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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2008

BEGINNING OF TERM

OCTOBER 6, 2008, THROUGH MARCH 6, 2009

FRANK D. WAGNER

REPORTER OF DECISIONS

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Errata

"Agency" should be "Administration" in the following places:
517 U. S. 821, line 6 from bottom.
508 U. S. 79, n. 1, line 1.
505 U. S. 647, line 7.
494 U. S. 262, line 3.
487 U. S. 545, line 10 from bottom.
480 U. S. 307, line 3.
476 U. S. 323, line 6.
471 U. S. 387, line 12 from bottom.
460 U. S. 503, n. 9, line 4.
449 U. S. 362, line 17.
446 U. S. 565, n. 6, line 1.

542 U. S. 716, last line: "Legion" should be "Legation".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

JOHN G. ROBERTS, Jr., Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.
SAMUEL A. ALITO, Jr., Associate Justice.

RETIRED

SANDRA DAY O'CONNOR, Associate Justice.

OFFICERS OF THE COURT

MICHAEL B. MUKASEY, Attorney General.[1]
MARK R. FILIP, Acting Attorney General.[2]
ERIC H. HOLDER, Jr., Attorney General.[3]
GREGORY G. GARRE, Solicitor General.[4]
EDWIN S. KNEEDLER, Acting Solicitor General.[5]
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
PAMELA TALKIN, Marshal.
JUDITH A. GASKELL, Librarian.

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*For notes, see p. iv.

NOTES

[1] Attorney General Mukasey resigned effective January 20, 2009.

[2] Mr. Filip became Acting Attorney General effective January 20, 2009. He resigned effective February 3, 2009.

[3] The Honorable Eric H. Holder, Jr., of Washington, D. C., was nominated by President Obama on January 20, 2009, to be Attorney General; the nomination was confirmed by the Senate on February 2, 2009; he was commissioned on February 2, 2009, and took the oath of office on February 3, 2009.

[4] The Honorable Gregory G. Garre, of Maryland, was nominated by President Bush on June 19, 2008, to be Solicitor General; the nomination was confirmed by the Senate on October 2, 2008; he was commissioned on October 3, 2008, and took the oath of office on October 6, 2008. He was presented to the Court on October 7, 2008. See *post*, p. VII. He resigned effective January 19, 2009.

[5] Mr. Kneedler became Acting Solicitor General effective January 19, 2009.

SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective February 1, 2006, viz.:

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

For the First Circuit, David H. Souter, Associate Justice.

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

For the Third Circuit, David H. Souter, Associate Justice.

For the Fourth Circuit, John G. Roberts, Jr., 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, Samuel A. Alito, Jr., Associate Justice.

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

For the Tenth Circuit, Stephen Breyer, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

February 1, 2006.

(For next previous allotment, see 546 U. S., p. v.)

PRESENTATION OF THE SOLICITOR GENERAL

Supreme Court of the United States

TUESDAY, OCTOBER 7, 2008

Present: Chief Justice Roberts, Justice Stevens, Justice Scalia, Justice Kennedy, Justice Souter, Justice Thomas, Justice Ginsburg, Justice Breyer, and Justice Alito.

The Chief Justice said:

The Court now recognizes the Deputy Attorney General of the United States, Mark Filip.

The Deputy Attorney General said:

Good morning Mr. Chief Justice, and may it please the Court. It's my honor to present to the Court, the Solicitor General of the United States, Mr. Gregory G. Garre of Maryland.

The Chief Justice said:

Mr. Solicitor General, the Court welcomes you to the performance of the important office that you have assumed, to represent the government of the United States before this Court. We wish you well in your office.

The Solicitor General said:

Thank you very much, Mr. Chief Justice.

TABLE OF CASES REPORTED

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

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

Page

A.; Forest Grove School Dist. *v.* 1130
A. *v.* New Jersey 1156
Aames Funding Corp.; Houston *v.* 1048
A. B. *v.* United States 962
Abad *v.* United States 827
Abarca-Sotelo *v.* United States 1057
Abbett; Coggins *v.* 1151
Abbott *v.* Abbott 1135
Abbott; Cosco *v.* 905
Abdulahi *v.* United States 914
Abdullah-Bey *v.* Bank One 1051
Abdullahi *v.* United States 929
Abel; Mann *v.* 1170
Abidaoud *v.* Mukasey 808,1031,1127
Abiodun *v.* United States 1020
Abner *v.* Mobile Infirmary Medical Center 1101
Abood; Borkowski *v.* 927
Aboulissan *v.* United States 1018
Abraham *v.* United States 853
Abrahamson *v.* United States 1039
Abrams *v.* Florida 949
Abrams *v.* Jones 1099
Abrego *v.* United States 860
Abuarquob *v.* United States 1194
Abuelhawa *v.* United States 1028,1095
Abu-Jamal *v.* Pennsylvania 916
Accime *v.* United States 937
Acevedo *v.* United States 934
Ackles *v.* California 867
Acosta *v.* California 877

Page
Acosta *v.* United States 934,1037
Acuna *v.* Turkish 813
Ada County; Gibson *v.* 886
Adam *v.* Yamamoto 1034
Adams, *In re* 809
Adams; Bousman *v.* 920
Adams *v.* California 848
Adams; Escareno *v.* 1144
Adams; Harrison *v.* 874
Adams *v.* Hunt 948
Adams; Kim *v.* 1120
Adams; Martinez *v.* 1144
Adams; McNeil *v.* 854
Adams; Robinson *v.* 1214
Adams *v.* United States 888,904,915,961
Adams *v.* Warner Brothers Pictures Network 1081
Adamson *v.* United States 1010
Addison; Haney *v.* 1086,1209
Addo *v.* Mukasey 1132
Adediji *v.* Illinois 1212
Adejumobi *v.* National Security Agency 1042
Adeyemi *v.* District of Columbia 1036
Adkins *v.* Fairfax County School Bd. 1120,1210
Adventist Health System; Robinson *v.* 806
Advocate Health Care; Worthington *v.* 832
AES Sparrows Point LNG, LLC; Smith *v.* 888
Africa *v.* Conway 902
AGFA Corp. *v.* United States 946
Aghahowa *v.* Mukasey 852
Agofsky *v.* United States 837
Agosto-Graulau *v.* United States 892
Agri Processor Co. *v.* National Labor Relations Bd. 1031
Aguila *v.* United States 931
Aguilar *v.* United States 853
Aguilar-Barragan *v.* United States 862
Aguilar-Gonzalez *v.* United States 919
Aguilar-Ramirez *v.* United States 892
Aguilera *v.* Baca 993
Aguilera *v.* United States 896
Aguirre *v.* United States 924
Aguirre-Calles *v.* United States 958
Aguirre-Cavazos *v.* United States 857
Aguirre-Lopez *v.* United States 910
Agwu *v.* United States 867

Page
Ahdom *v.* Galaza 1157
Ahmed *v.* Ohio 824,996
Ahmed *v.* United States 1089,1210
Ahuja; Ericsson, Inc. *v.* 1012
Airborne Express; Gueye *v.* 874,1127
Akers *v.* Keszei 843
Akers *v.* United States 923,1128
Aki-Khuam *v.* Indiana 1196
Akinro *v.* Maher 1087,1219
Akinrosotu *v.* United States 1204
AK Steel Corp. Retirement Accumulation Pension Plan *v.* West 1097
Alabama; Burrell *v.* 896
Alabama; Callahan *v.* 1130
Alabama; Cloud *v.* 878
Alabama; Coggins *v.* 1143
Alabama; Danielson *v.* 872
Alabama; Eatmon *v.* 876
Alabama; Harris *v.* 1155
Alabama; Holt *v.* 1036,1086
Alabama; Jones *v.* 833
Alabama; Luke *v.* 906
Alabama; Marshall *v.* 918
Alabama; McGowan *v.* 861
Alabama; Moten *v.* 842
Alabama; Newton *v.* 899
Alabama; Parker *v.* 835
Alabama *v.* Pope 1084
Alabama; Revis *v.* 1185
Alabama; Sharifi *v.* 1010
Alabama; Sneed *v.* 1155
Alabama Dept. of Public Safety; Talley *v.* 873
Aladekoba, *In re* 1168
Aladekoba Sophisticat; Umoren *v.* 948
Alameda Police Dept.; Guerra *v.* 847
Al-Amin; Smith *v.* 820
Alarcon-Tapia *v.* United States 902
Al-Arian *v.* United States 887
Alaska *v.* Southeast Alaska Conservation Council 1043
Alba *v.* Montford 1051
Alba *v.* United States 908
Albarado Delacruz *v.* United States 1018
Albemarle County; Stephens *v.* 944
Albert *v.* Johnson 1178
Albertoni *v.* Bayer Corp. 938,1065

Page
Albertson's Inc. *v.* Kanter 808,1097
Alcala *v.* United States 937
Alcivar *v.* Wynne 877
Aldaz-Trevino *v.* United States 866
Alder *v.* Caruso 1034
Aldridge *v.* Texas 842
Ales Group USA, Inc.; Morris *v.* 876,1064
Alexander *v.* Brigham & Women's Physicians Organization, Inc. . . 814
Alexander *v.* Forr 1115
Alexander; Sanai *v.* 1173
Alexander *v.* United States 812
Alfaro *v.* California 953
Alfonso; Skadden *v.* 944
Alford *v.* Florida Dept. of Corrections 1155
Al Ghashiyah *v.* Litscher 900
Alghazouli *v.* United States 904
Al-Ghizzawi *v.* Bush 1094
Ali *v.* Department of Health and Human Services 924,1128
Ali *v.* Florida 910
Ali *v.* United States 1170
Allard *v.* Anderson 858
Allen, *In re* 1096
Allen *v.* American Signature Furniture, Inc. 893,1064
Allen *v.* Arizona 817
Allen *v.* Clark 832
Allen; National Union Fire Ins. Co. of Pittsburgh *v.* 1085
Allen *v.* New Orleans Police Dept. 883
Allen; Perry *v.* 1155
Allen; Ray *v.* 952
Allen *v.* Reilly 1110
Allen; Schrader *v.* 835,869,1027
Allen; Steele *v.* 831
Allen; Trawick *v.* 1033
Allen *v.* U. S. Postal Service 1056
Allen *v.* Value City Furniture 893,1064
Alliance Security Products *v.* Fleming & Co., Pharmaceuticals . . 1071
Allison *v.* Citizens for Affordable Dentures 884
Allison *v.* State Farm Mut. Automobile Ins. Co. 827
Allmerica Financial Corp.; Foley *v.* 994
Allnut *v.* Commissioner 996
Allstate Ins. Co.; Peabody *v.* 1166
Alltel Communications, LLC *v.* Springfield 1071
Almager; Johnson *v.* 1000
Almager; McCloud *v.* 833

Page
Almager; Mitchell *v.* 1156
Almahdi *v.* Massachusetts 881,1081
Al-Marbu *v.* Mukasey 993,1127
al-Marri *v.* Spagone 1066,1152,1220
Almashleh *v.* United States 853
Alonzo *v.* Shinseki 1159
Alpine, *In re* 1096,1219
Alston *v.* Florida 943
Altheimer *v.* Baptist Hospital 1012,1128
Altheimer *v.* Seton Corp. 1012,1128
Alton; Dupree *v.* 832
Alton *v.* Mathis 1111
Altria Group, Inc. *v.* Good 70
Alvares Rubio *v.* United States 878
Alvarez *v.* Smith 1169
Alvarez *v.* United States 878,1007
Alvarez-Espino *v.* United States 896
Alvarez Rubio *v.* United States 878
Amador *v.* United States 936
Amati *v.* United States 902
Amaya-Capetillo *v.* United States 1146
Ambort *v.* United States 1017,1130
Ambrosia Land Investments, LLC; Heritage Coal Co., LLC *v.* . . 970
American Airlines; Doe *v.* 1140
American Airlines, Inc.; Ayala *v.* 1051
American Airlines, Inc.; Cerqueira *v.* 821
American Airlines, Inc.; Willi *v.* 1032
American Civil Liberties Union; Mukasey *v.* 1137
American Coalition of Life Activists *v.* Planned Parenthood 824
American Electric Power Service Corp.; Wiley *v.* 990
American Express Co.; Goetz *v.* 827
American Greetings Corp.; Bell *v.* 1070
American Needle, Inc. *v.* National Football League 1168
American Ship Management, LLC; Kilgroe *v.* 1101
American Signature Furniture, Inc.; Allen *v.* 893,1064
Amirmokri *v.* Bodman 885
Amirmokri *v.* Department of Energy 886
Ammons *v.* United States 879
Amos *v.* United States 1059
Ampthill Rayon Workers, Inc.; E. I. du Pont de Nemours & Co. *v.* 1153
Anacortes Housing Authority; Assenberg *v.* 850
Analog Devices, Inc.; Pellegrini *v.* 1172
Anaya, *In re* 810,1064
Anchorage; Latham *v.* 974,1129

Page
Andersen LLP *v.* Carlisle 1010
Anderson, *In re* 1096
Anderson; Allard *v.* 858
Anderson; Booker *v.* 864
Anderson *v.* Brunson 921
Anderson; Cate *v.* 818
Anderson *v.* Colorado 862,1081
Anderson; Darnell *v.* 863
Anderson *v.* Gellery 1167
Anderson; Hayes *v.* 951
Anderson *v.* McDaniel 892
Anderson *v.* Michigan Dept. of Corrections 1033,1150
Anderson *v.* Turner 908
Anderson *v.* United States 909,997,1202
Andino *v.* Texas 1185
Andino Figueroa *v.* Texas 1185
Andrade; Texas Democratic Party *v.* 1100
Andrews-Willmann *v.* Paulson 1117
Angel *v.* Quarterman 828
Anguiano-Rosales *v.* United States 1117
Angulo *v.* United States 869
Angulo *v.* Yates 1015
Anh *v.* United States 904
Anh Le *v.* United States 834
Anh Vu Nguyen *v.* Washington 1156
Animal Protection and Rescue League *v.* California 1100
Annabel *v.* Michigan 1180
Ann Arbor Charter Township; Braun *v.* 1062
Ann Taylor Co.; Bell-Boston *v.* 1083
Anonymous; Kareem W. *v.* 1046
Anthony *v.* Quarterman 1012
Anthony *v.* United States 822,1080
Antonellis *v.* Cumberland County Bd. of Ed. 1212
Antonsson *v.* Kast 948,1082
Antt; Stroman Realty, Inc. *v.* 970
Antunez Jimenez *v.* United States 1119
Anwar *v.* U. S. Citizenship & Immigration Services 883
Apartments Assn., Ltd.; Bafford *v.* 1040
Apodaca *v.* California 950
Apotex, Inc. *v.* Roche Palo Alto LLC 1153
Appellate Div., Super. Ct. of Cal., Los Angeles Cty.; Deligiannis *v.* 805
APP International Finance Co., B. V. *v.* Gryphon Domestic VI . . 994
Aracena-Sanchez *v.* United States 1007
Aragones-Delgado *v.* United States 1062

Page
Aragon-Hernandez *v.* United States 1018
Aragon-Reyna *v.* United States 863
Arambula *v.* California 902
Aranda *v.* Herrera 910,1065
Archdiocese of Miami, Inc.; Minagorri *v.* 1102
Arch Lighting Group, Inc. *v.* Genlyte Thomas Group LLC 970
Ardilla *v.* United States 927
Aristocrat Technologies Austl. *v.* International Game Technology 1070
Arizona; Allen *v.* 817
Arizona; Boggs *v.* 1086
Arizona; Eggers *v.* 840
Arizona; Fernandez *v.* 970
Arizona; Harrod *v.* 830
Arizona *v.* Johnson 323,807
Arizona; Martinez *v.* 998
Arizona; McCray *v.* 841
Arizona; Montenegro Cruz *v.* 1104
Arizona; Vice *v.* 865
Arizona Dept. of Corrections; Beasley *v.* 839
Arizona Life Coalition; Stanton *v.* 815
Arkansas; Creed *v.* 823
Arkansas; Grant *v.* 843
Arkansas; Pinder *v.* 927
Arkansas; Seely *v.* 898
Armant *v.* Stalder 1051
Armendariz-Moreno *v.* United States 1133
Arms *v.* Virginia 1195
Armstrong, *In re* 810
Arnaiz *v.* United States 1089
Arneth *v.* United States 1149
Arnett *v.* Commissioner 1011
Arnold *v.* Bank of America, N. A. 1031
Arnold *v.* California 1015
Arnold *v.* United States 1176
Arocho *v.* Lehigh County 815
Arpaio; Bradberry *v.* 848
Arredondo *v.* California 1192
Arredondo *v.* Huibregtse 1126
Arredondo-Hernandez *v.* United States 864
Arreola *v.* Choudry 1048
Arrick *v.* Quarterman 877
Arrow Electronics, Inc. *v.* E.ON AG 971
Arteaga *v.* United States 903
Arthur Andersen LLP *v.* Carlisle 1010

Page
Artistic Beauty College; Fortt *v.* 951,1082
Artus; Brown *v.* 908
Artus; Johnson *v.* 1075
Artus; Vigliotti *v.* 1215
Arzola *v.* McNeil 842
Asemani *v.* Holder 1215
Asemani *v.* Mukasey 1112,1145
Ashcraft *v.* Villas West II of Willowridge Homeowners Assn., Inc. 1213
Ashcroft *v.* Iqbal 807,1030
Ashland Home Condominium; Harris *v.* 874
Aslani *v.* Michigan 1047
Aspenwood Apartment Corp. *v.* Link 1136
Assenberg *v.* Anacortes Housing Authority 850
Assicurazioni Generali, S. P. A.; Rubin *v.* 1172
Association. For labor union, see also name of trade.
Association of Civilian Technicians, N. Y. State Council *v.* FLRA 819
Astrop *v.* Brunswick 850
Astrue; Brown *v.* 1115
Astrue; Elshinnawy *v.* 816,1089
Astrue; Karnofel *v.* 859,1064
Astrue; Manning *v.* 993
Astrue; Menkes *v.* 1055
Astrue; Reeves *v.* 1072
Astrue; Renneke *v.* 913
Astrue; Sprau *v.* 862
Atamian *v.* Rich 880
Atamirzayeva *v.* United States 1170
Atchison Hospital Assn.; Vesom *v.* 970
Ate Kays Co. *v.* Pennsylvania Dept. of General Services 1070
Athon *v.* Direct Merchants Bank 858
Atkins *v.* Middle River Regional Jail Medical Dept. 914,1082
Atkinson; Johnson *v.* 1000
Atkinson *v.* United States 1202
Atlanta; Simon *v.* 1191
Atlantic Express; Graves *v.* 1094
Atlantic Sounding Co. *v.* Townsend 993,1095
A. T. Massey Coal Co.; Caperton *v.* 1028,1162
A Touch of Class Painting, Inc.; Johnson *v.* 1115
AT&T Cal. *v.* linkLine Communications, Inc. 438,1029
AT&T Corp. *v.* Hulteen 1030,1210
Attebury *v.* Revels 1040
Attorney General; Abidaoud *v.* 808,1031,1127
Attorney General; Addo *v.* 1132
Attorney General; Aghahowa *v.* 852

Page
Attorney General; Al-Marbu *v.* 993,1127
Attorney General *v.* American Civil Liberties Union 1137
Attorney General; Asemani *v.* 1112,1145,1215
Attorney General; Avila-Sanchez *v.* 825
Attorney General; Biskupski *v.* 820
Attorney General; Broderick *v.* 836
Attorney General; Bustamante *v.* 1077,1209
Attorney General; Calderon *v.* 814
Attorney General; Calderon-Dominguez *v.* 814
Attorney General; de Oliveira *v.* 1101
Attorney General; Djan *v.* 1000
Attorney General; Djokovic *v.* 969
Attorney General; Drummond *v.* 903
Attorney General; Enwonwu *v.* 1191
Attorney General; Esfandiary *v.* 1117
Attorney General; Fontilea *v.* 1048
Attorney General; Gegaj *v.* 887
Attorney General; Granados Olvera *v.* 1100
Attorney General; Henry *v.* 839,1031
Attorney General; Hernandez *v.* 813
Attorney General; Jimenez Viracacha *v.* 969
Attorney General; Jordan *v.* 1192
Attorney General; Kirlew *v.* 882
Attorney General; Labbe *v.* 885
Attorney General; Lewis *v.* 888
Attorney General; Lisenko *v.* 1054,1209
Attorney General; Lopez *v.* 944
Attorney General; Mbodj *v.* 830
Attorney General; Mejia-Restrepo *v.* 839
Attorney General; Ming Dong *v.* 1070
Attorney General; Ming Dung *v.* 1070
Attorney General; Ndreka *v.* 945
Attorney General; Negusie *v.* 511
Attorney General; Nijhawan *v.* 1131
Attorney General; Nken *v.* 1042
Attorney General; Noble *v.* 808
Attorney General; Northwest Austin Municipal Util. Dist. One *v.* 1091
Attorney General; Norton *v.* 806
Attorney General; Olukune *v.* 1087
Attorney General; Osumah *v.* 1116
Attorney General; Pena-Muriel *v.* 811
Attorney General; Puentes Fernandez *v.* 837
Attorney General; Ricketts *v.* 830,1002
Attorney General; Robinson *v.* 956

Page
Attorney General; Rudolf *v.* 825
Attorney General; Saintha *v.* 1031
Attorney General; Santos *v.* 839
Attorney General; Scheerer *v.* 825
Attorney General; Sitompul *v.* 953
Attorney General; Stanbury *v.* 1003
Attorney General; Sunarno *v.* 1185
Attorney General; Sweeney *v.* 1078
Attorney General; Tantay *v.* 819
Attorney General; Tenesaca Delgado *v.* 887
Attorney General; Thornton *v.* 1174
Attorney General; Trenchfield *v.* 1032
Attorney General; Truesdale *v.* 1124
Attorney General; Vakker *v.* 880
Attorney General; Valenzuela Grullon *v.* 813
Attorney General; Vazquez-Avila *v.* 838
Attorney General; Watson *v.* 1044
Attorney General; Wilson *v.* 840
Attorney General of Ala.; Bradley *v.* 1161
Attorney General of Ark.; Johnson *v.* 878
Attorney General of Cal.; Foster *v.* 1182
Attorney General of Cal.; Mack *v.* 842
Attorney General of Cal.; Rodriguez *v.* 838
Attorney General of Cal.; Tolliver *v.* 922
Attorney General of Conn.; Burke *v.* 1214
Attorney General of Fla.; Freeman *v.* 1110
Attorney General of Fla.; Hickmon *v.* 1003
Attorney General of Fla.; Knight *v.* 849
Attorney General of Ga.; Thomas *v.* 1002
Attorney General of Mass.; Robinson *v.* 834,1063
Attorney General of Nev.; Cox *v.* 1185
Attorney General of Nev.; Jackson *v.* 972
Attorney General of N. Y.; Chalif *v.* 1110
Attorney General of N. Y. *v.* Clearing House Assn., L. L. C. 1130
Attorney General of N. Y.; Jones *v.* 1075
Attorney General of N. Y.; Shuler *v.* 1016
Attorney General of Ohio; King *v.* 1186
Attorney General of Ohio; Meadowlake Corp. *v.* 1098
Attorney General of Ohio; Ross *v.* 1099
Attorney General of Pa.; Corbett *v.* 1001
Attorney General of Pa.; Gallman *v.* 875
Attorney General of Pa.; Oliver *v.* 1129
Attorney General of S. C.; El Bey *v.* 1114
Attorney General of S. C.; McKinnedy *v.* 834,1040

Page
Attorney General of Wash.; Dilworth *v.* 1139
Attorney Grievance Comm'n; Maples *v.* 923
Attorney Registration and Disciplinary Comm'n; Stoller *v.* 808
AT&T Tex. *v.* Texas Cable Assn. 938
AT&T Wireless Services, Inc.; Penberthy *v.* 882
Atwell *v.* Pennsylvania 1166
Auble *v.* United States 1195
Auburn Univ. at Montgomery; Shortz *v.* 1054
Augusta; Sullivan *v.* 821
Ault; Thompson *v.* 1004
Ausburn *v.* United States 828
Auster *v.* United States 840
Austin, *In re* 1135
Austin; McGee *v.* 926,1090
Austin *v.* United States 856,932
Autolive ASP, Inc.; Venture Industries Corp. *v.* 1048
Automobile Club of N. Y.; Dykstra *v.* 827
Auto Workers; Zehrung *v.* 913
Avalos *v.* Nielsen 1000,1208
Avalos *v.* United States 1132
Avalos-Melgar *v.* United States 924
Avalos-Perez *v.* United States 924
Avelar-Ceja *v.* United States 1193
Avent *v.* Doe 1110
Avery *v.* New Hampshire 967
Avery *v.* Wall 939
Avila *v.* Cate 997
Avila *v.* United States 875
Avila-Palacios *v.* United States 1077
Avila-Sanchez *v.* Mukasey 825
Aviles-Colon *v.* United States 1039
Avilez-Zamora *v.* United States 957
Awala *v.* United States 804
Ayad *v.* Radio One, Inc. 880
Ayala *v.* American Airlines, Inc. 1051
Ayala *v.* Morgan 906
Ayala *v.* United States 1201
Ayers; Brown *v.* 837
Ayers; Galvan *v.* 1172
Ayers; Lester *v.* 846,1090
Ayers; Trahan *v.* 1016
Ayers; Tuvalu *v.* 1214
Ayers; Vernon *v.* 1109
Ayers; Villa *v.* 1195

Page
Ayers; Wright *v.* 1017
Ayoub *v.* United States 830
Ayres *v.* Virginia 1184
Ayyar *v.* California 906
Azam *v.* California 1157
B. *v.* Illinois 1197
B. *v.* United States 962
Baba *v.* Evans 1171
Babbs *v.* Washington 919
Baber *v.* California 858
Babi *v.* LaClair 1054
Baca; Aguilera *v.* 993
Baca *v.* Knowles 1157
Baca *v.* Thomas 1099
Baca *v.* Washington 1180
Bacas *v.* Geren 954
Baccus *v.* South Carolina 1074
Back; Hall *v.* 1098
Bacon *v.* Carroll 975
Bacon *v.* Nevada 914
Badger *v.* Ricci 1105
Badruddoza *v.* United States 1076,1209
Badruddoza *v.* U. S. Law Enforcement Units 875
Baer *v.* Winter 1119,1219
BAE Systems Information & Elec. Systems Integration; Budro *v.* 1215
Baez *v.* United States 925,1128
Baez Rivera *v.* United States 1058
Bafford *v.* Township Apartments Assn., Ltd. 877,1040
Baggett *v.* U. S. District Court 1112
Bagley; Bey *v.* 1041
Bahena *v.* Quarterman 1073
Baida *v.* First Unum Life Ins. Co. 812
Bailey *v.* Brandon 902
Bailey; Common Law Settlement Counsel *v.* 1083,1168
Bailey *v.* Culliver 1141
Bailey *v.* Illinois 1178
Bailey *v.* Miner 931
Bailey; Travelers Indemnity Co. *v.* 1083,1167
Bailey *v.* United States 1121
Bair *v.* United States 1084
Baker *v.* California 829
Baker *v.* Canadian National/Ill. Central R. Co. 1171
Baker *v.* Department of Army 915
Baker *v.* Louisiana 830

Page
Baker *v.* Patton 1217
Baker; Thomas *v.* 1002
Baker *v.* Thurmer 1056
Baker *v.* United States 829,853,1123,1127
Baker *v.* Wisconsin 1183
Balduino-Silano *v.* United States 896
Baldwin *v.* Office of Personnel Management 1055,1209
Balistreri *v.* Metropolitan Life Ins. Co. 949
Ball *v.* United States 977
Ballard *v.* Philadelphia School Dist. 1177
Ballardo-Villapudua *v.* United States 958
Ballay *v.* Louisiana 1000
Ballew; Boze *v.* 818
Ball, Koons & Watson; Manci *v.* 889
Banco Popular de Puerto Rico; Sanchez-Figueroa *v.* 1180
Banda *v.* Burlington County 896,1064
Banegas-Hernandez *v.* United States 860
Baney *v.* Department of Justice 867
Banga *v.* Countrywide Home Loans 877
Bank of America; Hatton *v.* 857
Bank of America, N. A.; Arnold *v.* 1031
Bank One; Abdullah-Bey *v.* 1051
Bank One-Cleveland, N. A.; Davet *v.* 825
Banks *v.* McNeil 1214
Banks *v.* United States 1042,1120
Banos *v.* California 801
Bansal *v.* Server Beach 1159
Baptiste *v.* Runnell 1215
Baptist Hospital; Altheimer *v.* 1012,1128
Barajas-Tinoco *v.* United States 924
Baranski *v.* United States 1011
Barber *v.* Jones 972
Barber *v.* Zuercher 952
Barboza *v.* United States 1005
Barco *v.* Virginia 1016
Barcosh, Ltd.; Dumas *v.* 826
Bar Counsel for D. C.; Sibley *v.* 1134
Bardoff *v.* State Bar of Cal. 1174
Bare; Lake Shastina Community Services Dist. *v.* 990
Barela *v.* United States 1198
Barg; Vos *v.* 1211
Barkclay, *In re* 810
Barkmeyer *v.* Rhode Island 1071
Barnard *v.* North Carolina 914

Page
Barner *v.* Winn 877
Barnes *v.* Ricks 999
Barnett *v.* United States 845,1149
Barney *v.* Ingersoll-Rand Co. 1056,1209
Barnhill *v.* Schafer 1136
Barnstable School Committee; Fitzgerald *v.* 246
Barr *v.* United States 893
Barragan *v.* United States 1037
Barragan Santana *v.* United States 909
Barritt *v.* Trant 803,1043
Barroca *v.* United States 1202
Barry *v.* California 844
Bartholomew *v.* California 1076
Bartlett *v.* United States 1006
Bartlette *v.* Kmart Corp. 1115,1210
Barton *v.* Missouri 842
Bartos; Yoder *v.* 1112
Basal; Fuller *v.* 1107
Basciano *v.* U. S. District Court 1177
Bashas' Inc. *v.* Parra 1154
Baskett *v.* U. S. Court of Appeals 1029
Baskett *v.* Washington Dept. of Corrections 1165
Bassett; Bridges *v.* 1087,1219
Bass Pro Outdoor World, LLC; Kelly *v.* 824
Bass Pro Shops Outdoor World; Kelly *v.* 824
Basurto *v.* Luna 1194
Batan *v.* United States 891
Bates *v.* Harvey 945
Batheja; Quinn *v.* 1142
Battle; Buttles *v.* 840,1081
Battles; Taylor *v.* 1194
Batton *v.* United States 888
Baublitz *v.* Ingham Circuit Judge 836,1127
Bautista *v.* United States 1089
Baxter *v.* Quarterman 872
Baxter *v.* United States 930,1020,1130
Bayer AG; Reynoso *v.* 1115
Bayer Bioscience N. V. *v.* Monsanto Co. 1045
Bayer Corp.; Albertoni *v.* 938,1065
Bayer Corp.; Britton *v.* 938,1065
Baylor *v.* United States 1175
Bazuaye *v.* United States 935
Bazzle; Scott *v.* 953
Beachside Two-I Homeowners' Assn.; Cohen *v.* 945

Page
Bean *v.* McQuiggin 1074
Beard; Brown *v.* 804,1030
Beard *v.* Hannon 1069
Beard *v.* Holland 1012
Beard; Holland *v.* 1033
Beard; Ingram *v.* 863
Beard *v.* JP Morgan Chase Bank National Assn. 999,1129
Beard; Rohn *v.* 861
Beard; Taylor *v.* 846
Beary; Webb-Edwards *v.* 1100
Beasley *v.* Arizona Dept. of Corrections 839
Beasley; Lockwood *v.* 996,1128
Beason *v.* Wilkerson 856
Beattie; CenturyTel, Inc. *v.* 1032
Beatty *v.* United States 1193
Beaty *v.* Illinois 914
Beaty; Pandozy *v.* 995
Beaty; Republic of Iraq *v.* 1092
Beaty *v.* Schriro 949
Beaudette *v.* Department of Treasury 806,1124
Beazer Homes; Just New Homes, Inc. *v.* 1174
Becerril-Lopez *v.* United States 1121
Beck; Fredrick *v.* 895
Beck; Wilkerson *v.* 1116
Becker *v.* Massachusetts 933
Bedford *v.* United States 1191
Beecher *v.* State Electrical Work Examining Bd. 818
Beecroft; Tivis *v.* 1034
Beeman *v.* United States 1079
Bejar *v.* United States 910
Belcher *v.* Wells Fargo Bank, N. A. 837,1063
Bell *v.* American Greetings Corp. 1070
Bell *v.* Bell 822
Bell; Brown *v.* 858
Bell *v.* California 1163
Bell *v.* Culliver 1110
Bell *v.* Georgetown Univ. Hospital 845
Bell; Harbison *v.* 808,992
Bell; Henley *v.* 1160
Bell; Irick *v.* 1033
Bell; Jefferson *v.* 954
Bell *v.* Kelly 55,941
Bell; Kenner *v.* 872
Bell; Meeks *v.* 1104

Page
Bell *v.* Men's Store at Saks Fifth Avenue 875
Bell *v.* Mississippi Dept. of Corrections 1183
Bell *v.* Reynolds 921
Bell *v.* Taylor 1035
Bell; Ulrich *v.* 1214
Bell *v.* United States 946,1006,1059,1146
Bell; Yong Tan Huang *v.* 926,1082
Bell-Boston *v.* Ann Taylor Co. 1083
Bell-Boston *v.* Dorcey 1134
Bell-Boston *v.* Sibley Memorial Hospital 1093
Belleque; Johnson *v.* 832,1081
Belleque; Larson *v.* 871
Bello *v.* U. S. District Court 995,1128
Bello-Juarez *v.* United States 958
Belmares-Delgado *v.* United States 1159
Belser, *In re* 809
Belton *v.* United States 921
Beltran-Gabito *v.* United States 959
Benally *v.* United States 1146
Benefit Recovery, Inc. *v.* Donelon 882
Benge *v.* DeLoy 857
Benistar Ltd. *v.* Cahaly 1047,1159
Benitez *v.* Pollard 863
Benitez *v.* United States 963
Benkahla *v.* United States 1120
Bennett, *In re* 809,1011
Bennett; Cole *v.* 903
Bennett; Sewerage and Water Bd. of New Orleans *v.* 970
Bennett; Williams *v.* 899
Benning *v.* Webster 950
Bens *v.* United States 957
Benson; Covelli *v.* 841
Benson *v.* United States 1210
Benson *v.* U. S. District Court 929
Benton *v.* United States 998
Benzel *v.* Houston 1118
Berbary; Van Stuyvesant *v.* 838
Berberick *v.* Wolfinsohn 805
Berber-Tinoco *v.* United States 850
Bereznak; Gray *v.* 975
Berg *v.* Obama 1126,1134
Berg; Theusch *v.* 1212
Berghuis; Burt *v.* 1014
Berghuis; Caruthers *v.* 1188

Page
Berghuis; Porter *v.* 1002
Berks County; Ludwig *v.* 1120
Bermudez *v.* United States 1123
Bernal *v.* Cate 1002
Bernal-Portillo *v.* United States 934
Bernanke; Smith *v.* 976
Bernard *v.* United States 1145
Berry *v.* Illinois 1197
Berry *v.* United States 978
Bertollini *v.* United States 1018
Bertram *v.* North Dakota 878
Bess *v.* United States 1007
Best *v.* United States 1010
Betancur *v.* Florida Dept. of Health 1213
Betcher *v.* United States 1123
Bethany Hospital; Worthington *v.* 832
Bethea *v.* Virginia 867,1081
Bethel *v.* United States 1061
Bethel *v.* Wisconsin 1191
Bett; Johnson *v.* 1119
Bett; Newson *v.* 1119
Betz; Trainer Wortham & Co. *v.* 808
Beucke *v.* Department of Agriculture 1213
Beverly *v.* Norris 863
Bexar County; Cano *v.* 1036
Bey *v.* Bagley 1041
Bey *v.* United States 1203
Bhaduri *v.* Summit Security Systems, Inc. 902,1081
Bias; Sabater *v.* 1101
Bies; Bobby *v.* 1131
Biggs *v.* New York 1179
Biggs *v.* United States 1121
Bilaal *v.* Moore 872
Bilco Tools, Inc.; Rattler Tools, Inc. *v.* 1098
Billman *v.* United States 919
Billups *v.* United States 856
Bingham *v.* Quarterman 1180
Binion; Piper *v.* 885
Biomedical Patent Mgmt. Corp. *v.* California Dept. of Health Servs. 1097
Birkett; Jones *v.* 1000
Birkett; Threatt *v.* 914,1065
Biros *v.* Houk 893
Bischoff *v.* Louisville & Jefferson Cty. Metropolitan Sewer Dist. 819,1089
Bishop *v.* United States 1176

Page
Biskupski *v.* Mukasey 820
Bissonnette; Farley *v.* 1198
Bistawros *v.* Licea 1173
Black *v.* United States 875,1062
Blackburn *v.* Iowa 1157
Blackeagle *v.* United States 922
Blackert *v.* Florida 919,1065
Blackshear *v.* United States 904
Blackwell *v.* California 923,1065
Blackwell *v.* United States 1196
Blaine; Jae *v.* 1156
Blake *v.* United States 1117
Blakeney *v.* Pennsylvania 1177
Blake O. *v.* Paul H. 1034
Blakes *v.* Texas 881
Blakeway; Gharbi *v.* 1036
Blan *v.* Culliver 1179
Blanco *v.* Cate 1034
Blanco-Acosta *v.* United States 956
Blanco Rubio *v.* United States 959
Blankenship *v.* United States 863
Blaxton *v.* Florida 1191
Blechman *v.* Washington Mut. Bank 870
Bleiman; Fields *v.* 1033
Blevins *v.* United States 1123,1147
Blige *v.* Davis 822
Blocker *v.* Kelley 1181
Bloom *v.* Kansas 877
Blount *v.* Johnson 840
Blowers *v.* United States 946
Blueport Co., LLC *v.* United States 1153
Blum; Bond *v.* 1172
Blum *v.* United States 1020
Blumenthal; Burke *v.* 1214
Board of Bar Overseers of Mass.; Johnson *v.* 849
Board of County Comm'rs of Sarasota County; Stratton *v.* 1013
Board of Ed. of Boyd County; Morrison *v.* 1171
Board of Ed. of New York City; Fuentes *v.* 1190
Board of Trustees of Cal. State Univ.; LaFreniere *v.* 1094
Boatswain *v.* United States 1199
Bobby *v.* Bies 1131
Bobby; Brooks *v.* 1177
Bobby; Webber *v.* 1215
Bochiccio *v.* California 850

Page
Bock; Eller *v.* 1142
Bock; Tate *v.* 1156
Bodin; Schmidt *v.* 1105
Bodkin *v.* Cook Inlet Region, Inc. 1040
Bodkins *v.* United States 929
Bodman; Amirmokri *v.* 885
Boeing Corp.; Nolan *v.* 816
Boggs *v.* Arizona 1086
Boghgosian *v.* United States 946
Bohn *v.* United States 946
Bohon *v.* Oklahoma 947
Boise Cascade Corp. *v.* Oregon 828
Bojorquez Salcido *v.* California 1143
Boland *v.* McNeil 973
Bolanos-Morales *v.* United States 857
Bolar *v.* Luna 1106
Bolden *v.* Virginia 920
Boldt *v.* Boldt 814
Boling *v.* Bouchard 1074
Boling; Chisolm *v.* 1013
Bolivar *v.* United States 1124
Bombasi *v.* Grounds 846
Bond *v.* Blum 1172
Bond *v.* Pennsylvania 867
Bond *v.* Rosenstein 1154
Bones *v.* New York 896
Bonilla *v.* United States 1105
Bonner *v.* United States 883
Bontkowski *v.* United States 971
Booher; Harmon *v.* 891
Book *v.* Tobin 1105
Booker *v.* Anderson 864
Booker; Fields *v.* 1106
Booker; Wilbon *v.* 895
Boone *v.* Maryland 1192
Boone *v.* Vasbinder 851
Boos, *In re* 942
Boothes *v.* Sanders 863
Borden *v.* School Dist. of East Brunswick 1212
Bordier et Cie *v.* LaSala 1028
Borg *v.* United States 927
Borkowski *v.* Abood 927
Borrero-Acevedo *v.* United States 1019
Bosch *v.* United States 1008

Page
Boschetto *v.* Hansing 1171
Boskic *v.* United States 1175
Boston Scientific Corp. *v.* Cordis Corp. 882
Boswell *v.* United States 1009
Bott *v.* Silicon Valley Colleges 1012,1128
Bouchard; Boling *v.* 1074
Boudloche; Fratila *v.* 835,1081
Boudreaux *v.* Cain 1014,1160
Boulder Valley School Dist.; Bronakowski *v.* 1193
Bourseau *v.* United States 1212
Bousman *v.* Adams 920
Bowen *v.* Cheuvront 970
Bowen; Lightfoot *v.* 1151
Bowen *v.* United States 930
Bowie *v.* Personnel Bd. of Jefferson County 1085
Bowie State Univ.; Silva *v.* 812
Bowling *v.* Carpenter 1100
Bowman *v.* United States 920,1128
Bowyer *v.* Wisler 1184
Box *v.* Steele 858
Boxley *v.* Pennsylvania 1003
Boyd; Robinson *v.* 1050
Boyd *v.* Rowley 950
Boyett *v.* Washington County 1049
Boyston *v.* United States 914
Boze *v.* Ballew 818
Bozzelli *v.* Klem 1197
BP Oil International Ltd.; Tiber Shipping LLC *v.* 821
Bracero *v.* Florida 860
Bradberry *v.* Arpaio 848
Bradd *v.* Leinenweber 1191
Braden *v.* Parker 902
Bradford, *In re* 809
Bradford *v.* Cellxion, LLC 845,1090
Bradford *v.* Chapello 1014
Bradley *v.* General Counsel of Central Office, Bureau of Prisons 1144
Bradley *v.* King 1161
Bradley *v.* Mississippi Dept. of Corrections 902
Bradley *v.* United States 836,902
Bradley *v.* Wisconsin 1179
Bradshaw *v.* United States 979
Bradt; Prude *v.* 1052
Brady; Rice *v.* 835
Brady *v.* Washington 872,1064

Page
Brailey *v.* Virginia Dept. of Taxation 899
Braley *v.* California 1157
Bramwell *v.* O'Brien 1067
Branch *v.* Franklin 843
Branch *v.* United States 1080,1118
Branch *v.* Wisconsin 1117
Branch-Williams *v.* Department of Veterans Affairs 875,1064
Brandon; Bailey *v.* 902
Brandon; Ewing *v.* 857
Brandon *v.* Roper 1167
Branham *v.* Caruso 1182
Branham *v.* United States 1117
Branker; Cagle *v.* 1086
Branker; Call *v.* 843
Branker; Golphin *v.* 975
Branker; Holden *v.* 1187
Branker; Hyde *v.* 1157
Branker; Lawrence *v.* 868
Branker; Peterson *v.* 1111
Branker; Strickland *v.* 1105
Brannigan; Ganesan *v.* 884
Brannon *v.* Luco Mop Co. 1072
Brannon *v.* United States 1060
Branscombe *v.* Roe 1126
Branson *v.* Gay 867
Braquet *v.* United States 967,1103
Brasure *v.* California 832
Bratcher *v.* United States 910
Braun *v.* Ann Arbor Charter Township 1062
Bravo-Alfre *v.* United States 1010
Braxton; Hamlett *v.* 1032
Breckenridge *v.* California 1181
Bredesen; Doe *v.* 921
Brehm *v.* United States 929
Brennan *v.* United States 957
Brewer *v.* Wisconsin Bd. of Bar Examiners 1003
Brewster *v.* New York 915
Brideson *v.* United States 1020
Bridgeforth *v.* Oklahoma 1035
Bridges *v.* Bassett 1087,1219
Brigano; Scuba *v.* 915
Brigham & Women's Physicians Organization, Inc.; Alexander *v.* 814
Bright; Saunders *v.* 1073
Brightwell *v.* United States 1080

Page
Brill; Wallin *v.* 1051
Brillon; Vermont *v.* 1091
Brinkmann; Dolenz *v.* 951
Briseno *v.* Quarterman 1073
Briseno-Benavidez *v.* United States 917
Britt *v.* Steelworkers 1152
Britt *v.* United States 1061
Britten; Leonor *v.* 974,1129
Britton *v.* Bayer Corp. 938,1065
Broadbent; Wolfson *v.* 1181
Broadnax *v.* United States 1062
Broadus *v.* United States 830
Brock *v.* Quarterman 1052,1218
Brock *v.* United States 1196
Brockbank *v.* Commodity Futures Trading Comm'n 1002
Broderick *v.* Mukasey 836
Broderick's Estate; Puls *v.* 1178
Brodie *v.* United States 1204
Bronakowski *v.* Boulder Valley School Dist. 1193
Broney Automotive Repairs, Inc.; Navarro *v.* 996
Bronx Community College of City Univ. of N. Y.; Mobasher *v.* 808,1043
Brooks *v.* Bobby 1177
Brooks *v.* Florida 1054,1186
Brooks; Henry *v.* 920
Brooks; Hodson *v.* 1075
Brooks *v.* United States 867,879,1200
Broome *v.* United States 1080
Brotherhood. For labor union, see name of trade.
Brothers *v.* Oklahoma 1182
Brothers *v.* Summit County 1070
Brothers *v.* Tennessee 838
Brower *v.* North Carolina 954
Brown, *In re* 809,1090,1135
Brown *v.* Artus 908
Brown *v.* Astrue 1115
Brown *v.* Ayers 837
Brown *v.* Beard 804,1030
Brown *v.* Bell 858
Brown *v.* Burke 1142
Brown *v.* Cain 1106
Brown *v.* California 1210
Brown *v.* Cate 955
Brown; Chanowitz *v.* 1186
Brown *v.* Department of Justice 932

Page
Brown *v.* DiGuglielmo 1015
Brown *v.* Dinwiddie 1051
Brown *v.* Donald 831
Brown; Ellis-Smith *v.* 1178
Brown *v.* Fisher 817
Brown *v.* Folino 1074
Brown; Foster *v.* 1182
Brown; Hudson *v.* 1106
Brown *v.* Kemp 951,1065
Brown; Mack *v.* 842
Brown; McDaniel *v.* 1152
Brown *v.* Nooth 848
Brown; Norris *v.* 1106
Brown *v.* Ohio 1190
Brown *v.* Parker 863
Brown *v.* Peake 1056,1209
Brown *v.* Pennsylvania Dept. of Corrections 1166
Brown *v.* Pugh 998
Brown; Rodriguez *v.* 838,1062
Brown *v.* Romanowski 1073
Brown *v.* Sherrod 1107
Brown *v.* Sinclair 1141
Brown *v.* Sirmons 948
Brown *v.* Thompson 856
Brown; Tolliver *v.* 922
Brown *v.* United States 869, 875, 932, 937, 959, 1060, 1118, 1122, 1193, 1194, 1197, 1198, 1201, 1219
Brown *v.* U. S. District Court 875
Browning *v.* Southwest Research Institute 1170
Browning *v.* United States 828,1089
Brownlee *v.* California 954
Brownlow *v.* Kane 1035
B&R Property Management Co.; Hooper *v.* 849
Bruce *v.* United States 961
Brunner *v.* Ohio Republican Party 5
Bruno *v.* Quarterman 803
Bruno *v.* Texas 1066,1152
Bruno *v.* United States 1170
Brunsman; Greer *v.* 926,1082
Brunson; Anderson *v.* 921
Brunson *v.* Harris 967
Brunson *v.* United States 1122,1132
Brunswick; Astrop *v.* 850

Page
Bruvold *v.* New Mexico 1016,1130
Bruzon *v.* United States 991
Bryan P. *v.* Los Angeles Cty. Dept. of Children and Family Servs. 915
Bryant; Dollar General Corp. *v.* 1138
Bryant; General Motors Corp. *v.* 1098
Bryant *v.* Rich 1074
Bryant *v.* Texas 1000
Bryant *v.* United States 1039,1060
Buch; Yang *v.* 907
Buchanan *v.* Illinois 811
Buchanan *v.* United States 929
Buck *v.* Deutsche Bank National Trust Co. 869,1027
Buck *v.* United States 809,1050
Buckley *v.* United States 977
Bucklon *v.* McNeil 914
Buckner *v.* Illinois 837
Budd *v.* United States 814
Budge; Kelly *v.* 959
Budro *v.* BAE Systems Information & Elec. Systems Integration 1215
Buggs *v.* Tennis 1190
Bui *v.* United States 962
Buie *v.* Michigan 947
Bui Phu Xuan *v.* Fort Worth Star Telegram 925,1040
Bulington *v.* Quarterman 1074
Bullard *v.* North Carolina 906
Bullard *v.* United States 1216
Bullette *v.* California 838
Bullis *v.* United States 906
Bullock *v.* United States 977
Bumgarner *v.* Oregon 1101
Buntion *v.* Quarterman 1176
Buono; Salazar *v.* 1169
Buonsignore *v.* United States 917,1128
Burandt *v.* Dudas 1154
Bureau of Alcohol, Tobacco, Firearms and Explosives; Norton *v.* 1006
Bureau of Immigration and Customs Enforcement; Hurley *v.* . . . 817
Burford *v.* United States 1121
Burgess *v.* United States 906
Burgest *v.* McAfree 997
Burgest *v.* United States 917
Burke *v.* Blumenthal 1214
Burke; Brown *v.* 1142
Burke; Gadomski *v.* 974
Burlington Coat Factory; Millen *v.* 920,1065

Page
Burlington County; Banda *v.* 896,1064
Burlington N. & S. F. R. Co. *v.* United States 1095
Burnette, *In re* 1097
Burnette *v.* United States 862
Burns *v.* California 1141
Burr *v.* Pollard 1175
Burrell *v.* Alabama 896
Burrell *v.* LaClair 847
Burriola *v.* Palmer 1188
Burrows *v.* United States 891
Burt *v.* Berghuis 1014
Burt; Dunbar *v.* 1155
Burt; Ford *v.* 974
Burt; Forsyth *v.* 1157
Burt; Johnson *v.* 974
Burton *v.* Inspector General 1185
Burtt; Monahan *v.* 907
Busby *v.* Texas 1050
Bush, *In re* 810
Bush; Al-Ghizzawi *v.* 1094
Bush; Guillory *v.* 1029
Bush; Simmons *v.* 954,1129
Bush *v.* Wells Fargo Bank, N. A. 856
Bush *v.* Wyoming 1168
Buss; Felder *v.* 879
Buss; Humbles *v.* 842
Bussell *v.* United States 812
Bustamante *v.* Mukasey 1077,1209
Bustillos *v.* United States 1019
Butler; Curry *v.* 1089
Butler *v.* Kempthorne 1103
Butler *v.* Milwaukee 1115
Butler *v.* Quarterman 1106,1218
Butler *v.* United States 871
Butters *v.* United States 853
Butterworth *v.* United States 830
Buttles *v.* Battle 840,1081
Butts *v.* Sheets 1037
Byrd *v.* Kelchner 844
Byrd *v.* New Jersey 916
Byrd *v.* Woodlawn Community Development Corp. 914
Bysiewicz; Wrotnowski *v.* 1083
Byun *v.* United States 1088
C. *v.* D. C. 1178

Page
C.; D. C. *v.* 1178
C.; Gresbach *v.* 994
Cabbagestalk *v.* Tyler 1074
Cable *v.* Horel 1111
Cable News Network, Inc. *v.* CSC Holdings, Inc. 1095
Cabral *v.* United States 1213
Cabrera *v.* Scribner 1015
Cabrera-Frattini *v.* United States 1174
CACI International, Inc.; Pentagen Technologies International *v.* 1070
Caddell *v.* Quarterman 864
Caden; Plummer *v.* 1151
Caden *v.* United States 899
Cadle Co. *v.* Friedheim 887
Cadogan *v.* Renico 973
Cadorniga-Doeing *v.* NSH/Long Island Jewish Health System . . 908,1064
Caesar *v.* United States 1039
Cagle *v.* Branker 1086
Cahaly; Benistar Ltd. *v.* 1047,1159
Cahill *v.* Spooner 1181
Cain; Boudreaux *v.* 1014,1160
Cain; Brown *v.* 1106
Cain; Crain *v.* 1014
Cain; Debrow *v.* 851
Cain; Degruy *v.* 899
Cain; Dillon *v.* 974
Cain; Dugas *v.* 952
Cain; Gordon *v.* 1108
Cain; Guilbeau *v.* 974
Cain; Hao Chi Nguyen *v.* 843
Cain; Higgenbotham *v.* 838
Cain; Hudson *v.* 1073
Cain *v.* Koon 1010
Cain; Lee *v.* 1133,1186
Cain *v.* Menifee 934
Cain; Palmer *v.* 889
Cain *v.* Perez 995
Cain *v.* Quarterman 1035,1209
Cain; Robinson *v.* 855,1127
Cain; Silvo *v.* 909,1128
Cain; Tolbert *v.* 865
Cain *v.* Transocean Offshore USA, Inc. 880
Cain; Wardlaw *v.* 1141
Cain; Watson *v.* 889
Cairns *v.* Johnson 806,1017

Page
Cajuste *v.* McNeil 1184
C. A. L. *v.* United States 975
Caldero Martinez *v.* United States 911
Calderon *v.* Mukasey 814
Calderon *v.* United States 854
Calderon-Dominguez *v.* Mukasey 814
Calderon-Segura *v.* United States 854
Caldwell *v.* California 1104
Caldwell; Goodman *v.* 875
Caldwell *v.* Quarterman 834
Caldwell *v.* Texas 999
Calhoun *v.* McKee 833
Calhoun *v.* Pennsylvania Bd. of Probation and Parole 974
Calhoun; Spradley *v.* 909
California; Ackles *v.* 867
California; Acosta *v.* 877
California; Adams *v.* 848
California; Alfaro *v.* 953
California; Animal Protection and Rescue League *v.* 1100
California; Apodaca *v.* 950
California; Arambula *v.* 902
California; Arnold *v.* 1015
California; Arredondo *v.* 1192
California; Ayyar *v.* 906
California; Azam *v.* 1157
California; Baber *v.* 858
California; Baker *v.* 829
California; Banos *v.* 801
California; Barry *v.* 844
California; Bartholomew *v.* 1076
California; Bell *v.* 1163
California; Blackwell *v.* 923,1065
California; Bochiccio *v.* 850
California; Bojorquez Salcido *v.* 1143
California; Braley *v.* 1157
California; Brasure *v.* 832
California; Breckenridge *v.* 1181
California; Brown *v.* 1210
California; Brownlee *v.* 954
California; Bullette *v.* 838
California; Burns *v.* 1141
California; Caldwell *v.* 1104
California; Ceasar *v.* 1140
California; Chopra *v.* 918

Page
California; Cole *v.* 854
California; Coleman *v.* 954
California; Coronado *v.* 1076
California; Cortez *v.* 851
California; Cox *v.* 817
California; Craig *v.* 1110
California; Cramer *v.* 839
California; Crawford *v.* 999
California; Cruz *v.* 1215
California; Dablon *v.* 1086
California; Daniels *v.* 908
California; Davidson *v.* 1156
California; Diaz *v.* 1071
California; Dwyer *v.* 866
California; Farlough *v.* 1072
California; Farquharson *v.* 816
California; Forrester *v.* 819
California; Fresquez *v.* 849,1127
California; Gill *v.* 880
California; Gonzales *v.* 1110,1141
California; Goodie *v.* 1016
California; Gray *v.* 1190
California; Griffin *v.* 1001
California; Guess *v.* 1119
California; Harris *v.* 1111
California; Hayatullah *v.* 949
California; Her *v.* 842
California; Hernandez *v.* 1055
California; Hollywood *v.* 969
California; Howard *v.* 946,1183
California; Hypolite *v.* 873
California; Imbach *v.* 975
California; Jackson *v.* 869,998,1150
California; Jefferson *v.* 1035
California; Jimenez *v.* 879
California; Jimmerson *v.* 876
California; Johnson *v.* 950
California; Kao *v.* 840
California; Kearney *v.* 1004
California; Kelly *v.* 1020
California; King *v.* 1111,1157
California; Kirkland *v.* 876
California; LaBranch *v.* 1074
California; Lamison *v.* 1180

Page
California; Lau *v.* 900
California; Lebbos *v.* 973
California; Lenix *v.* 1142
California; Lewis *v.* 1155
California; Lindberg *v.* 912
California; Lopez *v.* 865,947
California; Lugo Ibarra *v.* 1213
California; Lynch *v.* 1036
California; Macias *v.* 1180
California; Mack *v.* 841
California; Marrufo *v.* 1157
California; Matye *v.* 852
California; Mays *v.* 876
California; Miller *v.* 833,1054
California; Mock *v.* 840
California; Moore *v.* 869
California; Mulholland *v.* 850
California; Mungia *v.* 1215
California; Mwasi *v.* 1004
California; Nelson *v.* 926
California; Nesbitt *v.* 913
California; Ortiz *v.* 889,1076
California; Page *v.* 999
California; Parker *v.* 1074
California; Parthemore *v.* 913,1090
California; Parvizi *v.* 953
California; Pierce *v.* 866
California; Rai *v.* 1188
California; Rankin *v.* 812
California; Ray *v.* 876
California; Redmond *v.* 974
California; Ricchio *v.* 1215
California; Richardson *v.* 1177
California; Riley *v.* 1192
California; Rodriguez *v.* 898,1033,1035
California; Rogers *v.* 890
California; Romero *v.* 1142
California; Ruberoe *v.* 844
California; Rundle *v.* 1014
California; Saavedra *v.* 1052
California; Senator *v.* 1134
California; Sheard *v.* 878
California; Sherman *v.* 1034
California; Sieber *v.* 840

Page
California; Sims *v.* 1156
California; Sloan *v.* 1003
California; Smith *v.* 866,895,1111,1139
California; Snowden *v.* 865
California; Stacy *v.* 873
California; Taylor *v.* 1106,1188
California; Thlang *v.* 849
California; Thompson *v.* 836
California; Tolliver *v.* 1000
California; Torres *v.* 1053
California; Tovar *v.* 867
California; Treadway *v.* 1153
California; Trujillo *v.* 1120
California; Valdez *v.* 906
California; Valencia *v.* 891
California; Vargas *v.* 907
California; Varghese *v.* 1143
California; Vega *v.* 1112
California; Watson *v.* 876
California; Whisenhunt *v.* 1053
California; White *v.* 834
California; Williams *v.* 1140
California; Williby *v.* 946
California; Wilson *v.* 806,1105
California; Wiseman *v.* 1112
California; Zackery *v.* 1076
California; Zamudio *v.* 1020
California; Zapien *v.* 821
California City; Neilson *v.* 1174
California Coastal Comm'n; Charles A. Pratt Construction Co. *v.* 1171
California Coastal Comm'n; Marine Forests Society *v.* 1086
California Coastal Comm'n; Ocean Harbor House HOA *v.* 1172
California Dept. of Health Servs.; Biomedical Patent Mgmt. *v.* . . 1097
California Employment Development Dept.; Whaley *v.* 821
California Speedway Corp. *v.* Miller 1208
California Workers' Compensation Appeals Bd.; Deupree *v.* 1213
Calimlim *v.* United States 1102
Call *v.* Branker 843
Callahan *v.* Alabama 1130
Callahan *v.* Circuit City Stores, Inc. 816
Callahan; Pearson *v.* 223
Calles *v.* United States 899
Calpine Energy Servs. *v.* Public Util. Dist. No. 1 of Snohomish Cty. 941
Camacho *v.* United States 1145

Page
Camacho-Hernandez *v.* United States 1078
Cambridge Literary Properties, Ltd. *v.* W. Goebel Porzellanfabrik 815
Camden; Huertas *v.* 839
Campbell, *In re* 1168
Campbell; Harrison *v.* 833
Campbell *v.* Illinois 891
Campbell *v.* Louisiana 1040
Campbell *v.* Phelps 817
Campbell *v.* Reynolds 917
Campbell *v.* United States 847,1145
Campeau *v.* United States 1079
Campion *v.* United States 1032
Campos *v.* United States 921,935,1122
Campos-Maldonado *v.* United States 935
Canadian Lumber Trade Alliance; United States Steel Corp. *v.* . . 819
Canadian National/Ill. Central R. Co.; Baker *v.* 1171
Canady *v.* Runnels 859
Canania *v.* United States 1037
Cancelmi; Porter *v.* 1183
Canfield *v.* United States 1139
Cannady; Nicarry *v.* 868
Cannel *v.* United States 854,1027
Cannon *v.* Clinton 921
Cannon; Michau *v.* 1029
Cano *v.* Bexar County 1036
Cano-Morales *v.* United States 896
Cantrell; McGowan *v.* 1015
Cantu *v.* Quarterman 907
Cantu *v.* United States 997
Canyon County *v.* Syngenta Seeds, Inc. 970
Cao *v.* United States 904
Capers *v.* Rogers 955,1129
Caperton *v.* A. T. Massey Coal Co. 1028,1162
Caplan *v.* United States 960
Capshaw *v.* Kentucky 1016
Caputo *v.* United States 819
Caracappa *v.* United States 1148
Caracciolo *v.* Office of Personnel Management 923
Caraco Pharmaceutical Laboratories, Ltd.; Forest Laboratories *v.* 1170
Carbajal *v.* United States 1119
Carbe *v.* United States 864
Carcieri *v.* Kempthorne 807,991
Carcieri *v.* Salazar 379
Cardenas-Cardenas *v.* United States 1192

Page
Cardenas Luna *v.* United States 1118
Cardona *v.* Quarterman 1053
Cardona *v.* United States 865,1146
Cardona-Rosario *v.* United States 1201
CareToLive *v.* von Eschenbach 1101
Carey *v.* Free 1036,1209
Carey *v.* Johnson 923,1065
Carey; Norman *v.* 1113
Cargill *v.* United States 926,1040
Carl *v.* Lawler 917
Carlisle; Arthur Andersen LLP *v.* 1010
Carlisle *v.* Ohio 1101
Carlota Copper Co. *v.* Friends of Pinto Creek 1097
Carlsbad Technology, Inc. *v.* HIF Bio, Inc. 943,1043
Carlton; Davis *v.* 896,1004
Carlton; Jones *v.* 1087
Carlton *v.* Smith 1163
Carlton *v.* United States 1038
Carmenate *v.* United States 1019
Carmon *v.* Hudson 890
Carnagie *v.* United States 1194
Carney *v.* Kelly 1115
Caro-Grimaldo *v.* United States 1062
Carolinas Healthcare System; Jackson *v.* 893,1040
Carothers; Hertz *v.* 843
Carpenter; Bowling *v.* 1100
Carpenter; Mohawk Industries, Inc. *v.* 1152
Carpenter *v.* United States 1058
Carr *v.* United States 834
Carrasco *v.* United States 958,1079
Carrascosa *v.* McGuire 998,1129
Carrazco *v.* Florida 840
Carrillo-Luna *v.* United States 977
Carroll; Bacon *v.* 975
Carroll; Charity *v.* 890
Carroll; Reed *v.* 898,1081
Carroll *v.* United States 937
Carstarphen *v.* United States 911
Carter, *In re* 809
Carter *v.* Florida 947
Carter *v.* Illinois 880
Carter *v.* Lafler 974
Carter *v.* United States 909,977,1017,1061
Carter *v.* Virginia 1117

Page
Cartier *v.* United States 1202
Caruso; Alder *v.* 1034
Caruso; Branham *v.* 1182
Caruthers *v.* Berghuis 1188
Carvajal-Vasquez *v.* United States 1119
Carvajal Vazquez *v.* United States 1119
Casanovas; Curiale *v.* 802,1043
Casarez-Acevedo *v.* United States 1201
Case Corp.; Extra Equipamentos e Exportacao Ltda. *v.* 1175
Cash *v.* NADA Retirement Administrators, Inc. 944,1064
Cash *v.* NADART 944,1064
Caskey *v.* Colgate-Palmolive Co. 1071
Cason; Ezell *v.* 835
Cason; Gentry *v.* 836
Cason *v.* Johnson 1034
Casper *v.* SMG 827
Cassell *v.* United States 1155
Castaneda-Velez *v.* United States 1193
Castellon-Falcon *v.* United States 1123
Castillo, *In re* 1168
Castillo *v.* Texas 1053
Castillo *v.* United States 848,960
Castillo-Cuevas *v.* United States 1125
Castillo-Lucio *v.* United States 1133
Castilloux *v.* McNeil 848
Castleberry *v.* Ohio 916
Caston *v.* United States 923
Castro *v.* Drug Enforcement Administration 959
Castro *v.* United States 903,905
Castro-Mejia *v.* United States 905
Castro Naranjo *v.* United States 1079
Cata *v.* Garcia 1110
Cate *v.* Anderson 818
Cate; Avila *v.* 997
Cate; Bernal *v.* 1002
Cate; Blanco *v.* 1034
Cate; Brown *v.* 955
Cate; Kratz *v.* 1178
Cate; Lugo *v.* 949
Cate; Miller *v.* 1143
Cate; Monarrez *v.* 859
Cate; Parthemore *v.* 833
Cate; Saavedra *v.* 939
Cate; Stewart *v.* 1085

Page
Caterpillar, Inc.; Trans-Spec Truck Service, Inc. *v.* 995
Catholic Healthcare Partners; Talwar *v.* 1035
Catterson; Thompson *v.* 912
Caviness *v.* Felker 917
Cazares-Olivas *v.* United States 834
Cazares-Saenz *v.* United States 1058
Cazzres-Saenz *v.* United States 1058
CCA Associates *v.* United States 1170
Ceasar *v.* California 1140
Ceballos-Saligan *v.* United States 1194
Cedars-Sinai Medical Center; Purnell *v.* 822
Cedeno *v.* Texas 833
Cellxion, LLC; Bradford *v.* 845,1090
Cemco Investors, LLC *v.* United States 823
Censke *v.* Department of Justice 808
Center for Bioethical Reform; Los Angeles Cty. Sheriff's Dept. *v.* 1098
Center for Bioethical Reform; Roberts *v.* 1098
Central Intelligence Agency; Dennett *v.* 820
Central Intelligence Agency; Norton *v.* 974
Central Laborers Pension Fund; Merix Corp. *v.* 1085
Central W. Va. Energy Co. *v.* Wheeling Pittsburgh Steel Corp. . . 1045
CenturyTel, Inc. *v.* Beattie 1032
Ceo *v.* Padula 1110
Cerqueira *v.* American Airlines, Inc. 821
Certified Grocers Midwest, Inc.; Delgado *v.* 1013,1090
Cervantes-Quintero *v.* United States 1145
Cervantes-Rubio *v.* United States 909
Cervantez-Valerio *v.* United States 901
C'est Moi, Inc. *v.* New Hampshire Ins. Co. 1047
Chacon *v.* United States 1140
Chalif *v.* Cuomo 1110
Chamberlain *v.* United States 1194
Chamberlin *v.* Mississippi 1106
Chambers; Rockman *v.* 835
Chambers *v.* United States 122,806
Chamblain *v.* Power 1114
Chandler; Hayes *v.* 857
Chandler; Spencer *v.* 1046
Chang *v.* Minnesota 931
Chanowitz *v.* Brown 1186
Chapello; Bradford *v.* 1014
Charity *v.* Carroll 890
Charles, *In re* 942
Charles *v.* Farwell 865

Page
Charles A. Pratt Construction Co. *v.* California Coastal Comm'n 1171
Charleston County Detention Center; Gibson *v.* 834
Chartschlaa *v.* Nationwide Mut. Ins. Co. 1213
Chase *v.* Texas 832,1089,1127
Chase *v.* United States 876
Chase Bank; Condit *v.* 825
Chatmon *v.* United States 924
Chavero *v.* United States 1105
Chavez *v.* Fairman 1108
Chavez *v.* United States 1121
Chavez-Calderon *v.* United States 876
Chavez-Cuevas *v.* United States 1079
Chavis, *In re* 810
Cheadle *v.* Dinwiddie 1109
Check Investors, Inc. *v.* Federal Trade Comm'n 1011
Chein *v.* Drug Enforcement Administration 1139
Cheng Chui Ping *v.* United States 993
Chen Xiang *v.* United States 823
Cherokee Center for Change, Inc.; Spaeth *v.* 883
Cherry *v.* United States 854
Chertoff; Codina *v.* 1113,1117
Chery, *In re* 1030,1130
Chesterfield County Planning Comm'n; Steinburg *v.* 1046
Cheuvront; Bowen *v.* 970
Chicago; Evans *v.* 1104
Chicago Public Schools; Gee *v.* 910
Chief Judge, Court of Appeals of N. Y.; Lee *v.* 892
Chief Justice, Supreme Court of Va.; Rodriguez *v.* 1071
Child Development Services of Fremont County; Dehning *v.* 822
Childers *v.* Oklahoma 1154
Childers; Stewart *v.* 818
Childers *v.* United States 1060
Childress *v.* Nevada 1108
Childs *v.* United States 975
Ching Tang Lo *v.* United States 978
Chi Nguyen *v.* Cain 843
Chiplease, Inc. *v.* Steinberg 1046
Chisolm *v.* Boling 1013
Chisolm *v.* United States 961
Choe *v.* Torres 1139
Choinski; Thompson *v.* 1118
Chopra *v.* California 918
Chorin *v.* United States 1201
Choudry; Arreola *v.* 1048

Page
Christ *v.* United States 885
Christian *v.* Gansheimer 917
Christie; Crump *v.* 822
Christophe *v.* Morris 1113
Christopher *v.* Iowa 1185
Chui Ping *v.* United States 993
Chun *v.* New Jersey 825
Church; Robinson *v.* 972
Chu Young Yi *v.* Tompkins 946,1160
Cianfarano *v.* United States 1049
Cidlowski *v.* Department of State 845
Cielto *v.* United States 1148
Cimpl's, Inc.; Fin-Ag, Inc. *v.* 1095
Cincinnati *v.* Cleveland Construction, Inc. 1100
Cincinnati; Cleveland Construction, Inc. *v.* 1100
Cinque; Piterniak *v.* 1135
Circuit City Stores, Inc.; Callahan *v.* 816
Circuit Court of Ala., Lee County; Sunday *v.* 998
Circuit Court of Mich., Macomb County; Maples *v.* 1086
Circuit Court of Wis., Dane County; Voigt *v.* 1179
Cisneros *v.* United States 924,1013
Citifinancial Mortgage Co.; York *v.* 838,1090
Citizens for Affordable Dentures; Allison *v.* 884
Citizens for Tax Reform; Ohio *v.* 1031
Citizens United *v.* Federal Election Comm'n 1028
City. See also name of city.
City Council of Fredericksburg; Turner *v.* 1099
Civil Service Employees Assn.; Greene *v.* 1190
Civil Service Employees Assn.; Turner *v.* 1190
Clapper *v.* TacCo Falcon Point, Inc. 995
Clark; Allen *v.* 832
Clark *v.* Finn 1015
Clark *v.* Florida 1106
Clark *v.* New York City Transit Authority 1012,1128
Clark *v.* Perez 823
Clark *v.* Quarterman 1108
Clark *v.* Roberts 852
Clark; Santiago *v.* 1184
Clark; Smith *v.* 1016,1129
Clark *v.* Sniezek 867
Clark *v.* South Carolina 841
Clark *v.* Texas 999
Clark *v.* United States 829,1007,1009
Clark *v.* Zipfel 1106

Page
Clark-Aigner *v.* United States 1121
Clarke; Crosby *v.* 1034
Clarke; Gaskins *v.* 1119
Clarke; Hicks *v.* 857
Clarke; Leftwich *v.* 1094
Clarke; Murphy *v.* 941
Clarke *v.* United States 956
Claro *v.* United States 1059
Clasen *v.* United States 977
Clay *v.* United States 1193
Clayton *v.* Quarterman 948
Clayton *v.* Roper 1003
Clayton *v.* United States 1006
CleanCOALition *v.* TXU Generation Co. LP 1049
CleanCOALition *v.* TXU Power 1049
Clear Creek Independent School Dist.; Mayeaux *v.* 1048
Clearing House Assn., L. L. C.; Cuomo *v.* 1130
Clemente *v.* Massachusetts 1181
Clements *v.* Johnson 1002
Clements *v.* United States 858
Clements-Herron *v.* United States 858
Clemmons *v.* Mathy 1158
Clemson Univ.; Holman *v.* 884
Clerk of U. S. District Court; Smith *v.* 1037
Cleveland Construction, Inc. *v.* Cincinnati 1100
Cleveland Construction, Inc.; Cincinnati *v.* 1100
Climate Conditioning Corp.; Edwards *v.* 1153
Climate Heating and Cooling; Edwards *v.* 1153
Cline; Gales *v.* 918
Cline *v.* United States 926,1124
Clinton; Cannon *v.* 921
Clinton *v.* United States 928
Cloud *v.* Alabama 878
Clow *v.* United States 1089
Coakley; Robinson *v.* 834,1063
Coalition to Defend Affirmative Action; Mich. Civ. Rights Comm. *v.* 937
Coates *v.* United States 1079
Coats *v.* United States 1216
Cobb *v.* Massachusetts 1167
Cobb *v.* McNeil 1036
Cobb *v.* United States 1147
Cochran; McCann *v.* 944
Cochran *v.* Stein 929,1065
Codina *v.* Chertoff 1113,1117

Page
Cody *v.* Gold Kist, Inc. 1173
Cody *v.* United States 1193
Coeur Alaska, Inc. *v.* Southeast Alaska Conservation Council . . . 1043
Coffindaffer *v.* United States 1057
Coffman *v.* West Virginia 1194
Coggins *v.* Abbett 1151
Coggins *v.* Alabama 1143
Coggins *v.* Harris 1051
Coggins *v.* Jackson's Gap 1086,1160
Coggins *v.* Parr 1094
Coggins *v.* U. S. District Court 1005,1130
Cohen *v.* Beachside Two-I Homeowners' Assn. 945
Cohen *v.* Napolitano 1187
Cohen; Pitts *v.* 1055
Cohen & Grigsby, P. C.; Iwanejko *v.* 829
Cohetzaltitla-Ponce *v.* United States 919
Coil *v.* United States 997
Coin Acceptors, Inc. *v.* Mars, Inc. 1049
Cole *v.* Bennett 903
Cole *v.* California 854
Cole; Long John Silver's, Inc. *v.* 815
Cole *v.* McNeil 1035
Cole *v.* United States 1080
Coleman *v.* California 954
Coleman *v.* Michigan 831
Coleman *v.* Quarterman 1155
Coleman *v.* United States 929,958,1088,1104,1146
Colgate-Palmolive Co.; Caskey *v.* 1071
Colina del Rio, LP; Villaje del Rio, Ltd. *v.* 1046
Collard *v.* Texas 1137
Collier *v.* Muntez 851
Collier *v.* United States 1146
Collier County Bd. of Comm'rs; Thampi *v.* 1153
Collins *v.* United States 1057
Colorado; Anderson *v.* 862,1081
Colorado; Edmond *v.* 1189
Colorado; Kansas *v.* 1029,1095
Colorado; Stephenson *v.* 869
Colorado Division of Ins.; Portugal *v.* 1215
Colorado Division of Ins.; Trujillo *v.* 1215
Columbia Gas Transmission Corp. *v.* Levin 1097
Columbus Exploration, LLC *v.* Williamson 1102
Combs *v.* Homer-Center School Dist. 1138
Comedy Club, Inc.; Improv West Associates *v.* 801

Page
Comerica, Inc.; Tkachik *v.* 824
Comisar *v.* United States 1125
Commissioner; Allnut *v.* 996
Commissioner; Arnett *v.* 1011
Commissioner; Hightower *v.* 997
Commissioner; Holloway *v.* 1213
Commissioner *v.* Jelke's Estate 826
Commissioner; Kanofsky *v.* 1071,1208
Commissioner; Malan *v.* 826,1063
Commissioner; Patridge *v.* 909
Commissioner; Stearman *v.* 885
Commissioner; Thurner *v.* 824
Commissioner; Turner *v.* 1154
Commissioner; Webster *v.* 887
Commissioner of Internal Revenue. See Commissioner.
Commodity Futures Trading Comm'n; Brockbank *v.* 1002
Commodity Futures Trading Comm'n; Shimer *v.* 1136
Commodore *v.* United States 993
Common Law Settlement Counsel *v.* Bailey 1083,1168
Commonwealth. See name of Commonwealth.
Comstock *v.* United States 1020
Conard *v.* Lawler 841
Conchas *v.* United States 930
Concho *v.* United States 915
Condit *v.* Chase Bank 825
Conkright *v.* Frommert 1211
Conkright; Frommert *v.* 1211
Conkright; Pietrowski *v.* 1211
Conlenzo-Huffman *v.* United States 1124
Conley *v.* New Jersey 1016
Conlin *v.* Texas 999
Conn *v.* New Jersey 864
Connecticut *v.* Cook 970
Connecticut; Grant *v.* 916
Connecticut; Johnson *v.* 883
Connecticut; Martin *v.* 859
Connecticut; Moreno-Cuevas *v.* 947
Connecticut; Santos *v.* 851
Connecticut; Zubrowski *v.* 1216
Connell; Douglas *v.* 806
Conner *v.* State Farm Mut. Automobile Ins. Co. 944
Connolly; Sanchez *v.* 855
Conroy *v.* Florida 831
Conroy *v.* New York 1013

Page
Consolidated Freightways, Inc.; Smith *v.* 1046
Continental Airlines, Inc.; Hall *v.* 819
Continental Airlines, Inc.; Staunch *v.* 883
Continental Construction Co.; Dilworth *v.* 1042
Continental Resources, Inc.; Olson *v.* 817,1063
Contreras *v.* United States 1117
Contreras-Murillo *v.* United States 1079
Contreras-Saldana *v.* United States 907
Conway; Africa *v.* 902
Conway; Daniel *v.* 906
Conway; Diaz *v.* 870
Conway; Martinez *v.* 852
Conway; Policano *v.* 954
Conway; Walker *v.* 1107
Cooey *v.* Kerns 968
Cooey *v.* Strickland 940
Cook; Connecticut *v.* 970
Cook *v.* Drew 961
Cook *v.* Florida 831
Cook; Lerma *v.* 837
Cook *v.* McNeil 841
Cook *v.* Palakovich 858
Cook *v.* Schriro 1141
Cook; Simon *v.* 945
Cook County Public Guardian; Struck *v.* 1134
Cookeville Regional Medical Center *v.* Johnson 1212
Cook Inlet Region, Inc.; Bodkin *v.* 1040
Coombs *v.* Kelchner 940,1068
Coomer *v.* Yukins 1188
Cooney *v.* Orlando 882
Cooper *v.* Dallas Police Assn. 831
Cooper; Indyway Investment *v.* 1047
Cooper *v.* Johnson 1167
Cooper; Johnson *v.* 844
Cooper; LeBeuf *v.* 1156
Cooper; Preston *v.* 906
Cooper *v.* Skanchy 1171
Cooper *v.* South Carolina 861
Cooper *v.* United States 943,1061
Cope *v.* United States 933,1124,1147
Copeland *v.* Ohio 946
Copeland *v.* United States 1121,1196
Copley *v.* Voorhies 1193
Copp *v.* Tarro 1107

Page
Coppedge, *In re* 1084
Copple; Illinois Central R. Co. *v.* 995
Corbett; Gallman *v.* 875
Corbett; Oliver *v.* 1001,1129
Cordero *v.* DeLano 805
Cordis Corp.; Boston Scientific Corp. *v.* 882
Cordoba-Martinez *v.* United States 1077
Cordova *v.* United States 969
Corley *v.* United States 1140
Cornejo; Dittmer *v.* 999
Cornelio *v.* National Labor Relations Bd. 994
Cornelius *v.* Pollard 833
Cornelius *v.* United States 863
Corner *v.* McNeil 899
Coronado *v.* California 1076
Coronado *v.* Jones 860
Coronado-Majano *v.* United States 860
Corona-Verbera *v.* United States 865
Coronel-Perez *v.* Washington 1156
Correctional Medical Services; Southworth *v.* 834
Corrections Commissioner. See name of commissioner.
Correll; Schriro *v.* 1098
Cortez *v.* California 851
Cortez-Balleza *v.* United States 1019
Cortez Masto; Cox *v.* 1185
Cortez Masto; Jackson *v.* 972
Cosco *v.* Abbott 905
Cosenza *v.* St. Amand 1176
Cosme-Garcia *v.* United States 924
Cossette *v.* Department of Agriculture 1211
Costa *v.* United States 956
Costco Wholesale; Jamison *v.* 952
Cotten *v.* Oberdier 923
Cotton *v.* Fielding 1167
Cotton *v.* McNeil 839
Cotton *v.* North Carolina 1087
Cotton *v.* United States 1059
Coughlan; O'Neill *v.* 1011
Coulombe *v.* Oxnard 1183
Countess *v.* United States 932
Countrywide Home Loans; Banga *v.* 877
County. See also name of county.
County Bd. of Ed. of Richmond County; Wynn *v.* 865,1141
County Comm'rs of Carroll County; Piney Run Preserv. Assn. *v.* 885

Page
Courshon's Estate; Weiss *v.* 1139
Court of Appeal of Cal., Second Appellate Dist.; Holloway *v.* 895
Court of Appeals. See also U. S. Court of Appeals.
Court of Appeals of Mo., Eastern Dist.; Williams *v.* 1178
Court of Brunswick County; Matson *v.* 1112
Court of Common Pleas of Pa., Allegheny County; Szarewicz *v.* . . 1165
Court of Criminal Appeals of Tex.; Wells *v.* 1051
Courville *v.* United States 1145
Cousins *v.* United States 901
Covelli *v.* Benson 841
Covington *v.* Smith 849
Cox, *In re* 1011,1030,1130
Cox *v.* California 817
Cox *v.* Cortez Masto 1185
Cox *v.* McNeil 998
Cox *v.* United States 1009,1088
Coy *v.* Quarterman 1138
C. Pyramid Enterprises *v.* E&H Steel Corp. 1042
Craig *v.* California 1110
Craig *v.* Rozum 1001
Craig Outdoor Advertising, Inc. *v.* Viacom Outdoor, Inc. 1136
Crain *v.* Cain 1014
Cram, *In re* 1096
Cramer *v.* California 839
Cramer *v.* Duncan 1002,1209
Crampton *v.* United States 1133
Cranmer *v.* Tucson Police Dept. 1100
Crawford *v.* California 999
Crawford *v.* Hooks 829
Crawford *v.* Metropolitan Govt. of Nashville and Davidson County 271
Crawford *v.* Roe 821
Crawford *v.* Texas 851,1040
Crawford *v.* United States 859,924,960,1009
Crawley *v.* United States 1007
Creech *v.* Smithfield Housing Authority 1141
Creed *v.* Arkansas 823
Creighton *v.* Pennsylvania 864
Creveling *v.* Washington Dept. of Fish and Wildlife 1166
Criminal Dist. Court Number 2, Dallas County; Veasey *v.* 906
Criner *v.* Quarterman 1075
Criner *v.* Texas Dept. of Criminal Justice 1075
Crisolo *v.* United States 976
Crissup *v.* Quarterman 1182
Crockett *v.* Hulick 1189

Page
Crook *v.* El Paso Independent School Dist. 956,1129
Crosby *v.* Clarke 1034
Crosby *v.* United States 912
Cross *v.* Reliance Standard Life Ins. Co. 813
Cross *v.* United States 1218
Cross Country Bank, Inc. *v.* New York 1136
Croy; Hansen *v.* 1165
Crump *v.* Christie 822
Crump-Donahue *v.* United States 1048,1128
Crusoe *v.* United States 1124
Crutcher *v.* Nevada 923
Cruz *v.* Arizona 1104
Cruz *v.* California 1215
Cruz *v.* United States 1132
Cruzado-Laureano *v.* United States 1099
Cruz-Pereira *v.* United States 1140
Cruz-Rodriguez *v.* United States 1144
Crytser *v.* United States 1103
CSC Holdings, Inc.; Cable News Network, Inc. *v.* 1095
CSX Transportation, Inc.; Metz *v.* 811
CSX Transportation, Inc. *v.* Rivenburgh 1010
Cuba Soil & Water Conservation Dist. *v.* Lewis 1099
Cuesta *v.* United States 978
Cueto-Borque *v.* United States 993
Culbert *v.* United States 977
Cull *v.* Perry Homes 1103
Culliver; Bailey *v.* 1141
Culliver; Bell *v.* 1110
Culliver; Blan *v.* 1179
Culliver; Dubose *v.* 1188
Culliver; Means *v.* 1180
Culliver; Moffett *v.* 844
Culliver; Singleton *v.* 841
Culliver; Tedder *v.* 808
Cumberland County Bd. of Ed.; Antonellis *v.* 1212
Cummings; Lowery *v.* 848
Cummings *v.* McNeil 843
Cunningham *v.* Indiana 1047
Cuomo; Chalif *v.* 1110
Cuomo *v.* Clearing House Assn., L. L. C. 1130
Cuomo; Jones *v.* 1075
Cuomo; Shuler *v.* 1016
Curators of Univ. of Mo.; Love *v.* 1001
Curiale *v.* Casanovas 802,1043

Page
Curiale *v.* Potter 804,1043
Curran *v.* United States 924
Curras-Ortiz *v.* Supreme Court of P. R. 1172
Curry *v.* Butler 1089
Curry *v.* Hensinger 1069
Curry *v.* United States 863,1059
Curry; Womack *v.* 928
Curtis, *In re* 1135
Curtis; Tatum *v.* 808,1072,1159
Cuthbertson *v.* Cuthbertson 1113
Cutshaw *v.* Lewis 1157
Cutsinger *v.* Hawaii 928
D. *v.* Florida Dept. of Children and Families 805
Dablon *v.* California 1086
Dade *v.* DiGuglielmo 1110
Dade *v.* United States 898,1208
Dagley *v.* Russo 1114
Dahler *v.* Martinez 1176
Dahlgren *v.* First National Bank of Holdrege 1153
Dahlquist *v.* Kent 1012,1128
Daiak *v.* Florida 1108
Daigle *v.* Department of Veterans Affairs 924,1065
DaimlerChrysler Financial Services; Marquette Chrysler Jeep *v.* 826
DaimlerChrysler Financial Services; Ridge Chrysler Jeep *v.* 826
Dallanegra *v.* United States 1092
Dallas; Daniels *v.* 1049
Dallas; Environmental Conservation Organization *v.* 945
Dallas Independent School Dist.; Grey *v.* 883
Dallas Police Assn.; Cooper *v.* 831
Dalton *v.* Tiller 1099
D'Amario *v.* Davis 1134
Damon *v.* Moore 939
Dandar *v.* Good 844
Dandar *v.* Krysevig 1111,1219
Daneshvar *v.* Graphic Technology, Inc. 889,1064
Daniel *v.* Conway 906
Daniels *v.* California 908
Daniels *v.* Dallas 1049
Daniels *v.* United States 822,825,905
Danielson *v.* Alabama 872
Danner *v.* United States 864
Dannhoff; Minniecheske *v.* 803
Dantzler *v.* Pope 805
Dardenne; Libertarian Party *v.* 940

Page
Darne, *In re* 810
Darnell *v.* Anderson 863
Dasisa *v.* University of D. C. Bd. of Trustees 1105
Davenport *v.* Pennsylvania 891
Davet *v.* Bank One-Cleveland, N. A. 825
David *v.* Monsanto Co. 888
Davidson *v.* California 1156
Davidson *v.* Grossman 823
Davidson *v.* Texas 1187
Davidson *v.* United States 933,1195
Davies *v.* Kane 1156
Davignon; Hodgson *v.* 1069
Davila, *In re* 809
Davila-Romero *v.* United States 1203
Davis; Blige *v.* 822
Davis *v.* Carlton 896,1004
Davis; D'Amario *v.* 1134
Davis *v.* Ercole 870
Davis *v.* Federal Bureau of Prisons 846
Davis *v.* Florida 1188
Davis *v.* Georgia 967
Davis; Gordon *v.* 1186
Davis *v.* Grant 1176
Davis *v.* McNeil 899
Davis; Miller *v.* 888
Davis *v.* Minnesota 1111
Davis *v.* New Jersey 880,1040
Davis; Newton *v.* 935
Davis *v.* Ohio 861
Davis *v.* Siemens Medical Solutions USA, Inc. 1171
Davis *v.* South Carolina 840
Davis *v.* United States 835,890,902,928,931,976,1039,1058,1080,1201
Davis *v.* Vincent 1184
Dawson *v.* Georgia 871
Dawson *v.* Michigan 1072
Dawson *v.* United States 896,1118
Day *v.* United States 887
Day *v.* Wollenhaupt 924
Daye *v.* McBride 858
D. C. *v.* D. C. 1178
D. C.; D. C. *v.* 1178
DCC Litigation Facility, Inc.; Perkins *v.* 1173
DCFS Trust *v.* Jones 1028
DCR Fund I, L. L. C.; Tal *v.* 814

Page
Dean *v.* Leake 801
Dean *v.* United States 1028,1095,1168
Dearing *v.* McDaniel 919
De Armas *v.* United States 893
Dearmore; Garland *v.* 938
Debrow *v.* Cain 851
DeCologero *v.* United States 1005,1039
Dee *v.* Maine 823
Dee *v.* Wyoming 824
Deep *v.* Recording Industry Assn. of America, Inc. 1126
Deering *v.* United States 921
Dees *v.* United States 1203
Deese; Row *v.* 824
Deeter *v.* Rozum 1001
Defense Finance and Accounting Service; Spurlock *v.* 1182
Degorski *v.* Illinois 1077
Degruy *v.* Cain 899
Dehning *v.* Child Development Services of Fremont County 822
De Horta-Garcia *v.* United States 997
Deicher; Evansville *v.* 1173
DeJesus *v.* Jones 860
DeJesus *v.* Lafler 951
De La Cerda, *In re* 1096
De La Cerda *v.* Quarterman 871
Delacruz *v.* United States 1018
Delacruz-Albarado *v.* United States 1018
De La Cruz-Cuevas *v.* United States 962
De La Garza *v.* Fabian 1167
Delaney, *In re* 1168
DeLano; Cordero *v.* 805
De La Rosa *v.* United States 1145
Delaware; Gattis *v.* 1109
Delaware; Quandt *v.* 869
Delaware; Sykes *v.* 969
De Leon *v.* Shih Wei Navigation Co. Ltd. 824
DeLeon *v.* United States 890,1176
Deleston *v.* South Carolina 1108
Delfino *v.* United States 812
Delgado *v.* Certified Grocers Midwest, Inc. 1013,1090
Delgado *v.* Mukasey 887
Delgado *v.* United States 1200
Del Giorno; Wood *v.* 826
Deligiannis *v.* Appellate Div., Super. Ct. of Cal., Los Angeles Cty. 805
Del-One Del. Federal Credit Union; Shahin *v.* 1153

Page
Delor *v.* DirectNIC.com 1055,1150
Delor *v.* Intercosmos Media Group, Inc. 1055,1150
De Los Santos Mora *v.* New York 943
DeLoy; Benge *v.* 857
Delta Air Lines, Inc.; Drake *v.* 805
Deltoro *v.* Florida 1107
Dembry *v.* United States 1121
DeMontbreun *v.* Department of Navy 1198
De Montebello; Grant *v.* 1099
Dempewolf; Wallin *v.* 1051
Dempster *v.* Dempster 1098
Denedo; United States *v.* 1041
Dennett *v.* Central Intelligence Agency 820
Denny *v.* Kansas 955
Denton *v.* Hyman 1097
de Oliveira *v.* Mukasey 1101
DePalma *v.* United States 1144
Department of Agriculture; Beucke *v.* 1213
Department of Agriculture; Cossette *v.* 1211
Department of Agriculture; Lewis *v.* 886,1064
Department of Air Force; Thompson *v.* 1158
Department of Army; Baker *v.* 915
Department of Army; Murray *v.* 1146
Department of Corrections Training Academy; Tuskusky *v.* 944
Department of Defense; National Institute of Military Justice *v.* 1084
Department of Energy; Amirmokri *v.* 886
Department of Health and Human Services; Ali *v.* 924,1128
Department of Homeland Security; Elkimya *v.* 1003
Department of Housing and Urban Dev.; Emory *v.* 909,1065
Department of Housing and Urban Dev.; Sitkovetskiy *v.* 1115,1219
Department of Interior; Elephant Butte Irrig. Dist. of N. M. *v.* . . 1172
Department of Interior; Lawrence *v.* 888
Department of Justice; Baney *v.* 867
Department of Justice; Brown *v.* 932
Department of Justice; Censke *v.* 808
Department of Mental Health; Morgan *v.* 916
Department of Navy; DeMontbreun *v.* 1198
Department of Navy; Groseclose *v.* 1044,1140
Department of Navy; Larsen *v.* 1071
Department of Navy; Motley *v.* 1152,1213
Department of State; Cidlowski *v.* 845
Department of Treasury; Beaudette *v.* 806,1124
Department of Veterans Affairs; Branch-Williams *v.* 875,1064
Department of Veterans Affairs; Daigle *v.* 924,1065

Page
Department of Veterans Affairs; Doe *v.* 1136
Department of Veterans Affairs; King *v.* 1103
Department of Veterans Affairs; Patrick *v.* 1139
Department of Veterans Affairs; Weber *v.* 1069
DeReyes *v.* Wilkins 1212
DeSivo *v.* United States 1080
Despenza, *In re* 809,1064
Des Plaines; Kosyla *v.* 870
DeStefano; Ricci *v.* 1091
Detroit Building Authority; Michigan Financial Investments *v.* . . 828
Detweiler *v.* United States 1148
Deupree *v.* California Workers' Compensation Appeals Bd. 1213
Deutsche Bank National Trust Co.; Buck *v.* 869,1027
Deveries; Martin *v.* 1074
DeVincentis *v.* Quinn 880
Dexter; Perez *v.* 884
D. G. *v.* North Plainfield Bd. of Ed. 1085
DHL Express (USA), Inc. *v.* Ontiveros 1154
Dial *v.* United States 902
Dias *v.* Elique 1096
Diaz *v.* California 1071
Diaz *v.* Conway 870
Diaz *v.* Inch 854
Diaz *v.* United States 859,865,937,1007,1079
Diaz-Boyzo *v.* United States 1216
Diaz-Trevino *v.* United States 860
Dickerson *v.* North Carolina 1076
Dickerson *v.* United States 958
Dickerson; Wisdom *v.* 904
Dickow; Rothhaupt *v.* 1100
Dicus; Mateen *v.* 819,1063
Diego-Barrera *v.* United States 934
Diehl, *In re* 1096
Diggs *v.* DiGuglielmo 971,1081
Diggs *v.* Osceola 864
Diggs *v.* United States 1007
DiGuglielmo; Brown *v.* 1015
DiGuglielmo; Dade *v.* 1110
DiGuglielmo; Diggs *v.* 971,1081
DiGuglielmo; Green *v.* 1186
DiGuglielmo; Holmes *v.* 857
DiGuglielmo; Richard *v.* 871,1027
Dillard *v.* United States 1148
Dillingham Ship Repair; Siler *v.* 1093

Page
Dillon *v.* Cain 974
Dilworth *v.* Continental Construction Co. 1042
Dilworth *v.* Gregoire 1139
Dilworth *v.* McKenna 1139
Dimas *v.* United States 1176
Dimepiece *v.* United States 1196
Dimitrov *v.* United States 1196
Dingle; Townsend *v.* 1016
Dinsio *v.* Federal Bureau of Investigation 872
Dinsio *v.* Kirkpatrick 1181
Dinwiddie; Brown *v.* 1051
Dinwiddie; Cheadle *v.* 1109
Dionisio *v.* United States 825
Direct Merchants Bank; Athon *v.* 858
DirectNIC.com; Delor *v.* 1055,1150
Director of penal or correctional institution. See name or title of director.
DIRECTV Group, Inc.; Finisar Corp. *v.* 1070
DIRECTV, Inc. *v.* Hoa Huynh 937
Disciplinary Bd. of Supreme Court of N. M.; Stein *v.* 818
Disler *v.* Massachusetts 968
District Attorney of Philadelphia; Martinez *v.* 845
District Attorney's Office for Third Judicial Dist. *v.* Osborne . . 992,1152
District Court. See also U. S. District Court.
District Court of Colo., Arapahoe County; Egbune *v.* 923
District Court of Minn., Hennepin County; Sharp *v.* 1158
District of Columbia; Adeyemi *v.* 1036
District of Columbia; Fernebok *v.* 971
District of Columbia; Ginger *v.* 1101
District of Columbia; Parnigoni *v.* 996
District of Columbia; Sobin *v.* 931
District of Columbia; Yates *v.* 887
District of Columbia Housing Authority; Willis *v.* 1189
Dittmer *v.* Cornejo 999
Dixie National Life Ins. Co. *v.* Ward 938
Dixon *v.* Thompson 999,1129
Dixon *v.* United States 864
Djan *v.* Mukasey 1000
Djokovic *v.* Mukasey 969
Djoumessi *v.* United States 1119
Djukic *v.* Turner 884
Dobbey *v.* Illinois 1180
Docherty *v.* United States 1176
Dodd *v.* Quarterman 1035,1209

Page
Dodd *v.* United States 1199
Dodd; Valentine *v.* 951
Dodge *v.* Utah 872
Dodson, *In re* 1211
Dodson *v.* United States 1077,1209
Doe *v.* American Airlines 1140
Doe; Avent *v.* 1110
Doe *v.* Bredesen 921
Doe *v.* Department of Veterans Affairs 1136
Doe *v.* MySpace, Inc. 1031
Doe; New York Law Publishing Co. *v.* 1013
Doe *v.* Office and Professional Employees 1185
Doherty-Garcia *v.* United States 1017
Dolberry *v.* Napa 1189
Dolenz *v.* Brinkmann 951
Dollar General Corp. *v.* Bryant 1138
Domantay *v.* United States 1067,1076
Dominguez-Rivera *v.* United States 958
Dommisse, *In re* 1084
Donald; Brown *v.* 831
Donat; Drake *v.* 911
Donat; Thomas *v.* 1116
Donat; Tilcock *v.* 1112
Donell; Kowell *v.* 1047
Donelon; Benefit Recovery, Inc. *v.* 882
Donelon *v.* Louisiana Division of Administrative Law 805
Dong *v.* Mukasey 1070
Donofrio *v.* Wells 1067
Dora *v.* Mississippi 1142
Dorcey; Bell-Boston *v.* 1134
Doriss *v.* New Haven 1036
Dormire; Mansfield *v.* 900,1090
Dormire; Skipper *v.* 862
Dormire; Weir *v.* 856
Dorn *v.* United States 819
Doroteo-Solano *v.* United States 860
Dorsey *v.* Florida 845
Dorsey *v.* Kravchuk 973
Dorsey *v.* Maryland 845
Dorsey *v.* United States 896
Doss *v.* Wisconsin 1037
Doughton; Everson *v.* 817
Douglas *v.* Connell 806
Douglas *v.* McKune 843

