE MATTER OF DISBARMENT OF STEVEN LOUIS TARSHIS

Steven Louis Tarshis, of Newburgh, New York, having been suspended from the practice of law in this Court by order of October 6, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Steven Louis Tarshis is disbarred from the practice of law in this Court.

D-2815

IN THE MATTER OF DISBARMENT OF NEAL STUART SPECTOR

Neal Stuart Spector, of New York, New York, having been suspended from the practice of law in this Court by order of October 6, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Neal Stuart Spector is disbarred from the practice of law in this Court.

D-2816

IN THE MATTER OF DISBARMENT OF BRENDA JOYCE COUNCIL

Brenda Joyce Council, of Omaha, Nebraska, having been suspended from the practice of law in this Court by order of November 3, 2014; and a rule having been issued and served upon her requiring her to show cause why she should not be disbarred; and the time to file a response having expired;

It is ordered that Brenda Joyce Council is disbarred from the practice of law in this Court.

D-2817

IN THE MATTER OF DISBARMENT OF PAUL M. DAUGERDAS

Paul M. Daugerdas, of Wilmette, Illinois, having been suspended from the practice of law in this Court by order of November 3, 2014; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Paul M. Daugerdas is disbarred from the practice of law in this Court.

D-2818

IN THE MATTER OF DISBARMENT OF NEIL JEROME LEWIS

Neil Jerome Lewis, of Baltimore, Maryland, having been suspended from the practice of law in this Court by order of November 3, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Neil Jerome Lewis is disbarred from the practice of law in this Court.

D-2819

IN THE MATTER OF DISBARMENT OF W. AUSTIN COOPER

W. Austin Cooper, of Sacramento, California, having been suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that W. Austin Cooper is disbarred from the practice of law in this Court.

D-2820

IN THE MATTER OF DISBARMENT OF C. WILLIAM BERGER

C. William Berger, of Boynton Beach, Florida, having been

suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that C. William Berger is disbarred from the practice of law in this Court.

D-2821

IN THE MATTER OF DISBARMENT OF WILLIAM GOLDMAN SCHER

William Goldman Scher, of Hackensack, New Jersey, having been suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that William Goldman Scher is disbarred from the practice of law in this Court.

D-2822

IN THE MATTER OF DISBARMENT OF STEPHEN C. JACKSON

Stephen C. Jackson, of Altona, New York, having been suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Stephen C. Jackson is disbarred from the practice of law in this Court.

D-2823

IN THE MATTER OF DISBARMENT OF JOHN W. HILL

John W. Hill, of Los Angeles, California, having been suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that John W. Hill is disbarred from the practice of law in this Court.

D-2824

IN THE MATTER OF DISBARMENT OF DAVID S. PURCELL

David S. Purcell, of Saint Louis, Missouri, having been suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that David S. Purcell is disbarred from the practice of law in this Court.

D-2826

IN THE MATTER OF DISBARMENT OF MICHAEL CRAIG WORSHAM

Michael Craig Worsham, of Forest Hill, Maryland, having been suspended from the practice of law in this Court by order of December 1, 2014; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Michael Craig Worsham is disbarred from the practice of law in this Court.

Statement of SOTOMAYOR, J.

SUPREME COURT OF THE UNITED STATES

ROY ELBERT CARLTON *v.* UNITED STATES

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

No.14–8740. Decided June 22, 2015

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE BREYER joins, respecting the denial of certiorari.

The District Court enhanced petitioner Roy Carlton’s sentence based on a factual inaccuracy introduced into the sentencing record by the Government. The United States Court of Appeals for the Fifth Circuit refused to review Carlton’s appellate challenge to the enhancement, relying on Circuit precedent holding that factual errors are never cognizable on plain-error review. For the reasons that follow, I believe the Fifth Circuit’s precedent is misguided.

Carlton was convicted by a jury of possessing marijuana while incarcerated. The Probation Office prepared a presentence report recommending a two-level enhancement of Carlton’s base offense level because the ultimate aim of his crime was the distribution of a controlled substance in a prison. See United States Sentencing Commission, Guidelines Manual §2D1.1(b)(4) (Nov. 2014). The foundation for this enhancement was the Government’s representation that Carlton’s girlfriend, Whitney Anderson, had testified at trial that Carlton intended to use the marijuana to pay off a debt owed to another inmate. In fact, Anderson said no such thing. The Government nevertheless repeated its faulty assertion at sentencing, and the District Court, which shared a similar misimpression of Anderson’s testimony, imposed the enhancement and sentenced Carlton to 27 months’ imprisonment.

Carlton challenged the sentencing enhancement before

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the Fifth Circuit, citing the inaccuracy regarding Anderson's testimony. The Government conceded its error, but the Fifth Circuit rejected Carlton's claim anyway. 593 Fed. Appx. 346 (2014) (*per curiam*). In light of defense counsel's failure to object at sentencing to the Government's characterization of the record, the court reviewed Carlton's argument under the plain-error standard. *Id.*, at 348. The Fifth Circuit acknowledged that the record "unambiguously" showed "Anderson never testified that Carlton needed the marijuana to repay a prison debt," and that the District Court had therefore erred in supporting the enhancement with her imagined statement. *Ibid.* The court explained, however, that the District Court's mistake was a mistake of fact. And under the Fifth Circuit's decision in *United States v. Lopez*, 923 F. 2d 47 (1991) (*per curiam*), such a factual error "'can never constitute plain error'" because it "could have been cured by bringing it to the district court's attention at sentencing." 593 Fed. Appx., at 349 (quoting *Lopez*, 923 F. 2d, at 50).