Page
Douglas *v.* United States 1033,1201,1202
Dove *v.* North Carolina 908
Dow Chemical Co.; Isaacson *v.* 1218
Dow Chemical Co.; Stephenson *v.* 1218
Dow Chemical Co.; Vietnam Assn. for Victims of Agent Orange *v.* 1218
Dowdell *v.* United States 933
Dowling *v.* United States 1038
Downing *v.* Thompson 829
Downing *v.* United States 877
Downs *v.* Florida 954
Downs *v.* Quarterman 1142
Doyle; Hawkins *v.* 1187
Doyle *v.* Texas 844
D. P. S. *v.* Lawrence County Juvenile Office 895
Drabovskiy, *In re* 942,1044
Drake *v.* Delta Air Lines, Inc. 805
Drake *v.* Donat 911
Drake *v.* United States 935
Dreher *v.* Power 950
Dreizler *v.* United States 917
Drennon *v.* United States 978
Drew; Cook *v.* 961
Drew *v.* United States 832
Drewry *v.* Maine 919
Driver *v.* United States 1061
Drow *v.* Hoenisch 878
Drug Enforcement Administration; Castro *v.* 959
Drug Enforcement Administration; Chein *v.* 1139
Drummond *v.* Mukasey 903
Drury *v.* United States 825
Drutis *v.* Quebecor World (USA), Inc. 816
Dryer, *In re* 1096
Dubose *v.* Culliver 1188
Duchesne City *v.* Summum 1210
Duc Nguyen *v.* Patrick 945
Dudas; Burandt *v.* 1154
Dudas; Nuijten *v.* 816
Dudas; Translogic Technology, Inc. *v.* 813
Dugas *v.* Cain 952
Dugger *v.* Sheets 1051
Duggins *v.* North Carolina 859
Duke *v.* Leake 994
Dukes, *In re* 810
Dukes *v.* Philip Johnson/Alan Ritchie Architects, P. C. 1138

Page
Dulaney *v.* United States 1217
Dumas *v.* Barcosh, Ltd. 826
Dumontier *v.* Schlumberger Technology Corp. 1172
Dumorange *v.* Miami 1101
Dunbar *v.* Burt 1155
Duncan, *In re* 1096
Duncan; Cramer *v.* 1002,1209
Duncan *v.* United States 935,1103
Dung *v.* Mukasey 1070
Dunham *v.* United States 890
Dunivant; Feurtado *v.* 802
Dunlap; Pennsylvania *v.* 964
Dunleavy *v.* Far Away Farm, LLC 1012
du Pont de Nemours & Co. *v.* Ampthill Rayon Workers, Inc. 1153
du Pont de Nemours & Co. *v.* Stanton 1084
Dupre *v.* Telxon Corp. 882,1081
Dupree *v.* Alton 832
Dupree *v.* Finn 1158
Duque *v.* Erwood 975
Duque *v.* Hudson 1193
Duran *v.* United States 1201
Durand *v.* Phoenix 996,1128
Durham, *In re* 809
Duverge *v.* United States 1078
D. V. K. *v.* Pennsylvania State Police 1153
Dwyer *v.* California 866
Dyer *v.* Outlaw 916
Dykstra *v.* Automobile Club of N. Y. 827
Eady *v.* Morgan 933
Earnheart; Marro *v.* 1172
Earth Island Institute; Summers *v.* 488
Easky *v.* United States 929
Eason; Wallace *v.* 874
Eastern Union, Inc. *v.* Western Union Holdings, Inc. 1139
Eatmon *v.* Alabama 876
Eaton *v.* Wyoming 1187
Ebersole *v.* United States 866
Ebert; Goldblatt *v.* 811
Ebert; Holman *v.* 876
Eccleston *v.* United States 958
Echavarria-Espinoza *v.* United States 1204
EchoStar Communications Corp. *v.* TiVo, Inc. 888
Eckles *v.* United States 1117
Edelen *v.* United States 957

Page
Edelkind *v.* United States 908
Edgar *v.* Johnson 1053
Edgerton *v.* United States 1005
Edmond *v.* Colorado 1189
Edmond *v.* Quarterman 950
Edmund *v.* Small 1189
Educational Credit Management Corp.; Ostrom *v.* 1052
Educational Credit Management Corp.; Spence *v.* 1177
Edwards *v.* Climate Conditioning Corp. 1153
Edwards *v.* Climate Heating and Cooling 1153
Edwards *v.* Florida 915
Edwards *v.* Oklahoma 1034,1150
Edwards *v.* United States 862,903,959,1124,1216
Eff *v.* United States 924
Egbune *v.* District Court of Colo., Arapahoe County 923
Eggers *v.* Arizona 840
Eggers *v.* Moore 884
Eggert *v.* Texas 1044
Eggleston *v.* Washington 1075
Egipciaco *v.* United States 1039
E&H Steel Corp.; C. Pyramid Enterprises *v.* 1042
E. I. du Pont de Nemours & Co. *v.* Ampthill Rayon Workers, Inc. 1153
E. I. du Pont de Nemours & Co. *v.* Stanton 1084
Eighth Judicial District Court of Nev., Clark Cty.; Morsovillo *v.* 820
800 Adept, Inc. *v.* Murex Securities, Ltd. 1175
Eirby *v.* United States 839
Eisen *v.* Pennsylvania 827
Eisenman *v.* Texas 1144
Eisenstein *v.* New York 1131
Eisiminger *v.* Vazquez 975
Eklof *v.* Hoefel 1214
Ekpo *v.* United States 895
Elahi; Ministry of Defense, Islamic Republic of Iran *v.* 1043
El Bey *v.* McMaster 1114
Elder *v.* Quarterman 1106
Eldridge; Evans *v.* 1102,1218
Eldridge *v.* United States 1006
Elephant Butte Irrigation Dist. of N. M. *v.* Department of Interior 1172
Elfgeeh *v.* United States 902
Elique; Dias *v.* 1096
Eljack *v.* Johnson Realty Co. 1113,1210
Elkimya *v.* Department of Homeland Security 1003
Eller *v.* Bock 1142
Ellerbee *v.* United States 1201

Page
Ellis; Flournoy *v.* 919
Ellis *v.* Grant Thornton LLP 1049
Ellis *v.* Province 841
Ellis *v.* United States 932,1147
Ellis-Smith *v.* Brown 1178
Elmes *v.* United States 886
El Paso Independent School Dist.; Crook *v.* 956,1129
Elsevier, Inc. *v.* Muchnick 1211
Elshinnawy *v.* Astrue 816,1089
Embrey, *In re* 809,992,1135
Embry *v.* United States 977
Emerson *v.* United States 895
Emojevwe *v.* United States 1149
Emory *v.* Department of Housing and Urban Development . . . 909,1065
Encarnacion *v.* Napoli 1142
Encarnacion-Rivera *v.* Pennsylvania 1216
Engel *v.* Montana Supreme Court Comm'n on Practice 1031
Engle, *In re* 810,1096
Enriquez *v.* Quarterman 899,1081
Entergy Corp. *v.* Riverkeeper, Inc. 941
Environmental Conservation Organization *v.* Dallas 945
Environmental Protection Agcy.; Our Children's Earth Found. *v.* 1045
Environmental Protection Agcy. *v.* New Jersey 1162
Enwonwu *v.* Holder 1191
E.ON AG; Arrow Electronics, Inc. *v.* 971
Eppolito *v.* United States 1148
Epps; Howard *v.* 833
Epps; Jones *v.* 876
Equal Access for El Paso, Inc. *v.* Hawkins 811
EEOC; Federal Express Corp. *v.* 814
EEOC; FedEx Express *v.* 814
Ercole; Davis *v.* 870
Ercole; Farrow *v.* 843
Ercole; Gillian *v.* 955
Ercole; Hall *v.* 1114
Ercole; McKeever *v.* 836
Ercole; Melendez *v.* 1053,1209
Ercole; Pinero *v.* 1014
Ercole; Warren *v.* 1179
Erickson; Lawrence *v.* 950
Ericsson, Inc. *v.* Ahuja 1012
Erlandson *v.* Northglenn Municipal Court 1112
Ernst *v.* North Dakota 1004
Erpenbeck *v.* United States 997

Page
Erwood; Duque *v.* 975
Escajeda *v.* United States 1018
Escareno *v.* Adams 1144
Esfandiary *v.* Mukasey 1117
Eshan, *In re* 1096
Esparza-Ramos *v.* United States 932
Espin *v.* Florida 890
Espinal *v.* Texas 949
Espinoza *v.* Estep 911
Espinoza *v.* United States 896
Espinoza-Barron *v.* United States 1105
Estate. See name of estate.
Estep; Espinoza *v.* 911
Estep; Lindsey *v.* 1017
Estrada *v.* United States 898,959,1200
Estrada-Obregon *v.* United States 997
Estrella *v.* New York 1032
Estremera *v.* United States 1089
Eurodif S. A.; United States *v.* 305,807,941
Eurodif S. A.; USEC Inc. *v.* 305,807,941
Euverard; Lowery *v.* 825
Evans, *In re* 1068
Evans; Baba *v.* 1171
Evans *v.* Chicago 1104
Evans *v.* Eldridge 1102,1218
Evans *v.* Haws 915
Evans *v.* Johnson 813,1063
Evans; McRae *v.* 823,1063
Evans; Owens *v.* 1016
Evans *v.* Pope 973
Evans *v.* Roller Derby Skate Corp. 1015
Evans; Stines *v.* 875
Evans *v.* Thompson 911
Evans; Thornton *v.* 848
Evans; Todd *v.* 806
Evans *v.* United States 953,971,977,1125
Evans; York *v.* 1112
Evansville *v.* Deicher 1173
Evansville Vanderburgh School Corp.; Thomas *v.* 994,1128
Everett *v.* Pennsylvania Dept. of Corrections 1189
Evergreen Dynasty Corp.; Molski *v.* 1031
Everman *v.* United States 1140
Everson *v.* Doughton 817
Ewing *v.* Brandon 857

Page
Executive Management Services, Inc.; Tate *v.* 1175
Exelon Corp.; Jonites *v.* 881
Experienced Internet.com, Inc.; Silverstein *v.* 1070
Express Shipping International; Umoren *v.* 948
Extra Equipamentos e Exportacao Ltda. *v.* Case Corp. 1175
Exxon Mobil Corp. *v.* Federal Energy Regulatory Comm'n 1126
Ezell *v.* Cason 835
Ezell *v.* United States 1058
Fabian; De La Garza *v.* 1167
Fabian; Henderson *v.* 847
Fabian; Johnson *v.* 1014
Fabian *v.* United States 920
Faegre & Benson, LLP; Sieverding *v.* 1174
Fahrenholtz *v.* Williams 1045
Fahrenkrug *v.* United States 1105
Fairfax County School Bd.; Adkins *v.* 1120,1210
Fairman; Chavez *v.* 1108
Fairman *v.* Huibregtse 903
Fajardo *v.* United States 1148
Falciglia *v.* United States 978
Faller *v.* United States 1175
Faluotico; Maliha *v.* 1100
Famania-Roche *v.* United States 1077
Fambro *v.* United States 1050
Far Away Farm, LLC; Dunleavy *v.* 1012
Farias *v.* United States 894
Farley, *In re* 809
Farley *v.* Bissonnette 1198
Farlough *v.* California 1072
Farmer *v.* Houston 1012
Farney; Noel *v.* 1178
Farquharson *v.* California 816
Farrior *v.* United States 1077
Farris *v.* United States 1125
Farrow *v.* Ercole 843
Farwell; Charles *v.* 865
Farwell; Sakay *v.* 1158
Farwell; Sutton *v.* 1115
Fashion Valley Mall, LLC *v.* National Labor Relations Bd. 819
Fauconier *v.* Robinson 832
Fautenberry *v.* Mitchell 951
Favors *v.* Michigan 839,1063
Fayne *v.* Konteh 1186
FBL Financial Services, Inc.; Gross *v.* 1066

Page
Feaster *v.* Maryland 843
Federal Bureau of Investigation; Dinsio *v.* 872
Federal Bureau of Investigation; Norton *v.* 977
Federal Bureau of Prisons; Davis *v.* 846
Federal Bureau of Prisons; King *v.* 957
Federal Bureau of Prisons; Potts *v.* 906
Federal Communications Comm'n; Kay *v.* 1049
Federal Election Comm'n; Citizens United *v.* 1028
Federal Energy Regulatory Comm'n; Exxon Mobil Corp. *v.* 1126
Federal Express Corp. *v.* EEOC 814
Federal Ins. Co. *v.* Kingdom of Saudi Arabia 1168
Federal Judges of U. S. District Court; Wallace *v.* 945
FLRA; Association of Civilian Technicians, N. Y. State Council *v.* 819
Federal Marine Terminals, Inc.; Talik *v.* 880
Federal Republic of Germany; Gutch *v.* 821
Federal Trade Comm'n; Check Investors, Inc. *v.* 1011
Federal Trade Comm'n; Hutchins *v.* 1011
Federal Trade Comm'n; North Tex. Specialty Physicians *v.* 1170
Federal Trade Comm'n *v.* Rambus Inc. 1171
Federal Way; Kim *v.* 943
FedEx Express *v.* Equal Employment Opportunity Comm'n 814
Fedora Inc. *v.* Thomas 819
Fehnel *v.* Pennsylvania 995
Feingold *v.* Palmetto Government Benefits Administrators 1137
Felder *v.* Buss 879
Feliciano *v.* United States 1124
Feliz-Ramirez *v.* United States 1218
Felker; Caviness *v.* 917
Felker; Hayes *v.* 848,1064
Felker; Nelson *v.* 999
Felker; Reginald *v.* 1178
Femino *v.* NFA Corp. 1053
Fenno; Mountain West Bank, N. A. *v.* 1219
Ferega *v.* Georgia 881
Ferguson *v.* United States 1017
Fermin *v.* United States 925
Fernandes *v.* United States 1049
Fernandez *v.* Arizona 970
Fernandez *v.* Mukasey 837
Fernandez *v.* United States 925,1119
Fernandez Rocha *v.* United States 1119
Fernebok *v.* District of Columbia 971
Ferqueron *v.* Michigan 1029
Ferreira; McNeil *v.* 1149

Page
Ferrer *v.* United States 1217
Feurtado, *In re* 942
Feurtado *v.* Dunivant 802
Fiasche *v.* United States 886
Ficken *v.* Lundebye 1114,1219
Fidel; Hayes *v.* 1135
Fielding; Cotton *v.* 1167
Fields, *In re* 810
Fields *v.* Bleiman 1033
Fields *v.* Booker 1106
Fields; Jen-Kang Yang *v.* 948
Fields *v.* Kansas 873
Fields *v.* McNeil 1094
Fields *v.* United States 922
Figaro *v.* United States 918
Figueroa *v.* Texas 1185
Figura Torrefranca *v.* Schriro 1115
Filip; Veizaj *v.* 1154
Fin-Ag, Inc. *v.* Cimpl's, Inc. 1095
Fin-Ag, Inc. *v.* Pipestone Livestock Auction Market, Inc. 1095
Fin-Ag, Inc. *v.* Watertown Livestock Auction, Inc. 1095
Fincher *v.* United States 1174
Fine; Voinche *v.* 873
Finisar Corp. *v.* DIRECTV Group, Inc. 1070
Finley *v.* United States 961,1019,1082,1209
Finn; Clark *v.* 1015
Finn; Dupree *v.* 1158
Finn; Pearson *v.* 904,1082
Finn *v.* Thompson 1181
Finnan; Smith *v.* 1052
Fiorani *v.* United States 911
Fire Fighters; Turinski *v.* 944
First National Bank of Holdrege; Dahlgren *v.* 1153
First Nationwide Mortgage Corp.; Glass *v.* 1164
First Unum Life Ins. Co.; Baida *v.* 812
Fischer; Linares *v.* 892
Fischer *v.* Suffolk County Bd. of Elections 1151
Fisher; Brown *v.* 817
Fisher *v.* Jackson National Life Ins. Co. 1053
Fisher; McLaughlin *v.* 996
Fitzgerald *v.* Barnstable School Committee 246
Flaherty; Span *v.* 1003
Flaherty *v.* United States 946
Fleming *v.* United States 904

Page
Fleming & Co., Pharmaceuticals; Alliance Security Products *v.* . . 1071
Flemming *v.* Woods 1184
Fletcher *v.* Illinois 954
Fletcher *v.* United States 1147
Flint *v.* Jordan 897
Flipping *v.* Reilly 1170
Florance *v.* Texas 1173
Florence, *In re* 1135
Flores *v.* Florida 1158
Flores; Horne *v.* 1092
Flores *v.* Schriro 1108
Flores; Speaker of Ariz. House of Representatives *v.* 1092
Flores-Figueroa *v.* United States 969,1084,1162
Flores-Moya *v.* United States 925
Flores-Vasquez *v.* United States 936
Flores Vera *v.* Texas 1002,1129
Florida; Abrams *v.* 949
Florida; Ali *v.* 910
Florida; Alston *v.* 943
Florida; Blackert *v.* 919,1065
Florida; Blaxton *v.* 1191
Florida; Bracero *v.* 860
Florida; Brooks *v.* 1054,1186
Florida; Carrazco *v.* 840
Florida; Carter *v.* 947
Florida; Clark *v.* 1106
Florida; Conroy *v.* 831
Florida; Cook *v.* 831
Florida; Daiak *v.* 1108
Florida; Davis *v.* 1188
Florida; Deltoro *v.* 1107
Florida; Dorsey *v.* 845
Florida; Downs *v.* 954
Florida; Edwards *v.* 915
Florida; Espin *v.* 890
Florida; Flores *v.* 1158
Florida; Fuller *v.* 1114
Florida; Gallagher *v.* 894
Florida; Gantt *v.* 1032
Florida; Georgia *v.* 1097
Florida; Gonzalez *v.* 1056,1185
Florida; Gore *v.* 1190
Florida; Gorman *v.* 1086
Florida; Guetzloe *v.* 1138

Page
Florida; Hall *v.* 1164
Florida; Higginbotham *v.* 975,1090
Florida; Hogan *v.* 1190
Florida; Hopkins *v.* 1004
Florida; Hudson *v.* 1191
Florida; Jacobs *v.* 1000
Florida; Kablitz *v.* 855
Florida; Kepner *v.* 916
Florida; Kilgore *v.* 853
Florida; Lanier *v.* 1075
Florida; McDonald *v.* 1187
Florida; McDowell *v.* 1190
Florida; Merck *v.* 840
Florida; Moore *v.* 897,1128
Florida; Nance *v.* 953
Florida; Norris *v.* 1116
Florida; Penoyer *v.* 1119
Florida; Perry *v.* 894
Florida; Peters *v.* 1109
Florida; Ponek *v.* 1068
Florida; Pooler *v.* 911
Florida; Quinlan *v.* 867
Florida; Ramsey *v.* 1116
Florida; Riechmann *v.* 879
Florida; Roark *v.* 832
Florida; Roberts *v.* 1215
Florida; Robinson *v.* 1142
Florida; Russell *v.* 916
Florida; Salazar *v.* 1187
Florida; Savage *v.* 864
Florida; Sears *v.* 955
Florida; Shamburger *v.* 1052
Florida; Stahl *v.* 1172
Florida; Strickland *v.* 1144
Florida; Thomas *v.* 850,855,1016
Florida; Toler *v.* 901
Florida; Tompkins *v.* 1161
Florida; Torres *v.* 1215
Florida; Viera *v.* 909
Florida; Walker *v.* 1195
Florida; Weidner *v.* 923
Florida; White *v.* 1052,1057
Florida; Wolliston *v.* 850
Florida; Woodel *v.* 1036

Page
Florida; Wyche *v.* 1070
Florida *v.* Young 1137
Florida Bar; Sibley *v.* 830,1151,1188
Florida Dept. of Children and Families; R. D. *v.* 805
Florida Dept. of Corrections; Alford *v.* 1155
Florida Dept. of Corrections; Harris *v.* 1182
Florida Dept. of Corrections; Hernandez *v.* 1184
Florida Dept. of Corrections; Hudson *v.* 1184
Florida Dept. of Corrections; Smith *v.* 1106
Florida Dept. of Corrections; Tinsley *v.* 1180
Florida Dept. of Health; Betancur *v.* 1213
Florida Hospital Orlando; Robinson *v.* 806
Florida House of Representatives; Seminole Tribe of Fla. *v.* 1212
Florida Parole Comm'n; Michael *v.* 1073
Florida Unemployment Appeals Comm'n; Watts *v.* 1109,1219
Flournoy *v.* Ellis 919
Flower Mound; Poteet *v.* 808,1044
Foley *v.* Allmerica Financial Corp. 994
Folino; Brown *v.* 1074
Folino; Hoffman *v.* 1182
Folino; Pitts *v.* 950
Folino; Romansky *v.* 1053,1179
Fonteneau *v.* United States 926
Fonteneaux *v.* Shell Oil Co. 1171
Fontenot *v.* United States 1217
Fontilea *v.* Mukasey 1048
Foose, *In re* 810,1064
Forbes *v.* McNeil 856
Forbes *v.* Pennsylvania Dept. of Corrections 1192
Forbes *v.* United States 978
Ford *v.* Burt 974
Ford *v.* Jenks 849
Ford *v.* Martel 951
Ford *v.* Powers 1113
Ford *v.* Rodda 919
Ford *v.* South Carolina 918
Ford *v.* United States 831
Foreman *v.* Weinstein 1184
Forest Grove School Dist. *v.* T. A. 1130
Forest Laboratories, Inc. *v.* Caraco Pharmaceutical Laboratories 1170
Forr; Alexander *v.* 1115
Forrest *v.* McNeil 1114
Forrester *v.* California 819
Forsyth *v.* Burt 1157

Page
Fort *v.* Massachusetts 1189
Fortner; Meeks *v.* 1104
Fortt *v.* Artistic Beauty College 951,1082
Fort Worth Star Telegram; Bui Phu Xuan *v.* 925,1040
Foster *v.* Brown 1182
Foster; McAfee *v.* 1102
Foster; McAfee MX *v.* 1102
Foster *v.* Ohio 1052
Foster *v.* United States 897,1218
Fotopoulos *v.* McNeil 899
Fowler; Incor *v.* 995
Fowler *v.* United States 1060
Fox *v.* Lempke 1190
Fox *v.* Michigan 836
Fox *v.* Securities and Exchange Comm'n 1103,1218
Foxworth *v.* United States 1144
Fraas; Mavity *v.* 1149
Francis *v.* Joint Force Headquarters National Guard 805
Francis *v.* United States 958,1196
Frank; Voigt *v.* 1144
Franklin; Branch *v.* 843
Franklin *v.* Sims 1102
Fraternal Order of Eagles Aerie #200; Marvin *v.* 1138
Fratila *v.* Boudloche 835,1081
Frazier *v.* McNeil 972
Frazier *v.* United States 894,919
Frederick County Dept. of Fire & Rescue Services; Waybright *v.* 1069
Fredrick *v.* Beck 895
Free; Carey *v.* 1036,1209
Freedman *v.* United States 996
Freeman *v.* McCollum 1110
Freeman *v.* South Carolina 839
Freeman *v.* United States 873,926
Freemont Investments & Loans; Muckle *v.* 1110
French *v.* United States 1147
Fresquez *v.* California 849,1127
Frey; Guzman *v.* 859
Frias *v.* United States 922
Friday *v.* United States 1176
Friedheim; The Cadle Co. *v.* 887
Friedman; Linder *v.* 1125
Friedman; Smith *v.* 1048,1150
Friel; Malek *v.* 973
Friel; Payne *v.* 841

Page
Friel; Sherratt *v.* 1002
Friel *v.* United States 897
Friends of Pinto Creek; Carlota Copper Co. *v.* 1097
Frierson *v.* Parke 1143
Friese *v.* United States 875
Frisby; Taylor *v.* 972
Frison *v.* Illinois 911
Frohlich; Schlagel *v.* 1032
Frommert *v.* Conkright 1211
Frommert; Conkright *v.* 1211
Frost; Slough *v.* 971
Fry's Electronics, Inc.; Haque *v.* 900,1027
Fuentes *v.* Board of Ed. of New York City 1190
Fuentes *v.* Virginia 825
Fuentes-Gonzalez *v.* United States 935
Fujitsu Microelectronics, Inc.; Nghiem *v.* 1151
Fuller *v.* Basal 1107
Fuller *v.* Florida 1114
Fuller *v.* Reisch 1015
Fuller *v.* Texas 806,1105
Fulmore; Howell *v.* 1171
Fulton *v.* U. S. District Court 1004
Funchess *v.* United States 1119
Fu Quan *v.* United States 1200
Futch *v.* United States 943,1102
Futch *v.* Wheeler 1145
G. *v.* North Plainfield Bd. of Ed. 1085
Gabrill *v.* Leavitt 943,1064
Gabrill *v.* U. S. District Court 837,1063
Gaddy *v.* United States 1019
Gadomski *v.* Burke 974
Gadomski *v.* Renico 884
Gadsden *v.* United States 1197
Gagliardi *v.* United States 1217
Gaines *v.* United States 1159
Gaitan *v.* Texas 1158
Galaza; Ahdom *v.* 1157
Gales *v.* Cline 918
Galindo Aguilera *v.* United States 896
Gallagher *v.* Florida 894
Gallagher *v.* United States 960
Gallaher *v.* Southern Tube Form, LLC 836,1081
Gallano *v.* Illinois 951
Gallant *v.* Gallant 1138

Page
Gallardo *v.* Giurbino 1075
Gallardo *v.* Tackitt 1067
Gallardo *v.* United States 922
Gallardo; Wilson *v.* 907
Gallegos *v.* Quarterman 818
Gallman *v.* Corbett 875
Galvan *v.* Ayers 1172
Galvan-Lizarraga *v.* United States 1060
Gamble *v.* United States 1060
Gamboa *v.* Miller-Stout 1107
Gamez-Silva *v.* United States 978
Gammino *v.* Southwestern Bell Telephone, L. P. 828
Gammon; White *v.* 860
Gandia *v.* United States 930
Ganesan *v.* Brannigan 884
Gans *v.* Rozum 844
Gansheimer; Christian *v.* 917
Gant *v.* Grand Prairie Ford, L. P. 1137
Gantt *v.* Florida 1032
Gaona *v.* United States 1202
Garcia; Cata *v.* 1110
Garcia; Gutierrez *v.* 848
Garcia *v.* Hall 1111
Garcia; Martinez *v.* 853
Garcia; Mejia *v.* 1117
Garcia *v.* Santa Clara County 822
Garcia *v.* Scribner 1189
Garcia; Soroka *v.* 836
Garcia *v.* Texas 949,1002
Garcia; Thompson *v.* 1179
Garcia *v.* United States 860,912,955,976,1019,1039,1060,1145,1203
Garcia *v.* Vanguard Car Rental USA, Inc. 1174
Garcia-Arellano *v.* United States 880
Garcia-Barragan *v.* United States 909
Garcia-Benitez *v.* United States 902
Garcia Briseno *v.* Quarterman 1073
Garcia Cisneros *v.* United States 1013
Garcia-Flores *v.* United States 863
Garcia-Garcia *v.* United States 956,1199
Garcia-Ortiz *v.* United States 910
Garcia-Quintero *v.* United States 1123
Garden Grove *v.* Superior Court of Cal., Orange County 1044
Gardner *v.* Ozmint 856
Gardner *v.* Perez 1196

Page
Garey *v.* United States 1144
Garland *v.* Dearmore 938
Garland *v.* United States 1159
Garland *v.* US Airways, Inc. 856
Garner *v.* United States 892
Garnett *v.* Virginia 853
Garrett *v.* Georgia 912
Garrett *v.* Quarterman 1108
Gartman; Warren *v.* 1120
Garvin *v.* Rhode Island 1012
Gary *v.* United States 1123
Garza *v.* Quarterman 1033,1150
Garza *v.* United States 826,955,1149,1203
Gaskins *v.* Clarke 1119
Gaskins *v.* Nolan 919
Gasparik *v.* Stony Brook Univ. 1173
Gaston County; Phillips *v.* 1085
Gates; McKnight *v.* 1175
Gattis *v.* Delaware 1109
Gavin *v.* United States 1057
Gay; Branson *v.* 867
Gay *v.* Hunt 1048,1208
Gayle *v.* Johnson 1073
Geary *v.* Wilson 836
Gebhart *v.* Shinseki 1087
Geddings *v.* United States 946
Gee *v.* Chicago Public Schools 910
Geer; Squire *v.* 945
Geffken, *In re* 809
Gegaj *v.* Mukasey 887
Geiser *v.* United States 1102
Gellery; Anderson *v.* 1167
Gendron *v.* Lafler 895
General Counsel of Central Office, Bureau of Prisons; Bradley *v.* 1144
General Electric Capital Corp.; United States Fire Ins. Co. *v.* . . . 1172
General Motors Corp. *v.* Bryant 1098
Genlyte Thomas Group LLC; Arch Lighting Group, Inc. *v.* 970
Gentry *v.* Cason 836
Georgacarakos *v.* United States 1145
George *v.* Ohio 887
George *v.* United States 1038,1060
Georges *v.* Georges 1096,1213
Georgetown Univ. Hospital; Bell *v.* 845
Georgia; Davis *v.* 967

Page
Georgia; Dawson *v.* 871
Georgia; Ferega *v.* 881
Georgia *v.* Florida 1097
Georgia; Garrett *v.* 912
Georgia; Hill *v.* 944
Georgia; Miller *v.* 834,1063
Georgia; Morris *v.* 1074
Georgia; Navarrete *v.* 820
Georgia; Ruffin *v.* 1181
Georgia; Simon *v.* 1188
Georgia; Slade *v.* 815
Georgia; Slmbey *v.* 1137
Georgia; Walker *v.* 979,1082
Georgia; Williams *v.* 1054
Georgia Dept. of Defense National Guard Hdqtrs.; Williams *v.* . . 1138
Geren; Bacas *v.* 954
Geren; Goodin *v.* 1102
Geren; IMS Engineers-Architects, P. C. *v.* 1031
Geren; Role Models America, Inc. *v.* 994
Germany; Gutch *v.* 821
Geske *v.* United States 1078
Gharbi *v.* Blakeway 1036
Ghazibayat *v.* SBC Advanced Solutions, Inc. 1135
Ghee, *In re* 1030
Gherini *v.* Lagamarsino 812
Gianelli *v.* United States 1175
Giannone *v.* United States 1167
Gibbs *v.* United States 847
Gibney *v.* United States 1148
Gibson *v.* Ada County 886
Gibson *v.* Charleston County Detention Center 834
Gibson *v.* United States 803,930,961,991,1200
Gilbert *v.* United States 929,1038
Gill *v.* California 880
Gill *v.* United States 1080
Gillespie *v.* United States 927
Gillian *v.* Ercole 955
Gillispie *v.* Marina Club of Tampa, Homeowners Assn. Inc. 814
Gilmore *v.* United States 1018
Gilson *v.* Sirmons 1180
Ginger *v.* District of Columbia 1101
Girts; Yanai *v.* 819
Giterrez Martinez *v.* United States 958
Giurbino; Gallardo *v.* 1075

Page
Giurbino; Hutson *v.* 922,1128
Giurbino; Magdaleno *v.* 954
Giurbino; Richmond *v.* 1073
Giurbino; Rogers *v.* 1054
GKN Aerospace North America, Inc.; Price *v.* 882
Glass *v.* First Nationwide Mortgage Corp. 1164
Glassman; Wiley *v.* 826
Glazer *v.* Reliance Standard Life Ins. Co. 1048
Glenn *v.* Walker 945
Glover *v.* Smith 1083
GlowProducts.com *v.* Litecubes, LLC 1013
GmbH & Co. KG; Stupakoff *v.* 825
Godino-Madrigal *v.* United States 943
Godwin *v.* United States 1122
Goebel Porzellanfabrik G.m.b.H.; Cambridge Literary Properties *v.* 815
Goetz *v.* American Express Co. 827
Goff; NiSource, Inc. *v.* 1041
Goins *v.* United States 847,1184
Goldberg Weisman & Cairo Ltd.; Sanders *v.* 975
Goldblatt *v.* Ebert 811
Goldblum *v.* Kerestes 850
Golden *v.* United States 1131
Golden Bridge Technology Inc. *v.* Motorola Inc. 1167
Gold Kist, Inc.; Cody *v.* 1173
Goldstein; Van de Kamp *v.* 335
Goldwire *v.* Palakovich 858
Gollehon *v.* Mahoney 859
Golphin *v.* Branker 975
Gomez *v.* Quarterman 1050
Gomez; Smith *v.* 1106
Gomez; Trevino *v.* 1214
Gomez *v.* United States 956
Gomez-Herrera *v.* United States 1050
Goncalves *v.* United States 1217
Gonzales *v.* California 1141
Gonzales *v.* Tafoya 890
Gonzales *v.* United States 1077
Gonzalez *v.* California 1110
Gonzalez *v.* Florida 1056,1185
Gonzalez *v.* Sabol 853
Gonzalez *v.* South Dakota 827
Gonzalez *v.* United States 829,851,878,919,962,1008,1071,1078,1080
Gonzalez *v.* Wolfe 1144
Gonzalez-Cordova *v.* United States 1192

Page
Gonzalez-Lauzan *v.* United States 1018
Gonzalez-Perales *v.* United States 1140
Gonzeles; Robinson *v.* 872
Good; Altria Group, Inc. *v.* 70
Good; Dandar *v.* 844
Good; Jae *v.* 1156
Goode *v.* Watson 919
Goodell *v.* Michigan 900
Goodie *v.* California 1016
Goodin *v.* Geren 1102
Goodlett *v.* United States 1061
Goodman *v.* Caldwell 875
Goodman *v.* Walker 918,1082
Goodson *v.* Letter Carriers 888
Goodyear Tire & Rubber Co.; Nance *v.* 1171
Gordo *v.* United States 930
Gordon *v.* Cain 1108
Gordon *v.* Davis 1186
Gordon; Gutierrez *v.* 1048
Gordon *v.* McNeil 857
Gordon *v.* Novastar Mortgage, Inc. 1046
Gordon *v.* United States 828,872,894
Gore, *In re* 809
Gore *v.* Florida 1190
Gorman *v.* Florida 1086
Gormley *v.* United States 929
Goss *v.* North Carolina 835
Gould *v.* United States 1154
Gould *v.* West 1004
Governor of Ala. *v.* Plump 801
Governor of Cal.; Medway *v.* 897
Governor of Md.; Smith *v.* 1052
Governor of Mich.; Marsh *v.* 1141
Governor of Mont.; Seven Up Pete Venture *v.* 885
Governor of Ohio; Cooey *v.* 940
Governor of Pa.; Lattaker *v.* 896,1128
Governor of Pa.; Szarewicz *v.* 1057
Governor of R. I. *v.* Kempthorne 807,991
Governor of R. I. *v.* Salazar 379
Governor of Tenn.; Doe *v.* 921
Governor of Tex.; Parks *v.* 864
Governor of Wash.; Dilworth *v.* 1139
Governor of Wash.; Matheson *v.* 881
Governor of Wash.; Olivo *v.* 1197

Page
Gradinariu *v.* United States 962
Graham *v.* Rhode Island 848
Graham; Ross *v.* 1087
Graham; Soto *v.* 1068
Graham *v.* United States 1060
Graham Cty. Soil & Water Conserv. Dist. *v.* U. S. *ex rel.* Wilson 1068
Grajeda-Sifuentes *v.* United States 927
Granados Olvera *v.* Mukasey 1100
Grande-Dorantes *v.* United States 838
Grand Prairie Ford, L. P.; Gant *v.* 1137
Grand Trunk Western R. Co.; Van Gorder *v.* 994
Granholm; Marsh *v.* 1141
Granite State Outdoor Advertising, Inc. *v.* Roswell 882
Grant *v.* Arkansas 843
Grant *v.* Connecticut 916
Grant; Davis *v.* 1176
Grant *v.* De Montebello 1099
Grant *v.* McNeil 958
Grant-Martinez *v.* United States 860
Grant Thornton LLP; Ellis *v.* 1049
Graphic Technology, Inc.; Daneshvar *v.* 889,1064
Graves *v.* Atlantic Express 1094
Gray *v.* Bereznak 975
Gray *v.* California 1190
Gray *v.* Illinois 1158
Gray *v.* Moore 894
Gray *v.* New York 1182
Gray *v.* United States 922,958,1038,1129
Grayson *v.* Iowa 952
Graziano; Roberson *v.* 803
Green, *In re* 1096
Green *v.* DiGuglielmo 1186
Green *v.* Kansas 1033
Green *v.* RBS National Bank 1113
Green *v.* Reynolds 849
Green *v.* Sirmons 894
Green *v.* Thomas 1183
Green *v.* United States 851,918,1078,1200,1201
Greenberg *v.* National Geographic Society 1070
Greene *v.* Civil Service Employees Assn. 1190
Greenhill *v.* United States 900
Greenwood; Thompson *v.* 880,1064
Greer *v.* Brunsman 926,1082
Greer *v.* United States 960

Page
Grega *v.* Hofmann 898
Gregg; Williams *v.* 864
Gregoire; Dilworth *v.* 1139
Gregoire; Matheson *v.* 881
Gregoire; Olivo *v.* 1197
Gresbach *v.* Michael C. 994
Grethen *v.* Johnson 1164
Grey *v.* Dallas Independent School Dist. 883
Grice *v.* Vermont Electric Power Co. 888
Griebel *v.* United States 866
Griesbach *v.* United States 1122
Grievance Committee for Ninth Judicial Dist.; Hausch *v.* 1172
Griffin *v.* California 1001
Griffin *v.* Prosper 1004
Griffin *v.* United States 1196
Griffin *v.* Veterans Administration Regional Office 917,1210
Griffin *v.* Zavaras 1003
Griffith *v.* Kentucky Dept. of Corrections 1041
Grigar; Hatton *v.* 944
Groseclose *v.* Department of Navy 1044,1140
Gross *v.* FBL Financial Services, Inc. 1066
Grossman; Davidson *v.* 823
Gross Pointe Woods; Nali *v.* 802
Grounds; Bombasi *v.* 846
Groves *v.* United States 1176
Grullon *v.* Mukasey 813
Gryphon Domestic VI; APP International Finance Co., B. V. *v.* . . 994
Guadarrama *v.* Superior Court of Cal., Imperial County 875
Guajome Park Academy Charter School; Peters *v.* 1076
Guardiola *v.* United States 936
Guarino *v.* United States 903
Guavara; Lee *v.* 1084
Guedea-Martinez *v.* United States 1147
Guerra *v.* Alameda Police Dept. 847
Guerra *v.* McNeil 1069
Guerrero *v.* United States 1200
Guess *v.* California 1119
Guetzloe *v.* Florida 1138
Guevara *v.* Oklahoma 951
Gueye *v.* Airborne Express 874,1127
Gueye *v.* Gutierrez 874,1127
Guilbeau *v.* Cain 974
Guillen-Reyes *v.* United States 919
Guillory *v.* Bush 1029

Page
Guinn; Ramirez *v.* 1054
Gulley *v.* United States 867
Gully *v.* Power 1114
Gunn *v.* Quarterman 1183
Gunnel *v.* Quarterman 843
Gunter *v.* United States 885
Gurrola *v.* United States 861,1081
Gurrola-Rodriguez *v.* United States 861,1081
Gutch *v.* Federal Republic of Germany 821
Gutierrez *v.* Garcia 848
Gutierrez *v.* Gordon 1048
Gutierrez; Gueye *v.* 874,1127
Gutierrez Bruno *v.* Quarterman 803
Gutierrez Carrasco *v.* United States 958
Gutierrez-Cruz *v.* United States 904
Gutierrez-Perez *v.* United States 978
Gutierrez-Valdivia *v.* United States 879
Guyton *v.* Lewis 926
Guzman *v.* Frey 859
Guzman *v.* United States 1198
Guzman-Nieves *v.* United States 1197
Guzman Robles, *In re* 1211
Guzman-Saldivar *v.* United States 956
H.; Blake O. *v.* 1034
Ha *v.* Harrison 914,1082
Ha *v.* Ross 914,1082
Ha *v.* Superior Court of Cal., Alameda County 914,1082
Haas *v.* Peake 1149
Haas *v.* Quest Recovery Services, Inc. 812
Hackett *v.* Taylor 873
Hadley *v.* Hawaii Government Employees' Assn. 996
Hadley *v.* United States 919
Hafed, *In re* 942
Hafed *v.* United States 1018,1209
Hagen *v.* MacDonald 826
Hagener; Roberts *v.* 1126
Hagerty; Larson *v.* 911
Hahn *v.* United States 891
Haigh *v.* Indiana Supreme Court Disciplinary Comm'n 1154
Hains *v.* Logsdon 811
Hale *v.* McNeil 1073
Hale *v.* Walker 911
Haley *v.* Michels 1103
Haley; Texas *v.* 1212

Page
Haley *v.* United States 957
Hall *v.* Back 1098
Hall *v.* Continental Airlines, Inc. 819
Hall *v.* Ercole 1114
Hall *v.* Florida 1164
Hall; Garcia *v.* 1111
Hall; Hedrick *v.* 853
Hall; Hernandez-Hernandez *v.* 879
Hall; Newland *v.* 1183
Hall; New York *v.* 938
Hall *v.* Nooth 948
Hall; Sprint PCS Group *v.* 814
Hall; Sprint Spectrum L. P. *v.* 814
Hall *v.* United States 855,933,936,961
Hall *v.* U. S. District Court 1108
Hall; Voth *v.* 1143
Halliman *v.* United States 825
Halulakos *v.* Krysevig 972
Hambly *v.* Wisconsin 873,1090
Hamilton County Public Defender Comm'n *v.* Powers 813
Hamilton Sundstrand Corp.; Honeywell International Inc. *v.* 939
Hamlett *v.* Braxton 1032
Hammonds *v.* McGrath 891
Hampton *v.* United States 1115
Hamrick; Terry *v.* 1004
Haney *v.* Addison 1086,1209
Hankins *v.* Quarterman 1142
Hankinson; Rolle *v.* 804,1093
Hannon; Beard *v.* 1069
Hansel *v.* United States 1008
Hansen *v.* Croy 1165
Hansen *v.* Matar 1164
Hansing; Boschetto *v.* 1171
Hanton *v.* North Carolina 1087
Hao Chi Nguyen *v.* Cain 843
Haque *v.* Fry's Electronics, Inc. 900,1027
Harbison *v.* Bell 808,992
Harbuck *v.* Houston County 1047,1159
Harbury *v.* Hayden 881
Hardaway *v.* Lewis 873
Hardaway *v.* Yarborough 972
Hardman *v.* United States 873
Hardwick *v.* United States 1200
Harenda Enterprises, Inc. *v.* Wisconsin 1012

Page
Hargrove *v.* United States 1048
Harley *v.* Montgomery 833
Harmon *v.* Booher 891
Harmon *v.* Webster 1183
Harned *v.* United States 942,956
Harney *v.* Speedway Superamerica, LLC 1173
Harper *v.* Houston 1003,1129
Harper *v.* United States 891,942,1084
Harrah's Operating Co. *v.* NGV Gaming, Ltd. 1153
Harrington; Hendrix *v.* 937
Harris, *In re* 809,1160
Harris *v.* Alabama 1155
Harris *v.* Ashland Home Condominium 874
Harris; Brunson *v.* 967
Harris *v.* California 1111
Harris; Coggins *v.* 1051
Harris *v.* Florida Dept. of Corrections 1182
Harris *v.* Kerestes 931,1128
Harris; Rowan *v.* 1000
Harris *v.* Tennessee 932
Harris *v.* Transport Workers 905,1082
Harris *v.* United States 873,925,1014,1019,1198,1200
Harris; Wilkerson *v.* 1143
Harris *v.* Wynder 1055
Harris County; Jammer *v.* 1002
Harris County Public Health & Environmental Services; Waris *v.* 1085
Harrison *v.* Adams 874
Harrison *v.* Campbell 833
Harrison; Hung Ha *v.* 914,1082
Harrison *v.* Ollison 911
Harrison *v.* United States 971,1037,1146,1150
Harris-Rorie *v.* United States 866
Harrod *v.* Arizona 830
Hart *v.* United States 888,1125
Hartley; Leyba *v.* 927
Hartmann; Lambert *v.* 1126
Harvey; Bates *v.* 945
Hasan *v.* United States 1196
Hassan *v.* United States 960
Hassell; Rodriguez *v.* 1071
Hassey *v.* Oakland 1213
Hatch; House *v.* 1187
Hatch *v.* United States 820
Hatfill *v.* New York Times Co. 1085

Page
Hattabaugh *v.* United States 1089
Hatton *v.* Bank of America 857
Hatton *v.* Grigar 944
Hausch *v.* Grievance Committee for Ninth Judicial Dist. 1172
Haven *v.* Worth 1135
Haviland; Haynes *v.* 855
Hawaii; Cutsinger *v.* 928
Hawaii *v.* Office of Hawaiian Affairs 1162
Hawaii Dept. of Ed.; Stucky *v.* 1101
Hawaii Government Employees' Assn.; Hadley *v.* 996
Hawkins, *In re* 992
Hawkins *v.* Doyle 1187
Hawkins; Equal Access for El Paso, Inc. *v.* 811
Hawkins *v.* Hernandez 1107
Hawkins *v.* Roper 949
Hawkins *v.* United States 858,905,1019
Hawley *v.* United States 1136
Haws; Evans *v.* 915
Haws; Lozano *v.* 879
Haws; Salgado *v.* 829
Hawthone *v.* Norris 1184
Hayatullah *v.* California 949
Hayden; Harbury *v.* 881
Hayes *v.* Anderson 951
Hayes *v.* Chandler 857
Hayes *v.* Felker 848,1064
Hayes *v.* Fidel 1135
Hayes *v.* Potter 941
Hayes *v.* Thomas & Betts Corp. 943
Hayes *v.* United States 909,911
Hayes; United States *v.* 415
Hayes *v.* Wells Fargo Bank, N. A. 1012
Hayner *v.* Washington Court House 905,1082
Haynes *v.* Haviland 855
Haynes; Hirt *v.* 879
Haynes; Kozoman *v.* 848
Haynes; Obiorah *v.* 947
Haynes *v.* Washington Dept. of Social and Health Services 949
Hazel *v.* United States 936
Hearing *v.* Tennessee 1113
Hearing *v.* United States 830
Hearne *v.* United States 1123
Hedgpeth *v.* Pulido 57
Hedgpeth; Valdivia *v.* 1052

Page
Hedrick *v.* Hall 853
Helen Hayes Hospital; Shah *v.* 827,1063
Helmig; Mann *v.* 1085
Hemmerle *v.* Schriro 829,1063
Henderson, *In re* 810
Henderson *v.* Fabian 847
Henderson *v.* Michigan 879
Henderson *v.* United States 857
Hendricks *v.* South Carolina Dept. of Corrections 1185
Hendricks *v.* United States 1125
Hendrix *v.* Harrington 937
Hendrix *v.* McNeil 1004
Henley *v.* Bell 1160
Henley *v.* Little 1160
Henneberry *v.* ING Capital Advisors, LLC 941
Henry *v.* Brooks 920
Henry; Mapa *v.* 972
Henry *v.* Mukasey 839,1031
Henry *v.* United States 955,1039
Hensinger; Curry *v.* 1069
Heppner *v.* United States 909
Her *v.* California 842
Her *v.* Minnesota 1092
Herbert, *In re* 1068
Heredia; Ring *v.* 855
Heritage Coal Co., LLC *v.* Ambrosia Land Investments, LLC . . . 970
Herman *v.* Meiselman 823
Hernandez, *In re* 809,1169
Hernandez *v.* California 1055
Hernandez *v.* Florida Dept. of Corrections 1184
Hernandez; Hawkins *v.* 1107
Hernandez *v.* Mukasey 813
Hernandez *v.* Texas 940
Hernandez *v.* United States 887,1078,1123,1124
Hernandez; Wensel *v.* 947,1090
Hernandez-Campos *v.* United States 958
Hernandez-Castillo *v.* United States 1089
Hernandez-Hernandez *v.* Hall 879
Hernandez-Hernandez *v.* United States 868,960
Hernandez-Lebron *v.* United States 1078
Hernandez-Mendez *v.* United States 1217
Hernandez-Sanchez *v.* United States 969,1072
Hernke *v.* United States 868
Herrera; Aranda *v.* 910,1065

Page
Herrera *v.* Quarterman 1183
Herring *v.* United States 135
Herrington *v.* United States 1196
Herron *v.* United States 858
Hertz *v.* Carothers 843
Hervey *v.* Koochiching County 1137
Hester *v.* West Virginia 1032
Hettich *v.* Hettich 1110
Hettich; Wise *v.* 1110
Hickman *v.* United States 1198
Hickmon *v.* McCollum 1003
Hickmon *v.* U. S. District Court 1164
Hicks *v.* Clarke 857
Hicks *v.* McBride 1158
Hicks *v.* United States 956,1020
Hiddens *v.* Leibold 842,1015,1127,1129
Hien Vu Tu *v.* Washington 1052
Hieu Trung Nguyen *v.* Runnels 857
HIF Bio, Inc.; Carlsbad Technology, Inc. *v.* 943,1043
Higgenbotham *v.* Cain 838
Higginbotham *v.* Florida 975,1090
Higgins *v.* Quarterman 1184
Higgs *v.* Superior Court of Mass. 1032
Hightower *v.* Commissioner 997
Hightower *v.* McGrath 858
Hilaire *v.* United States 1200
Hilario-Hilario *v.* United States 976
Hildenbrand *v.* United States 946
Hill *v.* Georgia 944
Hill *v.* Hill 1052
Hill *v.* Hillier 844
Hill *v.* Jones 843
Hill *v.* NCO Portfolio Management 1000
Hill *v.* Pennsylvania 1216
Hill *v.* United States 936
Hill *v.* Wilson 882
Hillard *v.* Webb 1113
Hilliard *v.* Jacobs 886
Hilliard *v.* United States 900,1177
Hillier; Hill *v.* 844
Himmelreich *v.* United States 870
Hines *v.* Newsom 1156
Hines *v.* United States 1200
Hines *v.* White 1214

Page
Hinojos Orozco *v.* United States 896
Hinton *v.* United States 1105,1116
Hirsch *v.* McNeil 859
Hirt *v.* Haynes 879
Histon *v.* Superior Court of Cal., Los Angeles County 1093
Hitachi, Ltd.; Translogic Technology, Inc. *v.* 1045
H & N Planning & Control, Inc. *v.* St. Peters 1173
Hoa Huynh; DIRECTV, Inc. *v.* 937
Hoang *v.* United States 930,1019,1088
Hobley *v.* Pliler 1002
Hobley *v.* Wachovia Corp. 1042
Hodges *v.* McNeil 855
Hodges *v.* Norris 1192
Hodgson *v.* Davignon 1069
Hodson *v.* Brooks 1075
Hoefel; Eklof *v.* 1214
Hoenisch; Drow *v.* 878
Hoffecker *v.* United States 1049
Hoffman *v.* Folino 1182
Hofmann; Grega *v.* 898
Hogan *v.* Florida 1190
Hogan *v.* United States 976
Hogsett *v.* United States 1170
Holden *v.* Branker 1187
Holder; Asemani *v.* 1215
Holder; Enwonwu *v.* 1191
Holder; Jordan *v.* 1192
Holder; Negusie *v.* 511
Holder; Sunarno *v.* 1185
Holder; Thornton *v.* 1174
Holinka; Maro *v.* 930
Holland *v.* Beard 1033
Holland; Beard *v.* 1012
Holland *v.* United States 931
Holler *v.* United States 1197
Holliday *v.* Minnesota 856
Hollinshead *v.* Illinois 1189
Hollis; Lash *v.* 1004
Hollonbeck *v.* U. S. Olympic Committee 938
Holloway *v.* Commissioner 1213
Holloway *v.* Court of Appeal of Cal., Second Appellate District . . 895
Holloway *v.* United States 873
Holly *v.* Montes 1191
Hollywood *v.* California 969

Page
Hollywood Housing Authority; Shell *v.* 1004
Holman *v.* Clemson Univ. 884
Holman *v.* Ebert 876
Holman *v.* United States 801,1007
Holmes *v.* DiGuglielmo 857
Holmes *v.* Washington 1185
Holt *v.* Alabama 1036,1086
Holt *v.* Keo 1183
Holt *v.* Limestone County Sheriff's Dept. 849
Holt *v.* Valls 1073,1086
Holtz *v.* United States 1038
Holyfield *v.* United States 978
Homer *v.* Walker 919
Homer-Center School Dist.; Combs *v.* 1138
Honeywell International Inc. *v.* Hamilton Sundstrand Corp. 939
Honeywell Technology Solutions, Inc.; Valderrama *v.* 979
Hong Chang *v.* Minnesota 931
Honolulu; Long *v.* 816
Hooks; Crawford *v.* 829
Hooper *v.* B&R Property Management Co. 849
Hooper *v.* United States 958
Hopkins *v.* Florida 1004
Hopkins *v.* United States 1132
Hopkins *v.* White 1182
Horel; Cable *v.* 1111
Horel; Neale *v.* 1107
Horel; Rodriguez *v.* 1187
Horel; Torres *v.* 1075
Horel; Wooten *v.* 1040
Horne *v.* Flores 1092
Hornsby; Luna *v.* 973,1082
Horton *v.* Parker 951
Hosack *v.* Internal Revenue Service 1216
Hosley *v.* McNeil 1055
Hott *v.* United States 1133
Houck *v.* Pennsylvania 1056
Houk; Biros *v.* 893
Houk; Wilson *v.* 872
Houlihan *v.* Michigan 910
House *v.* Hatch 1187
House *v.* Quarterman 918
House *v.* United States 883
Housing Resources Management, Inc.; Osijo *v.* 1185
Houston, *In re* 992

Page
Houston *v.* Aames Funding Corp. 1048
Houston; Benzel *v.* 1118
Houston; Harper *v.* 1003,1129
Houston *v.* Illinois 929
Houston; Leonor *v.* 868
Houston; Malcom *v.* 946,1081
Houston *v.* Schomig 1187
Houston; United States *ex rel.* Farmer *v.* 1012
Houston County; Harbuck *v.* 1047,1159
Howard *v.* California 946,1183
Howard *v.* Epps 833
Howard *v.* Illinois 1186
Howard *v.* Kemna 1185
Howard *v.* Nevada 1184
Howard *v.* Oregon 1052
Howard *v.* Perdue 1190
Howard *v.* Sony BMG Music Entertainment Inc. 1174
Howard *v.* United States 930,1202
Howard Brothers Inc.; Thompson *v.* 1013,1150
Howard Univ.; Martin *v.* 1040,1128
Howell *v.* Fulmore 1171
Howerton; Stephens *v.* 854
Howes; LaFountain *v.* 804
H&R Block Services, Inc.; Reynolds *v.* 942,1104
Huang *v.* Bell 926,1082
Hubbard *v.* Hulick 1056
Hubbard *v.* Kerestes 843
Hubbard *v.* United States 829
Hubbeling *v.* United States 894
Hubby *v.* Hubby 881
Hudson *v.* Brown 1106
Hudson *v.* Cain 1073
Hudson; Carmon *v.* 890
Hudson; Duque *v.* 1193
Hudson *v.* Florida 1191
Hudson *v.* Florida Dept. of Corrections 1184
Hudson; Johnson *v.* 933,1109
Hudson *v.* Laurel 1187
Hudson; McDonald *v.* 842
Hudson; Prather *v.* 1108
Hudson *v.* Quarterman 1041
Hudspeth *v.* Quarterman 1182
Huertas *v.* Camden 839
Hughes *v.* Minnesota 1036,1209

Page
Hughes *v.* Mississippi 1052
Hughes; Rojas-Vega *v.* 904
Hughes *v.* Yates 929
Huibregtse; Arredondo *v.* 1126
Huibregtse; Fairman *v.* 903
Huibregtse; Jacobs *v.* 1151
Huibregtse; Lamon *v.* 1034,1150
Huibregtse; Schlemm *v.* 1113
Hulick; Crockett *v.* 1189
Hulick; Hubbard *v.* 1056
Hulick; Jameson *v.* 932
Hullette *v.* United States 919
Hulteen; AT&T Corp. *v.* 1030,1210
Humbles *v.* Buss 842
Humphrey *v.* Onondaga County Sheriff's Dept. 1165
Hung Ha *v.* Harrison 914,1082
Hung Ha *v.* Ross 914,1082
Hung Ha *v.* Superior Court of Cal., Alameda County 914,1082
Hunt, *In re* 810
Hunt; Adams *v.* 948
Hunt; Gay *v.* 1048,1208
Hunt *v.* Quarterman 918
Hunt *v.* Rodriguez-Mendoza 857
Hunt *v.* United States 1132
Hunt *v.* Wagner 1014
Hunt; Walters *v.* 851
Hunter; Lopez Rosier *v.* 1214
Hunter *v.* Texas 832
Hunter *v.* United States 1007,1028
Hunter *v.* Williams-Sonoma Direct 806
Huntleigh Healthcare, LLC; Lee *v.* 995,1128
Huntleigh USA Corp. *v.* United States 1045
Hurley *v.* Bureau of Immigration and Customs Enforcement 817
Hurley; Parker *v.* 815
Hurley; Stedman *v.* 1157
Hurst *v.* Rehoboth Beach 1166
Hurtado *v.* Kirkland 1033
Hurtado *v.* Parker 894
Hust *v.* Phillips 1150
Hutchins *v.* Federal Trade Comm'n 1011
Hutchins *v.* McNeil 849,857
Hutchins *v.* United States 1018
Hutchinson *v.* United States 1158
Hutson *v.* Giurbino 922,1128

Page
Huynh; DIRECTV, Inc. *v.* 937
Hyde *v.* Branker 1157
Hyland *v.* Kolhage 874
Hyles *v.* United States 1102
Hyman; Denton *v.* 1097
Hyperion Books; Steinbuch *v.* 939
Hypolite *v.* California 873
Hyppolite *v.* United States 960
Hytower *v.* Ohio 1190
Iacullo *v.* United States 1077
Ibanez-Espinosa *v.* United States 960
Ibarra *v.* California 1213
Ibarra *v.* United States 1196
Ibn Shabazz *v.* United States 959
Ice; Oregon *v.* 160
Idaho; Johnson *v.* 1053
Idaho; Pocatello *v.* 1068
Igbinosun *v.* United States 1072
Ilaraza *v.* United States 1198
Illinois; Adediji *v.* 1212
Illinois; Bailey *v.* 1178
Illinois; Beaty *v.* 914
Illinois; Berry *v.* 1197
Illinois; Buchanan *v.* 811
Illinois; Buckner *v.* 837
Illinois; Campbell *v.* 891
Illinois; Carter *v.* 880
Illinois; Degorski *v.* 1077
Illinois; Dobbey *v.* 1180
Illinois; Fletcher *v.* 954
Illinois; Frison *v.* 911
Illinois; Gallano *v.* 951
Illinois; Gray *v.* 1158
Illinois; Hollinshead *v.* 1189
Illinois; Houston *v.* 929
Illinois; Howard *v.* 1186
Illinois; Jackson *v.* 1156
Illinois; Jones *v.* 952
Illinois; Kaszuba *v.* 862
Illinois; Long *v.* 862
Illinois *v.* Lopez 1136
Illinois; Martinez *v.* 952
Illinois; Mosley *v.* 1107
Illinois; Pearson *v.* 1014

Page
Illinois; Poole *v.* 861
Illinois; Pratt *v.* 1180
Illinois; Radcliff *v.* 1178
Illinois; Rivera *v.* 1162
Illinois; Robinson *v.* 946
Illinois; Rosenbach *v.* 955
Illinois; S. B. *v.* 1197
Illinois; Vann *v.* 1109
Illinois; Wesley *v.* 1181
Illinois; Whittington *v.* 854
Illinois; Williams *v.* 1055
Illinois; Willis *v.* 1016
Illinois; Winston *v.* 1190
Illinois; Young *v.* 916
Illinois; Zayes *v.* 895
Illinois Central R. Co. *v.* Copple 995
Illinois Dept. of Correctional Clinical Psychologists; Walls *v.* 1214
Illinois Dept. of Human Services; Poindexter *v.* 889
Illinois *ex rel.* Ill. Dept. of Human Services; Poindexter *v.* 889
Imbach *v.* California 975
Immigration and Naturalization Service; Zuluaga-Martinez *v.* . . . 1170
Improv West Associates *v.* Comedy Club, Inc. 801
IMS Engineers-Architects, P. C. *v.* Geren 1031
Inch; Diaz *v.* 854
Incor *v.* Fowler 995
Independent Technologies, Inc.; TIP Systems, LLC *v.* 1046
Indiana; Aki-Khuam *v.* 1196
Indiana; Cunningham *v.* 1047
Indiana; Jeter *v.* 1055
Indiana; Oldham *v.* 1000
Indiana; Overstreet *v.* 972
Indiana; Quiroz *v.* 920
Indiana; Smith *v.* 841,1083
Indiana; Sweeney *v.* 1003
Indiana; Taylor *v.* 1142
Indiana; Vance *v.* 868
Indiana Lumbermens Mut. Ins. Co.; Reinsurance Results, Inc. *v.* 884
Indiana Supreme Court Disciplinary Comm'n; Haigh *v.* 1154
Industrious, *In re* 1135
Indyway Investment *v.* Cooper 1047
Indyway Investment *v.* Opri 820,1063
ING Capital Advisors, LLC; Henneberry *v.* 941
Ingersoll-Rand Co.; Barney *v.* 1056,1209
Ingham Circuit Judge; Baublitz *v.* 836,1127

Page
Ingram *v.* Beard 863
Ingram *v.* Texas 1185
Ingram *v.* United States 976,1132
Ingram *v.* Warden, River Bend Detention Center 1056
Innarelli *v.* United States 879
In re. See name of party.
Inspector General; Burton *v.* 1185
Intercosmos Media Group, Inc.; Delor *v.* 1055,1150
Internal Revenue Service; Hosack *v.* 1216
International. For labor union, see name of trade.
International Game Technology; Aristocrat Technologies Austl. *v.* 1070
International Rectifier Corp. *v.* IXYS Corp. 882
International Shipping Agency *v.* Puerto Rico Ports Authority . . 1170
Interscope Records, Inc.; Tucker's Estate *v.* 827
Inyama *v.* United States 926
Iowa; Blackburn *v.* 1157
Iowa; Christopher *v.* 1185
Iowa; Grayson *v.* 952
Iowa; Schreiber *v.* 1036,1209
Iowa; Scott *v.* 1187
Iqbal; Ashcroft *v.* 807,1030
Iraq *v.* Beaty 1092
Iraq *v.* Simon 1092
Irick *v.* Bell 1033
Irving *v.* Kelly 1073
Isaacs *v.* Metropolitan Life Ins. Co. 1047
Isaacson *v.* Dow Chemical Co. 1218
Islander East Pipeline Co., L. L. C. *v.* McCarthy 1046
Ivaldy *v.* Loral Space & Communications Ltd. 1126
Iverson *v.* Minnesota 953
Ivoclar Vivadent, Inc.; PSN Ill., LLC *v.* 1048
Iwanejko *v.* Cohen & Grigsby, P. C. 829
IXYS Corp.; International Rectifier Corp. *v.* 882
Jacinto-Sotelo *v.* United States 1078
Jackson *v.* California 869,998,1150
Jackson *v.* Carolinas Healthcare System 893,1040
Jackson *v.* Cortez Masto 972
Jackson *v.* Illinois 1156
Jackson *v.* Leutzow 890
Jackson; Madyun *v.* 855
Jackson *v.* Mix 971
Jackson; Monroe *v.* 1155
Jackson *v.* New York 973
Jackson *v.* North Carolina 1215

Page
Jackson *v.* Purkett 908,1150
Jackson *v.* Quarterman 844
Jackson *v.* Rousseau 948
Jackson *v.* Thompson 865,1127
Jackson *v.* United States 855,925,962,1068,1123,1163,1201,1217
Jackson *v.* Washington 1032
Jackson *v.* Wisconsin 905
Jackson National Life Ins. Co.; Fisher *v.* 1053
Jackson's Gap; Coggins *v.* 1086,1160
Jackson State Univ.; Washington *v.* 1010
Jacobs *v.* Florida 1000
Jacobs; Hilliard *v.* 886
Jacobs *v.* Huibregtse 1151
Jacobs *v.* Tapscott 887
Jacobs *v.* United States 961
Jacobs *v.* Wisconsin 1002
Jacques *v.* United States 1088
Jacquez *v.* United States 1017
Jae *v.* Blaine 1156
Jae *v.* Good 1156
Jaeger *v.* United States 1117
Jagger *v.* Washington 1104
Jahmall *v.* United States 1146
James *v.* Mississippi Bar 826
James *v.* Pollard 1116
James *v.* Scribner 992
James *v.* Springfield 1141
James *v.* United States 955,1122
Jameson *v.* Hulick 932
Jamison *v.* Costco Wholesale 952
Jamison *v.* Smith Food & Drug, Inc. 972
Jammer *v.* Harris County 1002
Janda; T-Mobile USA, Inc. *v.* 813
Janecka; Wesley *v.* 1116
Janicek *v.* United States 923
Janoe *v.* Rackauckas 849
Janossy *v.* Washington Mut. Bank 1215
Jarvis *v.* United States 936
Jasmin *v.* United States 1195
Jeanetta *v.* United States 1079
Jeep *v.* Jones 849,1150
Jeffers *v.* United States 855
Jefferson *v.* Bell 954
Jefferson *v.* California 1035

Page
Jefferson *v.* Kilmer 1051
Jefferson *v.* McDaniel 837
Jeffreys; Lathan *v.* 974
Jelke's Estate; Commissioner *v.* 826
Jen-Kang Yang *v.* Fields 948
Jenkins *v.* McDaniel 1076
Jenkins *v.* United States 959
Jenks; Ford *v.* 849
Jennings *v.* United States 1061,1104
Jensen *v.* Missouri 1143
Jeremiah *v.* United States 956
Jeross *v.* United States 1176
Jerry *v.* United States 918
Jeter *v.* Indiana 1055
Jett; Short *v.* 871
Jewelcor Inc. *v.* Karfunkel 886
Jianguang Wang; Tang *v.* 1175
Jimenez *v.* California 879
Jimenez *v.* Quarterman 113
Jimenez *v.* Texas 892
Jimenez *v.* United States 1103,1119
Jimenez-Gudino *v.* United States 1080
Jimenez Viracacha *v.* Mukasey 969
Jimmerson *v.* California 876
J. J. Store *v.* Lot Polish Airlines 822
J. J. Store *v.* Polskie Linie Lotnicze 822
Johanson; Powers *v.* 1111
Johns; Smith *v.* 923
Johns Hopkins Univ.; Onawola *v.* 1047
Johnson; Albert *v.* 1178
Johnson *v.* Almager 1000
Johnson; Arizona *v.* 323,807
Johnson *v.* Artus 1075
Johnson *v.* Atkinson 1000
Johnson *v.* A Touch of Class Painting, Inc. 1115
Johnson *v.* Belleque 832,1081
Johnson *v.* Bett 1119
Johnson; Blount *v.* 840
Johnson *v.* Board of Bar Overseers of Mass. 849
Johnson *v.* Burt 974
Johnson; Cairns *v.* 806,1017
Johnson *v.* California 950
Johnson; Carey *v.* 923,1065
Johnson; Cason *v.* 1034

Page
Johnson; Clements *v.* 1002
Johnson *v.* Connecticut 883
Johnson; Cookeville Regional Medical Center *v.* 1212
Johnson *v.* Cooper 844
Johnson; Cooper *v.* 1167
Johnson; Edgar *v.* 1053
Johnson; Evans *v.* 813,1063
Johnson *v.* Fabian 1014
Johnson; Gayle *v.* 1073
Johnson; Grethen *v.* 1164
Johnson *v.* Hudson 933,1109
Johnson *v.* Idaho 1053
Johnson *v.* Lowery 996
Johnson *v.* McBride 840
Johnson *v.* McDaniel 878
Johnson *v.* McNeil 851
Johnson *v.* Michael 1167
Johnson; Miller *v.* 835,897,1063
Johnson *v.* Missouri 872
Johnson; Moore *v.* 1158
Johnson *v.* Norris 1182
Johnson *v.* Ohio 899
Johnson; Patterson *v.* 856
Johnson *v.* Pennsylvania 868
Johnson *v.* Pointe Coupee Parish Police Jury 805
Johnson *v.* Quarterman 847,892
Johnson; Rhodes *v.* 876
Johnson; Savage *v.* 1157
Johnson *v.* Shorewood 886
Johnson *v.* Texas 1162
Johnson; Thomas *v.* 846
Johnson *v.* Thurmer 1143
Johnson *v.* Transit Mix Concrete & Materials Co. 1047
Johnson *v.* United States 828,
851,892,911,931,977,978,1081,1118,1122,1125,1169,1203
Johnson *v.* University Good Samaritan 1044
Johnson; Vines *v.* 848,1015,1127,1129
Johnson *v.* Washington 845,1063
Johnson; Washington *v.* 1111
Johnson; Whittington *v.* 869
Johnson; Wilson *v.* 907
Johnson *v.* Woods 841
Johnson; Yancey *v.* 1214
Johnson Realty Co.; Eljack *v.* 1113,1210

Page
Johnston *v.* Tampa Sports Authority 1138
Joint Force Headquarters National Guard; Francis *v.* 805
Jolley *v.* United States 1017
Jones; Abrams *v.* 1099
Jones *v.* Alabama 833
Jones; Barber *v.* 972
Jones *v.* Birkett 1000
Jones *v.* Carlton 1087
Jones; Coronado *v.* 860
Jones *v.* Cuomo 1075
Jones; DCFS Trust *v.* 1028
Jones; DeJesus *v.* 860
Jones *v.* Epps 876
Jones; Hill *v.* 843
Jones *v.* Illinois 952
Jones; Jeep *v.* 849,1150
Jones; Kaske *v.* 952,1218
Jones *v.* Larkin 928,1082
Jones; Mack *v.* 1035
Jones *v.* McNeil 1190
Jones *v.* Michigan 1112
Jones *v.* New Hope Housing, Inc. 1186
Jones *v.* New York 851,1109
Jones *v.* Ohio State Univ. 1109
Jones *v.* Parker 1119
Jones *v.* Peake 913
Jones; Pearl *v.* 952
Jones *v.* Pennsylvania Bd. of Probation and Parole 846
Jones *v.* Quarterman 847,893,1014
Jones; Robinson *v.* 1033,1209
Jones *v.* St. Lucie County 1155
Jones *v.* Social Security Administration 889
Jones *v.* Tidewater Marine LLC 1068
Jones *v.* United States 867,
894, 895, 901, 905, 912, 913, 934, 961, 977, 1005, 1017, 1056, 1078,
1079,1159,1201,1204
Jonites *v.* Exelon Corp. 881
Jordan; Flint *v.* 897
Jordan *v.* Holder 1192
Jordan *v.* United States 862,869,906,1090,1199
Joseph *v.* Michigan 1107
JP Morgan Chase Bank National Assn.; Beard *v.* 999,1129
J. P. Morgan Chase & Co.; Williams *v.* 882
Juarez-Godina *v.* United States 860

Page
Judge, Cir. Ct. of Fla., 2d Jud. Cir.; Rolle *v.* 804
Judge, Cir. Ct. of Ky., Boone Cty.; Schlagel *v.* 1032
Judge, Cir. Ct. of Ky., Knott and Magoffin Ctys.; Childers *v.* 818
Judge, Cir. Ct. of Marion Cty.; Taylor *v.* 1141
Judge, Dist. Ct. of Appeal of Fla., 1st Dist.; Harmon *v.* 1183
Judge, Dist. Ct. of Neb., 3d Dist.; Bowen *v.* 970
Judge, Dist. Ct. of Utah, 3d Dist.; Cooper *v.* 1171
Judge, Super. Ct. of Allegany/Rockingham Cty., N. C.; Everson *v.* 817
Judge, Super. Ct. of Cal., Madera Cty.; Williams *v.* 1001
Judge, 21st Jud. Dist. Ct. of Mont.; Hirt *v.* 879
Juneau *v.* United States 1057
Jurgens *v.* United States 1082
Justice *v.* Livingston 1114
Justice *v.* Rall 953
Justin Combs Publishing; Westbound Records, Inc. *v.* 818
Just New Homes, Inc. *v.* Beazer Homes 1174
Juvenile Male *v.* United States 1217
K. *v.* Pennsylvania State Police 1153
K. A. *v.* New Jersey 1156
Kablitz *v.* Florida 855
Kadlec Medical Center; Lakeview Anesthesia Associates *v.* 1046
Kane; Brownlow *v.* 1035
Kane; Davies *v.* 1156
Kane; McKinney *v.* 1055
Kane; Treadway *v.* 1114
Kang *v.* PB Fasteners 883
Kannapien *v.* Quaker Oats Co. 816
Kanofsky *v.* Commissioner 1071,1208
Kanovsky *v.* Montefiore Medical Center 823
Kansas; Bloom *v.* 877
Kansas *v.* Colorado 1029,1095
Kansas; Denny *v.* 955
Kansas; Fields *v.* 873
Kansas; Green *v.* 1033
Kansas; Kitzman *v.* 955
Kansas; Loggins *v.* 840
Kansas; Lynn *v.* 948
Kansas; Martin *v.* 880
Kansas *v.* Morton 1126
Kansas *v.* Smith 1062
Kansas *v.* Ventris 1030,1091
Kanter; Albertson's Inc. *v.* 808,1097
Kao *v.* California 840
Karanja *v.* Maryland 890

Page
Karass; Locke *v.* 207
Kareem W. *v.* Anonymous 1046
Karfunkel; Jewelcor Inc. *v.* 886
Karimian *v.* United States 884
Karl *v.* United States 867
Karnofel *v.* Astrue 859,1064
Karnofel *v.* Kmart Corp. 1186
Kartzman; Truong *v.* 1094
Kaske *v.* Jones 952,1218
Kast; Antonsson *v.* 948,1082
Kaszuba *v.* Illinois 862
Katonah-Lewisboro School Dist.; Manbeck *v.* 886
Katt *v.* Lafler 1142
Kay *v.* Federal Communications Comm'n 1049
Kay *v.* United States 813,1062
Kaye; Lee *v.* 892
Kean Univ.; Skoorka *v.* 817,1063
Kearney *v.* California 1004
Kearny; Lincoln North Development Corp. *v.* 970
Keene *v.* Mitchell 1157
Keith *v.* United States 1019,1121
Kelchner; Byrd *v.* 844
Kelchner; Coombs *v.* 940,1068
Kelchner; Knight *v.* 1178
Keller *v.* Porter Hospital 911
Keller; Powell *v.* 916,1065
Keller; Rischon Development Corp. *v.* 996
Kelley; Blocker *v.* 1181
Kelley; Lynch *v.* 894
Kellogg *v.* United States 943
Kelly *v.* Bass Pro Outdoor World, LLC 824
Kelly *v.* Bass Pro Shops Outdoor World 824
Kelly; Bell *v.* 55,941
Kelly *v.* Budge 959
Kelly *v.* California 1020
Kelly; Carney *v.* 1115
Kelly; Irving *v.* 1073
Kelly *v.* Quarterman 828,866,967
Kelly; Sharikas *v.* 1189
Kelly *v.* Sisto 1081,1219
Kelly *v.* United States 1203
Kemna; Howard *v.* 1185
Kemna; Wilson *v.* 913
Kemp; Brown *v.* 951,1065

Page
Kemp *v.* Osage Nation 820
Kemp *v.* United States 928
Kempthorne; Butler *v.* 1103
Kempthorne; Carcieri *v.* 807,991
Kempthorne; National Mining Assn. *v.* 1062
Kendrick *v.* Ohio 872
Kendricks *v.* McNeil 1058
Kenfield *v.* United States 868
Kennedy *v.* Plan Adm'r for DuPont Savings and Inv. Plan 285,990
Kenner *v.* Bell 872
Kenney *v.* United States 1009
Kenny; O'Neal *v.* 1133
Kent; Dahlquist *v.* 1012,1128
Kentucky; Capshaw *v.* 1016
Kentucky *v.* Leach 937
Kentucky; McStoots *v.* 862
Kentucky; Padilla *v.* 1169
Kentucky; Peyton *v.* 1035
Kentucky; Rice *v.* 1110
Kentucky; Stanford *v.* 910
Kentucky Cabinet for Health and Family Services; Lee *v.* 959
Kentucky Dept. of Corrections; Griffith *v.* 1041
Kenworthy; Lesane *v.* 855
Keo; Holt *v.* 1183
Kepner *v.* Florida 916
Kerestes; Goldblum *v.* 850
Kerestes; Harris *v.* 931,1128
Kerestes; Hubbard *v.* 843
Kerestes; Mitchell *v.* 891
Kerestes; Sessa *v.* 836
Kerestes; Spencer *v.* 900
Kerley *v.* United States 1159
Kernan; Walker *v.* 953
Kerns; Cooey *v.* 968
Keszei; Akers *v.* 843
Keyes *v.* United States 1102
Keys *v.* United States 961
Keystone Aviation Services Inc.; Peters *v.* 1189
Khalil *v.* Stevens Institute of Technology 1188
Khan *v.* United States 1198
Khanh Tran *v.* Washington 1055
Kickapoo Traditional Tribe of Tex. *v.* Texas 811
Kidd *v.* Ohio 1003
Kienzle *v.* Ohio 842

Page
Kikkert *v.* Schmidt 1115
Kilgore *v.* Florida 853
Kilgroe *v.* American Ship Management, LLC 1101
Killingsworth *v.* Wells Fargo Bank 1000
Kilmer; Jefferson *v.* 1051
Kim *v.* Adams 1120
Kim *v.* Federal Way 943
Kim *v.* United States 826
Kimbrough *v.* United States 1102
Kimmie *v.* Wilkerson 1215
Kinchen *v.* United States 1200
King, *In re* 809
King; Bradley *v.* 1161
King *v.* California 1111,1157
King *v.* Department of Veterans Affairs 1103
King *v.* Federal Bureau of Prisons 957
King *v.* Marriott International, Inc. 808,1044,1159
King *v.* Nebraska 931
King *v.* New York State Division of Parole 887
King; Paladino *v.* 1191
King *v.* Quarterman 1192
King *v.* Rogers 1186
King *v.* State Resources Corp. 820
King *v.* United States 855,870,935,1009,1090,1119,1121
King *v.* Wisconsin 930
Kingdom of Saudi Arabia; Federal Ins. Co. *v.* 1168
Kingston; Moody *v.* 954
Kirby Inland Marine, LP; T H Investment, Inc. *v.* 1098
Kirkham *v.* United States 1195
Kirkland *v.* California 876
Kirkland; Hurtado *v.* 1033
Kirkland *v.* Kirkland 945
Kirkland *v.* New York 1181
Kirkland *v.* Tamplin 945
Kirkland *v.* United States 1072
Kirkpatrick; Dinsio *v.* 1181
Kirlew *v.* Mukasey 882
Kirlew *v.* United States 1123
Kittrell *v.* United States 871
Kitzman *v.* Kansas 955
Klamath Tribes of Ore. *v.* PacifiCorp 821
Klein *v.* United States 1200
Klem; Bozzelli *v.* 1197
Klopf *v.* United States 930

Page
Klump *v.* United States 1061
Klym *v.* Washington 865
Kmart Corp.; Bartlette *v.* 1115,1210
Kmart Corp.; Karnofel *v.* 1186
Knight *v.* Kelchner 1178
Knight *v.* McCollum 849
Knight *v.* Mississippi 998
Knowles; Baca *v.* 1157
Knowles *v.* Mirzayance 807
Knowles; Rufus *v.* 1072
Knowles; Sampson *v.* 841
Knox *v.* United States 1212
Knubbe *v.* Portfolio Recovery Associates 820
Kohl *v.* United States 1199
Kolhage; Hyland *v.* 874
Konan *v.* Sengel 821
Konteh; Fayne *v.* 1186
Kontogiannis; Policastro *v.* 814,1134
Koochiching County; Hervey *v.* 1137
Koon; Cain *v.* 1010
Korman; Moore *v.* 918
Kornicki *v.* Vincent 930
Kosyla *v.* Des Plaines 870
Kowal *v.* United States 1038
Kowell *v.* Donell 1047
Kozoman *v.* Haynes 848
Kramer; Morris *v.* 897
Kramer; Tuggle *v.* 844
Kratz *v.* Cate 1178
Kravchuk; Dorsey *v.* 973
Krueger *v.* Quarterman 838
Kruse; McKenna *v.* 821
Krysevig; Dandar *v.* 1111,1219
Krysevig; Halulakos *v.* 972
Kuper *v.* United States 885
Kuperman *v.* Supreme Court of N. H. 899
Kyles *v.* Quarterman 1143
Kyles *v.* Thurmer 973
Kyung Byun *v.* United States 1088
L. *v.* United States 975
Labbe *v.* Mukasey 885
Labor Union. See name of trade.
LaBranch *v.* California 1074
LaCasse *v.* United States 1133

Page
LaClair; Babi *v.* 1054
LaClair; Burrell *v.* 847
LaClair; Madonia *v.* 867
LaCount *v.* Wisconsin 1046
Lacy *v.* National Railroad Passenger Corp. 808,1050,1208
Lafayelle *v.* United States 906
Lafferty *v.* Utah 830
LaFlam *v.* United States 927
Lafler; Carter *v.* 974
Lafler; DeJesus *v.* 951
Lafler; Gendron *v.* 895
Lafler; Katt *v.* 1142
Lafler; Reischauer *v.* 1111
Lafler; Thompson *v.* 1015
Lafler; Woods *v.* 1015
LaFortune *v.* United States 871
LaFountain *v.* Howes 804
LaFreniere *v.* Board of Trustees of Cal. State Univ. 1094
Lagamarsino; Gherini *v.* 812
Lagasse *v.* United States 1060
Laity *v.* Peake 1016,1130
Lake Forest Partners 2, Inc. *v.* Michigan Dept. of Treasury 885
Lake Shastina Community Services Dist. *v.* Bare 990
Lakeview Anesthesia Associates *v.* Kadlec Medical Center 1046
Lake Worth; Taylor *v.* 1033,1150
Lam *v.* Lam 1053
Lambert *v.* Hartmann 1126
Lamison *v.* California 1180
Lamon *v.* Huibregtse 1034,1150
Lamons *v.* United States 1009
Lampkin *v.* United States 1020
Lampkin-Asam *v.* Volusia County School Bd. 815,1063
Lancaster *v.* United States 1132
Land *v.* Murdoch 1075
Landeros *v.* United States 862
Landrum *v.* United States 1147
Lane *v.* Pennsylvania 996
Lane *v.* Texas 818
Lang *v.* Paulson 820
Lang *v.* United States 898
Lango *v.* Smith 894
Lanier *v.* Florida 1075
Lankenau Hospital; Reshard *v.* 883,1064
Lansing *v.* United States 881

Page
Lantz; Small *v.* 975
La Plata R–II School Dist.; McClaskey *v.* 818,1127
Lara *v.* United States 1079
Larkin; Jones *v.* 928,1082
Larkins; Skillicorn *v.* 975
Larkins; Williams *v.* 1186
Larsen *v.* Department of Navy 1071
Larson *v.* Belleque 871
Larson *v.* Hagerty 911
Larson *v.* United States 886
LaSala; Bordier et Cie *v.* 1028
Las Cruces *v.* Vondrak 1137
Lash *v.* Hollis 1004
Lash *v.* United States 930
Lashley *v.* Ohio 1109
Las Vegas Valley Water Dist.; Watson *v.* 1084
Latham *v.* Anchorage 974,1129
Lathan *v.* Jeffreys 974
Latif *v.* United States 1039
Lattaker, *In re* 810,1128
Lattaker *v.* Rendell 896,1128
Lau *v.* California 900
Lau *v.* Suarez 1164
Lauer *v.* Quarterman 858
Lauersen *v.* United States 997,1082
Laureano-Velez *v.* United States 1203
Laurel; Hudson *v.* 1187
Law *v.* United States 1148
Lawler; Carl *v.* 917
Lawler; Conard *v.* 841
Lawler; O'Neill *v.* 1199
Lawler; Rowe *v.* 1076
Lawler; Sampson *v.* 1113
Lawrence *v.* Branker 868
Lawrence *v.* Department of Interior 888
Lawrence *v.* Erickson 950
Lawrence; Philadelphia *v.* 1085
Lawrence County Juvenile Office; D. P. S. *v.* 895
Lawton *v.* Perry Township Police Dept. 1110
Le *v.* United States 834
Leach; Kentucky *v.* 937
Leadis Technology, Inc. *v.* Safron Capital Corp. 1220
Leake; Dean *v.* 801
Leake; Duke *v.* 994

Page
Leaphart *v.* Stephens 1164
Leavitt; Gabrill *v.* 943,1064
Leavitt; Maximum Comfort, Inc. *v.* 822
Leavitt; Middlebrooks *v.* 1013
Lebbos *v.* California 973
LeBeuf *v.* Cooper 1156
Lee *v.* Cain 1133,1186
Lee *v.* Guavara 1084
Lee *v.* Huntleigh Healthcare, LLC 995,1128
Lee *v.* Kaye 892
Lee *v.* Kentucky Cabinet for Health and Family Services 959
Lee *v.* Louisiana 823,824
Lee *v.* Mississippi 903
Lee *v.* New Orleans Police Dept. 1169
Lee *v.* Prelesnik 1001
Lee; Swami, Inc. *v.* 1085
Lee *v.* United States 864,1146
Lee's Summit School Dist.; Phox *v.* 1189
Leftwich *v.* Clarke 1094
Leger *v.* Terrell 1192
Legg *v.* United States 928
Leggett *v.* Williams 1178
Legrande *v.* United States 1057
Leguizamo-Martinez *v.* United States 1077
Lehigh County; Arocho *v.* 815
Lehman; Saha *v.* 1171
Leibold; Hiddens *v.* 842,1015,1127,1129
Leifester *v.* Quarterman 916
Leinenweber; Bradd *v.* 1191
Lei Shi *v.* United States 934
Leist *v.* United States 1148
Lemanski *v.* Quarterman 835
Lemons *v.* United States 905
Lempke; Fox *v.* 1190
Lempke; Mills *v.* 1155
Lemus-Morales *v.* United States 892
Lenix *v.* California 1142
Lentz *v.* United States 928
Leonard *v.* Ohio 1075
Leonard; Williams *v.* 999
Leonor *v.* Britten 974,1129
Leonor *v.* Houston 868
Lerma *v.* Cook 837
LeRose *v.* United States 1170

Page
Leroy *v.* United States 1148
Lesane *v.* Kenworthy 855
Lester *v.* Ayers 846,1090
Letherblaire *v.* Workers' Compensation Appeals Bd. 1055,1209
Lett *v.* United States 811
Letter Carriers; Goodson *v.* 888
Leutzow; Jackson *v.* 890
Levin; Columbia Gas Transmission Corp. *v.* 1097
Levine; Lugo *v.* 832
Levine; Wyeth *v.* 555,806
Levon *v.* United States 928
Lewis *v.* California 1155
Lewis; Cuba Soil & Water Conservation Dist. *v.* 1099
Lewis; Cutshaw *v.* 1157
Lewis *v.* Department of Agriculture 886,1064
Lewis; Guyton *v.* 926
Lewis; Hardaway *v.* 873
Lewis; McCary *v.* 894
Lewis *v.* Michigan 845
Lewis *v.* Mukasey 888
Lewis *v.* Tennessee 994
Lewis *v.* United States 813,870,911,979,1006,1018,1089
Lewis *v.* Walsh 1075
Lexington Ins. Co.; Preis *v.* 1101
Leyba *v.* Hartley 927
Li *v.* Raytheon Co. 1099
Libbett *v.* United States 1019
Libertarian Party *v.* Dardenne 940
Licea; Bistawros *v.* 1173
Licon *v.* Marshall 1118
Liddell *v.* United States 1045
Lightfoot *v.* Bowen 1151
Lightfoot; Moore *v.* 1054
Light-Roth *v.* Washington 922
Limbrick *v.* United States 889
Limestone County Sheriff's Dept.; Holt *v.* 849
Limon *v.* United States 895
Limon-Madero *v.* United States 1061
Limpin *v.* Winter 1076
Lin *v.* University of Nebraska-Lincoln 844
Linares *v.* Fischer 892
Linares-Hernandez *v.* United States 978
Lincoln North Development Corp. *v.* Kearny 970
Lindberg *v.* California 912

Page
Linder *v.* Friedman 1125
Lindsey *v.* Estep 1017
Lindsey *v.* United States 1104
Lingle *v.* Mitchell 1013
Link; Aspenwood Apartment Corp. *v.* 1136
linkLine Communications, Inc.; AT&T Cal. *v.* 438,1029
linkLine Communications, Inc.; Pacific Bell Telephone Co. *v.* . . 438,1029
Lipscomb *v.* United States 1124,1139
Lisenko *v.* Mukasey 1054,1209
Litecubes, LLC; GlowProducts.com *v.* 1013
Litscher; Al Ghashiyah *v.* 900
Little; Henley *v.* 1160
Little; Smith *v.* 841
Living *v.* United States 1217
Livingston; Justice *v.* 1114
Livingston; Pondexter *v.* 1220
Lizano *v.* United States 1005
Liz Claiborne; Riddle *v.* 949,1090
Llanos-Agostadero *v.* United States 1105
Lloyd *v.* Shannon 1072
Lnu *v.* United States 1198
Lo *v.* United States 978
Local. For labor union, see also name of trade.
Local Union No. 32B–32J; Vargas *v.* 816
Locke *v.* Karass 207
Lockhart; Ringgold *v.* 1042
Lockwood *v.* Beasley 996,1128
Locomotive Eng'rs Gen. Comm. Adjustment; Union Pac. R. Co. *v.* 1169
Locust *v.* United States 877
Loden *v.* Mississippi 831
Loflin *v.* United States 1088
Lofton-Taylor *v.* Verizon Wireless 994
Loggins *v.* Kansas 840
Logix Communications, L. P. *v.* Public Utility Comm'n of Tex. . . 883
Logsdon; Hains *v.* 811
Lomax *v.* United States 1196
Lomax *v.* Wrigley 1177
Long *v.* Honolulu 816
Long *v.* Illinois 862
Long *v.* Nebraska 1196
Long *v.* Peterson 1181
Long *v.* Roberts 905
Long *v.* Slaton 1069
Long Island Savings Bank, FSB *v.* United States 812

Page
Long John Silver's, Inc. *v.* Cole 815
Long Neck *v.* United States 892
Loomis; Smith *v.* 998
Looney *v.* United States 1005
Lopez, *In re* 1096
Lopez *v.* California 865,947
Lopez; Illinois *v.* 1136
Lopez *v.* Mukasey 944
Lopez *v.* Quarterman 871,1001
Lopez *v.* United States 854,860,872,1199
Lopez *v.* Wallace 950
Lopez-Cortez *v.* United States 870
Lopez-Cruz *v.* Texas 897
Lopez-Cuevas *v.* United States 932
Lopez Gamboa *v.* Miller-Stout 1107
Lopez-Garcia *v.* United States 1192
Lopez-Lopez *v.* United States 976
Lopez-Loya *v.* United States 957
Lopez-Martinez *v.* United States 1146
Lopez-Matias *v.* United States 901
Lopez-Quezada *v.* United States 949
Lopez Rosier *v.* Hunter 1214
Lopez-Velasquez *v.* United States 1050
Lopez-Vivas *v.* United States 1019
Lopez-Zamora *v.* United States 1088
Loral Space & Communications Ltd.; Ivaldy *v.* 1126
Lord; Lynch *v.* 1109
Lorenzo *v.* United States 1148
Lorenzo-Giguere; Morales-Garza *v.* 971
Los Angeles; Los Angeles Scottish Rite Center, LLC *v.* 823
Los Angeles Cty.; Overland *v.* 811
Los Angeles Cty. Dept. of Children & Family Servs.; Bryan P. *v.* 915
Los Angeles Cty. Dept. of Children & Family Servs.; Margaret Z. *v.* 1109
Los Angeles Cty. Sheriff's Dept. *v.* Center for Bioethical Reform 1098
Los Angeles Scottish Rite Center, LLC *v.* Los Angeles 823
Lot Polish Airlines; J. J. Store *v.* 822
Lot Polish Airlines; Tokarz *v.* 822
Louisiana; Baker *v.* 830
Louisiana; Ballay *v.* 1000
Louisiana; Campbell *v.* 1040
Louisiana; Lee *v.* 823,824
Louisiana; Montejo *v.* 1084
Louisiana; Ragas *v.* 834
Louisiana; Short *v.* 869

Page
Louisiana; Williams *v.* 1075
Louisiana Attorney Disciplinary Bd.; Williams *v.* 913
Louisiana Division of Administrative Law; Donelon *v.* 805
Louisuis *v.* United States 1194
Louisville & Jefferson Cty. Metro. Sewer Dist.; Bischoff *v.* 819,1089
Lovald; Tri-State Financial, LLC *v.* 1046
Lovato *v.* Tapia 898
Love *v.* Curators of Univ. of Mo. 1001
Love *v.* McNeil 1188
Love *v.* United States 962,1088
Lowden; T-Mobile USA, Inc. *v.* 813
Lowe *v.* Sears, Roebuck & Co. 948
Lowery *v.* Cummings 848
Lowery *v.* Euverard 825
Lowery; Johnson *v.* 996
Lowery *v.* United States 976
Lowry; Watson Chapel School Dist. *v.* 1212
Lozano *v.* Haws 879
Lozano-Pedroza *v.* United States 896,933
Lucas *v.* United States 822
Lucei *v.* United States 1124
Lucero *v.* Texas 818
Lucero *v.* United States 1079
Luco Mop Co.; Brannon *v.* 1072
Ludwick; McCann *v.* 1186
Ludwig *v.* Berks County 1120
Lufkin Industries, Inc. *v.* McClain 881
Lugo *v.* Cate 949
Lugo *v.* Levine 832
Lugo *v.* United States 861,1125
Lugo Ibarra *v.* California 1213
Lugo-Quinones *v.* United States 1005
Luke *v.* Alabama 906
Luke P. *v.* Thompson R2–J School Dist. 1173
Luna; Basurto *v.* 1194
Luna; Bolar *v.* 1106
Luna *v.* Hornsby 973,1082
Luna *v.* United States 1118
Lundebye; Ficken *v.* 1114,1219
Luqman *v.* United States 1020
Lusick *v.* Palakovich 950
Lynch *v.* California 1036
Lynch *v.* Kelley 894
Lynch *v.* Lord 1109

Page
Lynch *v.* United States 1008,1177
Lynn *v.* Kansas 948
Lyon *v.* Virginia 952,1128
Lyons *v.* Palmer 902
M. *v.* Special School Dist. No. 1, Minneapolis 979
M. *v.* Tennessee Dept. of Children's Services 824
M. *v.* United States 871
Mabry *v.* United States 1212
MacDonald; Hagen *v.* 826
MacEwan *v.* United States 1174
Macias *v.* California 1180
Mack *v.* Brown 842
Mack *v.* California 841
Mack *v.* Jones 1035
Mackerley *v.* McNeil 1138
Mackins *v.* United States 976
Macomb; Michaels *v.* 885
MacPhail *v.* United States 892
Mac's Shell Service Inc. *v.* Shell Oil Products Co. LLC 1043
Mac's Shell Service Inc.; Shell Oil Products Co. LLC *v.* 1043
Madden *v.* Ohio 1144
Madera *v.* United States 1147
Madera-Gomez *v.* United States 1006
Madison Materials Co. *v.* St. Paul Fire & Marine Ins. Co. 1048
Madlock *v.* Quarterman 1133
Madonia *v.* LaClair 867
Madrid *v.* United States 1201
Madyun *v.* Jackson 855
Magby *v.* United States 855
Magdaleno *v.* Giurbino 954
Maher; Akinro *v.* 1087,1219
Mahmud *v.* Oberman 826
Mahogany *v.* Muwwakkil 838
Mahogany *v.* Supreme Court of La. 833
Mahone *v.* United States 1195
Mahoney; Gollehon *v.* 859
Mahoney; Root *v.* 974
Maine; Dee *v.* 823
Maine; Drewry *v.* 919
Maine; McGowan *v.* 878,1064
Maine; Wall *v.* 877
Maine Dept. of Health and Human Services; Roberts *v.* 821
Major *v.* United States 925
Malan *v.* Commissioner 826,1063

Page
Malcom *v.* Houston 946,1081
Malek *v.* Friel 973
Maliha *v.* Faluotico 1100
Malley *v.* Texas Dept. of Criminal Justice, Corr. Institutions 1106
Mallios *v.* Standard Ins. Co. 815
Mallory; Pennsylvania *v.* 884
Maltese *v.* United States 1120
Manatt, Phelps & Phillips, LLP; Timmons *v.* 852
Manbeck *v.* Katonah-Lewisboro School Dist. 886
Manci *v.* Ball, Koons & Watson 889
Manco *v.* Roberts 1004
Mandarin Touch Restaurant; Molski *v.* 1031
Maner *v.* Padula 1186
Mangual *v.* United States 932
Mann *v.* Abel 1170
Mann *v.* Helmig 1085
Manning *v.* Astrue 993
Manning *v.* United States 1091
Man-Seok Choe *v.* Torres 1139
Mansfield *v.* Dormire 900,1090
Mansfield *v.* Peake 1101
Manta Management Corp. *v.* San Bernardino 1013
Mantello; McKethan *v.* 903
Mapa *v.* Henry 972
Maples *v.* Attorney Grievance Comm'n 923
Maples *v.* Circuit Court of Mich., Macomb County 1086
Maracalin *v.* United States 1195
Marcos-Mora *v.* United States 1061
Marcrum *v.* Roper 1068
Marcusse *v.* United States 931,1090
Margaret Z. *v.* Los Angeles Cty. Dept. of Children & Family Servs. 1109
Mariano-Santos *v.* Mills 845
Marina Club of Tampa, Homeowners Assn. Inc.; Gillispie *v.* 814
Marin Alliance for Medical Marijuana *v.* United States 938,1065
Marine Forests Society *v.* California Coastal Comm'n 1086
Marin-Soto *v.* United States 927
Marion *v.* United States 1148
Mark *v.* Quarterman 873,1127
Mark *v.* United States 971,1103
Marler *v.* United States 957
Marlowe *v.* United States 963
Marmolejos *v.* United States 1089
Maro *v.* Holinka 930
Marquardt *v.* Vanrybroek 903,1040

Page
Marquette Chrysler Jeep *v.* DaimlerChrysler Financial Services 826
Marquez *v.* United States 937
Marquez-Ramirez *v.* United States 934
Marriott International, Inc.; King *v.* 808,1044,1159
Marro *v.* Earnheart 1172
Marrufo *v.* California 1157
Marsh *v.* Granholm 1141
Marsh *v.* Tennessee 947
Marshall *v.* Alabama 918
Marshall; Licon *v.* 1118
Marshall *v.* Morgan 845
Marshall *v.* Quarterman 854,1187
Marshall; Schachter *v.* 1111
Marshall *v.* United States 1005
Mars, Inc.; Coin Acceptors, Inc. *v.* 1049
Martel; Ford *v.* 951
Martell *v.* United States 870
Martin *v.* Connecticut 859
Martin *v.* Deveries 1074
Martin *v.* Howard Univ. 1040,1128
Martin *v.* Kansas 880
Martin *v.* Outlaw 935
Martin *v.* Quarterman 898
Martin *v.* Texas 1094,1108
Martin; Therrien *v.* 950,1090
Martin *v.* United States 829,890,898,905,916,928,960,1049
Martin *v.* Yates 974
Martinelli *v.* United States 1084
Martinez *v.* Adams 1144
Martinez *v.* Arizona 998
Martinez *v.* Conway 852
Martinez; Dahler *v.* 1176
Martinez *v.* District Attorney of Philadelphia 845
Martinez *v.* Garcia 853
Martinez *v.* Illinois 952
Martinez *v.* United States 852,901,911,924,926,936,958,1039,1199
Martinez Acevedo *v.* United States 934
Martinez-Cavazos *v.* United States 857
Martinez-Grant *v.* United States 860
Martinez-Guerrero *v.* United States 815
Martinez-Guevara *v.* United States 1009
Martinez-Navarro *v.* United States 910
Martinez-Rubio *v.* United States 1204
Martinez-Santiago *v.* United States 976

Page
Martinez-Soto *v.* United States 958
Martis *v.* McKune 957
Marulanda *v.* United States 811
Marvin *v.* Fraternal Order of Eagles Aerie #200 1138
Marvin *v.* Menifee 932
Marx *v.* Texas 828
Maryland; Boone *v.* 1192
Maryland; Dorsey *v.* 845
Maryland; Feaster *v.* 843
Maryland; Karanja *v.* 890
Maryland; Palmer *v.* 884
Maryland *v.* Shatzer 1152
Maryland; Tribbett *v.* 823
Maryland Dept. of Human Resources; Wilson-X *v.* 849
Marzullo *v.* McNeil 899
Masferrer *v.* United States 1136
Mason; Purtell *v.* 945
Mason *v.* Smith 853
Mason *v.* United States 1125
Massachusetts; Almahdi *v.* 881,1081
Massachusetts; Becker *v.* 933
Massachusetts; Clemente *v.* 1181
Massachusetts; Cobb *v.* 1167
Massachusetts; Disler *v.* 968
Massachusetts; Fort *v.* 1189
Massachusetts; Melendez-Diaz *v.* 807
Massachusetts; Mooltrey *v.* 947
Massachusetts; Ocasio *v.* 931
Massachusetts; Pacheco *v.* 953
Massachusetts; Panse *v.* 1100
Massachusetts; Smith *v.* 893
Massachusetts Institute of Technology; Yong Zhu *v.* 817
Massey Coal Co.; Caperton *v.* 1028,1162
Masto; Cox *v.* 1185
Masto; Jackson *v.* 972
Mata *v.* Nebraska 901
Mata *v.* Texas 845
Matar; Hansen *v.* 1164
Mateen *v.* Dicus 819,1063
Mateo *v.* United States 1124
Matheson *v.* Gregoire 881
Mathias *v.* United States 1132
Mathis; Alton *v.* 1111
Mathis *v.* United States 1121

Page
Mathison *v.* Wiley 805
Mathy; Clemmons *v.* 1158
Matican *v.* New York City 1047
Matos *v.* United States 1080
Matson *v.* Court of Brunswick County 1112
Matthews *v.* Michigan 1051
Matthews *v.* Military Dept., State of La. 818
Matthews; New Jersey *v.* 1159
Matthews *v.* United States 1175
Matul-Alvarado *v.* United States 903
Matye *v.* California 852
Mavity *v.* Fraas 1149
Maximum Comfort, Inc. *v.* Leavitt 822
Maxwell *v.* United States 908
Maye *v.* United States 1151
Mayeaux *v.* Clear Creek Independent School Dist. 1048
Maynard; Walker *v.* 901
Mayor, Flordell Hills; McClure *v.* 1014
Mays, *In re* 1136
Mays *v.* California 876
Mays *v.* Smith 974
Mays *v.* Snyder 1076
Mays *v.* United States 1218
Maytubby *v.* United States 1006
Mazin *v.* Steinberg 947
Mbah; Nadra *v.* 1185
Mbodj *v.* Mukasey 830
McAfee *v.* Foster 1102
McAfee MX *v.* Foster 1102
McAfree; Burgest *v.* 997
McAnderson *v.* United States 872,1090
McAndrew *v.* Texas 944
McArty *v.* Norris 874
McBirney *v.* United States 831
McBride; Daye *v.* 858
McBride; Hicks *v.* 1158
McBride; Johnson *v.* 840
McBride; Reynolds *v.* 867
McBride; Sigley *v.* 1196
McCalla *v.* United States 1174
McCalvin *v.* Quarterman 876
McCann *v.* Cochran 944
McCann *v.* Ludwick 1186
McCann; Young *v.* 913

Page
McCarthy; Islander East Pipeline Co., L. L. C. *v.* 1046
McCarthy *v.* McNeil 1106
McCary *v.* Lewis 894
McClain; Lufkin Industries, Inc. *v.* 881
McClain *v.* United States 1147
McClaskey *v.* La Plata R–II School Dist. 818,1127
McClellan *v.* United States 801
McCloud, *In re* 809,1063
McCloud *v.* Almager 833
McClure *v.* Rehg 1014
McCollum; Freeman *v.* 1110
McCollum; Hickmon *v.* 1003
McCollum; Knight *v.* 849
McCoy *v.* United States 906,1149
McCray *v.* Arizona 841
McCray *v.* Rios 939,1090
McCray *v.* Texas 1034
McCray *v.* United States 1014
McCree *v.* Sherrod 922
McCrory *v.* Wendling 839,1081
McDaniel; Anderson *v.* 892
McDaniel *v.* Brown 1152
McDaniel; Dearing *v.* 919
McDaniel; Jefferson *v.* 837
McDaniel; Jenkins *v.* 1076
McDaniel; Johnson *v.* 878
McDaniel; Miller *v.* 1119,1219
McDaniel; Ocasio *v.* 877,1064
McDaniel *v.* United States 928,1018,1145
McDaniel; White *v.* 915
McDaniel; Whittaker *v.* 854
McDonald *v.* Florida 1187
McDonald *v.* Hudson 842
McDonald *v.* Mississippi 846
McDonald's Corp.; Umoren *v.* 948
McDonnell *v.* Oregon 904
McDowell *v.* Florida 1190
McFadden *v.* United States 1125
McFarland *v.* United States 907
McGaha *v.* United States 1058
McGee *v.* Austin 926,1090
McGee *v.* McNeil 952,1082
McGinley *v.* Pennsylvania 1112
McGlon *v.* United States 960

Page
McGovney *v.* United States 874
McGowan *v.* Alabama 861
McGowan *v.* Cantrell 1015
McGowan *v.* Maine 878,1064
McGowan *v.* Tennessee 1036,1164
McGowan *v.* United States 1121
McGrath; Hammonds *v.* 891
McGrath; Hightower *v.* 858
McGrath; Stauber *v.* 969
McGrath; Stokely *v.* 1184
McGuigan, *In re* 809
McGuire; Carrascosa *v.* 998,1129
McIntire *v.* United States 839
McIntosh *v.* United States 1195
McKee; Calhoun *v.* 833
McKeever *v.* Ercole 836
McKenna; Dilworth *v.* 1139
McKenna *v.* Kruse 821
McKenna *v.* Security Mortgage Brokers 821
McKenzie *v.* United States 1118
McKethan *v.* Mantello 903
McKie; Richardson *v.* 921
McKines *v.* United States 913
McKinnedy *v.* McMaster 834,1040
McKinnedy *v.* Newell 906,1027
McKinney *v.* Kane 1055
McKinney *v.* United States 1104
McKinzie *v.* McNeil 893,1064
McKnight *v.* Gates 1175
McKoy *v.* United States 926,1196
McKune; Douglas *v.* 843
McKune; Martis *v.* 957
McKune; Shobe *v.* 954
McKune; Valdez *v.* 924
McLain *v.* United States 1122
McLaughlin *v.* Fisher 996
McLaughlin *v.* United States 1057
McLaughlin Res. Inst. for Biomedical Sciences; Shaun Xin Xu *v.* 845
McLendon *v.* United States 905
McLeod, *In re* 1096
McMaster; El Bey *v.* 1114
McMaster; McKinnedy *v.* 834,1040
McMaster; Owens *v.* 998
McMillen *v.* U. S. District Court 857

Page
McNeil *v.* Adams 854
McNeil; Arzola *v.* 842
McNeil; Banks *v.* 1214
McNeil; Boland *v.* 973
McNeil; Bucklon *v.* 914
McNeil; Cajuste *v.* 1184
McNeil; Castilloux *v.* 848
McNeil; Cobb *v.* 1036
McNeil; Cole *v.* 1035
McNeil; Cook *v.* 841
McNeil; Corner *v.* 899
McNeil; Cotton *v.* 839
McNeil; Cox *v.* 998
McNeil; Cummings *v.* 843
McNeil; Davis *v.* 899
McNeil *v.* Ferreira 1149
McNeil; Fields *v.* 1094
McNeil; Forbes *v.* 856
McNeil; Forrest *v.* 1114
McNeil; Fotopoulos *v.* 899
McNeil; Frazier *v.* 972
McNeil; Gordon *v.* 857
McNeil; Grant *v.* 958
McNeil; Guerra *v.* 1069
McNeil; Hale *v.* 1073
McNeil; Hendrix *v.* 1004
McNeil; Hirsch *v.* 859
McNeil; Hodges *v.* 855
McNeil; Hosley *v.* 1055
McNeil; Hutchins *v.* 849,857
McNeil; Johnson *v.* 851
McNeil; Jones *v.* 1190
McNeil; Kendricks *v.* 1058
McNeil; Love *v.* 1188
McNeil; Mackerley *v.* 1138
McNeil; Marzullo *v.* 899
McNeil; McCarthy *v.* 1106
McNeil; McGee *v.* 952,1082
McNeil; McKinzie *v.* 893,1064
McNeil; Means *v.* 877
McNeil; Miller *v.* 899
McNeil; Minton *v.* 1112
McNeil; Mustelier *v.* 1142
McNeil; Myers *v.* 921

Page
McNeil; Norris *v.* 829
McNeil; Ojeda *v.* 1015
McNeil; Padron *v.* 954
McNeil; Paulcin *v.* 1086
McNeil; Perry *v.* 1179
McNeil; Peterka *v.* 1155
McNeil; Pineda *v.* 832,1063
McNeil; Quick *v.* 891
McNeil; Reyes *v.* 1180
McNeil; Rolle *v.* 1029,1163,1192
McNeil; Rosa *v.* 1190
McNeil; Schmidt *v.* 865
McNeil; Schreiner *v.* 1086
McNeil; Sears *v.* 949
McNeil; Skinner *v.* 1058
McNeil; Slater *v.* 871
McNeil; Smith *v.* 861,1074,1113,1209
McNeil; Sneed *v.* 1037
McNeil; Stevens *v.* 860
McNeil; Strickland *v.* 1004
McNeil; Stroud *v.* 1156
McNeil; Tavia *v.* 950
McNeil; Tompkins *v.* 1161
McNeil; Trimuar *v.* 893
McNeil; Trotter *v.* 860,1087
McNeil; Whigham *v.* 910
McNeil; White *v.* 998
McNeil; Wilson *v.* 1017
McNeil; Wright *v.* 852
McQueen *v.* United States 903
McQuiggin; Bean *v.* 1074
McRae *v.* Evans 823,1063
McRae *v.* United States 858
McShepard *v.* Ohio 900
McStoots *v.* Kentucky 862
McVay *v.* United States 1103
McWane, Inc.; United States *v.* 1045
McWilliams; Simmons *v.* 1181
Meador *v.* Quarterman 837
Meadowlake Corp. *v.* Ohio *ex rel.* Rogers 1098
Meadows *v.* Norris 953
Means *v.* Culliver 1180
Means *v.* McNeil 877
Means *v.* U. S. District Court 1008

Page
Mears *v.* Wynder 1053
Meda-Rodriguez *v.* United States 871
Medellín *v.* Texas 922
Medina *v.* United States 1197
Medina-Hernandez *v.* United States 1059
Medina-Reyes *v.* United States 878
Medina-Salas *v.* Tyson Fresh Meats, Inc. 1095
Medina-Valencia *v.* United States 1079
Medley *v.* Turner 841,1081
Medley *v.* United States 1140
Medoza-Paz *v.* United States 857
Medrano-Mora *v.* United States 958
Medway *v.* Schwarzenegger 897
Meeks *v.* Bell 1104
Meeks *v.* Fortner 1104
Meineke *v.* Texas 948
Meiselman; Herman *v.* 823
Mejia *v.* Garcia 1117
Mejia-Murcia *v.* United States 905
Mejia-Restrepo *v.* Mukasey 839
Melchor-Zaragoza *v.* United States 1198
Melendez *v.* Ercole 1053,1209
Melendez-Diaz *v.* Massachusetts 807
Melendez-Marrero *v.* United States 1118
Mellon Bank; Scheib *v.* 816
Melso; Victory Outreach Center *v.* 1098
Melvin *v.* United States 963
Menchaca-Valles *v.* United States 959
Mendez *v.* United States 887
Mendez-Echevarria *v.* United States 1121
Mendoza *v.* Runnels 842
Mendoza *v.* United States 857,915
Mendoza-Mendoza *v.* United States 850
Mendozapaz *v.* United States 857
Mendoza-Powers; Saffold *v.* 898
Mendoza-Powers; Tillman *v.* 1113
Menifee; Cain *v.* 934
Menifee; Marvin *v.* 932
Menifee; Polk *v.* 956
Menkes *v.* Astrue 1055
Men's Store at Saks Fifth Avenue; Bell *v.* 875
Meraz-Chavarria *v.* United States 924
Mercado *v.* United States 865
Mercedes *v.* United States 1018

Page
Mercer *v.* United States 1121
Merck *v.* Florida 840
Merck & Co.; Petty *v.* 1143
Merica *v.* United States 924
Merit Systems Protection Bd.; St. Clair *v.* 1197
Merit Systems Protection Bd.; Wadhwa *v.* 1103
Merit Systems Protection Bd.; Wheaton *v.* 821
Merix Corp. *v.* Central Laborers Pension Fund 1085
Mertens *v.* United States 870
Mesa-Lopez *v.* United States 863
Meshwerks, Inc. *v.* Toyota Motor Sales, U. S. A., Inc. 1138
Messer *v.* Ohio 1045
Messina *v.* Wynder 1001
Methodist Healthcare; Stalley *v.* 1137
Metro-Goldwyn-Mayer Pictures, Inc.; Richlin *v.* 1137
Metropolitan Govt. of Nashville and Davidson Cty.; Crawford *v.* 271
Metropolitan Life Ins. Co.; Balistreri *v.* 949
Metropolitan Life Ins. Co.; Isaacs *v.* 1047
Metropolitan Life Ins. Co.; Stamp *v.* 1062
Metro Transit Authority; Richardson *v.* 1068
Metz *v.* CSX Transportation, Inc. 811
Meyers; Tavares *v.* 1116
Miami; Dumorange *v.* 1101
Michael *v.* Florida Parole Comm'n 1073
Michael; Johnson *v.* 1167
Michael C.; Gresbach *v.* 994
Michaels *v.* Macomb 885
Michau *v.* Cannon 1029
Michels; Haley *v.* 1103
Michigan; Annabel *v.* 1180
Michigan; Aslani *v.* 1047
Michigan; Buie *v.* 947
Michigan; Coleman *v.* 831
Michigan; Dawson *v.* 1072
Michigan; Favors *v.* 839,1063
Michigan; Ferqueron *v.* 1029
Michigan; Fox *v.* 836
Michigan; Goodell *v.* 900
Michigan; Henderson *v.* 879
Michigan; Houlihan *v.* 910
Michigan; Jones *v.* 1112
Michigan; Joseph *v.* 1107
Michigan; Lewis *v.* 845
Michigan; Matthews *v.* 1051

Page
Michigan; Moore *v.* 1053
Michigan; Osantowski *v.* 1015
Michigan; Peoples *v.* 1112
Michigan; Salerno *v.* 1073,1209
Michigan; Smith *v.* 838,1027
Michigan; Sterhan *v.* 1112
Michigan; Taylor *v.* 1005
Michigan Civil Rights Comm. *v.* Coalition to Defend Affirm. Action 937
Michigan Dept. of Corrections; Anderson *v.* 1033,1150
Michigan Dept. of Treasury; Lake Forest Partners 2, Inc. *v.* 885
Michigan Env. Council *v.* Michigan Public Service Comm'n . . . 994,1100
Michigan Financial Investments *v.* Detroit Building Authority . . 828
Michigan Gambling Opposition *v.* Salazar 1137
Michigan Public Service Comm'n; Michigan Env. Council *v.* . . . 994,1100
Middlebrooks *v.* Leavitt 1013
Middle River Regional Jail Medical Dept.; Atkins *v.* 914,1082
Miera *v.* United States 1124
Miesse *v.* Washington 947
Mikulewicz *v.* United States 1145
Mi Kyung Byun *v.* United States 1088
Military Dept., State of La.; Matthews *v.* 818
Milkowski; Thane International, Inc. *v.* 826
Millen *v.* Burlington Coat Factory 920,1065
Millen *v.* United States 917
Miller, *In re* 1135
Miller *v.* California 833,1054
Miller; California Speedway Corp. *v.* 1208
Miller *v.* Cate 1143
Miller *v.* Davis 888
Miller *v.* Georgia 834,1063
Miller *v.* Johnson 835,897,1063
Miller *v.* McDaniel 1119,1219
Miller *v.* McNeil 899
Miller *v.* Mills 1107
Miller *v.* Ricci 1016
Miller *v.* Smith 1188,1216
Miller *v.* United States 876,928,993,1176,1195
Miller-Jenkins *v.* Miller-Jenkins 888,1069
Miller-Stout; Lopez Gamboa *v.* 1107
Miller-Stout; Nielsen *v.* 1195
Millhouse *v.* United States 913
Millington *v.* Temple Univ. School of Dentistry 954
Mills, *In re* 1096
Mills *v.* Lempke 1155

Page
Mills; Mariano-Santos *v.* 845
Mills; Miller *v.* 1107
Mills; Smith *v.* 830
Mills *v.* United States 1131
Mills *v.* U. S. District Court 1113
Mills *v.* Watson 1191
Milwaukee; Butler *v.* 1115
Milwaukee Housing Authority; Perry *v.* 950
Minagorri *v.* Archdiocese of Miami, Inc. 1102
Miner; Bailey *v.* 931
Miner *v.* United States 863,1081
Mines; Quarterman *v.* 938
Ming Dong *v.* Mukasey 1070
Ming Dung *v.* Mukasey 1070
Minh Thuy *v.* United States 1119
Ministry of Defense, Islamic Republic of Iran *v.* Elahi 1043
Minnesota; Davis *v.* 1111
Minnesota; Her *v.* 1092
Minnesota; Holliday *v.* 856
Minnesota; Hughes *v.* 1036,1209
Minnesota; Iverson *v.* 953
Minnesota; Murphy *v.* 851
Minnesota; O'Neal *v.* 1001
Minnesota; Pugh *v.* 1182
Minnesota; Shriner *v.* 1137
Minnesota; Toua Hong Chang *v.* 931
Minniecheske *v.* Dannhoff 803
Minor; Ray *v.* 912,1128
Minton *v.* McNeil 1112
Miranda *v.* United States 1061,1125
Miranda *v.* University of Md. at College Park 1096,1177
Mirch *v.* State Bar of Nev. 971
Mirzayance; Knowles *v.* 807
Mississippi; Chamberlin *v.* 1106
Mississippi; Dora *v.* 1142
Mississippi; Hughes *v.* 1052
Mississippi; Knight *v.* 998
Mississippi; Lee *v.* 903
Mississippi; Loden *v.* 831
Mississippi; McDonald *v.* 846
Mississippi; Ousley *v.* 1036
Mississippi; Palmer *v.* 1074
Mississippi; Simpson *v.* 1188
Mississippi; Sumrell *v.* 952

Page
Mississippi; Torrey *v.* 852
Mississippi; Turner *v.* 951,1082
Mississippi Bar; James *v.* 826
Mississippi Dept. of Corrections; Bell *v.* 1183
Mississippi Dept. of Corrections; Bradley *v.* 902
Mississippi Dept. of Corrections; Smith *v.* 847
Missouri; Barton *v.* 842
Missouri; Jensen *v.* 1143
Missouri; Johnson *v.* 872
Missouri; Ozier *v.* 1215
Missouri; Taylor *v.* 1154
Missouri; Umphfrey *v.* 835
Missouri Public Service Comm'n *v.* SBC Missouri 1099
Missouri Public Service Comm'n *v.* Southwestern Bell Telephone 1099
Mitchell *v.* Almager 1156
Mitchell; Fautenberry *v.* 951
Mitchell; Keene *v.* 1157
Mitchell *v.* Kerestes 891
Mitchell; Lingle *v.* 1013
Mitchell *v.* Quarterman 1168
Mitchell *v.* Rees 1212
Mitchell *v.* United States 843,1050
Mitchem; Ray *v.* 898
Mix; Jackson *v.* 971
M. M. *v.* Special School Dist. No. 1, Minneapolis 979
Mobasher *v.* Bronx Community College of City Univ. of N. Y. . . . 808,1043
Mobile Infirmary Medical Center; Abner *v.* 1101
Mobley *v.* Ohio 897
Mock *v.* California 840
Moffat; Williams *v.* 1001
Moffett *v.* Culliver 844
Mohammed *v.* United States 1070
Mohawk Industries, Inc. *v.* Carpenter 1152
Moke *v.* United States 953
Mola Development Corp. *v.* United States 1045
Mollica *v.* Rossi-Mollica 840,1063
Mollica *v.* United States 1019
Molski *v.* Evergreen Dynasty Corp. 1031
Molski *v.* Mandarin Touch Restaurant 1031
Monahan *v.* Burtt 907
Monarrez *v.* Cate 859
Monday *v.* United States 957
Monge-Gonzalez *v.* United States 878
Monroe *v.* Jackson 1155

Page
Monroe; Reyna *v.* 847,1090
Monroe; Tucker *v.* 1067,1135
Monsanto Co.; Bayer Bioscience N. V. *v.* 1045
Monsanto Co.; David *v.* 888
Montague *v.* United States 859
Montana *v.* Wyoming 968
Montana Supreme Court Comm'n on Practice; Engel *v.* 1031
Montclair State Univ.; Sarmiento *v.* 1144
Montefiore Medical Center; Kanovsky *v.* 823
Montejo *v.* Louisiana 1084
Montenegro Cruz *v.* Arizona 1104
Monterey County; Rangel *v.* 882
Montes; Holly *v.* 1191
Montes-Garay *v.* United States 1147
Montford; Alba *v.* 1051
Montgomery; Harley *v.* 833
Monzon *v.* United States 1120
Moody *v.* Kingston 954
Moody; Talley *v.* 873
Mooltrey *v.* Massachusetts 947
Moon *v.* United States 812
Mooney *v.* United States 1147
Mooneyham; Turner *v.* 850
Moore, *In re* 1135
Moore; Bilaal *v.* 872
Moore *v.* California 869
Moore; Damon *v.* 939
Moore; Eggers *v.* 884
Moore *v.* Florida 897,1128
Moore; Gray *v.* 894
Moore *v.* Johnson 1158
Moore *v.* Korman 918
Moore *v.* Lightfoot 1054
Moore *v.* Michigan 1053
Moore *v.* Nevada 912
Moore *v.* New York 805
Moore *v.* Pennsylvania 969
Moore *v.* Potter 941
Moore *v.* Quarterman 842
Moore *v.* Raffaele 866
Moore *v.* Texas 1149
Moore *v.* United States 1,1140,1199,1204
Moorefield *v.* United States 881
Mora *v.* United States 1132

Page
Mora-Gaona *v.* United States 921
Morales *v.* Shannon 893
Morales; Sociedad Espanola de Auxilio Mutuo y Beneficencia *v.* . . 1097
Morales *v.* United States 859,869,921
Morales-Aldahondo *v.* United States 1005
Morales Estrada *v.* United States 959
Morales-Garza *v.* Lorenzo-Giguere 971
Morcos *v.* Morcos 867,1027
Moreland *v.* United States 1134
Moreno *v.* United States 885,1050
Moreno-Cuevas *v.* Connecticut 947
Moreno Diaz *v.* United States 1079
Moreno-Navarro *v.* United States 1217
Moreno-Tejeda *v.* United States 958
Morgan; Ayala *v.* 906
Morgan *v.* Department of Mental Health 916
Morgan; Eady *v.* 933
Morgan; Marshall *v.* 845
Morgan *v.* Quarterman 999
Morgan *v.* United States 1149
Morgan Chase & Co.; Williams *v.* 882
Morgan Stanley Group *v.* Public Util. Dist. 1 of Snohomish County 941
Morgret *v.* United States 917
Morris, *In re* 809
Morris *v.* Ales Group USA, Inc. 876,1064
Morris; Christophe *v.* 1113
Morris *v.* Georgia 1074
Morris *v.* Kramer 897
Morris *v.* Quarterman 904
Morris *v.* Texas 1220
Morris *v.* United States 917,995
Morrison *v.* Board of Ed. of Boyd County 1171
Morrison *v.* Ohio 833
Morrison *v.* Quarterman 846
Morrison *v.* United States 1003,1059
Morrison *v.* Vaughn 846,1127
Morse *v.* United States 824
Morsovillo *v.* Eighth Judicial District Court of Nev., Clark Cty. . . 820
Morton; Kansas *v.* 1126
Mosley *v.* Illinois 1107
Mosley; Willis *v.* 999
Mosquera-Rengifo *v.* United States 958
Moss *v.* United States 1061,1118
Mota-Campos *v.* United States 1199

Page
Moten *v.* Alabama 842
Motley *v.* Department of Navy 1152,1213
Motorola Inc.; Golden Bridge Technology Inc. *v.* 1167
Mountain West Bank, N. A. *v.* Fenno 1219
Mower *v.* United States 993
Mowry *v.* United Parcel Service, Inc. 1171
Moya-Alegria *v.* United States 936
M. R. M. *v.* United States 871
Mroch *v.* United States 1013
Muchnick; Reed Elsevier, Inc. *v.* 1211
Muckle *v.* Freemont Investments & Loans 1110
Muhammad *v.* United States 843
Muhammad *v.* Vargas 802
Mukasey; Abidaoud *v.* 808,1031,1127
Mukasey; Addo *v.* 1132
Mukasey; Aghahowa *v.* 852
Mukasey; Al-Marbu *v.* 993,1127
Mukasey *v.* American Civil Liberties Union 1137
Mukasey; Asemani *v.* 1112,1145
Mukasey; Avila-Sanchez *v.* 825
Mukasey; Biskupski *v.* 820
Mukasey; Broderick *v.* 836
Mukasey; Bustamante *v.* 1077,1209
Mukasey; Calderon *v.* 814
Mukasey; Calderon-Dominguez *v.* 814
Mukasey; de Oliveira *v.* 1101
Mukasey; Djan *v.* 1000
Mukasey; Djokovic *v.* 969
Mukasey; Drummond *v.* 903
Mukasey; Esfandiary *v.* 1117
Mukasey; Fontilea *v.* 1048
Mukasey; Gegaj *v.* 887
Mukasey; Granados Olvera *v.* 1100
Mukasey; Henry *v.* 839,1031
Mukasey; Hernandez *v.* 813
Mukasey; Jimenez Viracacha *v.* 969
Mukasey; Kirlew *v.* 882
Mukasey; Labbe *v.* 885
Mukasey; Lewis *v.* 888
Mukasey; Lisenko *v.* 1054,1209
Mukasey; Lopez *v.* 944
Mukasey; Mbodj *v.* 830
Mukasey; Mejia-Restrepo *v.* 839
Mukasey; Ming Dong *v.* 1070

Page
Mukasey; Ming Dung *v.* 1070
Mukasey; Ndreka *v.* 945
Mukasey; Nijhawan *v.* 1131
Mukasey; Nken *v.* 1042
Mukasey; Noble *v.* 808
Mukasey; Northwest Austin Municipal Utility Dist. No. One *v.* . . 1091
Mukasey; Norton *v.* 806
Mukasey; Olukune *v.* 1087
Mukasey; Osumah *v.* 1116
Mukasey; Pena-Muriel *v.* 811
Mukasey; Puentes Fernandez *v.* 837
Mukasey; Ricketts *v.* 830,1002
Mukasey; Robinson *v.* 956
Mukasey; Rudolf *v.* 825
Mukasey; Saintha *v.* 1031
Mukasey; Santos *v.* 839
Mukasey; Scheerer *v.* 825
Mukasey; Sitompul *v.* 953
Mukasey; Stanbury *v.* 1003
Mukasey; Sweeney *v.* 1078
Mukasey; Tantay *v.* 819
Mukasey; Tenesaca Delgado *v.* 887
Mukasey; Trenchfield *v.* 1032
Mukasey; Truesdale *v.* 1124
Mukasey; Vakker *v.* 880
Mukasey; Valenzuela Grullon *v.* 813
Mukasey; Vazquez-Avila *v.* 838
Mukasey; Watson *v.* 1044
Mukasey; Wilson *v.* 840
Mulholland *v.* California 850
Munchinski *v.* Solomon 817
Mundelein *v.* Wisconsin Central R. Co. 814
Mungia *v.* California 1215
Mungia *v.* United States 1196
Muniz-Quintana *v.* United States 1203
Munoz *v.* Palakovich 875
Munoz-Hernandez *v.* United States 1038
Munoz-Tello *v.* United States 1177
Munsch *v.* Quarterman 1133
Munsell; Walker *v.* 1046
Muntez; Collier *v.* 851
Murdoch; Land *v.* 1075
Muresan *v.* U. S. Trustee 925
Murex Securities, Ltd.; 800 Adept, Inc. *v.* 1175

Page
Murillo *v.* United States 859
Murphy *v.* Clarke 941
Murphy *v.* Minnesota 851
Murphy *v.* North Dakota 1006
Murphy *v.* United States 868,928,962,1019
Murray *v.* Department of Army 1146
Murray *v.* United States 868,1175
Mustelier *v.* McNeil 1142
Muwwakkil; Mahogany *v.* 838
Mwasi *v.* California 1004
Myers *v.* McNeil 921
Myers; Rasul *v.* 1083
Myers; Slone *v.* 881
Myles *v.* United States 1118
MySpace, Inc.; Doe *v.* 1031
N. *v.* United States 1039
NADA Retirement Administrators, Inc.; Cash *v.* 944,1064
NADART; Cash *v.* 944,1064
Nadra *v.* Mbah 1185
Nair; Ogunsalu *v.* 967,1082
Najera-Gordillo *v.* United States 962
Najera-Najera *v.* United States 862
Nali *v.* Gross Pointe Woods 802
Nam Pyo Kim *v.* United States 826
Nanan *v.* State Farm Fire & Casualty Co. 995
Nance *v.* Florida 953
Nance *v.* Goodyear Tire & Rubber Co. 1171
Napa; Dolberry *v.* 1189
Naples *v.* Naples 907
Napoli; Encarnacion *v.* 1142
Napolitano; Cohen *v.* 1187
Napolitano; Rodriguez *v.* 1194
Napolitano; Yoder *v.* 1141
Naranjo *v.* United States 1079
Nastasio, *In re* 1096
Nation *v.* United States 1038
National Football League; American Needle, Inc. *v.* 1168
National Geographic Society; Greenberg *v.* 1070
National Health Corp.; Owens *v.* 815
National Institute of Military Justice *v.* Department of Defense 1084
National Labor Relations Bd.; Agri Processor Co. *v.* 1031
National Labor Relations Bd.; Cornelio *v.* 994
National Labor Relations Bd.; Fashion Valley Mall, LLC *v.* 819
National Mining Assn. *v.* Kempthorne 1062

Page
National Railroad Passenger Corp.; Lacy *v.* 808,1050,1208
National Security Agency; Adejumobi *v.* 1042
National Union Fire Ins. Co. of Pittsburgh *v.* Allen 1085
Nationwide Mut. Ins. Co.; Chartschlaa *v.* 1213
Natural Resources Defense Council, Inc.; Winter *v.* 7,807
Navarrete *v.* Georgia 820
Navarro *v.* Broney Automotive Repairs, Inc. 996
Navarro-Ramirez *v.* Texas 831
Nawrocki *v.* Nawrocki 944
NCO Portfolio Management; Hill *v.* 1000
Ndreka *v.* Mukasey 945
Neal *v.* Texas 1154
Neal *v.* United States 1118
Neal *v.* Webb 863
Neale *v.* Horel 1107
Nebraska; King *v.* 931
Nebraska; Long *v.* 1196
Nebraska; Mata *v.* 901
Nebraska; Poe *v.* 1109
Nebraska; Shannon *v.* 901
Neder *v.* United States 1077
Neely *v.* Riverdale 826
Negusie *v.* Holder 511
Neilson *v.* California City 1174
Neilson *v.* Seaboard Corp. 1045
Nelson *v.* California 926
Nelson *v.* Felker 999
Nelson *v.* Schwartz 998
Nelson *v.* United States 350,1201
Nesbitt *v.* California 913
Nevada; Bacon *v.* 914
Nevada; Childress *v.* 1108
Nevada; Crutcher *v.* 923
Nevada; Howard *v.* 1184
Nevada; Moore *v.* 912
Nevada; Ray *v.* 923
Nevada; Rose *v.* 847
Nevada; Stockmeier *v.* 1189
Nevarez-Puentes *v.* United States 1050
Newell; McKinnedy *v.* 906,1027
New Hampshire; Avery *v.* 967
New Hampshire Ins. Co.; C'est Moi, Inc. *v.* 1047
New Haven; Doriss *v.* 1036
New Hope Housing, Inc.; Jones *v.* 1186

Page
New Jersey; Byrd *v.* 916
New Jersey; Chun *v.* 825
New Jersey; Conley *v.* 1016
New Jersey; Conn *v.* 864
New Jersey; Davis *v.* 880,1040
New Jersey; Environmental Protection Agency *v.* 1162
New Jersey; K. A. *v.* 1156
New Jersey *v.* Matthews 1159
New Jersey; Nyema *v.* 854
New Jersey; Quinn *v.* 1153
New Jersey; Salerno *v.* 1114
New Jersey; Stiles *v.* 1086
New Jersey; Utility Air Regulatory Group *v.* 1169
Newland *v.* Hall 1183
Newman *v.* United States 1144
New Mexico; Bruvold *v.* 1016,1130
New Mexico *v.* Snell 1045
New Mexico; Texas *v.* 806
New Orleans; Reynolds *v.* 880
New Orleans Police Dept.; Allen *v.* 883
New Orleans Police Dept.; Lee *v.* 1169
Newsom; Hines *v.* 1156
Newsom; Shabazz *v.* 1156
Newson *v.* Bett 1119
Newton *v.* Alabama 899
Newton *v.* Davis 935
Newton *v.* Quarterman 921
Newton; Simmons *v.* 834
Newton *v.* United States 1039
Newton-Embry; Wilkens *v.* 1111
New York; Biggs *v.* 1179
New York; Bones *v.* 896
New York; Brewster *v.* 915
New York; Conroy *v.* 1013
New York; Cross Country Bank, Inc. *v.* 1136
New York; De Los Santos Mora *v.* 943
New York; Estrella *v.* 1032
New York; Gray *v.* 1182
New York *v.* Hall 938
New York; Jackson *v.* 973
New York; Jones *v.* 851,1109
New York; Kirkland *v.* 1181
New York; Moore *v.* 805
New York; Peterec *v.* 973

Page
New York; Singh *v.* 1011
New York; Thomas *v.* 953
New York; United States *ex rel.* Eisenstein *v.* 1131
New York; Vaughan *v.* 910
New York; Velazquez *v.* 951
New York; White *v.* 897
New York; Whyte *v.* 1070
New York City; Matican *v.* 1047
New York City; Thomas *v.* 1152
New York City Health and Hospitals Corp.; Swakeen *v.* 808
New York City Transit Authority; Clark *v.* 1012,1128
New York Dept. of Housing Preservation and Dev.; Weinstein *v.* 823
New York Law Publishing Co. *v.* Doe 1013
New York State Division of Parole; King *v.* 887
New York Times Co.; Hatfill *v.* 1085
NFA Corp.; Femino *v.* 1053
Nghiem *v.* Fujitsu Microelectronics, Inc. 1151
Nguyen *v.* Cain 843
Nguyen *v.* Patrick 945
Nguyen *v.* Runnels 857
Nguyen *v.* United States 907,1072,1199
Nguyen *v.* Washington 1055,1156
NGV Gaming, Ltd.; Harrah's Operating Co. *v.* 1153
Niblock *v.* United States 1197
Nicarry *v.* Cannady 868
Nicholson *v.* Runnels 1154
Nickels Midway Pier, LLC; Wild Waves, LLC *v.* 812
Nicoli-Fuentes *v.* United States 1006
Nielsen; Avalos *v.* 1000,1208
Nielsen *v.* Miller-Stout 1195
Nieto-Esparaza *v.* United States 860
Nieves *v.* United States 1201
Nijhawan *v.* Mukasey 1131
Nikolits; Taylor *v.* 1087
Nish; Williams *v.* 870
NiSource, Inc. *v.* Goff 1041
Nissim Corp. *v.* Time Warner, Inc. 1218
Nken *v.* Mukasey 1042
Noble *v.* Mukasey 808
Nodd *v.* United States 1202
Noel *v.* Farney 1178
Nolan *v.* Boeing Corp. 816
Nolan; Gaskins *v.* 919
Nolles *v.* State Committee for Reorganization of School Dists. . . . 945

Page
Nooth; Brown *v.* 848
Nooth; Hall *v.* 948
Nooth; Skelton *v.* 1191
Nordberg *v.* South Street Seaport Corp. 1012
Nordlund *v.* Washington 1155
Norfolk Southern R. Co.; Weldon *v.* 1097
Norman *v.* Carey 1113
Norman; Panse *v.* 1071,1208
Norris; Beverly *v.* 863
Norris *v.* Brown 1106
Norris *v.* Florida 1116
Norris; Hawthone *v.* 1184
Norris; Hodges *v.* 1192
Norris; Johnson *v.* 1182
Norris; McArty *v.* 874
Norris *v.* McNeil 829
Norris; Meadows *v.* 953
Norris *v.* Ohio 841
Norris; Perry *v.* 1180
Norris; Simpson *v.* 1183
North Carolina; Barnard *v.* 914
North Carolina; Brower *v.* 954
North Carolina; Bullard *v.* 906
North Carolina; Cotton *v.* 1087
North Carolina; Dickerson *v.* 1076
North Carolina; Dove *v.* 908
North Carolina; Duggins *v.* 859
North Carolina; Goss *v.* 835
North Carolina; Hanton *v.* 1087
North Carolina; Jackson *v.* 1215
North Carolina; Pettis *v.* 975
North Carolina; South Carolina *v.* 1091
North Carolina; Ventura *v.* 1087
North Carolina; Wright-Bey *v.* 847
Northcutt *v.* United States 889
North Dakota; Bertram *v.* 878
North Dakota; Ernst *v.* 1004
North Dakota; Murphy *v.* 1006
Northern *v.* Tennessee 1214
Northfield Ins. Co.; Royal Surplus Lines Ins. Co. *v.* 820
Northglenn Municipal Court; Erlandson *v.* 1112
North Plainfield Bd. of Ed.; D. G. *v.* 1085
North Tex. Specialty Physicians *v.* Federal Trade Comm'n 1170
Northwest Austin Municipal Utility Dist. No. One *v.* Mukasey 1091

Page
Northwestern Univ.; Will *v.* 995
Norton, *In re* 1084
Norton *v.* Bureau of Alcohol, Tobacco, Firearms and Explosives 1006
Norton *v.* Central Intelligence Agency 974
Norton *v.* Federal Bureau of Investigation 977
Norton *v.* Mukasey 806
Norton *v.* Tennessee 1034
Norwood *v.* United States 934
Novastar Mortgage, Inc.; Gordon *v.* 1046
Nowell *v.* United States 903,1064
NSH/Long Island Jewish Health System; Cadorniga-Doeing *v.* 908,1064
Nufarm America's Inc. *v.* United States 1011
Nuijten *v.* Dudas 816
Nunez *v.* United States 1201
Nunez-Gonzalez *v.* United States 879
Nunez-Tiscareno *v.* United States 1078
Nunley *v.* Sherry 947
Nunley *v.* United States 1216
NYCTL 1999–1 Trust; 114 Tenth Avenue Assn., Inc. *v.* 970
Nyema *v.* New Jersey 854
O. *v.* Paul H. 1034
Oakland; Hassey *v.* 1213
Oaks *v.* United States 1132
Obama; Berg *v.* 1126,1134
Oberdier; Cotten *v.* 923
Oberman; Mahmud *v.* 826
Obiorah *v.* Haynes 947
Obriecht *v.* Raemisch 953
O'Brien; Bramwell *v.* 1067
O'Bryan, *In re* 1011
Ocampo *v.* United States 1148
Ocasio, *In re* 810,1063,1064,1065
Ocasio *v.* Massachusetts 931
Ocasio *v.* McDaniel 877,1064
Ocean Harbor House Homeowners Assn. *v.* Cal. Coastal Comm'n 1172
Ochoa *v.* United States 1203
Ochoa-Cano *v.* United States 923
Ochoa-Navarette *v.* United States 920
Ochoa-Saldana *v.* United States 921
Odeh, *In re* 1169
Odunze *v.* United States 934
Office and Professional Employees; Doe *v.* 1185
Office of Hawaiian Affairs; Hawaii *v.* 1162
Office of Personnel Management; Baldwin *v.* 1055,1209

Page
Office of Personnel Management; Caracciolo *v.* 923
Office of Personnel Management; Payton *v.* 1005
Ofray-Campos *v.* United States 1020
O'Garro *v.* United States 1140
Ogba *v.* United States 897
Ogunsalu *v.* Nair 967,1082
Ohio; Ahmed *v.* 824,996
Ohio; Brown *v.* 1190
Ohio; Carlisle *v.* 1101
Ohio; Castleberry *v.* 916
Ohio *v.* Citizens for Tax Reform 1031
Ohio; Copeland *v.* 946
Ohio; Davis *v.* 861
Ohio; Foster *v.* 1052
Ohio; George *v.* 887
Ohio; Hytower *v.* 1190
Ohio; Johnson *v.* 899
Ohio; Kendrick *v.* 872
Ohio; Kidd *v.* 1003
Ohio; Kienzle *v.* 842
Ohio; Lashley *v.* 1109
Ohio; Leonard *v.* 1075
Ohio; Madden *v.* 1144
Ohio; McShepard *v.* 900
Ohio; Messer *v.* 1045
Ohio; Mobley *v.* 897
Ohio; Morrison *v.* 833
Ohio; Norris *v.* 841
Ohio; Simpkins *v.* 973
Ohio; Sowards *v.* 816
Ohio; Starnes *v.* 1034
Ohio *v.* Wade 1126
Ohio; Were *v.* 1036
Ohio; Williams *v.* 947,1128
Ohio *ex rel.* Rogers; Meadowlake Corp. *v.* 1098
Ohio Republican Party; Brunner *v.* 5
Ohio Secretary of State *v.* Ohio Republican Party 5
Ohio State Univ.; Jones *v.* 1109
Ohiri *v.* United States 1143
Ojeda *v.* McNeil 1015
O'Keefe *v.* United States 962,1007
Oklahoma; Bohon *v.* 947
Oklahoma; Bridgeforth *v.* 1035
Oklahoma; Brothers *v.* 1182

Page
Oklahoma; Childers *v.* 1154
Oklahoma; Edwards *v.* 1034,1150
Oklahoma; Guevara *v.* 951
Oklahoma; Robertson *v.* 898
Oklahoma; Simmons *v.* 920
Oklahoma; Sutton *v.* 1047
Oklahoma; Tiger *v.* 846
Oklahoma; Washington *v.* 1073
Oklahoma; Williams *v.* 1214
Oklahoma; Young *v.* 972
Okpala *v.* United States 1072
Olacirequi Sanchez *v.* United States 1146
Old Bridge; Raikar *v.* 1182
Oldham *v.* Indiana 1000
Oliver *v.* Corbett 1001,1129
Olivo *v.* Gregoire 1197
Ollison; Harrison *v.* 911
Olsen *v.* United States 1154
Olson *v.* Continental Resources, Inc. 817,1063
Olson *v.* Peake 925,1082
Olson *v.* United States 1060
Olukune *v.* Mukasey 1087
Olvera *v.* Mukasey 1100
Olvera Jimenez *v.* Texas 892
Olvera-Ramirez *v.* United States 892
O'Malley; Smith *v.* 1052
Onawola *v.* Johns Hopkins Univ. 1047
Ondilla *v.* United States 936
O'Neal *v.* Kenny 1133
O'Neal *v.* Minnesota 1001
O'Neil *v.* Stowitzky 1074
O'Neil; Taylor *v.* 1035
O'Neill *v.* Coughlan 1011
O'Neill *v.* Lawler 1199
O'Neill *v.* Philadelphia 1101
O'Nell *v.* United States 1008
114 Tenth Avenue Assn., Inc. *v.* NYCTL 1999–1 Trust 970
Onondaga County Sheriff's Dept.; Humphrey *v.* 1165
Ontiveros; DHL Express (USA), Inc. *v.* 1154
Opri; Indyway Investment *v.* 820,1063
Orange County *v.* Pierce 1031
Orange County; Vohra *v.* 1093
Oregon; Boise Cascade Corp. *v.* 828
Oregon; Bumgarner *v.* 1101

Page
Oregon; Howard *v.* 1052
Oregon *v.* Ice 160
Oregon; McDonnell *v.* 904
Oregon; Ragen *v.* 1183
Orient Overseas Container Line Ltd. *v.* Royal Ins. Co. of America 887
Orlando; Cooney *v.* 882
Orozco *v.* United States 896
Orozco *v.* Voss 949
Ortega-Ayala *v.* United States 1019
Ortiz *v.* California 889,1076
Ortiz *v.* Ortiz 1139
Ortiz *v.* Quarterman 1160
Ortiz; Suarez *v.* 864
Ortiz *v.* Ward 1189
Ortiz-Cabrera *v.* United States 957
Ortiz-Corral *v.* United States 958
Ortiz-Graulan *v.* United States 1077
Ortiz-Graulau *v.* United States 1077
Osage Nation; Kemp *v.* 820
Osahar *v.* Potter 996
Osantowski *v.* Michigan 1015
Osborn *v.* Osborn 806
Osborne; District Attorney's Office for Third Judicial Dist. *v.* 992,1152
Osceola; Diggs *v.* 864
Osequera-Morales *v.* United States 1203
Oshunkey *v.* United States 1198
Osijo *v.* Housing Resources Management, Inc. 1185
Osorio *v.* United States 1088
Osorto-Guevarra *v.* United States 1193
Ostrom *v.* Educational Credit Management Corp. 1052
Osumah *v.* Mukasey 1116
Oswald, *In re* 808
Otis *v.* Wisconsin 849
Otto (GmbH & Co. KG); Stupakoff *v.* 825
Our Children's Earth Foundation *v.* EPA 1045
Ousley *v.* Mississippi 1036
Outlaw; Dyer *v.* 916
Outlaw; Martin *v.* 935
Outlaw *v.* United States 1203
Outlaw; Zuniga-Hernandez *v.* 870
Overland *v.* Los Angeles County 811
Overstreet *v.* Indiana 972
Owens *v.* Evans 1016
Owens *v.* McMaster 998

Page
Owens *v.* National Health Corp. 815
Owens *v.* South Carolina 1141
Oxnard; Coulombe *v.* 1183
Ozcelik *v.* United States 1153
Ozier *v.* Missouri 1215
Ozmint; Gardner *v.* 856
Ozmint; Stahl *v.* 920
Ozmint; Williams *v.* 1162
P. *v.* Los Angeles County Dept. of Children & Family Services . . 915
P. *v.* Thompson R2–J School Dist. 1173
Pabellon *v.* U. S. Penitentiary at McCreary 1037
Pacheco *v.* Massachusetts 953
Pacheco-Sanchez *v.* United States 1105
Pacheco-Soria *v.* United States 860
Pacific Bell Telephone Co. *v.* linkLine Communications, Inc. . . . 438,1029
PacifiCorp; Klamath Tribes of Ore. *v.* 821
Padilla *v.* Kentucky 1169
Padilla *v.* United States 1198
Padilla-Salas *v.* United States 1204
Padilla-Vela *v.* United States 1198
Padron *v.* McNeil 954
Padula; Ceo *v.* 1110
Padula; Maner *v.* 1186
Pagan *v.* Pennsylvania 1198
Page *v.* California 999
Page *v.* St. Lawrence 968
Page *v.* United States 1124
Paige *v.* United States 1196
Pajardo *v.* United States 934
Paladino *v.* King 1191
Palakovich; Cook *v.* 858
Palakovich; Goldwire *v.* 858
Palakovich; Lusick *v.* 950
Palakovich; Munoz *v.* 875
Palakovich; Strum *v.* 838
Palermo *v.* United States 1217
Palisades Interstate Park Comm'n; Sterngass *v.* 940
Palma *v.* United States 893
Palm Beach County; White Lion Van Lines, Inc. *v.* 970
Palmer; Burriola *v.* 1188
Palmer *v.* Cain 889
Palmer; Lyons *v.* 902
Palmer *v.* Maryland 884
Palmer *v.* Mississippi 1074

Page
Palmer; Smash *v.* 898
Palmer *v.* United States 812
Palmetto Govt. Benefits Administrators; U. S. *ex rel.* Feingold *v.* 1137
Palm Shores Retirement Community; Wofsy *v.* 1157
Pandozy *v.* Beaty 995
Panse *v.* Massachusetts 1100
Panse *v.* Norman 1071,1208
Paradis *v.* United States 1115
Pardue; Saraland *v.* 1170
Parisi *v.* United States 1197
Park *v.* United States 933
Park City Municipal Corp.; Travis *v.* 1114
Parke; Frierson *v.* 1143
Parker *v.* Alabama 835
Parker; Braden *v.* 902
Parker; Brown *v.* 863
Parker *v.* California 1074
Parker; Horton *v.* 951
Parker *v.* Hurley 815
Parker; Hurtado *v.* 894
Parker; Jones *v.* 1119
Parker *v.* Parker 948,1090
Parker; Rockwell *v.* 878
Parker *v.* United States 866,891,959,1009,1076,1147
Parker Abex NWL; Williams *v.* 1210
Parkison *v.* Washington 1086
Parks *v.* Perry 864
Parks *v.* United States 933,1132
Parm *v.* Shumate 813
Parnigoni *v.* District of Columbia 996
Parr; Coggins *v.* 1094
Parra; Bashas' Inc. *v.* 1154
Parra Lopez *v.* United States 872
Parrish *v.* Parrish 1134
Parrish *v.* United States 959
Partain, *In re* 1135
Parthemore *v.* California 913,1090
Parthemore *v.* Cate 833
Parvizi *v.* California 953
Patel *v.* United States 1038
Patino-Prado *v.* United States 936
Patrick *v.* Department of Veterans Affairs 1139
Patrick; Phu Duc Nguyen *v.* 945
Patrick; Ryder *v.* 1076

Page
Patrick; Smith *v.* 915
Patrick *v.* Virginia 1032
Patridge *v.* Commissioner 909
Patterson *v.* Johnson 856
Patterson *v.* United States 1131
Patterson *v.* Vanderver 1115
Pattison *v.* United States 1122
Patton; Baker *v.* 1217
Paulcin *v.* McNeil 1086
Paul H.; Blake O. *v.* 1034
Paulson; Andrews-Willmann *v.* 1117
Paulson; Lang *v.* 820
Payne *v.* Friel 841
Payne *v.* United States 894
Payton *v.* Office of Personnel Management 1005
PB Fasteners; Kang *v.* 883
Peabody *v.* Allstate Ins. Co. 1166
Peabody *v.* United States 803,1030
Peake; Brown *v.* 1056,1209
Peake; Haas *v.* 1149
Peake; Jones *v.* 913
Peake; Laity *v.* 1016,1130
Peake; Mansfield *v.* 1101
Peake; Olson *v.* 925,1082
Peake; Roberts *v.* 996
Peake *v.* Sanders 992
Peake *v.* Simmons 992
Peake; Winsett *v.* 992,1095
Pearl *v.* Jones 952
Pearson *v.* Callahan 223
Pearson *v.* Finn 904,1082
Pearson *v.* Illinois 1014
Peek *v.* Quarterman 835,1127
Pellegrini *v.* Analog Devices, Inc. 1172
Pena *v.* United States 927,937,956,1009
Pena-Muriel *v.* Mukasey 811
Penberthy *v.* AT&T Wireless Services, Inc. 882
Pennsylvania; Abu-Jamal *v.* 916
Pennsylvania; Atwell *v.* 1166
Pennsylvania; Blakeney *v.* 1177
Pennsylvania; Bond *v.* 867
Pennsylvania; Boxley *v.* 1003
Pennsylvania; Creighton *v.* 864
Pennsylvania; Davenport *v.* 891

Page
Pennsylvania *v.* Dunlap 964
Pennsylvania; Eisen *v.* 827
Pennsylvania; Encarnacion-Rivera *v.* 1216
Pennsylvania; Fehnel *v.* 995
Pennsylvania; Hill *v.* 1216
Pennsylvania; Houck *v.* 1056
Pennsylvania; Johnson *v.* 868
Pennsylvania; Lane *v.* 996
Pennsylvania *v.* Mallory 884
Pennsylvania; McGinley *v.* 1112
Pennsylvania; Moore *v.* 969
Pennsylvania; Pagan *v.* 1198
Pennsylvania; Pepe *v.* 881
Pennsylvania; Pickard *v.* 879
Pennsylvania; Sam *v.* 1134
Pennsylvania; Sickler *v.* 895
Pennsylvania; Tielsch *v.* 1072
Pennsylvania; Watson *v.* 1167
Pennsylvania Bd. of Probation and Parole; Calhoun *v.* 974
Pennsylvania Bd. of Probation and Parole; Jones *v.* 846
Pennsylvania Dept. of Corrections; Brown *v.* 1166
Pennsylvania Dept. of Corrections; Everett *v.* 1189
Pennsylvania Dept. of Corrections; Forbes *v.* 1192
Pennsylvania Dept. of Corrections; Williams *v.* 1016
Pennsylvania Dept. of Env. Protection; Strubinger *v.* 883
Pennsylvania Dept. of Env. Protection; UMCO Energy *v.* 1047
Pennsylvania Dept. of General Services; Ate Kays Co. *v.* 1070
Pennsylvania State Police; D. V. K. *v.* 1153
Penoyer *v.* Florida 1119
Pentagen Technologies International Ltd. *v.* CACI International 1070
Pentz *v.* United States 956
Peoples *v.* Michigan 1112
Peoples *v.* United States 1020
Pepe *v.* Pennsylvania 881
Pepper *v.* United States 861
Pequeno *v.* Schmidt 828
Perdue; Howard *v.* 1190
Perez; Cain *v.* 995
Perez; Clark *v.* 823
Perez *v.* Dexter 884
Perez; Gardner *v.* 1196
Perez *v.* United States 857,924,933
Perez-Gonzalez *v.* United States 860
Perez-Lopez *v.* United States 943

Page
Perez-Morales *v.* United States 1059
Perez-Rendon *v.* United States 1007
Perez-Rodriguez *v.* United States 1061
Perez-Vasquez *v.* United States 924,1217
Perez-Vela *v.* United States 857
Perkins, *In re* 1044
Perkins *v.* DCC Litigation Facility, Inc. 1173
Perkins *v.* United States 805,822,1058
Peroceski *v.* United States 912
Perry, *In re* 1084
Perry *v.* Allen 1155
Perry *v.* Florida 894
Perry *v.* McNeil 1179
Perry *v.* Milwaukee Housing Authority 950
Perry *v.* Norris 1180
Perry; Parks *v.* 864
Perry *v.* Quarterman 1034,1150
Perry *v.* Turner 1055
Perry *v.* United States 850
Perry County Coal Corp.; Turner *v.* 818
Perry Homes; Cull *v.* 1103
Perry Township Police Dept.; Lawton *v.* 1110
Persik *v.* Tucci Learning Solutions, Inc. 883,1127
Person *v.* United States 1203
Personnel Bd. of Jefferson County; Bowie *v.* 1085
Pete *v.* United States 926
Peterec *v.* New York 973
Peterka *v.* McNeil 1155
Peters *v.* Florida 1109
Peters *v.* Guajome Park Academy Charter School 1076
Peters *v.* Keystone Aviation Services Inc. 1189
Peters *v.* United States 922
Petersen *v.* Riverview Police Dept. 917
Peterson *v.* Branker 1111
Peterson; Long *v.* 1181
Peterson *v.* Saperstein 1100
Peterson *v.* United States 913,1128,1204
Petrus *v.* Quarterman 878
Pettis *v.* North Carolina 975
Petty *v.* Merck & Co. 1143
Peyton *v.* Kentucky 1035
Pfizer Pharmaceuticals LLC; Ruiz Rivera *v.* 939
Phelps; Campbell *v.* 817
Phelps; Shelton *v.* 943

Page
Phelps *v.* United States 1202
Philadelphia *v.* Lawrence 1085
Philadelphia; O'Neill *v.* 1101
Philadelphia School Dist.; Ballard *v.* 1177
Philip Johnson/Alan Ritchie Architects, P. C.; Dukes *v.* 1138
Phillips *v.* Gaston County 1085
Phillips; Hust *v.* 1150
Phillips *v.* Prairie Eye Center 1068,1140
Phillips *v.* United Parcel Service, Inc. 851,1090
Phillips *v.* United States 1058,1118
Phillips *v.* Washington 1108
Phillips; Williams *v.* 900
Phinazee *v.* United States 1038
Phipps *v.* United States 1202
Phoenix; Durand *v.* 996,1128
Phox *v.* Lee's Summit School Dist. 1189
Phu Duc Nguyen *v.* Patrick 945
Phu Xuan *v.* Fort Worth Star Telegram 925,1040
Pickard *v.* Pennsylvania 879
Pickens *v.* United States 1060
Pierce *v.* California 866
Pierce; Orange County *v.* 1031
Pierce *v.* United States 1117
Pierre *v.* United States 901,936
Pierre-Louis *v.* United States 1057
Pietrowski *v.* Conkright 1211
Pietrzak *v.* Quarterman 1132
Pike *v.* United States 1122
Pilcher, *In re* 992
Pilgrim *v.* United States 874
Pimentel *v.* United States 1018
Pina-Suarez *v.* United States 1007
Pinckney *v.* Salamon 874
Pinder *v.* Arkansas 927
Pineda *v.* McNeil 832,1063
Pineda-Lorenzana *v.* United States 1058
Pinero *v.* Ercole 1014
Piney Run Preserv. Assn. *v.* County Comm'rs of Carroll County 885
Ping *v.* United States 993
Pinson *v.* United States 1059,1195
Piper *v.* Binion 885
Pipestone Livestock Auction Market, Inc.; Fin-Ag, Inc. *v.* 1095
Pira *v.* United States 1018
Piskanin, *In re* 1211

Page
Pitchford *v.* Turbitt 1144
Piterniak *v.* Cinque 1135
Pitts *v.* Cohen 1055
Pitts *v.* Folino 950
Pizzuti *v.* United States 1175
Plan Adm'r for DuPont Savings and Inv. Plan; Kennedy *v.* 285,990
Planned Parenthood of Columbia/Willamette; Am. Life Activists *v.* 824
Platero *v.* United States 909
Platinum Property Management; Taylor *v.* 1168
Plaza-Uzeta *v.* United States 962
Pleasant Glade Assembly of God; Schubert *v.* 1137
Pleasant Grove City *v.* Summum 460
Pliler; Hobley *v.* 1002
Plummer *v.* Caden 1151
Plump; Riley *v.* 801
Plunkett *v.* United States 1050
Pocatello *v.* Idaho 1068
Pocatello Ed. Assn.; Ysursa *v.* 353
Poe *v.* Nebraska 1109
Poehl *v.* Randolph 952,1065
Poindexter *v.* Illinois *ex rel.* Ill. Dept. of Human Services 889
Pointe Coupee Parish Police Jury; Johnson *v.* 805
Poirier *v.* Thurmer 806
Polar Tankers, Inc. *v.* Valdez 1083
Policano *v.* Conway 954
Policastro *v.* Kontogiannis 814,1134
Poliner *v.* Presbyterian Hospital of Dallas 1149
Poliner *v.* Texas Health Systems 1149
Polino-Mercedes *v.* United States 997
Politano *v.* United States 859
Polite *v.* United States 1059,1219
Polk *v.* Menifee 956
Polk *v.* Sherry 912
Polk *v.* United States 978
Pollack *v.* United States 827
Pollard; Benitez *v.* 863
Pollard; Burr *v.* 1175
Pollard; Cornelius *v.* 833
Pollard; James *v.* 1116
Pollard *v.* United States 1008
Polskie Linie Lotnicze; J. J. Store *v.* 822
Polskie Linie Lotnicze; Tokarz *v.* 822
Ponce-Cruz *v.* United States 1019
Ponce-Rubio *v.* United States 896

Page
Pondexter, *In re* 1219
Pondexter *v.* Livingston 1220
Pondexter *v.* Quarterman 1219
Pondexter *v.* Texas 1219
Ponek *v.* Florida 1068
Poole *v.* Illinois 861
Poole *v.* Rich 854
Poole; Yarbrough *v.* 1087
Pooler *v.* Florida 911
Pope; Alabama *v.* 1084
Pope; Dantzler *v.* 805
Pope; Evans *v.* 973
Porsboll; Vaile *v.* 994
Port Auth. of N. Y. and N. J.; Port Auth. Police Benevolent Assn. *v.* 1069
Port Auth. Police Benevolent Assn. *v.* Port Auth. of N. Y. and N. J. 1069
Porter *v.* Berghuis 1002
Porter *v.* Cancelmi 1183
Porter *v.* United States 1146
Porter Hospital; Keller *v.* 911
Portfolio Recovery Associates; Knubbe *v.* 820
Portugal *v.* Colorado Division of Ins. 1215
Poseley *v.* United States 846
Posey *v.* United States 1059
Post *v.* Rivas 1180
Postmaster General; Curiale *v.* 804,1043
Postmaster General; Hayes *v.* 941
Postmaster General; Moore *v.* 941
Postmaster General; Osahar *v.* 996
Postmaster General; Rasco *v.* 884
Poteet *v.* Flower Mound 808,1044
Potter; Curiale *v.* 804,1043
Potter; Hayes *v.* 941
Potter; Moore *v.* 941
Potter; Osahar *v.* 996
Potter; Rasco *v.* 884
Potts *v.* Federal Bureau of Prisons 906
Potts *v.* United States 1199
Poway Unified School Dist.; Stewart *v.* 1054
Powell *v.* Keller 916,1065
Powell *v.* United States 1059,1102,1117
Power; Chamblain *v.* 1114
Power; Dreher *v.* 950
Power; Gully *v.* 1114
Powers; Ford *v.* 1113

Page
Powers; Hamilton County Public Defender Comm'n *v.* 813
Powers *v.* Johanson 1111
Pozo *v.* Schneiter 1167
Prairie Eye Center; Phillips *v.* 1068,1140
Prather *v.* Hudson 1108
Pratt *v.* Illinois 1180
Pratt *v.* United States 960,1132
Pratt Construction Co. *v.* California Coastal Comm'n 1171
Preis *v.* Lexington Ins. Co. 1101
Prelesnik; Lee *v.* 1001
Prelesnik; Sifuentes *v.* 1054,1209
Presbyterian Hospital of Dallas; Poliner *v.* 1149
President of U. S.; Al-Ghizzawi *v.* 1094
President of U. S.; Guillory *v.* 1029
President of U. S.; Simmons *v.* 954,1129
Pressey *v.* United States 1125
Pressley *v.* United States 925
Preston *v.* Cooper 906
Prible *v.* Texas 833,1176
Price, *In re* 1211
Price *v.* GKN Aerospace North America, Inc. 882
Price *v.* Quarterman 1181
Price *v.* United States 912,922,1082,1123
Pritchett *v.* United States 1005
Proctor; Sunseri *v.* 1138
Proffit *v.* Wyoming 1157,1158
Prosper; Griffin *v.* 1004
Prousalis *v.* United States 932
Province; Ellis *v.* 841
Province; Seward *v.* 834
Prude *v.* Bradt 1052
Prudential Financial Corp.; Wang *v.* 944,1081
Pruett; West-Bey *v.* 975
Pryce *v.* United States 1121
PSEG Fossil LLC *v.* Riverkeeper, Inc. 941
PSN Ill., LLC *v.* Ivoclar Vivadent, Inc. 1048
Public Util. Comm'n of Tex.; Logix Communications, L. P. *v.* 883
Public Util. Dist. 1 of Snohomish Cty.; Calpine Energy Servs. *v.* 941
Public Util. Dist. 1 of Snohomish Cty.; Morgan Stanley Group *v.* 941
Puche *v.* United States 1102
Puckett *v.* United States 1030,1167
Puentes *v.* United States 976
Puentes Fernandez *v.* Mukasey 837
Puerto Rico Ports Authority; International Shipping Agency *v.* . . 1170

Page
Pugh; Brown *v.* 998
Pugh *v.* Minnesota 1182
Pugh *v.* United States 1080
Puletasi *v.* Wills 1160
Pulido; Hedgpeth *v.* 57
Pulido-Zepeda *v.* United States 1019
Pullen *v.* United States 1145
Puls *v.* Broderick's Estate 1178
Pumphrey *v.* Texas 897
Punchard, *In re* 1097
Pure Fishing, Inc.; Stoller *v.* 1032
Purkett; Jackson *v.* 908,1150
Purnell *v.* Cedars-Sinai Medical Center 822
Purtell *v.* Mason 945
Purvis *v.* United States 866
Puttick *v.* United States 1061
Pyne *v.* United States 1119
Pyo Kim *v.* United States 826
Qu *v.* United States 962
Quaker Oats Co.; Kannapien *v.* 816
Quan *v.* United States 1200
Quandt *v.* Delaware 869
Quang Van Nguyen *v.* United States 1199
Quarterman; Angel *v.* 828
Quarterman; Anthony *v.* 1012
Quarterman; Arrick *v.* 877
Quarterman; Bahena *v.* 1073
Quarterman; Baxter *v.* 872
Quarterman; Bingham *v.* 1180
Quarterman; Brock *v.* 1052,1218
Quarterman; Bulington *v.* 1074
Quarterman; Buntion *v.* 1176
Quarterman; Butler *v.* 1106,1218
Quarterman; Caddell *v.* 864
Quarterman; Cain *v.* 1035,1209
Quarterman; Caldwell *v.* 834
Quarterman; Cantu *v.* 907
Quarterman; Cardona *v.* 1053
Quarterman; Clark *v.* 1108
Quarterman; Clayton *v.* 948
Quarterman; Coleman *v.* 1155
Quarterman; Coy *v.* 1138
Quarterman; Criner *v.* 1075
Quarterman; Crissup *v.* 1182

Page
Quarterman; De La Cerda *v.* 871
Quarterman; Dodd *v.* 1035,1209
Quarterman; Downs *v.* 1142
Quarterman; Edmond *v.* 950
Quarterman; Elder *v.* 1106
Quarterman; Enriquez *v.* 899,1081
Quarterman; Gallegos *v.* 818
Quarterman; Garcia Briseno *v.* 1073
Quarterman; Garrett *v.* 1108
Quarterman; Garza *v.* 1033,1150
Quarterman; Gomez *v.* 1050
Quarterman; Gunn *v.* 1183
Quarterman; Gunnel *v.* 843
Quarterman; Gutierrez Bruno *v.* 803
Quarterman; Hankins *v.* 1142
Quarterman; Herrera *v.* 1183
Quarterman; Higgins *v.* 1184
Quarterman; House *v.* 918
Quarterman; Hudson *v.* 1041
Quarterman; Hudspeth *v.* 1182
Quarterman; Hunt *v.* 918
Quarterman; Jackson *v.* 844
Quarterman; Jimenez *v.* 113
Quarterman; Johnson *v.* 847,892
Quarterman; Jones *v.* 847,893,1014
Quarterman; Kelly *v.* 828,866,967
Quarterman; King *v.* 1192
Quarterman; Krueger *v.* 838
Quarterman; Kyles *v.* 1143
Quarterman; Lauer *v.* 858
Quarterman; Leifester *v.* 916
Quarterman; Lemanski *v.* 835
Quarterman; Lopez *v.* 871,1001
Quarterman; Madlock *v.* 1133
Quarterman; Mark *v.* 873,1127
Quarterman; Marshall *v.* 854,1187
Quarterman; Martin *v.* 898
Quarterman; McCalvin *v.* 876
Quarterman; Meador *v.* 837
Quarterman *v.* Mines 938
Quarterman; Mitchell *v.* 1168
Quarterman; Moore *v.* 842
Quarterman; Morgan *v.* 999
Quarterman; Morris *v.* 904

Page
Quarterman; Morrison *v.* 846
Quarterman; Munsch *v.* 1133
Quarterman; Newton *v.* 921
Quarterman; Ortiz *v.* 1160
Quarterman; Peek *v.* 835,1127
Quarterman; Perry *v.* 1034,1150
Quarterman; Petrus *v.* 878
Quarterman; Pietrzak *v.* 1132
Quarterman; Pondexter *v.* 1219
Quarterman; Price *v.* 1181
Quarterman; Rachal *v.* 943
Quarterman; Ramirez *v.* 1142
Quarterman; Ramos *v.* 834
Quarterman; Randle *v.* 892
Quarterman; Reeders *v.* 1187
Quarterman; Richardson *v.* 1173
Quarterman; Ries *v.* 990
Quarterman; Rivera *v.* 827
Quarterman; Rosales *v.* 1177
Quarterman; Sabedra *v.* 842,952,1163
Quarterman; Sawyer *v.* 835
Quarterman; Scheanette *v.* 1160
Quarterman; Shaw *v.* 972,1129
Quarterman; Sheehy *v.* 861
Quarterman; ShisInday *v.* 815
Quarterman; Slaughter *v.* 1179
Quarterman; Strickland *v.* 837,1090
Quarterman; Thomas *v.* 815,868,1073
Quarterman; Thompson *v.* 1014,1178
Quarterman; Turnbull *v.* 916,1065
Quarterman; Villegas *v.* 971
Quarterman; Wadhwa *v.* 837
Quarterman; Warner *v.* 973,1129
Quarterman; Washington *v.* 972
Quarterman; Webb *v.* 889
Quarterman; Welch *v.* 1054
Quarterman; Wenceslao *v.* 913
Quarterman; White *v.* 999
Quarterman; Whitmill *v.* 914,1027
Quarterman; Willich *v.* 1179
Quarterman; Wischnewsky *v.* 900
Quarterman; Wood *v.* 1108
Quarterman; Wright *v.* 973
Quarterman; Ybarra *v.* 1179

Page
Quarterman; Youngblood *v.* 1001,1129
Quebecor World (USA), Inc.; Drutis *v.* 816
Quest Recovery Services, Inc.; Haas *v.* 812
Quick *v.* McNeil 891
Quigley *v.* United States 827
Quinlan *v.* Florida 867
Quinn *v.* Batheja 1142
Quinn; DeVincentis *v.* 880
Quinn *v.* New Jersey 1153
Quinn; Shaw *v.* 1186
Quinn *v.* United States 960
Quinones *v.* United States 910,1216
Quinonez-Martinez *v.* United States 1008
Quintana-Holguin *v.* United States 925
Quiroz *v.* Indiana 920
Quoc Thai Minh Thuy *v.* United States 1119
Qwest Communications International, Inc. *v.* Windt 1099
Qwest Communications International, Inc.; Windt *v.* 1098
R.; The Dalles *v.* 825
Rachal *v.* Quarterman 943
Rackauckas; Janoe *v.* 849
Radcliff *v.* Illinois 1178
Radick *v.* United States 869
Radio One, Inc.; Ayad *v.* 880
Raemisch; Obriecht *v.* 953
Raffaele; Moore *v.* 866
Ragas *v.* Louisiana 834
Ragen *v.* Oregon 1183
Ragin *v.* Sniezek 900
Rahman *v.* United States 1118
Rai *v.* California 1188
Raikar *v.* Old Bridge 1182
Raile *v.* Zavaras 848
Rall; Justice *v.* 953
Rambus Inc.; Federal Trade Comm'n *v.* 1171
Rambus Inc.; Samsung Electronics Co. *v.* 886
Rameker; Ring *v.* 968,1072
Ramirez *v.* Guinn 1054
Ramirez *v.* Quarterman 1142
Ramirez; Sancho *v.* 847,1090
Ramirez *v.* United States 934,1019
Ramirez-Contreras *v.* United States 977
Ramirez-Mendez *v.* United States 927
Ramirez-Molina *v.* United States 860

Page
Ramirez-Nolasco *v.* United States 860
Ramirez-Perez *v.* United States 1199
Ramirez-Robles *v.* United States 1194
Ramirez-Rodriguez *v.* United States 860
Ramirez Torres *v.* United States 961
Rammelkamp *v.* United States 889
Ramos *v.* Quarterman 834
Ramos *v.* Shepherd 1114
Ramos *v.* United States 869
Ramos-Cardenas *v.* United States 908
Ramsey *v.* Florida 1116
Rance *v.* State Farm Mut. Automobile Ins. Co. 1107
Randle *v.* Quarterman 892
Randle *v.* United States 896
Randolph; Poehl *v.* 952,1065
Randolph *v.* Tatarow Family Partners, Ltd. 1000,1129
Randolph *v.* United States 934
Rangel *v.* Monterey County 882
Rangel *v.* United States 930
Rankin *v.* California 812
Rasco *v.* Potter 884
Rashad *v.* United States 1146
Rasul *v.* Myers 1083
Rathbone *v.* Tennessee 1192
Rattler Tools, Inc. *v.* Bilco Tools, Inc. 1098
Rauch *v.* United States 979
Ray *v.* Allen 952
Ray *v.* California 876
Ray *v.* Minor 912,1128
Ray *v.* Mitchem 898
Ray *v.* Nevada 923
Raybestos Products Co.; Vail *v.* 1192
Rayford *v.* United States 897
Raytheon Co.; Yong Li *v.* 1099
RBS National Bank; Green *v.* 1113
R. D. *v.* Florida Dept. of Children and Families 805
R. D. M. *v.* Tennessee Dept. of Children's Services 824
Re, *In re* 810
Recording Industry Assn. of America, Inc.; Deep *v.* 1126
Redd *v.* United States 862
Redding; Safford Unified School Dist. #1 *v.* 1130
Red Eagle *v.* United States 1147
Redmond *v.* California 974
Redmond *v.* United States 1037

Page
Reed *v.* Carroll 898,1081
Reed *v.* United States 889,905,1117
Reed *v.* U. S. Postal Service 1109
Reed Elsevier, Inc. *v.* Muchnick 1211
Reeders *v.* Quarterman 1187
Rees; Mitchell *v.* 1212
Reeves *v.* Astrue 1072
Reginald *v.* Felker 1178
Rehg; McClure *v.* 1014
Rehoboth Beach; Hurst *v.* 1166
Reid; Rockette *v.* 896
Reid *v.* United States 1061
Reilly; Allen *v.* 1110
Reilly; Flipping *v.* 1170
Reinsurance Results, Inc. *v.* Indiana Lumbermens Mut. Ins. Co. 884
Reisch; Fuller *v.* 1015
Reischauer *v.* Lafler 1111
Reiss *v.* United States 935
Reiter *v.* United States 929
Reliable Life Ins. Co.; Sabzevari *v.* 821
Reliance Standard Life Ins. Co.; Cross *v.* 813
Reliance Standard Life Ins. Co.; Glazer *v.* 1048
Remington Oil & Gas Corp.; Silvas *v.* 1102
Rendell; Lattaker *v.* 896,1128
Rendell; Szarewicz *v.* 1057
Renico; Cadogan *v.* 973
Renico; Gadomski *v.* 884
Renico; Richmond *v.* 999
Renneke *v.* Astrue 913
Repine; Young *v.* 1138
Republic of Iraq *v.* Beaty 1092
Republic of Iraq *v.* Simon 1092
Reshard *v.* Lankenau Hospital 883,1064
Residential Funding Corp.; Schaaf *v.* 882
Reveles-Espinoza *v.* United States 908
Revels; Attebury *v.* 1040
Revis *v.* Alabama 1185
Reyes *v.* McNeil 1180
Reyes *v.* United States 1148
Reyes-Figueroa *v.* United States 1132
Reyes-Lopez *v.* United States 901
Reyes-Platero *v.* United States 909
Reyes Santana *v.* Schriro 831
Reyna *v.* Monroe 847,1090

Page
Reyna *v.* United States 1191
Reynolds; Bell *v.* 921
Reynolds; Campbell *v.* 917
Reynolds; Green *v.* 849
Reynolds *v.* H&R Block Services, Inc. 942,1104
Reynolds *v.* McBride 867
Reynolds *v.* New Orleans 880
Reynolds; Stroman *v.* 1178
Reynoso *v.* Bayer AG 1115
Rhaburn *v.* United States 1088
Rhode Island; Barkmeyer *v.* 1071
Rhode Island; Garvin *v.* 1012
Rhode Island; Graham *v.* 848
Rhode Island Dept. of Ed.; Richardson *v.* 1143
Rhodes *v.* Johnson 876
Rhodes *v.* Romero's Estate 1051,1160
Rhodes; Sanders *v.* 947,1090
Ricchio *v.* California 1215
Ricci; Badger *v.* 1105
Ricci *v.* DeStefano 1091
Ricci; Miller *v.* 1016
Rice *v.* Brady 835
Rice *v.* Kentucky 1110
Rice *v.* Smith 917
Rice *v.* United States 1167
Rich, *In re* 811
Rich; Atamian *v.* 880
Rich; Bryant *v.* 1074
Rich; Poole *v.* 854
Richard *v.* DiGuglielmo 871,1027
Richards, *In re* 809,1150
Richards *v.* Thompson 1141
Richardson, *In re* 942
Richardson *v.* California 1177
Richardson *v.* McKie 921
Richardson *v.* Metro Transit Authority 1068
Richardson *v.* Quarterman 1173
Richardson *v.* Rhode Island Dept. of Ed. 1143
Richardson *v.* Tennessee 1036
Richardson *v.* Texas 832
Richardson *v.* United States 860,896,908,1120
Richardson; Valentine *v.* 1155
Richlin *v.* Metro-Goldwyn-Mayer Pictures, Inc. 1137
Richmond *v.* Giurbino 1073

Page
Richmond *v.* Renico 999
Richmond *v.* United States 1122
Ricketts *v.* Mukasey 830,1002
Ricks; Barnes *v.* 999
Rico-Gomez *v.* United States 874
Rico-Serrano *v.* United States 892
Riddick *v.* United States 1198
Riddle *v.* Liz Claiborne 949,1090
Ridge Chrysler Jeep *v.* DaimlerChrysler Financial Services 826
Riechmann *v.* Florida 879
Ries *v.* Quarterman 990
Ries *v.* Texas 990
Rigby *v.* United States 824
Riley *v.* California 1192
Riley *v.* Plump 801
Riley *v.* United States 830,1006
Rimmer; Self *v.* 1188
Rimmer *v.* Tennessee 852
Ring *v.* Heredia 855
Ring *v.* Rameker 968,1072
Ringgold *v.* Lockhart 1042
Rios; McCray *v.* 939,1090
Rios-Corellia *v.* United States 901
Rios-Rosas *v.* United States 860
Rippetoe *v.* United States 1120
Rischon Development Corp. *v.* Keller 996
Risquet *v.* United States 909
Rittweger *v.* United States 1202
Rivas; Post *v.* 1180
Rivas *v.* United States 878
Rivas-Lopez *v.* United States 860
Rivas-Macias *v.* United States 1195
Rivas-Salinas *v.* United States 977
Rivenburgh; CSX Transportation, Inc. *v.* 1010
Rivera, *In re* 1152
Rivera *v.* Illinois 1162
Rivera *v.* Pfizer Pharmaceuticals LLC 939
Rivera *v.* Quarterman 827
Rivera *v.* United States 873,930,1058,1204
Rivera; Webb *v.* 1174
Riverdale; Neely *v.* 826
Riverkeeper, Inc.; Entergy Corp. *v.* 941
Riverkeeper, Inc.; PSEG Fossil LLC *v.* 941
Riverkeeper, Inc.; Utility Water Act Group *v.* 941

Page
Rivers *v.* Washington 1056
Riverview Police Dept.; Petersen *v.* 917
Roark *v.* Florida 832
Roberson *v.* Graziano 803
Roberts *v.* Center for Bioethical Reform 1098
Roberts; Clark *v.* 852
Roberts *v.* Florida 1215
Roberts *v.* Hagener 1126
Roberts; Long *v.* 905
Roberts *v.* Maine Dept. of Health and Human Services 821
Roberts; Manco *v.* 1004
Roberts *v.* Peake 996
Roberts *v.* United States 877,1139,1194
Robertson *v.* Oklahoma 898
Robertson *v.* United States 1197
Robertson *v.* United States *ex rel.* Watson 1011
Robertson *v.* Ventura County 885
Robinson *v.* Adams 1214
Robinson *v.* Adventist Health System 806
Robinson *v.* Boyd 1050
Robinson *v.* Cain 855,1127
Robinson *v.* Church 972
Robinson *v.* Coakley 834,1063
Robinson; Fauconier *v.* 832
Robinson *v.* Florida 1142
Robinson *v.* Florida Hospital Orlando 806
Robinson *v.* Gonzeles 872
Robinson *v.* Illinois 946
Robinson *v.* Jones 1033,1209
Robinson *v.* Mukasey 956
Robinson *v.* Sheet Metal Workers' National Pension Fund, Plan A 884
Robinson *v.* Sisto 1111
Robinson; Snodgrass *v.* 813
Robinson *v.* Texas 1000
Robinson *v.* United States 895,935,978,1008,1009,1078,1116
Robles, *In re* 1211
Robles-Robles *v.* United States 957
Rocha *v.* United States 1119
Roche Palo Alto LLC; Apotex, Inc. *v.* 1153
Rockette *v.* Reid 896
Rockman *v.* Chambers 835
Rockwell *v.* Parker 878
Rodale, Inc.; Wisniewski *v.* 814
Rodda; Ford *v.* 919

Page
Rodi *v.* Southern New England School of Law 1175
Rodis; San Francisco *v.* 1151
Rodrigues *v.* United States 1140
Rodriguez, *In re* 1030
Rodriguez *v.* Brown 838,1062
Rodriguez *v.* California 898,1033,1035
Rodriguez *v.* Hassell 1071
Rodriguez *v.* Horel 1187
Rodriguez *v.* Napolitano 1194
Rodriguez *v.* Scribner 1053,1215
Rodriguez *v.* United States 853,
861,869,890,903,958,1019,1050,1056,1080,1191,1195,1210
Rodriguez-Amaya *v.* United States 904
Rodriguez-Corral *v.* United States 1019
Rodriguez-Diaz *v.* United States 1199
Rodriguez-Martinez *v.* United States 1154
Rodriguez-Mendoza; Hunt *v.* 857
Rodriguez-Morales *v.* United States 862
Rodriguez-Resendez *v.* United States 860
Rodriguez-Rodriguez *v.* United States 922,956,998
Rodriguez-Ruiz *v.* United States 860
Rodriguez-Venegas *v.* United States 905
Rodziewicz *v.* United States 879
Roe; Branscombe *v.* 1126
Roe; Crawford *v.* 821
Rogers *v.* California 890
Rogers; Capers *v.* 955,1129
Rogers *v.* Giurbino 1054
Rogers; King *v.* 1186
Rogers; Meadowlake Corp. *v.* 1098
Rogers; Ross *v.* 1099
Rogers *v.* United States 1103,1136
Rohden *v.* United States 976
Rohm & Haas Electronic Materials; Waytec Electronics Corp. *v.* 812
Rohn *v.* Beard 861
Rohn *v.* Wilson 844,1127
Rojas-Vega *v.* Hughes 904
Role Models America, Inc. *v.* Geren 994
Rolle, *In re* 810,1152
Rolle *v.* Hankinson 804,1093
Rolle *v.* McNeil 1029,1163,1192
Rolle *v.* Sherrill 805,1151
Rolle *v.* West 1165
Roller Derby Skate Corp.; Evans *v.* 1015

Page
Rollings *v.* United States 1009
Roman Catholic Bishop of Providence; Ryan *v.* 955
Romanowski; Brown *v.* 1073
Romans *v.* United States 928
Roman-Salgado *v.* United States 1216
Romansky *v.* Folino 1053,1179
Romero *v.* California 1142
Romero-Alvarez *v.* United States 1159
Romero's Estate; Rhodes *v.* 1051,1160
Romm *v.* United States 1105
Root *v.* Mahoney 974
Roper; Brandon *v.* 1167
Roper; Clayton *v.* 1003
Roper; Hawkins *v.* 949
Roper; Marcrum *v.* 1068
Roper; Schmitt *v.* 1187
Rosa *v.* McNeil 1190
Rosales *v.* Quarterman 1177
Rosales-Robles *v.* United States 1146
Rosario *v.* United States 937
Rosario-Pache *v.* United States 1078
Rosas-Fortis *v.* United States 860
Rosas-Pulido *v.* United States 921
Rose *v.* Nevada 847
Rose *v.* United States 890,1200
Rosenbach *v.* Illinois 955
Rosendo Valdes *v.* United States 939
Rosenstein; Bond *v.* 1154
Rosier *v.* Hunter 1214
Ross, *In re* 1168
Ross *v.* Graham 1087
Ross; Hung Ha *v.* 914,1082
Ross *v.* Rogers 1099
Ross *v.* Tennessee 1176
Ross *v.* Whitaker 883
Rossetti *v.* United States 1158
Rossi-Mollica; Mollica *v.* 840,1063
Roswell; Granite State Outdoor Advertising, Inc. *v.* 882
Roth *v.* United States 946
Rothhaupt *v.* Dickow 1100
Rotmistrenko *v.* United States 1078
Rountree *v.* Virginia 853
Rousseau; Jackson *v.* 948
Row *v.* Deese 824

Page
Row *v.* Row 824
Rowan *v.* Harris 1000
Rowe *v.* Lawler 1076
Rowland *v.* United States 1017
Rowley; Boyd *v.* 950
Roy *v.* Wynder 1054,1209
Royal Ins. Co. of America; Orient Overseas Container Line *v.* . . . 887
Royal Surplus Lines Ins. Co. *v.* Northfield Ins. Co. 820
Rozum; Craig *v.* 1001
Rozum; Deeter *v.* 1001
Rozum; Gans *v.* 844
Rozum; Villanueva *v.* 1114
Rubalcaba-Ramirez *v.* United States 976
Rubalcaba-Vazquez *v.* United States 1078
Ruberoe *v.* California 844
Rubin *v.* Assicurazioni Generali, S. P. A. 1172
Rubio *v.* United States 878,959,1193
Rubio Alvarez *v.* United States 878
Rubio-Guerrero *v.* United States 1193
Rudolf *v.* Mukasey 825
Ruelas *v.* United States 962
Ruffin *v.* Georgia 1181
Rufus *v.* Knowles 1072
Ruidiaz *v.* United States 962
Ruiz *v.* United States 877,1197
Ruiz Rivera *v.* Pfizer Pharmaceuticals LLC 939
Rundle *v.* California 1014
Runnell; Baptiste *v.* 1215
Runnels; Canady *v.* 859
Runnels; Hieu Trung Nguyen *v.* 857
Runnels; Mendoza *v.* 842
Runnels; Nicholson *v.* 1154
Rushton; Vazquez *v.* 895,1064
Rushton; Young *v.* 907,1128
Rushwam *v.* United States 918
Russell *v.* Florida 916
Russell *v.* Texas 1193
Russell *v.* United States 955
Russo; Dagley *v.* 1114
Ruston, *In re* 809,810
Ryan *v.* Roman Catholic Bishop of Providence 955
Ryan *v.* United States 997,1032,1208
Ryder *v.* Patrick 1076
Rylander *v.* United States 861

Page
Rylee *v.* United States 1008
S. *v.* Lawrence County Juvenile Office 895
Saavedra *v.* California 1052
Saavedra *v.* Cate 939
Saavedra Alvarez *v.* United States 1007
Sabater *v.* Bias 1101
Sabater *v.* United States 852
Sabedra *v.* Quarterman 842,952,1163
Sabol; Gonzalez *v.* 853
Sabzevari *v.* Reliable Life Ins. Co. 821
Sacramento *v.* Yount 1099
Saddler *v.* United States 1088
Saenz *v.* United States 1056
Safer Foundation; Washington *v.* 915
Saffold *v.* Mendoza-Powers 898
Safford Unified School Dist. #1 *v.* Redding 1130
Safron Capital Corp.; Leadis Technology, Inc. *v.* 1220
Saha *v.* Lehman 1171
St. Amand; Cosenza *v.* 1176
St. Clair *v.* Merit Systems Protection Bd. 1197
St. Francis Health Center; Xiangyuan Zhu *v.* 940,1043
Saintha *v.* Mukasey 1031
St. Lawrence; Page *v.* 968
St. Lucie County; Jones *v.* 1155
St. Paul Fire & Marine Ins. Co.; Madison Materials Co. *v.* 1048
St. Peters; H & N Planning & Control, Inc. *v.* 1173
Sakar International, Inc. *v.* United States 993
Sakay *v.* Farwell 1158
Salamon; Pinckney *v.* 874
Salas *v.* United States 1082
Salas-Ortiz *v.* United States 865
Salas-Paredes *v.* United States 932
Salazar *v.* Buono 1169
Salazar; Carcieri *v.* 379
Salazar *v.* Florida 1187
Salazar; Michigan Gambling Opposition *v.* 1137
Salazar; Tillman *v.* 850
Salazar *v.* United States 1008
Salcido *v.* California 1143
Saldarriaga-Palacio *v.* United States 936
Salehi *v.* United States 1039
Salerno *v.* Michigan 1073,1209
Salerno *v.* New Jersey 1114
Salgado *v.* Haws 829

Page
Salinas-Campos *v.* United States 830,998
Salinas-Gonzales *v.* United States 920
Salinas-Lucio *v.* United States 997
Sallis *v.* United States 1039
Salman *v.* United States 1008
Salvador-Figueroa *v.* United States 1217
Sam *v.* Pennsylvania 1134
Samper *v.* United States 1049
Sampson *v.* Knowles 841
Sampson *v.* Lawler 1113
Sampson; Timson *v.* 840
Samsung Electronics Co. *v.* Rambus Inc. 886
Samuels *v.* United States 920
Sanai *v.* Alexander 1173
San Bernardino; Manta Management Corp. *v.* 1013
Sanches Montes *v.* United States 1007
Sanchez *v.* Connolly 855
Sanchez *v.* Sanchez 817
Sanchez *v.* United States 844,870,901,1146
Sanchez-Caceres *v.* United States 878
Sanchez-Figueroa *v.* Banco Popular de Puerto Rico 1180
Sanchez-Gallardo *v.* United States 920
Sanchez-Leocadio *v.* United States 1191
Sanchez Lugo *v.* United States 1125
Sanchez-Morphin *v.* United States 1009
Sanchez-Perez *v.* United States 909
Sanchez-Ruiz *v.* United States 911
Sanchez-Vasquez *v.* United States 956
Sancho *v.* Ramirez 847,1090
Sandberg *v.* Wheaton 828,995
Sanders, *In re* 1211
Sanders; Boothes *v.* 863
Sanders *v.* Goldberg Weisman & Cairo Ltd. 975
Sanders; Peake *v.* 992
Sanders *v.* Rhodes 947,1090
Sanders *v.* United States 906,915,920,1009,1037
Sandoval-Hernandez *v.* United States 909
Sandoval-Vasquez *v.* United States 1125
San Francisco *v.* Rodis 1151
Santa Clara County; Garcia *v.* 822
Santana *v.* Schriro 831
Santana *v.* United States 875,909
Santana-De Leon *v.* United States 1193
Santiago *v.* Clark 1184

Page
Santiago *v.* United States 1145
Santiago-Baez *v.* United States 866
Santiago-Melendez *v.* United States 934
Santillana *v.* United States 975
Santos *v.* Connecticut 851
Santos *v.* Mukasey 839
Santos *v.* United States 1122
Saperstein; Peterson *v.* 1100
Saraland *v.* Pardue 1170
Sarausad; Waddington *v.* 179,807
Sarmiento *v.* Montclair State Univ. 1144
Sarsak *v.* United States 962
Saterstad *v.* Stover 846
Sauer *v.* United States 874
Saunders *v.* Bright 1073
Saunders *v.* United States 961
Savage *v.* Florida 864
Savage *v.* Johnson 1157
Savoy *v.* United States 1077
Sawaf *v.* United States 1037
Sawyer *v.* Quarterman 835
Sawyer *v.* United States 930,1103
S. B. *v.* Illinois 1197
SBC Advanced Solutions, Inc.; Ghazibayat *v.* 1135
SBC Missouri; Missouri Public Service Comm'n *v.* 1099
Scaff-Martinez *v.* United States 852
Schaaf *v.* Residential Funding Corp. 882
Schachter *v.* Marshall 1111
Schaefer *v.* Wisconsin 881
Schafer; Barnhill *v.* 1136
Schafler *v.* Spear 1103,1218
Schales *v.* United States 1202
Scheanette *v.* Quarterman 1160
Scheerer *v.* Mukasey 825
Scheib *v.* Mellon Bank 816
Schick *v.* United States 822
Schils *v.* Washtenaw County 836,838,1001,1090
Schipke *v.* United States 1200
Schlagel *v.* Frohlich 1032
Schlemm *v.* Huibregtse 1113
Schlesinger *v.* United States 827
Schlumberger Technology Corp.; Dumontier *v.* 1172
Schmidt, *In re* 809
Schmidt *v.* Bodin 1105

Page
Schmidt; Kikkert *v.* 1115
Schmidt *v.* McNeil 865
Schmidt; Pequeno *v.* 828
Schmitt *v.* Roper 1187
Schneiter; Pozo *v.* 1167
Schneller *v.* Zitomer 1093
Schomig; Houston *v.* 1187
School Dist. of East Brunswick; Borden *v.* 1212
Schrader *v.* Allen 835,869,1027
Schreiber *v.* Iowa 1036,1209
Schreiner *v.* McNeil 1086
Schriro; Beaty *v.* 949
Schriro; Cook *v.* 1141
Schriro *v.* Correll 1098
Schriro; Figura Torrefranca *v.* 1115
Schriro; Flores *v.* 1108
Schriro; Hemmerle *v.* 829,1063
Schriro; Reyes Santana *v.* 831
Schriro; Smith *v.* 1072
Schubert *v.* Pleasant Glade Assembly of God 1137
Schultz; Short *v.* 1197
Schultz *v.* United States 1071
Schulz *v.* United States 946
Schulz *v.* U. S. Federal Reserve System 1029
Schwab *v.* Washington 1188
Schwartz; Nelson *v.* 998
Schwartz; Shell *v.* 891
Schwartz *v.* United States 830
Schwarzenegger; Medway *v.* 897
Schweitzer; Seven Up Pete Venture *v.* 885
Schwinn *v.* United States 886
Scott, *In re* 810
Scott *v.* Bazzle 953
Scott *v.* Iowa 1187
Scott *v.* United States 905,930,933,1104
Scribner; Cabrera *v.* 1015
Scribner; Garcia *v.* 1189
Scribner; James *v.* 992
Scribner; Rodriguez *v.* 1053,1215
Scribner; Sobarzo *v.* 862
Scribner; Wilkins *v.* 852
Scuba *v.* Brigano 915
Seaboard Corp.; Neilson *v.* 1045
Sealed Appellant *v.* United States 806,1009

Page
Sears *v.* Florida 955
Sears *v.* McNeil 949
Sears, Roebuck & Co.; Lowe *v.* 948
Seawell *v.* United States 1071
Secretary of Agriculture; Barnhill *v.* 1136
Secretary of Air Force; Alcivar *v.* 877
Secretary of Army; Bacas *v.* 954
Secretary of Army; Goodin *v.* 1102
Secretary of Army; IMS Engineers-Architects, P. C. *v.* 1031
Secretary of Army; Role Models America, Inc. *v.* 994
Secretary of Commerce; Gueye *v.* 874,1127
Secretary of Defense; McKnight *v.* 1175
Secretary of Energy; Amirmokri *v.* 885
Secretary of HHS; Gabrill *v.* 943,1064
Secretary of HHS; Maximum Comfort, Inc. *v.* 822
Secretary of HHS; Middlebrooks *v.* 1013
Secretary of Homeland Security; Codina *v.* 1113,1117
Secretary of Homeland Security; Cohen *v.* 1187
Secretary of Homeland Security; Rodriguez *v.* 1194
Secretary of Interior *v.* Buono 1169
Secretary of Interior; Butler *v.* 1103
Secretary of Interior; Carcieri *v.* 379,807,991
Secretary of Interior; Michigan Gambling Opposition *v.* 1137
Secretary of Interior; National Mining Assn. *v.* 1062
Secretary of Navy; Baer *v.* 1119,1219
Secretary of Navy; Limpin *v.* 1076
Secretary of Navy *v.* Natural Resources Defense Council, Inc. . . 7,807
Secretary of Navy; Stoyanov *v.* 884,1064
Secretary of State of Cal.; Lightfoot *v.* 1151
Secretary of State of Conn.; Wrotnowski *v.* 1083
Secretary of State of Idaho *v.* Pocatello Ed. Assn. 353
Secretary of State of Ill.; Hopkins *v.* 1182
Secretary of State of La.; Libertarian Party *v.* 940
Secretary of State of N. J.; Donofrio *v.* 1067
Secretary of State of Tex.; Texas Democratic Party *v.* 1100
Secretary of Treasury; Andrews-Willmann *v.* 1117
Secretary of Treasury; Lang *v.* 820
Secretary of Veterans Affairs; Alonzo *v.* 1159
Secretary of Veterans Affairs; Brown *v.* 1056,1209
Secretary of Veterans Affairs; Gebhart *v.* 1087
Secretary of Veterans Affairs; Haas *v.* 1149
Secretary of Veterans Affairs; Jones *v.* 913
Secretary of Veterans Affairs; Laity *v.* 1016,1130
Secretary of Veterans Affairs; Mansfield *v.* 1101