Judge Prado issued a concurring opinion. Although he agreed that *Lopez* controlled Carlton's case, Judge Prado wrote separately to reiterate his view that *Lopez* was wrongly decided. 593 Fed. Appx., at 349–352 (specially concurring opinion).

I agree with Judge Prado. This Court has long held that "[i]n exceptional circumstances, especially in criminal cases, appellate courts . . . may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States v. Atkinson*, 297 U.S. 157, 160 (1936). The doctrine of plain error follows from the recognition that a "rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged

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would be out of harmony with . . . the rules of fundamental justice.” *United States v. Olano*, 507 U. S. 725, 732 (1993) (internal quotation marks omitted). And in all the years since the doctrine arose, we have never suggested that plain-error review should apply differently depending on whether a mistake is characterized as one of fact or one of law. To the contrary, “[w]e have emphasized that a *per se* approach to plain-error review is flawed.” *Puckett v. United States*, 556 U. S. 129, 142 (2009) (internal quotation marks omitted). The Fifth Circuit’s wooden rule that factual mistakes cannot constitute plain error runs counter to these teachings.

Federal Rule of Criminal Procedure 52(b), which codifies the common-law plain-error rule, similarly draws no distinction between factual errors and legal errors. It states: “A plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.” Not “a plain *legal* error,” or “a plain error *other than a factual error*”; all plain errors fall within the Rule’s ambit. Courts must apply the Federal Rules as they are written, see *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 168 (1993), and no basis is apparent for reading into Rule 52(b) an exception for factual errors.

Given its inconsistency with the governing text and longstanding precedent, it is little wonder that no other court of appeals has adopted the *per se* rule outlined by the Fifth Circuit in *Lopez*.^{1*} This lack of uniformity can

*See, e.g., *United States v. Thomas*, 518 Fed. Appx. 610, 612–613 (CA11 2013) (*per curiam*) (applying plain-error review to asserted factual error); *United States v. Griffiths*, 504 Fed. Appx. 122, 126–127 (CA3 2012) (same); *United States v. Durham*, 645 F. 3d 883, 899–900 (CA7 2011) (same); *United States v. Sahakian*, 446 Fed. Appx. 861, 863 (CA9 2011) (same); *United States v. Romeo*, 385 Fed. Appx. 45, 50 (CA2 2010) (same); *United States v. Gonzalez-Castillo*, 562 F. 3d 80, 83–84 (CA1 2009) (same); *United States v. Sargent*, 19 Fed. Appx. 268 (CA6

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have important consequences for criminal defendants. Indeed, Carlton’s case illustrates the potential inequity caused by the Fifth Circuit’s outlier position on plain error: All agree the District Court improperly relied on testimony Anderson never gave. But in the Fifth Circuit—and only the Fifth Circuit—that mistake cannot be reviewed and possibly corrected. As a result, Carlton may spend several additional months in jail simply because he was sentenced in Alexandria, Louisiana, instead of Alexandria, Virginia.

For all these reasons, I conclude that *Lopez*’s categorical rule is unjustified. Nevertheless, I reluctantly agree with the Court’s decision to deny certiorari in this case. The Solicitor General informs us that the Fifth Circuit is at times inconsistent in its adherence to *Lopez*. Compare *United States v. Akinosho*, 285 Fed. Appx. 128, 130 (2008) (*per curiam*) (applying *Lopez*), with *United States v. Stevenson*, 97 Fed. Appx. 468, 470 (2004) (*per curiam*) (ignoring *Lopez*); see also *United States v. Rodriguez*, 15 F. 3d 408, 416, n. 10 (1994) (questioning whether *Lopez* survived this Court’s decision in *Olano*). When that sort of internal division exists, the ordinary course of action is to allow the court of appeals the first opportunity to resolve the disagreement. I hope the Fifth Circuit will use that opportunity to rethink its approach to plain-error review.

2001) (*per curiam*) (same); *United States v. Wells*, 163 F. 3d 889, 900 (CA4 1998) (same); *United States v. Saro*, 24 F. 3d 283, 291 (CA10 1994) (same). Of the remaining Courts of Appeals, it appears that only the Tenth Circuit has articulated a rule for unraised factual errors anything like the Fifth Circuit’s. See *United States v. Overholt*, 307 F. 3d 1231, 1253 (2002) (where defendant “fail[s] to raise his factual challenge at sentencing” court will “consider the issue waived and will not find plain error”). But even the Tenth Circuit’s rule is subject to an exception in cases, like this one, where “the appellant can establish the certainty of a favorable finding on remand.” *United States v. Dunbar*, 718 F. 3d 1268, 1280 (CA10 2013) (internal quotation marks omitted).