Page
Secretary of Veterans Affairs; Olson *v.* 925,1082
Secretary of Veterans Affairs; Roberts *v.* 996
Secretary of Veterans Affairs *v.* Sanders 992
Secretary of Veterans Affairs *v.* Simmons 992
Secretary of Veterans Affairs; Winsett *v.* 992,1095
Securities and Exchange Comm'n; Fox *v.* 1103,1218
Security Classification Committee; Threatt *v.* 1183
Security Mortgage Brokers; McKenna *v.* 821
Seely *v.* Arkansas 898
Segovia-Portillo *v.* United States 878
Sehen *v.* United States 1089
Self *v.* Rimmer 1188
Seljan *v.* United States 1195
Sells *v.* United States 1202
Seminole Tribe of Fla. *v.* Florida House of Representatives 1212
Senat *v.* United States 915
Senator *v.* California 1134
Senator *v.* Senator 1093
Senator *v.* United States 901
Senator *v.* U. S. Court of Appeals 1067,1168
Senator *v.* Valadez 1163
Sengel; Konan *v.* 821
Sengsatheuane *v.* United States 915
Seraphin *v.* United States 907
Server Beach; Bansal *v.* 1159
Servin *v.* United States 957
Servin-Terrasas *v.* United States 957
Sessa *v.* Kerestes 836
Seton Corp.; Altheimer *v.* 1012,1128
Settle *v.* United States 859,1038
Settles *v.* United States 1140
Seven Up Pete Venture *v.* Schweitzer 885
Seward *v.* Province 834
Sewerage and Water Bd. of New Orleans *v.* Bennett 970
Seymour *v.* United States 852,993,1127
Shabazz *v.* Newsom 1156
Shabazz *v.* Texas 858
Shabazz *v.* United States 959
Shabazz *v.* White 1214
Shah *v.* Helen Hayes Hospital 827,1063
Shahin *v.* Del-One Del. Federal Credit Union 1153
Shamburger *v.* Florida 1052
Shannon; Lloyd *v.* 1072
Shannon; Morales *v.* 893

Page
Shannon *v.* Nebraska 901
Shannon; Smith *v.* 925
Shannon; Thomas *v.* 907
Sharif *v.* Wellness International Network, Ltd. 1085
Sharifi *v.* Alabama 1010
Sharikas *v.* Kelly 1189
Sharma *v.* Sharma 887
Sharp *v.* District Court of Minn., Hennepin County 1158
Sharpe *v.* Stovall 1054
Sharrett; Williams *v.* 850,1081
Shatzer; Maryland *v.* 1152
Shaun Xin Xu *v.* McLaughlin Res. Inst. for Biomedical Sciences 845
Shaw *v.* Quarterman 972,1129
Shaw *v.* Quinn 1186
Sheard *v.* California 878
Sheehy *v.* Quarterman 861
Sheet Metal Workers' National Pension Fund, Plan A; Robinson *v.* 884
Sheets; Butts *v.* 1037
Sheets; Dugger *v.* 1051
Shelby *v.* United States 1031,1127
Sheldon; Widel *v.* 1056
Shell *v.* Hollywood Housing Authority 1004
Shell *v.* Schwartz 891
Shell Oil Co.; Fonteneaux *v.* 1171
Shell Oil Co. *v.* United States 1095
Shell Oil Products Co. LLC *v.* Mac's Shell Service Inc. 1043
Shell Oil Products Co. LLC; Mac's Shell Service Inc. *v.* 1043
Shelton *v.* Phelps 943
Shelton *v.* United States 908,1177
Shepard *v.* United States 1080
Shepherd; Ramos *v.* 1114
Sherman *v.* California 1034
Sherratt *v.* Friel 1002
Sherrill; Rolle *v.* 805,1151
Sherrod; Brown *v.* 1107
Sherrod; McCree *v.* 922
Sherry; Nunley *v.* 947
Sherry; Polk *v.* 912
Shi *v.* United States 934
Shields *v.* United States 957
Shih Wei Navigation Co. Ltd.; De Leon *v.* 824
Shik Park *v.* United States 933
Shimer *v.* Commodity Futures Trading Comm'n 1136
Shinseki; Alonzo *v.* 1159

Page
Shinseki; Gebhart *v.* 1087
ShisInday *v.* Quarterman 815
Shobe *v.* McKune 954
Shoreline; Stover *v.* 890
Shorewood; Johnson *v.* 886
Short, *In re* 810
Short *v.* Jett 871
Short *v.* Louisiana 869
Short *v.* Schultz 1197
Shortz *v.* Auburn Univ. at Montgomery 1054
Shoupe *v.* United States 926
Shriner *v.* Minnesota 1137
Shuler *v.* Cuomo 1016
Shults *v.* United States 1158
Shumate; Parm *v.* 813
Shusterman, *In re* 810
Shusterman *v.* United States 839,1127
Siau *v.* United States 1104
Sibley *v.* Bar Counsel for D. C. 1134
Sibley *v.* Florida Bar 830,1151,1188
Sibley Memorial Hospital; Bell-Boston *v.* 1093
Sicilia *v.* United Parcel Service, Inc. 1136
Sickler *v.* Pennsylvania 895
Sieber *v.* California 840
Siegel *v.* United States 1087
Siemens Medical Solutions USA, Inc.; Davis *v.* 1171
Sierra-Quezada *v.* United States 935
Sieverding *v.* Faegre & Benson, LLP 1174
Sifford *v.* United States 929
Sifuentes *v.* Prelesnik 1054,1209
Sigley *v.* McBride 1196
Siler *v.* Dillingham Ship Repair 1093
Silicon Valley Colleges; United States *ex rel.* Bott *v.* 1012,1128
Sillas-Cabello *v.* United States 861
Silman *v.* United States 1057
Silva *v.* Bowie State Univ. 812
Silva *v.* United States 935
Silva-Colon *v.* United States 1147
Silvas *v.* Remington Oil & Gas Corp. 1102
Silverio *v.* United States 910
Silverstein *v.* Experienced Internet.com, Inc. 1070
Silvo *v.* Cain 909,1128
Simeon *v.* Texas 1035
Simmons *v.* Bush 954,1129

Page
Simmons *v.* McWilliams 1181
Simmons *v.* Newton 834
Simmons *v.* Oklahoma 920
Simmons; Peake *v.* 992
Simmons *v.* United States 1033
Simon, *In re* 1211
Simon *v.* Atlanta 1191
Simon *v.* Cook 945
Simon *v.* Georgia 1188
Simon; Republic of Iraq *v.* 1092
Simpkins *v.* Ohio 973
Simpson *v.* Mississippi 1188
Simpson *v.* Norris 1183
Simpson *v.* United States 891,1038,1194
Sims *v.* California 1156
Sims; Franklin *v.* 1102
Sinclair; Brown *v.* 1141
Singh *v.* New York 1011
Singletary *v.* United States 1204
Singleton, *In re* 1168
Singleton *v.* Culliver 841
Singleton *v.* United States 905
Singleton *v.* Volkswagen of America, Inc. 1172
Sinibaldi *v.* United States 1050
Sinquefield, *In re* 1030
Siraj *v.* United States 1200
Siriano-Ortiz *v.* United States 1116
Sirmons; Brown *v.* 948
Sirmons; Gilson *v.* 1180
Sirmons; Green *v.* 894
Sisson *v.* Wilcox 1013
Sisto; Kelly *v.* 1081,1219
Sisto; Robinson *v.* 1111
Sitkovetskiy *v.* Department of Housing and Urban Dev. 1115,1219
Sitompul *v.* Mukasey 953
Sjothun *v.* United States 977
Skadden *v.* Tarquis Alfonso 944
Skanchy; Cooper *v.* 1171
Skannal *v.* United States 978
Skelton *v.* Nooth 1191
Skelton *v.* United States 820
Skillicorn *v.* Larkins 975
Skinner *v.* McNeil 1058
Skipper *v.* Dormire 862

Page
Skolnik; Wright *v.* 1214
Skoorka *v.* Kean Univ. 817,1063
Skrzypek *v.* United States 1080
Slade *v.* Georgia 815
Slater *v.* McNeil 871
Slaton; Long *v.* 1069
Slaughter *v.* Quarterman 1179
Slaughter *v.* United States 1116
Slmbey *v.* Georgia 1137
Sloan *v.* California 1003
Slone *v.* Myers 881
Slough *v.* Frost 971
Small; Edmund *v.* 1189
Small *v.* Lantz 975
Smart *v.* United States 1122
Smash *v.* Palmer 898
SMG; Casper *v.* 827
Smith *v.* AES Sparrows Point LNG, LLC 888
Smith *v.* Al-Amin 820
Smith; Alvarez *v.* 1169
Smith *v.* Bernanke 976
Smith *v.* California 866,895,1111,1139
Smith; Carlton *v.* 1163
Smith *v.* Clark 1016,1129
Smith *v.* Clerk of U. S. District Court 1037
Smith *v.* Consolidated Freightways, Inc. 1046
Smith; Covington *v.* 849
Smith *v.* Finnan 1052
Smith *v.* Florida Dept. of Corrections 1106
Smith *v.* Friedman 1048,1150
Smith; Glover *v.* 1083
Smith *v.* Gomez 1106
Smith *v.* Indiana 841,1083
Smith *v.* Johns 923
Smith; Kansas *v.* 1062
Smith; Lango *v.* 894
Smith *v.* Little 841
Smith *v.* Loomis 998
Smith; Mason *v.* 853
Smith *v.* Massachusetts 893
Smith; Mays *v.* 974
Smith *v.* McNeil 861,1074,1113,1209
Smith *v.* Michigan 838,1027
Smith; Miller *v.* 1188,1216

Page
Smith *v.* Mills 830
Smith *v.* Mississippi Dept. of Corrections 847
Smith *v.* O'Malley 1052
Smith *v.* Patrick 915
Smith; Rice *v.* 917
Smith *v.* Schriro 1072
Smith *v.* Shannon 925
Smith *v.* Spisak 1169
Smith; Sveum *v.* 1116
Smith; Taylor *v.* 1168
Smith *v.* Thompson 1108
Smith *v.* United States 806, 852, 853, 854, 880, 918, 922, 926, 927, 932, 934, 937, 957, 960, 993, 1006,1007,1056,1058,1078,1116,1122,1146,1148
Smith; Virsnieks *v.* 868
Smith *v.* Voorhies 1107
Smith; Watson *v.* 856
Smith *v.* Wisconsin 1183
Smithfield Housing Authority; Creech *v.* 1141
Smith Food & Drug, Inc.; Jamison *v.* 972
Smoot *v.* Virginia 1156
Sneed *v.* Alabama 1155
Sneed *v.* McNeil 1037
Snell; New Mexico *v.* 1045
Sniezek; Clark *v.* 867
Sniezek; Ragin *v.* 900
Snodgrass *v.* Robinson 813
Snowden *v.* California 865
Snowden *v.* United States 1059
Snyder; Mays *v.* 1076
Sobarzo *v.* Scribner 862
Sobin *v.* District of Columbia 931
Sobitan *v.* United States 856,1127
Socha *v.* Wilson 865
Social Security Administration; Jones *v.* 889
Sociedad Espanola de Auxilio Mutuo y Beneficencia *v.* Morales . . 1097
Society for Prevention of Trademark Abuse; Stoller *v.* 802
Society National Bank; Wesley *v.* 944
Solis *v.* Ward 913,1090
Solomon; Munchinski *v.* 817
Soltero *v.* United States 829
Sony BMG Music Entertainment Inc.; Howard *v.* 1174
Sophisticat; Umoren *v.* 948
Sorich *v.* United States 1204

Page
Soroka *v.* Garcia 836
Sorrells *v.* Texas 921
Sosa; Thompson *v.* 1181
Sosin; Taylor *v.* 1141
Soto *v.* Graham 1068
Soto *v.* United States 838,933,1116
Soto-Cervantes *v.* United States 959
Soto Fernandez *v.* United States 1119
Soto-Piedra *v.* United States 912
South Beloit; Tyrer *v.* 819
South Carolina; Baccus *v.* 1074
South Carolina; Clark *v.* 841
South Carolina; Cooper *v.* 861
South Carolina; Davis *v.* 840
South Carolina; Deleston *v.* 1108
South Carolina; Ford *v.* 918
South Carolina; Freeman *v.* 839
South Carolina *v.* North Carolina 1091
South Carolina; Owens *v.* 1141
South Carolina; Stanko *v.* 875
South Carolina Dept. of Corrections; Hendricks *v.* 1185
South Carolina Dept. of Corrections; Wagner *v.* 1110,1209
South Dakota; Gonzalez *v.* 827
Southeast Alaska Conservation Council; Alaska *v.* 1043
Southeast Alaska Conservation Council; Coeur Alaska, Inc. *v.* . . . 1043
Southern New England School of Law; Rodi *v.* 1175
Southern Tube Form, LLC; Gallaher *v.* 836,1081
South Fork Band *v.* United States 885,1098
South Street Seaport Corp.; Nordberg *v.* 1012
Southwestern Bell Telephone Co. *v.* Texas Cable Assn. 938
Southwestern Bell Telephone, L. P.; Gammino *v.* 828
Southwestern Bell Telephone, L. P.; Missouri Pub. Serv. Comm'n *v.* 1099
Southwest Research Institute; Browning *v.* 1170
Southworth *v.* Correctional Medical Services 834
Sowards *v.* Ohio 816
Sowers *v.* United States 935,1129
Sowewimo *v.* Wright 922
Spacht *v.* Troyer 1069
Spaeth *v.* Cherokee Center for Change, Inc. 883
Spagone; al-Marri *v.* 1066,1152,1220
Span *v.* Flaherty 1003
Spangle *v.* United States 961
Sparkman *v.* United States 1116
Sparrow *v.* United States 957

Page
Speagle *v.* United States 1038
Speaker of Ariz. House of Representatives *v.* Flores 1092
Spear; Schafler *v.* 1103,1218
Spears, *In re* 810
Spears *v.* United States 261
Special School Dist. No. 1, Minneapolis; M. M. *v.* 979
Speedway Superamerica, LLC; Harney *v.* 1173
Spence *v.* Educational Credit Management Corp. 1177
Spencer *v.* Chandler 1046
Spencer *v.* Kerestes 900
Spencer *v.* United States 1017,1122
Spielvogel *v.* United States 971
Spisak; Smith *v.* 1169
Spivey *v.* United States 1018
Splendid Shipping Sendirian Berhard *v.* Trans-Tec Asia 1062
Spooner; Cahill *v.* 1181
Spottsville *v.* Terry 1051
Spradley *v.* Calhoun 909
Spragling *v.* United States 936
Sprau *v.* Astrue 862
Springfield; Alltel Communications, LLC *v.* 1071
Springfield; James *v.* 1141
Sprint PCS Group *v.* Hall 814
Sprint Spectrum L. P. *v.* Hall 814
Spurlock *v.* Defense Finance and Accounting Service 1182
Spurlock *v.* Utility Service Express, LLC 998,1129
Squire *v.* Geer 945
Sriram *v.* United States 933
Stacy *v.* California 873
Staffney, *In re* 1169
Stafford, *In re* 1168
Stafford *v.* United States 1071
Stahl *v.* Florida 1172
Stahl *v.* Ozmint 920
Stalder; Armant *v.* 1051
Stalder; Stewart *v.* 1035
Stalley *v.* Methodist Healthcare 1137
Stamp *v.* Metropolitan Life Ins. Co. 1062
Stanbury *v.* Mukasey 1003
Standard Ins. Co.; Mallios *v.* 815
Stanford *v.* Kentucky 910
Stanko *v.* South Carolina 875
Stanley *v.* United States 1104
Stanton *v.* Arizona Life Coalition 815

Page
Stanton; E. I. du Pont de Nemours & Co. *v.* 1084
Starnes *v.* Ohio 1034
Starr *v.* United States 881,921,1079
State. See also name of State.
State Bar of Cal.; Bardoff *v.* 1174
State Bar of Nev.; Mirch *v.* 971
State Committee for Reorganization of School Dists.; Nolles *v.* . . 945
State Court Administrative Office; Yee *v.* 820,1127
State Electrical Work Examining Bd.; Beecher *v.* 818
State Farm Fire & Casualty Co.; Nanan *v.* 995
State Farm Mut. Automobile Ins. Co.; Allison *v.* 827
State Farm Mut. Automobile Ins. Co.; Conner *v.* 944
State Farm Mut. Automobile Ins. Co.; Rance *v.* 1107
State Resources Corp.; King *v.* 820
Stauber *v.* McGrath 969
Staunch *v.* Continental Airlines, Inc. 883
Stearman *v.* Commissioner 885
Stedman *v.* Hurley 1157
Steele *v.* Allen 831
Steele; Box *v.* 858
Steelworkers; Britt *v.* 1152
Stein; Cochran *v.* 929,1065
Stein *v.* Disciplinary Bd. of Supreme Court of N. M. 818
Steinberg; Chiplease, Inc. *v.* 1046
Steinberg; Mazin *v.* 947
Steinbuch *v.* Hyperion Books 939
Steinburg *v.* Chesterfield County Planning Comm'n 1046
Stenson *v.* Uttecht 908
Stenson; Vail *v.* 1065
Stephens *v.* Albemarle County 944
Stephens *v.* Howerton 854
Stephens; Leaphart *v.* 1164
Stephens *v.* United States 969
Stephens *v.* Wisconsin 1049
Stephenson *v.* Colorado 869
Stephenson *v.* Dow Chemical Co. 1218
Sterhan *v.* Michigan 1112
Sterngass *v.* Palisades Interstate Park Comm'n 940
Sterngass *v.* Woodbury 939
Stevens *v.* McNeil 860
Stevens *v.* United States 928,1058,1159
Stevens *v.* U. S. District Court 817
Stevens Institute of Technology; Khalil *v.* 1188
Stevenson *v.* United States 816

Page
Steward *v.* Workman 878
Stewart *v.* Cate 1085
Stewart *v.* Childers 818
Stewart *v.* Poway Unified School Dist. 1054
Stewart *v.* Stalder 1035
Stewart *v.* United States 928,1071
Stewart *v.* U. S. Bank, N. A. 973
Stewart *v.* Walker 1173
Stiles *v.* New Jersey 1086
Stines *v.* Evans 875
Stockmeier *v.* Nevada 1189
Stokely *v.* McGrath 1184
Stoller *v.* Attorney Registration and Disciplinary Comm'n 808
Stoller *v.* Pure Fishing, Inc. 1032
Stoller *v.* Society for Prevention of Trademark Abuse 802
Stoller *v.* Tepper 842
Stoner; Wilcox *v.* 814
Stony Brook Univ.; Gasparik *v.* 1173
Storage Technology Corp.; Yue *v.* 1094
Stoterau *v.* United States 1123
Stout *v.* United States 880
Stovall; Sharpe *v.* 1054
Stover; Saterstad *v.* 846
Stover *v.* Shoreline 890
Stowitzky; O'Neil *v.* 1074
Stoyanov *v.* Winter 884,1064
Strahan *v.* United States 976
Stratton *v.* Board of County Comm'rs of Sarasota County 1013
Stratton *v.* United States 866
Straub *v.* United States 812
Straw *v.* United States 874
Street *v.* United States 959
Strickland *v.* Branker 1105
Strickland; Cooey *v.* 940
Strickland *v.* Florida 1144
Strickland *v.* McNeil 1004
Strickland *v.* Quarterman 837,1090
Strickland *v.* Virginia 846
Stringer *v.* United States 1049
Stroman *v.* Reynolds 1178
Stroman Realty, Inc. *v.* Antt 970
Stroman Realty, Inc. *v.* Wercinski 816
Strong *v.* Sullivan 832
Stroud *v.* McNeil 1156

Page
Strubinger *v.* Pennsylvania Dept. of Environmental Protection . . 883
Struck *v.* Cook County Public Guardian 1134
Strum *v.* Palakovich 838
Stryker Corp. *v.* Trimed, Inc. 824
Stubler *v.* United States 931
Stucky *v.* Hawaii Dept. of Ed. 1101
Stumpner *v.* United States 961
Stupakoff *v.* Otto (GmbH & Co. KG) 825
Stupka *v.* United States 850
Suarez; Lau *v.* 1164
Suarez *v.* Ortiz 864
Suffolk County Bd. of Elections; Fischer *v.* 1151
Sukup *v.* United States 1121
Sullivan *v.* Augusta 821
Sullivan; Strong *v.* 832
Sullivan *v.* Tennessee 949
Summers *v.* Earth Island Institute 488
Summers *v.* United States 1132
Summit County; Brothers *v.* 1070
Summit Security Systems, Inc.; Bhaduri *v.* 902,1081
Summum; Duchesne City *v.* 1210
Summum; Pleasant Grove City *v.* 460
Sumrell *v.* Mississippi 952
Sunarno *v.* Holder 1185
Sunday *v.* Circuit Court of Ala., Lee County 998
Sunderland *v.* Washington Dept. of Social and Health Services . . 815
Sunseri *v.* Proctor 1138
Suntrust Banks, Inc.; Williams *v.* 1099
Superintendent of penal or correctional institution. See name or title of superintendent.
Superior Court of Cal., Alameda County; Hung Ha *v.* 914,1082
Superior Court of Cal., Imperial County; Guadarrama *v.* 875
Superior Court of Cal., Los Angeles County; Histon *v.* 1093
Superior Court of Cal., Orange County; Garden Grove *v.* 1044
Superior Court of Mass.; Higgs *v.* 1032
Supreme Court of La.; Mahogany *v.* 833
Supreme Court of N. H.; Kuperman *v.* 899
Supreme Court of P. R.; Curras-Ortiz *v.* 1172
Supreme Court of Va.; Switzer *v.* 1115
Suttles *v.* United States 853
Sutton *v.* Farwell 1115
Sutton *v.* Oklahoma 1047
Sveum *v.* Smith 1116
Swafford *v.* United States 936

Page
Swain, *In re* 992,1096
Swakeen *v.* New York City Health and Hospitals Corp. 808
Swami, Inc. *v.* Lee 1085
Swanberg *v.* United States 916
Swann *v.* United States 1202
Swanson *v.* United States 1005
Swearingen *v.* Texas 1199
Sweeney *v.* Indiana 1003
Sweeney *v.* Mukasey 1078
Switzer *v.* Supreme Court of Va. 1115
Swope *v.* United States 1145
Sykes *v.* Delaware 969
Sylvester *v.* United States 920
Syngenta Seeds, Inc.; Canyon County *v.* 970
Szarewicz *v.* Court of Common Pleas of Pa., Allegheny County . . 1165
Szarewicz *v.* Rendell 1057
T. A.; Forest Grove School Dist. *v.* 1130
Taba *v.* United States 934
TacCo Falcon Point, Inc.; Clapper *v.* 995
Tackitt; Gallardo *v.* 1067
Tadlock; Woody *v.* 901
Tafoya; Gonzales *v.* 890
Tairu *v.* United States 805
Takahashi *v.* United States 873
Tal *v.* DCR Fund I, L. L. C. 814
Talik *v.* Federal Marine Terminals, Inc. 880
Talley *v.* Alabama Dept. of Public Safety 873
Talley *v.* Moody 873
Talwar *v.* Catholic Healthcare Partners 1035
Tampa Sports Authority; Johnston *v.* 1138
Tamplin; Kirkland *v.* 945
Tang *v.* Jianguang Wang 1175
Tang Lo *v.* United States 978
Tan Huang *v.* Bell 926,1082
Tann *v.* United States 1088
Tantay *v.* Mukasey 819
Tapanes *v.* United States 971
Tapia; Lovato *v.* 898
Tapscott; Jacobs *v.* 887
Tarquis Alfonso; Skadden *v.* 944
Tarro; Copp *v.* 1107
Tarvin *v.* Texas Bd. of Criminal Justice 1002
Tatarow Family Partners, Ltd.; Randolph *v.* 1000,1129
Tate *v.* Bock 1156

Page
Tate *v.* Executive Management Services, Inc. 1175
Tate *v.* United States 847
Tatum *v.* Curtis 808,1072,1159
Tauati *v.* United States 928
Tavares *v.* Meyers 1116
Tavarez *v.* United States 1049,1167
Tavia *v.* McNeil 950
Tax Comm'r of Ohio; Columbia Gas Transmission Corp. *v.* 1097
Taylor *v.* Battles 1194
Taylor *v.* Beard 846
Taylor; Bell *v.* 1035
Taylor *v.* California 1106,1188
Taylor *v.* Frisby 972
Taylor; Hackett *v.* 873
Taylor *v.* Indiana 1142
Taylor *v.* Lake Worth 1033,1150
Taylor *v.* Michigan 1005
Taylor *v.* Missouri 1154
Taylor *v.* Nikolits 1087
Taylor *v.* O'Neil 1035
Taylor *v.* Platinum Property Management 1168
Taylor *v.* Smith 1168
Taylor *v.* Sosin 1141
Taylor *v.* Texas 1010
Taylor *v.* United States 878,890,894,909,927,1042,1120,1123,1132
Teachers' and State Employees' Ret. Sys. of N. C.; Whisnant *v.* . . 1174
Tedder *v.* Culliver 808
Teh *v.* United States 1198
Tellez-Martinez *v.* United States 871
Telxon Corp.; Dupre *v.* 882,1081
Temple Univ. School of Dentistry; Millington *v.* 954
Tenesaca Delgado *v.* Mukasey 887
Tennessee; Brothers *v.* 838
Tennessee; Harris *v.* 932
Tennessee; Hearing *v.* 1113
Tennessee; Lewis *v.* 994
Tennessee; Marsh *v.* 947
Tennessee; McGowan *v.* 1036,1164
Tennessee; Northern *v.* 1214
Tennessee; Norton *v.* 1034
Tennessee; Rathbone *v.* 1192
Tennessee; Richardson *v.* 1036
Tennessee; Rimmer *v.* 852
Tennessee; Ross *v.* 1176

Page
Tennessee; Sullivan *v.* 949
Tennessee; Wells *v.* 974
Tennessee Dept. of Children's Services; R. D. M. *v.* 824
Tennis; Buggs *v.* 1190
Teoume-Lessane *v.* United States 927
Tepper; Stoller *v.* 842
Terrell; Leger *v.* 1192
Terry, *In re* 810
Terry *v.* Hamrick 1004
Terry; Spottsville *v.* 1051
Terry *v.* United States 904
Texas; Aldridge *v.* 842
Texas; Andino *v.* 1185
Texas; Andino Figueroa *v.* 1185
Texas; Blakes *v.* 881
Texas; Bruno *v.* 1066,1152
Texas; Bryant *v.* 1000
Texas; Busby *v.* 1050
Texas; Caldwell *v.* 999
Texas; Castillo *v.* 1053
Texas; Cedeno *v.* 833
Texas; Chase *v.* 832,1089,1127
Texas; Clark *v.* 999
Texas; Collard *v.* 1137
Texas; Conlin *v.* 999
Texas; Crawford *v.* 851,1040
Texas; Davidson *v.* 1187
Texas; Doyle *v.* 844
Texas; Eggert *v.* 1044
Texas; Eisenman *v.* 1144
Texas; Espinal *v.* 949
Texas; Florance *v.* 1173
Texas; Flores Vera *v.* 1002,1129
Texas; Fuller *v.* 806,1105
Texas; Gaitan *v.* 1158
Texas; Garcia *v.* 949,1002
Texas *v.* Haley 1212
Texas; Hernandez *v.* 940
Texas; Hunter *v.* 832
Texas; Ingram *v.* 1185
Texas; Johnson *v.* 1162
Texas; Kickapoo Traditional Tribe of Tex. *v.* 811
Texas; Lane *v.* 818
Texas; Lopez-Cruz *v.* 897

Page
Texas; Lucero *v.* 818
Texas; Martin *v.* 1094,1108
Texas; Marx *v.* 828
Texas; Mata *v.* 845
Texas; McAndrew *v.* 944
Texas; McCray *v.* 1034
Texas; Medellín *v.* 922
Texas; Meineke *v.* 948
Texas; Moore *v.* 1149
Texas; Morris *v.* 1220
Texas; Navarro-Ramirez *v.* 831
Texas; Neal *v.* 1154
Texas *v.* New Mexico 806
Texas; Olvera Jimenez *v.* 892
Texas; Pondexter *v.* 1219
Texas; Prible *v.* 833,1176
Texas; Pumphrey *v.* 897
Texas; Richardson *v.* 832
Texas; Ries *v.* 990
Texas; Robinson *v.* 1000
Texas; Russell *v.* 1193
Texas; Shabazz *v.* 858
Texas; Simeon *v.* 1035
Texas; Sorrells *v.* 921
Texas; Swearingen *v.* 1199
Texas; Taylor *v.* 1010
Texas; Thomas *v.* 832
Texas; Thompson *v.* 877
Texas; Trevino *v.* 1075
Texas; Turner *v.* 1179
Texas; Watkins *v.* 846
Texas; Wisdom *v.* 837
Texas; Woodring *v.* 897
Texas Bd. of Criminal Justice; Tarvin *v.* 1002
Texas Cable Assn.; AT&T Tex. *v.* 938
Texas Cable Assn.; Southwestern Bell Telephone Co. *v.* 938
Texas Democratic Party *v.* Andrade 1100
Texas Dept. of Criminal Justice; Criner *v.* 1075
Texas Dept. of Criminal Justice, Corr. Institutions; Malley *v.* 1106
Texas Health Systems; Poliner *v.* 1149
Texiera Goncalves *v.* United States 1217
Thai Minh Thuy *v.* United States 1119
Thampi *v.* Collier County Bd. of Comm'rs 1153
Thane International, Inc. *v.* Milkowski 826

Page
Thanh Hoang *v.* United States 1019
Thebeau *v.* United States 925
The Dalles *v.* T. R. 825
Theilen; UFO Chuting of Haw., Inc. *v.* 1044
Therrien *v.* Martin 950,1090
Theusch *v.* Berg 1212
Thian Teh *v.* United States 1198
Thigpen *v.* United States 1059
Thinh Cao *v.* United States 904
T H Investment, Inc. *v.* Kirby Inland Marine, LP 1098
Thlang *v.* California 849
Thomas, *In re* 809
Thomas; Baca *v.* 1099
Thomas *v.* Baker 1002
Thomas *v.* Donat 1116
Thomas *v.* Evansville Vanderburgh School Corp. 994,1128
Thomas; Fedora Inc. *v.* 819
Thomas *v.* Florida 850,855,1016
Thomas; Green *v.* 1183
Thomas *v.* Johnson 846
Thomas *v.* New York 953
Thomas *v.* New York City 1152
Thomas *v.* Quarterman 815,868,1073
Thomas *v.* Shannon 907
Thomas *v.* Texas 832
Thomas *v.* Thompson 863,1081
Thomas *v.* United States 874,
886,907,922,923,960,1081,1133,1148,1159,1194
Thomas *v.* Walker 1179
Thomas; Wilbon *v.* 951
Thomas; Willis *v.* 1107
Thomas *v.* Wynder 912
Thomas & Betts Corp.; Hayes *v.* 943
Thompson *v.* Ault 1004
Thompson; Brown *v.* 856
Thompson *v.* California 836
Thompson *v.* Catterson 912
Thompson *v.* Choinski 1118
Thompson *v.* Department of Air Force 1158
Thompson; Dixon *v.* 999,1129
Thompson; Downing *v.* 829
Thompson; Evans *v.* 911
Thompson; Finn *v.* 1181
Thompson *v.* Garcia 1179

Page
Thompson *v.* Greenwood 880,1064
Thompson *v.* Howard Brothers Inc. 1013,1150
Thompson; Jackson *v.* 865,1127
Thompson *v.* Lafler 1015
Thompson *v.* Quarterman 1014,1178
Thompson; Richards *v.* 1141
Thompson; Smith *v.* 1108
Thompson *v.* Sosa 1181
Thompson *v.* Texas 877
Thompson; Thomas *v.* 863,1081
Thompson *v.* Turk 1069
Thompson *v.* United States 879,936,993,1087
Thompson R2–J School Dist.; Luke P. *v.* 1173
Thorne *v.* United States 979,1090
Thornton *v.* Evans 848
Thornton *v.* Holder 1174
Threatt *v.* Birkett 914,1065
Threatt *v.* Security Classification Committee 1183
Threatt *v.* United States 1192
Thrower *v.* United States 855
Thurman *v.* United States 1194
Thurmer; Baker *v.* 1056
Thurmer; Johnson *v.* 1143
Thurmer; Kyles *v.* 973
Thurmer; Poirier *v.* 806
Thurmer; Williams *v.* 866
Thurner *v.* Commissioner 824
Thuy *v.* United States 1119
Thyer *v.* United States 931,1065
Tiber Shipping LLC *v.* BP Oil International Ltd. 821
Tice *v.* Wilson 948
Tidewater Marine LLC; Jones *v.* 1068
Tidwell *v.* United States 1084
Tielsch *v.* Pennsylvania 1072
Tiger *v.* Oklahoma 846
Tilcock *v.* Donat 1112
Tiller; Dalton *v.* 1099
Tillman *v.* Mendoza-Powers 1113
Tillman *v.* Salazar 850
Tillman; Ucak *v.* 1189
Time Warner, Inc.; Nissim Corp. *v.* 1218
Timmons *v.* Manatt, Phelps & Phillips, LLP 852
Timson *v.* Sampson 840
Tinajero-Porras *v.* United States 918

Page
Tingle *v.* United States 976
Tinh Thanh Hoang *v.* United States 1019
Tinklenberg *v.* United States 1010
Tinoco-Barajas *v.* United States 924
Tinoco Garcia *v.* United States 860
Tinsley *v.* Florida Dept. of Corrections 1180
Tippins *v.* United States 1120
TIP Systems, LLC *v.* Independent Technologies, Inc. 1046
Tirado *v.* United States 969
Tivis *v.* Beecroft 1034
TiVo, Inc.; EchoStar Communications Corp. *v.* 888
Tkachik *v.* Comerica, Inc. 824
T. K. N. *v.* United States 1039
T-Mobile USA, Inc. *v.* Janda 813
T-Mobile USA, Inc. *v.* Lowden 813
Tobar-Campos *v.* United States 1061
Tobin; Book *v.* 1105
Todd *v.* Evans 806
Toepfer *v.* United States 1136
Tokarz *v.* Lot Polish Airlines 822
Tokarz *v.* Polskie Linie Lotnicze 822
Tolbert *v.* Cain 865
Toler *v.* Florida 901
Tolliver *v.* Brown 922
Tolliver *v.* California 1000
Tolliver *v.* United States 1118
Tompkins; Chu Young Yi *v.* 946,1160
Tompkins *v.* Florida 1161
Tompkins *v.* McNeil 1161
Toney *v.* United States 1103
Torjagbo *v.* United States 1003,1129
Torrefranca *v.* Schriro 1115
Torres *v.* California 1053
Torres *v.* Florida 1215
Torres *v.* Horel 1075
Torres; Man-Seok Choe *v.* 1139
Torres *v.* United States 861,924,961,962
Torres-Rodriguez *v.* United States 861
Torrey *v.* Mississippi 852
Toua Hong Chang *v.* Minnesota 931
Touch of Class Painting, Inc.; Johnson *v.* 1115
Tovar *v.* California 867
Town. See name of town.
Townsend; Atlantic Sounding Co. *v.* 993,1095

Page
Townsend *v.* Dingle 1016
Townsend *v.* United States 978
Township Apartments Assn., Ltd.; Bafford *v.* 877
Toyota Motor Sales, U. S. A., Inc.; Meshwerks, Inc. *v.* 1138
T. R.; The Dalles *v.* 825
Trader *v.* U. S. District Court 1060
Trahan *v.* Ayers 1016
Trainer Wortham & Co. *v.* Betz 808
Trammel *v.* United States 1079
Tran *v.* United States 863
Tran *v.* Washington 1055
Transit Mix Concrete & Materials Co.; Johnson *v.* 1047
Translogic Technology, Inc. *v.* Dudas 813
Translogic Technology, Inc. *v.* Hitachi, Ltd. 1045
Transocean Offshore USA, Inc.; Cain *v.* 880
Transportation Security Administration; Wright *v.* 839
Transport Workers; Harris *v.* 905,1082
Trans-Spec Truck Service, Inc. *v.* Caterpillar, Inc. 995
Trans-Tec Asia; Splendid Shipping Sendirian Berhard *v.* 1062
Trant; Barritt *v.* 803,1043
Trapp; White *v.* 831
Travelers Indemnity Co. *v.* Bailey 1083,1167
Travis *v.* Park City Municipal Corp. 1114
Trawick *v.* Allen 1033
Treadway *v.* California 1153
Treadway *v.* Kane 1114
Treasurer of N. M.; Cuba Soil & Water Conservation Dist. *v.* . . . 1099
Trenchfield *v.* Mukasey 1032
Trenkler *v.* United States 1193
Trevino *v.* Gomez 1214
Trevino *v.* Texas 1075
Tribbett *v.* Maryland 823
Tribbey; Wallace *v.* 1105
Trigg *v.* United States 1202
Trimed, Inc.; Stryker Corp. *v.* 824
Trimuar *v.* McNeil 893
Tristan; Williams *v.* 847
Tri-State Financial, LLC *v.* Lovald 1046
Trotter *v.* McNeil 860,1087
Trout *v.* Virginia 809,1032
Troyer; Spacht *v.* 1069
Trucchio *v.* United States 978
Truesdale *v.* Mukasey 1124
Trujillo *v.* California 1120

Page
Trujillo *v.* Colorado Division of Ins. 1215
Trung Nguyen *v.* Runnels 857
Truong *v.* Kartzman 1094
Tu *v.* Washington 1052
Tucci Learning Solutions, Inc.; Persik *v.* 883,1127
Tucker *v.* Monroe 1067,1135
Tucker *v.* United States 806,1008
Tucker's Estate *v.* Interscope Records, Inc. 827
Tucson Police Dept.; Cranmer *v.* 1100
Tuggle *v.* Kramer 844
Tulare County Sheriff Dept.; Vera *v.* 1094
Turbitt; Pitchford *v.* 1144
Turinski *v.* Fire Fighters 944
Turk; Thompson *v.* 1069
Turkish; Acuna *v.* 813
Turnbull *v.* Quarterman 916,1065
Turner; Anderson *v.* 908
Turner *v.* City Council of Fredericksburg 1099
Turner *v.* Civil Service Employees Assn. 1190
Turner *v.* Commissioner 1154
Turner; Djukic *v.* 884
Turner; Medley *v.* 841,1081
Turner *v.* Mississippi 951,1082
Turner *v.* Mooneyham 850
Turner; Perry *v.* 1055
Turner *v.* Perry County Coal Corp. 818
Turner *v.* Texas 1179
Turner *v.* United States 1042,1120,1123
Turner *v.* Wisconsin 900
Tuskusky *v.* Department of Corrections Training Academy 944
Tuvalu *v.* Ayers 1214
Twiggs *v.* United States 1147
TXU Generation Co. LP; CleanCOALition *v.* 1049
TXU Power; CleanCOALition *v.* 1049
Tyler; Cabbagestalk *v.* 1074
Tyler *v.* United States 936
Tyndall *v.* United States 1139
Tyree *v.* United States 963
Tyrer *v.* South Beloit 819
Tyson Fresh Meats, Inc.; Medina-Salas *v.* 1095
Ucak *v.* Tillman 1189
Udoh *v.* United States 910
UFO Chuting of Haw., Inc. *v.* Theilen 1044
Ulep; Williams *v.* 1074

Page
Ullah *v.* United States 1008
Ulrich *v.* Bell 1214
Ulrich *v.* Ulrich 1094
UMCO Energy *v.* Pennsylvania Dept. of Env. Protection 1047
Umoren *v.* Aladekoba Sophisticat 948
Umoren *v.* Express Shipping International 948
Umoren *v.* McDonald's Corp. 948
Umoren *v.* Sophisticat 948
Umphfrey *v.* Missouri 835
Underwood *v.* United States 1094
Union. For labor union, see name of trade.
Union Pac. R. Co. *v.* Locomotive Eng'rs Gen. Comm. Adjustment 1169
United. For labor union, see name of trade.
United Parcel Service, Inc.; Mowry *v.* 1171
United Parcel Service, Inc.; Phillips *v.* 851,1090
United Parcel Service, Inc.; Sicilia *v.* 1136
United States. See also name of other party.
U. S. Bank, N. A.; Stewart *v.* 973
U. S. Citizenship & Immigration Services; Anwar *v.* 883
U. S. Court of Appeals; Baskett *v.* 1029
U. S. Court of Appeals; Senator *v.* 1067,1168
U. S. Court of Appeals; Washington *v.* 831,845
U. S. District Court; Baggett *v.* 1112
U. S. District Court; Basciano *v.* 1177
U. S. District Court; Bello *v.* 995,1128
U. S. District Court; Benson *v.* 929
U. S. District Court; Brown *v.* 875
U. S. District Court; Coggins *v.* 1005,1130
U. S. District Court; Fulton *v.* 1004
U. S. District Court; Gabrill *v.* 837,1063
U. S. District Court; Hall *v.* 1108
U. S. District Court; Hickmon *v.* 1164
U. S. District Court; McMillen *v.* 857
U. S. District Court; Means *v.* 1008
U. S. District Court; Mills *v.* 1113
U. S. District Court; Stevens *v.* 817
U. S. District Court; Trader *v.* 1060
U. S. District Court; Vandivere *v.* 893
U. S. District Court; Williams *v.* 872,1064
U. S. District Court; Young *v.* 851
U. S. District Judge; Bradd *v.* 1191
U. S. Federal Reserve System; Schulz *v.* 1029
United States Fire Ins. Co. *v.* General Electric Capital Corp. . . . 1172
U. S. Law Enforcement Units; Badruddoza *v.* 875

Page
U. S. Marshals Service; Zani *v.* 856
U. S. Navy Commander; al-Marri *v.* 1066
U. S. Navy Commander, Consolidated Naval Brig; al-Marri *v.* 1152,1220
U. S. Olympic Committee; Hollonbeck *v.* 938
U. S. Penitentiary at McCreary; Pabellon *v.* 1037
U. S. Postal Service; Allen *v.* 1056
U. S. Postal Service; Reed *v.* 1109
United States Steel Corp. *v.* Canadian Lumber Trade Alliance . . 819
U. S. Trustee; Muresan *v.* 925
University Good Samaritan; Johnson *v.* 1044
University of D. C. Bd. of Trustees; Dasisa *v.* 1105
University of Md. at College Park; Miranda *v.* 1096,1177
University of Nebraska-Lincoln; Yu Lin *v.* 844
Unverzagt *v.* United States 1060
Upshaw *v.* United States 1059
Upton *v.* United States 830
Uribe-Salas *v.* United States 925
Urrutia-Jimenez *v.* United States 1018
US Airways, Inc.; Garland *v.* 856
USEC Inc. *v.* Eurodif S. A. 305,807,941
Utah; Dodge *v.* 872
Utah; Lafferty *v.* 830
Utility Air Regulatory Group *v.* New Jersey 1169
Utility Service Express, LLC; Spurlock *v.* 998,1129
Utility Water Act Group *v.* Riverkeeper, Inc. 941
Uttecht; Stenson *v.* 908
Vail *v.* Raybestos Products Co. 1192
Vail *v.* Stenson 1065
Vaile *v.* Porsboll 994
Vakker *v.* Mukasey 880
Valadez; Senator *v.* 1163
Valderrama *v.* Honeywell Technology Solutions, Inc. 979
Valdes *v.* United States 939
Valdez *v.* California 906
Valdez *v.* McKune 924
Valdez; Polar Tankers, Inc. *v.* 1083
Valdez-Barrientos *v.* United States 1201
Valdez-Diaz *v.* United States 1019
Valdivia *v.* Hedgpeth 1052
Valencia *v.* California 891
Valenciano *v.* United States 993
Valentine *v.* Dodd 951
Valentine *v.* Richardson 1155
Valentine *v.* United States 1058

Page
Valenzuela Grullon *v.* Mukasey 813
Vallejo *v.* United States 1124
Valls; Holt *v.* 1073,1086
Value City Furniture; Allen *v.* 893,1064
Van Anh *v.* United States 904
Vance *v.* Indiana 868
Vance *v.* United States 1120
Van de Kamp *v.* Goldstein 335
Vanderver; Patterson *v.* 1115
Vandivere *v.* U. S. District Court 893
Van Gorder *v.* Grand Trunk Western R. Co. 994
Vanguard Car Rental USA, Inc.; Garcia *v.* 1174
Vanhook *v.* United States 1133
Vann *v.* Illinois 1109
Van Nguyen *v.* United States 1199
Vanrybroek; Marquardt *v.* 903,1040
Van Stuyvesant *v.* Berbary 838
Vargas *v.* California 907
Vargas *v.* Local Union No. 32B–32J 816
Vargas; Muhammad *v.* 802
Varghese *v.* California 1143
Varner *v.* United States 825
Vasbinder; Boone *v.* 851
Vasbinder; Watkins *v.* 951
Vasiloff *v.* United States 1125
Vasquez *v.* United States 912
Vasquez Carbajal *v.* United States 1119
Vasquez-Montalban *v.* United States 835
Vasquez-Morales *v.* United States 896
Vasquez-Perez *v.* United States 924
Vasquez-Torres *v.* United States 857
Vaughan *v.* New York 910
Vaughn; Morrison *v.* 846,1127
Vaughn *v.* United States 1139
Vaughn *v.* Villa 1213
Vaughn; Wharton *v.* 1158
Vazquez; Eisiminger *v.* 975
Vazquez *v.* Rushton 895,1064
Vazquez *v.* United States 1119
Vazquez; Williams *v.* 848
Vazquez-Avila *v.* Mukasey 838
Veasey *v.* Criminal District Court Number 2, Dallas County 906
Vega *v.* California 1112
Vega-Santiago *v.* United States 819

Page
Veizaj *v.* Filip 1154
Vela-Ramirez *v.* United States 1050
Velasquez *v.* Virginia 1017
Velasquez-Coronado *v.* United States 1216
Velazquez *v.* New York 951
Velleff *v.* United States 1146
Veloz *v.* United States 1217
Vences-Casteneda *v.* United States 1140
Ventris; Kansas *v.* 1030,1091
Ventura *v.* North Carolina 1087
Ventura County; Robertson *v.* 885
Venture Industries Corp. *v.* Autolive ASP, Inc. 1048
Vera *v.* Texas 1002,1129
Vera *v.* Tulare County Sheriff Dept. 1094
Verde-Eb *v.* United States 833
Verdi *v.* Wilkinson County 1001,1129
Verdin-Garcia *v.* United States 868
Vergara-Torres *v.* United States 896
Verizon Wireless; Lofton-Taylor *v.* 994
Vermont *v.* Brillon 1091
Vermont Electric Power Co.; Grice *v.* 888
Vernon *v.* Ayers 1109
Vesom *v.* Atchison Hospital Assn. 970
Veterans Administration Regional Office; Griffin *v.* 917,1210
Vey, *In re* 1169
Viacom Outdoor, Inc.; Craig Outdoor Advertising, Inc. *v.* 1136
Viar *v.* United States 887,912
Vice *v.* Arizona 865
Vickers *v.* United States 1088
Victoria *v.* United States 1217
Victory Outreach Center *v.* Melso 1098
Viera *v.* Florida 909
Vietnam Assn. for Victims of Agent Orange *v.* Dow Chemical Co. 1218
Viet Nguyen *v.* United States 907
Vigil *v.* United States 886,960
Vigliotti *v.* Artus 1215
Vilches-Navarette *v.* United States 897
Villa *v.* Ayers 1195
Villa; Vaughn *v.* 1213
Village. See name of village.
Villaje del Rio, Ltd. *v.* Colina del Rio, LP 1046
Villanueva *v.* Rozum 1114
Villarreal de Parsons *v.* United States 861
Villarreal-Orozco *v.* United States 1033

Page
Villas West II of Willowridge Homeowners Assn.; Ashcraft *v.* . . . 1213
Villegas *v.* Quarterman 971
Villegas-Delgadillo *v.* United States 933
Vincent; Davis *v.* 1184
Vincent; Kornicki *v.* 930
Vincent *v.* United States 1133
Vines *v.* Johnson 848,1015,1127,1129
Viola *v.* United States 935
Viracacha *v.* Mukasey 969
Virgil *v.* United States 1121
Virginia; Arms *v.* 1195
Virginia; Ayres *v.* 1184
Virginia; Barco *v.* 1016
Virginia; Bethea *v.* 867,1081
Virginia; Bolden *v.* 920
Virginia; Carter *v.* 1117
Virginia; Fuentes *v.* 825
Virginia; Garnett *v.* 853
Virginia; Lyon *v.* 952,1128
Virginia; Patrick *v.* 1032
Virginia; Rountree *v.* 853
Virginia; Smoot *v.* 1156
Virginia; Strickland *v.* 846
Virginia; Trout *v.* 809,1032
Virginia; Velasquez *v.* 1017
Virginia Dept. of Taxation; Brailey *v.* 899
Virsnieks *v.* Smith 868
Vision Service Plan, Inc. *v.* United States 1097
Vitagliano *v.* United States 927
Vitug *v.* United States 1079
Vivanco-Gonzalez *v.* United States 1061
Vizcarra-Chaidez *v.* United States 892
Vohra *v.* Orange County 1093
Voigt *v.* Circuit Court of Wis., Dane County 1179
Voigt *v.* Frank 1144
Voinche *v.* Fine 873
Volkswagen of America, Inc.; Singleton *v.* 1172
Volusia County School Bd.; Lampkin-Asam *v.* 815,1063
Vondrak; Las Cruces *v.* 1137
von Eschenbach; CareToLive *v.* 1101
Vonner *v.* United States 816
Voorhies; Copley *v.* 1193
Voorhies; Smith *v.* 1107
Vos *v.* Barg 1211

Page
Voss; Orozco *v.* 949
Voss *v.* United States 1060
Voth *v.* Hall 1143
Vu Anh Le *v.* United States 834
Vu Nguyen *v.* United States 1072
Vu Nguyen *v.* Washington 1156
Vu Tu *v.* Washington 1052
W. *v.* Anonymous 1046
Wachovia Corp.; Hobley *v.* 1042
Waddington *v.* Sarausad 179,807
Wade; Ohio *v.* 1126
Wade *v.* United States 1057
Wadhwa *v.* Merit Systems Protection Bd. 1103
Wadhwa *v.* Quarterman 837
Wagenseller *v.* United States 1057
Wagner; Hunt *v.* 1014
Wagner *v.* South Carolina Dept. of Corrections 1110,1209
Wagner *v.* World Botanical Gardens, Inc. 827
Walker *v.* Conway 1107
Walker *v.* Florida 1195
Walker *v.* Georgia 979,1082
Walker; Glenn *v.* 945
Walker; Goodman *v.* 918,1082
Walker; Hale *v.* 911
Walker; Homer *v.* 919
Walker *v.* Kernan 953
Walker *v.* Maynard 901
Walker *v.* Munsell 1046
Walker; Stewart *v.* 1173
Walker; Thomas *v.* 1179
Walker *v.* United States 876,1007,1057,1102,1148,1216,1217
Walker; Ward *v.* 1157
Walker; Wheaton *v.* 1017
Walker; Williams *v.* 836
Wall; Avery *v.* 939
Wall *v.* Maine 877
Wallace *v.* Eason 874
Wallace *v.* Federal Judges of U. S. District Court 945
Wallace; Lopez *v.* 950
Wallace *v.* Tribbey 1105
Wallace *v.* United States 861,1009
Wallin *v.* Brill 1051
Wallin *v.* Dempewolf 1051
Walls *v.* Illinois Dept. of Correctional Clinical Psychologists 1214

Page
Walsh; Lewis *v.* 1075
Walston *v.* Walston 822,1063
Walters *v.* Hunt 851
Wang *v.* Prudential Financial Corp. 944,1081
Wang; Tang *v.* 1175
Ward, *In re* 810
Ward; Dixie National Life Ins. Co. *v.* 938
Ward; Ortiz *v.* 1189
Ward; Solis *v.* 913,1090
Ward *v.* United States 871,1125
Ward *v.* Walker 1157
Wardell *v.* United States 920
Warden. See also name of warden.
Warden, River Bend Detention Center; Ingram *v.* 1056
Wardlaw *v.* Cain 1141
Wardlaw *v.* United States 893
Waris *v.* Harris County Public Health & Environmental Services 1085
Warner *v.* Quarterman 973,1129
Warner *v.* United States 1059
Warner Brothers Pictures Network; Adams *v.* 1081
Warner-Freeman *v.* United States 871
Warren, *In re* 809,810
Warren *v.* Ercole 1179
Warren *v.* Gartman 1120
Washington; Anh Vu Nguyen *v.* 1156
Washington; Babbs *v.* 919
Washington; Baca *v.* 1180
Washington; Brady *v.* 872,1064
Washington; Coronel-Perez *v.* 1156
Washington; Eggleston *v.* 1075
Washington; Hien Vu Tu *v.* 1052
Washington; Holmes *v.* 1185
Washington; Jackson *v.* 1032
Washington *v.* Jackson State Univ. 1010
Washington; Jagger *v.* 1104
Washington *v.* Johnson 1111
Washington; Johnson *v.* 845,1063
Washington; Khanh Tran *v.* 1055
Washington; Klym *v.* 865
Washington; Light-Roth *v.* 922
Washington; Miesse *v.* 947
Washington; Nguyen *v.* 1055
Washington; Nordlund *v.* 1155
Washington *v.* Oklahoma 1073

Page
Washington; Parkison *v.* 1086
Washington; Phillips *v.* 1108
Washington *v.* Quarterman 972
Washington; Rivers *v.* 1056
Washington *v.* Safer Foundation 915
Washington; Schwab *v.* 1188
Washington *v.* United States 936,1006,1020
Washington *v.* U. S. Court of Appeals 831,845
Washington; Waterman *v.* 865
Washington; Whitt *v.* 997
Washington; Wise *v.* 850,899
Washington County; Boyett *v.* 1049
Washington Court House; Hayner *v.* 905,1082
Washington Dept. of Corrections; Baskett *v.* 1165
Washington Dept. of Fish and Wildlife; Creveling *v.* 1166
Washington Dept. of Social and Health Services; Haynes *v.* 949
Washington Dept. of Social and Health Services; Sunderland *v.* . . 815
Washington Mut. Bank; Blechman *v.* 870
Washington Mut. Bank; Janossy *v.* 1215
Washtenaw County; Schils *v.* 836,838,1001,1090
Waterman *v.* Washington 865
Watertown Livestock Auction, Inc.; Fin-Ag, Inc. *v.* 1095
Watkins, *In re* 992
Watkins *v.* Texas 846
Watkins *v.* Vasbinder 951
Watlington *v.* United States 1145
Watson *v.* Cain 889
Watson *v.* California 876
Watson; Goode *v.* 919
Watson *v.* Las Vegas Valley Water Dist. 1084
Watson; Mills *v.* 1191
Watson *v.* Mukasey 1044
Watson *v.* Pennsylvania 1167
Watson; Robertson *v.* 1011
Watson *v.* Smith 856
Watson *v.* United States 829,1104,1192
Watson *v.* Watson 824
Watson Chapel School Dist. *v.* Lowry 1212
Watts *v.* Florida Unemployment Appeals Comm'n 1109,1219
Way *v.* United States 1005
Waybright *v.* Frederick County Dept. of Fire & Rescue Services 1069
Wayne *v.* United States 856
Wayne County Circuit Court Clerks; White *v.* 1210
Waytec Electronics Corp. *v.* Rohm & Haas Electronic Materials 812

Page
Weatherly *v.* United States 866
Weathersbee; Williams *v.* 889
Weaver *v.* United States 935,1204
Webb; Hillard *v.* 1113
Webb; Neal *v.* 863
Webb *v.* Quarterman 889
Webb *v.* Rivera 1174
Webb-Edwards *v.* Beary 1100
Webber *v.* Bobby 1215
Webber *v.* United States 903
Weber *v.* Department of Veterans Affairs 1069
Webster; Benning *v.* 950
Webster *v.* Commissioner 887
Webster; Harmon *v.* 1183
Webster *v.* United States 1200
Wecht *v.* United States 1049
Weidner *v.* Florida 923
Weiland *v.* United States 1104
Wei Navigation Co. Ltd.; De Leon *v.* 824
Weinstein; Foreman *v.* 1184
Weinstein *v.* New York Dept. of Housing Preservation and Dev. 823
Weir *v.* Dormire 856
Weiss *v.* Courshon's Estate 1139
Welch *v.* Quarterman 1054
Weldon *v.* Norfolk Southern R. Co. 1097
Wellness International Network, Ltd.; Sharif *v.* 1085
Wells *v.* Court of Criminal Appeals of Tex. 1051
Wells; Donofrio *v.* 1067
Wells *v.* Tennessee 974
Wells Fargo Bank; Killingsworth *v.* 1000
Wells Fargo Bank, N. A.; Belcher *v.* 837,1063
Wells Fargo Bank, N. A.; Bush *v.* 856
Wells Fargo Bank, N. A.; Hayes *v.* 1012
Wenceslao *v.* Quarterman 913
Wendling; McCrory *v.* 839,1081
Wensel *v.* Hernandez 947,1090
Wercinski; Stroman Realty, Inc. *v.* 816
Were *v.* Ohio 1036
Wesley *v.* Illinois 1181
Wesley *v.* Janecka 1116
Wesley *v.* Society National Bank 944
West, *In re* 809
West; AK Steel Corp. Retirement Accumulation Pension Plan *v.* 1097
West; Gould *v.* 1004

Page
West; Rolle *v.* 1165
West *v.* United States 1199,1203
West-Bey *v.* Pruett 975
Westbound Records, Inc. *v.* Justin Combs Publishing 818
Westerfield *v.* United States 1163
Western Union Holdings, Inc.; Eastern Union, Inc. *v.* 1139
Weston, *In re* 1168
West Virginia; Coffman *v.* 1194
West Virginia; Hester *v.* 1032
W. Goebel Porzellanfabrik G.m.b.H.; Cambridge Lit. Properties *v.* 815
Whaley *v.* California Employment Development Dept. 821
Wharton *v.* Vaughn 1158
Wheaton *v.* Merit Systems Protection Bd. 821
Wheaton; Sandberg *v.* 828,995
Wheaton *v.* Walker 1017
Wheeler, *In re* 942
Wheeler; Futch *v.* 1145
Wheeling Pittsburgh Steel Corp.; Central W. Va. Energy Co. *v.* . . 1045
Whigham *v.* McNeil 910
Whisenhunt *v.* California 1053
Whisnant *v.* Teachers' and State Employees' Ret. System of N. C. 1174
Whitaker; Ross *v.* 883
White *v.* California 834
White *v.* Florida 1052,1057
White *v.* Gammon 860
White; Hines *v.* 1214
White; Hopkins *v.* 1182
White *v.* McDaniel 915
White *v.* McNeil 998
White *v.* New York 897
White *v.* Quarterman 999
White; Shabazz *v.* 1214
White *v.* Trapp 831
White *v.* United States 956,963,1088,1193
White *v.* Wayne County Circuit Court Clerks 1210
White; Woods *v.* 1073
Whitehill *v.* United States 1037
White Lion Van Lines, Inc. *v.* Palm Beach County 970
Whiting *v.* United States 963
Whitmill, *In re* 1152
Whitmill *v.* Quarterman 914,1027
Whitney *v.* United States 1213
Whitt *v.* Washington 997
Whittaker *v.* McDaniel 854

Page
Whittington *v.* Illinois 854
Whittington *v.* Johnson 869
Whylie *v.* United States 977
Whyte *v.* New York 1070
Widel *v.* Sheldon 1056
Wiggins *v.* United States 1147,1194
Wiig *v.* United States 1089,1219
Wilbon *v.* Booker 895
Wilbon *v.* Thomas 951
Wilcox; Sisson *v.* 1013
Wilcox *v.* United States *ex rel.* Stoner 814
Wilder *v.* United States 912,1050
Wild Waves, LLC *v.* Nickels Midway Pier, LLC 812
Wiley *v.* American Electric Power Service Corp. 990
Wiley *v.* Glassman 826
Wiley; Mathison *v.* 805
Wilkens *v.* Newton-Embry 1111
Wilkerson; Beason *v.* 856
Wilkerson *v.* Beck 1116
Wilkerson *v.* Harris 1143
Wilkerson; Kimmie *v.* 1215
Wilkins; DeReyes *v.* 1212
Wilkins *v.* Scribner 852
Wilkinson County; Verdi *v.* 1001,1129
Will *v.* Northwestern Univ. 995
Willi *v.* American Airlines, Inc. 1032
Williams, *In re* 969,1011,1168
Williams *v.* Bennett 899
Williams *v.* California 1140
Williams *v.* Court of Appeals of Mo., Eastern Dist. 1178
Williams; Fahrenholtz *v.* 1045
Williams *v.* Georgia 1054
Williams *v.* Georgia Dept. of Defense National Guard Hdqtrs. . . . 1138
Williams *v.* Gregg 864
Williams *v.* Illinois 1055
Williams *v.* J. P. Morgan Chase & Co. 882
Williams *v.* Larkins 1186
Williams; Leggett *v.* 1178
Williams *v.* Leonard 999
Williams *v.* Louisiana 1075
Williams *v.* Louisiana Attorney Disciplinary Bd. 913
Williams *v.* Moffat 1001
Williams *v.* Nish 870
Williams *v.* Ohio 947,1128

Page
Williams *v.* Oklahoma 1214
Williams *v.* Ozmint 1162
Williams *v.* Parker Abex NWL 1210
Williams *v.* Pennsylvania Dept. of Corrections 1016
Williams *v.* Phillips 900
Williams *v.* Sharrett 850,1081
Williams *v.* Suntrust Banks, Inc. 1099
Williams *v.* Thurmer 866
Williams *v.* Tristan 847
Williams *v.* Ulep 1074
Williams *v.* United States 852, 864,870,894,895,909,921,927,929,932,935,956,1006,1038,1057, 1123,1124
Williams *v.* U. S. District Court 872,1064
Williams *v.* Vazquez 848
Williams *v.* Walker 836
Williams *v.* Weathersbee 889
Williamson; Columbus Exploration, LLC *v.* 1102
Williamson *v.* United States 931
Williams-Sonoma Direct; Hunter *v.* 806
Williby *v.* California 946
Willich *v.* Quarterman 1179
Willis *v.* District of Columbia Housing Authority 1189
Willis *v.* Illinois 1016
Willis *v.* Mosley 999
Willis *v.* Thomas 1107
Willis *v.* United States 803,907
Wills; Puletasi *v.* 1056,1160
Wilson *v.* California 806,1105
Wilson *v.* Gallardo 907
Wilson; Geary *v.* 836
Wilson; Graham County Soil and Water Conservation Dist. *v.* . . . 1068
Wilson; Hill *v.* 882
Wilson *v.* Houk 872
Wilson *v.* Johnson 907
Wilson *v.* Kemna 913
Wilson *v.* McNeil 1017
Wilson *v.* Mukasey 840
Wilson; Rohn *v.* 844,1127
Wilson; Socha *v.* 865
Wilson; Tice *v.* 948
Wilson *v.* United States 801,904,1058,1121,1202
Wilson *v.* Yates 1182
Wilson-X *v.* Maryland Dept. of Human Resources 849

Page
Windt *v.* Qwest Communications International, Inc. 1098
Windt; Qwest Communications International, Inc. *v.* 1099
Winkelman *v.* United States 962,978
Winn; Barner *v.* 877
Winsett *v.* Peake 992,1095
Winston *v.* Illinois 1190
Winter; Baer *v.* 1119,1219
Winter; Limpin *v.* 1076
Winter *v.* Natural Resources Defense Council, Inc. 7,807
Winter; Stoyanov *v.* 884,1064
Wirsch *v.* United States 1008
Wischnewsky *v.* Quarterman 900
Wisconsin; Baker *v.* 1183
Wisconsin; Bethel *v.* 1191
Wisconsin; Bradley *v.* 1179
Wisconsin; Branch *v.* 1117
Wisconsin; Doss *v.* 1037
Wisconsin; Hambly *v.* 873,1090
Wisconsin; Harenda Enterprises, Inc. *v.* 1012
Wisconsin; Jackson *v.* 905
Wisconsin; Jacobs *v.* 1002
Wisconsin; King *v.* 930
Wisconsin; LaCount *v.* 1046
Wisconsin; Otis *v.* 849
Wisconsin; Schaefer *v.* 881
Wisconsin; Smith *v.* 1183
Wisconsin; Stephens *v.* 1049
Wisconsin; Turner *v.* 900
Wisconsin Bd. of Bar Examiners; Brewer *v.* 1003
Wisconsin Central R. Co.; Mundelein *v.* 814
Wisdom *v.* Dickerson 904
Wisdom *v.* Texas 837
Wise *v.* Hettich 1110
Wise *v.* Washington 850,899
Wiseman *v.* California 1112
Wisler; Bowyer *v.* 1184
Wisniewski *v.* Rodale, Inc. 814
Witherspoon *v.* United States 926,1008
Woerth, *In re* 810,1028
Wofsy *v.* Palm Shores Retirement Community 1157
Wolf, *In re* 809,1030
Wolfe; Gonzalez *v.* 1144
Wolfinsohn; Berberick *v.* 805
Wolfson *v.* Broadbent 1181

Page
Wollenhaupt; Day *v.* 924
Wolliston *v.* Florida 850
Woltz, *In re* 1168
Womack *v.* Curry 928
Wong *v.* United States 961
Wood *v.* Del Giorno 826
Wood *v.* Quarterman 1108
Wood *v.* United States 929,1037
Woodberry *v.* United States 920,1028
Woodbury; Sterngass *v.* 939
Woodel *v.* Florida 1036
Woodlawn Community Development Corp.; Byrd *v.* 914
Woodring *v.* Texas 897
Woodruff *v.* United States 898
Woods; Flemming *v.* 1184
Woods; Johnson *v.* 841
Woods *v.* Lafler 1015
Woods *v.* White 1073
Woodward *v.* Zenk 963
Woody *v.* Tadlock 901
Wooten *v.* Horel 1040
Word, *In re* 942,1065
Workers' Compensation Appeals Bd.; Letherblaire *v.* 1055,1209
Workman; Steward *v.* 878
World Botanical Gardens, Inc.; Wagner *v.* 827
Worrells *v.* United States 1149
Worth; Haven *v.* 1135
Worthington *v.* Advocate Health Care 832
Worthington *v.* Bethany Hospital 832
Worthon *v.* United States 937
Wright, *In re* 991
Wright *v.* Ayers 1017
Wright *v.* McNeil 852
Wright *v.* Quarterman 973
Wright *v.* Skolnik 1214
Wright; Sowewimo *v.* 922
Wright *v.* Transportation Security Administration 839
Wright *v.* United States 931,1057,1077
Wright-Bey *v.* North Carolina 847
Wrigley; Lomax *v.* 1177
Wrotnowski *v.* Bysiewicz 1083
Wyche *v.* Florida 1070
Wyeth *v.* Levine 555,806
Wynder; Harris *v.* 1055

Page
Wynder; Mears *v.* 1053
Wynder; Messina *v.* 1001
Wynder; Roy *v.* 1054,1209
Wynder; Thomas *v.* 912
Wynn *v.* County Bd. of Ed. of Richmond County 865,1141
Wynn *v.* United States 1216
Wynne; Alcivar *v.* 877
Wyoming; Bush *v.* 1168
Wyoming; Dee *v.* 824
Wyoming; Eaton *v.* 1187
Wyoming; Montana *v.* 968
Wyoming; Proffit *v.* 1157,1158
Xiang *v.* United States 823
Xiangyuan Zhu *v.* St. Francis Health Center 940,1043
Xin Xu *v.* McLaughlin Research Institute for Biomedical Sciences 845
Xu *v.* McLaughlin Research Institute for Biomedical Sciences 845
Xuan *v.* Fort Worth Star Telegram 925,1040
Yamamoto; Adam *v.* 1034
Yanai *v.* Girts 819
Yancey *v.* Johnson 1214
Yang *v.* Buch 907
Yang *v.* Fields 948
Yarborough; Hardaway *v.* 972
Yarbrough *v.* Poole 1087
Yarbrough *v.* United States 889
Yates; Angulo *v.* 1015
Yates *v.* District of Columbia 887
Yates; Hughes *v.* 929
Yates; Martin *v.* 974
Yates; Wilson *v.* 1182
Ybarra *v.* Quarterman 1179
Ybarra *v.* United States 1080
Yeager *v.* United States 1028
Yearwood *v.* United States 861
Yeazel *v.* United States 809,1033
Yee *v.* State Court Administrative Office 820,1127
Yi *v.* Tompkins 946,1160
Yoder *v.* Bartos 1112
Yoder *v.* Napolitano 1141
Yong Li *v.* Raytheon Co. 1099
Yong Tan Huang *v.* Bell 926,1082
Yong Zhu *v.* Massachusetts Institute of Technology 817
Yoon Shik Park *v.* United States 933
York *v.* Citifinancial Mortgage Co. 838,1090

Page
York *v.* Evans 1112
Young; Florida *v.* 1137
Young *v.* Illinois 916
Young *v.* McCann 913
Young *v.* Oklahoma 972
Young *v.* Repine 1138
Young *v.* Rushton 907,1128
Young *v.* United States 828,923,968,1006,1039,1077,1096,1214
Young *v.* U. S. District Court 851
Youngblood *v.* Quarterman 1001,1129
Young Yi *v.* Tompkins 946,1160
Yount; Sacramento *v.* 1099
Ysursa *v.* Pocatello Ed. Assn. 353
Yue *v.* Storage Technology Corp. 1094
Yukins; Coomer *v.* 1188
Yu Lin *v.* University of Nebraska-Lincoln 844
Yurisich *v.* United States 874
Yuzary *v.* United States 1037,1150
Z. *v.* Los Angeles County Dept. of Children and Family Services 1109
Zackery *v.* California 1076
Zamarripa *v.* United States 956
Zambrana *v.* United States 1149
Zamora *v.* United States 892,1037
Zamora-Solorzano *v.* United States 1007
Zamudio *v.* California 1020
Zandi *v.* United States 956
Zani *v.* U. S. Marshals Service 856
Zapata *v.* United States 1088
Zapien *v.* California 821
Zarate *v.* United States 860
Zarwell, *In re* 810,1040
Zavala *v.* United States 1038
Zavaras; Griffin *v.* 1003
Zavaras; Raile *v.* 848
Zayes *v.* Illinois 895
Zehrung *v.* Auto Workers 913
Zenk; Woodward *v.* 963
Zheng Qu *v.* United States 962
Zhu *v.* Massachusetts Institute of Technology 817
Zhu *v.* St. Francis Health Center 940,1043
Zikee *v.* United States 350
Zipfel; Clark *v.* 1106
Zitomer; Schneller *v.* 1093
Zone *v.* United States 888

Page
Zubrowski *v.* Connecticut 1216
Zuercher; Barber *v.* 952
Zuluaga-Martinez *v.* Immigration and Naturalization Service . . . 1170
Zuni *v.* United States 902
Zunie *v.* United States 1203
Zuniga *v.* United States 868
Zuniga-Hernandez *v.* Outlaw 870

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2008

MOORE *v.* UNITED STATES

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

No. 07–10689. Decided October 14, 2008

Petitioner Moore was convicted of possessing cocaine base with intent to distribute. At sentencing, Moore asked the District Court to impose a sentence below the range calculated under the United States Sentencing Guidelines in light of the Guidelines' disparate treatment of crack and powder cocaine and this Court's decision in *United States* v. *Booker*, 543 U. S. 220. The District Court refused, and the Eighth Circuit affirmed, holding that neither *Booker* nor 18 U. S. C. § 3553(a) authorizes district courts to reject the crack/powder sentencing disparity mandated by Congress. This Court vacated the judgment and remanded the case in light of *Kimbrough* v. *United States*, 552 U. S. 85, which held that a judge "may consider the [crack/powder] disparity" when applying § 3553(a), "even in a mine-run case." *Id.*, at 91, 110. On remand, the Eighth Circuit reaffirmed on the presumption that the District Court was initially aware of its discretion to vary Moore's sentence downward, but elected not to do so.

Held: The Eighth Circuit erred in failing to remand the case to the District Court for resentencing under *Kimbrough.* The District Court's comment that Congress, not judges, "looks at the [G]uidelines and decides whether or not they should be put . . . in force" showed that the court did not think it had the discretion later upheld by *Kimbrough.* And the Eighth Circuit's initial decision clearly recognized this, describ-

ing the District Court as correctly concluding that it was not authorized to reject the crack/powder disparity.

Certiorari granted; 518 F. 3d 577, reversed and remanded.

PER CURIAM.

James Eric Moore was convicted of one count of possessing cocaine base with intent to distribute, a violation of 21 U. S. C. §§ 841(a)(1) and (b)(1). Given the quantity of crack cocaine, the presentence report calculated that Moore's sentencing range under the United States Sentencing Guidelines was 151 to 188 months. At sentencing, Moore asked the District Court to impose a below-Guidelines sentence in light of our decision in *United States* v. *Booker*, 543 U. S. 220 (2005), and the Guidelines' disparate treatment of similar amounts of crack and powder cocaine.

The District Court refused, saying:

> "With regard to the crack and powder cocaine difference, that is the law. I'm applying the law as it currently stands. If that is going to be changed, that is a congressional matter. Congress is the one who looks at the guidelines and decides whether or not they should be put in—in force. . . . It isn't the judges. It's the lawmakers, and I have taken an oath to apply the law, and that's what I will do in this sentencing." App. D to Pet. for Cert. 55–56.

The District Court sentenced Moore to 188 months of imprisonment and six years of supervised release.

Moore appealed, and the United States Court of Appeals for the Eighth Circuit affirmed his conviction and sentence. *United States* v. *Moore*, 470 F. 3d 767 (2006). In response to his claim that the District Court should have considered the crack/powder disparity, the Court of Appeals held that "the district court was correct in concluding that 'neither *Booker* nor [18 U. S. C.] § 3553(a) authorizes district courts to reject' the powder cocaine to crack cocaine quantity ratio mandated by Congress and reflected in the Guidelines." *Id.*,

at 770 (quoting *United States* v. *Spears*, 469 F. 3d 1166, 1176 (CA8 2006) (en banc)). Moore filed a petition for certiorari with this Court. Pet. for Cert. in *Moore* v. *United States*, O. T. 2007, No. 06–9749.

While Moore's certiorari petition was pending, this Court issued its opinion in *Kimbrough* v. *United States*, 552 U. S. 85 (2007), concluding that a judge "may consider the disparity between the Guidelines' treatment of crack and powder cocaine offenses" when applying 18 U. S. C. § 3553(a), "even in a mine-run case." 552 U. S., at 91, 110. We granted Moore's petition, vacated the judgment, and remanded the case to the Eighth Circuit for further consideration in light of *Kimbrough*. *Moore* v. *United States*, 552 U. S. 1090 (2008).

On remand, without new briefing, the Eighth Circuit affirmed again. 518 F. 3d 577 (2008). This time, the Court of Appeals concluded that "[a]s there was then no circuit authority to the contrary, we presume the district court was aware that *Booker* granted it discretion to vary downward based upon the impact of the crack cocaine guidelines on this defendant, but elected not to exercise that discretion." *Id.*, at 580.

Proceeding *pro se*, Moore again petitioned for certiorari, arguing that the Eighth Circuit's new characterization of the transcript is wrong, and that it is "clear that the district court thought judges had no discre[t]ion to reject" the Guidelines ratio. Pet. for Cert. 7. The United States agrees that the Eighth Circuit erred, see Brief for United States 9, and so do we.

When the District Court said that "[i]t isn't the judges" but Congress that "looks at the [G]uidelines and decides whether or not they should be put . . . in force," the court showed that it did not think it had the discretion later upheld by *Kimbrough*. App. D to Pet. for Cert. 56. The Eighth Circuit's first decision recognized this, describing the District Court as "concluding" (correctly under Circuit precedent) that it was not "authorize[d] . . . to reject" the crack/

powder disparity. *Moore*, *supra*, at 770 (internal quotation marks omitted). In light of the District Court's comments at sentencing, the Court of Appeals should have remanded the case to the District Court for resentencing under *Kimbrough*. We express no views on how the District Court should exercise its discretion at resentencing.

The petition for certiorari and the motion for leave to proceed *in forma pauperis* are 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.

BRUNNER, OHIO SECRETARY OF STATE *v.* OHIO REPUBLICAN PARTY ET AL.

ON APPLICATION FOR STAY

No. 08A332. Decided October 17, 2008

The District Court entered a temporary restraining order (TRO) directing the Ohio secretary of state to update Ohio's Statewide Voter Registration Database to comply with § 303 of the Help America Vote Act of 2002 (HAVA), 42 U. S. C. § 15483(a)(5)(B)(i). The Sixth Circuit denied the secretary's motion to vacate the TRO. The secretary then filed the instant application to stay the TRO.

Held: The application is granted, and the TRO is vacated. Respondents are not sufficiently likely to prevail on the question whether Congress has authorized the District Court to enforce HAVA § 303 in an action brought by a private litigant to justify the issuance of a TRO. See *Gonzaga Univ.* v. *Doe*, 536 U. S. 273, 283.

Application granted and stay vacated.

PER CURIAM.

On October 9, 2008, the United States District Court for the Southern District of Ohio entered a temporary restraining order (TRO) directing Jennifer Brunner, the Ohio Secretary of State (Secretary), to update Ohio's Statewide Voter Registration Database to comply with § 303 of the Help America Vote Act of 2002 (HAVA), 116 Stat. 1708, 42 U. S. C. § 15483(a)(5)(B)(i) (2000 ed., Supp. V).* The United States Court of Appeals for the Sixth Circuit denied the Secretary's motion to vacate the TRO. The Secretary has filed an application to stay the TRO with JUSTICE STEVENS as Circuit Justice for the Sixth Circuit, and he has referred the matter

*Section 15483(a)(5)(B)(i) states, in relevant part:

"The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration."

to the Court. The Secretary argues both that the District Court had no jurisdiction to enter the TRO and that its ruling on the merits was erroneous. We express no opinion on the question whether HAVA is being properly implemented. Respondents, however, are not sufficiently likely to prevail on the question whether Congress has authorized the District Court to enforce § 303 in an action brought by a private litigant to justify the issuance of a TRO. See *Gonzaga Univ.* v. *Doe*, 536 U. S. 273, 283 (2002); *Alexander* v. *Sandoval*, 532 U. S. 275, 286 (2001). We therefore grant the application for a stay and vacate the TRO.

It is so ordered.

WINTER, SECRETARY OF THE NAVY, ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

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

No. 07–1239. Argued October 8, 2008—Decided November 12, 2008

Antisubmarine warfare is one of the Navy's highest priorities. The Navy's fleet faces a significant threat from modern diesel-electric submarines, which are extremely difficult to detect and track because they can operate almost silently. The most effective tool for identifying submerged diesel-electric submarines is active sonar, which emits pulses of sound underwater and then receives the acoustic waves that echo off the target. Active sonar is a complex technology, and sonar operators must undergo extensive training to become proficient in its use.

This case concerns the Navy's use of "mid-frequency active" (MFA) sonar during integrated training exercises in the waters off southern California (SOCAL). In these exercises, ships, submarines, and aircraft train together as members of a "strike group." Due to the importance of antisubmarine warfare, a strike group may not be certified for deployment until it demonstrates proficiency in the use of active sonar to detect, track, and neutralize enemy submarines.

The SOCAL waters contain at least 37 species of marine mammals. The plaintiffs—groups and individuals devoted to the protection of marine mammals and ocean habitats—assert that MFA sonar causes serious injuries to these animals. The Navy disputes that claim, noting that MFA sonar training in SOCAL waters has been conducted for 40 years without a single documented sonar-related injury to any marine mammal. Plaintiffs sued the Navy, seeking declaratory and injunctive relief on the grounds that the training exercises violated the National Environmental Policy Act of 1969 (NEPA) and other federal laws; in particular, plaintiffs contend that the Navy should have prepared an environmental impact statement (EIS) before conducting the latest round of SOCAL exercises.

The District Court entered a preliminary injunction prohibiting the Navy from using MFA sonar during its training exercises. The Court of Appeals held that this injunction was overbroad and remanded to the District Court for a narrower remedy. The District Court then entered another preliminary injunction, imposing six restrictions on the Navy's use of sonar during its SOCAL training exercises. As relevant to this case, the injunction required the Navy to shut down MFA sonar when

a marine mammal was spotted within 2,200 yards of a vessel, and to power down sonar by 6 decibels during conditions known as "surface ducting."

The Navy then sought relief from the Executive Branch. The Council on Environmental Quality (CEQ) authorized the Navy to implement "alternative arrangements" to NEPA compliance in light of "emergency circumstances." The CEQ allowed the Navy to continue its training exercises under voluntary mitigation procedures that the Navy had previously adopted.

The Navy moved to vacate the District Court's preliminary injunction in light of the CEQ's actions. The District Court refused to do so, and the Court of Appeals affirmed. The Court of Appeals held that there was a serious question whether the CEQ's interpretation of the "emergency circumstances" regulation was lawful, that plaintiffs had carried their burden of establishing a "possibility" of irreparable injury, and that the preliminary injunction was appropriate because the balance of hardships and consideration of the public interest favored the plaintiffs. The Court of Appeals emphasized that any negative impact of the injunction on the Navy's training exercises was "speculative," and determined that (1) the 2,200-yard shutdown zone was unlikely to affect naval operations, because MFA sonar systems are often shut down during training exercises; and (2) the power-down requirement during surface ducting conditions was not unreasonable, because such conditions are rare and the Navy has previously certified strike groups not trained under these conditions.

Held: The preliminary injunction is vacated to the extent challenged by the Navy. The balance of equities and the public interest—which were barely addressed by the District Court—tip strongly in favor of the Navy. The Navy's need to conduct realistic training with active sonar to respond to the threat posed by enemy submarines plainly outweighs the interests advanced by the plaintiffs. Pp. 20–33.

(a) The lower courts held that when a plaintiff demonstrates a strong likelihood of success on the merits, a preliminary injunction may be entered based only on a "possibility" of irreparable harm. The "possibility" standard is too lenient. This Court's frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.

Even if plaintiffs have demonstrated a likelihood of irreparable injury, such injury is outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors. For the same reason, it is unnecessary to address the lower courts' holding that plaintiffs have established a likelihood of success on the merits. Pp. 20–24.

(b) A preliminary injunction is an extraordinary remedy never awarded as of right. In each case, courts must balance the competing claims of injury and consider the effect of granting or withholding the requested relief, paying particular regard to the public consequences. *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 312. Military interests do not always trump other considerations, and the Court has not held that they do, but courts must give deference to the professional judgment of military authorities concerning the relative importance of a particular military interest. *Goldman* v. *Weinberger*, 475 U. S. 503, 507.

Here, the record contains declarations from some of the Navy's most senior officers, all of whom underscored the threat posed by enemy submarines and the need for extensive sonar training to counter this threat. Those officers emphasized that realistic training cannot be accomplished under the two challenged restrictions imposed by the District Court—the 2,200-yard shutdown zone and the power-down requirement during surface ducting conditions. The use of MFA sonar under realistic conditions during training exercises is clearly of the utmost importance to the Navy and the Nation. The Court does not question the importance of plaintiffs' ecological, scientific, and recreational interests, but it concludes that the balance of equities and consideration of the overall public interest tip strongly in favor of the Navy. The determination of where the public interest lies in this case does not strike the Court as a close question. Pp. 24–26.

(c) The lower courts' justifications for entering the preliminary injunction are not persuasive. Pp. 26–31.

(1) The District Court did not give serious consideration to the balance of equities and the public interest. The Court of Appeals did consider these factors and conclude that the Navy's concerns about the preliminary injunction were "speculative." But that is almost always the case when a plaintiff seeks injunctive relief to alter a defendant's conduct. The lower courts failed properly to defer to senior Navy officers' specific, predictive judgments about how the preliminary injunction would reduce the effectiveness of the Navy's SOCAL training exercises. Pp. 26–27.

(2) The District Court abused its discretion by requiring the Navy to shut down MFA sonar when a marine mammal is spotted within 2,200 yards of a sonar-emitting vessel. The Court of Appeals concluded that the zone would not be overly burdensome because marine mammal sightings during training exercises are relatively rare. But regardless of the frequency of such sightings, the injunction will increase the radius of the shutdown zone from 200 to 2,200 yards, which expands its surface area by a factor of over 100. Moreover, because training scenarios can take several days to develop, each additional shutdown can result in

the loss of several days' worth of training. The Court of Appeals also concluded that the shutdown zone would not be overly burdensome because the Navy had shut down MFA sonar several times during prior exercises when marine mammals were spotted well beyond the Navy's self-imposed 200-yard zone. But the court ignored undisputed evidence that these voluntary shutdowns only occurred during tactically insignificant times. Pp. 27–29.

(3) The District Court also abused its discretion by requiring the Navy to power down MFA sonar by 6 decibels during significant surface ducting conditions. When surface ducting occurs, active sonar becomes more useful near the surface, but less effective at greater depths. Diesel-electric submariners are trained to take advantage of these distortions to avoid being detected by sonar. The Court of Appeals concluded that the power-down requirement was reasonable because surface ducting occurs relatively rarely, and the Navy has previously certified strike groups that did not train under such conditions. This reasoning is backwards. Given that surface ducting is both rare and unpredictable, it is especially important for the Navy to be able to train under these conditions when they occur. Pp. 29–30.

(4) The Navy has previously taken voluntary measures to address concerns about marine mammals, and has chosen not to challenge four other restrictions imposed by the District Court in this case. But that hardly means that other, more intrusive restrictions pose no threat to preparedness for war. The Court of Appeals noted that the Navy could return to the District Court to seek modification of the preliminary injunction if it actually resulted in an inability to train. The Navy is not required to wait until it is unable to train sufficient forces for national defense before seeking dissolution of the preliminary injunction. By then it may be too late. Pp. 30–31.

(d) This Court does not address the underlying merits of plaintiffs' claims, but the foregoing analysis makes clear that it would also be an abuse of discretion to enter a permanent injunction along the same lines as the preliminary injunction. Plaintiffs' ultimate legal claim is that the Navy must prepare an EIS, not that it must cease sonar training. There is accordingly no basis for enjoining such training pending preparation of an EIS—if one is determined to be required—when doing so is credibly alleged to pose a serious threat to national security. There are many other remedial tools available, including declaratory relief or an injunction specifically tailored to preparation of an EIS, that do not carry such dire consequences. Pp. 31–33.

518 F. 3d 658, reversed; preliminary injunction vacated in part.

Roberts, C. J., delivered the opinion of the Court, in which Scalia, Kennedy, Thomas, and Alito, JJ., joined. Breyer, J., filed an opinion

concurring in part and dissenting in part, in which STEVENS, J., joined as to Part I, *post*, p. 34. GINSBURG, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 43.

Solicitor General Garre argued the cause for petitioners. With him on the briefs were *Assistant Attorney General Tenpas*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Nelson*, *Anthony A. Yang*, *Andrew C. Mergen*, *Michael R. Eitel*, *Luther L. Hajek*, *Allen M. Brabender*, *Daniel J. Dell'Orto*, *Thomas N. Ledvina*, *J. Page Turney*, *Jane C. Luxton*, *Mary Beth Ward*, *Joel La Bissonniere*, and *Edward A. Boling.*

Richard B. Kendall argued the cause for respondents. With him on the brief for respondent environmentalists were *Robert N. Klieger*, *Gregory A. Fayer*, *Joel R. Reynolds*, *Cara A. Horowitz*, and *Stephen Zak Smith.*

Edmund G. Brown, Jr., Attorney General of California, filed a brief for respondent California Coastal Commission. With him on the brief were *Jamee Jordan Patterson*, Supervising Deputy Attorney General, *J. Matthew Rodriquez*, Chief Assistant Attorney General, *Manuel M. Medeiros*, Solicitor General, and *Gordon Burns*, Deputy Solicitor General.*

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*Briefs of *amici curiae* urging reversal were filed for the Navy League of the United States—Honolulu Council et al. by *Robert H. Thomas*, *Mark M. Murakami*, *Theodore G. Meeker*, and *Michael A. Lilly;* for the Pacific Legal Foundation by *M. Reed Hopper* and *Steven Geoffrey Gieseler;* and for the Washington Legal Foundation et al. by *Andrew G. McBride*, *Daniel J. Popeo*, and *Paul D. Kamenar.*

Briefs of *amici curiae* urging affirmance were filed for the Ecological Society of America by *Peter E. Perkowski;* for California Assembly Member Julia Brownley et al. by *Stephen B. Kinnaird*, *Peter H. Weiner*, *Paul W. Cane, Jr.*, and *Sean D. Unger;* and for Michael C. Small et al. by *Mr. Small*, *pro se*, *Jonathan D. Varat*, and *Edward P. Lazarus.*

Briefs of *amici curiae* were filed for the California Forestry Association et al. by *Thomas R. Lundquist*, *J. Michael Klise*, *Michele Dias*, *William R. Murray*, *Douglas T. Nelson*, *Duane J. Desiderio*, and *Thomas J. Ward;* and for Defenders of Wildlife et al. by *Eric R. Glitzenstein.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

"To be prepared for war is one of the most effectual means of preserving peace." 1 Messages and Papers of the Presidents 57 (J. Richardson comp. 1897). So said George Washington in his first Annual Address to Congress, 218 years ago. One of the most important ways the Navy prepares for war is through integrated training exercises at sea. These exercises include training in the use of modern sonar to detect and track enemy submarines, something the Navy has done for the past 40 years. The plaintiffs, respondents here, complained that the Navy's sonar-training program harmed marine mammals, and that the Navy should have prepared an environmental impact statement before commencing its latest round of training exercises. The Court of Appeals upheld a preliminary injunction imposing restrictions on the Navy's sonar training, even though that court acknowledged that "the record contains no evidence that marine mammals have been harmed" by the Navy's exercises. 518 F. 3d 658, 696 (CA9 2008).

The Court of Appeals was wrong, and its decision is reversed.

I

The Navy deploys its forces in "strike groups," which are groups of surface ships, submarines, and aircraft centered around either an aircraft carrier or an amphibious assault ship. App. to Pet. for Cert. 316a–317a (Pet. App.). Seamless coordination among strike-group assets is critical. Before deploying a strike group, the Navy requires extensive integrated training in analysis and prioritization of threats, execution of military missions, and maintenance of force protection. App. 110–111.

Antisubmarine warfare is currently the Pacific Fleet's top war-fighting priority. Pet. App. 270a–271a. Modern diesel-electric submarines pose a significant threat to Navy vessels because they can operate almost silently, making them ex-

tremely difficult to detect and track. Potential adversaries of the United States possess at least 300 of these submarines. App. 571.

The most effective technology for identifying submerged diesel-electric submarines within their torpedo range is active sonar, which involves emitting pulses of sound underwater and then receiving the acoustic waves that echo off the target. Pet. App. 266a–267a, 274a. Active sonar is a particularly useful tool because it provides both the bearing and the distance of target submarines; it is also sensitive enough to allow the Navy to track enemy submarines that are quieter than the surrounding marine environment.[1] This case concerns the Navy's use of "mid-frequency active" (MFA) sonar, which transmits sound waves at frequencies between 1 kHz and 10 kHz.

Not surprisingly, MFA sonar is a complex technology, and sonar operators must undergo extensive training to become proficient in its use. Sonar reception can be affected by countless different factors, including the time of day, water density, salinity, currents, weather conditions, and the contours of the sea floor. *Id.*, at 278a–279a. When working as part of a strike group, sonar operators must be able to coordinate with other Navy ships and planes while avoiding interference. The Navy conducts regular training exercises under realistic conditions to ensure that sonar operators are thoroughly skilled in its use in a variety of situations.

The waters off the coast of southern California (SOCAL) are an ideal location for conducting integrated training exercises, as this is the only area on the west coast that is relatively close to land, air, and sea bases, as well as amphibious

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[1] In contrast, passive sonar "listens" for sound waves but does not introduce sound into the water. Passive sonar is not effective for tracking diesel-electric submarines because those vessels can operate almost silently. Passive sonar also has a more limited range than active sonar, and cannot identify the exact location of an enemy submarine. Pet. App. 266a–271a.

landing areas. App. 141–142. At issue in this case are the Composite Training Unit Exercises and the Joint Tactical Force Exercises, in which individual naval units (ships, submarines, and aircraft) train together as members of a strike group. A strike group cannot be certified for deployment until it has successfully completed the integrated training exercises, including a demonstration of its ability to operate under simulated hostile conditions. *Id.*, at 564–565. In light of the threat posed by enemy submarines, all strike groups must demonstrate proficiency in antisubmarine warfare. Accordingly, the SOCAL exercises include extensive training in detecting, tracking, and neutralizing enemy submarines. The use of MFA sonar during these exercises is "mission-critical," given that MFA sonar is the only proven method of identifying submerged diesel-electric submarines operating on battery power. *Id.*, at 568–571.

Sharing the waters in the SOCAL operating area are at least 37 species of marine mammals, including dolphins, whales, and sea lions. The parties strongly dispute the extent to which the Navy's training activities will harm those animals or disrupt their behavioral patterns. The Navy emphasizes that it has used MFA sonar during training exercises in SOCAL for 40 years, without a single documented sonar-related injury to any marine mammal. The Navy asserts that, at most, MFA sonar may cause temporary hearing loss or brief disruptions of marine mammals' behavioral patterns.

The plaintiffs are the Natural Resources Defense Council, Inc., Jean-Michael Cousteau (an environmental enthusiast and filmmaker), and several other groups devoted to the protection of marine mammals and ocean habitats. They contend that MFA sonar can cause much more serious injuries to marine mammals than the Navy acknowledges, including permanent hearing loss, decompression sickness, and major behavioral disruptions. According to the plaintiffs, several mass strandings of marine mammals (outside of SOCAL)

have been "associated" with the use of active sonar. They argue that certain species of marine mammals—such as beaked whales—are uniquely susceptible to injury from active sonar; these injuries would not necessarily be detected by the Navy, given that beaked whales are "very deep divers" that spend little time at the surface.

II

The procedural history of this case is rather complicated. The Marine Mammal Protection Act of 1972 (MMPA), 86 Stat. 1027, generally prohibits any individual from "taking" a marine mammal, defined as harassing, hunting, capturing, or killing it. 16 U. S. C. §§ 1362(13), 1372(a). The Secretary of Defense may "exempt any action or category of actions" from the MMPA if such actions are "necessary for national defense." § 1371(f)(1). In January 2007, the Deputy Secretary of Defense—acting for the Secretary—granted the Navy a 2-year exemption from the MMPA for the training exercises at issue in this case. Pet. App. 219a–220a. The exemption was conditioned on the Navy adopting several mitigation procedures, including: (1) training lookouts and officers to watch for marine mammals; (2) requiring at least five lookouts with binoculars on each vessel to watch for anomalies on the water surface (including marine mammals); (3) requiring aircraft and sonar operators to report detected marine mammals in the vicinity of the training exercises; (4) requiring reduction of active sonar transmission levels by 6 dB if a marine mammal is detected within 1,000 yards of the bow of the vessel, or by 10 dB if detected within 500 yards; (5) requiring complete shutdown of active sonar transmission if a marine mammal is detected within 200 yards of the vessel; (6) requiring active sonar to be operated at the "lowest practicable level"; and (7) adopting coordination and reporting procedures. *Id.*, at 222a–230a.

The National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, requires federal agencies "to the fullest extent

possible" to prepare an environmental impact statement (EIS) for "every . . . major Federal actio[n] significantly affecting the quality of the human environment." 42 U. S. C. § 4332(2)(C) (2000 ed.). An agency is not required to prepare a full EIS if it determines—based on a shorter environmental assessment (EA)—that the proposed action will not have a significant impact on the environment. 40 CFR §§ 1508.9(a), 1508.13 (2007).

In February 2007, the Navy issued an EA concluding that the 14 SOCAL training exercises scheduled through January 2009 would not have a significant impact on the environment. App. 226–227. The EA divided potential injury to marine mammals into two categories: Level A harassment, defined as the potential destruction or loss of biological tissue (*i. e.*, physical injury), and Level B harassment, defined as temporary injury or disruption of behavioral patterns such as migration, feeding, surfacing, and breeding. *Id.*, at 160–161.

The Navy's computer models predicted that the SOCAL training exercises would cause only eight Level A harassments of common dolphins each year, and that even these injuries could be avoided through the Navy's voluntary mitigation measures, given that dolphins travel in large pods easily located by Navy lookouts. *Id.*, at 176–177, 183. The EA also predicted 274 Level B harassments of beaked whales per year, none of which would result in permanent injury. *Id.*, at 185–186. Beaked whales spend little time at the surface, so the precise effect of active sonar on these mammals is unclear. Erring on the side of caution, the Navy classified all projected harassments of beaked whales as Level A. *Id.*, at 186, 223. In light of its conclusion that the SOCAL training exercises would not have a significant impact on the environment, the Navy determined that it was unnecessary to prepare a full EIS. See 40 CFR § 1508.13.

Shortly after the Navy released its EA, the plaintiffs sued the Navy, seeking declaratory and injunctive relief on the grounds that the Navy's SOCAL training exercises violated

NEPA, the Endangered Species Act of 1973 (ESA), and the Coastal Zone Management Act of 1972 (CZMA).[2] The District Court granted plaintiffs' motion for a preliminary injunction and prohibited the Navy from using MFA sonar during its remaining training exercises. The court held that plaintiffs had "demonstrated a probability of success" on their claims under NEPA and the CZMA. Pet. App. 207a, 215a. The court also determined that equitable relief was appropriate because, under Ninth Circuit precedent, plaintiffs had established at least a " 'possibility' " of irreparable harm to the environment. *Id.*, at 217a. Based on scientific studies, declarations from experts, and other evidence in the record, the District Court concluded that there was in fact a "near certainty" of irreparable injury to the environment, and that this injury outweighed any possible harm to the Navy. *Id.*, at 217a–218a.

The Navy filed an emergency appeal, and the Ninth Circuit stayed the injunction pending appeal. 502 F. 3d 859, 865 (2007). After hearing oral argument, the Court of Appeals agreed with the District Court that preliminary injunctive relief was appropriate. The appellate court concluded, however, that a blanket injunction prohibiting the Navy from using MFA sonar in SOCAL was overbroad, and remanded the case to the District Court "to narrow its injunction so as to provide mitigation conditions under which the Navy may conduct its training exercises." 508 F. 3d 885, 887 (2007).

On remand, the District Court entered a new preliminary injunction allowing the Navy to use MFA sonar only as long as it implemented the following mitigation measures (in addition to the measures the Navy had adopted pursuant to its MMPA exemption): (1) imposing a 12 nautical mile "exclusion

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[2] The CZMA states that federal agencies taking actions "that affec[t] any land or water use or natural resource of the coastal zone" shall carry out these activities "in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." 16 U. S. C. § 1456(c)(1)(A).

zone" from the coastline; (2) using lookouts to conduct additional monitoring for marine mammals; (3) restricting the use of "helicopter-dipping" sonar; (4) limiting the use of MFA sonar in geographic "choke points"; (5) shutting down MFA sonar when a marine mammal is spotted within 2,200 yards of a vessel; and (6) powering down MFA sonar by 6 dB during significant surface ducting conditions, in which sound travels further than it otherwise would due to temperature differences in adjacent layers of water. 530 F. Supp. 2d 1110, 1118–1121 (CD Cal. 2008). The Navy filed a notice of appeal, challenging only the last two restrictions.

The Navy then sought relief from the Executive Branch. The President, pursuant to 16 U. S. C. § 1456(c)(1)(B), granted the Navy an exemption from the CZMA. Section 1456(c)(1)(B) permits such exemptions if the activity in question is "in the paramount interest of the United States." The President determined that continuation of the exercises as limited by the Navy was "essential to national security." Pet. App. 232a. He concluded that compliance with the District Court's injunction would "undermine the Navy's ability to conduct realistic training exercises that are necessary to ensure the combat effectiveness of . . . strike groups." *Ibid.*

Simultaneously, the Council on Environmental Quality (CEQ) authorized the Navy to implement "alternative arrangements" to NEPA compliance in light of "emergency circumstances." See 40 CFR § 1506.11.[3] The CEQ determined that alternative arrangements were appropriate because the District Court's injunction "create[s] a significant and unreasonable risk that Strike Groups will not be

[3] That provision states in full: "Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review."

able to train and be certified as fully mission capable." Pet. App. 238a. Under the alternative arrangements, the Navy would be permitted to conduct its training exercises under the mitigation procedures adopted in conjunction with the exemption from the MMPA. The CEQ also imposed additional notice, research, and reporting requirements.

In light of these actions, the Navy then moved to vacate the District Court's injunction with respect to the 2,200-yard shutdown zone and the restrictions on training in surface ducting conditions. The District Court refused to do so, 527 F. Supp. 2d 1216 (2008), and the Court of Appeals affirmed. The Ninth Circuit held that there was a serious question regarding whether the CEQ's interpretation of the "emergency circumstances" regulation was lawful. Specifically, the court questioned whether there was a true "emergency" in this case, given that the Navy has been on notice of its obligation to comply with NEPA from the moment it first planned the SOCAL training exercises. 518 F. 3d, at 681. The Court of Appeals concluded that the preliminary injunction was entirely predictable in light of the parties' litigation history. *Ibid.* The court also held that plaintiffs had established a likelihood of success on their claim that the Navy was required to prepare a full EIS for the SOCAL training exercises. *Id.*, at 693. The Ninth Circuit agreed with the District Court's holding that the Navy's EA—which resulted in a finding of no significant environmental impact—was "cursory, unsupported by cited evidence, or unconvincing." *Ibid.*[4]

The Court of Appeals further determined that plaintiffs had carried their burden of establishing a "possibility" of irreparable injury. Even under the Navy's own figures, the court concluded, the training exercises would cause 564 physical injuries to marine mammals, as well as 170,000 disturb-

[4] The Ninth Circuit's discussion of the plaintiffs' likelihood of success was limited to their NEPA claims. The court did not discuss claims under the CZMA or ESA.

ances of marine mammals' behavior. *Id.*, at 696. Lastly, the Court of Appeals held that the balance of hardships and consideration of the public interest weighed in favor of the plaintiffs. The court emphasized that the negative impact on the Navy's training exercises was "speculative," since the Navy has never before operated under the procedures required by the District Court. *Id.*, at 698–699. In particular, the court determined that: (1) The 2,200-yard shutdown zone imposed by the District Court was unlikely to affect the Navy's operations, because the Navy often shuts down its MFA sonar systems during the course of training exercises; and (2) the power-down requirement during significant surface ducting conditions was not unreasonable because such conditions are rare, and the Navy has previously certified strike groups that had not trained under such conditions. *Id.*, at 699–702. The Ninth Circuit concluded that the District Court's preliminary injunction struck a proper balance between the competing interests at stake.

We granted certiorari, 554 U. S. 916 (2008), and now reverse and vacate the injunction.

III

A

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. See *Munaf* v. *Geren*, 553 U. S. 674, 689–690 (2008); *Amoco Production Co.* v. *Gambell*, 480 U. S. 531, 542 (1987); *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 311–312 (1982).

The District Court and the Ninth Circuit concluded that plaintiffs have shown a likelihood of success on the merits of their NEPA claim. The Navy strongly disputes this determination, arguing that plaintiffs' likelihood of success is low because the CEQ reasonably concluded that "emergency

circumstances" justified alternative arrangements to NEPA compliance. 40 CFR § 1506.11. Plaintiffs' briefs before this Court barely discuss the ground relied upon by the lower courts—that the plain meaning of "emergency circumstances" does not encompass a court order that was "entirely predictable" in light of the parties' litigation history. 518 F. 3d, at 681. Instead, plaintiffs contend that the CEQ's actions violated the separation of powers by readjudicating a factual issue already decided by an Article III court. Moreover, they assert that the CEQ's interpretations of NEPA are not entitled to deference because the CEQ has not been given statutory authority to conduct adjudications.

The District Court and the Ninth Circuit also held that when a plaintiff demonstrates a strong likelihood of prevailing on the merits, a preliminary injunction may be entered based only on a "possibility" of irreparable harm. *Id.*, at 696–697; 530 F. Supp. 2d, at 1118 (quoting *Faith Center Church Evangelistic Ministries* v. *Glover*, 480 F. 3d 891, 906 (CA9 2007); *Earth Island Inst.* v. *United States Forest Serv.*, 442 F. 3d 1147, 1159 (CA9 2006)). The lower courts held that plaintiffs had met this standard because the scientific studies, declarations, and other evidence in the record established to "a near certainty" that the Navy's training exercises would cause irreparable harm to the environment. 530 F. Supp. 2d, at 1118.

The Navy challenges these holdings, arguing that plaintiffs must demonstrate a likelihood of irreparable injury—not just a possibility—in order to obtain preliminary relief. On the facts of this case, the Navy contends that plaintiffs' alleged injuries are too speculative to give rise to irreparable injury, given that ever since the Navy's training program began 40 years ago, there has been no documented case of sonar-related injury to marine mammals in SOCAL. And even if MFA sonar does cause a limited number of injuries to individual *marine mammals*, the Navy asserts that plaintiffs have failed to offer evidence of species-level harm that

would adversely affect *their* scientific, recreational, and ecological interests. For their part, plaintiffs assert that they would prevail under any formulation of the irreparable injury standard, because the District Court found that they had established a "near certainty" of irreparable harm.

We agree with the Navy that the Ninth Circuit's "possibility" standard is too lenient. Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction. *Los Angeles* v. *Lyons*, 461 U. S. 95, 103 (1983); *Granny Goose Foods, Inc.* v. *Teamsters*, 415 U. S. 423, 441 (1974); *O'Shea* v. *Littleton*, 414 U. S. 488, 502 (1974); see also 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.1, p. 139 (2d ed. 1995) (hereinafter Wright & Miller) (applicant must demonstrate that in the absence of a preliminary injunction, "the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered"); *id.*, at 154–155 ("[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury"). Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Mazurek* v. *Armstrong*, 520 U. S. 968, 972 (1997) (*per curiam*).

It is not clear that articulating the incorrect standard affected the Ninth Circuit's analysis of irreparable harm. Although the court referred to the "possibility" standard, and cited Circuit precedent along the same lines, it affirmed the District Court's conclusion that plaintiffs had established a "'near certainty'" of irreparable harm. 518 F. 3d, at 696–697. At the same time, however, the nature of the District Court's conclusion is itself unclear. The District Court originally found irreparable harm from sonar-training exercises generally. But by the time of the District Court's final decision, the Navy challenged only two of six restrictions

imposed by the court. See *supra*, at 17–19. The District Court did not reconsider the likelihood of irreparable harm in light of the four restrictions not challenged by the Navy. This failure is significant in light of the District Court's own statement that the 12 nautical mile exclusion zone from the coastline—one of the unchallenged mitigation restrictions—"would bar the use of MFA sonar in a significant portion of important marine mammal habitat." 530 F. Supp. 2d, at 1119.

We also find it pertinent that this is not a case in which the defendant is conducting a new type of activity with completely unknown effects on the environment. When the Government conducts an activity, "NEPA itself does not mandate particular results." *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 350 (1989). Instead, NEPA imposes only procedural requirements to "ensur[e] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Id.*, at 349. Part of the harm NEPA attempts to prevent in requiring an EIS is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures. Here, in contrast, the plaintiffs are seeking to enjoin—or substantially restrict—training exercises that have been taking place in SOCAL for the last 40 years. And the latest series of exercises were not approved until after the defendant took a "hard look at environmental consequences," *id.*, at 350 (quoting *Kleppe* v. *Sierra Club*, 427 U. S. 390, 410, n. 21 (1976); internal quotation marks omitted), as evidenced by the issuance of a detailed, 293-page EA.

As explained in the next section, even if plaintiffs have shown irreparable injury from the Navy's training exercises, any such injury is outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors. A proper consideration of these factors alone requires denial of the requested injunctive relief. For the same reason, we

do not address the lower courts' holding that plaintiffs have also established a likelihood of success on the merits.

B

A preliminary injunction is an extraordinary remedy never awarded as of right. *Munaf*, 553 U. S., at 689–690. In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co.*, 480 U. S., at 542. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Romero-Barcelo*, 456 U. S., at 312; see also *Railroad Comm'n of Tex.* v. *Pullman Co.*, 312 U. S. 496, 500 (1941). In this case, the District Court and the Ninth Circuit significantly understated the burden the preliminary injunction would impose on the Navy's ability to conduct realistic training exercises, and the injunction's consequent adverse impact on the public interest in national defense.

This case involves "complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force," which are "essentially professional military judgments." *Gilligan* v. *Morgan*, 413 U. S. 1, 10 (1973). We "give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." *Goldman* v. *Weinberger*, 475 U. S. 503, 507 (1986). As the Court emphasized just last Term, "neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." *Boumediene* v. *Bush*, 553 U. S. 723, 797 (2008).

Here, the record contains declarations from some of the Navy's most senior officers, all of whom underscored the threat posed by enemy submarines and the need for extensive sonar training to counter this threat. Admiral Gary

Roughead—the Chief of Naval Operations—stated that during training exercises:

> "It is important to stress the ship crews in all dimensions of warfare simultaneously. If one of these training elements were impacted—for example, if effective sonar training were not possible—the training value of the other elements would also be degraded . . . ." Pet. App. 342a.

Captain Martin May—the Third Fleet's Assistant Chief of Staff for Training and Readiness—emphasized that the use of MFA sonar is "mission-critical." App. 570–571. He described the ability to operate MFA sonar as a "highly perishable skill" that must be repeatedly practiced under realistic conditions. *Id.*, at 577. During training exercises, MFA sonar operators learn how to avoid sound-reducing "clutter" from ocean floor topography and environmental conditions; they also learn how to avoid interference and how to coordinate their efforts with other sonar operators in the strike group. *Id.*, at 574. Several Navy officers emphasized that realistic training cannot be accomplished under the two challenged restrictions imposed by the District Court—the 2,200-yard shutdown zone and the requirement that the Navy power down its sonar systems during significant surface ducting conditions. See, *e. g.*, Pet. App. 333a (powering down in presence of surface ducting "unreasonably prevent[s] realistic training"); *id.*, at 356a (shutdown zone would "result in a significant, adverse impact to realistic training"). We accept these officers' assertions that the use of MFA sonar under realistic conditions during training exercises is of the utmost importance to the Navy and the Nation.

These interests must be weighed against the possible harm to the ecological, scientific, and recreational interests that are legitimately before this Court. Plaintiffs have submitted declarations asserting that they take whale watching trips, observe marine mammals underwater, conduct scien-

tific research on marine mammals, and photograph these animals in their natural habitats. Plaintiffs contend that the Navy's use of MFA sonar will injure marine mammals or alter their behavioral patterns, impairing plaintiffs' ability to study and observe the animals.

While we do not question the seriousness of these interests, we conclude that the balance of equities and consideration of the overall public interest in this case tip strongly in favor of the Navy. For the plaintiffs, the most serious possible injury would be harm to an unknown number of the marine mammals that they study and observe. In contrast, forcing the Navy to deploy an inadequately trained antisubmarine force jeopardizes the safety of the fleet. Active sonar is the only reliable technology for detecting and tracking enemy diesel-electric submarines, and the President—the Commander in Chief—has determined that training with active sonar is "essential to national security." *Id.*, at 232a.

The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs. Of course, military interests do not always trump other considerations, and we have not held that they do. In this case, however, the proper determination of where the public interest lies does not strike us as a close question.

C

1. Despite the importance of assessing the balance of equities and the public interest in determining whether to grant a preliminary injunction, the District Court addressed these considerations in only a cursory fashion. The court's entire discussion of these factors consisted of one (albeit lengthy) sentence: "The Court is also satisfied that the balance of hardships tips in favor of granting an injunction, as the harm to the environment, Plaintiffs, and public interest outweighs the harm that Defendants would incur if prevented from using MFA sonar, absent the use of effective mitigation

measures, during a subset of their regular activities in one part of one state for a limited period." *Id.*, at 217a–218a. As the prior Ninth Circuit panel in this case put it, in staying the District Court's original preliminary injunction, "[t]he district court did not give serious consideration to the public interest factor." 502 F. 3d, at 863. The District Court's order on remand did nothing to cure this defect, but simply repeated nearly verbatim the same sentence from its previous order. Compare 530 F. Supp. 2d, at 1118, with Pet. App. 217a–218a. The subsequent Ninth Circuit panel framed its opinion as reviewing the District Court's exercise of discretion, 518 F. 3d, at 697–699, but that discretion was barely exercised here.

The Court of Appeals held that the balance of equities and the public interest favored the plaintiffs, largely based on its view that the preliminary injunction would not in fact impose a significant burden on the Navy's ability to conduct its training exercises and certify its strike groups. *Id.*, at 698–699. The court deemed the Navy's concerns about the preliminary injunction "speculative" because the Navy had not operated under similar procedures before. *Ibid.* But this is almost always the case when a plaintiff seeks injunctive relief to alter a defendant's conduct. The lower courts failed properly to defer to senior Navy officers' specific, predictive judgments about how the preliminary injunction would reduce the effectiveness of the Navy's SOCAL training exercises. See Wright & Miller § 2948.2, at 167–168 ("The policy against the imposition of judicial restraints prior to an adjudication of the merits becomes more significant when there is reason to believe that the decree will be burdensome").

2. The preliminary injunction requires the Navy to shut down its MFA sonar if a marine mammal is detected within 2,200 yards of a sonar-emitting vessel. The Ninth Circuit stated that the 2,200-yard shutdown zone would not be overly burdensome because sightings of marine mammals

during training exercises are relatively rare. But regardless of the frequency of marine mammal sightings, the injunction will greatly increase the size of the shutdown zone. Pursuant to its exemption from the MMPA, the Navy agreed to reduce the power of its MFA sonar at 1,000 yards and 500 yards, and to completely turn off the system at 200 yards. Pet. App. 222a–230a. The District Court's injunction does not include a graduated power-down, instead requiring a total shutdown of MFA sonar if a marine mammal is detected within 2,200 yards of a sonar-emitting vessel. There is an exponential relationship between radius length and surface area (Area = πr^2). Increasing the radius of the shutdown zone from 200 to 2,200 yards would accordingly expand the surface area of the shutdown zone by a factor of over 100 (from 125,664 square yards to 15,205,308 square yards).

The lower courts did not give sufficient weight to the views of several top Navy officers, who emphasized that because training scenarios can take several days to develop, each additional shutdown can result in the loss of several days' worth of training. *Id.*, at 344a. Limiting the number of sonar shutdowns is particularly important during the Joint Tactical Force Exercises, which usually last for less than two weeks. *Ibid.* Rear Admiral John Bird explained that the 2,200-yard shutdown zone would cause operational commanders to "lose awareness of the tactical situation through the constant stopping and starting of MFA [sonar]." *Id.*, at 332a; see also *id.*, at 356a ("It may take days to get to the pivotal attack in antisubmarine warfare, but only minutes to confound the results upon which certification is based"). Even if there is a low likelihood of a marine mammal sighting, the preliminary injunction would clearly increase the number of disruptive sonar shutdowns the Navy is forced to perform during its SOCAL training exercises.

The Court of Appeals also concluded that the 2,200-yard shutdown zone would not be overly burdensome because the Navy had shut down MFA sonar 27 times during its eight

prior training exercises in SOCAL; in several of these cases, the Navy turned off its sonar when marine mammals were spotted well beyond the Navy's self-imposed 200-yard shutdown zone. 518 F. 3d, at 700, n. 65. Vice Admiral Samuel Locklear III—the Commander of the Navy's Third Fleet—stated that any shutdowns beyond the 200-yard zone were voluntary avoidance measures that likely took place at tactically insignificant times; the Ninth Circuit discounted this explanation as not supported by the record. *Ibid.* In reaching this conclusion, the Court of Appeals ignored key portions of Vice Admiral Locklear's declaration, in which he stated unequivocally that commanding officers "would not shut down sonar until legally required to do so if in contact with a submarine." Pet. App. 354a–355a. Similarly, if a commanding officer is in contact with a target submarine, "the CO will be expected to continue to use active sonar unless another ship or helicopter can gain contact or if regulatory reasons dictate otherwise." *Id.*, at 355a. The record supports the Navy's contention that its shutdowns of MFA sonar during prior training exercises only occurred during tactically insignificant times; those voluntary shutdowns do not justify the District Court's imposition of a mandatory 2,200-yard shutdown zone.

Lastly, the Ninth Circuit stated that a 2,200-yard shutdown zone was feasible because the Navy had previously adopted a 2,000-meter zone for low-frequency active (LFA) sonar. The Court of Appeals failed to give sufficient weight to the fact that LFA sonar is used for long-range detection of enemy submarines, and thus its use and shutdown involve tactical considerations quite different from those associated with MFA sonar. See App. 508 (noting that equating MFA sonar with LFA sonar "is completely misleading and is like comparing 20 degrees Fahrenheit to 20 degrees Celsius").

3. The Court of Appeals also concluded that the Navy's training exercises would not be significantly affected by the requirement that it power down MFA sonar by 6 dB during

significant surface ducting conditions. Again, we think the Ninth Circuit understated the burden this requirement would impose on the Navy's ability to conduct realistic training exercises.

Surface ducting is a phenomenon in which relatively little sound energy penetrates beyond a narrow layer near the surface of the water. When surface ducting occurs, active sonar becomes more useful near the surface but less useful at greater depths. Pet. App. 299a–300a. Diesel-electric submariners are trained to take advantage of these distortions to avoid being detected by sonar. *Id.*, at 333a.

The Ninth Circuit determined that the power-down requirement during surface ducting conditions was unlikely to affect certification of the Navy's strike groups because surface ducting occurs relatively rarely, and the Navy has previously certified strike groups that did not train under such conditions. 518 F. 3d, at 701–702. This reasoning is backwards. Given that surface ducting is both rare and unpredictable, it is especially important for the Navy to be able to train under these conditions when they occur. Rear Admiral Bird explained that the 6 dB power-down requirement makes the training less valuable because it "exposes [sonar operators] to unrealistically lower levels of mutual interference caused by multiple sonar systems operating together by the ships within the Strike Group." Pet. App. 281a (footnote and some capitalization omitted). Although a 6 dB reduction may not seem terribly significant, decibels are measured on a logarithmic scale, so a 6 dB decrease in power equates to a 75% reduction. *Id.*, at 284a–285a.

4. The District Court acknowledged that "'the imposition of these mitigation measures will require the Navy to alter and adapt the way it conducts antisubmarine warfare training—a substantial challenge. Nevertheless, evidence presented to the Court reflects that the Navy has employed mitigation measures in the past, without sacrificing training

objectives.' " 527 F. Supp. 2d, at 1238. Apparently no good deed goes unpunished. The fact that the Navy has taken measures in the past to address concerns about marine mammals—or, for that matter, has elected not to challenge four additional restrictions imposed by the District Court in this case, see *supra*, at 17–19—hardly means that other, more intrusive restrictions pose no threat to preparedness for war.

The Court of Appeals concluded its opinion by stating that "the Navy may return to the district court to request relief on an emergency basis" if the preliminary injunction "actually result[s] in an inability to train and certify sufficient naval forces to provide for the national defense." 518 F. 3d, at 703. This is cold comfort to the Navy. The Navy contends that the injunction will hinder efforts to train sonar operators under realistic conditions, ultimately leaving strike groups more vulnerable to enemy submarines. Unlike the Ninth Circuit, we do not think the Navy is required to wait until the injunction "actually result[s] in an inability to train . . . sufficient naval forces to provide for the national defense" before seeking its dissolution. By then it may be too late.

IV

As noted above, we do not address the underlying merits of plaintiffs' claims. While we have authority to proceed to such a decision at this point, see *Munaf*, 553 U. S., at 691–692, doing so is not necessary here. In addition, reaching the merits is complicated by the fact that the lower courts addressed only one of several issues raised, and plaintiffs have largely chosen not to defend the decision below on that ground.[5]

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[5] The bulk of JUSTICE GINSBURG's dissent is devoted to the merits. For the reasons stated, we find the injunctive relief granted in this case an abuse of discretion, even if plaintiffs are correct on the underlying merits. As to the injunction, the dissent barely mentions the Navy's in-

At the same time, what we have said makes clear that it would be an abuse of discretion to enter a permanent injunction, after final decision on the merits, along the same lines as the preliminary injunction. An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course. *Romero-Barcelo*, 456 U. S., at 313 ("[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law").

The factors examined above—the balance of equities and consideration of the public interest—are pertinent in assessing the propriety of any injunctive relief, preliminary or permanent. See *Amoco Production Co.*, 480 U. S., at 546, n. 12 ("The standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success"). Given that the ultimate legal claim is that the Navy must prepare an EIS, not that it must cease sonar training, there is no basis for enjoining such

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terests. *Post*, at 53. We find that those interests, and the documented risks to national security, clearly outweigh the harm on the other side of the balance.

We agree with much of JUSTICE BREYER's analysis, *post*, at 36–41 (opinion concurring in part and dissenting in part), but disagree with his conclusion that the modified conditions imposed by the stay order should remain in force until the Navy completes its EIS, *post*, at 42–43. The Court is reviewing the District Court's imposition of the preliminary injunction; once we conclude, as JUSTICE BREYER does, *post*, at 41, that the preliminary injunction should be vacated, the stay order is no longer pertinent. A stay is a useful tool for managing the impact of injunctive relief *pending further appeal*, but once the Court resolves the merits of the appeal, the stay ceases to be relevant. See 518 F. 3d 704, 706 (CA9 2008) ("[T]he partial stay . . . shall remain in effect until final disposition by the Supreme Court"). Unexamined conditions imposed by the stay order are certainly no basis for what would be in effect the entry of a new preliminary injunction by this Court.

training in a manner credibly alleged to pose a serious threat to national security. This is particularly true in light of the fact that the training has been going on for 40 years with no documented episode of harm to a marine mammal. A court concluding that the Navy is required to prepare an EIS has many remedial tools at its disposal, including declaratory relief or an injunction tailored to the preparation of an EIS rather than the Navy's training in the interim. See, *e. g.*, *Steffel* v. *Thompson*, 415 U. S. 452, 466 (1974) ("Congress plainly intended declaratory relief to act as an alternative to the strong medicine of the injunction"). In the meantime, we see no basis for jeopardizing national security, as the present injunction does. Plaintiffs confirmed at oral argument that the preliminary injunction was "the whole ball game," Tr. of Oral Arg. 33, and our analysis of the propriety of preliminary relief is applicable to any permanent injunction as well.

* * *

President Theodore Roosevelt explained that "the only way in which a navy can ever be made efficient is by practice at sea, under all the conditions which would have to be met if war existed." President's Annual Message, 42 Cong. Rec. 81 (1907). We do not discount the importance of plaintiffs' ecological, scientific, and recreational interests in marine mammals. Those interests, however, are plainly outweighed by the Navy's need to conduct realistic training exercises to ensure that it is able to neutralize the threat posed by enemy submarines. The District Court abused its discretion by imposing a 2,200-yard shutdown zone and by requiring the Navy to power down its MFA sonar during significant surface ducting conditions. The judgment of the Court of Appeals is reversed, and the preliminary injunction is vacated to the extent it has been challenged by the Navy.

It is so ordered.

JUSTICE BREYER, with whom JUSTICE STEVENS joins as to Part I, concurring in part and dissenting in part.

As of December 2006, the United States Navy planned to engage in a series of 14 antisubmarine warfare training exercises off the southern California coast. The Natural Resources Defense Council, Inc., and others (NRDC) brought this case in Federal District Court claiming that the National Environmental Policy Act of 1969 (NEPA) requires the Navy to prepare an environmental impact statement (EIS) (assessing the impact of the exercises on marine mammals) prior to its engaging in the exercises. As the case reaches us, the District Court has found that the NRDC will likely prevail on its demand for an EIS; the Navy has agreed to prepare an EIS; the District Court has forbidden the Navy to proceed with the exercises unless it adopts six mitigating measures; and the Navy has agreed to adopt all but two of those measures.

The controversy between the parties now concerns the two measures that the Navy is unwilling to adopt. The first concerns the "shutdown zone," a circle with a ship at the center within which the Navy must try to spot marine mammals and shut down its sonar if one is found. The controverted condition would enlarge the radius of that circle from about one-tenth of a mile (200 yards) to one and one-quarter miles (2,200 yards). The second concerns special ocean conditions called "surface ducting conditions." The controverted condition would require the Navy, when it encounters any such condition, to diminish the sonar's power by 75%. The Court of Appeals affirmed the District Court order that contained these two conditions. 518 F. 3d 658, 703 (CA9 2008).

I

We must now decide whether the District Court was legally correct in forbidding the training exercises *unless* the Navy implemented the two controverted conditions. In

doing so, I assume, like the Court, that the NRDC will prevail on its demand for an EIS. (Indeed, the Navy is in the process of preparing one.) And, I would ask whether, in imposing these conditions, the District Court properly "balance[d the] harms." See, *e. g.*, *Amoco Production Co.* v. *Gambell*, 480 U. S. 531, 545 (1987).

Respondents' (the plaintiffs) argument favoring the District Court injunction is a strong one. As JUSTICE GINSBURG well points out, see *post*, at 47–48 (dissenting opinion), the very point of NEPA's insistence upon the writing of an EIS is to force an agency "carefully" to "consider . . . detailed information concerning significant environmental impacts," while "giv[ing] the public the assurance that the agency 'has indeed considered environmental concerns in its decision-making process.'" *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 349 (1989). NEPA seeks to assure that when Government officials consider taking action that may affect the environment, they do so fully aware of the relevant environmental considerations. An EIS does not force them to make any particular decision, but it does lead them to take environmental considerations into account when they decide whether, or how, to act. *Id.*, at 354. Thus, when a decision to which EIS obligations attach is made without the informed environmental consideration that NEPA requires, much of the harm that NEPA seeks to prevent has already taken place. In this case, for example, the *absence* of an injunction means that the Navy will proceed with its exercises in the absence of the fuller consideration of environmental effects that an EIS is intended to bring. The absence of an injunction thereby threatens to cause the very environmental harm that a full preaction EIS might have led the Navy to avoid (say, by adopting the two additional mitigation measures that the NRDC proposes). Consequently, if the exercises are to continue, conditions designed to mitigate interim environmental harm may well be appropriate.

On the other hand, several features of this case lead me to conclude that the record, as now before us, lacks adequate support for an injunction imposing the two controverted requirements. *First*, the evidence of need for the two special conditions is weak or uncertain. The record does show that the exercises as the Navy originally proposed them could harm marine mammals. The District Court found (based on the Navy's study of the matter) that the exercises might cause 466 instances of Level A harm and 170,000 instances of Level B harm. App. to Pet. for Cert. 196a–197a. (The environmental assessment actually predicted 564 instances of Level A harm. See App. 223–224.) The study defines Level A injury as "any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild" through "destruction or loss of biological tissue," whether "slight to severe." *Id.*, at 160. It defines Level B harm as " 'any act that disturbs or is likely to disturb a marine mammal . . . by causing disruption of natural behavioral patterns including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering to a point where such behaviors are abandoned or significantly altered' " and describes it as a "short term" and "temporary" "disturbance." *Id.*, at 161, 175.

The raw numbers seem large. But the parties argue about the extent to which they mean likely harm. The Navy says the classifications and estimates err on the side of caution. (When in doubt about the amount of harm to a mammal, the study assumed the harm would qualify as Level A harassment. *Id.*, at 200.) The Navy also points out that, by definition, mammals recover from Level B injuries, often very quickly. It notes that, despite 40 years of naval exercises off the southern California coast, no injured marine mammal has ever been found. App. to Pet. for Cert. 274a–275a. (It adds that dolphins often swim alongside the ships. *Id.*, at 290a, 346a.) At the same time, plaintiffs point to instances where whales have been found stranded. They add

that scientific studies have found a connection between those beachings and the Navy's use of sonar, see, *e. g.*, App. 600–602, and the Navy has acknowledged one stranding where "U. S. Navy mid-frequency sonar has been identified as the most plausible contributory source to the stranding event," *id.*, at 168.

Given the uncertainty the figures create in respect to the harm caused by the Navy's original training plans, it would seem important to have before us at least some estimate of the harm likely avoided by the Navy's decision not to contest here *four of the six mitigating conditions* that the District Court ordered. Without such evidence, it is difficult to assess the *relevant* harm—that is, the environmental harm likely caused by the Navy's exercises with the four uncontested mitigation measures (but without the two contested mitigation measures) in place.

Second, the Navy has filed multiple affidavits from Navy officials explaining in detail the seriousness of the harm that the delay associated with completion of this EIS (approximately one year) would create in respect to the Navy's ability to maintain an adequate national defense. See generally App. to Pet. for Cert. 260a–357a. Taken by themselves, those affidavits make a strong case for the proposition that insistence upon the two additional mitigating conditions would seriously interfere with necessary defense training.

The affidavits explain the importance of training in anti-submarine warfare, *id.*, at 263a; the need to use active sonar to detect enemy submarines, *id.*, at 266a–267a, App. 566; the complexity of a training exercise involving sonar, App. to Pet. for Cert. 343a; the need for realistic conditions when training exercises take place, *id.*, at 299a–300a, App. 566; the "cascading" negative "effect" that delay in one important aspect of a set of coordinated training exercises has upon the Navy's ability "to provide combat ready forces," App. to Pet. for Cert. 343a; the cost and disruption that would accompany the adoption of the two additional mitigating conditions that

the NRDC seeks, *ibid.;* the Navy's resulting inability adequately to train personnel, *id.*, at 278a; the effectiveness of the mammal-protecting measures that the Navy has taken in the past, *id.*, at 285a–298a; and the reasonable likelihood that the mitigating conditions to which it has agreed will prove adequate, *id.*, at 296a.

Third, and particularly important in my view, the District Court did not explain *why* it rejected the Navy's affidavit-supported contentions. In its first opinion enjoining the use of sonar, the District Court simply stated:

> "The Court is . . . satisfied that the balance of hardships tips in favor of granting an injunction, as the harm to the environment, Plaintiffs, and public interest outweighs the harm that Defendants would incur if prevented from using [mid-frequency active (MFA)] sonar, absent the use of effective mitigation measures, during a subset of their regular activities in one part of one state for a limited period." *Id.*, at 217a–218a.

Following remand from the Court of Appeals, the District Court simply repeated, word for word, this same statement. It said:

> "The Court is . . . satisfied that the balance of hardships tips in favor of granting an injunction, as the harm to the environment, Plaintiffs, and public interest outweighs the harm that Defendants would incur (or the public interest would suffer) if Defendants were prevented from using MFA sonar, absent the use of effective mitigation measures, during a subset of their regular activities in one part of one state for a limited period." 530 F. Supp. 2d 1110, 1118 (CD Cal. 2008).

With respect to the imposition of the 2,200-yard shutdown zone, the District Court noted evidence of the harm that MFA sonar poses to marine mammals, and then concluded that "[t]he Court therefore is persuaded that while the 2200 yard shutdown requirement may protect marine mammals

from the harshest of sonar-related consequences, it represents a minimal imposition [on] the Navy's training exercises." *Id.*, at 1119. The District Court did not there explain the basis for that conclusion. With respect to the imposition of the surface ducting condition, the District Court said nothing about the Navy's interests at all. *Id.*, at 1120–1121.

While a district court is often free simply to state its conclusion in summary fashion, in this instance neither that conclusion, nor anything else I have found in the District Court's opinion, answers the Navy's documented claims that the two extra conditions the District Court imposed will, in effect, seriously interfere with its ability to carry out necessary training exercises.

The first condition requires the Navy to reduce the power of its sonar equipment by 75% when the ship encounters a condition called "surface ducting" that occurs when the presence of layers of water of different temperature make it unusually difficult for sonar operators to determine whether a diesel submarine is hiding below. Rear Admiral John Bird, an expert in submarine warfare, made clear that the 75% power-reduction requirement was equivalent to forbidding any related training. App. to Pet. for Cert. 297a. But he says in paragraph 52 of his declaration: "Training in surface ducting conditions is critical to effective training because sonar operators need to learn how sonar transmissions are altered due to surface ducting and how submarines may take advantage of them." *Id.*, at 299a–300a. The District Court, as far as I can tell, did not even acknowledge in its opinion the Navy's asserted interest in being able to train under these conditions. 530 F. Supp. 2d, at 1120–1121.

The second condition requires the Navy to expand the sonar "shutdown" area surrounding a ship (*i. e.*, turn off the sonar if a mammal is spotted in the area) from a circle with a radius of about one-tenth of a mile to a circle with a radius of about one mile and a quarter. Both sides agree that this

requirement will lead to more shutdowns. Admiral Gary Roughead, Chief of Naval Operations, states in paragraph 12 of his declaration that this expanded zone requirement "will result in increased interruptions to training exercises, . . . vastly increas[ing] the risk of negating training effectiveness, preventing strike group certification, and disrupting carefully orchestrated deployment plans to meet world-wide operational commitments." App. to Pet. for Cert. 344a. Again, I can find nothing in the District Court's opinion that specifically explains why this is not so. 530 F. Supp. 2d, at 1119–1120.

Fourth, the Court of Appeals sought, through its own thorough examination of the record, to supply the missing explanations. But those explanations are not sufficient. In respect to the surface ducting conditions, the Court of Appeals rejected the Navy's contentions on the ground that those conditions are "rar[e]," and the Navy has certified trainings that did not involve any encounter with those conditions. 518 F. 3d, at 701–702. I am not certain, however, why the rarity of the condition supports the District Court's conclusion. Rarity argues as strongly for training when the condition is encountered as it argues for the contrary.

In respect to the expansion of the "shutdown" area, the Court of Appeals noted that (1) the Navy in earlier exercises had shut down its sonar when marine mammals were sited within about one-half a mile, (2) the Navy has used a larger shutdown area when engaged in exercises with lower frequency sonar equipment, and (3) foreign navies have used larger shutdown areas. *Id.*, at 699–701, and nn. 63, 67. But the Navy's affidavits state that (1) earlier shutdowns when marine mammals were spotted at farther distances "likely occurred during tactically insignificant times," App. to Pet. for Cert. 356a, (2) ships with low frequency sonar (unlike the sonar here at issue) have equipment that makes it easier to monitor the larger area, particularly by significantly reducing the number of monitoring personnel necessarily involved, and (3) foreign navy experience is not relevant given the

potentially different military demands upon those navies, App. 508–509.

Finally, the Court of Appeals, mirroring a similar District Court suggestion in the language I have quoted, says that "the exercises in southern California are only a subset of the Navy's training activities involving active sonar." 518 F. 3d, at 702. It adds that the Navy's study "shows the Navy is still able to conduct its exercises in alternative locations, in reduced number, or through simulation." *Ibid.*, n. 69. The Court of Appeals, however, also concluded that the study "provides reasonably detailed justifications for why the Southern California Operating Area is uniquely suited to these exercises, and demonstrates that the Navy would suffer a certain hardship if the considered alternatives were employed instead." *Ibid.*

Fifth, when the Court of Appeals first heard this case following the District Court's imposition of a broad, absolute injunction, it held that any injunction must be crafted so that the Navy could continue its training exercises. Noting that the Navy had, in the past, been able to use mitigation measures to "reduce the harmful effects of its active sonar," it "vacate[d] the stay and remand[ed] this matter to the district court to narrow its injunction so as to provide mitigation conditions *under which the Navy may conduct its training exercises.*" 508 F. 3d 885, 887 (CA9 2007) (emphasis added). For the reasons just stated, neither the District Court nor the Court of Appeals has explained why we should reject the Navy's assertions that it cannot effectively conduct its training exercises under the mitigation conditions imposed by the District Court.

I would thus vacate the preliminary injunction imposed by the District Court to the extent it has been challenged by the Navy. Neither the District Court nor the Court of Appeals has adequately explained its conclusion that the balance of the equities tips in favor of plaintiffs. Nor do those parts of the record to which the parties have pointed supply the missing explanation.

II

Nonetheless, as the Court of Appeals held when it first considered this case, the Navy's past use of mitigation conditions makes clear that the Navy can effectively train under *some* mitigation conditions. In the ordinary course, I would remand so the District Court could, pursuant to the Court of Appeals' direction, set forth mitigation conditions that will protect the marine wildlife while also enabling the Navy to carry out its exercises. But, at this point, the Navy has informed us that this set of exercises will be complete by January, at the latest, and an EIS will likely be complete at that point, as well. Thus, by the time the District Court would have an opportunity to impose new conditions, the case could very well be moot.

In February of this year, the Court of Appeals stayed the injunction imposed by the District Court—*but only pending this Court's resolution of the case.* The Court of Appeals concluded that "[i]n light of the short time before the Navy is to commence its next exercise, the importance of the Navy's mission to provide for the national defense and the representation by the Chief of Naval Operations that the district court's preliminary injunction in its current form will 'unacceptably risk' effective training and strike group certification and thereby interfere with his statutory responsibility . . . to 'organiz[e], train[ ], and equip[ ] the Navy,'" interim relief was appropriate, and the court then modified the two mitigation conditions at issue. 518 F. 3d 704, 705 (CA9 2008).

With respect to the 2,200-yard shutdown zone, it required the Navy to suspend its use of the sonar if a marine mammal is detected within 2,200 yards, *except* when sonar is being used at a "critical point in the exercise," in which case the amount by which the Navy must power down is proportional to the mammal's proximity to the sonar. *Id.*, at 705–706 (internal quotation marks omitted). With respect to surface ducting, the Navy is only required to shut down sonar alto-

gether when a marine mammal is detected within 500 meters and the amount by which it is otherwise required to power down is again proportional to the mammal's proximity to the sonar source. *Ibid.* The court believed these conditions would permit the Navy to go forward with its imminently planned exercises while at the same time minimizing the harm to marine wildlife.

In my view, the modified conditions imposed by the Court of Appeals in its February stay order reflect the best equitable conditions that can be created in the short time available before the exercises are complete and the EIS is ready. The Navy has been training under these conditions since February, so allowing them to remain in place will, in effect, maintain what has become the status quo. Therefore, I would modify the Court of Appeals' February 29, 2008, order so that the provisional conditions it contains remain in place until the Navy's completion of an acceptable EIS.

Justice Ginsburg, with whom Justice Souter joins, dissenting.

The central question in this action under the National Environmental Policy Act of 1969 (NEPA) was whether the Navy must prepare an environmental impact statement (EIS). The Navy does not challenge its obligation to do so, and it represents that the EIS will be complete in January 2009—one month after the instant exercises conclude. If the Navy had completed the EIS before taking action, as NEPA instructs, the parties and the public could have benefited from the environmental analysis—and the Navy's training could have proceeded without interruption. Instead, the Navy acted first, and thus thwarted the very purpose an EIS is intended to serve. To justify its course, the Navy sought dispensation not from Congress, but from an executive council that lacks authority to countermand or revise NEPA's requirements. I would hold that, in imposing manageable measures to mitigate harm until completion of the

EIS, the District Court conscientiously balanced the equities and did not abuse its discretion.

I

In December 2006, the Navy announced its intent to prepare an EIS to address the potential environmental effects of its naval readiness activities in the Southern California (SOCAL) Range Complex. See 71 Fed. Reg. 76639 (2006). These readiness activities include expansion and intensification of naval training, as well as research, development, and testing of various systems and weapons. *Id.*, at 76639, 76640. The EIS process is underway, and the Navy represents that it will be complete in January 2009. Brief for Petitioners 11; Tr. of Oral Arg. 11.

In February 2007, seeking to commence training before completion of the EIS, the Navy prepared an environmental assessment (EA) for the 14 exercises it planned to undertake in the interim. See App. to Pet. for Cert. 235a.[1] On February 12, the Navy concluded the EA with a finding of no significant impact. App. 225–226. The same day, the Navy commenced its training exercises. *Id.*, at 227 ("The Proposed Action is hereby implemented.").

On March 22, 2007, the Natural Resources Defense Council, Inc. (NRDC), filed suit in the U. S. District Court for the Central District of California, seeking declaratory and injunctive relief based on the Navy's alleged violations of NEPA and other environmental statutes. As relevant here, the District Court determined that NRDC was likely to succeed on its NEPA claim and that equitable principles warranted preliminary relief. On August 7, 2007, the court

[1] An EA is used "for determining whether to prepare" an EIS. *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 757 (2004) (quoting 40 CFR § 1508.9(a) (2003)); see *ante*, at 15–16 (opinion of the Court). By definition, an EA alone does not satisfy an agency's obligation under NEPA if the effects of a proposed action require preparation of a full EIS.

enjoined the Navy's use of mid-frequency active (MFA) sonar during the 11 remaining exercises at issue.

On August 31, the Court of Appeals for the Ninth Circuit stayed the injunction pending disposition of the Navy's appeal, and the Navy proceeded with two more exercises. In a November 13 order, the Court of Appeals vacated the stay, stating that NRDC had shown "a strong likelihood of success on the merits" and that preliminary injunctive relief was appropriate. 508 F. 3d 885, 886 (2007). The Court of Appeals remanded, however, instructing the District Court to provide mitigation measures under which the Navy could conduct its remaining exercises.

On remand, the District Court received briefing from both parties. In addition, the court "toured the *USS Milius* at the naval base in San Diego, California, to improve its understanding of the Navy's sonar training procedures and the feasibility of the parties' proposed mitigation measures. Counsel for both [parties] were present." 530 F. Supp. 2d 1110, 1112 (2008). On January 3, 2008, the District Court entered a modified preliminary injunction imposing six mitigation measures. The court revised the modified injunction slightly on January 10 in response to filings by the Navy, and four days later, denied the Navy's application for a stay pending appeal.

On the following day, January 15, the Council on Environmental Quality (CEQ), an advisory body within the Executive Office of the President, responded to the Navy's request for "alternative arrangements" for NEPA compliance. App. to Pet. for Cert. 233a. The "arrangements" CEQ set out purported to permit the Navy to continue its training without timely environmental review. *Id.*, at 241a–247a. The Navy accepted the arrangements on the same day. App. 228.

The Navy then filed an emergency motion in the Court of Appeals requesting immediate vacatur of the District Court's modified injunction. CEQ's action, the Navy urged,

eliminated the injunction's legal foundation. In the alternative, the Navy sought a stay of two aspects of the injunction pending its appeal: the 2,200-yard mandatory shutdown zone and the power-down requirement in significant surface ducting conditions, see *ante*, at 17–18 (opinion of the Court). While targeting in its stay application only two of the six measures imposed by the District Court, the Navy explicitly reserved the right to challenge on appeal each of the six mitigation measures. Responding to the Navy's emergency motion, the Court of Appeals remanded the matter to allow the District Court to determine in the first instance the effect of the intervening executive action. Pending its own consideration of the Navy's motion, the District Court stayed the injunction, and the Navy conducted its sixth exercise.

On February 4, after briefing and oral argument, the District Court denied the Navy's motion. The Navy appealed, reiterating its position that CEQ's action eliminated all justification for the injunction. The Navy also argued that vacatur of the entire injunction was required irrespective of CEQ's action, in part because the "conditions imposed, in particular the 2,200 yard mandatory shutdown zone and the six decibel (75%) power-down in significant surface ducting conditions, severely degrade the Navy's training." Brief for Appellants in No. 08–55054 (CA9), p. 15. In the February 29 decision now under review, the Court of Appeals affirmed the District Court's judgment. 518 F. 3d 658, 703 (2008). The Navy has continued training in the meantime and plans to complete its final exercise in December 2008.

As the procedural history indicates, the courts below determined that an EIS was required for the 14 exercises. The Navy does not challenge that decision in this Court. Instead, the Navy defends its failure to complete an EIS before launching the exercises based upon CEQ's "alternative arrangements"—arrangements the Navy sought and obtained in order to overcome the lower courts' rulings. As

explained below, the Navy's actions undermined NEPA and took an extraordinary course.

II

NEPA "promotes its sweeping commitment" to environmental integrity "by focusing Government and public attention on the environmental effects of proposed agency action." *Marsh* v. *Oregon Natural Resources Council*, 490 U. S. 360, 371 (1989). "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct." *Ibid.*

The EIS is NEPA's core requirement. *Department of Transportation* v. *Public Citizen*, 541 U. S. 752, 757 (2004). This Court has characterized the requirement as "action-forcing." *Andrus* v. *Sierra Club*, 442 U. S. 347, 350 (1979) (internal quotation marks omitted). Environmental concerns must be "integrated into the very process of agency decisionmaking" and "interwoven into the fabric of agency planning." *Id.*, at 350–351. In addition to discussing potential consequences, an EIS must describe potential mitigation measures and alternatives to the proposed course of action. See *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 351–352 (1989) (citing 40 CFR §§ 1508.25(b), 1502.14(f), 1502.16(h), 1505.2(c) (1987)). The EIS requirement "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." 490 U. S., at 349.

"Publication of an EIS . . . also serves a larger informational role." *Ibid.* It demonstrates that an agency has indeed considered environmental concerns, and "perhaps more significantly, provides a springboard for public comment." *Ibid.* At the same time, it affords other affected governmental bodies "notice of the expected consequences and the opportunity to plan and implement corrective measures in a timely manner." *Id.*, at 350.

In light of these objectives, the timing of an EIS is critical. CEQ regulations instruct agencies to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values." 40 CFR § 1501.2 (1987). An EIS must be prepared "early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made." *Andrus,* 442 U. S., at 351–352, n. 3 (quoting 43 Fed. Reg. 55995 (1978) (codified in 40 CFR § 1502.5 (1979))).

The Navy's publication of its EIS in this case, scheduled to occur *after* the 14 exercises are completed, defeats NEPA's informational and participatory purposes. The Navy's inverted timing, it bears emphasis, is the very reason why the District Court had to confront the question of mitigation measures at all. Had the Navy prepared a legally sufficient EIS before beginning the SOCAL exercises, NEPA would have functioned as its drafters intended: The EIS process and associated public input might have convinced the Navy voluntarily to adopt mitigation measures, but NEPA itself would not have impeded the Navy's exercises. See *Public Citizen,* 541 U. S., at 756, 769, n. 2 (noting that NEPA does not mandate particular results, but rather establishes procedural requirements with a "focus on improving agency decisionmaking").

The Navy had other options. Most importantly, it could have requested assistance from Congress. The Government has sometimes obtained congressional authorization to proceed with planned activities without fulfilling NEPA's requirements. See, *e. g.,* Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398, § 317, 114 Stat. 1654A–57 (exempting the military from preparing a programmatic EIS for low-level flight training); 42 U. S. C. § 10141(c) (2000 ed.) (exempting the Environmental Protection Agency from preparing an EIS for the development of criteria for handling spent nuclear fuel and high-

level radioactive waste); 43 U. S. C. § 1652(d) (exempting construction of the trans-Alaska oil pipeline from further NEPA compliance).

Rather than resorting to Congress, the Navy "sought relief from the Executive Branch." *Ante*, at 18 (opinion of the Court). On January 10, 2008, the Navy asked CEQ, adviser to the President, to approve alternative arrangements for NEPA compliance pursuant to 40 CFR § 1506.11 (1987). App. to Pet. for Cert. 233a; see *ante*, at 18, n. 3. The next day, the Navy submitted supplementary material to CEQ, including the Navy's EA and after-action reports, the District Court's orders, and two analyses by the National Marine Fisheries Service (NMFS). App. to Pet. for Cert. 237a–238a. Neither the Navy nor CEQ notified NRDC, and CEQ did not request or consider any of the materials underlying the District Court orders it addressed.

Four days later, on January 15, the Chairman of CEQ issued a letter to the Secretary of the Navy. Repeating the Navy's submissions with little independent analysis, the letter stated that the District Court's orders posed risks to the Navy's training exercises. See *id.*, at 238a ("You have explained that the training restrictions set forth in the . . . injunctive orders prevent the Navy from providing Strike Groups with adequate proficiency training and create a substantial risk of precluding certification of the Strike Groups as combat ready.").

The letter continued:

> "Discussions between our staffs, your letter and supporting documents, and the classified declaration and briefings I have received, have clearly determined that the Navy cannot ensure the necessary training to certify strike groups for deployment under the terms of the injunctive orders. Based on the record supporting your request . . . CEQ has concluded that the Navy must be able to conduct the [exercises] . . . in a timeframe that does not provide sufficient time to complete an EIS.

> Therefore, emergency circumstances are present for the nine exercises and alternative arrangements for compliance with NEPA under CEQ regulation 40 C. F. R. § 1506.11 are warranted." *Id.*, at 240a.

The alternative arrangements CEQ set forth do not vindicate NEPA's objectives. The arrangements provide for "public participation measures," which require the Navy to provide notices of the alternative arrangements. *Id.*, at 241a, 242a. The notices must "seek input on the process for reviewing post-exercise assessments" and "include an offer to meet jointly with Navy representatives . . . and CEQ to discuss the alternative arrangements." *Id.*, at 242a–243a. The alternative arrangements also describe the Navy's existing research and mitigation efforts. *Id.*, at 243a–247a.

CEQ's hasty decision on a one-sided record is no substitute for the District Court's considered judgment based on a two-sided record.[2] More fundamentally, even an exemplary CEQ review could not have effected the short circuit the Navy sought. CEQ lacks authority to absolve an agency of its statutory duty to prepare an EIS. NEPA established CEQ to assist and advise the President on environmental policy, 42 U. S. C. § 4342, and a 1977 Executive Order charged CEQ with issuing regulations to federal agencies for implementation of NEPA's procedural provisions, Exec. Order No. 11991, 3 CFR 123 (1977 Comp.). This Court has recognized that CEQ's regulations are entitled to "substantial deference," *Robertson*, 490 U. S., at 355, and 40 CFR § 1506.11 indicates that CEQ may play an important consultative role in emergency circumstances, but we have never suggested that CEQ could eliminate the statute's command. If the

[2] The District Court may well have given too spare an explanation for the balance of hardships in issuing its injunction of August 7, 2007. The court cured any error in this regard, however, when it closely examined each mitigation measure in issuing the modified injunction of January 3, 2008. The Court of Appeals, too, conducted a detailed analysis of the record.

Navy sought to avoid its NEPA obligations, its remedy lay in the Legislative Branch. The Navy's alternative course—rapid, self-serving resort to an office in the White House—is surely not what Congress had in mind when it instructed agencies to comply with NEPA "to the fullest extent possible." 42 U. S. C. § 4332.[3]

III

A

Flexibility is a hallmark of equity jurisdiction. "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it." *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 312 (1982) (quoting *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329 (1944)). Consistent with equity's character, courts do not insist that litigants uniformly show a particular, predetermined quantum of probable success or injury before awarding equitable relief. Instead, courts have evaluated claims for equitable relief on a "sliding scale," sometimes awarding relief based on a lower likelihood of harm when the likelihood of success is very high. 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.3, p. 195 (2d ed. 1995). This Court has never rejected that formulation, and I do not believe it does so today.

Equity's flexibility is important in the NEPA context. Because an EIS is the tool for *uncovering* environmental harm, environmental plaintiffs may often rely more heavily on their probability of success than the likelihood of harm. The Court is correct that relief is not warranted "simply to prevent the possibility of some remote future injury." *Ante*,

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[3] On the same day that CEQ issued its letter, the President granted the Navy an exemption from the requirements of the Coastal Zone Management Act of 1972 (CZMA) pursuant to 16 U. S. C. § 1456(c)(1)(B) (2006 ed.). That exemption, expressly authorized by the CZMA, does not affect NRDC's NEPA claim.

at 22 (quoting Wright & Miller, *supra*, § 2948.1, at 155). "However, the injury need not have been inflicted when application is made or be certain to occur; a strong threat of irreparable injury before trial is an adequate basis." Wright & Miller, *supra*, § 2948.1, at 155–156 (footnote omitted). I agree with the District Court that NRDC made the required showing here.

B

The Navy's own EA predicted substantial and irreparable harm to marine mammals. Sonar is linked to mass strandings of marine mammals, hemorrhaging around the brain and ears, acute spongiotic changes in the central nervous system, and lesions in vital organs. *E. g.*, App. 600–602; *id.*, at 360–362, 478–479. As the Ninth Circuit noted, the EA predicts that the Navy's "use of MFA sonar in the SOCAL exercises will result in 564 instances of physical injury including permanent hearing loss (Level A harassment) and nearly 170,000 behavioral disturbances (Level B harassment), more than 8,000 of which would also involve temporary hearing loss." 518 F. 3d, at 696; see App. 223–224. Within those totals,

> "the EA predicts 436 Level A harassments of Cuvier's beaked whales. According to [the National Oceanic and Atmospheric Administration (NOAA)], as few as 1,121 . . . may exist in California, Oregon and Washington combined. Likewise, the EA predicts 1,092 Level B harassments of bottlenose dolphins, of which only 5,271 may exist in the California Coastal and Offshore stocks." 518 F. 3d, at 691–692.

The majority acknowledges the lower courts' findings, *ante*, at 19, but also states that the EA predicted "only eight Level A harassments of common dolphins each year" and "274 Level B harassments of beaked whales per year, none of which would result in permanent injury," *ante*, at 16. Those numbers do not fully capture the EA's predictions.

The EA classified the harassments of beaked whales as Level A, not Level B. The EA does indeed state that "modeling predicts non-injurious Level B exposures." App. 185. But, as the majority correctly notes, *ante*, at 16, the EA also states that "all beaked whale exposures are counted as Level A," App. 185. The EA counted the predicted exposures as Level A "[b]y Navy policy developed in conjunction with NMFS." *Id.*, at 200. The record reflects "the known sensitivity of these species to tactical sonar," *id.*, at 365 (NOAA letter), and as the majority acknowledges, beaked whales are difficult to study, *ante*, at 16. Further, as the Ninth Circuit noted, "the EA . . . maintained that the methodology used was based on the 'best available science.'" 518 F. 3d, at 669.[4]

In my view, this likely harm—170,000 behavioral disturbances, including 8,000 instances of temporary hearing loss; and 564 Level A harms, including 436 injuries to a beaked whale population numbering only 1,121—cannot be lightly dismissed, even in the face of an alleged risk to the effectiveness of the Navy's 14 training exercises. There is no doubt that the training exercises serve critical interests. But those interests do not authorize the Navy to violate a statutory command, especially when recourse to the Legislature remains open. "Of course, military interests do not always trump other considerations, and we have not held that they do." *Ante*, at 26.

In light of the likely, substantial harm to the environment, NRDC's almost inevitable success on the merits of its claim

[4] The majority reasons that the environmental harm deserves less weight because the training exercises "have been taking place in SOCAL for the last 40 years," such that "this is not a case in which the defendant is conducting a new type of activity with completely unknown effects on the environment." *Ante*, at 23. But the EA explains that the proposed action is not a continuation of the "status quo training." App. 128. Instead, the EA is based on the Navy's proposal to employ a "surge" training strategy, *ibid.*, in which the commander "would have the option to conduct two concurrent major range events," *id.*, at 124.

that NEPA required the Navy to prepare an EIS, the history of this litigation, and the public interest, I cannot agree that the mitigation measures the District Court imposed signal an abuse of discretion. Cf. *Amoco Production Co.* v. *Gambell*, 480 U. S. 531, 545 (1987) ("Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i. e.*, irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.").

For the reasons stated, I would affirm the judgment of the Ninth Circuit.

BELL *v.* KELLY, WARDEN

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

No. 07–1223. Argued November 12, 2008—Decided November 17, 2008

Certiorari dismissed. Reported below: 260 Fed. Appx. 599.

Richard P. Bress argued the cause for petitioner. With him on the briefs were *Maureen E. Mahoney*, *J. Scott Ballenger*, *Matthew K. Roskoski*, *Robert Lee*, *Jonathan P. Sheldon*, and *Randi R. Vickers*.

Katherine B. Burnett, Senior Assistant Attorney General of Virginia, argued the cause for respondent. With her on the brief were *Robert F. McDonnell*, Attorney General, and *Jerry P. Slonaker*, Senior Assistant Attorney General.*

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*Briefs of *amici curiae* urging reversal were filed for Former State Court Judges by *Susan J. Kohlmann;* for the National Association of Federal Defenders et al. by *Andrea D. Lyon*, *Pamela Harris*, and *Frances H. Pratt;* and for the Virginia Association of Criminal Defense Lawyers by *Ashley C. Parrish* and *Marvin D. Miller*.

Briefs of *amici curiae* urging affirmance were filed for the State of Idaho et al. by *Lawrence G. Wasden*, Attorney General of Idaho, and *Jessica M. Lorello*, *L. LaMont Anderson*, and *Kenneth K. Jorgensen*, Deputy Attorneys General, by *Kevin T. Kane*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Dustin McDaniel* of Arkansas, *John Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Steve Carter* of Indiana, *Steve Six* of Kansas, *Jack Conway* of Kentucky, *Martha Coakley* of Massachusetts, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Anne Milgram* of New Jersey, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert M. McKenna* of Washington, and *Bruce A. Salzburg* of Wyoming; for the Criminal Justice Legal Foun-

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

It is so ordered.

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dation by *Kent S. Scheidegger;* and for the Virginia Association of Commonwealth's Attorneys by *Joel R. Branscom.*

Syllabus

HEDGPETH, WARDEN *v.* PULIDO

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

No. 07–544. Argued October 15, 2008—Decided December 2, 2008

Respondent Pulido was convicted by a California jury of felony murder. On direct appeal, the California Supreme Court found invalid one of the alternative theories of guilt on which the jury had been instructed, but upheld the conviction on the grounds that the error was harmless. The District Court disagreed and granted Pulido federal habeas relief, concluding that, under *Brecht* v. *Abrahamson*, 507 U. S. 619, 623, the invalid theory had a " 'substantial and injurious effect or influence in determining the jury's verdict.' " The Ninth Circuit affirmed but on a different ground, ruling that instructing a jury on multiple theories of guilt, one of which is legally improper, is "structural" error not subject to harmless-error review. The Ninth Circuit held that Pulido's conviction must be set aside because it could not determine with "absolute certainty" that he was convicted under a proper theory. Pulido now agrees with the State that the Ninth Circuit erred and that *Brecht*'s harmless-error standard governs, but he maintains that the Court of Appeals effectively engaged in the *Brecht* analysis.

Held: The Ninth Circuit erred by categorizing the error as structural rather than applying *Brecht.* This Court has previously held that various forms of instructional error, such as omitting or misstating an element of an offense, are not structural but instead trial errors subject to harmless-error review. See, *e. g.*, *Neder* v. *United States*, 527 U. S. 1; *California* v. *Roy*, 519 U. S. 2 *(per curiam); Pope* v. *Illinois*, 481 U. S. 497; *Rose* v. *Clark*, 478 U. S. 570. And *Neder* made clear that harmless-error analysis applies to instructional errors so long as the error at issue does not categorically "vitiat[e] all the jury's findings." 527 U. S., at 11. An instructional error arising in the context of multiple theories of guilt no more vitiates *all* the jury's findings than does omission or misstatement of an element of the offense when only one theory is submitted. Pulido's argument that the Ninth Circuit effectively engaged in the *Brecht* analysis is rejected. That court mentioned *Brecht* only briefly in a footnote, agreed with Pulido's alternative argument that the error was structural and not subject to harmless-error review, and applied an "absolute certainty" standard that is plainly inconsistent with *Brecht.*

487 F. 3d 669, vacated and remanded.

Jeremy Friedlander, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *Edmund G. Brown, Jr.*, Attorney General, *Dane R. Gillette*, Chief Assistant Attorney General, *Manuel Medeiros*, State Solicitor General, *Gerald A. Engler*, Senior Assistant Attorney General, *Donald E. de Nicola*, Deputy State Solicitor General, and *Peggy S. Ruffra*, Supervising Deputy Attorney General.

Pratik A. Shah argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were former *Solicitor General Clement*, former *Assistant Attorney General Fisher*, *Deputy Solicitor General Dreeben*, and *Deborah Watson*.

J. Bradley O'Connell, by appointment of the Court, 552 U. S. 1294, argued the cause and filed a brief for respondent.*

Per Curiam.

A conviction based on a general verdict is subject to challenge if the jury was instructed on alternative theories of guilt and may have relied on an invalid one. See *Stromberg* v. *California*, 283 U. S. 359 (1931); *Yates* v. *United States*, 354 U. S. 298 (1957). In this case the Court of Appeals for the Ninth Circuit held that such an error is "structural error," requiring that the conviction be set aside on collateral review without regard to whether the flaw in the instructions prejudiced the defendant. The parties now agree that the Court of Appeals was wrong to categorize this type of error as "structural." They further agree that a reviewing court finding such error should ask whether the flaw in the instructions "had substantial and injurious effect or influence in determining the jury's verdict." *Brecht* v. *Abrahamson*, 507 U. S. 619, 623 (1993) (internal quotation marks omitted). We agree as well and so hold.

**Kent S. Scheidegger* filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging reversal.

Respondent Michael Pulido was convicted by a California jury of felony murder. On direct appeal, Pulido sought to vacate his conviction on the ground that the jury instructions were erroneous: They permitted the jury to find him guilty of felony murder if he formed the intent to aid and abet the underlying felony before the murder, but they also permitted the jury to find him guilty if he formed that intent only after the murder. The California Supreme Court agreed with Pulido that the latter theory was invalid under California law, but upheld the conviction on the ground that Pulido was not prejudiced by the error. *People* v. *Pulido*, 15 Cal. 4th 713, 727, 936 P. 2d 1235, 1243–1244 (1997). Pulido sought federal habeas relief, which the District Court granted after concluding that instructing the jury on the invalid theory had a "'substantial and injurious effect or influence in determining the jury's verdict.'" *Pulido* v. *Lamarque*, No. C 99–4933 CW (PR) (ND Cal., Mar. 24, 2005), App. to Pet. for Cert. 65a–66a (quoting *Brecht*, *supra*, at 637).

The State appealed, and the Court of Appeals affirmed. *Pulido* v. *Chrones*, 487 F. 3d 669 (2007) *(per curiam)*. On appeal, Pulido argued the District Court's *Brecht* analysis was correct, but in the alternative sought to avoid the harmless-error inquiry altogether. In support of that alternative argument, he maintained that when a jury returns a general verdict after being instructed on both a valid and an invalid theory, the conviction must be automatically set aside, without asking whether the invalid instruction was harmless. The Court of Appeals recognized that the *Brecht* "substantial and injurious effect" standard governs harmless-error analysis on federal habeas, 487 F. 3d, at 673, n. 3 (internal quotation marks omitted), but agreed with Pulido that instructing a jury on multiple theories of guilt, one of which is legally improper, was "structural" error exempting the instructions as a whole from harmless-error review, *id.*, at 675–676. Such error instead required setting aside the conviction on habeas unless the reviewing court

could determine with "'absolute certainty'" that the defendant was convicted under a proper theory. *Id.*, at 676 (quoting *Lara* v. *Ryan*, 455 F. 3d 1080, 1086 (CA9 2006)). Because the instructions "le[ft] open the possibility" that the jury convicted Pulido on the impermissible ground, the court concluded that the verdict must be reversed. 487 F. 3d, at 676. We granted certiorari. *Chrones* v. *Pulido*, 552 U. S. 1230 (2008).

The Ninth Circuit precedent on which the Court of Appeals relied, see *Lara* v. *Ryan*, *supra*, based its structural-error analysis upon a line of our cases beginning with *Stromberg*. *Stromberg* addressed the validity of a general verdict that rested on an instruction that the petitioner could be found guilty for displaying a red flag as "'a sign, symbol, or emblem of opposition to organized government, or [a]s an invitation or stimulus to anarchistic action, or [a]s [a]n aid to propaganda that is of a seditious character.'" 283 U. S., at 363. After holding that the first clause of the instruction proscribed constitutionally protected conduct, we concluded that the petitioner's conviction must be reversed because "it [wa]s impossible to say under which clause of the [instruction] the conviction was obtained." *Id.*, at 368. In *Yates* v. *United States*, *supra*, we extended this reasoning to a conviction resting on multiple theories of guilt when one of those theories is not unconstitutional, but is otherwise legally flawed.

Both *Stromberg* and *Yates* were decided before we concluded in *Chapman* v. *California*, 386 U. S. 18 (1967), that constitutional errors can be harmless. Accordingly, neither *Stromberg* nor *Yates* had reason to address whether the instructional errors they identified could be reviewed for harmlessness, or instead required automatic reversal. In a series of post-*Chapman* cases, however, we concluded that various forms of instructional error are not structural but instead trial errors subject to harmless-error review. See, *e. g.*, *Neder* v. *United States*, 527 U. S. 1 (1999) (omission of

an element of an offense); *California* v. *Roy*, 519 U. S. 2 (1996) *(per curiam)* (erroneous aider and abettor instruction); *Pope* v. *Illinois*, 481 U. S. 497 (1987) (misstatement of an element of an offense); *Rose* v. *Clark*, 478 U. S. 570 (1986) (erroneous burden shifting as to an element of an offense).

Although these cases did not arise in the context of a jury instructed on multiple theories of guilt, one of which is improper, nothing in them suggests that a different harmless-error analysis should govern in that particular context. To the contrary, we emphasized in *Rose* that "while there are some errors to which [harmless-error analysis] does not apply, they are the exception and not the rule." *Id.*, at 578. And *Neder* makes clear that harmless-error analysis applies to instructional errors so long as the error at issue does not categorically "'vitiat[e] *all* the jury's findings.'" 527 U. S., at 11 (quoting *Sullivan* v. *Louisiana*, 508 U. S. 275, 281 (1993) (erroneous reasonable-doubt instructions constitute structural error)). An instructional error arising in the context of multiple theories of guilt no more vitiates *all* the jury's findings than does omission or misstatement of an element of the offense when only one theory is submitted.

In fact, drawing a distinction between alternative-theory error and the instructional errors in *Neder*, *Roy*, *Pope*, and *Rose* would be "patently illogical," given that such a distinction "'reduces to the strange claim that, because the jury . . . received both a "good" charge and a "bad" charge on the issue, the error was somehow more pernicious than . . . where the *only* charge on the critical issue was a mistaken one.'" 487 F. 3d, at 677–678 (O'Scannlain, J., concurring specially) (quoting *Quigley* v. *Vose*, 834 F. 2d 14, 16 (CA1 1987) *(per curiam)*); see also *Becht* v. *United States*, 403 F. 3d 541, 548 (CA8 2005) (same), cert. denied, 546 U. S. 1177 (2006).

Pulido now agrees with the State that the Court of Appeals erred by treating the instructional error in this case as structural, and that the required prejudice analysis should

be governed by *Brecht*'s "substantial and injurious effect" standard. See Brief for Respondent 17 ("[T]he Ninth Circuit was mistaken in its 'structural defect' nomenclature"); Tr. of Oral Arg. 27 ("We acknowledge that this is a trial error and is subject to the Brecht prejudice standard"). So do we.

Pulido nonetheless maintains we should affirm because the Court of Appeals effectively engaged in the *Brecht* analysis, despite its clear description of the error as "structural." But despite full briefing on the applicability of *Brecht*, the Court of Appeals mentioned *Brecht* only briefly in a footnote, see 487 F. 3d, at 673, n. 3, and then went on to agree with Pulido's alternative assertion that "the instructional error was structural and therefore not subject to harmless error review," *id.*, at 675–676. The court also stated that the conviction had to be overturned unless the court was "'absolutely certain'" that the jury relied on a valid ground. *Id.*, at 676. Such a determination would appear to be a finding that no violation had occurred at all, rather than that any error was harmless. In any event, an "absolute certainty" standard is plainly inconsistent with *Brecht*. Accordingly, we express no view on whether Pulido is entitled to habeas relief, but rather remand to the Court of Appeals for application of *Brecht* in the first instance.*

The judgment is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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*The dissent maintains the Court of Appeals "undertook a searching review of the parties' evidence and the jury instructions to determine the error's effect on the jury." *Post*, at 68 (opinion of STEVENS, J.). But the Court of Appeals reached its conclusion based solely on the existence of a typographical error in the special circumstances instructions, without addressing any of the State's arguments that the typographical error was harmless in light of the record as a whole. There was no need for that court to address those arguments, of course, because of its mistaken conclusion that the instructional error was structural. Under such circumstances, remand is the appropriate course.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

The Court of Appeals misused the term "structural error" in its opinion affirming the District Court's order granting Pulido's application for a writ of habeas corpus. But the court's misnomer was inconsequential because its decision rested on substantially the same analysis as the District Court's, which correctly applied the standards set forth in *Kotteakos* v. *United States*, 328 U. S. 750 (1946), *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993), and *O'Neal* v. *McAninch*, 513 U. S. 432 (1995). The Court of Appeals' decision therefore did not warrant this Court's review and does not now merit a remand to require that court to repeat its analysis. In my opinion, the interest in expediting the conclusion of this protracted litigation outweighs the interest in correcting a misnomer.

Respondent Michael Pulido was charged with felony murder for robbing a gas station and killing the attendant. At trial, the State argued that Pulido acted alone. Pulido maintained that his uncle was the principal actor and that he had no knowledge of his uncle's plan when the two arrived at the gas station. While he was waiting in the car, Pulido claimed, he heard a shot and ran into the store. At that point, his uncle insisted that Pulido help him pry open the stolen cash register and dispose of it, and Pulido reluctantly complied. The jury convicted Pulido of felony murder, but it was unable to reach a verdict on the charges that Pulido personally used a firearm and intentionally inflicted great bodily harm.

As a matter of California law, felony-murder liability extends to all persons jointly engaged in the commission of a felony at the time of a killing when one of the joint actors kills in furtherance of the common design. *People* v. *Pulido*, 15 Cal. 4th 713, 716, 936 P. 2d 1235, 1236 (1997). But a person is not guilty of felony murder if he is only a "late-joining" aider and abettor—*i. e.*, if he did not himself commit the mur-

der and his participation in the underlying felony did not begin until after the victim was killed. *Ibid.* In this case, the trial court's instructions erroneously permitted the jury to find Pulido guilty on such a theory, as they did not require the jury to find either that Pulido committed the murder or that he aided and abetted the underlying robbery before the murder was committed. Because the instructions allowed the jury to convict Pulido of felony murder for conduct that does not amount to that offense, their inclusion was constitutional error.

On direct appeal, the California Supreme Court agreed with Pulido that the late-joiner theory was an invalid theory of felony-murder liability. *Ibid.* It nevertheless held that any error in the trial court's instructions was harmless. According to the court, the jury found that Pulido had been engaged in the robbery at the time of the killing because the robbery-murder special-circumstance instruction stated that "the murder was committed *while the defendant was engaged*" in the "commission of or attempted commission of [a] robbery." *Id.*, at 727, 936 P. 2d, at 1243 (citing Cal. Penal Code Ann. § 190.2(a)(17) (internal quotation marks omitted)). Based on that portion of the instruction, the court concluded that the special-circumstance verdict "demonstrates the jury did not accept the theory [Pulido] joined the robbery only after [the victim] was killed," and it therefore held that Pulido was not prejudiced by the error. 15 Cal. 4th, at 727, 936 P. 2d, at 1244.

In reaching that conclusion, however, the California Supreme Court failed to take into account the entire special-circumstance instruction. A typographical error in that instruction in fact permitted the jury to find the special circumstance of robbery-murder true if it found *either* that the murder was committed while the defendant was engaged in the commission of a robbery *or* that it "was committed in order to carry out or advance the commission of the crime of robbery or to facilitate the escape therefrom or to avoid

detection"—a finding entirely consistent with the late-joiner theory. App. 14. Thus, as the State concedes, the erroneous instructions made it "reasonably likely" that the jury convicted Pulido on the impermissible theory. Brief for Petitioner 18.

After exhausting his state postconviction remedies,[1] Pulido sought a writ of habeas corpus in Federal District Court. The District Court recognized the erroneous disjunctive in the special-circumstance instruction that the California Supreme Court had overlooked, and it held that the state court's conclusion that Pulido was not prejudiced by erroneous instructions was "an objectively unreasonable application of clearly established federal law." *Pulido* v. *Lamarque*, No. C 99–4933 CW (PR) (ND Cal., Mar. 24, 2005), App. to Pet. for Cert. 64a.

The District Court then considered the effect of that error on the jury. Correctly relying on *Brecht*, the District Court began its analysis by noting that a federal habeas petitioner "is not entitled to habeas relief unless the State court's error resulted in actual prejudice, that is, the error had a 'substantial and injurious effect or influence in determining the jury's verdict.'" App. to Pet. for Cert. 65a (quoting *Brecht*, 507 U. S., at 637). If an error had a substantial influence, or if "the record is so evenly balanced that a conscientious judge is in 'grave doubt'" as to whether it had such an effect, the conviction must be reversed. App. to Pet. for Cert. 65a (quoting *O'Neal*, 513 U. S., at 438).

To determine whether the error was harmless under this standard, the District Court scrutinized the record, including the arguments of both parties, the evidence supporting their respective theories of the case, the jury instructions, the jury's questions to the trial court, and the various parts of the jury's verdict. App. to Pet. for Cert. 65a–66a.

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[1] The California Supreme Court summarily denied Pulido's state petition for a writ of habeas corpus. See *Pulido* v. *Chrones*, 487 F. 3d 669, 672 (CA9 2007) *(per curiam)*.

Throughout this inquiry, the District Court properly avoided substituting its judgment for the jury's. As we cautioned in *Kotteakos*, in undertaking harmless-error analysis "it is not the [reviewing] court's function to determine guilt or innocence. Nor is it to speculate upon probable reconviction and decide according to how the speculation comes out." 328 U. S., at 763 (citations omitted). Thus, "[t]he inquiry cannot be merely whether there was enough to support the result" in the absence of the error. *Id.*, at 765. Rather, the proper question is "whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand." *Ibid.;* accord, *O'Neal*, 513 U. S., at 437.

That was precisely the question addressed by the District Court when it sought to ascertain what the jury actually found. The court concluded that, while it is "possible" that the jury found that Pulido aided and abetted the robbery before the victim was killed, the court had "no way of determining whether this was the case." App. to Pet. for Cert. 66a. Because that uncertainty left the court with "'grave doubt as to the likely effect of [the] error on the jury's verdict,'" it faithfully applied the standard mandated by *Kotteakos* and *O'Neal* and found that the error was not harmless. App. to Pet. for Cert. 66a (quoting *O'Neal*, 513 U. S., at 435).

On appeal, Pulido contended that the judgment of the District Court should be affirmed whether the instructional error was viewed as structural error or as trial error. Brief for Appellee and Cross-Appellant in No. 05–15916 etc. (CA9), pp. 53–64 (hereinafter Appellee's Brief). He argued that the error was not harmless under *Brecht* and *O'Neal* because the substantial evidence that supported the invalid theory made it likely that the jury convicted him on that basis. Appellee's Brief 55–64. In particular, Pulido noted that the "injurious effect" of this type of error "is greatest when the instruction compromises the defense by appearing to extend liability even to the factual scenario suggested by the de-

fense evidence," as was true in this case. *Id.*, at 57 (internal quotation marks omitted; emphasis deleted). At oral argument, the parties' contentions similarly focused on the *Brecht* standard and the result that harmless-error analysis required.

Less than two months after oral argument, and before the Court of Appeals issued its decision in this case, a different panel of the Ninth Circuit decided *Lara* v. *Ryan*, 455 F. 3d 1080 (2006). Lara was convicted of attempted murder by a jury that had been instructed that it could find him guilty under either an express malice theory or an implied malice theory, the second of which is legally invalid. *Id.*, at 1082. The Ninth Circuit described the erroneous instruction as a "structural error," but it held that such an error does not necessitate reversal when a reviewing court can "determine with absolute certainty" that the defendant was not convicted under the erroneous theory. *Id.*, at 1086. Because the jury "made a specific finding that Lara attempted to murder willfully, deliberately, and with premeditation," the court concluded that it necessarily relied on the valid instruction and that reversal was therefore not required. *Id.*, at 1086–1087.

In those limited instances in which this Court has found an error "structural," we have done so because the error defies analysis by harmless-error standards. See *Arizona* v. *Fulminante*, 499 U. S. 279, 309 (1991); see also *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 150 (2006) (quoting *Sullivan* v. *Louisiana*, 508 U. S. 275, 282 (1993); *United States* v. *Cronic*, 466 U. S. 648, 659, and n. 25 (1984)). Indeed, it is because the consequences "'are necessarily unquantifiable and indeterminate'" that automatic reversal is required when such errors occur. *Gonzalez-Lopez*, 548 U. S., at 150 (quoting *Sullivan*, 508 U. S., at 282). That the court in *Lara* could be "'"*absolutely certain*" that the jury relied upon the legally correct theory,'" 455 F. 3d, at 1085,

shows both that the error was susceptible of harmless-error analysis and that the court in fact found the error harmless despite repeatedly referring to it as "structural."

Citing *Lara*, the Court of Appeals' *per curiam* opinion labeled the erroneous instruction in this case a structural error.[2] As in *Lara*, the court then undertook a searching review of the parties' evidence and the jury instructions to determine the error's effect on the jury. Noting, among other things, that "[t]he typographical error in the contemporaneity instruction relied upon by the California Supreme Court introduces doubt into any inference to be drawn from the jury's finding as to the special circumstance," the court concluded that "the jury instructions leave open the possibility that the jury convicted Pulido on a legally impermissible theory." *Pulido* v. *Chrones*, 487 F. 3d 669, 676 (CA9 2007) *(per curiam)*. That possibility of reliance on the erroneous instruction is the "substantial and injurious effect" to which *Brecht* refers. Thus, although the Court of Appeals called the error in this case by the wrong name, it performed substantially the same analysis and reached the same conclusion as the District Court did when it applied the standard prescribed by *Brecht*.[3]

Judge Thomas concurred separately both to defend the *Lara* decision and to demonstrate that harmless-error analysis also supports the panel's result. 487 F. 3d, at 678–683. Unlike the District Court, Judge Thomas applied the

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[2] The Court of Appeals' opinion asserts that Pulido argued that the error was structural under *Lara* v. *Ryan*, 455 F. 3d 1080 (CA9 2006). But due to the timing of the *Lara* decision, the parties did not raise arguments relying on that precedent until their postargument supplemental briefing. As discussed above, the parties' arguments had initially focused on the proper application of *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993).

[3] The Court of Appeals in fact cited *Brecht* and recited the proper standard in a footnote before turning its attention to *Lara:* "If there is constitutional error, we consider whether the error was harmless; that is, whether the error had a '"substantial and injurious effect or influence in determining the jury's verdict."'" 487 F. 3d, at 673, n. 3.

harmless-error standard announced in *Chapman* v. *California*, 386 U. S. 18 (1967), instead of looking to *Brecht*. 487 F. 3d, at 678. But his analysis similarly establishes that at least some jurors very likely relied on the impermissible late-joiner theory. *Id.*, at 679–683.

The record before us clearly supports that conclusion. Indeed, even petitioner admits that the ambiguity in the robbery and murder instructions and the trial court's confusing answers to the jury's questions "combined to make it reasonably likely that the jury applied the instructions in an unconstitutional way." Brief for Petitioner 18. That reasonable likelihood is sufficient to support the conclusion that the error was not harmless under *Brecht*.

Because the District Court's analysis was correct and the Court of Appeals' result was substantially the same, I think this Court's decision to remand for the purpose of obtaining a third analysis of the harmless-error issue is a misuse of scarce judicial resources. I would therefore affirm the judgment of the Court of Appeals.

Syllabus

ALTRIA GROUP, INC., ET AL. *v.* GOOD ET AL.

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

No. 07–562. Argued October 6, 2008—Decided December 15, 2008

Respondents, smokers of petitioners' "light" cigarettes, filed suit, alleging that petitioners violated the Maine Unfair Trade Practices Act (MUTPA) by fraudulently advertising that their "light" cigarettes delivered less tar and nicotine than regular brands. The District Court granted summary judgment for petitioners, finding the state-law claim pre-empted by the Federal Cigarette Labeling and Advertising Act (Labeling Act). The First Circuit reversed, holding that the Labeling Act neither expressly nor impliedly pre-empts respondents' fraud claim.

Held: Neither the Labeling Act's pre-emption provision nor the Federal Trade Commission's actions in this field pre-empt respondents' state-law fraud claim. Pp. 76–91.

(a) Congress may indicate pre-emptive intent through a statute's express language or through its structure and purpose. See *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 525. When the text of an express pre-emption clause is susceptible of more than one plausible reading, courts ordinarily "accept the reading that disfavors pre-emption." *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 449. The Labeling Act's stated purposes are to inform the public of the health risks of smoking while protecting commerce and the economy from the ill effects of nonuniform requirements to the extent consistent with the first goal. Although fidelity to these purposes does not demand the pre-emption of state fraud rules, the principal question here is whether that result is nevertheless required by 15 U. S. C. § 1334(b), which provides that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." Pp. 76–80.

(b) Respondents' claim is not expressly pre-empted by § 1334(b). As determined in *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, and *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525, the phrase "based on smoking and health" modifies the state-law rule at issue rather than a particular application of that rule. The *Cipollone* plurality concluded that "the phrase 'based on smoking and health' fairly but narrowly construed" did not pre-empt the *Cipollone* plaintiff's common-law claim that cigarette manufacturers had fraudulently misrepresented and concealed a material fact, because the claim alleged a violation of a duty not to deceive—

a duty that is not "based on" smoking and health. 505 U. S., at 528–529. Respondents here also allege a violation of the duty not to deceive as codified in the MUTPA, which, like the common-law duty in *Cipollone*, has nothing to do with smoking and health. Respondents' claim is not analogous to the "warning neutralization" claim found to be pre-empted in *Cipollone*. *Reilly* is consistent with *Cipollone*'s analysis. This Court disagrees with petitioners' alternative argument that the express pre-emption framework of *Cipollone* and *Reilly* should be rejected. *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219, and *Riegel* v. *Medtronic, Inc.*, 552 U. S. 312, are distinguished. Pp. 80–87.

(c) Various Federal Trade Commission decisions with respect to statements of tar and nicotine content do not impliedly pre-empt state deceptive practices rules like the MUTPA. Pp. 87–90.

501 F. 3d 29, affirmed and remanded.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and ALITO, JJ., joined, *post*, p. 91.

Theodore B. Olson argued the cause for petitioners. With him on the briefs were *Mark A. Perry*, *Amir C. Tayrani*, *Kenneth J. Parsigian*, *Kenneth S. Geller*, and *Guy Miller Struve*.

David C. Frederick argued the cause for respondents. With him on the brief were *Mark L. Evans*, *Gerard V. Mantese*, *Mark Rossman*, *Thomas V. Urmy, Jr.*, *Todd S. Heyman*, and *Samuel W. Lanham, Jr.*

Douglas Hallward-Driemeier argued the cause for the United States as *amicus curiae* in support of respondents. With him on the brief were *Solicitor General Garre*, *Deputy Solicitor General Kneedler*, *Assistant Attorney General Hertz*, *Mark B. Stern*, and *Alisa B. Klein*.*

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Jeffrey A. Lamken*, *Allyson N. Ho*, *Robin S. Conrad*, and *Amar D. Sarwal;* for the National Association of Manufacturers by *Peter A. Barile III*, *Jan S. Amundson*, and *Quentin Riegel;* for the Product Liability Advisory Council, Inc., by *John M. Thomas;* and for the Washington Legal Foundation by *Daniel J. Popeo* and *Richard A. Samp*.

Briefs of *amici curiae* urging affirmance were filed for the State of Maine et al. by *G. Steven Rowe*, Attorney General of Maine, *Paul Stern*,

JUSTICE STEVENS delivered the opinion of the Court.

Respondents, who have for over 15 years smoked "light" cigarettes manufactured by petitioners, Philip Morris USA, Inc., and its parent company, Altria Group, Inc., claim that petitioners violated the Maine Unfair Trade Practices Act

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Deputy Attorney General, *Linda Conti*, Chief, Consumer Protection Division, and *Jennifer Willis* and *Carolyn Silsby*, Assistant Attorneys General, by *Peter J. Nickles*, Interim Attorney General of the District of Columbia, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Edmund G. Brown, Jr.*, of California, *John W. Suthers* of Colorado, *Richard Blumenthal* of Connecticut, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Stephen N. Six* of Kansas, *Jack Conway* of Kentucky, *James D. Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Anne Milgram* of New Jersey, *Gary K. King* of New Mexico, *Andrew M. Cuomo* of New York, *Wayne Stenehjem* of North Dakota, *Nancy H. Rogers* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Tom Corbett* of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Robert M. McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for the American Medical Association et al. by *Gerson H. Smoger;* for Former Commissioners of the Federal Trade Commission by *Robert L. King;* for the Maryland Consumer Rights Coalition et al. by *Kathleen Hoke Dachille;* for the Tobacco Control Legal Consortium et al. by *David C. Vladeck*, *Leslie A. Brueckner*, and *Julie Nepveu;* and for Allan M. Brandt et al. by *Robert S. Peck* and *Francine A. Hochberg.*

Briefs of *amici curiae* were filed for Constitutional and Administrative Law Scholars by *Ernest A. Young, pro se*, and *Erin Glenn Busby;* and for Former Commissioners et al. of the Federal Trade Commission by *Michael S. Fried*, *Christian G. Vergonis*, and *Robert T. Smith.*

(MUTPA). Specifically, they allege that petitioners' advertising fraudulently conveyed the message that their "light" cigarettes deliver less tar and nicotine to consumers than regular brands despite petitioners' knowledge that the message was untrue. Petitioners deny the charge, asserting that their advertisements were factually accurate. The merits of the dispute are not before us because the District Court entered summary judgment in favor of petitioners on the ground that respondents' state-law claim is pre-empted by the Federal Cigarette Labeling and Advertising Act, as amended (Labeling Act or Act). The Court of Appeals reversed that judgment, and we granted certiorari to review its holding that the Labeling Act neither expressly nor impliedly pre-empts respondents' fraud claim. We affirm.

I

Respondents are Maine residents and longtime smokers of Marlboro Lights and Cambridge Lights cigarettes, which are manufactured by petitioners. Invoking the diversity jurisdiction of the Federal District Court, respondents filed a complaint alleging that petitioners deliberately deceived them about the true and harmful nature of "light" cigarettes in violation of the MUTPA, Me. Rev. Stat. Ann., Tit. 5, § 207 (Supp. 2008).[1] Respondents claim that petitioners fraudulently marketed their cigarettes as being "light" and containing " '[l]owered [t]ar and [n]icotine' " to convey to consumers that they deliver less tar and nicotine and are therefore less harmful than regular cigarettes. App. 28a–29a.

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[1] The MUTPA provides, as relevant, that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful." § 207. In construing that section, courts are to "be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 45(a)(1) of the Federal Trade Commission Act (15 United States Code 45(a)(1)), as from time to time amended." § 207(1).

Respondents acknowledge that testing pursuant to the Cambridge Filter Method[2] indicates that tar and nicotine yields of Marlboro Lights and Cambridge Lights are lower than those of regular cigarettes. *Id.*, at 30a. Respondents allege, however, that petitioners have known at all relevant times that human smokers unconsciously engage in compensatory behaviors not registered by Cambridge Filter Method testing that negate the effect of the tar- and nicotine-reducing features of "light" cigarettes. *Id.*, at 30a–31a. By covering filter ventilation holes with their lips or fingers, taking larger or more frequent puffs, and holding the smoke in their lungs for a longer period of time, smokers of "light" cigarettes unknowingly inhale as much tar and nicotine as do smokers of regular cigarettes. *Ibid.* "Light" cigarettes are in fact more harmful because the increased ventilation that results from their unique design features produces smoke that is more mutagenic per milligram of tar than the smoke of regular cigarettes. *Id.*, at 31a–32a. Respondents claim that petitioners violated the MUTPA by fraudulently concealing that information and by affirmatively representing, through the use of "light" and "lowered tar and nicotine" descriptors, that their cigarettes would pose fewer health risks. *Id.*, at 32a, 33a.

Petitioners moved for summary judgment on the ground that the Labeling Act, 15 U. S. C. § 1334(b), expressly preempts respondents' state-law cause of action. Relying on our decisions in *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504 (1992), and *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S.

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[2] The Cambridge Filter Method weighs and measures the tar and nicotine collected by a smoking machine that takes 35 milliliter puffs of two seconds' duration every 60 seconds until the cigarette is smoked to a specified butt length. App. 294a, 668a. As discussed below, the Federal Trade Commission (FTC or Commission) signaled in 1966 that the Cambridge Filter Method was an acceptable means of measuring the tar and nicotine content of cigarettes, but it never required manufacturers to publish test results in their advertisements.

525 (2001), the District Court concluded that respondents' MUTPA claim is pre-empted. The court recast respondents' claim as a failure-to-warn or warning neutralization claim of the kind pre-empted in *Cipollone:* The claim charges petitioners with "produc[ing] a product it knew contained hidden risks . . . not apparent or known to the consumer"—a claim that "runs to what [petitioners] actually said about Lights and what [respondents] claim they should have said." 436 F. Supp. 2d 132, 151 (Me. 2006). And the difference between what petitioners said and what respondents would have them say is " 'intertwined with the concern about cigarette smoking and health.' " *Id.*, at 153 (quoting *Reilly*, 533 U. S., at 548). The District Court thus concluded that respondents' claim rests on a state-law requirement based on smoking and health of precisely the kind that § 1334(b) pre-empts, and it granted summary judgment for petitioners.

Respondents appealed, and the Court of Appeals reversed. The Court of Appeals first rejected the District Court's characterization of respondents' claim as a warning neutralization claim akin to the pre-empted claim in *Cipollone.* 501 F. 3d 29, 37, 40 (CA1 2007). Instead, the court concluded that respondents' claim is in substance a fraud claim that alleges that petitioners falsely represented their cigarettes as "light" or having "lowered tar and nicotine" even though they deliver to smokers the same quantities of those components as do regular cigarettes. *Id.*, at 36. "The fact that these alleged misrepresentations were unaccompanied by additional statements in the nature of a warning does not transform the claimed fraud into failure to warn" or warning neutralization. *Id.*, at 42–43. Finding respondents' claim indistinguishable from the non-pre-empted fraud claim at issue in *Cipollone*, the Court of Appeals held that it is not expressly pre-empted. The court also rejected petitioners' argument that respondents' claim is impliedly pre-empted because their success on that claim would stand as an obsta-

cle to the purported policy of the FTC allowing the use of descriptive terms that convey Cambridge Filter Method test results. Accordingly, it reversed the judgment of the District Court.

In concluding that respondents' claim is not expressly pre-empted, the Court of Appeals considered and rejected the Fifth Circuit's reasoning in a similar case. 501 F. 3d, at 45. Unlike the court below, the Fifth Circuit likened the plaintiffs' challenge to the use of "light" descriptors to *Cipollone*'s warning neutralization claim and thus found it expressly pre-empted. *Brown* v. *Brown & Williamson Tobacco Corp.*, 479 F. 3d 383, 392–393 (2007). We granted the petition for certiorari to resolve this apparent conflict. 552 U. S. 1162 (2008).

II

Article VI, cl. 2, of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Consistent with that command, we have long recognized that state laws that conflict with federal law are "without effect." *Maryland* v. *Louisiana*, 451 U. S. 725, 746 (1981).

Our inquiry into the scope of a statute's pre-emptive effect is guided by the rule that "'[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case." *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485 (1996) (quoting *Retail Clerks* v. *Schermerhorn*, 375 U. S. 96, 103 (1963)). Congress may indicate pre-emptive intent through a statute's express language or through its structure and purpose. See *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 525 (1977). If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains. Pre-emptive intent may also be inferred if the scope of the statute indicates that Congress intended federal law to occupy the legislative field, or if there is an actual

conflict between state and federal law. *Freightliner Corp.* v. *Myrick*, 514 U. S. 280, 287 (1995).

When addressing questions of express or implied pre-emption, we begin our analysis "with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). That assumption applies with particular force when Congress has legislated in a field traditionally occupied by the States. *Lohr*, 518 U. S., at 485; see also *Reilly*, 533 U. S., at 541–542 ("Because 'federal law is said to bar state action in [a] fiel[d] of traditional state regulation,' namely, advertising, we 'wor[k] on the assumption that the historic police powers of the States [a]re not to be superseded by the Federal Act unless that [is] the clear and manifest purpose of Congress'" (citation omitted)). Thus, when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily "accept the reading that disfavors pre-emption." *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 449 (2005).

Congress enacted the Labeling Act in 1965[3] in response to the Surgeon General's determination that cigarette smoking is harmful to health. The Act required that every package of cigarettes sold in the United States contain a conspicuous warning, and it pre-empted state-law positive enactments that added to the federally prescribed warning. 79 Stat. 283. Congress amended the Labeling Act a few years later by enacting the Public Health Cigarette Smoking Act of 1969.[4] The amendments strengthened the language of the prescribed warning, 84 Stat. 88, and prohibited cigarette advertising in "any medium of electronic communication subject to [Federal Communications Commission] jurisdiction," *id.*, at 89. They also broadened the Labeling Act's pre-

[3] 79 Stat. 282.

[4] Pub. L. 91–222, 84 Stat. 87. Though actually enacted in 1970, Congress directed that it be cited as a "1969 Act."

emption provision. See *Cipollone*, 505 U. S., at 520 (plurality opinion) (discussing the difference in scope of the pre-emption clauses of the 1965 and 1969 Acts). The Labeling Act has since been amended further to require cigarette manufacturers to include four more explicit warnings in their packaging and advertisements on a rotating basis.[5]

The stated purpose of the Labeling Act is

> "to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—
>
> "(1) the public may be adequately informed that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes; and
>
> "(2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 79 Stat. 282, 15 U. S. C. § 1331.

The requirement that cigarette manufacturers include in their packaging and advertising the precise warnings mandated by Congress furthers the Act's first purpose. And the Act's pre-emption provisions promote its second purpose.

As amended, the Labeling Act contains two express pre-emption provisions. Section 5(a) protects cigarette manufacturers from inconsistent state labeling laws by prohibiting the requirement of additional statements relating to smoking and health on cigarette packages. 15 U. S. C. § 1334(a). Section 5(b), which is at issue in this case, provides that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the adver-

[5] Comprehensive Smoking Education Act, Pub. L. 98–474, § 4(a), 98 Stat. 2201, 15 U. S. C. § 1333(a).

tising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." § 1334(b).

Together, the labeling requirement and pre-emption provisions express Congress' determination that the prescribed federal warnings are both necessary and sufficient to achieve its purpose of informing the public of the health consequences of smoking. Because Congress has decided that no additional warning statement is needed to attain that goal, States may not impede commerce in cigarettes by enforcing rules that are based on an assumption that the federal warnings are inadequate. Although both of the Act's purposes are furthered by prohibiting States from supplementing the federally prescribed warning, neither would be served by limiting the States' authority to prohibit deceptive statements in cigarette advertising. Petitioners acknowledge that "Congress had no intention of insulating tobacco companies from liability for inaccurate statements about the relationship between smoking and health." Brief for Petitioners 28. But they maintain that Congress could not have intended to permit the enforcement of *state* fraud rules because doing so would defeat the Labeling Act's purpose of preventing nonuniform state warning requirements. 15 U. S. C. § 1331.[6] As we observed in *Cipollone*, however,

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[6] Petitioners also urge us to find support for their claim that Congress gave the FTC exclusive authority to police deceptive health-related claims in cigarette advertising in what they refer to as the Labeling Act's "saving clause." The clause provides that, apart from the warning requirement, nothing in the Act "shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes." § 1336. A plurality of this Court has previously read this clause to "indicat[e] that Congress intended the phrase 'relating to smoking and health' . . . to be construed narrowly, so as not to proscribe the regulation of deceptive advertising." *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 528–529 (1992). Nothing in the clause suggests that Congress meant to proscribe the States' historic regulation of deceptive advertising prac-

fraud claims "rely only on a single, uniform standard: falsity." 505 U. S., at 529 (plurality opinion).

Although it is clear that fidelity to the Act's purposes does not demand the pre-emption of state fraud rules, the principal question that we must decide is whether the text of § 1334(b) nevertheless requires that result.

III

We have construed the operative phrases of § 1334(b) in two prior cases: *Cipollone*, 505 U. S. 504, and *Reilly*, 533 U. S. 525. On both occasions we recognized that the phrase "based on smoking and health" modifies the state-law rule at issue rather than a particular application of that rule.

In *Cipollone*, the plurality, which consisted of Chief Justice Rehnquist and Justices White, O'Connor, and STEVENS, read the pre-emption provision in the 1969 amendments to the Labeling Act to pre-empt common-law rules as well as positive enactments. Unlike Justices Blackmun, KENNEDY, and SOUTER, the plurality concluded that the provision does not preclude all common-law claims that have some relationship to smoking and health. 505 U. S., at 521–523. To determine whether a particular common-law claim is preempted, the plurality inquired "whether the legal duty that is the predicate of the common-law damages action constitutes a 'requirement or prohibition based on smoking and health . . . with respect to . . . advertising or promotion,' giving that clause a fair but narrow reading." *Id.*, at 524.

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tices. The FTC has long depended on cooperative state regulation to achieve its mission because, although one of the smallest administrative agencies, it is charged with policing an enormous amount of activity. See 1 S. Kanwit, Federal Trade Commission §§ 1:1, 1:2 (2004 ed. and Supp. 2008). Moreover, when the Labeling Act was amended in 1969 it was not even clear that the FTC possessed rulemaking authority, see 84 Stat. 89, making it highly unlikely that Congress would have intended to assign exclusively to the FTC the substantial task of overseeing deceptive practices in cigarette advertisements.

Applying this standard, the plurality held that the plaintiff's claim that cigarette manufacturers had fraudulently misrepresented and concealed a material fact was not preempted. That claim alleged a violation of the manufacturers' duty not to deceive—a duty that is not "based on" smoking and health. *Id.*, at 528–529. Respondents in this case also allege a violation of the duty not to deceive as that duty is codified in the MUTPA. The duty codified in that state statute, like the duty imposed by the state common-law rule at issue in *Cipollone*, has nothing to do with smoking and health.[7]

Petitioners endeavor to distance themselves from that holding by arguing that respondents' claim is more analogous to the "warning neutralization" claim found to be pre-empted in *Cipollone*. Although the plurality understood the plaintiff to have presented that claim as a "theory of fraudulent misrepresentation," *id.*, at 528, the gravamen of the claim was the defendants' failure to warn, as it was "predicated on a state-law prohibition against statements in advertising and promotional materials that tend to minimize the health hazards associated with smoking," *id.*, at 527. Thus understood, the *Cipollone* plurality's analysis of the warning neutralization claim has no application in this case.[8]

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[7] In his dissent, JUSTICE THOMAS criticizes our reliance on the plurality opinion in *Cipollone*, *post*, at 96–98, 103–108, 111–112, and advocates adopting the analysis set forth by JUSTICE SCALIA in his opinion concurring in the judgment in part and dissenting in part in that case, *post*, at 95–96, 109–110. But JUSTICE SCALIA's approach was rejected by seven Members of the Court, and in the almost 17 years since *Cipollone* was decided Congress has done nothing to indicate its approval of that approach. Moreover, JUSTICE THOMAS fails to explain why Congress would have intended the result that JUSTICE SCALIA's approach would produce—namely, permitting cigarette manufacturers to engage in fraudulent advertising. As a majority of the Court concluded in *Cipollone*, nothing in the Labeling Act's language or purpose supports that result.

[8] The *Cipollone* plurality further stated that the warning neutralization claim was "merely the converse of a state-law *requirement* that warnings be included in advertising and promotional materials," 505 U. S., at 527,

Petitioners nonetheless contend that respondents' claim is like the pre-empted warning neutralization claim because it is based on statements that "might create a false impression" rather than statements that are "inherently false." Brief for Petitioners 39. But the extent of the falsehood alleged does not alter the nature of the claim. Nothing in the Labeling Act's text or purpose or in the plurality opinion in *Cipollone* suggests that whether a claim is pre-empted turns in any way on the distinction between misleading and inherently false statements. Petitioners' misunderstanding is the same one that led the Court of Appeals for the Fifth Circuit, when confronted with a "light" descriptors claim, to reach a result at odds with the Court of Appeals' decision in this case. See *Brown*, 479 F. 3d, at 391–393. Certainly, the extent of the falsehood alleged may bear on whether a plaintiff can prove her fraud claim, but the merits of respondents' claim are not before us.

Once that erroneous distinction is set aside, it is clear that our holding in *Cipollone* that the common-law fraud claim was not pre-empted is directly applicable to the statutory claim at issue in this case. As was true of the claim in *Cipollone*, respondents' claim that the deceptive statements "light" and "lowered tar and nicotine" induced them to purchase petitioners' product alleges a breach of the duty not to deceive.[9] To be sure, the presence of the federally mandated warnings may bear on the materiality of petitioners'

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evincing the plurality's recognition that warning neutralization and failure-to-warn claims are two sides of the same coin. JUSTICE THOMAS' criticism of the plurality's treatment of the failure-to-warn claim, *post*, at 106, is beside the point, as no such claim is at issue in this litigation.

[9] As the Court of Appeals observed, respondents' allegations regarding petitioners' use of the statements "light" and "lowered tar and nicotine" could also support a warning neutralization claim. But respondents did not bring such a claim, and the fact that they could have does not, as petitioners suggest, elevate form over substance. There is nothing new in the recognition that the same conduct might violate multiple proscriptions.

allegedly fraudulent statements, "but that possibility does not change [respondents'] case from one about the statements into one about the warnings." 501 F. 3d, at 44.[10]

Our decision in *Reilly* is consistent with *Cipollone*'s analysis. *Reilly* involved regulations promulgated by the Massachusetts attorney general " 'in order to address the incidence of cigarette smoking and smokeless tobacco use by children under legal age . . . [and] in order to prevent access to such products by underage consumers.' " 533 U. S., at 533 (quoting 940 Code Mass. Regs. § 21.01 (2000)). The regulations did not pertain to the content of any advertising; rather, they placed a variety of restrictions on certain cigarette sales and the location of outdoor and point-of-sale cigarette advertising. The attorney general promulgated those restrictions pursuant to his statutory authority to prevent unfair or deceptive trade practices. Mass. Gen. Laws, ch. 93A, § 2 (West 1996). But although the attorney general's authority derived from a general deceptive practices statute like the one at issue in this case, the challenged regulations targeted advertising that tended to promote tobacco use by children instead of prohibiting false or misleading statements. Thus, whereas the "prohibition" in *Cipollone* was the common-law fraud rule, the "prohibitions" in *Reilly* were the targeted regulations. Accordingly, our holding in *Reilly* that the reg-

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[10] JUSTICE THOMAS contends that respondents' fraud claim must be pre-empted because "[a] judgment in [their] favor will . . . result in a 'requirement' that petitioners represent the effects of smoking on health in a particular way in their advertising and promotion of light cigarettes." *Post*, at 93. He further asserts that "respondents seek to *require* the cigarette manufacturers to provide additional warnings about compensatory behavior, or to *prohibit* them from selling these products with the 'light' or 'low-tar' descriptors." *Post*, at 109–110. But this mischaracterizes the relief respondents seek. If respondents prevail at trial, petitioners will be prohibited from selling as "light" or "low tar" only those cigarettes that are not actually light and do not actually deliver less tar and nicotine. Barring intervening federal regulation, petitioners would remain free to make nonfraudulent use of the "light" and "low-tar" descriptors.

ulations were pre-empted provides no support for an argument that a general prohibition of deceptive practices is "based on" the harm caused by the specific kind of deception to which the prohibition is applied in a given case.

It is true, as petitioners argue, that the appeal of their advertising is based on the relationship between smoking and health. And although respondents have expressly repudiated any claim for damages for personal injuries, see App. 26a, their actual injuries likely encompass harms to health as well as the monetary injuries they allege. These arguments are unavailing, however, because the text of § 1334(b) does not refer to *harms* related to smoking and health. Rather, it pre-empts only *requirements and prohibitions*—*i. e.*, rules—that are based on smoking and health. The MUTPA says nothing about either "smoking" or "health." It is a general rule that creates a duty not to deceive and is therefore unlike the regulations at issue in *Reilly*.[11]

Petitioners argue in the alternative that we should reject the express pre-emption framework established by the *Cipollone* plurality and relied on by the Court in *Reilly*. In so doing, they invoke the reasons set forth in the separate opinions of Justice Blackmun (who especially criticized the plurality's holding that the failure-to-warn claim was pre-empted) and JUSTICE SCALIA (who argued that the fraud claim also should be pre-empted). While we again acknowledge that our analysis of these claims may lack "theoretical elegance," we remain persuaded that it represents "a fair understanding of congressional purpose." *Cipollone*, 505 U. S., at 529–530, n. 27 (plurality opinion).

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[11] In implementing the MUTPA, neither the state legislature nor the state attorney general has enacted a set of special rules or guidelines targeted at cigarette advertising. As we noted in *Cipollone*, it was the threatened enactment of new state warning requirements rather than the enforcement of pre-existing general prohibitions against deceptive practices that prompted congressional action in 1969. 505 U. S., at 515, and n. 11.

Petitioners also contend that the plurality opinion is inconsistent with our decisions in *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219 (1995), and *Riegel* v. *Medtronic, Inc.*, 552 U. S. 312 (2008). Both cases, however, are inapposite—the first because it involved a pre-emption provision much broader than the Labeling Act's, and the second because it involved precisely the type of state rule that Congress had intended to pre-empt.

At issue in *Wolens* was the pre-emptive effect of the Airline Deregulation Act of 1978 (ADA), 49 U. S. C. App. § 1305(a)(1) (1988 ed.), which prohibits States from enacting or enforcing any law "relating to rates, routes, or services of any air carrier." The plaintiffs in that case sought to bring a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act, Ill. Comp. Stat., ch. 815, § 505 (West 1992). Our conclusion that the state-law claim was pre-empted turned on the unusual breadth of the ADA's pre-emption provision. We had previously held that the meaning of the key phrase in the ADA's pre-emption provision, "'*relating to* rates, routes, or services,'" is a broad one. *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 383–384 (1992) (emphasis added). Relying on precedents construing the pre-emptive effect of the same phrase in the Employee Retirement Income Security Act of 1974, 29 U. S. C. § 1144(a), we concluded that the phrase "'relating to'" indicates Congress' intent to pre-empt a large area of state law to further its purpose of deregulating the airline industry. 504 U. S., at 383–384.[12] Unquestionably, the

[12] Petitioners also point to *Morales* as evidence that our decision in *Cipollone* was wrong. But *Morales* predated *Cipollone*, and it is in any event even more easily distinguishable from this case than *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219 (1995). At issue in *Morales* were guidelines regarding the form and substance of airline fare advertising implemented by the National Association of Attorneys General to give content to state deceptive practices rules. 504 U. S., at 379. Like the regulations at issue in *Reilly*, the guidelines were industry-specific directives that targeted the subject matter made off-limits by the ADA's ex-

phrase "relating to" has a broader scope than the Labeling Act's reference to rules "based on" smoking and health; whereas "relating to" is synonymous with "having a connection with," *id.*, at 384, "based on" describes a more direct relationship, see *Safeco Ins. Co. of America* v. *Burr*, 551 U. S. 47, 63 (2007) ("In common talk, the phrase 'based on' indicates a but-for causal relationship and thus a necessary logical condition").

Petitioners' reliance on *Riegel* is similarly misplaced. The plaintiffs in *Riegel* sought to bring common-law design, manufacturing, and labeling defect claims against the manufacturer of a faulty catheter. The case presented the question whether those claims were expressly pre-empted by the Medical Device Amendments of 1976 (MDA), 21 U. S. C. § 360c *et seq.* The MDA's pre-emption clause provides that no State "'may establish or continue in effect with respect to a device . . . any requirement' relating to safety or effectiveness that is different from, or in addition to, federal requirements." *Riegel*, 552 U. S., at 328 (quoting 21 U. S. C. § 360k(a); emphasis deleted).

The catheter at issue in *Riegel* had received premarket approval from the Food and Drug Administration (FDA). We concluded that premarket approval imposes "requirement[s] relating to safety [and] effectiveness" because the FDA requires a device that has received premarket approval to be made with almost no design, manufacturing, or labeling deviations from the specifications in its approved application. The plaintiffs' products liability claims fell within the core of the MDA's pre-emption provision because they sought to impose different requirements on precisely those aspects of the device that the FDA had approved. Unlike the *Cipollone* plaintiff's fraud claim, which fell outside of the Labeling Act's pre-emptive reach because it did not seek to impose a

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press pre-emption provisions. See also *Rowe* v. *New Hampshire Motor Transp. Assn.*, 552 U. S. 364 (2008) (holding that targeted ground carrier regulations were pre-empted by a statute modeled on the ADA).

prohibition "based on smoking and health," the *Riegel* plaintiffs' common-law products liability claims unquestionably sought to enforce "requirement[s] relating to safety or effectiveness" under the MDA. That the "relating to" language of the MDA's pre-emption provision is, like the ADA's, much broader than the operative language of the Labeling Act provides an additional basis for distinguishing *Riegel*. Thus, contrary to petitioners' suggestion, *Riegel* is entirely consistent with our holding in *Cipollone*.

In sum, we conclude now, as the plurality did in *Cipollone*, that "the phrase 'based on smoking and health' fairly but narrowly construed does not encompass the more general duty not to make fraudulent statements." 505 U. S., at 529.

IV

As an alternative to their express pre-emption argument, petitioners contend that respondents' claim is impliedly pre-empted because, if allowed to proceed, it would present an obstacle to a longstanding policy of the FTC. According to petitioners, the FTC has for decades promoted the development and consumption of low tar cigarettes and has encouraged consumers to rely on representations of tar and nicotine content based on Cambridge Filter Method testing in choosing among cigarette brands. Even if such a regulatory policy could provide a basis for obstacle pre-emption, petitioners' description of the FTC's actions in this regard are inaccurate. The Government itself disavows any policy authorizing the use of "light" and "low tar" descriptors. Brief for United States as *Amicus Curiae* 16–33.

In 1966, following the publication of the Surgeon General's report on smoking and health, the FTC issued an industry guidance stating its view that "a factual statement of the tar and nicotine content (expressed in milligrams) of the mainstream smoke from a cigarette," as measured by Cambridge Filter Method testing, would not violate the FTC Act. App. 478a. The Commission made clear, however, that the guid-

ance applied only to factual assertions of tar and nicotine yields and did not invite "collateral representations . . . made, expressly or by implication, as to reduction or elimination of health hazards." *Id.*, at 479a. A year later, the FTC reiterated its position in a letter to the National Association of Broadcasters. The letter explained that, as a "general rule," the Commission would not challenge statements of tar and nicotine content when "they are shown to be accurate and fully substantiated by tests conducted in accordance with the [Cambridge Filter Method]." *Id.*, at 368a. In 1970, the FTC considered providing further guidance, proposing a rule that would have required manufacturers to disclose tar and nicotine yields as measured by Cambridge Filter Method testing. 35 Fed. Reg. 12671. The leading cigarette manufacturers responded by submitting a voluntary agreement under which they would disclose tar and nicotine content in their advertising, App. 899a–900a, and the FTC suspended its rulemaking, 36 Fed. Reg. 784 (1971).

Based on these events, petitioners assert that "the FTC has *required* tobacco companies to disclose tar and nicotine yields in cigarette advertising using a government-mandated testing methodology and has *authorized* them to use descriptors as shorthand references to those numerical test results." Brief for Petitioners 2 (emphasis in original). As the foregoing history shows, however, the FTC has in fact never required that cigarette manufacturers disclose tar and nicotine yields, nor has it condoned representations of those yields through the use of "light" or "low tar" descriptors.

Subsequent Commission actions further undermine petitioners' claim. After the tobacco companies agreed to report tar and nicotine yields as measured by the Cambridge Filter Method, the FTC continued to police cigarette companies' misleading use of test results. In 1983, the FTC responded to findings that tar and nicotine yields for Barclay cigarettes obtained through Cambridge Filter Method testing were deceptive because the cigarettes in fact delivered

disproportionately more tar to smokers than other cigarettes with similar Cambridge Filter Method ratings. 48 Fed. Reg. 15954. And in 1995, the FTC found that a manufacturer's representation "that consumers will get less tar by smoking ten packs of Carlton brand cigarettes than by smoking a single pack of the other brands" was deceptive even though it was based on the results of Cambridge Filter Method testing. *In re American Tobacco Co.*, 119 F. T. C. 3, 4. The FTC's conclusion was based on its recognition that, "[i]n truth and in fact, consumers will not necessarily get less tar" due to "such behavior as compensatory smoking." *Ibid.*[13]

This history shows that, contrary to petitioners' suggestion, the FTC has no longstanding policy authorizing collateral representations based on Cambridge Filter Method test results. Rather, the FTC has endeavored to inform consumers of the comparative tar and nicotine content of different cigarette brands and has in some instances prevented misleading representations of Cambridge Filter Method test results. The FTC's failure to require petitioners to correct their allegedly misleading use of "light" descriptors is not evidence to the contrary; agency nonenforcement of a fed-

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[13] In a different action, the FTC charged a cigarette manufacturer with violating the FTC Act by misleadingly advertising certain brands as "low in tar" even though they had a higher-than-average tar rating. See *In re American Brands, Inc.*, 79 F. T. C. 255 (1971). The Commission and the manufacturer entered a consent order that prevented the manufacturer from making any such representations unless they were accompanied by a clear and conspicuous disclosure of the cigarettes' tar and nicotine content as measured by the Cambridge Filter Method. *Id.*, at 258. Petitioners offer this consent order as evidence that the FTC authorized the use of "light" and "low tar" descriptors as long as they accurately describe Cambridge Filter Method test results. As the Government observes, however, the decree only enjoined conduct. Brief for United States as *Amicus Curiae* 26. And a consent order is in any event only binding on the parties to the agreement. For all of these reasons, the consent order does not support the conclusion that respondents' claim is impliedly pre-empted.

eral statute is not the same as a policy of approval. Cf. *Sprietsma* v. *Mercury Marine*, 537 U. S. 51 (2002) (holding that the Coast Guard's decision not to regulate propeller guards did not impliedly pre-empt petitioner's tort claims).[14]

More telling are the FTC's recent statements regarding the use of "light" and "low tar" descriptors. In 1997, the Commission observed that "[t]here are no official definitions for" the terms "'light'" and "'low tar,'" and it sought comments on whether "there [is] a need for official guidance with respect to the terms" and whether "the descriptors convey implied health claims." 62 Fed. Reg. 48163. In November 2008, following public notice and comment, the Commission rescinded its 1966 guidance concerning the Cambridge Filter Method. 73 Fed. Reg. 74500. The rescission is a response to "a consensus among the public health and scientific communities that the Cambridge Filter method is sufficiently flawed that statements of tar and nicotine yields as measured by that method are not likely to help consumers make informed decisions." *Id.*, at 74503. The Commission's notice of its proposal to rescind the guidance also reiterated the original limits of that guidance, noting that it "only addresse[d] simple factual statements of tar and nicotine yields. It d[id] not apply to other conduct or express or implied representations, even if they concern[ed] tar and nicotine yields." *Id.*, at 40351.

In short, neither the handful of industry guidances and consent orders on which petitioners rely nor the FTC's inaction with regard to "light" descriptors even arguably justifies the pre-emption of state deceptive practices rules like the MUTPA.

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[14] It seems particularly inappropriate to read a policy of authorization into the FTC's inaction when that inaction is in part the result of petitioners' failure to disclose study results showing that Cambridge Filter Method test results do not reflect the amount of tar and nicotine that consumers of "light" cigarettes actually inhale. See *id.*, at 8–11.

V

We conclude, as we did in *Cipollone*, that the Labeling Act does not pre-empt state-law claims like respondents' that are predicated on the duty not to deceive. We also hold that the FTC's various decisions with respect to statements of tar and nicotine content do not impliedly pre-empt respondents' claim. Respondents still must prove that petitioners' use of "light" and "lowered tar" descriptors in fact violated the state deceptive practices statute, but neither the Labeling Act's pre-emption provision nor the FTC's actions in this field prevent a jury from considering that claim. Accordingly, the judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE ALITO join, dissenting.

This appeal requires the Court to revisit its decision in *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504 (1992). As in that case, the question before us is whether state-law claims alleging that cigarette manufacturers misled the public about the health effects of cigarettes are pre-empted by the Federal Cigarette Labeling and Advertising Act, as amended in 1969 (Labeling Act or Act). The Labeling Act requires that specific health warnings be placed on all cigarette packaging and advertising, 15 U. S. C. § 1333, in order to eliminate "diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health," § 1331. To that end, § 5(b) of the Labeling Act pre-empts any "requirement or prohibition based on smoking and health . . . imposed under State law with respect to the advertising or promotion of any cigarettes." § 1334(b).

Whether § 5(b) pre-empts state common-law claims divided the Court in *Cipollone*. The plurality opinion found some

claims expressly pre-empted and others not, depending on whether "*the legal duty that is the predicate of the common-law damages* action constitutes a requirement or prohibition based on smoking and health . . . imposed under State law with respect to . . . advertising or promotion." 505 U. S., at 524 (internal quotation marks omitted; emphasis added). A majority of the Court disagreed with the plurality's "predicate duty" approach. *Id.*, at 543 (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part); *id.*, at 552–554 (SCALIA, J., concurring in judgment in part and dissenting in part). In particular, JUSTICE SCALIA recognized that the plurality's interpretation of § 5(b) created an unworkable test for pre-emption with little or no relationship to the text of the statute. *Id.*, at 544, 555–556. The intervening years have vindicated JUSTICE SCALIA's critical assessment; the lower courts have consistently expressed frustration at the difficulty in applying the *Cipollone* plurality's test. Moreover, this Court's recent pre-emption decisions have undermined, and in some cases overruled, central aspects of the plurality's atextual approach to express pre-emption generally, *Riegel* v. *Medtronic, Inc.*, 552 U. S. 312 (2008), and to § 5(b) of the Labeling Act specifically, *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525 (2001).

The majority today ignores these problems and adopts the methodology of the *Cipollone* plurality as governing law. As a consequence, the majority concludes that state-law liability for deceiving purchasers about the health effects of smoking light cigarettes is not a "requirement or prohibition based on smoking and health" under the Labeling Act. The Court's fidelity to *Cipollone* is unwise and unnecessary. The Court should instead provide the lower courts with a clear test that advances Congress' stated goals by interpreting § 5(b) to expressly pre-empt any claim that "imposes an obligation . . . because of the effect of smoking upon health." *Cipollone*, *supra*, at 554 (opinion of SCALIA, J.).

Respondents' lawsuit under the Maine Unfair Trade Practices Act (MUTPA), Me. Rev. Stat. Ann., Tit. 5, § 207 (Supp. 2008), is expressly pre-empted under § 5(b) of the Labeling Act. The civil action is premised on the allegation that the cigarette manufacturers misled respondents into believing that smoking light cigarettes would be healthier for them than smoking regular cigarettes. A judgment in respondents' favor will thus result in a "requirement" that petitioners represent the effects of smoking on health in a particular way in their advertising and promotion of light cigarettes. Because liability in this case is thereby premised on the effect of smoking on health, I would hold that respondents' state-law claims are expressly pre-empted by § 5(b) of the Labeling Act. I respectfully dissent.

I

In *Cipollone*, a smoker and her spouse brought state common-law claims for fraud, breach of warranty, and failure to warn against cigarette manufacturers for their alleged failure to adequately disclose the health risks of smoking. 505 U. S., at 509. As here, the cigarette manufacturer asserted that the claims were pre-empted by § 5(b) of the Labeling Act.

In deciding the case, the Court could not agree on the meaning of the Labeling Act's express pre-emption provision. It produced three separate opinions, none of which reflected the views of a majority of Justices. Relying heavily on a "presumption against the pre-emption of state police power regulations," *id.*, at 518, a plurality opinion by JUSTICE STEVENS settled on a "narrow reading" of the Labeling Act that tested § 5(b)'s pre-emptive effect under a claim-by-claim approach, *id.*, at 524. This approach considered each state-law claim and asked whether it is predicated "on a duty 'based on smoking and health.'" *Id.*, at 528; see also *id.*, at 524. If so, the claim is pre-empted. *Id.*, at 524, 528. If,

however, the claim is predicated on a "more general obligation" under state law, it may proceed. *Id.*, at 528–529.

Applying a test that it conceded lacked "theoretical elegance," *id.*, at 530, n. 27, the plurality held that the failure-to-warn claims were pre-empted "to the extent that those claims rel[ied] on omissions or inclusions in . . . advertising or promotions" of cigarettes. *Id.*, at 531. The same was true for one of the fraud claims, which alleged that the cigarette manufacturers had used their advertising to neutralize the federally required warning labels. *Id.*, at 527–528. The plurality determined that these claims were "predicated on a state-law prohibition against statements . . . that tend to minimize the health hazards associated with smoking." *Id.*, at 527. Thus, according to the plurality, these state-law claims sought recovery under the theory that the cigarette manufacturer breached a duty based on smoking or health. But the plurality found that the other fraud claim, which alleged misrepresentation or concealment of a material fact, was not pre-empted because it was based on a more general state-law obligation: "the duty not to deceive." *Id.*, at 528–529.

Justice Blackmun, writing for three Justices, departed from the plurality on the antecedent question whether the Labeling Act pre-empted state common-law damages claims at all. *Id.*, at 535–542 (opinion, joined by KENNEDY and SOUTER, JJ., concurring in part, concurring in judgment in part, and dissenting in part). He concluded that the phrase "'State law'" in § 5(b) referred only to "positive enactments such as statutes and regulations." *Id.*, at 535. But Justice Blackmun specifically noted that even if state common-law claims were within the scope of the Labeling Act, he could not join the plurality's claim-by-claim approach because he "perceive[d] no principled basis for many of the plurality's asserted distinctions among the common-law claims." *Id.*, at 543. Justice Blackmun wrote that Congress could not have "intended to create such a hodgepodge of allowed and

disallowed claims when it amended the pre-emption provision in 1970," and lamented the "difficulty lower courts w[ould] encounter in attempting to implement" the plurality's test. *Id.*, at 543–544.

JUSTICE SCALIA, writing for two Justices, also faulted the plurality for its claim-by-claim approach. *Id.*, at 544–556 (opinion, joined by THOMAS, J., concurring in judgment in part and dissenting in part). Although he agreed with the plurality that the phrase " 'State law' " in § 5(b) encompassed state common-law claims as well as state statutes and regulations, *id.*, at 548–549, JUSTICE SCALIA objected to the plurality's invocation of a presumption against pre-emption to narrowly interpret § 5(b), *id.*, at 544, 545–547. Because Congress had expressed its intent to pre-empt state law by enacting § 5(b), the Court's "responsibility [was] to apply to the text ordinary principles of statutory construction." *Id.*, at 545.[1] By employing its "newly crafted doctrine of narrow construction," JUSTICE SCALIA wrote, the plurality arrived at a cramped and unnatural construction of § 5(b) that failed to give effect to the statutory text. *Id.*, at 544–548.

Applying "ordinary principles" of statutory construction, *id.*, at 548, JUSTICE SCALIA determined that the proper test for pre-emption of state-law claims under § 5(b) was far less complicated than the plurality's claim-by-claim approach. As he explained, "[o]nce one is forced to select a *consistent* methodology for evaluating whether a given legal duty is 'based on smoking and health,' it becomes obvious that the methodology must focus not upon the ultimate source of the duty . . . but upon its proximate application." *Id.*, at 553.

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[1] JUSTICE SCALIA also criticized the plurality for announcing a new rule that the enactment of an express pre-emption clause eliminates any consideration of implied pre-emption. He explained that this new rule created mischief because, when combined with the presumption against pre-emption, it placed a heavy burden of exactitude on Congress when it wishes to say anything about pre-emption. See *Cipollone*, 505 U. S., at 547–548.

This "proximate application" test, therefore, focuses not on the state-law duty invoked by the plaintiff, but on the effect of the suit on the cigarette manufacturer's conduct—*i. e.*, the "requirement" or "prohibition" that would be imposed under state law. Put simply, if, "whatever the source of the duty, [the claim] imposes an obligation . . . because of the effect of smoking upon health," it is pre-empted. *Id.*, at 554; see also *id.*, at 555 ("The test for pre-emption in this setting should be one of practical compulsion, *i. e.*, whether the law practically compels the manufacturers to engage in behavior that Congress has barred the States from prescribing directly"). JUSTICE SCALIA also seconded Justice Blackmun's concern that the lower courts would find the plurality's distinctions between materially identical state-law claims to be incapable of application: "A disposition that raises more questions than it answers does not serve the country well." *Id.*, at 556.

II

Sixteen years later, we must confront *Cipollone* to resolve the question presented in this case: whether respondents' class-action claims for fraudulent marketing under the MUTPA are pre-empted by § 5(b) of the Labeling Act. The majority adheres to *Cipollone* because it "remain[s] persuaded" that the plurality's construction of § 5(b) was "'fair.'" *Ante*, at 84. I disagree. The Court should discard the *Cipollone* plurality's ill-conceived predicate-duty approach and replace it with JUSTICE SCALIA's far more workable and textually sound "proximate application" test.

The majority does not assert that the *Cipollone* plurality opinion is binding precedent, and rightly so. Because the "plurality opinion . . . did not represent the views of a majority of the Court, we are not bound by its reasoning." *CTS Corp.* v. *Dynamics Corp. of America*, 481 U. S. 69, 81 (1987) (footnote omitted). At most, *Cipollone* is a "point of reference for further discussion." *Texas* v. *Brown*, 460 U. S. 730, 737 (1983) (plurality opinion). But even if the plurality opin-

ion had some force beyond its mere persuasive value, it nevertheless should be abandoned. It is unworkable; it has been overtaken by more recent decisions of this Court; and it cannot be reconciled with a commonsense reading of the text of § 5(b).

A

As predicted by a majority of the Justices in *Cipollone*, the plurality opinion's claim-by-claim approach has proved unworkable in the lower federal courts and state courts. The District Court in this case properly observed that "courts remain divided about what the decision means and how to apply it" and that "*Cipollone*'s distinctions, though clear in theory, defy clear application." 436 F. Supp. 2d 132, 142 (Me. 2006). Other courts have expressed similar frustration with the *Cipollone* framework. See, *e. g.*, *Glassner* v. *R. J. Reynolds Tobacco Co.*, 223 F. 3d 343, 348 (CA6 2000) ("Applying the plurality opinion in *Cipollone* to the Complaint in the present case is no easy task"); *Huddleston* v. *R. J. Reynolds Tobacco Co.*, 66 F. Supp. 2d 1370, 1380 (ND Ga. 1999) ("It would be an understatement to say that it is difficult to apply the plurality opinion in *Cipollone* to the Amended Complaint in this case. It is an impossibility"); *In re Welding Fume Prods. Liability Litigation*, 364 F. Supp. 2d 669, 681, n. 13 (ND Ohio 2005) ("[I]n *Cipollone*, the Supreme Court . . . delivered a fractured plurality opinion that is not easy to comprehend"); *Whiteley* v. *Philip Morris, Inc.*, 117 Cal. App. 4th 635, 669–670, 11 Cal. Rptr. 3d 807, 835–836 (2004) ("[*Cipollone* is] 'difficult' . . . due to the inherent contradiction at the core of the case"); *Mangini* v. *R. J. Reynolds Tobacco Co.*, 21 Cal. Rptr. 2d 232, 244 (Cal. App. 1993) (officially depublished) ("*Cipollone* draws no bright lines amenable to easy application"), aff'd, 7 Cal. 4th 1057, 875 P. 2d 73 (1994).

The Court should not retain an interpretative test that has proved incapable of implementation. "[T]he mischievous consequences to litigants and courts alike from the perpetua-

tion of an unworkable rule are too great." *Swift & Co.* v. *Wickham*, 382 U. S. 111, 116 (1965); *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 501 (2007) (SCALIA, J., concurring in part and concurring in judgment) ("*Stare decisis* considerations carry little weight when an erroneous 'governing decisio[n]' has created an 'unworkable' legal regime" (quoting *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991))). We owe far more to the lower courts, which depend on this Court's guidance, and to litigants, who must conform their actions to the Court's interpretation of federal law. The *Cipollone* plurality's test for pre-emption under § 5(b) should be abandoned for this reason alone.

B

Furthermore, in the years since *Cipollone* was decided, this Court has altered its doctrinal approach to express pre-emption. The *Cipollone* plurality justified what it described as the "theoretical [in]elegance" of its construction of § 5(b) by relying on the presumption against pre-emption, which, it argued, required a narrow, but "fair," construction of the statute. 505 U. S., at 530, n. 27. See, *e. g.*, *id.*, at 518 (majority opinion) ("This presumption reinforces the appropriateness of a narrow reading of § 5"); *id.*, at 523 (plurality opinion) ("[W]e must . . . narrowly construe the precise language of § 5(b)"); *id.*, at 524 (§ 5(b) must be given "a fair but narrow reading"); *id.*, at 529 ("[W]e conclude that the phrase 'based on smoking and health' fairly but narrowly construed does not encompass the more general duty not to make fraudulent statements"). Of course, as JUSTICE SCALIA explained, there was nothing "fair" about imposing an artificially narrow construction on the Labeling Act's pre-emption provision. See *id.*, at 545 (opinion concurring in judgment in part and dissenting in part) (explaining that the presumption against pre-emption "dissolves once there is conclusive evidence of intent to pre-empt in the express words of the statute itself").

Since *Cipollone*, the Court's reliance on the presumption against pre-emption has waned in the express pre-emption context. In 2002, for example, the Court unanimously explained that the "task of statutory construction must in the first instance focus on the plain wording of the [express pre-emption] clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Sprietsma* v. *Mercury Marine*, 537 U. S. 51, 62–63 (internal quotation marks omitted). Without referring to any presumption against pre-emption, the Court decided that the Federal Boat Safety Act of 1971's express pre-emption provision did not pre-empt state-law claims. *Id.*, at 62–64. Most other decisions since *Cipollone* also have refrained from invoking the presumption in the context of express pre-emption. See, *e. g.*, *Rowe* v. *New Hampshire Motor Transp. Assn.*, 552 U. S. 364 (2008); *Engine Mfrs. Assn.* v. *South Coast Air Quality Management Dist.*, 541 U. S. 246 (2004); *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341 (2001); *United States* v. *Locke*, 529 U. S. 89 (2000); *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000).

The Court has invoked the presumption sporadically during this timeframe. As the majority notes, *ante*, at 77, *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470 (1996), applied the presumption against pre-emption in deciding that the federal manufacturing and labeling requirements of the Medical Device Amendments of 1976 (MDA) did not pre-empt state common-law claims. *Id.*, at 500–501. Like *Cipollone* before it, *Lohr* produced a fractured decision featuring three opinions. 518 U. S., at 474 (opinion of STEVENS, J.); *id.*, at 503 (BREYER, J., concurring in part and concurring in judgment); *id.*, at 509 (O'Connor, J., concurring in part and dissenting in part). And, like *Cipollone*, *Lohr*'s approach to express pre-emption predates the Court's recent jurisprudence on the topic. In fact, this Court last year revisited the pre-emption provision of the MDA, 21 U. S. C.

§ 360k(a)(1), and did not employ any presumption against pre-emption. *Riegel*, 552 U. S. 312. See *infra*, at 101–102.[2]

More recently, in *Reilly*, 533 U. S. 525, a case revisiting the meaning of § 5(b) of the Labeling Act, the Court briefly alluded to the presumption, but did not rely on it to reach its decision. See *id.*, at 541–542, 546–551. Indeed, the Court's cursory treatment of the presumption in *Reilly* stands in stark contrast to the First Circuit decision it reversed; the First Circuit relied heavily on the "full force" of the presumption to determine that the regulations at issue were not pre-empted. See *Consolidated Cigar Corp.* v. *Reilly*, 218 F. 3d 30, 38–41 (2000). This Court, in overturning that judgment, declined to employ the presumption in its construction of § 5(b). See *Reilly*, 533 U. S., at 546–551. JUSTICE STEVENS highlighted this very point in dissent, arguing that if the presumption had been faithfully applied, the result would have been different. *Id.*, at 591–593 (opinion concurring in part, concurring in judgment in part, and dissenting in part).

The majority also relies on *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431 (2005), where the presumption was again mentioned, but only in dicta. As in *Reilly*, the presumption did not drive the Court's construction of the statute at issue. 544 U. S., at 449 (explaining that the presumption meant just that the holding of no pre-emption would have been the same

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[2] Also, as in *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504 (1992), the fractured decision in *Lohr* was a source of confusion for the lower courts. See *Kemp* v. *Medtronic, Inc.*, 231 F. 3d 216, 224 (CA6 2000) ("The various courts of appeals that have confronted issues of preemption arising under the MDA have struggled mightily with *Lohr's* language in the effort to discern its holding"); see also *Martin* v. *Medtronic, Inc.*, 254 F. 3d 573, 579 (CA5 2001) ("Because only parts of Justice Stevens's opinion commanded a majority, extracting the final meaning of *Lohr* is no easy task. . . . Although Justice Breyer's concurrence very specifically disavows the view that common law duties cannot provide substantive requirements for the purpose of preemption, neither his concurrence nor the plurality opinion offers much help to us in developing the point"). The confusion was cleared up in *Riegel*. See *infra*, at 101–103.

"even if [respondent's] alternative [construction of the statute] were just as plausible as our reading of [the statute's] text"); see also *id.*, at 457 (THOMAS, J., concurring in judgment in part and dissenting in part) (agreeing that the case should be vacated and remanded and reiterating that the "presumption does not apply . . . when Congress has included within a statute an express pre-emption provision"). At bottom, although the Court's treatment of the presumption against pre-emption has not been uniform, the Court's express pre-emption cases since *Cipollone* have marked a retreat from reliance on it to distort the statutory text.

If any doubt remained, it was eliminated last Term in *Riegel*. The question in *Riegel*, as noted above, was whether the MDA expressly pre-empts state common-law claims "challenging the safety and effectiveness of a medical device given premarket approval by the Food and Drug Administration." 552 U. S., at 315. Over the dissent of one Justice, the Court held that the state-law claims were pre-empted because the requirements the plaintiffs sought to impose were "'different from, or in addition to, any requirement applicable . . . to the device'" under federal law. *Id.*, at 316 (quoting 21 U. S. C. § 360k(a)(1)). The Court interpreted the statute without reference to the presumption or any perceived need to impose a narrow construction on the provision in order to protect the police power of the States. Rather, the Court simply construed the MDA in accordance with ordinary principles of statutory construction.

This was not accidental. The dissent focused on the Court's refusal to invoke the presumption in order to save the state-law claims from pre-emption. 552 U. S., at 334–335 (opinion of GINSBURG, J.). The dissent was adamant that "[f]ederal laws containing a preemption clause do not automatically escape the presumption against preemption." *Id.*, at 334; *id.*, at 335 ("Where the text of a preemption clause is open to more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption'" (quoting

Bates, *supra*, at 449)). In accordance with the presumption, the dissent would have found the state-law claims under review to fall beyond the reach of the MDA's express preemption provision. 552 U. S., at 334–335; see also *id.*, at 338, n. 8; *id.*, at 339, n. 9 (rejecting the majority's construction of § 360h(d) because "the presumption against preemption [is] operative even in construing a preemption clause"). Given the dissent's clear call for the use of the presumption against pre-emption, the Court's decision not to invoke it was necessarily a rejection of any role for the presumption in construing the statute.

JUSTICE STEVENS also declined to invoke the presumption in his opinion. *Id.*, at 330–333 (opinion concurring in part and concurring in judgment). In his view, the "significance of the pre-emption provision in the [MDA] was not fully appreciated until many years after it was enacted" and, therefore, it is "a statute whose text and general objective cover territory not actually envisioned by its authors." *Id.*, at 330–331. But JUSTICE STEVENS' opinion in *Riegel*—unlike the majority opinion here, the plurality opinion in *Cipollone*, and the dissenting opinion in *Riegel*—did *not* invoke the presumption to bend the text of the statute to meet the perceived purpose of Congress. Instead, JUSTICE STEVENS correctly found that "'it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.'" 552 U. S., at 331 (quoting *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998)).

In light of *Riegel*, there is no authority for invoking the presumption against pre-emption in express pre-emption cases. The majority here thus turns to *Lohr* to revive the presumption and, in turn, to justify its restrictive reading of the Labeling Act's express pre-emption provision. But, as *Riegel* plainly shows, the Court is no longer willing to unreasonably interpret expressly pre-emptive federal laws in the name of "'congressional purpose,'" *ante*, at 84, or because "Congress has legislated in a field traditionally occupied by

the States," *ante*, at 77. The text of the statute must control.

Riegel also undermined *Cipollone* in an even more fundamental way: It conclusively decided that a common-law cause of action imposes a state-law "'requiremen[t]'" that may be pre-empted by federal law. 552 U. S., at 324–325 ("Absent other indication, reference to a State's 'requirements' includes its common-law duties. . . . Indeed, one would think that tort law, applied by juries under a negligence or strict-liability standard, is less deserving of preservation [than regulatory legislation]"). Justice Blackmun's contrary interpretation of § 5(b) of the Labeling Act in *Cipollone*, 505 U. S., at 538–539 (opinion concurring in part, concurring in judgment in part, and dissenting in part), which provided the votes necessary for the judgment, thus is no longer tenable. In light of *Riegel*'s rejection of the presumption against pre-emption relied on by the plurality, as well as the definition of "requirements" relied on in Justice Blackmun's opinion, *Cipollone*'s approach to express pre-emption is nothing more than "a remnant of abandoned doctrine." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 855 (1992).

C

The *Cipollone* plurality's reading of § 5(b) of the Labeling Act was further undermined by this Court's decision in *Reilly*, 533 U. S. 525. There, the Court confronted regulations imposed by the Massachusetts attorney general on the location of tobacco advertising pursuant to the Commonwealth's unfair trade practices statute. *Id.*, at 533–536. The Court found the regulations—to the extent they applied to cigarettes—expressly pre-empted because, although Massachusetts remained free to enact "generally applicable zoning restrictions," its imposition of "special requirements or prohibitions 'based on smoking and health' 'with respect to the advertising or promotion' of cigarettes" fell within the ambit of § 5(b)'s pre-emptive sweep. *Id.*, at 551.

Reilly did not ignore *Cipollone.* It cited the plurality opinion extensively in its discussion of the basic history and text of the Labeling Act. 533 U. S., at 540–546. But in analyzing whether the regulations enacted by the Massachusetts attorney general were expressly pre-empted, the Court was silent about *Cipollone.* 533 U. S., at 546–551. Unlike the District Court, which saw "the central question for purposes of pre-emption [as] whether the regulations create[d] a predicate legal duty based on smoking and health," *id.*, at 537, the Court's substantive examination of the regulations under § 5(b) included no mention of the *Cipollone* plurality's "predicate duty" test. See 533 U. S., at 546–551. Instead, the Court disagreed with "the Attorney General's narrow construction" of the statute's "'based on smoking and health'" language, and concluded that the regulations were pre-empted because they were "motivated by" and "intertwined with" the concerns about smoking and health. *Id.*, at 547–548.

Reilly, therefore, cannot be reconciled with the *Cipollone* plurality's interpretation of § 5(b) of the Labeling Act. The regulations at issue in *Reilly* were enacted to implement a Massachusetts state law imposing a duty against unfair and deceptive trade practices—the same predicate duty asserted under the MUTPA in this case. 533 U. S., at 533. The state-law duty at issue in *Reilly* was no less general than the state-law duty at issue in this case or the state-law fraud claims confronted in *Cipollone.* Compare Mass. Gen. Laws, ch. 93A, § 2(a) (West 1996) ("Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful"), with Me. Rev. Stat. Ann., Tit. 5, § 207 (Supp. 2008) ("Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful"), and *Cipollone*, *supra*, at 528 (explaining that the "predicate" of the plaintiff's fraudulent misrepresentation claim was "a state-law duty not to make false statements of mate-

rial fact or to conceal such facts"). Faithful application of the *Cipollone* plurality opinion, therefore, would have required the Court in *Reilly* to uphold the regulations. Indeed, JUSTICE STEVENS argued as much in his dissent. 533 U. S., at 597 (opinion concurring in part, concurring in judgment in part, and dissenting in part) (noting that "[n]ary a word in any of the three *Cipollone* opinions supports the thesis that § 5 should be interpreted to pre-empt state regulation of the location of signs advertising cigarettes").

And yet, the majority today finds that *Reilly* and *Cipollone* are perfectly compatible. It contends that, although the regulations in question in *Reilly* "derived from a general deceptive practices statute like the one at issue in this case," they were pre-empted because they "targeted advertising that tended to promote tobacco use by children instead of prohibiting false or misleading statements." *Ante*, at 83. According to the majority, that legal duty contrasts with the regulations here, as "[t]he MUTPA says nothing about either 'smoking' or 'health.'" *Ante*, at 84; see also *ante*, at 81. But the *Cipollone* plurality expressly rejected any distinction between targeted regulations like those in *Reilly* and general duties imposed by the common law. 505 U. S., at 522. In fact, the general duties underlying the failure-to-warn and warning-neutralization claims in *Cipollone*—which the plurality found to be pre-empted—say nothing about smoking and health. *Id.*, at 524; see also *id.*, at 553 (SCALIA, J., concurring in judgment in part and dissenting in part) (noting that the duty to warn about a product's dangers was not "specifically crafted with an eye toward 'smoking and health'").

Accordingly, *Reilly* is better understood as establishing that even a general duty can impose requirements or prohibitions based on smoking and health. *Reilly* weakened the force of the *Cipollone* plurality's "predicate duty" approach to the pre-emptive effect of § 5(b) and cast doubt on its continuing utility.

D

Finally, the *Cipollone* plurality's approach should be discarded because its "predicate duty" approach is unpersuasive as an initial matter. In considering the warning-neutralization claim, for example, the *Cipollone* plurality asserted that the claim is predicated on a state-law prohibition against minimizing the health risks associated with smoking. 505 U. S., at 527. The Court today reaffirms this view. *Ante*, at 81; see also *ante*, at 84 (describing § 5(b) as expressly pre-empting "rules . . . that are based on smoking and health"). But every products liability action, including a failure-to-warn action, applies generally to *all* products. See *Cipollone*, 505 U. S., at 553 (opinion of SCALIA, J.). Thus, the "duty" or "rule" involved in a failure-to-warn claim is no more specific to smoking and health than is a common-law fraud claim based on the "duty" or "rule" not to use deceptive or misleading trade practices. Yet only for the latter was the *Cipollone* plurality content to ignore the context in which the claim is asserted. This shifting level of generality was identified as a logical weakness in the original *Cipollone* plurality decision by a majority of the Court, *id.*, at 543 (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part); *id.*, at 553–554 (opinion of SCALIA, J.), and it remains equally unconvincing today.

It is therefore unsurprising that the Court's defense of the plurality's confusing test is confined to one sentence and a footnote. See *ante*, at 84 ("While we again acknowledge that our analysis of these claims may lack 'theoretical elegance,' we remain persuaded that it represents 'a fair understanding of congressional purpose'" (quoting *Cipollone*, *supra*, at 529–530, n. 27)); *ante*, at 81, n. 7. The majority instead argues that this approach "fails to explain why Congress would . . . permi[t] cigarette manufacturers to engage in fraudulent advertising." *Ibid.* But no explanation is necessary; the text speaks for itself. Congress has pre-empted only those claims that would impose "requirement[s]

or prohibition[s] based on smoking and health." 15 U. S. C. § 1334(b). Thus, if cigarette manufacturers were to falsely advertise their products as "American-made," or "the official cigarette of Major League Baseball," state-law claims arising from that wrongful behavior would not be pre-empted.

Furthermore, contrary to the majority's policy arguments, faithful application of the statutory language does not authorize fraudulent advertising with respect to smoking and health.[3] Any misleading promotional statements for cigarettes remain subject to federal regulatory oversight under the Labeling Act. See § 1336. The relevant question thus is not whether "petitioners will be prohibited from selling as 'light' or 'low tar' only those cigarettes that are not actually light and do not actually deliver less tar and nicotine." *Ante*, at 83, n. 10. Rather, the issue is whether the Labeling Act allows regulators and juries to decide, on a state-by-state basis, whether petitioners' light and low-tar descriptors were in fact fraudulent, or instead whether § 5(b) charged the Federal Government with reaching a comprehensive judgment with respect to this question.

Congress chose a uniform federal standard. Under the Labeling Act, Congress "establish[ed] a comprehensive Federal Program to deal with cigarette labeling and advertising," 15 U. S. C. § 1331, so that "commerce and the national economy may . . . not [be] impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health," § 1331(2)(B).[4] The majority's distorted interpreta-

[3] The majority's policy-based attack could just as easily be leveled against its own determination that the Labeling Act pre-empts failure-to-warn claims. But just as there is no basis in fact or law to contend that the Labeling Act encourages the marketing of hazardous products without adequate warning labels, *ante*, at 81–82, n. 8, there is no basis to contend that the text of the Labeling Act permits fraudulent advertising.

[4] The majority contends that the relatively constrained enforcement power of the Federal Trade Commission (FTC) in 1970 undermines any argument that Congress intended the Labeling Act to prevent States from

tion of § 5(b) defeats this express congressional purpose, opening the door to an untold number of deceptive-practices lawsuits across the country. The question whether marketing a light cigarette is " 'misrepresentative' " in light of compensatory behavior "would almost certainly be answered differently from State to State." *Cipollone*, *supra*, at 553 (SCALIA, J., concurring in judgment in part and dissenting in part). This will inevitably result in the nonuniform imposition of liability for the marketing of light and/or low-tar cigarettes—the precise problem that Congress intended § 5(b) to remedy.

In light of these serious flaws in the majority's approach, even if the *Cipollone* plurality opinion were binding precedent, the Court "should not hesitate to allow our precedent to yield to the true meaning of an Act of Congress when our statutory precedent is 'unworkable' or 'badly reasoned.' " *Clark* v. *Martinez*, 543 U. S. 371, 402 (2005) (THOMAS, J., dissenting) (quoting *Holder* v. *Hall*, 512 U. S. 874, 936 (1994) (THOMAS, J., concurring in judgment), in turn quoting *Payne*, 501 U. S., at 827). Where, as here, there is "confusion following a splintered decision," that "is itself a reason for reexamining that decision." *Nichols* v. *United States*, 511 U. S. 738, 746 (1994). When a decision of this Court has failed to properly interpret a statute, we should not "place on the shoulders of Congress the burden of the Court's own error." *Girouard* v. *United States*, 328 U. S. 61, 69–70 (1946).[5]

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regulating deceptive advertising and marketing of cigarettes. *Ante*, at 79–80, n. 6. I am unwilling to rely on the majority's perception of the relative power of the FTC in 1970 to ignore Congress' stated purpose in enacting the Labeling Act and the plain meaning of the Act's express pre-emption provision.

[5] The United States, in its *amicus* brief and at oral argument, conspicuously declined to address express pre-emption or defend the *Cipollone* opinion's reasoning. See Brief for United States as *Amicus Curiae* 14–33. Instead, it addressed only the question of implied pre-emption, an issue I do not reach because of my resolution of the question on express pre-emption.

III

Applying the proper test—*i. e.*, whether a jury verdict on respondents' claims would "impos[e] an obligation" on the cigarette manufacturer "because of the effect of smoking upon health," *Cipollone*, 505 U. S., at 554 (opinion of SCALIA, J.), respondents' state-law claims are expressly pre-empted by § 5(b) of the Labeling Act. Respondents, longtime smokers of Marlboro Lights, claim that they have suffered an injury as a result of petitioners' decision to advertise these cigarettes as "light" and/or "low-tar and low-nicotine products." See 436 F. Supp. 2d, at 144–145. They claim that petitioners marketed their cigarettes as "light" and/or "low-tar and low-nicotine products" despite knowledge that light-cigarette smokers would engage in compensatory behavior causing them to inhale at least as much tar and nicotine as smokers of regular cigarettes. *Ibid.* Respondents thus allege that they were misled into thinking that they were gaining a health advantage by smoking the light cigarettes, *ibid.*, and, as a result, petitioners' conduct was an "unfair or deceptive ac[t] or practic[e]" under the MUTPA, Me. Rev. Stat. Ann., Tit. 5, § 207; 436 F. Supp. 2d, at 133.

Respondents' claims seek to impose liability on petitioners because of the effect that smoking light cigarettes had on their health. The alleged misrepresentation here—that "light" and "low-tar" cigarettes are not as healthy as advertised—is actionable *only* because of the effect that smoking light and low-tar cigarettes had on respondents' health. Otherwise, any alleged misrepresentation about the effect of the cigarettes on health would be immaterial for purposes of the MUTPA and would not be the source of the injuries that provided the impetus for the class-action lawsuit. See *State* v. *Weinschenk*, 2005 ME 28, ¶ 17, 868 A. 2d 200, 206 ("An act or practice is deceptive [under the MUTPA] if it is a *material* representation, omission, act or practice that is likely to mislead consumers acting reasonably under the circumstances" (emphasis added)). Therefore, with this suit, respondents

seek to *require* the cigarette manufacturers to provide additional warnings about compensatory behavior, or to *prohibit* them from selling these products with the "light" or "low-tar" descriptors. This is exactly the type of lawsuit that is pre-empted by the Labeling Act. Cf. *Rowe*, 552 U. S., at 372 (finding pre-emption of a Maine regulation of shipping of tobacco products where "[t]he Maine law . . . produces the very effect that the federal law sought to avoid").

Because the proper test for pre-emption is to look at the factual basis of a complaint to determine if a claim imposes a requirement based on smoking and health, there is no meaningful distinction to be drawn in this case between common-law failure-to-warn claims and claims under the MUTPA.[6] As the majority readily admits, both types of claims impose duties with respect to the same conduct—*i. e.*, the marketing of "light," "low-tar," and "low-nicotine" cigarettes. See *ante*, at 82, n. 9. If the claims arise from identical conduct, the claims impose the same requirement or prohibition with respect to that conduct. And when that allegedly wrongful conduct involves misleading statements about the health effects of smoking a particular brand of cigarette, the liability and resulting requirement or prohibition are, by definition, based on smoking and health.

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[6] The majority's observation that no warning-neutralization claim is at issue in this case, *ante*, at 82, n. 9, misses the point. The principal weakness in the *Cipollone* plurality's logic is not its distinction between claims for warning neutralization and claims for fraud. It is the fact that the predicate duty underlying New Jersey's products liability law, from which the majority now claims the warning-neutralization claim derived, see *ante*, at 81–82, n. 8, was no more specific to smoking and health than the predicate duty underlying the fraud claim, see *Cipollone*, 505 U. S., at 552–553 (opinion of SCALIA, J.) ("*Each* duty transcends the relationship between the cigarette companies and cigarette smokers; *neither* duty was specifically crafted with an eye toward 'smoking and health' "); *id.*, at 543 (opinion of Blackmun, J.); see also *supra*, at 106. Thus, the products liability and the fraud claims must stand or fall together. The majority's refusal to address the logical inconsistency of its approach remains as glaring today as it was in *Cipollone*.

Finally, at oral argument, respondents argued that their claims do not impose requirements based on smoking and health because the damages they seek to recover are not based on the effect of smoking on their health; rather, respondents are "asking . . . for the difference in value between a product [they] thought [they] were buying and a product [they] actually bought." Tr. of Oral Arg. 29. But the requirement or prohibition covered by § 5(b) is created by the imposition of liability for particular conduct—here, the way in which petitioners marketed "light" and "low-tar," and "low-nicotine" cigarettes—not by the manner in which respondents have chosen to measure their damages. No matter how respondents characterize their damages claim, they have not been injured for purposes of the MUTPA, and thus cannot recover, unless their decision to purchase the cigarettes had a negative effect on their health.

In any event, respondents sought "such injunctive relief as may be appropriate" in this case. App. 42a. The MUTPA specifically authorizes "other equitable relief, including an injunction," to remedy unfair or deceptive trade practices. Me. Rev. Stat. Ann., Tit. 5, § 213(1) (2002). And a court-crafted injunction prohibiting petitioners from marketing light cigarettes would be no less a requirement or prohibition than the regulations found to be pre-empted in *Reilly*. In the end, no matter what form the remedy takes, the liability with respect to the specific claim still creates the requirement or prohibition. When that liability is necessarily premised on the effects of smoking on health, as respondents' claims are here, the civil action is pre-empted by § 5(b) of the Labeling Act.

IV

The Court today elects to convert the *Cipollone* plurality opinion into binding law, notwithstanding its weakened doctrinal foundation, its atextual construction of the statute, and the lower courts' inability to apply its methodology. The resulting confusion about the nature of a claim's "predicate

duty" and inevitable disagreement in the lower courts as to what type of representations are "material" and "misleading" will have the perverse effect of increasing the nonuniformity of state regulation of cigarette advertising, the exact problem that Congress intended § 5(b) to remedy. It may even force us to yet again revisit the Court's interpretation of the Labeling Act. Because I believe that respondents' claims are pre-empted under § 5(b) of the Labeling Act, I respectfully dissent.

Syllabus

JIMENEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

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

No. 07–6984. Argued November 4, 2008—Decided January 13, 2009

After petitioner's state conviction for burglary became final on October 11, 1996, the state appellate court held in state habeas proceedings that petitioner had been denied his right to appeal and granted him the right to file an out-of-time appeal. He filed the appeal, his conviction was affirmed, and his time for seeking certiorari in this Court expired on January 6, 2004. Petitioner filed a second state habeas application on December 6, 2004, which was denied on June 29, 2005. He then filed a federal habeas petition on July 19, 2005, relying on 28 U. S. C. § 2244(d)(1)(A) to establish its timeliness. Section 2244(d)(1)(A) provides that the 1-year limitations period for seeking review under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) begins on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." Petitioner argued that his judgment became final on January 6, 2004, when time expired for seeking certiorari review of the decision in his out-of-time appeal, and that his July 19, 2005, petition was timely because the calculation of AEDPA's 1-year limitations period excludes the time "during which [his] properly filed application for State post-conviction . . . review . . . [was] pending," § 2244(d)(2). The District Court disagreed, ruling that the proper start date for calculating AEDPA's 1-year limitations period under § 2244(d)(1)(A) was October 11, 1996, when petitioner's conviction first became final. The District Court dismissed the federal habeas petition as time barred. The Fifth Circuit denied petitioner's request for a certificate of appealability.

Held: Where a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, but before the defendant has first sought federal habeas relief, his judgment is not "final" for purposes of § 2244(d)(1)(A) until the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking certiorari review of that appeal. This Court must enforce plain statutory language according to its terms. See, *e. g.*, *Lamie* v. *United States Trustee*, 540 U. S. 526, 534. Under § 2244(d)(1)(A)'s plain language, once the Texas Court of Criminal Appeals reopened direct review of petition-

er's conviction on September 25, 2002, the conviction was no longer final for § 2244(d)(1)(A) purposes. Rather, the order granting an out-of-time appeal restored the pendency of the direct appeal, and petitioner's conviction was again capable of modification through direct appeal to the state courts and to this Court on certiorari review. Therefore, it was not until January 6, 2004, when time for seeking certiorari review of the decision in the out-of-time appeal expired, that petitioner's conviction became "final" through "the conclusion of direct review or the expiration of the time for seeking such review" under § 2244(d)(1)(A). The Court rejects respondent's argument that using the later date created by the state court's decision to reopen direct review, thus resetting AEDPA's 1-year limitations period, undermines the policy of finality that Congress established in § 2244(d)(1). See *Carey* v. *Saffold*, 536 U. S. 214, 220. Pp. 118–121.

Reversed and remanded.

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

Thomas C. Goldstein argued the cause for petitioner. With him on the briefs were *Pamela S. Karlan*, *Jeffrey L. Fisher*, *Amy Howe*, *Kevin K. Russell*, and *Scott T. Williams*.

Sean D. Jordan, Deputy Solicitor General of Texas, argued the cause for respondent. With him on the brief were *Greg Abbott*, Attorney General, *Kent C. Sullivan*, First Assistant Attorney General, *Eric J. R. Nichols*, Deputy Attorney General for Criminal Justice, *James C. Ho*, Solicitor General, *Rance L. Craft* and *Adam W. Aston*, Assistant Solicitors General, and *Marta McLaughlin*, Assistant Attorney General.*

JUSTICE THOMAS delivered the opinion of the Court.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a 1-year time limitation for a state prisoner to file a federal habeas corpus petition. That year runs from the latest of four specified dates. 28 U. S. C.

**George A. Cumming, Jr.*, *Jani J. Maselli*, *Andrea Marsh*, and *Keith Hampton* filed a brief for the Texas Fair Defense Project et al. as *amici curiae* urging reversal.

§ 2244(d)(1). This case involves the date provided by § 2244(d)(1)(A), which is "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." Petitioner contends that "the date on which the judgment became final" can be postponed by a state court's decision during collateral review to grant a defendant the right to file an out-of-time direct appeal. The District Court disagreed, holding instead that the date could not be moved to reflect the out-of-time appeal, and that petitioner's federal habeas petition was untimely for that reason. The United States Court of Appeals for the Fifth Circuit denied a certificate of appealability. See § 2253(c). We now reverse the judgment of the Court of Appeals and remand for further proceedings consistent with this opinion.

I

After petitioner was sentenced for burglary in 1995, his attorney filed an appellate brief with the Texas Court of Appeals pursuant to *Anders* v. *California*, 386 U. S. 738 (1967), explaining that he was unable to identify any nonfrivolous ground on which to base an appeal.[1] He left a copy of the

[1] Petitioner was indicted in August 1991 for felony burglary of a habitation, in violation of Tex. Penal Code Ann. § 30.02 (West 1989), enhanced by a prior felony conviction for aggravated assault with a deadly weapon under Tex. Penal Code Ann. § 12.42(c) (West 1974). He entered a plea agreement in which he agreed to plead guilty to the burglary and true to the enhancement in exchange for an order of deferred adjudication. In November 1991, the trial court deferred adjudication of the burglary conviction and ordered that petitioner serve five years of deferred-adjudication probation. In March 1995, the State moved to revoke petitioner's probation based on four alleged violations of the conditions of his probation. At a November 1995 hearing, petitioner admitted to two of the violations. The court then heard testimony with respect to the other two violations and found that petitioner had committed those violations as well. The court revoked petitioner's deferred-adjudication probation, adjudicated him guilty of the enhanced burglary, and sentenced him to a 43-year term of imprisonment.

brief and a letter (advising petitioner of his right to file a *pro se* brief as set forth in *Anders*, *id.*, at 744) at the county jail where he believed petitioner to be. Petitioner, however, had been transferred to a state facility and did not receive the delivery. The Texas Court of Appeals dismissed the appeal on September 11, 1996, and served petitioner with notice of the dismissal at the county-jail address that, again, was the wrong address.

Petitioner eventually learned that his appeal had been dismissed. He filed an application in state court for a writ of habeas corpus pursuant to Tex. Code Crim. Proc. Ann., Art. 11.07 (Vernon 1977), arguing that he was denied his right to a meaningful appeal when he was denied the opportunity to file a *pro se* brief. The Texas Court of Criminal Appeals agreed and, on September 25, 2002, granted petitioner the right to file an out-of-time appeal:

> "[Petitioner] is entitled to an out-of-time appeal in cause number CR–91–0528–B in the 119th Judicial District Court of Tom Green County. [Petitioner] is ordered returned to that point in time at which he may give written notice of appeal so that he may then, with the aid of counsel, obtain a meaningful appeal. For purposes of the Texas Rules of Appellate Procedure, all time limits shall be calculated as if the sentence had been imposed on the date that the mandate of this Court issues." *Ex parte Jimenez*, No. 74,433 *(per curiam)*, App. 26, 27.

Petitioner thereafter filed the out-of-time appeal. His conviction was affirmed. The Texas Court of Criminal Appeals denied discretionary review on October 8, 2003. Time for seeking certiorari review of that decision with this Court expired on January 6, 2004. On December 6, 2004, petitioner filed a second application for a writ of habeas corpus in state court; it was denied on June 29, 2005.

Petitioner then filed a federal petition for a writ of habeas corpus on July 19, 2005. To establish the timeliness of his

petition, he relied on 28 U. S. C. § 2244(d)(1)(A), which provides "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review" as the trigger for AEDPA's 1-year limitations period. Petitioner argued that his judgment thus became final on January 6, 2004,[2] when time expired for seeking certiorari review of the decision in his out-of-time appeal. Until that date, petitioner argued, direct review of his state-court conviction was not complete.

With January 6, 2004, as the start date, petitioner contended that his July 19, 2005, petition was timely because the statute excludes from the 1-year limitations period "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." § 2244(d)(2). Petitioner had a state habeas application pending from December 6, 2004, through June 29, 2005, so less than one year of included time—specifically, 355 days—passed between January 6, 2004, and July 19, 2005.

The District Court disagreed and dismissed the federal habeas petition as time barred. In the District Court's view, the proper start date for AEDPA's 1-year limitations period was October 11, 1996, when time for seeking discretionary review of the decision in petitioner's first direct appeal expired. The District Court concluded that it could not take into account the Texas court's later decision reopening petitioner's direct appeal because Circuit precedent established that "'AEDPA provides for only a linear limitations period, one that starts and ends on specific dates, with only the possibility that tolling will expand the period in between.'" Order, Civ. Action No. 6:05–CV–05–C (ND Tex., Oct. 23, 2006), App. 75, 90 (quoting *Salinas* v. *Dretke*, 354 F. 3d 425, 429 (CA5 2004)). Therefore, the District Court reasoned,

[2] In the District Court, petitioner contended that this date was January 8, 2004, but petitioner's time for seeking certiorari review actually expired two days earlier.

the limitations period began on October 11, 1996, and ended on October 11, 1997, because petitioner had not sought any state or federal collateral review by that date.

The Court of Appeals denied petitioner's request for a certificate of appealability, finding that he had "failed to demonstrate that reasonable jurists would debate the correctness of the district court's conclusion that the § 2254 petition is time-barred." Order, No. 06–11240 (May 25, 2007), App. 124, 125. We granted certiorari, 552 U. S. 1256 (2008), and now reverse and remand for further proceedings.[3]

II

As with any question of statutory interpretation, our analysis begins with the plain language of the statute. *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004). It is well established that, when the statutory language is plain, we must enforce it according to its terms. See, *e. g.*, *Dodd* v. *United States*, 545 U. S. 353, 359 (2005); *Lamie*, *supra*, at 534; *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000); *Caminetti* v. *United States*, 242 U. S. 470, 485 (1917).

The parties agree that the statutory provision that determines the timeliness of petitioner's habeas petition is 28 U. S. C. § 2244(d)(1)(A). That subsection defines the starting

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[3] We do not decide whether petitioner is entitled to a certificate of appealability on remand because we are presented solely with the Court of Appeals' decision on the timeliness of the petition under 28 U. S. C. § 2244(d). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," as here, a certificate of appealability should issue only when the prisoner shows both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) (emphasis added). We make no judgment regarding the merits of petitioner's federal constitutional claims.

date for purposes of the 1-year AEDPA limitations period as "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." The only disputed question before us is whether the date on which direct review became "final" under the statute is October 11, 1996, when petitioner's conviction initially became final, or January 6, 2004, when the out-of-time appeal granted by the Texas Court of Criminal Appeals became final. We agree with petitioner that, under the plain meaning of the statutory text, the latter date controls.

Finality is a concept that has been "variously defined; like many legal terms, its precise meaning depends on context." *Clay* v. *United States*, 537 U. S. 522, 527 (2003). But here, the finality of a state-court judgment is expressly defined by statute as "the conclusion of direct review or the expiration of the time for seeking such review." § 2244(d)(1)(A).

With respect to postconviction relief for federal prisoners, this Court has held that the conclusion of direct review occurs when "this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari." *Id.*, at 527, 528–532 (interpreting § 2255, ¶ 6(1)). We have further held that if the federal prisoner chooses not to seek direct review in this Court, then the conviction becomes final when "the time for filing a certiorari petition expires." *Id.*, at 527. In construing the similar language of § 2244(d)(1)(A), we see no reason to depart from this settled understanding, which comports with the most natural reading of the statutory text. See *Lawrence* v. *Florida*, 549 U. S. 327, 332–335 (2007) (citing *Clay*, *supra*, at 528, n. 3). As a result, direct review cannot conclude for purposes of § 2244(d)(1)(A) until the "availability of direct appeal to the state courts," *Caspari* v. *Bohlen*, 510 U. S. 383, 390 (1994), and to this Court, *Lawrence*, *supra*, at 332–333, has been exhausted. Until that time, the "process of direct review" has not "com[e] to an end" and "a presumption of finality and legal-

ity" cannot yet have "attache[d] to the conviction and sentence," *Barefoot* v. *Estelle*, 463 U. S. 880, 887 (1983).

Under the statutory definition, therefore, once the Texas Court of Criminal Appeals reopened direct review of petitioner's conviction on September 25, 2002,[4] petitioner's conviction was no longer final for purposes of § 2244(d)(1)(A). Rather, the order "granting an out-of-time appeal restore[d] the pendency of the direct appeal," *Ex parte Torres*, 943 S. W. 2d 469, 472 (Tex. Crim. App. 1997), and petitioner's conviction was again capable of modification through direct appeal to the state courts and to this Court on certiorari review. Therefore, it was not until January 6, 2004, when time for seeking certiorari review in this Court expired, that petitioner's conviction became "final" through "the conclusion of direct review or the expiration of the time for seeking such review" under § 2244(d)(1)(A).

Respondent objects, observing that the Court has previously acknowledged Congress' intent "to advance the finality of criminal convictions" with the "tight time line" of § 2244(d)(1)(A), *Mayle* v. *Felix*, 545 U. S. 644, 662 (2005), which "pinpoint[s]" a uniform federal date of finality that does not "vary from State to State," *Clay*, *supra*, at 530, 531. In respondent's view, permitting a state court to reopen direct review, and thus reset AEDPA's 1-year limitations period, undermines the policy of finality that Congress estab-

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[4] We do not here decide whether petitioner could have sought timely federal habeas relief between October 11, 1997, when the 1-year limitations period initially expired, and September 25, 2002, when the state court ordered that his direct review be reopened. Were such a petition timely, though, it would not be through application of § 2244(d)(1)(A) because we have previously held that the possibility that a state court may reopen direct review "does not render convictions and sentences that are no longer subject to direct review nonfinal," *Beard* v. *Banks*, 542 U. S. 406, 412 (2004). We do not depart from that rule here; we merely hold that, where a state court has in fact reopened direct review, the conviction is rendered nonfinal for purposes of § 2244(d)(1)(A) during the pendency of the reopened appeal.

lished in § 2244(d)(1). But it is the plain language of § 2244(d)(1) that pinpoints the uniform date of finality set by Congress. And that language points to the conclusion of direct appellate proceedings in state court. The statute thus carries out "AEDPA's goal of promoting 'comity, finality, and federalism' by giving state courts 'the first opportunity to review [the] claim,' and to 'correct' any 'constitutional violation in the first instance.'" *Carey* v. *Saffold*, 536 U. S. 214, 220 (2002) (quoting *Williams* v. *Taylor*, 529 U. S. 420, 436 (2000); *O'Sullivan* v. *Boerckel*, 526 U. S. 838, 844–845 (1999)). The statute requires a federal court, presented with an individual's first petition for habeas relief, to make use of the date on which the entirety of the state direct appellate review process was completed. Here, that date was January 6, 2004.

* * *

Our decision today is a narrow one. We hold that, where a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, but before the defendant has first sought federal habeas relief, his judgment is not yet "final" for purposes of § 2244(d)(1)(A). In such a case, "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review" must reflect the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking review of that appeal. Because the Court of Appeals denied a certificate of appealability based on a contrary reading of the statute, we reverse the judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

CHAMBERS *v.* UNITED STATES

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

No. 06–11206. Argued November 10, 2008—Decided January 13, 2009

The Armed Career Criminal Act (ACCA) imposes a 15-year mandatory prison term on a felon unlawfully in possession of a firearm who has three prior convictions for committing certain drug crimes or "a violent felony," 18 U. S. C. § 924(e)(1), defined as a crime punishable by more than one year's imprisonment that, *inter alia*, "involves conduct that presents a serious potential risk of physical injury to another," § 924(e)(2)(B)(ii). At petitioner Chambers' sentencing for being a felon in possession of a firearm, the Government sought ACCA's 15-year mandatory prison term. Chambers disputed one of his prior convictions—failing to report for weekend confinement—as falling outside the ACCA definition of "violent felony." The District Court treated the failure to report as a form of what the relevant state statute calls "escape from [a] penal institution," and held that it qualified as a "violent felony" under ACCA. The Seventh Circuit agreed.

Held: Illinois' crime of failure to report for penal confinement falls outside the scope of ACCA's "violent felony" definition. Pp. 125–130.

(a) For purposes of ACCA's definitions, it is the generic crime that counts, not how the crime was committed on a particular occasion. *Taylor* v. *United States*, 495 U. S. 575, 602. This categorical approach requires courts to choose the right category, and sometimes the choice is not obvious. The nature of the behavior that likely underlies a statutory phrase matters in this respect. The state statute at issue places together in a single section several different kinds of behavior, which, as relevant here, may be categorized either as failure to report for detention or as escape from custody. Failure to report is a separate crime from escape. Its underlying behavior differs from the more aggressive behavior underlying escape, and it is listed separately in the statute's title and body and is of a different felony class than escape. At the same time, the statutory phrases setting forth the various kinds of failure to report describe roughly similar forms of behavior, thus constituting a single category. Consequently, for ACCA purposes, the statute contains at least two separate crimes, escape and failure to report. Pp. 125–127.

(b) The "failure to report" crime does not satisfy ACCA's "violent felony" definition. Although it is punishable by imprisonment exceed-

ing one year, it satisfies none of the other parts of the definition. Most critically, it does not "involv[e] conduct that presents a serious potential risk of physical injury to another." Conceptually speaking, the crime amounts to a form of inaction, and there is no reason to believe that an offender who fails to report is otherwise doing something that poses a serious potential risk of physical injury. The Government's argument that a failure to report reveals the offender's special, strong aversion to penal custody—pointing to three state and federal cases over 30 years in which individuals shot at officers attempting to recapture them—is unconvincing. Even assuming the relevance of violence that may occur long after an offender fails to report, the offender's aversion to penal custody is beside the point. The question is whether such an offender is significantly more likely than others to attack or resist an apprehender, thereby producing a serious risk of physical injury. Here a United States Sentencing Commission report, showing no violence in 160 federal failure-to-report cases over two recent years, helps provide a negative answer. The three reported cases to which the Government points do not show the contrary. Simple multiplication (2 years versus 30 years; federal alone versus federal-plus-state) suggests that they show only a statistically insignificant risk of physical violence. And the Government provides no other empirical information. Pp. 127–130.

473 F. 3d 724, reversed and remanded.

Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Stevens, Scalia, Kennedy, Souter, and Ginsburg, JJ., joined. Alito, J., filed an opinion concurring in the judgment, in which Thomas, J., joined, *post*, p. 131.

Robert N. Hochman argued the cause for petitioner. With him on the briefs were *Jeffrey T. Green*, *Julie Morian*, and *Sarah O'Rourke Schrup*.

Matthew D. Roberts argued the cause for the United States. With him on the brief were *Solicitor General Garre*, *Acting Assistant Attorney General Friedrich*, and *Deputy Solicitor General Dreeben*.

Justice Breyer delivered the opinion of the Court.

The question before us is whether a "failure to report" for penal confinement is a "'violent felony'" within the terms of the Armed Career Criminal Act. 18 U. S. C. § 924(e). We hold that it is not.

I

The Armed Career Criminal Act (ACCA) imposes a 15-year mandatory prison term on an individual convicted of being a felon in possession of a firearm *if* that individual has "three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another." § 924(e)(1). ACCA defines a "violent felony" as a "crime punishable by imprisonment for a term exceeding one year" that also either

> "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> "(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B).

Clause (ii), ACCA's so-called residual clause, is at issue here.

II

The petitioner, Deondery Chambers, pleaded guilty to a charge of being a felon unlawfully in possession of a firearm. § 922(g). At sentencing the Government asked the District Court to apply ACCA's 15-year mandatory prison term because, in its view, three of Chambers' prior convictions qualified as an ACCA "serious drug offense" or "violent felony." Chambers conceded that two of his prior convictions, namely, a 1998 conviction for robbery and aggravated battery and a 1999 drug crime conviction, fell within ACCA's definitions. But he disputed the Government's claim as to a third conviction. That third conviction arose out of Chambers' sentence for his 1998 robbery and battery offense. The sentence required Chambers to report to a local prison for 11 weekends of incarceration. He failed to report for weekend confinement on four occasions, and was later convicted of the crime

of "fail[ing] to report to a penal institution." Ill. Comp. Stat., ch. 720, § 5/31–6(a) (West Supp. 2008).

The District Court treated the "failure to report" as a form of what the relevant Illinois statute calls "escape from [a] penal institution," *ibid.*, and held that the crime qualified as a "violent felony" under ACCA. The Court of Appeals agreed. 473 F. 3d 724 (CA7 2007). In light of disagreement among the Circuits as to whether failure to report for imprisonment falls within the scope of ACCA's definition of "violent felony," we granted certiorari. Compare *United States* v. *Winn*, 364 F. 3d 7, 12 (CA1 2004) (failure to report is a "violent felony"), with *United States* v. *Piccolo*, 441 F. 3d 1084, 1088 (CA9 2006) (failure to report is not a "violent felony").

III

We initially consider the classification of the crime. In ordinary speech, words such as "crime" and "felony" can refer not only to a generic *set* of acts, say, burglary in general, but also to a specific act committed on a particular occasion, say, *the* burglary that the defendant engaged in last month. We have made clear, however, that, for purposes of ACCA's definitions, it is the generic sense of the word "felony" that counts. *Taylor* v. *United States*, 495 U. S. 575, 602 (1990); see also *Shepard* v. *United States*, 544 U. S. 13, 16–17 (2005). The statute's defining language, read naturally, uses "felony" to refer to a crime as generally committed. And by so construing the statute, one avoids the practical difficulty of trying to ascertain at sentencing, perhaps from a paper record mentioning only a guilty plea, whether the present defendant's prior crime, as committed on a particular occasion, did or did not involve violent behavior. See *id.*, at 20–21. Thus, to determine, for example, whether attempted burglary is a "violent felony," we have had to examine, not the unsuccessful burglary the defendant attempted on a particular occasion, but the generic crime of attempted burglary. *James* v. *United States*, 550 U. S. 192, 204–206 (2007).

This categorical approach requires courts to choose the right category. And sometimes the choice is not obvious. The nature of the behavior that likely underlies a statutory phrase matters in this respect. Where Massachusetts, for example, placed within a single, separately numbered statutory section (entitled "Breaking and entering at night," Mass. Gen. Laws Ann., ch. 266, § 16 (West 2008)) burglary of a "building, ship, vessel or vehicle," this Court found that the behavior underlying, say, breaking into a building differs so significantly from the behavior underlying, say, breaking into a vehicle that for ACCA purposes a sentencing court must treat the two as different crimes. See *Shepard*, *supra*, at 16–17; see also *Taylor*, *supra*, at 598.

The Illinois statute now before us, like the Massachusetts statute, places together in a single numbered statutory section several different kinds of behavior. It separately describes those behaviors as (1) escape from a penal institution, (2) escape from the custody of an employee of a penal institution, (3) failing to report to a penal institution, (4) failing to report for periodic imprisonment, (5) failing to return from furlough, (6) failing to return from work and day release, and (7) failing to abide by the terms of home confinement. Ill. Comp. Stat., ch. 720, § 5/31–6(a); see Appendix A, *infra*. We know from the state-court information in the record that Chambers pleaded guilty to "knowingly fail[ing] to report" for periodic imprisonment "to the Jefferson County Jail, a penal institution." App. 68; see *Shepard*, *supra*, at 25 (sentencing court may look, for example, to charging document, plea agreement, jury instructions, or transcript of plea colloquy to determine crime at issue). But we must decide whether for ACCA purposes a failure to report counts as a separate crime.

Unlike the lower courts, we believe that a failure to report (as described in the statutory provision's third, fourth, fifth, and sixth phrases) is a separate crime, different from escape

(the subject matter of the statute's first and second phrases), and from the potentially less serious failure to abide by the terms of home confinement (the subject of the final phrase). The behavior that likely underlies a failure to report would seem less likely to involve a risk of physical harm than the less passive, more aggressive behavior underlying an escape from custody. See *Begay* v. *United States*, 553 U. S. 137, 144–146 (2008). Moreover, the statute itself not only lists escape and failure to report separately (in its title and its body) but also places the behaviors in two different felony classes (Class Two and Class Three) of different degrees of seriousness. See Appendix A, *infra*.

At the same time, we believe the statutory phrases setting forth various kinds of failure to report (or to return) describe roughly similar forms of behavior. Each is characterized by a failure to present oneself for detention on a specified occasion. All amount to variations on a single theme. For that reason we consider them as together constituting a single category. Cf. *James*, *supra*, at 207–209 (determining that where separately listed behaviors pose a similar degree of risk, sentencing courts may consider all listed behaviors as a single crime). We consequently treat the statute for ACCA purposes as containing at least two separate crimes, namely, escape from custody on the one hand, and a failure to report on the other. Failure to abide by home confinement terms—potentially the least serious of the offenses—is not at issue here.

IV

We now must consider whether the "failure to report" crime satisfies ACCA's "violent felony" definition. It clearly satisfies the first part of that definition, for it is a "crime punishable by imprisonment for a term exceeding one year." 18 U. S. C. § 924(e)(2)(B). But it satisfies none of the other parts. It does not have "as an element the use, attempted use, or threatened use of physical force against the person of

another." § 924(e)(2)(B)(i). It does not consist of "burglary, arson, or extortion," or "involv[e] use of explosives." § 924(e)(2)(B)(ii). And, more critically for present purposes, it does not "'involve conduct that presents a serious potential risk of physical injury to another.'" See *Begay*, 553 U. S., at 141–142; *id.*, at 153–154 (SCALIA, J., concurring in judgment) (treating serious risk of physical injury to another as critical definitional factor); *id.*, at 156–158 (ALITO, J., dissenting) (same).

Conceptually speaking, the crime amounts to a form of inaction, a far cry from the "purposeful, 'violent,' and 'aggressive' conduct" potentially at issue when an offender uses explosives against property, commits arson, burgles a dwelling or residence, or engages in certain forms of extortion. Cf. *id.*, at 144–145. While an offender who fails to report must of course be doing *something* at the relevant time, there is no reason to believe that the *something* poses a serious potential risk of physical injury. Cf. *James*, 550 U. S., at 203–204. To the contrary, an individual who fails to report would seem unlikely, not likely, to call attention to his whereabouts by simultaneously engaging in additional violent and unlawful conduct.

The Government argues that a failure to report reveals the offender's special, strong aversion to penal custody. And it points to three cases arising over a period of 30 years in which reported opinions indicate that individuals shot at officers attempting to recapture them. See *United States* v. *Eaglin*, 571 F. 2d 1069, 1072 (CA9 1977); *State* v. *Johnson*, 245 S. W. 3d 288, 291 (Mo. Ct. App. 2008); *State* v. *Jones*, 96 Wash. App. 369, 371–372, 979 P. 2d 898, 899 (1999). But even if we assume for argument's sake the relevance of violence that may occur long after an offender fails to report, we are not convinced by the Government's argument. The offender's aversion to penal custody, even if special, is beside the point. The question is whether such an offender is signifi-

cantly more likely than others to attack, or physically to resist, an apprehender, thereby producing a "serious potential risk of physical injury." § 924(e)(2)(B)(ii). And here a United States Sentencing Commission report helps provide a conclusive, negative answer. See Report on Federal Escape Offenses in Fiscal Years 2006 and 2007, p. 7 (Nov. 2008) (hereinafter Commission's Report), reprinted in part in Appendix B, *infra*. See also 473 F. 3d, at 727 (Posner, J.) (urging that such research be done).

The Commission's Report identifies every federal case in 2006 or 2007 in which a federal sentencing court applied the Sentencing Guideline, "Escape, Instigating or Assisting Escape," 1 United States Sentencing Commission, Guidelines Manual § 2P1.1 (Nov. 2008), and in which sufficient detail was provided, say, in the presentence report, about the circumstances of the crime to permit analysis. The analysis included calculation of the likelihood that violence would accompany commission of the escape or the offender's later apprehension.

Of 414 such cases, 160 involved a failure to report either for incarceration (42) or for custody after having been temporarily released (118). Commission's Report 7; see also Appendix B, *infra*. Of these 160 cases, none at all involved violence—not during commission of the offense itself, not during the offender's later apprehension—although in 5 instances (3.1%) the offenders were armed. *Ibid.* The upshot is that the study strongly supports the intuitive belief that failure to report does not involve a serious potential risk of physical injury.

The three reported cases to which the Government points do not show the contrary. The Sentencing Commission culled its 160 instances from a set of federal sentences imposed over a period of two years. The Government apparently culled its three examples from a set of state and federal sentences imposed over a period of 30 years. Compare *Eag-*

lin, *supra* (CA9 1977), with *Johnson*, *supra* (Mo. Ct. App. 2008). Given the larger set, the presence of three instances of violence is consistent with the Commission's data. Simple multiplication (2 years versus 30 years; federal alone versus federal-plus-state) suggests that they show only a small risk of physical violence (less than one in several thousand). And the Government provides no other empirical information.

For these reasons we conclude that the crime here at issue falls outside the scope of ACCA's definition of "violent felony." § 924(e)(2)(B)(ii). 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.

APPENDIXES

A

"Escape; failure to report to a penal institution or to report for periodic imprisonment.

> "A person convicted of a felony, adjudicated a delinquent minor for the commission of a felony offense under the Juvenile Court Act of 1987, or charged with the commission of a felony who intentionally escapes from any penal institution or from the custody of an employee of that institution commits a Class 2 felony; however, a person convicted of a felony or adjudicated a delinquent minor for the commission of a felony offense under the Juvenile Court Act of 1987 who knowingly fails to report to a penal institution or to report for periodic imprisonment at any time or knowingly fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement is guilty of a Class 3 felony." Ill. Comp. Stat., ch. 720, § 5/31–6(a) (West Supp. 2008).

B

Report on Federal Escape Offenses in Fiscal Years 2006 and 2007, p. 7, fig. 1 (Nov. 2008).*

	Leaving Secure Custody	Leaving Law Enforcement Custody	Leaving Non-secure Custody	Failing to Report	Failing to Return
Number of Cases	64	13	177	42	118
Force	10 (15.6%)	1 (7.7%)	3 (1.7%)	0 (0.0%)	0 (0.0%)
Dangerous Weapon	20 (31.3%)	1 (7.7%)	4 (2.3%)	3 (7.1%)	2 (1.7%)
Injury	7 (10.9%)	2 (15.4%)	3 (1.7%)	0 (0.0%)	0 (0.0%)

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the judgment.

As I have previously explained, I believe that the Court's approach in *Begay*, like its approach in this case, "cannot be reconciled with the statutory text." *Begay* v. *United States*, 553 U. S. 137, 155 (2008) (dissenting opinion). I nonetheless recognize that "*stare decisis* in respect to statutory interpretation has 'special force,'" *John R. Sand & Gravel Co.* v. *United States*, 552 U. S. 130, 139 (2008), and I am sympathetic to the majority's efforts to provide a workable interpretation of the "residual clause" of the Armed Career Criminal Act (ACCA), while retaining the "categorical approach" that we

*Cases can fall into more than one category. For example, one case could involve both force and injury. Such a case would be represented in the table for force and also for injury. Therefore, the reader should not aggregate the numbers in any column.

adopted in *Taylor* v. *United States*, 495 U. S. 575, 602 (1990). In light of *Taylor* and *Begay*, I agree that this case should be remanded for resentencing. I write separately, however, to emphasize that only Congress can rescue the federal courts from the mire into which ACCA's draftsmanship and *Taylor*'s "categorical approach" have pushed us.

In 1986, when Congress enacted ACCA's residual clause, 18 U. S. C. § 924(e)(2)(B)(ii), few could have foreseen the difficulties that lay ahead.[1] Only four months before Congress framed the residual clause, this Court upheld a state sentencing provision that imposed a mandatory minimum sentence where the judge found by a preponderance of the evidence that the defendant visibly possessed a firearm during the commission of certain felonies (including robbery). See *McMillan* v. *Pennsylvania*, 477 U. S. 79 (1986). Legislating against the background of *McMillan*, Congress may have assumed that ACCA's residual clause would similarly require federal sentencing judges to determine whether the particular facts of a particular case triggered a mandatory minimum sentence.

But history took a different track. In *Taylor*, the Court held that ACCA requires "the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions." 495 U. S., at 600. Thus, we held that sentencing judges should apply a "categorical approach" to determine whether an underlying state offense meets the "generic" definition of burglary that this Court—

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[1] Congress originally enacted ACCA in 1984. See § 1802, 98 Stat. 2185, 18 U. S. C. App. § 1202(a) (1982 ed. and Supp. II) (repealed in 1986 by Firearms Owners' Protection Act, § 104(b), 100 Stat. 459). That statute, however, applied a mandatory sentencing enhancement to only two predicate felonies—robbery and burglary—which the statute expressly defined. 18 U. S. C. App. §§ 1202(c)(8)–(9) (1982 ed., Supp. II). Congress did not add the undefined "otherwise clause" until 1986. See Career Criminals Amendment Act of 1986, § 1402, 100 Stat. 3207–39.

not Congress—created. *Id.*, at 598. The Court justified its decision with a 10-page discussion of ACCA's purpose and legislative history, *id.*, at 581–590; see also *id.*, at 603 (SCALIA, J., concurring in part and concurring in judgment) (criticizing the Court's approach), and explained that its conclusion was necessary to undo "an inadvertent casualty [in ACCA's] complex drafting process," *id.*, at 589–590.

ACCA's clarity has been the true inadvertent casualty. After almost two decades with *Taylor*'s "categorical approach," only one thing is clear: ACCA's residual clause is nearly impossible to apply consistently. Indeed, the "categorical approach" to predicate offenses has created numerous splits among the lower federal courts,[2] the resolution of which could occupy this Court for years. What is worse is

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[2] For example, the lower courts have split over whether it is a "violent felony" under ACCA's residual clause to commit rape, compare *United States* v. *Sawyers*, 409 F. 3d 732 (CA6 2005) (statutory rape not categorically violent), with *United States* v. *Williams*, 120 F. 3d 575 (CA5 1997) (inducement of minor to commit sodomy violent), and *United States* v. *Thomas*, 231 Fed. Appx. 765 (CA9 2007) (all rape violent); retaliate against a government officer, compare *United States* v. *Montgomery*, 402 F. 3d 482 (CA5 2005) (not violent), with *Sawyers*, *supra* (violent); attempt or conspire to commit burglary, compare *United States* v. *Fell*, 511 F. 3d 1035 (CA10 2007) (even after *James* v. *United States*, 550 U. S. 192 (2007), and even where statute requires an overt act, conspiracy to commit burglary not violent), with *United States* v. *Moore*, 108 F. 3d 878 (CA8 1997) (attempted burglary violent if statute requires proof of overt act); carry a concealed weapon, compare *United States* v. *Whitfield*, 907 F. 2d 798 (CA8 1990) (not violent), with *United States* v. *Hall*, 77 F. 3d 398 (CA11 1996) (violent); and possess a sawed-off shotgun as a felon, compare *United States* v. *Amos*, 501 F. 3d 524 (CA6 2007) (not violent), with *United States* v. *Bishop*, 453 F. 3d 30 (CA1 2006) (violent). Compare also *United States* v. *Sanchez-Garcia*, 501 F. 3d 1208 (CA10 2007) (unauthorized use of a motor vehicle not a "violent felony" under 18 U. S. C. § 16(b), which closely resembles ACCA's residual clause), with *United States* v. *Reliford*, 471 F. 3d 913 (CA8 2006) (automobile tampering violent under ACCA's residual clause), and *United States* v. *Galvan-Rodriguez*, 169 F. 3d 217 (CA5 1999) *(per curiam)* (unauthorized use of a motor vehicle a "violent felony" under § 16(b)).

that each new application of the residual clause seems to lead us further and further away from the statutory text. Today's decision, for example, turns on little more than a statistical analysis of a research report prepared by the United States Sentencing Commission. *Ante*, at 129, 131 (Appendix B).

At this point, the only tenable, long-term solution is for Congress to formulate a specific list of expressly defined crimes that are deemed to be worthy of ACCA's sentencing enhancement. That is the approach that Congress took in 1984, when it applied ACCA to two enumerated and expressly defined felonies. See n. 1, *supra*. And that approach is the only way to right ACCA's ship.

HERRING *v.* UNITED STATES

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

No. 07–513. Argued October 7, 2008—Decided January 14, 2009

Officers in Coffee County arrested petitioner Herring based on a warrant listed in neighboring Dale County's database. A search incident to that arrest yielded drugs and a gun. It was then revealed that the warrant had been recalled months earlier, though this information had never been entered into the database. Herring was indicted on federal gun and drug possession charges and moved to suppress the evidence on the ground that his initial arrest had been illegal. Assuming that there was a Fourth Amendment violation, the District Court concluded that the exclusionary rule did not apply and denied the motion to suppress. The Eleventh Circuit affirmed, finding that the arresting officers were innocent of any wrongdoing, and that Dale County's failure to update the records was merely negligent. The court therefore concluded that the benefit of suppression would be marginal or nonexistent and that the evidence was admissible under the good-faith rule of *United States* v. *Leon*, 468 U. S. 897.

Held: When police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply. Pp. 139–148.

(a) The fact that a search or arrest was unreasonable does not necessarily mean that the exclusionary rule applies. *Illinois* v. *Gates*, 462 U. S. 213, 223. The rule is not an individual right and applies only where its deterrent effect outweighs the substantial cost of letting guilty and possibly dangerous defendants go free. *Leon*, 468 U. S., at 908–909. For example, it does not apply if police acted "in objectively reasonable reliance" on an invalid warrant. *Id.*, at 922. In applying *Leon*'s good-faith rule to police who reasonably relied on mistaken information in a court's database that an arrest warrant was outstanding, *Arizona* v. *Evans*, 514 U. S. 1, 14–15, the Court left unresolved the issue confronted here: whether evidence should be suppressed if the police committed the error, *id.*, at 16, n. 5. Pp. 139–143.

(b) The extent to which the exclusionary rule is justified by its deterrent effect varies with the degree of law enforcement culpability. See, *e. g.*, *Leon*, *supra*, at 911. Indeed, the abuses that gave rise to the rule featured intentional conduct that was patently unconstitutional.

See, *e. g.*, *Weeks* v. *United States*, 232 U. S. 383. An error arising from nonrecurring and attenuated negligence is far removed from the core concerns that led to the rule's adoption. Pp. 143–144.

(c) To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. The pertinent analysis is objective, not an inquiry into the arresting officers' subjective awareness. See, *e. g.*, *Leon*, *supra*, at 922, n. 23. Pp. 144–146.

(d) The conduct here was not so objectively culpable as to require exclusion. The marginal benefits that might follow from suppressing evidence obtained in these circumstances cannot justify the substantial costs of exclusion. *Leon*, *supra*, at 922. Pp. 146–148.

492 F. 3d 1212, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post*, p. 148. BREYER, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 157.

Pamela S. Karlan argued the cause for petitioner. With her on the briefs were *Jeffrey L. Fisher*, *Amy Howe*, *Kevin K. Russell*, *Ronald W. Wise*, and *Thomas C. Goldstein*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Garre*, *Acting Assistant Attorney General Friedrich*, *Toby J. Heytens*, and *Deborah Watson*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Fourth Amendment forbids "unreasonable searches and seizures," and this usually requires the police to have probable cause or a warrant before making an arrest. What

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Geoffrey F. Aronow*, *William H. Forman*, *Eric G. Barber*, and *Steven R. Shapiro;* for the Electronic Privacy Information Center et al. by *Marc Rotenberg;* and for the National Association of Criminal Defense Lawyers by *Pamela Harris* and *Walter Dellinger*.

if an officer reasonably believes there is an outstanding arrest warrant, but that belief turns out to be wrong because of a negligent bookkeeping error by another police employee? The parties here agree that the ensuing arrest is still a violation of the Fourth Amendment, but dispute whether contraband found during a search incident to that arrest must be excluded in a later prosecution.

Our cases establish that such suppression is not an automatic consequence of a Fourth Amendment violation. Instead, the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct. Here the error was the result of isolated negligence attenuated from the arrest. We hold that in these circumstances the jury should not be barred from considering all the evidence.

I

On July 7, 2004, Investigator Mark Anderson learned that Bennie Dean Herring had driven to the Coffee County Sheriff's Department to retrieve something from his impounded truck. Herring was no stranger to law enforcement, and Anderson asked the county's warrant clerk, Sandy Pope, to check for any outstanding warrants for Herring's arrest. When she found none, Anderson asked Pope to check with Sharon Morgan, her counterpart in neighboring Dale County. After checking Dale County's computer database, Morgan replied that there was an active arrest warrant for Herring's failure to appear on a felony charge. Pope relayed the information to Anderson and asked Morgan to fax over a copy of the warrant as confirmation. Anderson and a deputy followed Herring as he left the impound lot, pulled him over, and arrested him. A search incident to the arrest revealed methamphetamine in Herring's pocket, and a pistol (which as a felon he could not possess) in his vehicle. App. 17–23.

There had, however, been a mistake about the warrant. The Dale County sheriff's computer records are supposed to correspond to actual arrest warrants, which the office also

maintains. But when Morgan went to the files to retrieve the actual warrant to fax to Pope, Morgan was unable to find it. She called a court clerk and learned that the warrant had been recalled five months earlier. Normally when a warrant is recalled the court clerk's office or a judge's chambers calls Morgan, who enters the information in the sheriff's computer database and disposes of the physical copy. For whatever reason, the information about the recall of the warrant for Herring did not appear in the database. Morgan immediately called Pope to alert her to the mixup, and Pope contacted Anderson over a secure radio. This all unfolded in 10 to 15 minutes, but Herring had already been arrested and found with the gun and drugs, just a few hundred yards from the sheriff's office. *Id.*, at 26, 35–42, 54–55.

Herring was indicted in the District Court for the Middle District of Alabama for illegally possessing the gun and drugs, violations of 18 U. S. C. § 922(g)(1) and 21 U. S. C. § 844(a). He moved to suppress the evidence on the ground that his initial arrest had been illegal because the warrant had been rescinded. The Magistrate Judge recommended denying the motion because the arresting officers had acted in a good-faith belief that the warrant was still outstanding. Thus, even if there were a Fourth Amendment violation, there was "no reason to believe that application of the exclusionary rule here would deter the occurrence of any future mistakes." App. 70. The District Court adopted the Magistrate Judge's recommendation, 451 F. Supp. 2d 1290 (2005), and the Court of Appeals for the Eleventh Circuit affirmed, 492 F. 3d 1212 (2007).

The Eleventh Circuit found that the arresting officers in Coffee County "were entirely innocent of any wrongdoing or carelessness." *Id.*, at 1218. The court assumed that whoever failed to update the Dale County sheriff's records was also a law enforcement official, but noted that "the conduct in question [wa]s a negligent failure to act, not a deliberate or tactical choice to act." *Ibid.* Because the error was merely

negligent and attenuated from the arrest, the Eleventh Circuit concluded that the benefit of suppressing the evidence "would be marginal or nonexistent," *ibid.* (internal quotation marks omitted), and the evidence was therefore admissible under the good-faith rule of *United States* v. *Leon*, 468 U. S. 897 (1984).

Other courts have required exclusion of evidence obtained through similar police errors, *e. g.*, *Hoay* v. *State*, 348 Ark. 80, 86–87, 71 S. W. 3d 573, 577 (2002), so we granted Herring's petition for certiorari to resolve the conflict, 552 U. S. 1178 (2008). We now affirm the Eleventh Circuit's judgment.

II

When a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily been the victim of a constitutional violation. The very phrase "probable cause" confirms that the Fourth Amendment does not demand all possible precision. And whether the error can be traced to a mistake by a state actor or some other source may bear on the analysis. For purposes of deciding this case, however, we accept the parties' assumption that there was a Fourth Amendment violation. The issue is whether the exclusionary rule should be applied.

A

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," but "contains no provision expressly precluding the use of evidence obtained in violation of its commands," *Arizona* v. *Evans*, 514 U. S. 1, 10 (1995). Nonetheless, our decisions establish an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial. See, *e. g.*, *Weeks* v. *United States*, 232 U. S. 383, 398 (1914). We have stated that this judicially created rule is "designed to safeguard

Fourth Amendment rights generally through its deterrent effect." *United States* v. *Calandra*, 414 U. S. 338, 348 (1974).

In analyzing the applicability of the rule, *Leon* admonished that we must consider the actions of all the police officers involved. 468 U. S., at 923, n. 24 ("It is necessary to consider the objective reasonableness, not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it or who provided information material to the probable-cause determination"). The Coffee County officers did nothing improper. Indeed, the error was noticed so quickly because Coffee County requested a faxed confirmation of the warrant.

The Eleventh Circuit concluded, however, that somebody in Dale County should have updated the computer database to reflect the recall of the arrest warrant. The court also concluded that this error was negligent, but did not find it to be reckless or deliberate. 492 F. 3d, at 1218.[1] That fact is crucial to our holding that this error is not enough by itself to require "the extreme sanction of exclusion." *Leon*, *supra*, at 916.

B

1. The fact that a Fourth Amendment violation occurred—*i. e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies. *Illinois* v. *Gates*, 462 U. S. 213, 223 (1983). Indeed, exclusion "has always been our last resort, not our first impulse," *Hudson* v. *Michigan*, 547 U. S. 586, 591 (2006), and our precedents establish important principles that constrain application of the exclusionary rule.

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[1] At an earlier point in its opinion, the Eleventh Circuit described the error as " 'at the very least negligent,' " 492 F. 3d 1212, 1217 (2007) (quoting *Michigan* v. *Tucker*, 417 U. S. 433, 447 (1974)). But in the next paragraph, it clarified that the error was "a negligent failure to act, not a deliberate or tactical choice to act," 492 F. 3d, at 1218. The question presented treats the error as a "negligen[t]" one, see Pet. for Cert. i; Brief in Opposition (I), and both parties briefed the case on that basis.

First, the exclusionary rule is not an individual right and applies only where it "'result[s] in appreciable deterrence.'" *Leon*, *supra*, at 909 (quoting *United States* v. *Janis*, 428 U. S. 433, 454 (1976)). We have repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation. *Leon*, *supra*, at 905–906; *Evans*, *supra*, at 13–14; *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 363 (1998). Instead we have focused on the efficacy of the rule in deterring Fourth Amendment violations in the future. See *Calandra*, *supra*, at 347–355; *Stone* v. *Powell*, 428 U. S. 465, 486 (1976).[2]

In addition, the benefits of deterrence must outweigh the costs. *Leon*, *supra*, at 910. "We have never suggested that the exclusionary rule must apply in every circumstance in which it might provide marginal deterrence." *Scott*, *supra*, at 368. "[T]o the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs." *Illinois* v. *Krull*, 480 U. S. 340, 352–353 (1987) (internal quotation marks omitted). The principal cost of applying the rule is, of course, letting guilty and possibly dangerous defendants go free—something that "offends basic concepts of the criminal justice system." *Leon*, *supra*, at 908. "[T]he rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application." *Scott*, *supra*, at 364–365 (internal quotation marks omitted); see also *United States* v. *Havens*,

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[2] JUSTICE GINSBURG's dissent champions what she describes as "'a more majestic conception' of . . . the exclusionary rule," *post*, at 151 (quoting *Arizona* v. *Evans*, 514 U. S. 1, 18 (1995) (STEVENS, J., dissenting)), which would exclude evidence even where deterrence does not justify doing so. Majestic or not, our cases reject this conception, see, *e. g.*, *United States* v. *Leon*, 468 U. S. 897, 921, n. 22 (1984), and perhaps for this reason, her dissent relies almost exclusively on previous dissents to support its analysis.

446 U. S. 620, 626–627 (1980); *United States* v. *Payner*, 447 U. S. 727, 734 (1980).

These principles are reflected in the holding of *Leon*: When police act under a warrant that is invalid for lack of probable cause, the exclusionary rule does not apply if the police acted "in objectively reasonable reliance" on the subsequently invalidated search warrant. 468 U. S., at 922. We (perhaps confusingly) called this objectively reasonable reliance "good faith." *Ibid.*, n. 23. In a companion case, *Massachusetts* v. *Sheppard*, 468 U. S. 981 (1984), we held that the exclusionary rule did not apply when a warrant was invalid because a judge forgot to make "clerical corrections" to it. *Id.*, at 991.

Shortly thereafter we extended these holdings to warrantless administrative searches performed in good-faith reliance on a statute later declared unconstitutional. *Krull*, *supra*, at 349–350. Finally, in *Evans*, 514 U. S. 1, we applied this good-faith rule to police who reasonably relied on mistaken information in a court's database that an arrest warrant was outstanding. We held that a mistake made by a judicial employee could not give rise to exclusion for three reasons: The exclusionary rule was crafted to curb police rather than judicial misconduct; court employees were unlikely to try to subvert the Fourth Amendment; and "most important, there [was] no basis for believing that application of the exclusionary rule in [those] circumstances" would have any significant effect in deterring the errors. *Id.*, at 15. *Evans* left unresolved "whether the evidence should be suppressed if police personnel were responsible for the error,"[3] an issue not ar-

[3] We thus reject JUSTICE BREYER's suggestion that *Evans* was entirely "premised on a distinction between judicial errors and police errors," *post*, at 158 (dissenting opinion). Were that the only rationale for our decision, there would have been no reason for us expressly and carefully to leave police error unresolved. In addition, to the extent *Evans* is viewed as presaging a particular result here, it is noteworthy that the dissent's view in that case was that the distinction JUSTICE BREYER regards as determinative was instead "artificial." 514 U. S., at 29 (GINSBURG, J., dissenting).

gued by the State in that case, *id.*, at 16, n. 5, but one that we now confront.

2. The extent to which the exclusionary rule is justified by these deterrence principles varies with the culpability of the law enforcement conduct. As we said in *Leon*, "an assessment of the flagrancy of the police misconduct constitutes an important step in the calculus" of applying the exclusionary rule. 468 U. S., at 911. Similarly, in *Krull* we elaborated that "evidence should be suppressed 'only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.' " 480 U. S., at 348–349 (quoting *United States* v. *Peltier*, 422 U. S. 531, 542 (1975)).

Anticipating the good-faith exception to the exclusionary rule, Judge Friendly wrote that "[t]he beneficent aim of the exclusionary rule to deter police misconduct can be sufficiently accomplished by a practice . . . outlawing evidence obtained by flagrant or deliberate violation of rights." The Bill of Rights as a Code of Criminal Procedure, 53 Calif. L. Rev. 929, 953 (1965) (footnotes omitted); see also *Brown* v. *Illinois*, 422 U. S. 590, 610–611 (1975) (Powell, J., concurring in part) ("[T]he deterrent value of the exclusionary rule is most likely to be effective" when "official conduct was flagrantly abusive of Fourth Amendment rights").

Indeed, the abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional. In *Weeks*, 232 U. S. 383, a foundational exclusionary rule case, the officers had broken into the defendant's home (using a key shown to them by a neighbor), confiscated incriminating papers, then returned again with a U. S. Marshal to confiscate even more. *Id.*, at 386. Not only did they have no search warrant, which the Court held was required, but they could not have gotten one had they tried. They were so lacking in sworn and particularized information that "not even an order of court would have justified such proce-

dure." *Id.*, at 393–394. *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920), on which petitioner repeatedly relies, was similar; federal officials "without a shadow of authority" went to the defendants' office and "made a clean sweep" of every paper they could find. *Id.*, at 390. Even the Government seemed to acknowledge that the "seizure was an outrage." *Id.*, at 391.

Equally flagrant conduct was at issue in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), which overruled *Wolf* v. *Colorado*, 338 U. S. 25 (1949), and extended the exclusionary rule to the States. Officers forced open a door to Ms. Mapp's house, kept her lawyer from entering, brandished what the court concluded was a false warrant, then forced her into handcuffs and canvassed the house for obscenity. 367 U. S., at 644–645. See Friendly, *supra*, at 953, and n. 127 ("[T]he situation in *Mapp*" featured a "flagrant or deliberate violation of rights"). An error that arises from nonrecurring and attenuated negligence is thus far removed from the core concerns that led us to adopt the rule in the first place. And in fact since *Leon*, we have never applied the rule to exclude evidence obtained in violation of the Fourth Amendment, where the police conduct was no more intentional or culpable than this.

3. To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level.[4]

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[4] We do not quarrel with JUSTICE GINSBURG's claim that "liability for negligence . . . creates an incentive to act with greater care," *post*, at 153, and we do not suggest that the exclusion of this evidence could have *no* deterrent effect. But our cases require any deterrence to "be weighed against the 'substantial social costs exacted by the exclusionary rule,'" *Illinois* v. *Krull*, 480 U. S. 340, 352–353 (1987) (quoting *Leon*, 468 U. S., at 907), and here exclusion is not worth the cost.

Our decision in *Franks* v. *Delaware*, 438 U. S. 154 (1978), provides an analogy. Cf. *Leon*, *supra*, at 914. In *Franks*, we held that police negligence in obtaining a warrant did not even rise to the level of a Fourth Amendment violation, let alone meet the more stringent test for triggering the exclusionary rule. We held that the Constitution allowed defendants, in some circumstances, "to challenge the truthfulness of factual statements made in an affidavit supporting the warrant," even after the warrant had issued. 438 U. S., at 155–156. If those false statements were necessary to the Magistrate Judge's probable-cause determination, the warrant would be "voided." *Ibid.* But we did not find all false statements relevant: "There must be allegations of deliberate falsehood or of reckless disregard for the truth," and "[a]llegations of negligence or innocent mistake are insufficient." *Id.*, at 171.

Both this case and *Franks* concern false information provided by police. Under *Franks*, negligent police miscommunications in the course of acquiring a warrant do not provide a basis to rescind a warrant and render a search or arrest invalid. Here, the miscommunications occurred in a different context—after the warrant had been issued and recalled—but that fact should not require excluding the evidence obtained.

The pertinent analysis of deterrence and culpability is objective, not an "inquiry into the subjective awareness of arresting officers," Reply Brief for Petitioner 4–5. See also *post*, at 157, n. 7 (GINSBURG, J., dissenting). We have already held that "our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal" in light of "all of the circumstances." *Leon*, 468 U. S., at 922, n. 23. These circumstances frequently include a particular officer's knowledge and experience, but that does not make the test any more subjective than the one for probable cause, which looks to an officer's knowledge and experience, *Ornelas* v. *United States*, 517 U. S. 690, 699–700 (1996), but

not his subjective intent, *Whren* v. *United States*, 517 U. S. 806, 812–813 (1996).

4. We do not suggest that all recordkeeping errors by the police are immune from the exclusionary rule. In this case, however, the conduct at issue was not so objectively culpable as to require exclusion. In *Leon*, we held that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." 468 U. S., at 922. The same is true when evidence is obtained in objectively reasonable reliance on a subsequently recalled warrant.

If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation. We said as much in *Leon*, explaining that an officer could not "obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search." *Id.*, at 923, n. 24 (citing *Whiteley* v. *Warden, Wyo. State Penitentiary*, 401 U. S. 560, 568 (1971)). Petitioner's fears that our decision will cause police departments to deliberately keep their officers ignorant, Brief for Petitioner 37–39, are thus unfounded.

Justice Ginsburg's dissent also adverts to the possible unreliability of a number of databases not relevant to this case. *Post*, at 155–156. In a case where systemic errors were demonstrated, it might be reckless for officers to rely on an unreliable warrant system. See *Evans*, 514 U. S., at 17 (O'Connor, J., concurring) ("Surely it would *not* be reasonable for the police to rely . . . on a recordkeeping system . . . that *routinely* leads to false arrests" (second emphasis added)); *Hudson*, 547 U. S., at 604 (Kennedy, J., concurring in part and concurring in judgment) ("If a *widespread pattern* of

violations were shown . . . there would be reason for grave concern" (emphasis added)). But there is no evidence that errors in Dale County's system are routine or widespread. Officer Anderson testified that he had never had reason to question information about a Dale County warrant, App. 27, and both Sandy Pope and Sharon Morgan testified that they could remember no similar miscommunication ever happening on their watch, *id.*, at 33, 61–62. That is even less error than in the database at issue in *Evans*, where we also found reliance on the database to be objectively reasonable. 514 U. S., at 15 (similar error "every three or four years"). Because no such showings were made here, see 451 F. Supp. 2d, at 1292,[5] the Eleventh Circuit was correct to affirm the denial of the motion to suppress.

* * *

Petitioner's claim that police negligence automatically triggers suppression cannot be squared with the principles underlying the exclusionary rule, as they have been explained in our cases. In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, *e. g.*, *Leon*, 468 U. S., at 909–910, we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not "pay its

[5] JUSTICE GINSBURG notes that at an earlier suppression hearing Morgan testified—apparently in confusion—that there had been miscommunications "'[s]everal times.'" *Post*, at 150, n. 2 (quoting App. to Pet. for Cert. 17a). When she later realized that she had misspoken, Morgan emphatically corrected the record. App. 61–62. Noting this, the District Court found that "Morgan's 'several times' statement is confusing and essentially unhelpful," and concluded that there was "no credible evidence of routine problems with disposing of recalled warrants." 451 F. Supp. 2d, at 1292. This factual determination, supported by the record and credited by the Court of Appeals, see 492 F. 3d, at 1219, is of course entitled to deference.

way." *Id.*, at 907–908, n. 6. In such a case, the criminal should not "go free because the constable has blundered." *People* v. *Defore*, 242 N. Y. 13, 21, 150 N. E. 585, 587 (1926) (opinion of the Court by Cardozo, J.).

The judgment of the Court of Appeals for the Eleventh Circuit is affirmed.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

Petitioner Bennie Dean Herring was arrested, and subjected to a search incident to his arrest, although no warrant was outstanding against him, and the police lacked probable cause to believe he was engaged in criminal activity. The arrest and ensuing search therefore violated Herring's Fourth Amendment right "to be secure . . . against unreasonable searches and seizures." The Court of Appeals so determined, and the Government does not contend otherwise. The exclusionary rule provides redress for Fourth Amendment violations by placing the government in the position it would have been in had there been no unconstitutional arrest and search. The rule thus strongly encourages police compliance with the Fourth Amendment in the future. The Court, however, holds the rule inapplicable because careless recordkeeping by the police—not flagrant or deliberate misconduct—accounts for Herring's arrest.

I would not so constrict the domain of the exclusionary rule and would hold the rule dispositive of this case: "[I]f courts are to have any power to discourage [police] error of [the kind here at issue], it must be through the application of the exclusionary rule." *Arizona* v. *Evans*, 514 U. S. 1, 22–23 (1995) (STEVENS, J., dissenting). The unlawful search in this case was contested in court because the police found methamphetamine in Herring's pocket and a pistol in his truck. But the "most serious impact" of the Court's holding will be on innocent persons "wrongfully arrested based on

erroneous information [carelessly maintained] in a computer data base." *Id.*, at 22.

I

A warrant for Herring's arrest was recalled in February 2004, apparently because it had been issued in error. See Brief for Petitioner 3, n. 1 (citing App. 63). The warrant database for the Dale County Sheriff's Department, however, does not automatically update to reflect such changes. App. 39–40, 43, 45. A member of the Dale County Sheriff's Department—whom the parties have not identified—returned the hard copy of the warrant to the County Circuit Clerk's office, but did not correct the Department's database to show that the warrant had been recalled. *Id.*, at 60. The erroneous entry for the warrant remained in the database, undetected, for five months.

On a July afternoon in 2004, Herring came to the Coffee County Sheriff's Department to retrieve his belongings from a vehicle impounded in that Department's lot. *Id.*, at 17. Investigator Mark Anderson, who was at the Department that day, knew Herring from prior interactions: Herring had told the District Attorney, among others, of his suspicion that Anderson had been involved in the killing of a local teenager, and Anderson had pursued Herring to get him to drop the accusations. *Id.*, at 63–64. Informed that Herring was in the impoundment lot, Anderson asked the Coffee County warrant clerk whether there was an outstanding warrant for Herring's arrest. *Id.*, at 18. The clerk, Sandy Pope, found no warrant. *Id.*, at 19.

Anderson then asked Pope to call the neighboring Dale County Sheriff's Department to inquire whether a warrant to arrest Herring was outstanding there. Upon receiving Pope's phone call, Sharon Morgan, the warrant clerk for the Dale County Department, checked her computer database. As just recounted, that Department's database preserved an error. Morgan's check therefore showed—incorrectly—an active warrant for Herring's arrest. *Id.*, at 41. Morgan

gave the misinformation to Pope, *ibid.*, who relayed it to Investigator Anderson, *id.*, at 35. Armed with the report that a warrant existed, Anderson promptly arrested Herring and performed an incident search minutes before detection of the error.

The Court of Appeals concluded, and the Government does not contest, that the "failure to bring the [Dale County Sheriff's Department] records up to date [was] 'at the very least negligent.'" 492 F. 3d 1212, 1217 (CA11 2007) (quoting *Michigan* v. *Tucker*, 417 U. S. 433, 447 (1974)). And it is uncontested here that Herring's arrest violated his Fourth Amendment rights. The sole question presented, therefore, is whether evidence the police obtained through the unlawful search should have been suppressed.[1] The Court holds that suppression was unwarranted because the exclusionary rule's "core concerns" are not raised by an isolated, negligent recordkeeping error attenuated from the arrest. *Ante*, at 144, 147–148.[2] In my view, the Court's opinion underestimates the need for a forceful exclusionary rule and the gravity of recordkeeping errors in law enforcement.

II

A

The Court states that the exclusionary rule is not a defendant's right, *ante*, at 141; rather, it is simply a remedy applicable only when suppression would result in appreciable deterrence that outweighs the cost to the justice system, *ante*, at 147–148. See also *ante*, at 144 ("[T]he exclusionary rule

[1] That the recordkeeping error occurred in Dale County rather than Coffee County is inconsequential in the suppression analysis. As the Court notes, "we must consider the actions of all the police officers involved." *Ante*, at 140. See also *United States* v. *Leon*, 468 U. S. 897, 923, n. 24 (1984).

[2] It is not altogether clear how "isolated" the error was in this case. When the Dale County Sheriff's Department warrant clerk was first asked: "[H]ow many times have you had or has Dale County had problems, any problems with communicating about warrants," she responded: "Several times." App. to Pet. for Cert. 17a (internal quotation marks omitted).

serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.").

The Court's discussion invokes a view of the exclusionary rule famously held by renowned jurists Henry J. Friendly and Benjamin Nathan Cardozo. Over 80 years ago, Cardozo, then seated on the New York Court of Appeals, commented critically on the federal exclusionary rule, which had not yet been applied to the States. He suggested that in at least some cases the rule exacted too high a price from the criminal justice system. See *People* v. *Defore*, 242 N. Y. 13, 24–25, 150 N. E. 585, 588–589 (1926). In words often quoted, Cardozo questioned whether the criminal should "go free because the constable has blundered." *Id.*, at 21, 150 N. E., at 587.

Judge Friendly later elaborated on Cardozo's query. "The sole reason for exclusion," Friendly wrote, "is that experience has demonstrated this to be the only effective method for deterring the police from violating the Constitution." The Bill of Rights as a Code of Criminal Procedure, 53 Calif. L. Rev. 929, 951 (1965). He thought it excessive, in light of the rule's aim to deter police conduct, to require exclusion when the constable had merely "blundered"—when a police officer committed a technical error in an on-the-spot judgment, *id.*, at 952, or made a "slight and unintentional miscalculation," *id.*, at 953. As the Court recounts, Judge Friendly suggested that deterrence of police improprieties could be "sufficiently accomplished" by confining the rule to "evidence obtained by flagrant or deliberate violation of rights." *Ibid.; ante*, at 143.

B

Others have described "a more majestic conception" of the Fourth Amendment and its adjunct, the exclusionary rule. *Evans*, 514 U. S., at 18 (STEVENS, J., dissenting). Protective of the fundamental "right of the people to be secure in their persons, houses, papers, and effects," the Amendment "is a

constraint on the power of the sovereign, not merely on some of its agents." *Ibid.* (internal quotation marks omitted); see Stewart, The Road to *Mapp* v. *Ohio* and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases, 83 Colum. L. Rev. 1365 (1983). I share that vision of the Amendment.

The exclusionary rule is "a remedy necessary to ensure that" the Fourth Amendment's prohibitions "are observed in fact." *Id.*, at 1389; see Kamisar, Does (Did) (Should) the Exclusionary Rule Rest on a "Principled Basis" Rather Than an "Empirical Proposition"? 16 Creighton L. Rev. 565, 600 (1983). The rule's service as an essential auxiliary to the Amendment earlier inclined the Court to hold the two inseparable. See *Whiteley* v. *Warden, Wyo. State Penitentiary*, 401 U. S. 560, 568–569 (1971). Cf. *Olmstead* v. *United States*, 277 U. S. 438, 469–471 (1928) (Holmes, J., dissenting); *id.*, at 477–479, 483–485 (Brandeis, J., dissenting).

Beyond doubt, a main objective of the rule "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." *Elkins* v. *United States*, 364 U. S. 206, 217 (1960). But the rule also serves other important purposes: It "enabl[es] the judiciary to avoid the taint of partnership in official lawlessness," and it "assur[es] the people—all potential victims of unlawful government conduct—that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government." *United States* v. *Calandra*, 414 U. S. 338, 357 (1974) (Brennan, J., dissenting). See also *Terry* v. *Ohio*, 392 U. S. 1, 13 (1968) ("A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur."); Kamisar, *supra*, at 604 (a principal reason for the exclusionary rule is that "the Court's aid should be denied 'in order to maintain respect for law [and] to preserve

the judicial process from contamination' " (quoting *Olmstead*, 277 U. S., at 484 (Brandeis, J., dissenting))).

The exclusionary rule, it bears emphasis, is often the only remedy effective to redress a Fourth Amendment violation. See *Mapp* v. *Ohio*, 367 U. S. 643, 652 (1961) (noting "the obvious futility of relegating the Fourth Amendment to the protection of other remedies"); Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 360 (1974) (describing the exclusionary rule as "the primary instrument for enforcing the [F]ourth [A]mendment"). Civil liability will not lie for "the vast majority of [F]ourth [A]mendment violations—the frequent infringements motivated by commendable zeal, not condemnable malice." Stewart, 83 Colum. L. Rev., at 1389. Criminal prosecutions or administrative sanctions against the offending officers and injunctive relief against widespread violations are an even farther cry. See *id.*, at 1386–1388.

III

The Court maintains that Herring's case is one in which the exclusionary rule could have scant deterrent effect and therefore would not "pay its way." *Ante*, at 147–148 (internal quotation marks omitted). I disagree.

A

The exclusionary rule, the Court suggests, is capable of only marginal deterrence when the misconduct at issue is merely careless, not intentional or reckless. See *ante*, at 144, 146. The suggestion runs counter to a foundational premise of tort law—that liability for negligence, *i. e.*, lack of due care, creates an incentive to act with greater care. The Government so acknowledges. See Brief for United States 21; cf. Reply Brief 12.

That the mistake here involved the failure to make a computer entry hardly means that application of the exclusionary rule would have minimal value. "Just as the risk of *respondeat superior* liability encourages employers to

supervise . . . their employees' conduct [more carefully], so the risk of exclusion of evidence encourages policymakers and systems managers to monitor the performance of the systems they install and the personnel employed to operate those systems." *Evans*, 514 U. S., at 29, n. 5 (GINSBURG, J., dissenting).

Consider the potential impact of a decision applying the exclusionary rule in this case. As earlier observed, see *supra*, at 149, the record indicates that there is no electronic connection between the warrant database of the Dale County Sheriff's Department and that of the County Circuit Clerk's office, which is located in the basement of the same building. App. 39–40, 43, 45. When a warrant is recalled, one of the "many different people that have access to th[e] warrants," *id.*, at 60, must find the hard copy of the warrant in the "two or three different places" where the Department houses warrants, *id.*, at 41, return it to the Clerk's office, and manually update the Department's database, see *id.*, at 60. The record reflects no routine practice of checking the database for accuracy, and the failure to remove the entry for Herring's warrant was not discovered until Investigator Anderson sought to pursue Herring five months later. Is it not altogether obvious that the Department could take further precautions to ensure the integrity of its database? The Sheriff's Department "is in a position to remedy the situation and might well do so if the exclusionary rule is there to remove the incentive to do otherwise." 1 W. LaFave, Search and Seizure § 1.8(e), p. 313 (4th ed. 2004). See also *Evans*, 514 U. S., at 21 (STEVENS, J., dissenting).

B

Is the potential deterrence here worth the costs it imposes? See *ante*, at 144. In light of the paramount importance of accurate recordkeeping in law enforcement, I would answer yes, and next explain why, as I see it, Herring's motion presents a particularly strong case for suppression.

Electronic databases form the nervous system of contemporary criminal justice operations. In recent years, their breadth and influence have dramatically expanded. Police today can access databases that include not only the updated National Crime Information Center (NCIC), but also terrorist watchlists, the Federal Government's employee eligibility system, and various commercial databases. Brief for Electronic Privacy Information Center (EPIC) et al. as *Amici Curiae* 6. Moreover, States are actively expanding information sharing between jurisdictions. *Id.*, at 8–13. As a result, law enforcement has an increasing supply of information within its easy electronic reach. See Brief for Petitioner 36–37.

The risk of error stemming from these databases is not slim. Herring's *amici* warn that law enforcement databases are insufficiently monitored and often out of date. Brief for *Amici* EPIC 13–28. Government reports describe, for example, flaws in NCIC databases,[3] terrorist watchlist databases,[4] and databases associated with the Federal Government's employment eligibility verification system.[5]

Inaccuracies in expansive, interconnected collections of electronic information raise grave concerns for individual liberty. "The offense to the dignity of the citizen who is arrested, handcuffed, and searched on a public street simply

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[3] See Dept. of Justice, Bureau of Justice Statistics, P. Brien, Improving Access to and Integrity of Criminal History Records (NCJ 200581, July 2005), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/iaichr.pdf. (All Internet materials as visited Jan. 12, 2009, and included in Clerk of Court's case file.)

[4] See Dept. of Justice, Office of Inspector General, Audit of the U. S. Department of Justice Terrorist Watchlist Nomination Processes (Audit Rep. 08–16, Mar. 2008), http://www.usdoj.gov/oig/reports/plus/a0816/final.pdf.

[5] See Social Security Admin., Office of Inspector General, Congressional Response Report: Accuracy of the Social Security Administration's Numident File (A–08–06–26100, Dec. 2006), http://www.ssa.gov/oig/ADOBEPDF/A–08–06–26100.pdf.

because some bureaucrat has failed to maintain an accurate computer data base" is evocative of the use of general warrants that so outraged the authors of our Bill of Rights. *Evans*, 514 U. S., at 23 (STEVENS, J., dissenting).

C

The Court assures that "exclusion would certainly be justified" if "the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests." *Ante*, at 146. This concession provides little comfort.

First, by restricting suppression to bookkeeping errors that are deliberate or reckless, the majority leaves Herring, and others like him, with no remedy for violations of their constitutional rights. See *supra*, at 153. There can be no serious assertion that relief is available under 42 U. S. C. § 1983. The arresting officer would be sheltered by qualified immunity, see *Harlow* v. *Fitzgerald*, 457 U. S. 800 (1982), and the police department itself is not liable for the negligent acts of its employees, see *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978). Moreover, identifying the department employee who committed the error may be impossible.

Second, I doubt that police forces already possess sufficient incentives to maintain up-to-date records. The Government argues that police have no desire to send officers out on arrests unnecessarily, because arrests consume resources and place officers in danger. The facts of this case do not fit that description of police motivation. Here the officer wanted to arrest Herring and consulted the Department's records to legitimate his predisposition. See App. 17–19.[6]

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[6] It has been asserted that police departments have become sufficiently "professional" that they do not need external deterrence to avoid Fourth Amendment violations. See Tr. of Oral Arg. 24–25; cf. *Hudson* v. *Michigan*, 547 U. S. 586, 598–599 (2006). But professionalism is a sign of the exclusionary rule's efficacy—not of its superfluity.

Third, even when deliberate or reckless conduct is afoot, the Court's assurance will often be an empty promise: How is an impecunious defendant to make the required showing? If the answer is that a defendant is entitled to discovery (and if necessary, an audit of police databases), see Tr. of Oral Arg. 57–58, then the Court has imposed a considerable administrative burden on courts and law enforcement.[7]

IV

Negligent recordkeeping errors by law enforcement threaten individual liberty, are susceptible to deterrence by the exclusionary rule, and cannot be remedied effectively through other means. Such errors present no occasion to further erode the exclusionary rule. The rule "is needed to make the Fourth Amendment something real; a guarantee that does not carry with it the exclusion of evidence obtained by its violation is a chimera." *Calandra*, 414 U. S., at 361 (Brennan, J., dissenting). In keeping with the rule's "core concerns," *ante*, at 144, suppression should have attended the unconstitutional search in this case.

* * *

For the reasons stated, I would reverse the judgment of the Eleventh Circuit.

JUSTICE BREYER, with whom JUSTICE SOUTER joins, dissenting.

I agree with JUSTICE GINSBURG and join her dissent. I write separately to note one additional supporting factor that I believe important. In *Arizona* v. *Evans*, 514 U. S. 1 (1995), we held that recordkeeping errors made by a court clerk do not trigger the exclusionary rule, so long as the

[7] It is not clear how the Court squares its focus on deliberate conduct with its recognition that application of the exclusionary rule does not require inquiry into the mental state of the police. See *ante*, at 145; *Whren* v. *United States*, 517 U. S. 806, 812–813 (1996).

police reasonably relied upon the court clerk's recordkeeping. *Id.*, at 14; *id.*, at 16–17 (O'Connor, J., concurring). The rationale for our decision was premised on a distinction between judicial errors and police errors, and we gave several reasons for recognizing that distinction.

First, we noted that "the exclusionary rule was historically designed as a means of deterring *police* misconduct, not mistakes by court employees." *Id.*, at 14 (emphasis added). *Second*, we found "no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Id.*, at 14–15. *Third*, we recognized that there was "no basis for believing that application of the exclusionary rule . . . [would] have a significant effect on court employees responsible for informing the police that a warrant has been quashed. Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, they have no stake in the outcome of particular criminal prosecutions." *Id.*, at 15 (citation omitted). Taken together, these reasons explain why police recordkeeping errors should be treated differently than judicial ones.

Other cases applying the "good faith" exception to the exclusionary rule have similarly recognized the distinction between police errors and errors made by others, such as judicial officers or legislatures. See *United States* v. *Leon*, 468 U. S. 897 (1984) (police reasonably relied on magistrate's issuance of warrant); *Massachusetts* v. *Sheppard*, 468 U. S. 981 (1984) (same); *Illinois* v. *Krull*, 480 U. S. 340 (1987) (police reasonably relied on statute's constitutionality).

Distinguishing between police recordkeeping errors and judicial ones not only is consistent with our precedent, but also is far easier for courts to administer than the Court's case-by-case, multifactored inquiry into the degree of police culpability. I therefore would apply the exclusionary rule

when police personnel are responsible for a recordkeeping error that results in a Fourth Amendment violation.

The need for a clear line, and the recognition of such a line in our precedent, are further reasons in support of the outcome that JUSTICE GINSBURG's dissent would reach.

Syllabus

OREGON *v.* ICE

CERTIORARI TO THE SUPREME COURT OF OREGON

No. 07–901. Argued October 14, 2008—Decided January 14, 2009

Respondent Ice twice entered an 11-year-old girl's residence and sexually assaulted her. For each of the incidents, an Oregon jury found Ice guilty of first-degree burglary for entering with the intent to commit sexual abuse; first-degree sexual assault for touching the victim's vagina; and first-degree sexual assault for touching her breasts. Ice was sentenced under a state statute providing, generally, for concurrent sentences, Ore. Rev. Stat. § 137.123(1), but allowing the judge to impose consecutive sentences in these circumstances: (1) when "a defendant is simultaneously sentenced for . . . offenses that do not arise from the same . . . course of conduct," § 137.123(2), and (2) when offenses arise from the same course of conduct, if the judge finds either "(a) [t]hat the . . . offense . . . was an indication of defendant's willingness to commit more than one criminal offense; or . . . (b) [t]he . . . offense . . . caused or created a risk of causing greater or qualitatively different . . . harm to the victim," § 137.123(5). The trial judge first found that the two burglaries constituted separate incidents and exercised his discretion to impose consecutive sentences for those crimes under § 137.123(2). The court then found that each offense of touching the victim's vagina met § 137.123(5)'s two criteria, giving the judge discretion to impose the sentences for those offenses consecutive to the two associated burglary sentences. The court elected to do so, but ordered that the sentences for touching the victim's breasts run concurrently with the other sentences. On appeal, Ice argued, *inter alia*, that the sentencing statute was unconstitutional under *Apprendi* v. *New Jersey*, 530 U. S. 466, 490, and *Blakely* v. *Washington*, 542 U. S. 296, holding that the Sixth Amendment's jury-trial guarantee requires that the jury, rather than the judge, determine any fact (other than the existence of a prior conviction) that increases the maximum punishment authorized for a particular crime. The appellate court affirmed, but the Oregon Supreme Court reversed, holding that the *Apprendi* rule applied because the imposition of consecutive sentences increased Ice's quantum of punishment.

Held: In light of historical practice and the States' authority over administration of their criminal justice systems, the Sixth Amendment does not inhibit States from assigning to judges, rather than to juries, the finding of facts necessary to the imposition of consecutive, rather than concurrent, sentences for multiple offenses. Pp. 167–172.

(a) The Court declines to extend the *Apprendi* and *Blakely* line of decisions beyond the offense-specific context that supplied the historic grounding for the decisions. The Court's application of *Apprendi*'s rule must honor the "longstanding common-law practice" in which the rule is rooted. *Cunningham* v. *California*, 549 U. S. 270, 281. The rule's animating principle is the preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense. See *Apprendi*, 530 U. S., at 477. Because the Sixth Amendment does not countenance legislative encroachment on the jury's traditional domain, see *id.*, at 497, the Court considers whether the finding of a particular fact was understood as within the jury's domain by the Bill of Rights' Framers, *Harris* v. *United States*, 536 U. S. 545, 557. In so doing, the Court is also cognizant that administration of a discrete criminal justice system is among the basic sovereign prerogatives States retain. See, *e. g.*, *Patterson* v. *New York*, 432 U. S. 197, 201. These twin considerations—historical practice and respect for state sovereignty—counsel against extending *Apprendi* to the imposition of sentences for discrete crimes. Pp. 167–168.

(b) The historical record demonstrates that both in England before this Nation's founding and in the early American States, the common law generally entrusted the decision whether sentences for discrete offenses should be served consecutively or concurrently to judges' unfettered discretion, assigning no role in the determination to the jury. Thus, legislative reforms regarding the imposition of multiple sentences do not implicate the core concerns that prompted the Court's decision in *Apprendi*. There is no encroachment here by the judge upon facts historically found by the jury, nor any threat to the jury's domain as a bulwark at trial between the State and the accused. Instead, the defendant—who historically may have faced consecutive sentences by default—has been granted by some modern legislatures statutory protections meant to temper the harshness of the historical practice. Ice's argument that he is "entitled" to concurrent sentences absent the fact-findings Oregon law requires is rejected. Because the scope of the federal constitutional jury right must be informed by the jury's historical common-law role, that right does not attach to every contemporary state-law "entitlement" to predicate findings. For similar reasons, *Cunningham*, upon which Ice heavily relies, does not control here. In holding that the facts permitting imposition of an elevated "upper term" sentence for a particular crime fell within the jury's province rather than the sentencing judge's, 549 U. S., at 274, *Cunningham* had no occasion to consider the appropriate inquiry when no erosion of the jury's traditional role was at stake. Pp. 168–170.

(c) States' interest in the development of their penal systems, and their historic dominion in this area, also counsel against the extension of *Apprendi* that Ice requests. This Court should not diminish the States' sovereign authority over the administration of their criminal justice systems absent impelling reason to do so. Limiting judicial discretion to impose consecutive sentences serves the "salutary objectives" of promoting sentences proportionate to "the gravity of the offense," *Blakely*, 542 U. S., at 308, and of reducing disparities in sentence length. All agree that a scheme making consecutive sentences the rule, and concurrent sentences the exception, encounters no Sixth Amendment shoal. To hem in States by holding that they may not choose to make concurrent sentences the rule, and consecutive sentences the exception, would make scant sense. Neither *Apprendi* nor the Court's Sixth Amendment traditions compel straitjacketing the States in that manner. Further, the potential intrusion of *Apprendi*'s rule into other state initiatives on sentencing choices or accoutrements—for example, permitting trial judges to find facts about the offense's nature or the defendant's character in determining the length of supervised release, required attendance at drug rehabilitation programs or terms of community service, and the imposition of fines and restitution—would cut the rule loose from its moorings. Moreover, the expansion Ice seeks would be difficult for States to administer, as the predicate facts for consecutive sentences could substantially prejudice the defense at the trial's guilt phase, potentially necessitating bifurcated or trifurcated trials. Pp. 170–172.

343 Ore. 248, 170 P. 3d 1049, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, BREYER, and ALITO, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and SOUTER and THOMAS, JJ., joined, *post*, p. 173.

Mary H. Williams, Solicitor General of Oregon, argued the cause for petitioner. With her on the briefs were *Hardy Myers*, Attorney General, *Peter Shepherd*, Deputy Attorney General, and *Douglas Petrina*, Assistant Attorney General.

Ernest G. Lannet, by appointment of the Court, 553 U. S. 1030, argued the cause for respondent. With him on the brief were *Peter Gartlan* and *Rebecca A. Duncan*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Indiana et al. by *Steve Carter*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, *Stephen R. Creason*, Section Chief, and *Ellen*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the scope of the Sixth Amendment's jury-trial guarantee, as construed in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), and *Blakely* v. *Washington*, 542 U. S. 296 (2004). Those decisions are rooted in the historic jury function—determining whether the prosecution has proved each element of an offense beyond a reasonable doubt. They hold that it is within the jury's province to determine any fact (other than the existence of a prior conviction) that increases the maximum punishment authorized for a particular offense. Thus far, the Court has not extended the *Apprendi* and *Blakely* line of decisions beyond the offense-specific context that supplied the historic grounding for the decisions. The question here presented concerns a sentencing function in which the jury traditionally played no part: When a defendant has been tried and convicted of multiple offenses, each involving discrete sentencing prescriptions, does the Sixth Amendment mandate jury determination of any fact declared necessary to the imposition of consecutive, in lieu of concurrent, sentences?

Most States continue the common-law tradition: They entrust to judges' unfettered discretion the decision whether sentences for discrete offenses shall be served consecutively or concurrently. In some States, sentences for multiple of-

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H. Meilaender, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Stephen N. Six* of Kansas, *G. Steven Rowe* of Maine, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jeremiah W. (Jay) Nixon* of Missouri, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, and *Robert M. McKenna* of Washington; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger;* and for Sentencing Law Scholars by *Jonathan F. Mitchell* and *Stephanos Bibas*, both *pro se.*

Jeffrey T. Green filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

fenses are presumed to run consecutively, but sentencing judges may order concurrent sentences upon finding cause therefor. Other States, including Oregon, constrain judges' discretion by requiring them to find certain facts before imposing consecutive, rather than concurrent, sentences. It is undisputed that States may proceed on the first two tracks without transgressing the Sixth Amendment. The sole issue in dispute, then, is whether the Sixth Amendment, as construed in *Apprendi* and *Blakely*, precludes the mode of proceeding chosen by Oregon and several of its sister States. We hold, in light of historical practice and the authority of States over administration of their criminal justice systems, that the Sixth Amendment does not exclude Oregon's choice.

I

A

State laws, as just observed, prescribe a variety of approaches to the decision whether a defendant's sentences for distinct offenses shall run concurrently or consecutively. Oregon might have followed the prevailing pattern by placing the decision within the trial court's discretion in all,[1] or almost all,[2] circumstances. Instead, Oregon and several other States have adopted a more restrained approach: They provide for judicial discretion, but constrain its exercise. In these States, to impose consecutive sentences, judges must make certain predicate factfindings.[3]

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[1] *E. g.*, Connecticut (Conn. Gen. Stat. § 53a–37 (2005)); Idaho (Idaho Code § 18–308 (Lexis 2004)); Nebraska (Neb. Rev. Stat. § 29–2204 (1995)). See generally Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 9, n. 6 (listing laws of nine other States).

[2] *E. g.*, Florida (Fla. Stat. § 921.16 (2007)); Kansas (Kan. Stat. Ann. § 21–4608 (2007)); Mississippi (Miss. Code Ann. § 99–19–21 (2007)).

[3] *E. g.*, Maine (Me. Rev. Stat. Ann., Tit. 17–A, § 1256 (2006); *State* v. *Keene*, 2007 ME 84, 927 A. 2d 398); Tennessee (Tenn. Code Ann. § 40–35–115(b) (2006); *State* v. *Allen*, 259 S. W. 3d 671 (Tenn. 2008)); Oregon (Ore. Rev. Stat. § 137.123 (2007)).

The controlling statute in Oregon provides that sentences shall run concurrently unless the judge finds statutorily described facts. Ore. Rev. Stat. § 137.123(1) (2007). In most cases, finding such facts permits—but does not require—the judge to order consecutive sentences.[4] Specifically, an Oregon judge may order consecutive sentences "[i]f a defendant is simultaneously sentenced for criminal offenses that do not arise from the same continuous and uninterrupted course of conduct." § 137.123(2). If the offenses *do* arise from the same course of conduct, the judge may still impose consecutive sentences if she finds either:

> "(a) That the criminal offense . . . was an indication of defendant's willingness to commit more than one criminal offense; or
>
> "(b) The criminal offense . . . caused or created a risk of causing greater or qualitatively different loss, injury or harm to the victim or . . . to a different victim . . . ." § 137.123(5).

B

On two occasions between December 1996 and July 1997, respondent Thomas Eugene Ice entered an apartment in the complex he managed and sexually assaulted an 11-year-old girl. 343 Ore. 248, 250, 170 P. 3d 1049, 1050 (2007). An Oregon jury convicted Ice of six crimes. For each of the two incidents, the jury found him guilty of first-degree burglary for entering with the intent to commit sexual abuse; first-degree sexual assault for touching the victim's vagina; and first-degree sexual assault for touching the victim's breasts. *Ibid.*

At sentencing, the judge made findings, pursuant to § 137.123, that permitted the imposition of consecutive sentences. First, the judge found that the two burglaries con-

[4] Sentences must run consecutively, however, "[w]hen a defendant is sentenced for a crime committed while the defendant was incarcerated." Ore. Rev. Stat. § 137.123(3).

stituted "separate incident[s]." *Id.*, at 255, 170 P. 3d, at 1053 (internal quotation marks omitted). Based on that finding, the judge had, and exercised, discretion to impose the two burglary sentences consecutively. *Ibid.;* see § 137.123(2).

Second, the court found that each offense of touching the victim's vagina met the statutory criteria set forth in § 137.123(5): Ice displayed a "willingness to commit more than one . . . offense" during each criminal episode, and his conduct "caused or created a risk of causing greater, qualitatively different loss, injury or harm to the victim." *Id.*, at 253, 170 P. 3d, at 1051 (internal quotation marks omitted). These findings gave the judge discretion to impose the sentence for each of those sexual assault offenses consecutive to the associated burglary sentence. The court elected to do so. *Ibid.* The court ordered, however, that the sentences for touching the victim's breasts run concurrently with the other sentences. *Ibid.* In total, the court sentenced Ice to 340 months' imprisonment. App. 46–87.[5]

Ice appealed his sentences. In relevant part, he argued that he had a Sixth Amendment right to have the jury, not the sentencing judge, find the facts that permitted the imposition of consecutive sentences. The appellate court affirmed the trial court's judgment without opinion. 178 Ore. App. 415, 39 P. 3d 291 (2001).

The Oregon Supreme Court granted Ice's petition for review and reversed, 4 to 2. 343 Ore., at 250, 170 P. 3d, at 1050.[6] In the majority's view, the rule of *Apprendi* applied, because the imposition of consecutive sentences increased "the quantum of punishment" imposed. 343 Ore., at 265, 170

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[5] Had the judge ordered concurrent service of all sentences, Ice's time in prison would have been 90 months. App. 68, 75.

[6] Preliminarily, the Oregon Supreme Court ruled unanimously that the consecutive-sentencing findings did not constitute elements of any specific crime, and therefore the jury-trial right safeguarded by the Oregon Constitution was not violated. 343 Ore. 248, 261–262, 170 P. 3d 1049, 1056 (2007).

P. 3d, at 1058. The dissenting justices concluded that "[n]either the holding in *Apprendi* nor its reasoning support[ed] extending that decision to the question of consecutive sentencing." *Id.*, at 267, 170 P. 3d, at 1059 (opinion of Kistler, J.). State high courts have divided over whether the rule of *Apprendi* governs consecutive-sentencing decisions.[7] We granted review to resolve the question. 552 U. S. 1256 (2008).

II

The Federal Constitution's jury-trial guarantee assigns the determination of certain facts to the jury's exclusive province. Under that guarantee, this Court held in *Apprendi*, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U. S., at 490.

We have applied *Apprendi*'s rule to facts subjecting a defendant to the death penalty, *Ring* v. *Arizona*, 536 U. S. 584, 602, 609 (2002), facts allowing a sentence exceeding the "standard" range in Washington's sentencing system, *Blakely*, 542 U. S., at 304–305, and facts prompting an elevated sentence under then-mandatory Federal Sentencing Guidelines, *United States* v. *Booker*, 543 U. S. 220, 244 (2005). Most recently, in *Cunningham* v. *California*, 549 U. S. 270 (2007), we applied *Apprendi*'s rule to facts permitting imposition of an "upper term" sentence under California's determinate sentencing law. All of these decisions involved sentencing for a discrete crime, not—as here—for multiple offenses different in character or committed at different times.

Our application of *Apprendi*'s rule must honor the "longstanding common-law practice" in which the rule is rooted.

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[7] Compare, *e. g.*, *People* v. *Wagener*, 196 Ill. 2d 269, 283–286, 752 N. E. 2d 430, 440–442 (2001) (holding that *Apprendi* does not apply); *Keene*, 927 A. 2d, at 405–408 (same), with *State* v. *Foster*, 109 Ohio St. 3d 1, 2006–Ohio–856, 845 N. E. 2d 470 (holding *Apprendi* applicable).

Cunningham, 549 U. S., at 281. The rule's animating principle is the preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense. See *Apprendi*, 530 U. S., at 477. Guided by that principle, our opinions make clear that the Sixth Amendment does not countenance legislative encroachment on the jury's traditional domain. See *id.*, at 497. We accordingly considered whether the finding of a particular fact was understood as within "the domain of the jury . . . by those who framed the Bill of Rights." *Harris* v. *United States*, 536 U. S. 545, 557 (2002) (plurality opinion). In undertaking this inquiry, we remain cognizant that administration of a discrete criminal justice system is among the basic sovereign prerogatives States retain. See, *e. g.*, *Patterson* v. *New York*, 432 U. S. 197, 201 (1977).

These twin considerations—historical practice and respect for state sovereignty—counsel against extending *Apprendi*'s rule to the imposition of sentences for discrete crimes. The decision to impose sentences consecutively is not within the jury function that "extends down centuries into the common law." *Apprendi*, 530 U. S., at 477. Instead, specification of the regime for administering multiple sentences has long been considered the prerogative of state legislatures.

A

The historical record demonstrates that the jury played no role in the decision to impose sentences consecutively or concurrently. Rather, the choice rested exclusively with the judge. See, *e. g.*, 1 J. Bishop, Criminal Law § 636, pp. 649–650 (2d ed. 1858) ("[W]hen there are two or more convictions, on which sentence remains to be pronounced; the judgment may direct, that each succeeding period of imprisonment shall commence on the termination of the period next preceding."); A. Campbell, Law of Sentencing § 9:22, p. 425 (3d ed. 2004) ("Firmly rooted in common law is the principle that the selection of either concurrent or consecutive sentences

rests within the discretion of sentencing judges."). This was so in England before the founding of our Nation,[8] and in the early American States.[9] Ice "has no quarrel with [this account] of consecutive sentencing practices through the ages." Brief for Respondent 32. The historical record further indicates that a judge's imposition of consecutive, rather than concurrent, sentences was the prevailing practice.[10]

In light of this history, legislative reforms regarding the imposition of multiple sentences do not implicate the core concerns that prompted our decision in *Apprendi*. There is no encroachment here by the judge upon facts historically found by the jury, nor any threat to the jury's domain as a bulwark at trial between the State and the accused. Instead, the defendant—who historically may have faced consecutive sentences by default—has been granted by some modern legislatures statutory protections meant to temper the harshness of the historical practice.

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[8] *E. g.*, *King* v. *Wilkes*, 19 How. St. Tr. 1075, 1132–1136 (1770); see also *Lee* v. *Walker*, [1985] 1 Q. B. 1191, 1201 (C. A. 1984) ("[T]he High Court has always had inherent jurisdiction to impose consecutive sentences of imprisonment in any appropriate case where the court had power to imprison.").

[9] *E. g.*, *Russell* v. *Commonwealth*, 7 Serg. & Rawle 489, 490 (Pa. 1822) (Judicial imposition of consecutive sentences has been "the common practice in the Courts of this State," and it is "warranted by principle, practice, and authority."); *In re Walsh*, 37 Neb. 454, 456, 55 N. W. 1075, 1076 (1893) ("[T]he great weight of authority is in favor of the proposition that . . . the court has power to impose cumulative sentences."); *In re Breton*, 93 Me. 39, 42, 44 A. 125, 126 (1899) (same); *Howard* v. *United States*, 75 F. 986, 993 (CA6 1896) ("[A] rule which denies the court the power to impose cumulative sentences turns the trial and conviction on all the indictments except one into an idle ceremony.").

[10] *E. g.*, *Queen* v. *Cutbush*, L. R. 2 Q. B. 379, 382, 10 Cox Crim. Cas. 489, 492 (1867) ("[R]ight and justice require [that] when a man has been guilty of separate offences, . . . that he should not escape from the punishment due to the additional offence, merely because he is already sentenced to be imprisoned for another offence."); *ibid.* (noting that it had been the practice to impose consecutive sentences "so far as living judicial memory goes back").

It is no answer that, as Ice argues, "he was '*entitled*' to" concurrent sentences absent the factfindings Oregon law requires. Brief for Respondent 43. In Ice's view, because "the Oregon Legislature deviated from tradition" and enacted a statute that hinges consecutive sentences on factfindings, *Apprendi*'s rule must be imported. Brief for Respondent 33. As we have described, the scope of the constitutional jury right must be informed by the historical role of the jury at common law. See, *e. g.*, *Williams* v. *Florida*, 399 U. S. 78, 98–100 (1970). It is therefore not the case that, as Ice suggests, the federal constitutional right attaches to every contemporary state-law "entitlement" to predicate findings.

For similar reasons, *Cunningham*, upon which Ice heavily relies, does not control his case. As stated earlier, we held in *Cunningham* that the facts permitting imposition of an elevated "upper term" sentence for a particular crime fell within the jury's province. 549 U. S., at 274 (internal quotation marks omitted). The assignment of such a finding to the sentencing judge implicates *Apprendi*'s core concern: a legislative attempt to "remove from the [province of the] jury" the determination of facts that warrant punishment for a specific statutory offense. *Apprendi*, 530 U. S., at 490 (internal quotation marks omitted). We had no occasion to consider the appropriate inquiry when no erosion of the jury's traditional role was at stake. *Cunningham* thus does not impede our conclusion that, as *Apprendi*'s core concern is inapplicable to the issue at hand, so too is the Sixth Amendment's restriction on judge-found facts.

B

States' interest in the development of their penal systems, and their historic dominion in this area, also counsel against the extension of *Apprendi* that Ice requests. Beyond question, the authority of States over the administration of their criminal justice systems lies at the core of their sovereign status. See, *e. g.*, *Patterson*, 432 U. S., at 201 ("It goes with-

out saying that preventing and dealing with crime is much more the business of the States than it is of the Federal Government."). We have long recognized the role of the States as laboratories for devising solutions to difficult legal problems. See *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting). This Court should not diminish that role absent impelling reason to do so.

It bears emphasis that state legislative innovations like Oregon's seek to rein in the discretion judges possessed at common law to impose consecutive sentences at will. Limiting judicial discretion to impose consecutive sentences serves the "salutary objectives" of promoting sentences proportionate to "the gravity of the offense," *Blakely*, 542 U. S., at 308, and of reducing disparities in sentence length, see 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 26.3(f) (3d ed. 2007). All agree that a scheme making consecutive sentences the rule, and concurrent sentences the exception, encounters no Sixth Amendment shoal. To hem in States by holding that they may not equally choose to make concurrent sentences the rule, and consecutive sentences the exception, would make scant sense. Neither *Apprendi* nor our Sixth Amendment traditions compel straitjacketing the States in that manner.

Further, it is unclear how many other state initiatives would fall under Ice's proposed expansion of *Apprendi*. As 17 States have observed in an *amici* brief supporting Oregon, States currently permit judges to make a variety of sentencing determinations other than the length of incarceration. Trial judges often find facts about the nature of the offense or the character of the defendant in determining, for example, the length of supervised release following service of a prison sentence; required attendance at drug rehabilitation programs or terms of community service; and the imposition of statutorily prescribed fines and orders of restitution. See Brief for State of Indiana et al. as *Amici Curiae* 11. Intruding *Apprendi*'s rule into these decisions

on sentencing choices or accoutrements surely would cut the rule loose from its moorings.

Moreover, the expansion that Ice seeks would be difficult for States to administer. The predicate facts for consecutive sentences could substantially prejudice the defense at the guilt phase of a trial. As a result, bifurcated or trifurcated trials might often prove necessary. Brief for State of Indiana, *supra*, at 14–15. We will not so burden the Nation's trial courts absent any genuine affront to *Apprendi*'s instruction.

We recognize that not every state initiative will be in harmony with Sixth Amendment ideals. But as we have previously emphasized, "structural democratic constraints exist to discourage legislatures from" pernicious manipulation of the rules we articulate. *Apprendi*, 530 U. S., at 490, n. 16. In any event, if confronted with such a manipulation, "we would be required to question whether the [legislative measure] was constitutional under this Court's prior decisions." *Id.*, at 491, n. 16. The Oregon statute before us today raises no such concern.

III

Members of this Court have warned against "wooden, unyielding insistence on expanding the *Apprendi* doctrine far beyond its necessary boundaries." *Cunningham*, 549 U. S., at 295 (KENNEDY, J., dissenting). The jury-trial right is best honored through a "principled rationale" that applies the rule of the *Apprendi* cases "within the central sphere of their concern." 549 U. S., at 295. Our disposition today—upholding an Oregon statute that assigns to judges a decision that has not traditionally belonged to the jury—is faithful to that aim.

* * *

For the reasons stated, the judgment of the Oregon Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE SOUTER, and JUSTICE THOMAS join, dissenting.

The rule of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), is clear: Any fact—other than that of a prior conviction—that increases the maximum punishment to which a defendant may be sentenced must be admitted by the defendant or proved beyond a reasonable doubt to a jury. Oregon's sentencing scheme allows judges rather than juries to find the facts necessary to commit defendants to longer prison sentences, and thus directly contradicts what we held eight years ago and have reaffirmed several times since. The Court's justification of Oregon's scheme is a virtual copy of the dissents in those cases.

The judge in this case could not have imposed a sentence of consecutive prison terms without making the factual finding that the defendant caused "separate harms" to the victim by the acts that produced two convictions. See 343 Ore. 248, 268, 170 P. 3d 1049, 1060 (2007) (Kistler, J., dissenting). There can thus be no doubt that the judge's factual finding was "essential to" the punishment he imposed. *United States* v. *Booker*, 543 U. S. 220, 232 (2005). That "should be the end of the matter." *Blakely* v. *Washington*, 542 U. S. 296, 313 (2004).

Instead, the Court attempts to distinguish Oregon's sentencing scheme by reasoning that the rule of *Apprendi* applies only to the length of a sentence for an individual crime and not to the total sentence for a defendant. I cannot understand why we would make such a strange exception to the treasured right of trial by jury. Neither the reasoning of the *Apprendi* line of cases, nor any distinctive history of the factfinding necessary to imposition of consecutive sentences, nor (of course) logic supports such an odd rule.

We have taken pains to reject artificial limitations upon the facts subject to the jury-trial guarantee. We long ago made clear that the guarantee turns upon the penal consequences attached to the fact, and not to its formal definition as an element of the crime. *Mullaney* v. *Wilbur*, 421 U. S.

684, 698 (1975). More recently, we rejected the contention that the "aggravating circumstances" that qualify a defendant for the death penalty did not have to be found by the jury. "If," we said, "a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt." *Ring* v. *Arizona*, 536 U. S. 584, 602 (2002). A bare three years ago, in rejecting the contention that the facts determining application of the Federal Sentencing Guidelines did not have to be found by the jury, we again set forth the pragmatic, practical, nonformalistic rule in terms that cannot be mistaken: The jury must "find the existence of '"any particular fact"' that the law makes essential to [a defendant's] punishment." *Booker*, *supra*, at 232 (quoting *Blakely*, *supra*, at 301).

This rule leaves no room for a formalistic distinction between facts bearing on the number of years of imprisonment that a defendant will serve for one count (subject to the rule of *Apprendi*) and facts bearing on how many years will be served in total (now not subject to *Apprendi*). There is no doubt that consecutive sentences are a "greater punishment" than concurrent sentences, *Apprendi*, *supra*, at 494. We have hitherto taken note of the reality that "a concurrent sentence is traditionally imposed as a less severe sanction than a consecutive sentence." *Ralston* v. *Robinson*, 454 U. S. 201, 216, n. 9 (1981) (emphasis deleted). The decision to impose consecutive sentences alters the single consequence most important to convicted noncapital defendants: their date of release from prison. For many defendants, the difference between consecutive and concurrent sentences is more important than a jury verdict of innocence on any single count: Two consecutive 10-year sentences are in most circumstances a more severe punishment than any number of concurrent 10-year sentences.

To support its distinction-without-a-difference, the Court puts forward the same (the *very* same) arguments regarding

the history of sentencing that were rejected by *Apprendi*. Here, it is entirely irrelevant that common-law judges had discretion to impose either consecutive or concurrent sentences, *ante*, at 168–169; just as there it was entirely irrelevant that common-law judges had discretion to impose greater or lesser sentences (within the prescribed statutory maximum) for individual convictions. There is no Sixth Amendment problem with a system that exposes defendants to a known range of sentences after a guilty verdict: "In a system that says the judge may punish burglary with 10 to 40 years, every burglar knows he is risking 40 years in jail." *Blakely*, *supra*, at 309. The same analysis applies to a system where both consecutive and concurrent sentences are authorized after only a jury verdict of guilt; the burglar-rapist knows he is risking consecutive sentences. Our concern here is precisely the same as our concern in *Apprendi:* What happens when a State breaks from the common-law practice of discretionary sentences and permits the imposition of an elevated sentence only upon the showing of extraordinary facts? In such a system, the defendant "is *entitled* to" the lighter sentence "and by reason of the Sixth Amendment[,] the facts bearing upon that entitlement must be found by a jury." *Blakely*, *supra*, at 309.

The Court protests that in this case there is no "encroachment" on or "erosion" of the jury's role because traditionally it was for the judge to determine whether there would be concurrent terms. *Ante*, at 169–170. Alas, this argument too was made and rejected in *Apprendi*. The jury's role was not diminished, the *Apprendi* dissent contended, because it was traditionally up to judges, not juries, to determine what the sentence would be. 530 U. S., at 556, 559 (opinion of BREYER, J.). The Court's opinion acknowledged that in the 19th century it was the practice to leave sentencing up to the judges, within limits fixed by law. But, it said, that practice had no bearing upon whether the jury must find the fact where a law conditions the higher sentence upon the

fact. The jury's role *is* diminished when the length of a sentence is made to depend upon a fact removed from its determination. *Id.*, at 482–483. The same is true here.

The Court then observes that the results of the Oregon system could readily be achieved, instead, by a system in which consecutive sentences are the default rule but judges are permitted to impose concurrent sentences when they find certain facts. *Ante*, at 171. Undoubtedly the Sixth Amendment permits a system in which judges are authorized (or even required) to impose consecutive sentences unless the defendant proves additional facts to the Court's satisfaction. See *ibid.* But the permissibility of that alternative means of achieving the same end obviously does not distinguish *Apprendi*, because the same argument (the *very* same argument) was raised and squarely rejected in that case:

> "If the defendant can escape the statutory maximum by showing, for example, that he is a war veteran, then a judge that finds the fact of veteran status is neither exposing the defendant to a deprivation of liberty greater than that authorized by the verdict according to statute, nor is the judge imposing upon the defendant a greater stigma than that accompanying the jury verdict alone. Core concerns animating the jury and burden-of-proof requirements are thus absent from such a scheme." 530 U. S., at 491, n. 16.

Ultimately, the Court abandons its effort to provide analytic support for its decision, and turns to what it thinks to be the "'salutary objectives'" of Oregon's scheme. *Ante*, at 171. "Limiting judicial discretion," we are told, promotes sentences proportionate to the gravity of the offense, and reduces disparities in sentence length. *Ibid.* The same argument (the *very* same argument) was made and rejected in *Booker*, see 543 U. S., at 244, and *Blakely*, see 542 U. S., at 313. The protection of the Sixth Amendment does not turn on this Court's opinion of whether an alternative scheme is

good policy, or whether the legislature had a compassionate heart in adopting it. The right to trial by jury and proof beyond a reasonable doubt is a given, and *all* legislative policymaking—good and bad, heartless and compassionate—must work within the confines of that reality. Of course the Court probably exaggerates the benign effect of Oregon's scheme, as is suggested by the defense bar's vigorous objection, evidenced by the participation of the National Association of Criminal Defense Lawyers as *amicus* in favor of respondent. Even that exaggeration is a replay of the rejected dissent in one of our prior cases. There the Court responded: "It is hard to believe that the National Association of Criminal Defense Lawyers was somehow duped into arguing for the wrong side." *Id.*, at 312.

Finally, the Court summons up the parade of horribles assembled by the *amici* brief of 17 States supporting Oregon. It notes that "[t]rial judges often find facts" in connection with "a variety of sentencing determinations other than the length of incarceration," and worries that even their ability to set the length of supervised release, impose community service, or order entry into a drug rehabilitation program may be called into question. *Ante*, at 171. But if these courses reduce rather than augment the punishment that the jury verdict imposes, there is no problem. The last horrible the Court invokes is the prospect of bifurcated or even trifurcated trials in order to have the jury find the facts essential to consecutive sentencing without prejudicing the defendant's merits case. *Ante*, at 172. That is another *déjà vu* and *déjà rejeté;* we have watched it parade past before, in several of our *Apprendi*-related opinions, and have not saluted. See *Blakely*, *supra*, at 336–337 (BREYER, J., dissenting); *Apprendi*, *supra*, at 557 (same).

* * *

The Court's peroration says that "[t]he jury-trial right is best honored through a 'principled rationale' that applies the rule of the *Apprendi* cases 'within the central sphere of their

concern.'" *Ante*, at 172 (quoting *Cunningham* v. *California*, 549 U. S. 270, 295 (2007) (KENNEDY, J., dissenting)). Undoubtedly so. But we have hitherto considered "the central sphere of their concern" to be facts necessary to the increase of the defendant's sentence beyond what the jury verdict alone justifies. "If the jury's verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, the Sixth Amendment requirement is not satisfied." *Id.*, at 290 (opinion of the Court). If the doubling or tripling of a defendant's jail time through fact-dependent consecutive sentencing does not meet this description, nothing does. And as for a "principled rationale": The Court's reliance upon a distinction without a difference, and its repeated exhumation of arguments dead and buried by prior cases, seems to me the epitome of the opposite. Today's opinion muddies the waters, and gives cause to doubt whether the Court is willing to stand by *Apprendi*'s interpretation of the Sixth Amendment's jury-trial guarantee.

Syllabus

WADDINGTON, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER *v.* SARAUSAD

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

No. 07–772. Argued October 15, 2008—Decided January 21, 2009

Respondent Sarausad drove the car in a driveby shooting at a high school, which was the culmination of a gang dispute. En route to school, Ronquillo, the front seat passenger, covered his lower face and readied a handgun. Sarausad abruptly slowed down upon reaching the school, Ronquillo fired at a group of students, killing one and wounding another, and Sarausad then sped away. He, Ronquillo, and Reyes, another passenger, were tried on murder and related charges. Sarausad and Reyes, who were tried as accomplices, argued that they were not accomplices to murder because they had not known Ronquillo's plan and had expected at most another fistfight. In her closing argument, the prosecutor stressed Sarausad's knowledge of a shooting, noting how he drove at the scene, that he knew that fighting alone would not regain respect for his gang, and that he was "in for a dime, in for a dollar." The jury received two instructions that directly quoted Washington's accomplice-liability law. When it failed to reach a verdict as to Reyes, the judge declared a mistrial as to him. The jury then convicted Ronquillo on all counts and convicted Sarausad of second-degree murder and related crimes. In affirming Sarausad's conviction, the State Court of Appeals, among other things, referred to an "in for a dime, in for a dollar" accomplice-liability theory. The State Supreme Court denied review, but in its subsequent *Roberts* case, it clarified that "in for a dime, in for a dollar" was not the best descriptor of accomplice liability because an accomplice must have knowledge of the crime that occurred. The court also explicitly reaffirmed its precedent that the type of jury instructions used at Sarausad's trial comport with Washington law. Sarausad sought state postconviction relief, arguing that the prosecutor's improper "in for a dime, in for a dollar" argument may have led the jury to convict him as an accomplice to murder based solely on a finding that he had anticipated that an assault would occur. The state appeals court reexamined the trial record in light of *Roberts*, but found no error requiring correction. The State Supreme Court denied Sarausad's petition, holding that the trial court correctly instructed the jury and that no prejudicial error resulted from the prosecutor's potentially improper hypothetical. Sarausad then sought review under 28

U. S. C. § 2254, which, *inter alia*, permits a federal court to grant habeas relief on a claim "adjudicated on the merits" in state court only if the decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by" this Court, § 2254(d)(1). The District Court granted the petition, and the Ninth Circuit affirmed, finding it unreasonable for the state court to affirm Sarausad's conviction because the jury instruction on accomplice liability was ambiguous and there was a reasonable likelihood that the jury misinterpreted the instruction in a way that relieved the State of its burden of proving Sarausad's knowledge of a shooting beyond a reasonable doubt.

Held: Because the state-court decision did not result in an "unreasonable application of . . . clearly established Federal law," § 2254(d)(1), the Ninth Circuit erred in granting habeas relief to Sarausad. Pp. 190–197.

(a) When a state court's application of governing federal law is challenged, the decision "'must be shown to be not only erroneous, but objectively unreasonable.'" *Middleton* v. *McNeil*, 541 U. S. 433, 436 *(per curiam)*. A defendant challenging the constitutionality of a jury instruction that quotes a state statute must show both that the instruction was ambiguous and that there was "'a reasonable likelihood'" that the jury applied the instruction in a way that relieved the State of its burden of proving every element of the crime beyond a reasonable doubt. *Estelle* v. *McGuire*, 502 U. S. 62, 72. The instruction "must be considered in the context of the instructions as a whole and the trial record," *ibid.*, and the pertinent question is whether the "'instruction by itself so infected the entire trial that the resulting conviction violates due process,'" *ibid.* Pp. 190–191.

(b) Because the Washington courts' conclusion that the jury instruction was unambiguous was not objectively unreasonable, the Ninth Circuit should have ended its § 2254(d)(1) inquiry there. The instruction parroted the state statute's language, requiring the jury to find Sarausad guilty as an accomplice "in the commission of the [murder]" if he acted "with knowledge that [his conduct would] promote or facilitate the commission of the [murder]," Wash. Rev. Code §§ 9A.08.020(2)(c), (3)(a). The instruction cannot be assigned any meaning different from the one given to it by the Washington courts. Pp. 191–192.

(c) Even if the instruction were ambiguous, the Ninth Circuit still erred in finding it so ambiguous as to cause a federal constitutional violation requiring reversal under the Antiterrorism and Effective Death Penalty Act of 1996. The Washington courts reasonably applied this Court's precedent when they found no "reasonable likelihood" that the prosecutor's closing argument caused the jury to apply the instruction

in a way that relieved the State of its burden to prove every element of the crime beyond a reasonable doubt. The prosecutor consistently argued that Sarausad was guilty as an accomplice because he acted with knowledge that he was facilitating a driveby shooting. She never argued that the admission by Sarausad and Reyes that they anticipated a fight was a concession of accomplice liability for murder. Sarausad's attorney also homed in on the key question, stressing a lack of evidence showing that Sarausad knew that his assistance would promote or facilitate a premeditated murder. Every state and federal appellate court that reviewed the verdict found the evidence supporting Sarausad's knowledge of a shooting legally sufficient to convict him under Washington law. Given the strength of that evidence, and the jury's failure to convict Reyes—who had also been charged as an accomplice to murder and admitted knowledge of a possible fight—it was not objectively unreasonable for the Washington courts to conclude that the jury convicted Sarausad because it believed that he, unlike Reyes, had knowledge of more than just a fistfight. The Ninth Circuit's contrary reasoning is unconvincing. Pp. 192–196.

479 F. 3d 671, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, and ALITO, JJ., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined, *post*, p. 197.

William Berggren Collins, Deputy Solicitor General of Washington, argued the cause for petitioner. With him on the briefs were *Robert M. McKenna*, Attorney General, *Jay D. Geck*, Deputy Solicitor General, and *Paul D. Weisser* and *John J. Samson*, Assistant Attorneys General.

Jeffrey L. Fisher argued the cause for respondent. On the brief were *Patricia Novotny*, by appointment of the Court, 555 U. S. 807, *Jeffrey T. Green*, *Mark E. Haddad*, *David Zuckerman*, and *Vanessa Soriano Power*.*

JUSTICE THOMAS delivered the opinion of the Court.

This case arose from a fatal driveby shooting into a group of students standing in front of a Seattle high school. Brian

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**Craig D. Singer* and *Pamela Harris* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

Ronquillo was ultimately identified as the gunman; at the time of the shooting, he was a passenger in a car driven by respondent Cesar Sarausad II. A jury convicted Sarausad as an accomplice to second-degree murder, attempted murder, and assault; he was sentenced to just over 27 years of imprisonment. The Washington courts affirmed his conviction and sentence on direct review, and his state-court motions for postconviction relief were denied.

Respondent, then, filed a federal petition for a writ of habeas corpus. The District Court granted the writ. On appeal, the Court of Appeals for the Ninth Circuit agreed with the District Court that the state-court decision was an objectively "unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). The Court of Appeals found it unreasonable for the state court to reject Sarausad's argument that certain jury instructions used at his trial were ambiguous and were likely misinterpreted by the jury to relieve the State of its burden of proving every element of the crime beyond a reasonable doubt. *Sarausad* v. *Porter*, 479 F. 3d 671 (2007). We disagree. Because the Washington courts reasonably applied our precedent to the facts of this case, we reverse the judgment below.

I

A

The driveby shooting was the culmination of a gang dispute between the 23d Street Diablos, of which Cesar Sarausad was a member, and the Bad Side Posse, which was headquartered at Ballard High School in Seattle, Washington. A member of the Diablos, Jerome Reyes, had been chased from Ballard by members of the Bad Side Posse, so the Diablos decided to go "to Ballard High School to show that the Diablos were not afraid" of the rival gang. App. to Pet. for Cert. 235a. The Diablos started a fight with the Bad Side Posse, but left quickly after someone indicated that

police were nearby. They went to a gang member's house, still angry because the Bad Side Posse had "called [them] weak." Tr. 2660–2661. Brian Ronquillo retrieved a handgun, and the gang decided to return to Ballard and "get [their] respect back." *Id.*, at 2699.

Sarausad drove, with Ronquillo in the front passenger seat and Reyes and two other Diablos in the back seat. En route, someone in the car mentioned "'capping'" the Bad Side Posse, and Ronquillo tied a bandana over the lower part of his face and readied the handgun. *Sarausad* v. *State*, 109 Wash. App. 824, 844, 39 P. 3d 308, 319 (2001). Shortly before reaching the high school, a second car of Diablos pulled up next to Sarausad's car and the drivers of the two cars talked briefly. Sarausad asked the other driver, "'Are you ready?'" *id.*, at 844–845, 39 P. 3d, at 319, and then sped the rest of the way to the high school. Once in front of the school, Sarausad abruptly slowed to about five miles per hour while Ronquillo fired 6 to 10 shots at a group of students standing in front of it. *Id.*, at 831, 39 P. 3d, at 312. Sarausad "saw everyone go down," Tr. 2870, and then sped away, 109 Wash. App., at 832, 39 P. 3d, at 313. The gunfire killed one student; another student was wounded when a bullet fragment struck his leg. *Id.*, at 831–832, 39 P. 3d, at 312–313.

B

Sarausad, Ronquillo, and Reyes were tried for the first-degree murder of Melissa Fernandes, the attempted first-degree murders of Ryan Lam and Tam Nguyen, and the second-degree assault of Brent Mason. Sarausad and Reyes, who were tried as accomplices, argued at trial that they could not have been accomplices to murder because they "had no idea whatsoever that Ronquillo had armed himself for the return trip." *Id.*, at 832, 39 P. 3d, at 313. They claimed that they expected, at most, another fistfight with the Bad Side Posse and were "totally and utterly dismayed when Ronquillo started shooting." *Ibid.*

Sarausad's counsel, in particular, argued that there was no evidence that Sarausad expected anything more than that the two gangs "would exchange insults, and maybe, maybe get into a fight." Tr. 1151. Sarausad testified that he considered only the "possibility of a fight," *id.*, at 2799, but never the possibility of a shooting, 109 Wash. App., at 832, 39 P. 3d, at 313. During closing arguments, Sarausad's attorney again argued that the evidence showed only that Sarausad was "willing to fight them the way they fought them the first time. And that is by pushing and shoving and more tough talk." App. 81. That was not sufficient, the attorney argued, to find that "Cesar [Sarausad] had knowledge that his assistance would promote or facilitate the crime of premeditated murder." *Id.*, at 83. Sarausad's attorney also explained to the jury that knowledge of just any crime, such as knowledge that criminal assistance would be rendered after the shooting, would be insufficient to hold Sarausad responsible as an accomplice to murder because "[a]ccomplice liability requires that one assists with knowledge, that their actions will promote or facilitate the commission of *the* crime." *Id.*, at 100 (emphasis added).

In response, the prosecutor focused much of her closing argument on the evidence of Sarausad's knowledge of a shooting. He had "slowed down before the shots were fired, stayed slowed down until the shots were over and immediately sped up." *Id.*, at 39. "There was no hesitation, there was no stopping the car. There was no attempt for Mr. Sarausad to swerve his car out of the way so that innocent people wouldn't get shot." *Id.*, at 40. She also argued that Sarausad knew when he drove back to the school that his gang's "fists didn't work, the pushing didn't work, the flashing of the signs, the violent altercation didn't work" because the Bad Side Posse still "laughed at them, they called them weak, they called them nothing." *Id.*, at 44. So, "[w]hen they rode down to Ballard High School that last

time, . . . [t]hey knew they were there to commit a crime, to disrespect the gang, to fight, to shoot, to get that respect back. A fist didn't work, pushing didn't work. Shouting insults at them didn't work. Shooting was going to work. In for a dime, you're in for a dollar." *Id.*, at 123–124.

At the close of trial, the jury received two instructions that directly quoted Washington's accomplice-liability statute.[1] Instruction number 45 provided:

> "You are instructed that a person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable. A person is legally accountable for the conduct of another person when he is an accomplice of such other person in the commission of *the crime*." *Id.*, at 16 (emphasis added).

Instruction number 46 provided, in relevant part:

> "A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of *the crime*, he or she either:
>
> "(1) solicits, commands, encourages, or requests another person to commit the crime or
>
> "(2) aids or agrees to aid another person in planning or committing the crime." *Id.*, at 17 (emphasis added).

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[1] Washington's accomplice-liability statute provides, in pertinent part: "A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable. A person is legally accountable for the conduct of another person when:

. . . . .

"He is an accomplice of such other person in the commission of the crime.

"A person is an accomplice of another person in the commission of a crime if . . . [w]ith knowledge that it will promote or facilitate the commission of the crime, he

"(i) solicits, commands, encourages, or requests such other person to commit it; or

"(ii) aids or agrees to aid such other person in planning or committing it." Wash. Rev. Code §§ 9A.08.020(1)–(3) (2008) (internal numbering omitted).

During seven days of deliberations, the jury asked five questions, three of which related to the intent requirement for accomplice liability. One questioned the accomplice-liability standard as it related to the first-degree murder instructions; one questioned the standard as it related to the second-degree murder instructions; and one stated that the jury was "having difficulty agreeing on the legal definition and concept of 'accomplice' " and whether a person's "willing participat[ion] in a group activity" makes "that person an accomplice to any crime committed by anyone in the group." *Id.*, at 129. In response to each question, the judge instructed the jury to reread the accomplice-liability instructions and to consider the instructions as a whole.

The jury was unable to reach a verdict as to Reyes, and the judge declared a mistrial as to him. The jury then returned guilty verdicts on all counts for Ronquillo and convicted Sarausad of the lesser included crimes of second-degree murder, attempted second-degree murder, and second-degree assault.

C

On appeal, Sarausad argued that because the State did not prove that he had intent to kill, he could not be convicted as an accomplice to second-degree murder under Washington law. The Washington Court of Appeals affirmed his convictions, explaining that under Washington law, an accomplice must have "general knowledge" that the crime will occur, but need not have the specific intent required for that crime's commission. App. to Pet. for Cert. 259a. The court referred to accomplice liability as "a theory of criminal liability that in Washington has been reduced to the maxim, 'in for a dime, in for a dollar.' " *Id.*, at 235a. The Washington Supreme Court denied discretionary review. *State* v. *Ronquillo*, 136 Wash. 2d 1018, 966 P. 2d 1277 (1998).

Shortly thereafter, the Washington Supreme Court clarified in an unrelated criminal case that "in for a dime, in for a dollar" is not the best descriptor of accomplice liability under

Washington law because an accomplice must have knowledge of "the crime" that occurs. *State* v. *Roberts*, 142 Wash. 2d 471, 509–510, 14 P. 3d 713, 734–735 (2000). Therefore, an accomplice who knows of one crime—the dime—is not guilty of a greater crime—the dollar—if he has no knowledge of that greater crime. It was error, then, to instruct a jury that an accomplice's knowledge of "'a crime'" was sufficient to establish accomplice liability for "'the crime.'" *Ibid.*[2] The Washington Supreme Court limited this decision to instructions containing the phrase "a crime" and explicitly reaffirmed its precedent establishing that jury instructions linking an accomplice's knowledge to "the crime," such as the instruction used at Sarausad's trial, comport with Washington law. *Id.*, at 511–512, 14 P. 3d, at 736 (discussing *State* v. *Davis*, 101 Wash. 2d 654, 656, 682 P. 2d 883, 884 (1984)). An instruction that references "the crime" "copie[s] exactly the language from the accomplice liability statute" and properly hinges criminal punishment on knowledge of "the crime" for which the defendant was charged as an accomplice. 142 Wash. 2d, at 512, 14 P. 3d, at 736.

D

Sarausad next sought postconviction relief from the Washington courts. He argued that although the accomplice-liability instruction used at his trial complied with *Roberts*,

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[2] The instruction found faulty in *Roberts* provided in full:

"You are instructed that a person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable. A person is legally accountable for the conduct of another person when he is an accomplice of such other person in the commission of *a crime*.

"A person is an accomplice in the commission of a crime, whether present at the time of its commission or not, if, with knowledge that it will promote or facilitate its commission, he either:

"(a) solicits, commands, encourages, or requests another person to commit the crime; or

"(b) aids another person in planning or committing the crime." 142 Wash. 2d, at 488–489, 14 P. 3d, at 724 (emphasis added).

"an additional clarifying instruction should have been given" because the prosecutor may have confused the jury by improperly arguing that he had been "'in for a dime, in for a dollar.'" *Sarausad*, 109 Wash. App., at 829, 39 P. 3d, at 311. Therefore, he argued, the jury may have convicted him as an accomplice to second-degree murder based solely on his admission that he anticipated that an assault would occur at Ballard High School.

The Washington Court of Appeals reexamined the trial record in its entirety in light of *Roberts*, see 109 Wash. App., at 834, 39 P. 3d, at 313–314, but found no error requiring correction. According to the court, the prosecutor's closing argument in its entirety did not convey "that the jury could find Sarausad guilty as an accomplice to murder if he had the purpose to facilitate an offense of any kind whatsoever, even a shoving match or fist fight." *Id.*, at 840, 39 P. 3d, at 317. The prosecutor's "'in for a dime, in for a dollar'" illustration also did not convey that standard. *Id.*, at 842–843, 39 P. 3d, at 318. The court explained that in every situation but one, the prosecutor clearly did not use that phrase to argue that Sarausad could be convicted of murder if he intended only a fistfight. Instead, she used it to convey a "gang mentality" that requires a wrong to the gang to be avenged by any means necessary. *Id.*, at 842, 39 P. 3d, at 318. Thus, according to the prosecutor, when a fight did not work, Sarausad knew that a shooting was required to avenge his gang. See *ibid.*

There was one "in for a dime, in for a dollar" hypothetical in the prosecutor's closing that did not convey this gang-mentality meaning and thus, the court recognized, "may or may not be problematic under *Roberts*" depending on how it was interpreted. *Id.*, at 843, 39 P. 3d, at 318.[3] The court

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[3] The prosecutor had argued in the hypothetical that an accomplice who knows that he is helping someone assault a victim bears responsibility if the victim is killed. The hypothetical stated in full:

"Let me give you a good example of accomplice liability. A friend comes up to you and says, 'Hold this person's arms while I hit him.' You

concluded that it did not need to decide whether the hypothetical was improper under state law because, even if it was, it did not prejudice Sarausad. Sarausad's jury was properly instructed and "the prosecutor made it crystal clear to the jury that the State wanted Sarausad found guilty . . . because he knowingly facilitated the drive-by shooting and for no other reason." *Id.*, at 843–844, 39 P. 3d, at 319.

Sarausad sought discretionary postconviction review from the Supreme Court of Washington. In denying his petition, the court held that "the trial court correctly instructed the jury" that knowledge of the particular crime committed was required. App. to Pet. for Cert. 191a. The court also found that no prejudicial error resulted from the prosecutor's potentially improper hypothetical. *Id.*, at 192a. "[W]hatever the flaws in the argument, the prosecutor properly focused on Mr. Sarausad's knowing participation in the shooting, not in some lesser altercation." *Ibid.*

E

Sarausad filed this petition for a writ of habeas corpus in Federal District Court pursuant to 28 U. S. C. § 2254. The District Court granted the petition, finding "ample evidence that the jury was confused about what elements had to be established in order for [Sarausad] to be found guilty of second degree murder and second degree attempted murder." App. to Pet. for Cert. 129a. The Court of Appeals for the Ninth Circuit affirmed, finding that the state postconviction court unreasonably applied this Court's decisions in *Estelle*

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say, 'Okay, I don't like that person, anyway.' You hold the arms. The person not only gets assaulted, he gets killed. You are an accomplice and you can't come back and say, 'Well, I only intended this much damage to happen.' Your presence, your readiness to assist caused the crime to occur and you are an accomplice. The law in the State of Washington says, if you're in for a dime, you're in for a dollar. If you're there or even if you're not there and you're helping in some fashion to bring about this crime, you are just as guilty." App. 38.

v. *McGuire*, 502 U. S. 62 (1991), *Sandstrom* v. *Montana*, 442 U. S. 510 (1979), and *In re Winship*, 397 U. S. 358 (1970), in affirming Sarausad's conviction in spite of ambiguous jury instructions and the " 'reasonable likelihood that the jury . . . applied the challenged instruction in a way' that violates the Constitution." 479 F. 3d, at 683 (quoting *Estelle*, *supra*, at 72). The court denied rehearing en banc over the dissent of five judges. *Sarausad* v. *Porter*, 503 F. 3d 822 (2007). We granted certiorari, 552 U. S. 1256 (2008), and now reverse.

II

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, a federal court may grant habeas relief on a claim "adjudicated on the merits" in state court only if the decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). Where, as here, it is the state court's application of governing federal law that is challenged, the decision " 'must be shown to be not only erroneous, but objectively unreasonable.' " *Middleton* v. *McNeil*, 541 U. S. 433, 436 (2004) *(per curiam)* (quoting *Yarborough* v. *Gentry*, 540 U. S. 1, 5 (2003) *(per curiam)*); see also *Schriro* v. *Landrigan*, 550 U. S. 465, 473 (2007) ("The question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold").

Our habeas precedent places an "especially heavy" burden on a defendant who, like Sarausad, seeks to show constitutional error from a jury instruction that quotes a state statute. *Henderson* v. *Kibbe*, 431 U. S. 145, 155 (1977). Even if there is some "ambiguity, inconsistency, or deficiency" in the instruction, such an error does not necessarily constitute a due process violation. *Middleton*, *supra*, at 437. Rather, the defendant must show both that the instruction was am-

biguous and that there was "'a reasonable likelihood'" that the jury applied the instruction in a way that relieved the State of its burden of proving every element of the crime beyond a reasonable doubt. *Estelle*, *supra*, at 72 (quoting *Boyde* v. *California*, 494 U. S. 370, 380 (1990)). In making this determination, the jury 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." *Estelle*, *supra*, at 72 (quoting *Cupp* v. *Naughten*, 414 U. S. 141, 147 (1973)). Because it is not enough that there is some "slight *possibility*" that the jury misapplied the instruction, *Weeks* v. *Angelone*, 528 U. S. 225, 236 (2000), the pertinent question "is 'whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process,'" *Estelle*, *supra*, at 72 (quoting *Cupp*, *supra*, at 147).

A

The Washington courts reasonably concluded that the trial court's instruction to the jury was not ambiguous. The instruction parroted the language of the statute, requiring that an accomplice "in the commission of *the crime*" take action "with knowledge that it will promote or facilitate the commission of *the crime*." App. 16–17 (emphasis added); Wash. Rev. Code §§ 9A.08.020(2)(c), (3)(a) (2008). It is impossible to assign any meaning to this instruction different from the meaning given to it by the Washington courts. By its plain terms, it instructed the jury to find Sarausad guilty as an accomplice "in the commission of the [murder]" only if he acted "with knowledge that [his conduct] will promote or facilitate the commission of the [murder]." App. 16–17.[4] Be-

[4] The dissent would reverse the Washington state courts based on the alleged confusion in Washington courts, and specifically in the Washington Court of Appeals on direct review, about the meaning of the Washington accomplice-liability statute. *Post*, at 198–200 (opinion of SOUTER, J.). But the confusion in the Court of Appeals over the application of the statute involved the related, but legally distinct, question whether an accom-

cause the conclusion reached by the Washington courts that the jury instruction was unambiguous was not objectively unreasonable, the Court of Appeals' 28 U. S. C. § 2254(d)(1) inquiry should have ended there.[5]

B

Even if we agreed that the instruction was ambiguous, the Court of Appeals still erred in finding that the instruction

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plice is required to share the specific intent of the principal actor under Washington law. On direct appeal, respondent argued that he should not have been convicted as an accomplice to murder because he did not have the specific intent to kill. The Washington Court of Appeals rejected that argument because "it was not necessary for the State to prove Sarausad knew Ronquillo had a gun, or knew that there was a potential for gunplay that day" under Washington law, App. to Pet. for Cert. 266a, where "accomplice liability predicates criminal liability on general knowledge of a crime, rather than specific knowledge of the elements of the principal's crime," *id.*, at 259a. But the Washington Court of Appeals never held that knowledge of a completely different crime, such as assault, would be sufficient under Washington law for accomplice liability for murder. See *id.*, at 258a–259a; see also *In re Domingo*, 155 Wash. 2d 356, 367–368, 119 P. 3d 816, 822 (2005) ("[N]either *Davis* nor any of this court's decisions subsequent to *Davis* approves of the proposition that accomplice liability attaches for any and all crimes committed by the principal so long as the putative accomplice knowingly aided in any one of the crimes"). In other words, the Court of Appeals had evaluated whether respondent's conviction required a specific intent versus a general intent to kill, not whether it required knowledge of a murder versus knowledge of an assault—the issue under review here. Thus, the confusion in the state courts referenced by the dissent has no bearing on the question presented in this appeal, and does not support the dissent's argument that the jury instruction in question was ambiguous.

[5] To the extent that the Court of Appeals attempted to rewrite state law by proposing that the instruction should have included "an explicit statement that an accomplice must have knowledge of . . . the actual crime the principal intends to commit," 479 F. 3d 671, 690 (CA9 2007), it compounded its error. The Washington Supreme Court expressly held that the jury instruction correctly set forth state law, App. to Pet. for Cert. 191a, and we have repeatedly held that "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle* v. *McGuire*, 502 U. S. 62, 67–68 (1991).

was so ambiguous as to cause a federal constitutional violation, as required for us to reverse the state court's determination under AEDPA, 28 U. S. C. § 2254(d). The Washington courts reasonably applied this Court's precedent when they determined that there was no "reasonable likelihood" that the prosecutor's closing argument caused Sarausad's jury to apply the instruction in a way that relieved the State of its burden to prove every element of the crime beyond a reasonable doubt. The prosecutor consistently argued that Sarausad was guilty as an accomplice because he acted with knowledge that he was facilitating a driveby shooting. Indeed, Sarausad and Reyes had admitted under oath that they anticipated a fight, Tr. 2671, 2794, and yet the prosecutor never argued that their admission was a concession of accomplice liability for murder. She instead argued that Sarausad knew that a shooting was intended, App. 123, because he drove his car in a way that would help Ronquillo "fire those shots," *id.*, at 39. The closing argument of Sarausad's attorney also homed in on the key legal question: He challenged the jury to look for evidence that Sarausad "had knowledge that his assistance would promote or facilitate the crime of premeditated murder" and argued that no such evidence existed. *Id.*, at 83.

Put simply, there was no evidence of ultimate juror confusion as to the test for accomplice liability under Washington law. Rather, the jury simply reached a unanimous decision that the State had proved Sarausad's guilt beyond a reasonable doubt. Indeed, every state and federal appellate court that reviewed the verdict found that the evidence supporting Sarausad's knowledge of a shooting was legally sufficient to convict him under Washington law. 479 F. 3d, at 677–683; *Sarausad*, 109 Wash. App., at 844–845, 39 P. 3d, at 319. Given the strength of the evidence supporting the conviction, along with the jury's failure to convict Reyes—who also had been charged as an accomplice to murder and also had admitted knowledge of a possible fight—it was not objectively

unreasonable for the Washington courts to conclude that the jury convicted Sarausad only because it believed that he, unlike Reyes, had knowledge of more than just a fistfight. The reasoning of the Court of Appeals, which failed to review the state courts' resolution of this question through the deferential lens of AEDPA, does not convince us otherwise.

First, the Court of Appeals found that the evidence of Sarausad's knowledge of the shooting was so "thin" that the jury must have incorrectly believed that proof of such knowledge was not required. 479 F. 3d, at 692–693. That conclusion, however, is foreclosed by the Court of Appeals' own determination that the evidence was sufficient for a rational jury to reasonably infer that Sarausad knowingly facilitated the driveby shooting. As explained above, the Court of Appeals acknowledged that the evidence showed that Ronquillo, while seated in Sarausad's front passenger seat, tied a bandana over the lower part of his face and pulled out a gun. *Id.*, at 681. There also was evidence that Sarausad then asked the Diablos in the other car, "'Are you ready?'" before driving to the school and "slow[ing] his car in front of the school in a manner that facilitated a drive-by shooting." *Ibid.* Other gang members testified to prior knowledge of the gun and to discussing the shooting as an option during the gang meeting held between trips to Ballard High School. *Id.*, at 682. There also was testimony from Sarausad that he suspected that members of the Bad Side Posse would be armed when they returned to Ballard High School, *ibid.*, making it reasonable to conclude that Sarausad would expect his gang to be similarly prepared for the confrontation. There was nothing "thin" about the evidence of Sarausad's guilt.

Second, the Court of Appeals faulted the prosecutor for arguing "clearly and forcefully" for an "'in for a dime, in for a dollar'" theory of accomplice liability. *Id.*, at 693. But the Washington Court of Appeals conducted an in-depth analysis of the prosecutor's argument and reasonably found

that it contained, at most, one problematic hypothetical. *Sarausad*, *supra*, at 842–843, 39 P. 3d, at 318–319. The state court's conclusion that the one hypothetical did not taint the proper instruction of state law was reasonable under this Court's precedent, which acknowledges that "arguments of counsel generally carry less weight with a jury than do instructions from the court." *Boyde*, 494 U. S., at 384. On habeas review, the Court of Appeals should not have dissected the closing argument and exaggerated the possible effect of one hypothetical in it. There was nothing objectively unreasonable about the Washington courts' resolution of this question.[6]

Third, and last, the Court of Appeals believed that the jury's questions "demonstrated substantial confusion about what the State was required to prove." 479 F. 3d, at 693. Sarausad focuses special attention on this factor, arguing that it was the "failure to remedy" this confusion that sets this case apart from previous decisions and establishes that the jury likely "did not understand accomplice liability" when it returned its verdict. Brief for Respondent 29, 31. But this Court has determined that the Constitution generally requires nothing more from a trial judge than the type of

[6] The dissent accuses us of downplaying this ambiguous hypothetical, arguing that it is so rife with improper meaning that it "infect[ed] every further statement bearing on accomplice law the prosecutor made," *post*, at 202, and ensured that the jury misinterpreted the trial court's properly phrased instruction. We disagree. The proper inquiry is whether the state court was objectively unreasonable in concluding that the instruction (which precisely tracked the language of the accomplice-liability statute) was not warped by this one-paragraph hypothetical in an argument and rebuttal spanning 31 pages of the joint appendix. The state court's conclusion was not unreasonable. The hypothetical was presented during closing arguments, which juries generally "vie[w] as the statements of advocates" rather than "as definitive and binding statements of the law," *Boyde* v. *California*, 494 U. S. 370, 384 (1990), and which, as a whole, made clear that the State sought a guilty verdict based solely on Sarausad's "knowledge that his assistance would promote or facilitate the crime of premeditated murder," App. 83; see also *id.*, at 123–124.

answers given to the jury here. *Weeks*, 528 U. S., at 234. Where a judge "respond[s] to the jury's question by directing its attention to the precise paragraph of the constitutionally adequate instruction that answers its inquiry," and the jury asks no followup question, this Court has presumed that the jury fully understood the judge's answer and appropriately applied the jury instructions. *Ibid.*

Under this established standard, it was not objectively unreasonable for the state court to conclude that Sarausad's jury received the answers it needed to resolve its confusion.[7] Its questions were spaced throughout seven days of deliberations, involved different criminal charges, and implicated the interrelation of several different jury instructions. The judge pinpointed his answers to the particular instructions responsive to the questions and those instructions reflected state law. Under these circumstances, the state court did not act in an objectively unreasonable manner in finding that the jury knew the proper legal standard for conviction.

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[7] The dissent argues that we "sideste[p] the thrust of this record" by finding that the trial judge's answers to the jury's questions were satisfactory. *Post*, at 205. But our decision cannot turn on a *de novo* review of the record or a finding that the answers were "the best way to answer jurors' questions," *ibid.* On federal habeas review, this Court's inquiry is limited to whether the state court violated clearly established federal law when it held that the jury applied the correct standard, in light of the answers given to its questions. See 28 U. S. C. § 2254(d)(1). On that issue, the state court was not objectively unreasonable; the jury's questions were answered in a manner previously approved by this Court, and they consistently referred the jury to the correct standard for accomplice liability in Washington. The dissent also ignores the important fact that the jury convicted Ronquillo of first-degree murder, convicted respondent of second-degree murder, and failed to reach an agreement on Reyes' guilt, causing a mistrial on the first-degree murder charge pending against him. The jury's assignment of culpability to two of the codefendants, versus its deadlock over a third who, like respondent, conceded knowledge of an assault, demonstrates that the jury understood the legal significance of each defendant's relative knowledge and intent with respect to the murder.

III

Because the state-court decision did not result in an "unreasonable application of . . . clearly established Federal law," 28 U. S. C. § 2254(d)(1), the Court of Appeals erred in granting a writ of habeas corpus to Sarausad. The judgment below is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE GINSBURG join, dissenting.

The issue in this habeas case is whether it was objectively reasonable for the state court to find that there was no reasonable likelihood that the jury convicted respondent Cesar Sarausad on a mistaken understanding of Washington law. The underlying question is whether the jury may have thought it could find Sarausad guilty as an accomplice to murder on the theory that he assisted in what he expected would be a fistfight, or whether the jury knew that to convict him Washington law required it to conclude Sarausad aided in what he understood was intended to be a killing.

So far as the instructions addressed these alternatives, the judge charged the jurors in these words:

> "A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:
>
> "(1) solicits, commands, encourages, or requests another person to commit the crime or
>
> "(2) aids or agrees to aid another person in planning or committing the crime." App. 17.

The majority answers the underlying question by relying on the general rule that incorporating a clear statute into a jury charge almost always produces an adequate instruction, which the jury is assumed to follow. The kicker of course is that the general rule is only good if the incorporated statute

is clear enough to require the jury to find facts amounting to a violation of the law as correctly understood.

Does the rule apply here? The majority says it does. It says the instruction quoted is unambiguous because it parrots the language of the Washington statute on accomplice liability, *ante*, at 191, and that "[i]t is impossible to assign any meaning to this instruction" and, by extension, the statute, "different from the meaning given to it by the Washington courts," *ibid.*

That is not, however, what the record shows. Rather than a single understanding, the Washington courts have produced a record of discordant positions on the meaning of the statute, and the Washington Court of Appeals can itself attest to a degree of difficulty in understanding the statutory requirement sufficient to show the statute to be ambiguous and the statute-based instruction constitutionally inadequate: that court read the statute to mean just the opposite of what the majority now claims it unambiguously requires.

On Sarausad's direct appeal in 1998, the State Court of Appeals set out the principles on which it understood accomplice liability in Washington to be premised. It did not say that the accomplice must understand that he is aiding in the commission of the same offense the principal has in mind, or the offense actually committed. Instead, the Washington Court of Appeals said this:

> "(1) To convict of accomplice liability, the State need not prove that principal and accomplice shared the same mental state, (2) accomplice liability predicates criminal liability on general knowledge of a crime, rather than specific knowledge of the elements of the principal's crime, and (3) an accomplice, having agreed to participate in a criminal activity, runs the risk that the primary actor will exceed the scope of the preplanned illegality." *State* v. *Ronquillo*, No. 35840–5–I etc. (Mar. 2, 1998), App. to Pet. for Cert. 233a, 258a–259a.

In support, the court cited *State* v. *Davis*, 101 Wash. 2d 654, 682 P. 2d 883 (1984), in which the Supreme Court of Washington noted that "an accomplice, having agreed to participate in a criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality." *Id.*, at 658, 682 P. 2d, at 886. As today's majority notes, *ante*, at 186, the state appellate court remarked that the Washington law of accomplice liability (as it then understood it) "'has been reduced to the maxim, "in for a dime, in for a dollar"'"; the court also held that "it was not necessary for the State to prove Sarausad . . . knew that there was a potential for gunplay that day." *State* v. *Ronquillo*, *supra*, at 235a, 266a. So much for the majority's confidence that the statute-based instruction can only be understood as requiring what the State Supreme Court now says it requires: proof that the accomplice understood that he was aiding in the commission of the very crime he is charged with facilitating.

The State Supreme Court clarified this requirement two years after the Court of Appeals held against Sarausad. In *State* v. *Roberts*, 142 Wash. 2d 471, 14 P. 3d 713 (2000), the Supreme Court of Washington held that the Court of Appeals's "in for a dime, in for a dollar" view of accomplice liability was a misreading of the statute and a flatout misstatement of law. In *Roberts*, the State Supreme Court revisited *Davis*, which it explained as standing for the principle "that an accomplice need not have specific knowledge of *every element* of the crime committed by the principal, provided he has general knowledge of that specific crime." 142 Wash. 2d, at 512, 14 P. 3d, at 736. Although a "general knowledge" of "that specific crime" intended by a confederate and eventually committed will suffice for the mental element of accomplice liability, mere "knowledge by the accomplice that the principal intends to commit 'a crime' does not impose strict liability for any and all offenses that follow." *Id.*, at 513, 14 P. 3d, at 736. In other words, it was incorrect

to read the statute as the Supreme Court of Washington had arguably done in *Davis* (and the State Court of Appeals certainly did in this case), to mean that anyone who agrees "to participate in a criminal act . . . runs the risk of [accomplice liability for a more serious crime if] the primary actor exceed[s] the scope of the preplanned illegality," 101 Wash. 2d, at 658, 682 P. 2d, at 886. The reductive maxim "in for a dime, in for a dollar" was now understood to be a distortion of Washington's accomplice-liability law.

The Washington Court of Appeals said as much when Sarausad appeared before it the second time, seeking post-conviction relief: "[Sarausad] points out, and correctly so, that this court decided [his direct] appeal on the premise that 'in for a dime, in for a dollar' correctly characterized Washington accomplice liability law. We said that 'an accomplice, "having agreed to participate in a criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality."'" *Sarausad* v. *State*, 109 Wash. App. 824, 833–834, 39 P. 3d 308, 313 (2001). The Court of Appeals said that it had "erred" in determining that it was unnecessary for the State to prove Sarausad knew he was facilitating a driveby shooting. *Id.*, at 837, 39 P. 3d, at 315.

This profession of judicial error in understanding the law is the touchmark not of a clear statute, but of an indistinct or perplexing one, which the law calls ambiguous. The majority is thus unquestionably mistaken in finding it "impossible to assign any meaning to [the instruction quoting the statute that is] different from the meaning" the majority thinks is clear. *Ante*, at 191. Given that error on the majority's part, it has not justified its reversal of the Ninth Circuit by showing that the instruction was clear.*

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*As the majority notes, *ante*, at 191–192, n. 4, in the Washington Court of Appeals on direct review, Sarausad's counsel claimed that state law required that an accomplice to murder have a specific intent to kill (or aid in killing). The Court of Appeals rejected this position. Contrary to the

There remains the question whether the majority's second conclusion is also unjustifiable: despite inadequate instruction, did the jurors nevertheless apply the correct view of state law, which only recently, and after the trial, attained its current clarity? The state postconviction court found no reasonable likelihood that the jurors failed to apply a correct understanding of accomplice liability, *Sarausad* v. *State*, *supra*, at 843–844, 39 P. 3d, at 318–319, and Sarausad's burden here (on federal habeas) is to demonstrate that the state court was objectively unreasonable in drawing this conclusion, 28 U. S. C. § 2254(d)(1). The District Court and the Ninth Circuit found he had done just that, whereas the majority today insists those courts were wrong.

The majority's position is simply unrealistic. Even a juror with a preternatural grasp of the statutory subtlety would have lost his grip after listening to the prosecutor's closing argument, which first addressed the state law of accomplice liability with a statement that was flatout error, followed that with a confusing argument that could have reflected

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majority view, *ibid.*, in gauging the adequacy of an instruction incorporating statutory terms, the fact that defense counsel may have asked for too much does nothing to lessen the pertinence of opaque state law or its uncertainty in the minds of the state judges. The Court of Appeals in its very response to counsel's argument demonstrated its misunderstanding of the scope of Washington accomplice-liability law: "accomplice liability predicates criminal liability on general knowledge of *a* crime." *State* v. *Ronquillo*, No. 35840–5–I etc. (Mar. 2, 1998), App. to Pet. for Cert. 233a, 259a (emphasis added). For that matter, the Court of Appeals subsequently disavowed the very statement used by the majority to support its contention that the court was focused solely on the issue of specific intent. The court, in the postconviction proceedings, concluded that it was in fact necessary for the State to prove Sarausad knew Ronquillo had a gun, or knew there was potential for gunplay that day. *Sarausad* v. *State*, 109 Wash. App. 824, 837, 39 P. 3d 308, 315 (2001). This knowledge would have been necessary regardless of whether the law required Sarausad to have specific or general intent to kill, unless, of course, accomplice liability was predicated on an "in for a dime, in for a dollar" theory of liability and knowledge of a fistfight could suffice.

either the correct or the erroneous view, and concluded with an argument that could have fit either theory but ended with a phrase defined to express the erroneous one.

In her first pass at the subject, the prosecutor said unequivocally that assaultive, not murderous, intent on Sarausad's part would suffice for the intent required of an accomplice to murder.

> "Let me give you a good example of accomplice liability. A friend comes up to you and says, 'Hold this person's arms while I hit him.' You say, 'Okay, I don't like that person, anyway.' You hold the arms. The person not only gets assaulted, he gets killed. You are an accomplice and you can't come back and say, 'Well, I only intended this much damage to happen.' Your presence, your readiness to assist caused the crime to occur and you are an accomplice. The law in the State of Washington says, if you're in for a dime, you're in for a dollar. If you're there or even if you're not there and you're helping in some fashion to bring about this crime, you are just as guilty." App. 38.

Thus, in what the majority would launder into "one problematic hypothetical," *ante*, at 195, the prosecutor introduced the "in for a dime, in for a dollar" locution, which she defined to mean that readiness to aid in the commission of any crime thought to be intended by the principal is enough intent for accomplice liability for whatever crime the principal actually commits. This leadoff misstatement of the law, never corrected by the trial judge, infects every further statement bearing on accomplice law the prosecutor made, for into each effort she consistently introduced the viral catchphrase "in for a dime, in for a dollar."

In a second reference to accomplice law, the prosecutor discussed gang mentality and used the phrase, without modifying her earlier explanation of its legal meaning, then followed up with a reference to the evidence that could have fit

either the erroneous theory or the law as corrected by *Roberts:*

> "Mr. Sarausad [was] present and . . . certainly ready to assist. And I remind you, too, what you heard not only from . . . the gang expert in this case, but from [gang] member after [gang] member who told you that an affront to one is an affront to all, 'When you disrespect me you disrespect my gang.' . . .
>
> "They were all there that day . . . ready to back each other up in whatever happened. In for a dime, they were in for a dollar and they were sticking together.
>
> " . . . You know, the best indication of what was going on just before the shooting is gleaned by what happened immediately after the fact. . . . Nothing [was] said to the [gunman], because there was nothing to say. Nobody asked him why he did it. They all knew. They all knew what they were there for. An affront to one is an affront to all." App. 40–41.

The confusion of the correct and erroneous theories of liability showed up again in the prosecutor's final rebuttal:

> "Mr. Sarausad's lawyer says that an accomplice has to have the same mental state as the person doing the shooting. . . . Not true, not true. And that's not what the instruction says.
>
> "And I've told you the old adage, you're in for a dime, you're in for a dollar. If their logic was correct, they're not ever an accomplice to anything. The getaway driver for a bank robbery would say, 'I just told him to rob them, I didn't tell him to shoot him, I didn't do anything.' The example I gave you earlier, 'I just told my friend to hold the arms down of this person while he hit him, I didn't tell him to kill him, I'm not guilty of anything.' If you're in for a dime, you're in for a dollar.
>
> "When they rode down to Ballard High School that last time, I say they knew what they were up to. They

> knew they were there to commit a crime, to disrespect the gang, to fight, to shoot, to get that respect back. A fist didn't work, pushing didn't work. Shouting insults at them didn't work. Shooting was going to work. In for a dime, you're in for a dollar." *Id.*, at 123–124.

In the prosecutor's jumble of rules, one proposition is both clear and clearly erroneous: the statement of law, "in for a dime, in for a dollar." It unmistakably contradicts the construction for which Sarausad's counsel correctly argued, which would have required the jury to find that Sarausad understood that the object was killing in order to find him guilty as an accomplice to murder. *Id.*, at 83–84.

The point here is not to excoriate the prosecutor, who tried this case in the period between *Roberts* and *Davis* and could fairly assume that her expansive ("in for a dime . . . ") view of accomplice liability was good law in her State. The point is just the obvious one that cannot be evaded without playing make-believe with the record: an uncertain instruction by the trial judge was combined with confounding prosecutorial argument incorporating what the state courts now acknowledge was a clearly erroneous statement of law, in contrast to the view of the law argued by defense counsel. In these circumstances jury confusion is all but inevitable and jury error the reasonable likelihood.

If there were any doubt about that, one could simply look at the record of the jury's deliberations, in the course of which the jurors repeatedly asked the court to clarify the law on accomplice liability. They began deliberating on Friday, October 21, 1994, and the following Tuesday, they asked (as to the instructions laying out the crime of first-degree murder and the required premeditation), "does the 'intent' apply to (the defendant only) or to (the defendant or his accomplice)?" App. 126. The judge replied, "Refer to instructions 46 and 47 and consider your instructions as a whole." *Ibid.* Three days later, October 28, this time in reference

to the second-degree murder instructions, the jury enquired a second time about accomplice liability, asking whether "intentional appl[ies] to only the defendant or only his accomplice?" *Id.*, at 128. The judge's response was nearly identical to his first one: "Refer to instructions 45 & 46 and consider the instructions as a whole." *Ibid.* The following Monday, the jury returned to deliberations and requested help yet again, spelling out its confusion: "We are having difficulty agreeing on the legal definition and concept of 'accomplice.' . . . [W]hen a person willing[ly] participates in a group activity, is that person an accomplice to any crime committed by anyone in the group?" *Id.*, at 129. Once again, the judge sent the jurors back to the written charge: "Reread instructions . . . 45, 46, 47, and 48 and consider your instructions as a whole." *Ibid.*

The majority sidesteps the thrust of this record by suggesting that the jurors failed to let the court know of any confusion: it says the jurors' questions "involved different criminal charges, and implicated the interrelation of several different jury instructions." *Ante*, at 196. But this simply ignores the disclosure obviously common to all those questions: the jurors did not understand the state of mind the prosecution had to prove for accomplice liability. Their final question makes this unmistakable.

The majority says, in any case, that the judge's repeated references back to the written instructions were enough and that "it was not objectively unreasonable for the state court to conclude that [the] jury received the answers it needed to resolve its confusion." *Ibid.* But after the jurors asked three times? In many trials, reference back to written instructions would be the best way to answer jurors' questions, which may reflect uncertain memory, not deficient instruction. But not in this case: the accomplice-liability instruction was defective owing to the ambiguity of the statutory language it incorporated, and its deficiency was under-

scored by the prosecutor's erroneous argument. Telling the jurors to read an inadequate instruction three more times did nothing to improve upon it or enlighten the readers. The District Court and the Ninth Circuit drew the only conclusion reasonably possible on this record. I respectfully dissent.

Syllabus

LOCKE ET AL. *v.* KARASS, STATE CONTROLLER, ET AL.

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

No. 07–610. Argued October 6, 2008—Decided January 21, 2009

The collective-bargaining agreement between Maine and respondent local union, the exclusive bargaining agent for certain state employees, requires nonmember employees represented by the union to pay the local a "service fee" equal to the portion of union dues related to ordinary representational activities, *e. g.*, collective bargaining or contract administration activities. That fee does not include nonchargeable union activities such as political, public relations, or lobbying activities. The fee includes a charge that represents the "affiliation fee" the local pays to the national union. But, it covers only the part of the affiliation fee that helps to pay for the national's own chargeable activities, which include some litigation activities that directly benefit other locals or the national itself, rather than respondent local. The petitioners, nonmembers of the local, brought this suit claiming, *inter alia*, that the First Amendment prohibits charging them for any portion of the service fee that represents litigation that does not directly benefit the local, *i. e.*, "national litigation." The District Court found no material facts at issue and upheld this element of the fee. The First Circuit affirmed.

Held: Under this Court's precedent, the First Amendment permits a local union to charge nonmembers for national litigation expenses as long as (1) the subject matter of the (extralocal) litigation is of a kind that would be chargeable if the litigation were local, *e. g.*, litigation appropriately related to collective bargaining rather than political activities, and (2) the charge is reciprocal in nature, *i. e.*, the contributing local reasonably expects other locals to contribute similarly to the national's resources used for costs of similar litigation on behalf of the contributing local if and when it takes place. Pp. 213–221.

(a) Prior decisions frame the question at issue. The Court has long held that the First Amendment permits local unions designated as the exclusive bargaining representatives for certain employees to charge nonmember employees a service fee as a condition of their continued employment. With respect to litigation expenses, the Court also held that a local could charge nonmembers for expenses of litigation normally conducted by an exclusive representative, including litigation incidental to collective bargaining, but said (in language that the petitioners here emphasize) that litigation expenses "not having such a connection with

the bargaining unit are not to be charged to objecting employees." *Ellis* v. *Railway Clerks*, 466 U. S. 435, 453. Later, the Court held, with respect to the chargeability of a local's payment of an affiliation fee to a national, that the local "may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit." *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 524. The Court added that the local unit need not "demonstrate a direct and tangible impact upon the dissenting employee's unit," although there must be "some indication that the payment [say, to the national] is for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." *Ibid.* However, the *Lehnert* Court split into three irreconcilable factions on the subject here at issue, payment for national litigation. Pp. 213–217.

(b) Because *Lehnert* failed to find a majority as to the chargeability of national litigation expenses, the lower courts have been uncertain about the matter. Having examined the question further, however, the Court now believes that, consistent with its precedent, costs of such litigation are chargeable provided the litigation meets the relevant standards for charging other national expenditures that the *Lehnert* majority enunciated. Under those standards, a local may charge a nonmember an appropriate share of its contribution to a national's litigation expenses if (1) the subject matter of the national litigation bears an appropriate relation to collective bargaining and (2) the arrangement is reciprocal—that is, the local's payment to the national affiliate is for "services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." 500 U. S., at 524. Logic suggests that the same standard should apply to national litigation expenses as to other national expenses, and the Court can find no significant difference between litigation activities and other national activities, the cost of which this Court has found chargeable. The petitioners' arguments to the contrary, which rest primarily on their understanding of *Ellis* and *Lehnert*, are rejected. Pp. 217–219.

(c) Applying *Lehnert*'s standard to the national litigation expenses at issue demonstrates that they are both appropriately related to collective-bargaining activities and reciprocal, and are therefore chargeable. First, the record establishes that the *kind* of national litigation activity for which the local charges nonmembers concerns only those aspects of collective bargaining, contract administration, or other matters that the courts have held chargeable. No one here denies that under *Lehnert* this kind of activity bears an appropriate relation to col-

lective bargaining. See, *e. g.*, 500 U. S., at 519. Second, although the *location* of the litigation activity is at the *national* (or extraunit) level, such activity is chargeable as long as the charges are for services that may ultimately inure to local members' benefit by virtue of their membership in the national union. *Ibid.* Respondent local says that the payment of its affiliation fee gives locals in general access to the national's financial resources—compiled via contributions from various locals—which would not otherwise be available to the local when needed to effectively negotiate, administer, or enforce the local's collective-bargaining agreements. Because no one claims that the national would treat respondent local any differently from other locals in this regard, the existence of reciprocity is not in dispute. Pp. 219–221.

498 F. 3d 49, affirmed.

BREYER, J., delivered the opinion for a unanimous Court. ALITO, J., filed a concurring opinion, in which ROBERTS, C. J., and SCALIA, J., joined, *post*, p. 221.

W. James Young argued the cause for petitioners. With him on the briefs were *Milton L. Chappell* and *Stephen C. Whiting.*

Jeremiah A. Collins argued the cause for respondents. With him on the brief for respondent Maine State Employees Association, SEIU Local 1989, Service Employees International Union were *Robert Alexander* and *Laurence Gold.**

JUSTICE BREYER delivered the opinion of the Court.

The State of Maine requires government employees to pay a service fee to the local union that acts as their exclusive bargaining agent even if those employees disagree with, and

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**Sharon L. Browne* and *Alan W. Foutz* filed a brief for the Pacific Legal Foundation et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* were filed for the United States by former *Solicitors General Clement* and *Garre, Acting Assistant Attorney General Katsas, Daryl Joseffer, Douglas N. Letter, Mark S. Flynn,* and *Nora Carroll;* and for the Commonwealth of Virginia by *Robert F. McDonnell,* Attorney General, *William E. Thro,* State Solicitor General, *Stephen R. McCullough,* Deputy State Solicitor General, and *William C. Mims,* Chief Deputy Attorney General.

do not belong to, the union. This Court has held that, in principle, the government may require this kind of payment without violating the First Amendment. See, *e. g.*, *Railway Employes* v. *Hanson*, 351 U. S. 225 (1956) (upholding such an arrangement as constitutional); *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977) (same); *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507 (1991) (same). At the same time, the Court has considered the constitutionality of charging for various elements of such a fee, upholding the charging of some elements (*e. g.*, those related to administering a collective-bargaining contract) while forbidding the charging of other elements (*e. g.*, those related to political expenditures). Compare, *e. g.*, *Ellis* v. *Railway Clerks*, 466 U. S. 435 (1984), with *Machinists* v. *Street*, 367 U. S. 740 (1961).

In this case, a local union charges nonmembers a service fee that (among other things) reflects an affiliation fee that the local union pays to its national union organization. We focus upon one portion of that fee, a portion that the national union uses to pay for litigation expenses incurred in large part on behalf of *other* local units. We ask whether a local's charge to nonmembers that reflects that element is consistent with the First Amendment. And we conclude that under our precedent the Constitution permits including this element in the local's charge to nonmembers as long as (1) the subject matter of the (extralocal) litigation is of a kind that would be chargeable if the litigation were local, *e. g.*, litigation appropriately related to collective bargaining rather than political activities, and (2) the litigation charge is reciprocal in nature, *i. e.*, the contributing local reasonably expects other locals to contribute similarly to the national's resources used for costs of similar litigation on behalf of the contributing local if and when it takes place.

I

Maine has designated the Maine State Employees Association (the local union) as the exclusive bargaining agent

for certain executive branch employees. A collective-bargaining agreement between Maine and the local requires nonmember employees whom the union represents to pay the local union a "service fee." And that service fee equals that portion of ordinary union dues that is related to ordinary representational activities, *e. g.*, collective-bargaining or contract administration activities. In calculating the fee, the union starts with ordinary union dues and subtracts a sum representing the pro rata cost of nonchargeable union activities such as political, public relations, or lobbying activities.

The service fee includes a charge that represents the affiliation fee the local pays to its national union, the Service Employees International Union. The included charge takes account of the affiliation fee, however, only insofar as the fee helps to pay for the national's activities that are of a chargeable kind, such as collective-bargaining or contract administration activities. The local does not charge nonmembers for the portion of the affiliation fee that helps pay for the national's activities of a kind that would not normally be chargeable, such as political, public relations, or lobbying activities.

The local includes in the chargeable portion of the affiliation fee an amount that helps the national pay for litigation activities, some of which do not *directly* benefit Maine's state employees' local but rather directly benefit other locals or the national organization itself. (For purposes of simplicity, we shall call all this extraunit litigation "national litigation.") As is true of all other parts of the affiliation fee, the local's charge to nonmembers reflects these national litigation costs only insofar as the national litigation concerns activities that are of a chargeable kind. The local does not charge nonmembers for the portion of national litigation costs that concerns activities of a kind that would not normally be chargeable, such as political, public relations, or lobbying activities.

Numbers may help illustrate the scope of the issue. In 2005, the full service fee the local charged nonmembers amounted to about 49% of a member's ordinary union dues. (The petitioners here, beneficiaries of grandfathering rules, paid a half fee, amounting to about 24.5% of a member's fee.) The full fee for employees like the petitioners would have amounted to about $9.70 per month. About $1.34 per month of that $9.70 reflected a pro rata share of the portion of the national affiliation fee that the local believed was chargeable. The portion of the $1.34 per month affiliation fee charge that represented national litigation costs—the cost here at issue—amounted to considerably less.

Although the amount at issue per nonmember may be small, nonmembers believed the principle important. And in December 2005, nonmembers challenged in arbitration several aspects of the local's service fee, including the element at issue here. In 2006, the arbitrator found all aspects of the service fee lawful. Before the arbitrator reached his decision, however, the petitioners, who are nonmembers of the local union, brought this lawsuit in Maine's Federal District Court also challenging various aspects of the service fee, including this element. In particular, they claimed that the First Amendment prohibits charging them for any portion of the service fee that represents what we have called "national litigation," *i. e.*, litigation that does not directly benefit the local. The District Court, finding no material facts at issue, upheld this element of the fee. 425 F. Supp. 2d 137 (2006). The Court of Appeals for the First Circuit affirmed the District Court's determination. 498 F. 3d 49 (2007). Because of uncertainty among the Circuits as to whether, or when, the Constitution permits charging nonmembers for the costs of national litigation, we granted certiorari. Compare *Otto* v. *Pennsylvania State Educ. Assn.-NEA*, 330 F. 3d 125 (CA3 2003), with *Pilots Against Illegal Dues* v. *Air Line Pilots Assn.*, 938 F. 2d 1123 (CA10 1991).

II

Prior decisions of this Court frame the question before us. In *Hanson*, *Street*, and *Abood*, the Court set forth a general First Amendment principle: The First Amendment permits the government to require both public sector and private sector employees who do not wish to join a union designated as the exclusive collective-bargaining representative at their unit of employment to pay that union a service fee as a condition of their continued employment. Taken together, *Hanson* and *Street* make clear that the local union cannot charge the nonmember for certain activities, such as political or ideological activities (with which the nonmembers may disagree). But under that precedent, the local can charge nonmembers for activities more directly related to collective bargaining. In such instances, the Court has determined that the First Amendment burdens accompanying the payment requirement are justified by the government's interest in preventing freeriding by nonmembers who benefit from the union's collective-bargaining activities and in maintaining peaceful labor relations. *Street*, 367 U. S., at 768–772; *Hanson*, 351 U. S., at 233–238.

In *Abood*, the Court explained the basis for a First Amendment challenge to service fees as follows: "To be required to help finance the union as a collective-bargaining agent might well be thought . . . to interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit." 431 U. S., at 222. But the *Abood* Court rejected such a challenge. It found that, "the judgment clearly made in *Hanson* and *Street* is that such interference as exists is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress." *Ibid.* The Court added that, " 'furtherance of the common cause leaves some leeway for the leadership of the group. As long as they act to promote the cause which justified bringing the group together,

the individual cannot withdraw his financial support merely because he disagrees with the group's strategy.' " *Id.*, at 223 (quoting *Street*, *supra*, at 778 (Douglas, J., concurring)).

In *Ellis* and *Lehnert*, the Court refined the general First Amendment principle. In particular, it refined the boundaries of *Abood*'s constitutional "leeway" by describing the nature of the cost elements that the local, constitutionally speaking, could include, or which the local could not constitutionally include, in the service fee. In 1984, the Court wrote in *Ellis* that service fees are constitutionally permissible when they relate to the union's duties of "negotiating and administering a collective agreement and in adjusting grievances and disputes." 466 U. S., at 446–447 (citing *Railway Clerks* v. *Allen*, 373 U. S. 113, 121 (1963)). Accordingly, the Court explained, the local union could charge the nonmember for union "expenditures [that] are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." 466 U. S., at 448. In doing so, the union could charge nonmembers for "the direct costs of negotiating and administering a collective-bargaining contract" and for "the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit." *Ibid.*

Applying this standard, the *Ellis* Court examined the particular service fee charges challenged in that case. The Court held that the local union could charge nonmembers for the costs of a national convention, *id.*, at 448–449; for the costs of social activities, *id.*, at 449–450; and for the costs of those portions of publications not devoted to political causes, *id.*, at 450–451. Convention expenses are chargeable, the Court explained, because, if a local union is to function effectively, "it must maintain its corporate or associational existence." *Id.*, at 448.

The Court also held that the local union could charge nonmembers for litigation expenses incidental to the local union's negotiation or administration of a collective-bargaining agreement, fair representation litigation, jurisdictional disputes, or other litigation normally conducted by an exclusive representative. *Id.*, at 453. But the Court then said (in language that the petitioners here emphasize) that "*expenses of litigation not having such a connection with the bargaining unit are not to be charged to objecting employees.*" *Ibid.* (emphasis added).

In 1991, the Court in *Lehnert* again described when an expense is chargeable. The Court said that a chargeable expenditure must bear an appropriate relation to collective-bargaining activity. 500 U. S., at 519. (Its specific description of that relation is not at issue here. Compare *ibid.* with *id.*, at 557–558 (SCALIA, J., concurring in judgment in part and dissenting in part).) The Court then considered one aspect of the matter here before us, the chargeability of a local union's payment to a national organization, say, an affiliation fee. The Court assumed that, in any given year, such a payment would primarily benefit other local units or the national organization itself, but it would not necessarily provide a direct benefit to the contributing local. The petitioners in the case (nonmembers of a teacher's union) argued that the Constitution forbids a local union to charge nonmembers for these activities, *i. e.*, for "activities that, though closely related to collective bargaining generally, are not undertaken directly on behalf of the bargaining unit to which the objecting employees belong." *Id.*, at 519.

The Court divided five to four on the general affiliation fee matter. The majority of the Court rejected the nonmembers' claim. The Court noted that it had "never interpreted" the chargeability test "to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit." *Id.*, at 522. Indeed, "to

require so close a connection would be to ignore the unified-membership structure under which many unions, including those here, operate." *Id.*, at 523. Rather, the affiliation relationship is premised on the "notion that the parent will bring to bear its often considerable economic, political, and informational resources when the local is in need of them." *Ibid.* And that "part of a local's affiliation fee which contributes to the pool of resources potentially available to the local is assessed for the bargaining unit's protection, even if it is not actually expended on that unit in any particular membership year." *Ibid.*

The Court then held that "a local bargaining representative may charge objecting employees for their pro rata share of the *costs associated with otherwise chargeable activities of its state and national affiliates*, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit." *Id.*, at 524 (emphasis added). Of particular relevance here, the Court added that the local unit need not "demonstrate a direct and tangible impact upon the dissenting employee's unit." Nonetheless, it said, there must be "some indication that the payment [say, to the national affiliate] is for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." *Ibid.*

Finally, the *Lehnert* Court turned to the subject now before us, that of payment for national litigation. On this point, the Court split into three irreconcilable factions. A plurality of four wrote that, even though the union was "clearly correct that precedent established through litigation on behalf of one unit may ultimately be of some use to another unit," it nonetheless found "extraunit litigation to be more akin to lobbying in both kind and effect." *Id.*, at 528. The plurality added that litigation is often "expressive." It concluded that "[w]hen unrelated to an objecting employee's unit, such activities are not germane to the union's duties as exclusive bargaining representative." *Ibid.*

The Member of the Court who provided the fifth vote for the other portions of the Court's opinion dissented from the part of the opinion on national litigation. Justice Marshall noted that the plurality's discussion of national litigation costs was dicta because no such costs were at issue in the case. *Id.*, at 544 (opinion concurring in part and dissenting in part). Nevertheless, Justice Marshall characterized any rule that found national litigation costs *per se* nonchargeable as "surely incorrect" and indicated such costs should be assessed under the plurality's own test, *i. e.*, whether the litigation bears an appropriate relation to collective bargaining. *Id.*, at 546–547.

At the same time, four Members of the Court agreed with the nonmembers that including national costs in the service fee violates the First Amendment except when those costs pay for specific services "actually provided" to the local. *Id.*, at 561 (SCALIA, J., concurring in judgment in part and dissenting in part) (emphasis deleted). They thought that a local union cannot charge nonmembers for national activities unless there is a direct relationship between the expenses and "some tangible benefit to the dissenters' bargaining unit." *Id.*, at 562 (internal quotation marks omitted). In other words, the dissent expressly rejected the majority's chargeability test for national expenses. But the dissent did not separately discuss national litigation activities, perhaps because, as Justice Marshall pointed out, they were not directly at issue in that case.

III

As a result of the *Lehnert* Court's failure to find a majority as to the chargeability of national litigation expenses, the lower courts have been uncertain about the matter. Compare *Otto*, 330 F. 3d, at 138, with *Pilots Against Illegal Dues*, 938 F. 2d, at 1130–1131. Having examined the question further, we now believe that, consistent with the Court's precedent, costs of that litigation are chargeable provided

the litigation meets the relevant standards for charging other national expenditures that the *Lehnert* majority enunciated. Under those standards, a local union may charge a nonmember an appropriate share of its contribution to a national's litigation expenses if (1) the subject matter of the national litigation bears an appropriate relation to collective bargaining and (2) the arrangement is reciprocal—that is, the local's payment to the national affiliate is for "services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." 500 U. S., at 524.

We reach this conclusion in part because logic suggests that the same standard should apply to national litigation expenses as to other national expenses. We can find no significant difference between litigation activities and other national activities the cost of which this Court has found chargeable. We can find no sound basis for holding that national social activities, national convention activities, and activities involved in producing the nonpolitical portions of national union publications all are chargeable but national litigation activities are not. See *Ellis*, 466 U. S., at 448–451. Of course, a local nonmember presumably has the right to attend, and consequently can directly benefit from, national social and convention activities; and a local nonmember can read, and benefit from, a national publication. But so can a local nonmember benefit from national litigation aimed at helping other units if the national or those other units will similarly contribute to the cost of litigation on the local union's behalf should the need arise.

The petitioners' arguments to the contrary rest primarily upon their understanding of *Ellis* and *Lehnert*. *Ellis*, we must concede, sets forth certain kinds of national litigation—for the most part directly related to a local union's particular interests—as chargeable; but it then goes on to say, as we have earlier pointed out, *supra*, at 215, that "expenses of litigation not having such a connection with the bargaining

unit are not to be charged to objecting employees." 466 U. S., at 453. Nonetheless, as the Court of Appeals noted, the *Ellis* Court focused upon a local union's payment of national litigation expenses *without any understanding as to reciprocity.* Indeed, JUSTICE KENNEDY pointed out in his *Lehnert* dissent, "*Ellis* . . . contains no discussion of whether a local bargaining unit might choose to fund litigation . . . through a cost sharing arrangement under the auspices of the affiliate." 500 U. S., at 564 (opinion concurring in judgment in part and dissenting in part). *Ellis* nowhere explains *why* reciprocal litigation funding arrangements would fail to benefit a local union. Hence, *Ellis* does not answer the question presented here.

We must also concede that a plurality in *Lehnert* wrote that national litigation expenses were not chargeable "[w]hen unrelated to an objecting employee's unit." 500 U. S., at 528. But, again, reciprocal litigation funding was not before the Court; hence the plurality could not (and did not) decide whether an understanding as to reciprocity produced the relationship necessary for chargeability. Regardless, a plurality does not speak for the Court as a whole.

Nor can one simply add together the four *Lehnert* dissenters and the four Members of the plurality in an effort to find a majority of Justices who hold the petitioners' view. That is because the *Lehnert* majority, speaking for the Court, adopted a more liberal standard of chargeability than the standard embraced by the dissent. And the question here is whether *that standard* permits charging nonmembers for national litigation expenses. There was no majority agreement in *Lehnert* about the answer to this last mentioned question. The best we can do for the petitioners is to find *Lehnert* ambiguous on the point at issue.

IV

Applying *Lehnert*'s standard to the national litigation expenses here at issue, we find them chargeable. First, the

kind of national litigation activity for which the local charges nonmembers concerns only those aspects of collective bargaining, contract administration, or other matters that the courts have held chargeable. *Ellis*, *supra*, at 446–447. The lower courts found (and the petitioners here do not dispute) that the local charges nonmembers *only* for those national litigation activities that, in respect to subject matter, "were comparable to those undertaken" by the local and which the local "deemed chargeable" in its calculation of the "service fee." 498 F. 3d, at 52, 64–65. And no one here denies that under *Lehnert* this *kind* of activity bears an appropriate relation to collective bargaining. See, *e. g.*, *Lehnert*, 500 U. S., at 519 (plurality opinion); see also *id.*, at 524 ("[A] local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates . . . ").

Second, the *location* of the litigation activity is at the *national* (or extraunit), not the local, level. But, as we have just said (under *Lehnert*), activity at the national level is chargeable as long as the charges in question are "for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." *Ibid.*

The Court of Appeals treated the litigation charge at issue as reciprocal in nature, and concluded the District Court must have done so as well. See 498 F. 3d, at 64–65. The local union here says that the payment of its affiliation fee gives locals in general access to the national's financial resources—compiled via contributions from various locals—"which would not otherwise be available to the local union when needed to effectively negotiate, administer or enforce the local's collective bargaining agreements." Brief for Respondent 18–19. The resources in question include resources related to litigation. No one claims that the national would treat the local union before us any differently, in terms of making these resources available, than the national would

treat any other local. The petitioners do not suggest the contrary. And we consequently conclude, as did the lower courts, that the existence of reciprocity is assumed by the parties and not here in dispute.

The record then leads us to find that the national litigation expenses before us are both appropriately related to collective bargaining and reciprocal. Consequently, consistent with our precedent, those expenses are chargeable. The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE ALITO, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, concurring.

I join the opinion of the Court but write separately to note that our decision, as I understand it, does not reach the question of what "reciprocity" means. Petitioners have taken an all-or-nothing position, contending that nonmembers of a local may *never* be assessed for *any* portion of the national's extraunit litigation expenses. See *ante*, at 212 (noting that petitioners "claimed that the First Amendment prohibits charging them for *any* portion of the service fee that represents what we have called 'national litigation,' *i. e.*, litigation that does not directly benefit the local" (emphasis added)). The opinion correctly concludes, "as did the lower courts, that the existence of reciprocity is assumed by the parties and not here in dispute." *Ante* this page.

Thus, this case does not require us to address what is meant by a charge being "reciprocal in nature," or what showing is required to establish that services "'may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.'" *Ante*, at 220 (quoting *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 524 (1991)). I understand the Court's opinion to conclude that the litigation expenses at issue here are chargeable only because the parties assumed that the benefit of any such expenses would be reciprocal.

In its brief as *amicus curiae,* the United States argues that a national union must bear the burden of proving that any expenditures charged to nonmembers of a local are made pursuant to a bona fide pooling arrangement. See Brief for United States 28–29. Once nonmembers object to a charge, the Government submits, the union must prove that the challenged expenditure was made pursuant to an arrangement that is akin to an insurance policy. See *id.*, at 7. This is necessary, the Government contends, to ensure that a charge is in fact "reciprocal in nature."

Because important First Amendment rights are at stake, the Government's argument regarding the burden of establishing true reciprocity has considerable force. Nonetheless, since petitioners in this case did not raise the question whether the Maine State Employees Association's pooling arrangement was bona fide, we need not reach that question today.

Syllabus

PEARSON ET AL. *v.* CALLAHAN

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

No. 07–751. Argued October 14, 2008—Decided January 21, 2009

After the Utah Court of Appeals vacated respondent's conviction for possession and distribution of drugs, which he sold to an undercover informant he had voluntarily admitted into his house, he brought this 42 U. S. C. § 1983 damages action in federal court, alleging that petitioners, the officers who supervised and conducted the warrantless search of the premises that led to his arrest after the sale, had violated the Fourth Amendment. The District Court granted summary judgment in favor of the officers. Noting that other courts had adopted the "consent-once-removed" doctrine—which permits a warrantless police entry into a home when consent to enter has already been granted to an undercover officer who has observed contraband in plain view—the court concluded that the officers were entitled to qualified immunity because they could reasonably have believed that the doctrine authorized their conduct. Following the procedure mandated in *Saucier* v. *Katz*, 533 U. S. 194, the Tenth Circuit held that petitioners were not entitled to qualified immunity. The court disapproved broadening the consent-once-removed doctrine to situations in which the person granted initial consent was not an undercover officer, but merely an informant. It further held that the Fourth Amendment right to be free in one's home from unreasonable searches and arrests was clearly established at the time of respondent's arrest, and determined that, under this Court's clearly established precedents, warrantless entries into a home are *per se* unreasonable unless they satisfy one of the two established exceptions for consent and exigent circumstances. The court concluded that petitioners could not reasonably have believed that their conduct was lawful because they knew that (1) they had no warrant; (2) respondent had not consented to their entry; and (3) his consent to the entry of an informant could not reasonably be interpreted to extend to them. In granting certiorari, this Court directed the parties to address whether *Saucier* should be overruled in light of widespread criticism directed at it.

Held:

1. The *Saucier* procedure should not be regarded as an inflexible requirement. Pp. 231–243.

(a) *Saucier* mandated, see 533 U. S., at 194, a two-step sequence for resolving government officials' qualified immunity claims: A court

must decide (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was "clearly established" at the time of the defendant's alleged misconduct, *id.*, at 201. Qualified immunity applies unless the official's conduct violated such a right. *Anderson* v. *Creighton*, 483 U. S. 635, 640. Pp. 231–232.

(b) *Stare decisis* does not prevent this Court from determining whether the *Saucier* procedure should be modified or abandoned. Revisiting precedent is particularly appropriate where, as here, a departure would not upset settled expectations, see, *e. g.*, *United States* v. *Gaudin*, 515 U. S. 506, 521; the precedent consists of a rule that is judge made and adopted to improve court operations, not a statute promulgated by Congress, see, *e. g.*, *State Oil Co.* v. *Khan*, 522 U. S. 3, 20; and the precedent has "been questioned by Members of th[is] Court in later decisions and [has] defied consistent application by the lower courts," *Payne* v. *Tennessee*, 501 U. S. 808, 829–830. Respondent's argument that *Saucier* should not be reconsidered unless the Court concludes that it was "badly reasoned" or that its rule has proved "unworkable," see *Payne*, *supra*, at 827, is rejected. Those standards are out of place in the present context, where a considerable body of new experience supports a determination that a mandatory, two-step rule for resolving all qualified immunity claims should not be retained. Pp. 233–235.

(c) Reconsideration of the *Saucier* procedure demonstrates that, while the sequence set forth therein is often appropriate, it should no longer be regarded as mandatory in all cases. Pp. 236–243.

(i) The Court continues to recognize that the *Saucier* protocol is often beneficial. In some cases, a discussion of why the relevant facts do not violate clearly established law may make it apparent that in fact the relevant facts do not make out a constitutional violation at all. And *Saucier* was correct in noting that the two-step procedure promotes the development of constitutional precedent and is especially valuable for questions that do not frequently arise in cases in which a qualified immunity defense is unavailable. See 533 U. S., at 194. P. 236.

(ii) Nevertheless, experience in this Court and the lower federal courts has pointed out the rigid *Saucier* procedure's shortcomings. For example, it may result in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the case's outcome, and waste the parties' resources by forcing them to assume the costs of litigating constitutional questions and endure delays attributable to resolving those questions when the suit otherwise could be disposed of more readily. Moreover, although the procedure's first prong is intended to further the development of constitutional precedent, opinions following that procedure often fail to make a meaningful contribution to

such development. Further, when qualified immunity is asserted at the pleading stage, the answer to whether there was a violation may depend on a kaleidoscope of facts not yet fully developed. And the first step may create a risk of bad decisionmaking, as where the briefing of constitutional questions is woefully inadequate. Application of the *Saucier* rule also may make it hard for affected parties to obtain appellate review of constitutional decisions having a serious prospective effect on their operations. For example, where a court holds that a defendant has committed a constitutional violation, but then holds that the violation was not clearly established, the defendant, as the winning party, may have his right to appeal the adverse constitutional holding challenged. Because rigid adherence to *Saucier* departs from the general rule of constitutional avoidance, cf., *e. g.*, *Scott* v. *Harris*, 550 U. S. 372, 388, the Court may appropriately decline to mandate the order of decision that the lower courts must follow, see, *e. g.*, *Strickland* v. *Washington*, 466 U. S. 668, 697. This flexibility properly reflects the Court's respect for the lower federal courts. Because the two-step *Saucier* procedure is often, but not always, advantageous, those judges are in the best position to determine the order of decisionmaking that will best facilitate the fair and efficient disposition of each case. Pp. 236–242.

(iii) Misgivings concerning today's decision are unwarranted. It does not prevent the lower courts from following *Saucier;* it simply recognizes that they should have the discretion to decide whether that procedure is worthwhile in particular cases. Moreover, it will not retard the development of constitutional law, result in a proliferation of damages claims against local governments, or spawn new litigation over the standards for deciding whether to reach the particular case's merits. Pp. 242–243.

2. Petitioners are entitled to qualified immunity because it was not clearly established at the time of the search that their conduct was unconstitutional. When the entry occurred, the consent-once-removed doctrine had been accepted by two State Supreme Courts and three Federal Courts of Appeals, and not one of the latter had issued a contrary decision. Petitioners were entitled to rely on these cases, even though their own Federal Circuit had not yet ruled on consent-once-removed entries. See *Wilson* v. *Layne*, 526 U. S. 603, 618. Pp. 243–245.

494 F. 3d 891, reversed.

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

Peter Stirba argued the cause for petitioners. With him on the briefs were *Meb W. Anderson* and *Orin S. Kerr*.

Malcolm L. Stewart argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were former *Solicitor General Garre*, *Acting Assistant Attorneys General Friedrich* and *Katsas*, *Deputy Solicitor General Dreeben*, *Ann Wallace*, *Barbara L. Herwig*, and *Edward Himmelfarb*.

Theodore P. Metzler, *Jr.*, argued the cause for respondent. With him on the brief were *Robert A. Long*, *Jr.*, and *James K. Slavens*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Michael A. Scodro*, Solicitor General, and *Jane Elinor Notz*, Deputy Solicitor General, by *Roberto J. Sánchez-Ramos*, Secretary of Justice of Puerto Rico, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Dustin McDaniel* of Arkansas, *Edmund G. Brown*, *Jr.*, of California, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Steve Carter* of Indiana, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Jim Hood* of Mississippi, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Anne Milgram* of New Jersey, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett*, *Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper*, *Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Robert M. McKenna* of Washington, *Darrell V. McGraw*, *Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; and for the National Association of Counties et al. by *Richard Ruda* and *Lawrence Rosenthal*.

Briefs of *amici curiae* urging affirmance were filed for the ACLU by *Steven R. Shapiro* and *Adam B. Wolf;* for the National Association of Criminal Defense Lawyers by *Jeffrey A. Lamken* and *Barbara Bergman;* for the National Campaign to Restore Civil Rights by *Beth S. Brinkmann*, *Seth M. Galanter*, and *Michael Gerard;* and for the National Police Accountability Project et al. by *Michael Avery*, *John Burton*, *Stephen M. Latimer*, *David Rudovsky*, and *Jeffrey L. Needle*.

Briefs of *amici curiae* were filed for the Liberty Legal Institute by *Kelly J. Shackelford;* and for the Texas Association of School Boards by *Ramón G. Viada III*.

JUSTICE ALITO delivered the opinion of the Court.

This is an action brought by respondent under Rev. Stat. § 1979, 42 U. S. C. § 1983, against state law enforcement officers who conducted a warrantless search of his house incident to his arrest for the sale of methamphetamine to an undercover informant whom he had voluntarily admitted to the premises. The Court of Appeals held that petitioners were not entitled to summary judgment on qualified immunity grounds. Following the procedure we mandated in *Saucier* v. *Katz*, 533 U. S. 194 (2001), the Court of Appeals held, first, that respondent adduced facts sufficient to make out a violation of the Fourth Amendment and, second, that the unconstitutionality of the officers' conduct was clearly established. In granting review, we required the parties to address the additional question whether the mandatory procedure set out in *Saucier* should be retained.

We now hold that the *Saucier* procedure should not be regarded as an inflexible requirement and that petitioners are entitled to qualified immunity on the ground that it was not clearly established at the time of the search that their conduct was unconstitutional. We therefore reverse.

I

A

The Central Utah Narcotics Task Force is charged with investigating illegal drug use and sales. In 2002, Brian Bartholomew, who became an informant for the task force after having been charged with the unlawful possession of methamphetamine, informed Officer Jeffrey Whatcott that respondent Afton Callahan had arranged to sell Bartholomew methamphetamine later that day.

That evening, Bartholomew arrived at respondent's residence at about 8 p.m. Once there, Bartholomew went inside and confirmed that respondent had methamphetamine available for sale. Bartholomew then told respondent that he needed to obtain money to make his purchase and left.

Bartholomew met with members of the task force at about 9 p.m. and told them that he would be able to buy a gram of methamphetamine for $100. After concluding that Bartholomew was capable of completing the planned purchase, the officers searched him, determined that he had no controlled substances on his person, gave him a marked $100 bill and a concealed electronic transmitter to monitor his conversations, and agreed on a signal that he would give after completing the purchase.

The officers drove Bartholomew to respondent's trailer home, and respondent's daughter let him inside. Respondent then retrieved a large bag containing methamphetamine from his freezer and sold Bartholomew a gram of methamphetamine, which he put into a small plastic bag. Bartholomew gave the arrest signal to the officers who were monitoring the conversation, and they entered the trailer through a porch door. In the enclosed porch, the officers encountered Bartholomew, respondent, and two other persons, and they saw respondent drop a plastic bag, which they later determined contained methamphetamine. The officers then conducted a protective sweep of the premises. In addition to the large bag of methamphetamine, the officers recovered the marked bill from respondent and a small bag containing methamphetamine from Bartholomew, and they found drug syringes in the residence. As a result, respondent was charged with the unlawful possession and distribution of methamphetamine.

B

The trial court held that the warrantless arrest and search were supported by exigent circumstances. On respondent's appeal from his conviction, the Utah attorney general conceded the absence of exigent circumstances, but urged that the inevitable discovery doctrine justified introduction of the fruits of the warrantless search. The Utah Court of Appeals disagreed and vacated respondent's conviction. See *State* v. *Callahan*, 2004 UT App. 164, 93 P. 3d 103. Respond-

ent then brought this damages action under 42 U. S. C. § 1983 in the United States District Court for the District of Utah, alleging that the officers had violated the Fourth Amendment by entering his home without a warrant. See *Callahan* v. *Millard Cty.*, No. 2:04–CV–00952, 2006 WL 1409130 (2006).

In granting the officers' motion for summary judgment, the District Court noted that other courts had adopted the "consent-once-removed" doctrine, which permits a warrantless entry by police officers into a home when consent to enter has already been granted to an undercover officer or informant who has observed contraband in plain view. Believing that this doctrine was in tension with our intervening decision in *Georgia* v. *Randolph*, 547 U. S. 103 (2006), the District Court concluded that "the simplest approach is to assume that the Supreme Court will ultimately reject the [consent-once-removed] doctrine and find that searches such as the one in this case are not reasonable under the Fourth Amendment." 2006 WL 1409130, *8. The court then held that the officers were entitled to qualified immunity because they could reasonably have believed that the consent-once-removed doctrine authorized their conduct.

On appeal, a divided panel of the Tenth Circuit held that petitioners' conduct violated respondent's Fourth Amendment rights. *Callahan* v. *Millard Cty.*, 494 F. 3d 891, 895–899 (2007). The panel majority stated that "[t]he 'consent-once-removed' doctrine applies when an undercover officer enters a house at the express invitation of someone with authority to consent, establishes probable cause to arrest or search, and then immediately summons other officers for assistance." *Id.*, at 896. The majority took no issue with application of the doctrine when the initial consent was granted to an undercover law enforcement officer, but the majority disagreed with decisions that "broade[n] this doctrine to grant informants the same capabilities as undercover officers." *Ibid.*

The Tenth Circuit panel further held that the Fourth Amendment right that it recognized was clearly established at the time of respondent's arrest. *Id.*, at 898–899. "In this case," the majority stated, "the relevant right is the right to be free in one's home from unreasonable searches and arrests." *Id.*, at 898. The Court determined that, under the clearly established precedents of this Court and the Tenth Circuit, "warrantless entries into a home are per se unreasonable unless they satisfy the established exceptions." *Id.*, at 898–899. In the panel's words, "the Supreme Court and the Tenth Circuit have clearly established that to allow police entry into a home, the only two exceptions to the warrant requirement are consent and exigent circumstances." *Id.*, at 899. Against that backdrop, the panel concluded, petitioners could not reasonably have believed that their conduct was lawful because petitioners "knew (1) they had no warrant; (2) [respondent] had not consented to their entry; and (3) [respondent's] consent to the entry of an informant could not reasonably be interpreted to extend to them." *Ibid.*

In dissent, Judge Kelly argued that "no constitutional violation occurred in this case" because, by inviting Bartholomew into his house and participating in a narcotics transaction there, respondent had compromised the privacy of the residence and had assumed the risk that Bartholomew would reveal their dealings to the police. *Id.*, at 903. Judge Kelly further concluded that, even if petitioners' conduct had been unlawful, they were nevertheless entitled to qualified immunity because the constitutional right at issue—"the right to be free from the warrantless entry of police officers into one's home to effectuate an arrest after one has granted voluntary, consensual entry to a confidential informant and undertaken criminal activity giving rise to probable cause"—was not "clearly established" at the time of the events in question. *Id.*, at 903–904.

As noted, the Court of Appeals followed the *Saucier* procedure. The *Saucier* procedure has been criticized by Members of this Court and by lower court judges, who have been required to apply the procedure in a great variety of cases and thus have much firsthand experience bearing on its advantages and disadvantages. Accordingly, in granting certiorari, we directed the parties to address the question whether *Saucier* should be overruled. 552 U. S. 1279 (2008).

II

A

The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982). Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Groh* v. *Ramirez*, 540 U. S. 551, 567 (2004) (KENNEDY, J., dissenting) (quoting *Butz* v. *Economou*, 438 U. S. 478, 507 (1978), for the proposition that qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law").

Because qualified immunity is "an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell* v. *Forsyth*, 472 U. S. 511, 526 (1985) (emphasis deleted). Indeed, we have made clear that the "driving force" behind creation of the qualified immunity doctrine was a desire to ensure that " 'insubstantial claims' against government officials [will] be resolved prior to discovery." *Anderson* v.

Creighton, 483 U. S. 635, 640, n. 2 (1987). Accordingly, "we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter* v. *Bryant*, 502 U. S. 224, 227 (1991) *(per curiam)*.

In *Saucier*, 533 U. S. 194, this Court mandated a two-step sequence for resolving government officials' qualified immunity claims. First, a court must decide whether the facts that a plaintiff has alleged (see Fed. Rules Civ. Proc. 12(b)(6), (c)) or shown (see Rules 50, 56) make out a violation of a constitutional right. 533 U. S., at 201. Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was "clearly established" at the time of defendant's alleged misconduct. *Ibid.* Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right. *Anderson, supra*, at 640.

Our decisions prior to *Saucier* had held that "the better approach to resolving cases in which the defense of qualified immunity is raised is to determine first whether the plaintiff has alleged a deprivation of a constitutional right at all." *County of Sacramento* v. *Lewis*, 523 U. S. 833, 841, n. 5 (1998). *Saucier* made that suggestion a mandate. For the first time, we held that whether "the facts alleged show the officer's conduct violated a constitutional right . . . *must* be the initial inquiry" in every qualified immunity case. 533 U. S., at 201 (emphasis added). Only after completing this first step, we said, may a court turn to "the next, sequential step," namely, "whether the right was clearly established." *Ibid.*

This two-step procedure, the *Saucier* Court reasoned, is necessary to support the Constitution's "elaboration from case to case" and to prevent constitutional stagnation. *Ibid.* "The law might be deprived of this explanation were a court simply to skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case." *Ibid.*

B

In considering whether the *Saucier* procedure should be modified or abandoned, we must begin with the doctrine of *stare decisis*. *Stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). Although "[w]e approach the reconsideration of [our] decisions . . . with the utmost caution," "[*s*]*tare decisis* is not an inexorable command." *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997) (internal quotation marks omitted). Revisiting precedent is particularly appropriate where, as here, a departure would not upset expectations, the precedent consists of a judge-made rule that was recently adopted to improve the operation of the courts, and experience has pointed up the precedent's shortcomings.

"Considerations in favor of *stare decisis* are at their acme in cases involving property and contract rights, where reliance interests are involved; the opposite is true in cases . . . involving procedural and evidentiary rules" that do not produce such reliance. *Payne*, *supra*, at 828 (citations omitted). Like rules governing procedures and the admission of evidence in the trial courts, *Saucier*'s two-step protocol does not affect the way in which parties order their affairs. Withdrawing from *Saucier*'s categorical rule would not upset settled expectations on anyone's part. See *United States* v. *Gaudin*, 515 U. S. 506, 521 (1995).

Nor does this matter implicate "the general presumption that legislative changes should be left to Congress." *Khan*, *supra*, at 20. We recognize that "considerations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation." *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720, 736 (1977). But the *Saucier* rule is judge made and implicates an important matter involving internal Judicial

Branch operations. Any change should come from this Court, not Congress.

Respondent argues that the *Saucier* procedure should not be reconsidered unless we conclude that its justification was "badly reasoned" or that the rule has proved to be "unworkable," see *Payne*, *supra*, at 827, but those standards, which are appropriate when a constitutional or statutory precedent is challenged, are out of place in the present context. Because of the basis and the nature of the *Saucier* two-step protocol, it is sufficient that we now have a considerable body of new experience to consider regarding the consequences of requiring adherence to this inflexible procedure. This experience supports our present determination that a mandatory, two-step rule for resolving all qualified immunity claims should not be retained.

Lower court judges, who have had the task of applying the *Saucier* rule on a regular basis for the past eight years, have not been reticent in their criticism of *Saucier*'s "rigid order of battle." See, *e. g.*, *Purtell* v. *Mason*, 527 F. 3d 615, 622 (CA7 2008) ("This 'rigid order of battle' has been criticized on practical, procedural, and substantive grounds"); Leval, Judging Under the Constitution: Dicta About Dicta, 81 N. Y. U. L. Rev. 1249, 1275, 1277 (2006) (hereinafter Leval) (referring to *Saucier*'s mandatory two-step framework as "a new and mischievous rule" that amounts to "a puzzling misadventure in constitutional dictum"). And application of the rule has not always been enthusiastic. See *Higazy* v. *Templeton*, 505 F. 3d 161, 179, n. 19 (CA2 2007) ("We do not reach the issue of whether [plaintiff's] Sixth Amendment rights were violated, because principles of judicial restraint caution us to avoid reaching constitutional questions when they are unnecessary to the disposition of a case"); *Cherrington* v. *Skeeter*, 344 F. 3d 631, 640 (CA6 2003) ("[I]t ultimately is unnecessary for us to decide whether the individual Defendants did or did not heed the Fourth Amendment

command . . . because they are entitled to qualified immunity in any event"); *Pearson* v. *Ramos*, 237 F. 3d 881, 884 (CA7 2001) ("Whether [the *Saucier*] rule is absolute may be doubted").

Members of this Court have also voiced criticism of the *Saucier* rule. See *Morse* v. *Frederick*, 551 U. S. 393, 432 (2007) (BREYER, J., concurring in judgment in part and dissenting in part) ("I would end the failed *Saucier* experiment now"); *Bunting* v. *Mellen*, 541 U. S. 1019 (2004) (STEVENS, J., joined by GINSBURG and BREYER, JJ., respecting denial of certiorari) (criticizing the "unwise judge-made rule under which courts must decide whether the plaintiff has alleged a constitutional violation before addressing the question whether the defendant state actor is entitled to qualified immunity"); *id.*, at 1025 (SCALIA, J., joined by Rehnquist, C. J., dissenting from denial of certiorari) ("We should either make clear that constitutional determinations are *not* insulated from our review . . . or else drop any pretense at requiring the ordering in every case" (emphasis in original)); *Brosseau* v. *Haugen*, 543 U. S. 194, 201–202 (2004) (BREYER, J., joined by SCALIA and GINSBURG, JJ., concurring) (urging Court to reconsider *Saucier*'s "rigid 'order of battle,'" which "requires courts unnecessarily to decide difficult constitutional questions when there is available an easier basis for the decision (*e. g.*, qualified immunity) that will satisfactorily resolve the case before the court"); *Saucier*, 533 U. S., at 210 (GINSBURG, J., concurring in judgment) ("The two-part test today's decision imposes holds large potential to confuse").

Where a decision has "been questioned by Members of the Court in later decisions and [has] defied consistent application by the lower courts," these factors weigh in favor of reconsideration. *Payne*, 501 U. S., at 829–830; see also *Crawford* v. *Washington*, 541 U. S. 36, 60 (2004). Collectively, the factors we have noted make our present reevaluation of the *Saucier* two-step protocol appropriate.

III

On reconsidering the procedure required in *Saucier*, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory. The judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.

A

Although we now hold that the *Saucier* protocol should not be regarded as mandatory in all cases, we continue to recognize that it is often beneficial. For one thing, there are cases in which there would be little if any conservation of judicial resources to be had by beginning and ending with a discussion of the "clearly established" prong. "[I]t often may be difficult to decide whether a right is clearly established without deciding precisely what the existing constitutional right happens to be." *Lyons* v. *Xenia*, 417 F. 3d 565, 581 (CA6 2005) (Sutton, J., concurring). In some cases, a discussion of why the relevant facts do not violate clearly established law may make it apparent that in fact the relevant facts do not make out a constitutional violation at all. In addition, the *Saucier* Court was certainly correct in noting that the two-step procedure promotes the development of constitutional precedent and is especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is unavailable.

B

At the same time, however, the rigid *Saucier* procedure comes with a price. The procedure sometimes results in a substantial expenditure of scarce judicial resources on diffi-

cult questions that have no effect on the outcome of the case. There are cases in which it is plain that a constitutional right is not clearly established but far from obvious whether in fact there is such a right. District courts and courts of appeals with heavy caseloads are often understandably unenthusiastic about what may seem to be an essentially academic exercise.

Unnecessary litigation of constitutional issues also wastes the parties' resources. Qualified immunity is "an immunity from suit rather than a mere defense to liability." *Mitchell*, 472 U. S., at 526 (emphasis deleted). *Saucier*'s two-step protocol "disserve[s] the purpose of qualified immunity" when it "forces the parties to endure additional burdens of suit—such as the costs of litigating constitutional questions and delays attributable to resolving them—when the suit otherwise could be disposed of more readily." Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 30.

Although the first prong of the *Saucier* procedure is intended to further the development of constitutional precedent, opinions following that procedure often fail to make a meaningful contribution to such development. For one thing, there are cases in which the constitutional question is so factbound that the decision provides little guidance for future cases. See *Scott* v. *Harris*, 550 U. S. 372, 388 (2007) (Breyer, J., concurring) (counseling against the *Saucier* two-step protocol where the question is "so fact dependent that the result will be confusion rather than clarity"); *Buchanan* v. *Maine*, 469 F. 3d 158, 168 (CA1 2006) ("We do not think the law elaboration purpose will be well served here, where the Fourth Amendment inquiry involves a reasonableness question which is highly idiosyncratic and heavily dependent on the facts").

A decision on the underlying constitutional question in a § 1983 damages action or a *Bivens* v. *Six Unknown Fed. Nar-*

cotics Agents, 403 U. S. 388 (1971),[1] action may have scant value when it appears that the question will soon be decided by a higher court. When presented with a constitutional question on which this Court had just granted certiorari, the Ninth Circuit elected to "bypass *Saucier's* first step and decide only whether [the alleged right] was clearly established." *Motley* v. *Parks*, 432 F. 3d 1072, 1078, and n. 5 (2005) (en banc). Similar considerations may come into play when a court of appeals panel confronts a constitutional question that is pending before the court en banc or when a district court encounters a constitutional question that is before the court of appeals.

A constitutional decision resting on an uncertain interpretation of state law is also of doubtful precedential importance. As a result, several courts have identified an "exception" to the *Saucier* rule for cases in which resolution of the constitutional question requires clarification of an ambiguous state statute. *Egolf* v. *Witmer*, 526 F. 3d 104, 109–111 (CA3 2008); accord, *Tremblay* v. *McClellan*, 350 F. 3d 195, 200 (CA1 2003); *Ehrlich* v. *Glastonbury*, 348 F. 3d 48, 57–60 (CA2 2003). Justifying the decision to grant qualified immunity to the defendant without first resolving, under *Saucier*'s first prong, whether the defendant's conduct violated the Constitution, these courts have observed that *Saucier*'s "underlying principle" of encouraging federal courts to decide unclear legal questions in order to clarify the law for the future "is not meaningfully advanced . . . when the definition of constitutional rights depends on a federal court's uncertain assumptions about state law." *Egolf*, *supra*, at 110; accord, *Tremblay*, *supra*, at 200; *Ehrlich*, *supra*, at 58.

When qualified immunity is asserted at the pleading stage, the precise factual basis for the plaintiff's claim or claims

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[1] See *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818, and n. 30 (1982) (noting that the Court's decisions equate the qualified immunity of state officials sued under 42 U. S. C. § 1983 with the immunity of federal officers sued directly under the Constitution).

may be hard to identify. See *Lyons*, 417 F. 3d, at 582 (Sutton, J., concurring); *Kwai Fun Wong* v. *United States*, 373 F. 3d 952, 957 (CA9 2004); *Mollica* v. *Volker*, 229 F. 3d 366, 374 (CA2 2000). Accordingly, several courts have recognized that the two-step inquiry "is an uncomfortable exercise where . . . the answer [to] whether there was a violation may depend on a kaleidoscope of facts not yet fully developed" and have suggested that "[i]t may be that *Saucier* was not strictly intended to cover" this situation. *Dirrane* v. *Brookline Police Dept.*, 315 F. 3d 65, 69–70 (CA1 2002); see also *Robinette* v. *Jones*, 476 F. 3d 585, 592, n. 8 (CA8 2007) (declining to follow *Saucier* because "the parties have provided very few facts to define and limit any holding" on the constitutional question).

There are circumstances in which the first step of the *Saucier* procedure may create a risk of bad decisionmaking. The lower courts sometimes encounter cases in which the briefing of constitutional questions is woefully inadequate. See *Lyons*, *supra*, at 582 (Sutton, J., concurring) (noting the "risk that constitutional questions may be prematurely and incorrectly decided in cases where they are not well presented"); *Mollica*, *supra*, at 374.

Although the *Saucier* rule prescribes the sequence in which the issues must be discussed by a court in its opinion, the rule does not—and obviously cannot—specify the sequence in which judges reach their conclusions in their own internal thought processes. Thus, there will be cases in which a court will rather quickly and easily decide that there was no violation of clearly established law before turning to the more difficult question whether the relevant facts make out a constitutional question at all. In such situations, there is a risk that a court may not devote as much care as it would in other circumstances to the decision of the constitutional issue. See *Horne* v. *Coughlin*, 191 F. 3d 244, 247 (CA2 1999) ("Judges risk being insufficiently thoughtful and cautious in

uttering pronouncements that play no role in their adjudication"); Leval 1278–1279.

Rigid adherence to the *Saucier* rule may make it hard for affected parties to obtain appellate review of constitutional decisions that may have a serious prospective effect on their operations. Where a court holds that a defendant committed a constitutional violation but that the violation was not clearly established, the defendant may face a difficult situation. As the winning party, the defendant's right to appeal the adverse holding on the constitutional question may be contested. See *Bunting*, 541 U. S., at 1025 (SCALIA, J., dissenting from denial of certiorari) ("The perception of unreviewability undermines adherence to the sequencing rule we . . . created" in Saucier);[2] see also *Kalka* v. *Hawk*, 215 F. 3d 90, 96, n. 9 (CADC 2000) (noting that "[n]ormally, a party may not appeal from a favorable judgment" and that the Supreme Court "has apparently never granted the certiorari petition of a party who prevailed in the appellate court"). In cases like *Bunting*, the "prevailing" defendant faces an unenviable choice: "compl[y] with the lower court's advisory dictum without opportunity to seek appellate [or certiorari] review," or "def[y] the views of the lower court, adher[e] to practices that have been declared illegal, and thus

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[2] In *Bunting*, the Court of Appeals followed the *Saucier* two-step protocol and first held that the Virginia Military Institute's use of the word "God" in a "supper roll call" ceremony violated the Establishment Clause, but then granted the defendants qualified immunity because the law was not clearly established at the relevant time. *Mellen* v. *Bunting*, 327 F. 3d 355, 365–376 (CA4 2003), cert. denied, 541 U. S. 1019 (2004). Although they had a judgment in their favor below, the defendants asked this Court to review the adverse constitutional ruling. Dissenting from the denial of certiorari, JUSTICE SCALIA, joined by Chief Justice Rehnquist, criticized "a perceived procedural tangle of the Court's own making." 541 U. S., at 1022. The "tangle" arose from the Court's "'settled refusal' to entertain an appeal by a party on an issue as to which he prevailed" below, a practice that insulates from review adverse merits decisions that are "locked inside" favorable qualified immunity rulings. *Id.*, at 1022, 1023, 1024.

invit[e] new suits" and potential "punitive damages." *Horne*, *supra*, at 247–248.

Adherence to *Saucier*'s two-step protocol departs from the general rule of constitutional avoidance and runs counter to the "older, wiser judicial counsel 'not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.'" *Scott*, 550 U. S., at 388 (BREYER, J., concurring) (quoting *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U. S. 101, 105 (1944)); see *Ashwander* v. *TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of").

In other analogous contexts, we have appropriately declined to mandate the order of decision that the lower courts must follow. For example, in *Strickland* v. *Washington*, 466 U. S. 668 (1984), we recognized a two-part test for determining whether a criminal defendant was denied the effective assistance of counsel: The defendant must demonstrate (1) that his counsel's performance fell below what could be expected of a reasonably competent practitioner; and (2) that he was prejudiced by that substandard performance. *Id.*, at 687. After setting forth and applying the analytical framework that courts must use in evaluating claims of ineffective assistance of counsel, we left it to the sound discretion of lower courts to determine the order of decision. *Id.*, at 697 ("Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one").

In *United States* v. *Leon*, 468 U. S. 897 (1984), we created an exception to the exclusionary rule when officers reasonably rely on a facially valid search warrant. *Id.*, at 913. In that context, we recognized that a defendant challenging a

search will lose if either: (1) the warrant issued was supported by probable cause; or (2) it was not, but the officers executing it reasonably believed that it was. Again, after setting forth and applying the analytical framework that courts must use in evaluating the good-faith exception to the Fourth Amendment warrant requirement, we left it to the sound discretion of the lower courts to determine the order of decision. *Id.*, at 924, 925 ("There is no need for courts to adopt the inflexible practice of always deciding whether the officers' conduct manifested objective good faith before turning to the question whether the Fourth Amendment has been violated").

This flexibility properly reflects our respect for the lower federal courts that bear the brunt of adjudicating these cases. Because the two-step *Saucier* procedure is often, but not always, advantageous, the judges of the district courts and the courts of appeals are in the best position to determine the order of decisionmaking that will best facilitate the fair and efficient disposition of each case.

C

Any misgivings concerning our decision to withdraw from the mandate set forth in *Saucier* are unwarranted. Our decision does not prevent the lower courts from following the *Saucier* procedure; it simply recognizes that those courts should have the discretion to decide whether that procedure is worthwhile in particular cases. Moreover, the development of constitutional law is by no means entirely dependent on cases in which the defendant may seek qualified immunity. Most of the constitutional issues that are presented in § 1983 damages actions and *Bivens* cases also arise in cases in which that defense is not available, such as criminal cases and § 1983 cases against a municipality, as well as § 1983 cases against individuals where injunctive relief is sought instead of or in addition to damages. See *Lewis,* 523 U. S., at 841, n. 5 (noting that qualified immunity is unavailable

"in a suit to enjoin future conduct, in an action against a municipality, or in litigating a suppression motion").

We also do not think that relaxation of *Saucier*'s mandate is likely to result in a proliferation of damages claims against local governments. Cf. Brief for National Association of Counties et al. as *Amici Curiae* 29, 30 ("[T]o the extent that a rule permitting courts to bypass the merits makes it more difficult for civil rights plaintiffs to pursue novel claims, they will have greater reason to press custom, policy, or practice [damages] claims against local governments"). It is hard to see how the *Saucier* procedure could have a significant effect on a civil rights plaintiff's decision whether to seek damages only from a municipal employee or also from the municipality. Whether the *Saucier* procedure is mandatory or discretionary, the plaintiff will presumably take into account the possibility that the individual defendant will be held to have qualified immunity, and presumably the plaintiff will seek damages from the municipality as well as the individual employee if the benefits of doing so (any increase in the likelihood of recovery or collection of damages) outweigh the litigation costs.

Nor do we think that allowing the lower courts to exercise their discretion with respect to the *Saucier* procedure will spawn "a new cottage industry of litigation . . . over the standards for deciding whether to reach the merits in a given case." Brief for National Association of Counties, *supra*, at 29, 30. It does not appear that such a "cottage industry" developed prior to *Saucier*, and we see no reason why our decision today should produce such a result.

IV

Turning to the conduct of the officers here, we hold that petitioners are entitled to qualified immunity because the entry did not violate clearly established law. An officer conducting a search is entitled to qualified immunity where clearly established law does not show that the search vio-

lated the Fourth Amendment. See *Anderson*, 483 U. S., at 641. This inquiry turns on the "objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken." *Wilson* v. *Layne*, 526 U. S. 603, 614 (1999) (internal quotation marks omitted); see *Hope* v. *Pelzer*, 536 U. S. 730, 739 (2002) ("[Q]ualified immunity operates to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful" (internal quotation marks omitted)).

When the entry at issue here occurred in 2002, the "consent-once-removed" doctrine had gained acceptance in the lower courts. This doctrine had been considered by three Federal Courts of Appeals and two State Supreme Courts starting in the early 1980's. See, *e. g.*, *United States* v. *Diaz*, 814 F. 2d 454, 459 (CA7), cert. denied, 484 U. S. 857 (1987); *United States* v. *Bramble*, 103 F. 3d 1475 (CA9 1996); *United States* v. *Pollard*, 215 F. 3d 643, 648–649 (CA6), cert. denied, 531 U. S. 999 (2000); *State* v. *Henry*, 133 N. J. 104, 627 A. 2d 125 (1993); *State* v. *Johnston*, 184 Wis. 2d 794, 518 N. W. 2d 759 (1994). It had been accepted by every one of those courts. Moreover, the Seventh Circuit had approved the doctrine's application to cases involving consensual entries by private citizens acting as confidential informants. See *United States* v. *Paul*, 808 F. 2d 645, 648 (1986). The Sixth Circuit reached the same conclusion after the events that gave rise to respondent's suit, see *United States* v. *Yoon*, 398 F. 3d 802, 806–808, cert. denied, 546 U. S. 977 (2005), and prior to the Tenth Circuit's decision in the present case, no court of appeals had issued a contrary decision.

The officers here were entitled to rely on these cases, even though their own Federal Circuit had not yet ruled on "consent-once-removed" entries. The principles of qualified immunity shield an officer from personal liability when an officer reasonably believes that his or her conduct complies with the law. Police officers are entitled to rely on existing lower court cases without facing personal liability for their

actions. In *Wilson*, we explained that a Circuit split on the relevant issue had developed after the events that gave rise to suit and concluded that "[i]f judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy." 526 U. S., at 618. Likewise, here, where the divergence of views on the consent-once-removed doctrine was created by the decision of the Court of Appeals in this case, it is improper to subject petitioners to money damages for their conduct.

Because the unlawfulness of the officers' conduct in this case was not clearly established, petitioners are entitled to qualified immunity. We therefore reverse the judgment of the Court of Appeals.

It is so ordered.

Syllabus

FITZGERALD ET VIR *v.* BARNSTABLE SCHOOL COMMITTEE ET AL.

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

No. 07–1125. Argued December 2, 2008—Decided January 21, 2009

Petitioners filed suit against respondents, the local school district's governing board and superintendent, alleging that their response to allegations of sexual harassment of petitioners' daughter by an older student was inadequate, raising claims under, *inter alia*, Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681(a), and 42 U. S. C. § 1983 for violation of the Equal Protection Clause of the Fourteenth Amendment. Among its rulings, the District Court dismissed the § 1983 claim. The First Circuit affirmed, holding that, under this Court's precedents, Title IX's implied private remedy was sufficiently comprehensive to preclude the use of § 1983 to advance constitutional claims.

Held:

1. Title IX does not preclude a § 1983 action alleging unconstitutional gender discrimination in schools. Pp. 252–259.

(a) In *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1; *Smith* v. *Robinson*, 468 U. S. 992; and *Rancho Palos Verdes* v. *Abrams*, 544 U. S. 113, this Court found that particular statutory enactments precluded § 1983 claims where it was established that Congress intended the statute's remedial scheme to "be the exclusive avenue through which a plaintiff may assert [the] claims," *Smith*, *supra*, at 1009. In determining whether Congress intended for a subsequent statute to preclude the enforcement of a federal right under § 1983, the Court has placed primary emphasis on the nature and extent of that statute's remedial scheme. See *Sea Clammers*, *supra*, at 20. Where the § 1983 claim alleges a constitutional violation, a lack of congressional intent to preclude may also be inferred from a comparison of the rights and protections of the other statute and those existing under the Constitution. Pp. 252–255.

(b) In the absence of a comprehensive remedial scheme comparable to those at issue in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*, and in light of the divergent coverage of Title IX and the Equal Protection Clause, it must be concluded that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for § 1983 suits as a means of enforcing constitutional rights. Pp. 255–259.

(i) Title IX's only express enforcement mechanism, 20 U. S. C. § 1682, is an administrative procedure resulting in the withdrawal of federal funding from noncompliant institutions. This Court has also recognized an implied private right of action, *Cannon* v. *University of Chicago*, 441 U. S. 677, 717, for which both injunctive relief and damages are available, *Franklin* v. *Gwinnett County Public Schools*, 503 U. S. 60, 76. These remedies stand in stark contrast to the "unusually elaborate," "carefully tailored," and "restrictive" enforcement schemes of the statutes in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*. Unlike those statutes, Title IX has no administrative exhaustion requirement and no notice provisions. Plaintiffs can file directly in court under its implied private right of action and can obtain the full range of remedies. Accordingly, parallel and concurrent § 1983 claims will neither circumvent required procedures nor allow access to new remedies. Moreover, under *Rancho Palos Verdes*, "[t]he provision of an express, private means of redress in the statute itself" is a key consideration in determining congressional intent, and "the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which . . . an action would lie under § 1983 and those in which we have held that it would not." 544 U. S., at 121. Title IX contains no express private remedy, much less a more restrictive one. Pp. 255–256.

(ii) Because Title IX's protections are narrower in some respects and broader in others than those guaranteed under the Equal Protection Clause, the Court cannot agree with the First Circuit that Congress saw Title IX as the sole means of correcting unconstitutional gender discrimination in schools. Title IX reaches institutions and programs that receive federal funds, 20 U. S. C. § 1681(a), which may include nonpublic institutions, § 1681(c), but it has consistently been interpreted as not authorizing suit against school officials, teachers, and other individuals. Moreover, while the constitutional provision reaches only state actors, § 1983 equal protection claims may be brought against individuals as well as state entities. *West* v. *Atkins*, 487 U. S. 42, 48–51. And Title IX exempts from its restrictions several activities that may be challenged on constitutional grounds. See, *e. g.*, § 1681(a)(5). Even where particular activities and particular defendants are subject to both Title IX and the Equal Protection Clause, the standards for establishing liability may not be wholly congruent. Compare *Gebser* v. *Lago Vista Independent School Dist.*, 524 U. S. 274, 290, with *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 694. Pp. 256–258.

(iii) The Court's conclusion is consistent with Title IX's context and history. Because the Congress that enacted Title IX authorized the Attorney General to intervene in private suits alleging sex discrimi-

nation violative of the Equal Protection Clause, 42 U. S. C. § 2000h–2, Congress must have explicitly envisioned that private plaintiffs would bring constitutional claims to challenge gender discrimination via § 1983. Moreover, Title IX was modeled after Title VI of the Civil Rights Act of 1964, *Cannon, supra,* at 694–695, and, at the time of Title IX's 1972 enactment, the lower courts routinely interpreted Title VI to allow for parallel and concurrent § 1983 claims. Absent contrary evidence, it follows that Congress intended Title IX to be interpreted similarly to allow for parallel and concurrent § 1983 claims. Pp. 258–259.

2. As neither of the courts below addressed the merits of petitioners' constitutional claims or even the sufficiency of their pleadings, this Court will not do so in the first instance here. Pp. 259–260.

504 F. 3d 165, reversed and remanded.

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

Charles A. Rothfeld argued the cause for petitioners. With him on the briefs were *Andrew J. Pincus*, *Dan M. Kahan*, and *Anne Glennon.*

Kay H. Hodge argued the cause for respondents. With her on the brief were *Joan L. Stein* and *John M. Simon.**

JUSTICE ALITO delivered the opinion of the Court.

The issue in this case of peer-on-peer sexual harassment is whether Title IX of the Education Amendments of 1972, 86 Stat. 373, 20 U. S. C. § 1681(a), precludes an action under Rev. Stat. § 1979, 42 U. S. C. § 1983, alleging unconstitutional gender discrimination in schools. The Court of Appeals for

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *H. Thomas Wells, Jr.*, *Richard M. Zuckerman*, and *Kristen Galles;* for the American Civil Liberties Union et al. by *Steven R. Shapiro*, *Lenora M. Lapidus*, *Marcia D. Greenberger*, *Jocelyn Samuels*, and *Dina R. Lassow;* for the National Association of Women Lawyers by *Margaret Drew*, *Beth L. Kaufman*, *Mary Therese Nagel*, and *Joanne Simboli Hodge;* and for the Pacific Legal Foundation by *John H. Findley* and *Steven Geoffrey Gieseler.*

Lisa A. Brown, *Ada Meloy*, *Francisco M. Negrón, Jr.*, *Naomi Gittins*, *Thomas Hutton*, and *Lisa Soronen* filed a brief for the National School Boards Association et al. as *amici curiae* urging affirmance.

the First Circuit held that it does. 504 F. 3d 165 (2007). We reverse.

I

Because this case comes to us on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), we assume the truth of the facts as alleged in petitioners' complaint. During the 2000–2001 school year, the daughter of petitioners Lisa and Robert Fitzgerald was a kindergarten student in the Barnstable, Massachusetts, school system, and rode the bus to school each morning. One day she told her parents that, whenever she wore a dress, a third-grade boy on the school bus would bully her into lifting her skirt. Lisa Fitzgerald immediately called the school principal, Frederick Scully, who arranged a meeting later that day with the Fitzgeralds, their daughter, and another school official, Lynda Day. Scully and Day then questioned the alleged bully, who denied the allegations. Day also interviewed the bus driver and several students who rode the bus. She concluded that she could not corroborate the girl's version of the events.

The Fitzgeralds' daughter then provided new details of the alleged abuse to her parents, who relayed them to Scully. Specifically, she told her parents that in addition to bullying her into raising her skirt, the boy coerced her into pulling down her underpants and spreading her legs. Scully scheduled a second meeting with the Fitzgeralds to discuss the additional details and again questioned the boy and other students.

Meanwhile, the local police department conducted an independent investigation and concluded there was insufficient evidence to bring criminal charges against the boy. Based partly on the police investigation and partly on the school's own investigation, Scully similarly concluded there was insufficient evidence to warrant discipline. Scully did propose remedial measures to the Fitzgeralds. He suggested transferring their daughter to a different bus or leaving rows of empty seats between the kindergarteners and older students

on the original bus. The Fitzgeralds felt that these proposals punished their daughter instead of the boy and countered with alternative proposals. They suggested transferring the boy to a different bus or placing a monitor on the original bus. The Barnstable school system's superintendent, Russell Dever, did not act on these proposals.

The Fitzgeralds began driving their daughter to school to avoid further bullying on the bus, but she continued to report unsettling incidents at school. The Fitzgeralds reported each incident to Scully. The Fitzgeralds' daughter had an unusual number of absences during the remainder of the school year.

In April 2002, the Fitzgeralds filed suit in District Court, alleging that the school system's response to their allegations of sexual harassment had been inadequate, resulting in further harassment to their daughter. Their complaint included: (1) a claim for violation of Title IX against the Barnstable School Committee (the school system's governing body), (2) claims under 42 U. S. C. § 1983 for violations of Title IX and the Equal Protection Clause of the Fourteenth Amendment against the school committee and Dever, and (3) Massachusetts state-law claims against the school committee and Dever. The school committee and Dever (respondents here), filed a motion to dismiss, which the District Court granted as to the § 1983 claims and the state-law claims. On the Title IX claim, the school committee filed a motion for summary judgment, which the District Court also granted. *Hunter* v. *Barnstable School Comm.*, 456 F. Supp. 2d 255, 266 (Mass. 2006).

The Court of Appeals for the First Circuit affirmed. 504 F. 3d 165. Turning first to the Title IX claim against the school committee, the court noted three points that were not in dispute: (1) The school committee was the recipient of federal funds and was therefore subject to Title IX, (2) the

school committee had actual knowledge of the harassment the Fitzgeralds' daughter suffered, and (3) if the allegations of the complaint were true, the harassment was "severe, pervasive, and objectively offensive." *Id.*, at 172. The court concluded that the Fitzgeralds' Title IX claim lacked merit, however, because the response of the school committee and Dever to the reported harassment had been objectively reasonable. *Id.*, at 175.

The Court of Appeals turned next to the Fitzgeralds' § 1983 claims. Relying on this Court's precedents in *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1 (1981), *Smith* v. *Robinson*, 468 U. S. 992 (1984), and *Rancho Palos Verdes* v. *Abrams*, 544 U. S. 113 (2005), the court characterized Title IX's implied private remedy as "sufficiently comprehensive" to preclude use of § 1983 to advance statutory claims based on Title IX itself. 504 F. 3d, at 179. This reasoning, the court held, "appl[ied] with equal force" to the constitutional claims. *Ibid.* The court concluded that "Congress saw Title IX as the sole means of vindicating the constitutional right to be free from gender discrimination perpetrated by educational institutions." *Ibid.*

The Court of Appeals' decision deepened a conflict among the Circuits regarding whether Title IX precludes use of § 1983 to redress unconstitutional gender discrimination in schools. Compare *Bruneau ex rel. Schofield* v. *South Kortright Central School Dist.*, 163 F. 3d 749, 758–759 (CA2 1998); *Waid* v. *Merrill Area Public Schools*, 91 F. 3d 857, 862–863 (CA7 1996); *Pfeiffer* v. *Marion Center Area School Dist.*, 917 F. 2d 779, 789 (CA3 1990), with *Communities for Equity* v. *Michigan High School Athletic Assn.*, 459 F. 3d 676, 691 (CA6 2006); *Crawford* v. *Davis*, 109 F. 3d 1281, 1284 (CA8 1997); *Seamons* v. *Snow*, 84 F. 3d 1226, 1234 (CA10 1996). We granted certiorari to resolve this conflict, 553 U. S. 1093 (2008), and we now reverse.

II

A

In relevant part, 42 U. S. C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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 in an action at law, suit in equity, or other proper proceeding for redress."

In three cases, this Court has found that statutory enactments precluded claims under this statute. *Sea Clammers*, *supra; Smith*, *supra; Rancho Palos Verdes*, *supra.* These cases establish that "[t]he crucial consideration is what Congress intended." *Smith*, 468 U. S., at 1012. If Congress intended a statute's remedial scheme to "be the exclusive avenue through which a plaintiff may assert [the] claims," *id.*, at 1009, the § 1983 claims are precluded. See *Rancho Palos Verdes*, 544 U. S., at 120–121 ("The critical question, then, is whether Congress meant the judicial remedy expressly authorized by [the statute] to coexist with an alternative remedy available in a § 1983 action").

In those cases in which the § 1983 claim is based on a statutory right, "evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Id.*, at 120 (internal quotation marks omitted). In cases in which the § 1983 claim alleges a constitutional violation, lack of congressional intent may be inferred from a comparison of the rights and protections of the statute and those existing under the Constitution. Where the contours of such rights and protections diverge in significant

ways, it is not likely that Congress intended to displace § 1983 suits enforcing constitutional rights. Our conclusions regarding congressional intent can be confirmed by a statute's context. *Id.*, at 127 (BREYER, J., concurring) ("[C]ontext, not just literal text, will often lead a court to Congress' intent in respect to a particular statute").

In determining whether a subsequent statute precludes the enforcement of a federal right under § 1983, we have placed primary emphasis on the nature and extent of that statute's remedial scheme. See *Sea Clammers*, *supra*, at 20 ("When the remedial devices provided in a particular Act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under § 1983").

Sea Clammers illustrates this approach. The plaintiffs brought suit under § 1983 for violations of the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act of 1972. This Court's analysis focused on these two statutes' "unusually elaborate enforcement provisions," which authorized the Environmental Protection Agency to seek civil and criminal penalties for violations, permitted "'any interested person'" to seek judicial review, and contained detailed citizen suit provisions allowing for injunctive relief. 453 U. S., at 13–14. Allowing parallel § 1983 claims to proceed, we concluded, would have thwarted Congress' intent in formulating and detailing these provisions.

In *Smith*, the plaintiffs alleged deprivation of a free, appropriate public education for their handicapped child, in violation of the Education of the Handicapped Act (EHA) and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Departing from the pattern of the plaintiffs in *Sea Clammers*, the *Smith* plaintiffs relied on § 1983 to assert independent constitutional rights, not to assert the statutory rights guaranteed by the EHA. As in *Sea Clammers*, however, this Court focused on the statute's

detailed remedial scheme in concluding that Congress intended the statute to provide the sole avenue for relief. *Smith*, *supra*, at 1011 (noting "the comprehensive nature of the procedures and guarantees set out in the [statute] and Congress' express efforts to place on local and state educational agencies the primary responsibility for developing a plan to accommodate the needs of each individual handicapped child").

In *Rancho Palos Verdes*, we again focused on a statute's remedial scheme in inferring congressional intent for exclusivity. After being denied a permit to build a radio tower on his property, the plaintiff brought claims for injunctive relief under the Telecommunications Act of 1996 (TCA) and for damages and attorney's fees under § 1983. Noting that the TCA provides highly detailed and restrictive administrative and judicial remedies, and explaining that "limitations upon the remedy contained in the statute are deliberate and are not to be evaded through § 1983," we again concluded that Congress must have intended the statutory remedies to be exclusive. 544 U. S., at 124.

In all three cases, the statutes at issue required plaintiffs to comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit. *Sea Clammers*, *supra*, at 6; *Smith*, *supra*, at 1011–1012; *Rancho Palos Verdes*, *supra*, at 122. Offering plaintiffs a direct route to court via § 1983 would have circumvented these procedures and given plaintiffs access to tangible benefits—such as damages, attorney's fees, and costs—that were unavailable under the statutes.[1] "Allowing a plaintiff to circum-

[1] The statutes at issue in *Sea Clammers* and *Smith* did not allow for damages. The statute at issue in *Rancho Palos Verdes* did not expressly allow for damages, but some lower courts interpreted it to do so. The statutes at issue in *Smith* and *Rancho Palos Verdes* did not allow for attorney's fees and costs. See *Sea Clammers*, 453 U. S., at 6–7, 13–14 (addressing the Federal Water Pollution Control Act, 86 Stat. 816, as amended, 33 U. S. C. § 1251 *et seq.* (2000 ed. and Supp. V), and the Marine Protection, Research, and Sanctuaries Act of 1972, 86 Stat. 1052, as amended, 33 U. S. C. § 1401 *et seq.* (2000 ed. and Supp. V)); *Smith*, 468

vent" the statutes' provisions in this way would have been "inconsistent with Congress' carefully tailored scheme." *Smith*, 468 U. S., at 1012.

B

1

Section 901(a) of Title IX provides:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U. S. C. § 1681(a).

The statute's only express enforcement mechanism, § 1682, is an administrative procedure resulting in the withdrawal of federal funding from institutions that are not in compliance. In addition, this Court has recognized an implied private right of action. *Cannon* v. *University of Chicago*, 441 U. S. 677, 717 (1979). In a suit brought pursuant to this private right, both injunctive relief and damages are available. *Franklin* v. *Gwinnett County Public Schools*, 503 U. S. 60, 76 (1992).

These remedies—withdrawal of federal funds and an implied cause of action—stand in stark contrast to the "unusually elaborate," "carefully tailored," and "restrictive" enforcement schemes of the statutes at issue in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*. Unlike those statutes, Title IX has no administrative exhaustion requirement and no notice provisions. Under its implied private right of action, plaintiffs can file directly in court, *Cannon*, *supra*, at 717, and can obtain the full range of remedies, see *Franklin*, *supra*, at 72 (concluding that "Congress did not intend to limit the remedies available in a suit brought under Title IX"). As a result, parallel and concurrent § 1983 claims will

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U. S., at 1010–1011 (addressing the EHA, 84 Stat. 175, as amended, 20 U. S. C. § 1400 *et seq.*); *Rancho Palos Verdes*, 544 U. S., at 122–123, and nn. 3, 4 (addressing the TCA, 110 Stat. 56, 47 U. S. C. § 332(c)(7)).

neither circumvent required procedures, nor allow access to new remedies.

Moreover, this Court explained in *Rancho Palos Verdes* that "[t]he provision of an *express*, private means of redress in the statute itself" is a key consideration in determining congressional intent, and that "the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which we have held that an action would lie under § 1983 and those in which we have held that it would not." 544 U. S., at 121 (emphasis added). As noted, Title IX contains no express private remedy, much less a more restrictive one. This Court has never held that an implied right of action had the effect of precluding suit under § 1983, likely because of the difficulty of discerning congressional intent in such a situation. See *Franklin*, *supra*, at 76 (SCALIA, J., concurring in judgment) ("Quite obviously, the search for what was Congress' *remedial* intent as to a right whose very existence Congress did not expressly acknowledge is unlikely to succeed"). Mindful that we should "not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy for a substantial equal protection claim," *Smith*, 468 U. S., at 1012, we see no basis for doing so here.

2

A comparison of the substantive rights and protections guaranteed under Title IX and under the Equal Protection Clause lends further support to the conclusion that Congress did not intend Title IX to preclude § 1983 constitutional suits. Title IX's protections are narrower in some respects and broader in others. Because the protections guaranteed by the two sources of law diverge in this way, we cannot agree with the Court of Appeals that "Congress saw Title IX as the sole means of vindicating the constitutional right to be free from gender discrimination perpetrated by educational institutions." 504 F. 3d, at 179.

Title IX reaches institutions and programs that receive federal funds, 20 U. S. C. § 1681(a), which may include non-public institutions, § 1681(c), but it has consistently been interpreted as not authorizing suit against school officials, teachers, and other individuals, see, *e. g.*, *Hartley* v. *Parnell*, 193 F. 3d 1263, 1270 (CA11 1999). The Equal Protection Clause reaches only state actors, but § 1983 equal protection claims may be brought against individuals as well as municipalities and certain other state entities. *West* v. *Atkins*, 487 U. S. 42, 48–51 (1988).

Title IX exempts from its restrictions several activities that may be challenged on constitutional grounds. For example, Title IX exempts elementary and secondary schools from its prohibition against discrimination in admissions, § 1681(a)(1); it exempts military service schools and traditionally single-sex public colleges from all of its provisions, §§ 1681(a)(4)–(5). Some exempted activities may form the basis of equal protection claims. See *United States* v. *Virginia*, 518 U. S. 515, 534 (1996) (men-only admissions policy at Virginia Military Institute violated the Equal Protection Clause); *Mississippi Univ. for Women* v. *Hogan*, 458 U. S. 718, 731 (1982) (women-only admission policy at a traditionally single-sex public college violated the Equal Protection Clause).

Even where particular activities and particular defendants are subject to both Title IX and the Equal Protection Clause, the standards for establishing liability may not be wholly congruent. For example, a Title IX plaintiff can establish school district liability by showing that a single school administrator with authority to take corrective action responded to harassment with deliberate indifference. *Gebser* v. *Lago Vista Independent School Dist.*, 524 U. S. 274, 290 (1998). A plaintiff stating a similar claim via § 1983 for violation of the Equal Protection Clause by a school district or other municipal entity must show that the harassment was

the result of municipal custom, policy, or practice. *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 694 (1978).

In light of the divergent coverage of Title IX and the Equal Protection Clause, as well as the absence of a comprehensive remedial scheme comparable to those at issue in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*, we conclude that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for § 1983 suits as a means of enforcing constitutional rights. Accordingly, we hold that § 1983 suits based on the Equal Protection Clause remain available to plaintiffs alleging unconstitutional gender discrimination in schools.

3

This conclusion is consistent with Title IX's context and history. In enacting Title IX, Congress amended § 902, 78 Stat. 267, 42 U. S. C. § 2000h–2, to authorize the Attorney General to intervene in private suits alleging discrimination on the basis of sex in violation of the Equal Protection Clause. See § 906, 86 Stat. 375 (adding the term "sex" to the listed grounds, which already included race, color, religion, or national origin). Accordingly, it appears that the Congress that enacted Title IX explicitly envisioned that private plaintiffs would bring constitutional claims to challenge gender discrimination; it must have recognized that plaintiffs would do so via 42 U. S. C. § 1983.

Moreover, Congress modeled Title IX after Title VI of the Civil Rights Act of 1964, *Cannon*, 441 U. S., at 694–695, and passed Title IX with the explicit understanding that it would be interpreted as Title VI was, *id.*, at 696. At the time of Title IX's enactment in 1972, Title VI was routinely interpreted to allow for parallel and concurrent § 1983 claims, see, *e. g.*, *Alvarado* v. *El Paso Independent School Dist.*, 445 F. 2d 1011 (CA5 1971); *Nashville I–40 Steering Comm.* v. *Ellington*, 387 F. 2d 179 (CA6 1967); *Bossier Parish School Bd.* v.

Lemon, 370 F. 2d 847 (CA5 1967), and we presume Congress was aware of this when it passed Title IX, see *Franklin*, 503 U. S., at 71 (in assessing Congress' intent, "we evaluate the state of the law when the Legislature passed Title IX"). In the absence of any contrary evidence, it follows that Congress intended Title IX to be interpreted similarly to allow for parallel and concurrent § 1983 claims. At the least, this indicates that Congress did not affirmatively intend Title IX to preclude such claims.[2]

III

One matter remains. Respondents contend that the judgment of the Court of Appeals should be affirmed on independent grounds—namely, that the Fitzgeralds have no actionable § 1983 claim on which to proceed. They contend that the Court of Appeals' holding that neither the school committee nor Dever acted with deliberate indifference is conclusive and forecloses a § 1983 constitutional claim based on a similar theory of liability. They contend that all other § 1983 constitutional claims on these facts are precluded by the Fitzgeralds' failure to allege such claims adequately or to preserve them on appeal.

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[2] Respondents argue that constitutional protections against gender discrimination were minimal in 1972, as the only gender-based equal protection case this Court had decided employed a rational-basis standard. *Reed* v. *Reed*, 404 U. S. 71, 76 (1971). But see Gunther, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L. Rev. 1, 34 (1972) (*Reed* exemplified the application of rationality review "with bite"). They further argue that because Congress could not have viewed the Equal Protection Clause as offering a meaningful remedy for sex discrimination by schools, it could not have envisioned and intended for Title IX and § 1983 constitutional claims to proceed side by side. But the relevant question is not whether Congress envisioned that the two types of claims would proceed together in addressing gender discrimination in schools; it is whether Congress affirmatively intended to preclude this result. The limited nature of constitutional protections against gender discrimination in 1972 offers no evidence that Congress did.

The Fitzgeralds respond that they have no intention of relitigating the issue of deliberate indifference. They intend, they say, to advance claims of discriminatory treatment in the investigation of student behavior and in the treatment of student complaints, which they were foreclosed from developing at the earliest stages of litigation by the dismissal of the § 1983 claims.

As the Fitzgeralds note, no court has addressed the merits of their constitutional claims or even the sufficiency of their pleadings. Ordinarily, "we do not decide in the first instance issues not decided below," *National Collegiate Athletic Assn.* v. *Smith*, 525 U. S. 459, 470 (1999), and we see no reason for doing so here.

Accordingly, we reverse the Court of Appeals' judgment that the District Court's dismissal of the § 1983 claims was proper and remand this case for further proceedings consistent with this opinion.

It is so ordered.

SPEARS *v.* UNITED STATES

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

No. 08–5721. Decided January 21, 2009

Petitioner Spears was found guilty of conspiracy to distribute, *inter alia*, crack cocaine. At sentencing, the District Court determined that the Federal Sentencing Guidelines' then-applicable 100:1 ratio between crack and powder cocaine quantities yielded an excessive sentence in light of 18 U. S. C. § 3553(a)'s sentencing factors, and thus recalculated Spears' offense level based on a 20:1 ratio. The Eighth Circuit reversed and remanded for resentencing, holding that the District Court was not authorized to reject the 100:1 ratio and impose a substitute. This Court vacated that judgment and remanded in light of *Kimbrough* v. *United States*, 552 U. S. 85, which held that under *United States* v. *Booker*, 543 U. S. 220, "the cocaine Guidelines . . . are advisory only," 552 U. S., at 91, and that "it would not be an abuse of discretion for a district court to conclude . . . that the crack/powder disparity yields a sentence 'greater than necessary' to achieve § 3553(a)'s purpose, even in a mine-run case," *id.*, at 110. On remand, the Eighth Circuit again concluded that the District Court could not categorically reject the Guidelines ratio and substitute its own based on a policy disagreement.

Held: The Eighth Circuit's holding conflicts with *Kimbrough*, which considered and rejected the Circuit's position. *Kimbrough* held that, with respect to the crack cocaine Guidelines, a categorical disagreement with, and variance from, the Guidelines is not suspect. Indeed, *Kimbrough*'s point was to recognize district courts' authority to vary from the Guidelines based on policy disagreement and not simply based on an individualized determination in a particular case, a point that had already been established in *Booker*. That *Kimbrough* noted that it was "appropriate" for the District Court not to specify a ratio of its own does not imply that a district court *may not* substitute its own ratio for that of the Guidelines. As a logical matter, rejection of the ratio necessarily implies adoption of some other ratio to govern the mine-run case.

Certiorari granted; 553 F. 3d 715, reversed and remanded.

PER CURIAM.

Steven Spears was found guilty of conspiracy to distribute at least 50 grams of cocaine base and at least 500 grams of

powder cocaine, in violation of 21 U. S. C. §§ 841(a)(1), (b)(1)(A), (b)(1)(B), 846. At sentencing, the District Court determined that the drug quantities attributable to Spears yielded an offense level of 38, that his criminal history justified placing him in the Guidelines' criminal history category IV, and that the resulting advisory Guidelines sentencing range was 324 to 405 months' imprisonment. The District Court was of the view that the Guidelines' 100:1 ratio between powder cocaine and crack cocaine quantities, see United States Sentencing Commission, Guidelines Manual § 2D1.1(c) (Nov. 2006) (USSG),* yielded an excessive sentence in light of the sentencing factors outlined in 18 U. S. C. § 3553(a). Relying in part on decisions from other District Courts, see *United States* v. *Perry*, 389 F. Supp. 2d 278, 307–308 (RI 2005); *United States* v. *Smith*, 359 F. Supp. 2d 771, 781–782 (ED Wis. 2005), which in turn relied on a report from the Sentencing Commission criticizing the 100:1 ratio, see United States Sentencing Commission, Report to Congress: Cocaine and Federal Sentencing Policy 106–107, App. A, pp. 3–6 (May 2002) (hereinafter Report to Congress), the District Court recalculated Spears' offense level based on a 20:1 crack-to-powder ratio. That yielded an offense level of 34 and a sentencing range of 210 to 262 months' imprisonment. The District Court sentenced Spears to 240 months in prison, the statutory mandatory minimum. See *United States* v. *Spears*, 469 F. 3d 1166, 1173–1174 (CA8 2006) (en banc) *(Spears I)*.

On cross-appeal, the Government argued that "the district court erred by categorically rejecting the 100:1 quantity ratio and substituting its own ratio in calculating Spears's sentence." *Id.*, at 1174. The Eighth Circuit reversed Spears' sentence and remanded for resentencing, holding that "neither *Booker* nor § 3553(a) authorizes district courts to reject the 100:1 quantity ratio and use a different ratio in

*The Sentencing Commission has since reduced the crack-to-powder ratio. See USSG, Supp. App. C, Amdt. 706 (Nov. 2007).

sentencing defendants for crack cocaine offenses." *Id.*, at 1176. This Court vacated the judgment of the Eighth Circuit, and remanded for further consideration in light of *Kimbrough* v. *United States*, 552 U. S. 85 (2007). *Spears* v. *United States*, 552 U. S. 1090 (2008).

On remand, the Eighth Circuit again reversed Spears' sentence and remanded for resentencing. 533 F. 3d 715, 716 (2008) (en banc) *(Spears II)*. It concluded, again, that the District Court "may not categorically reject the ratio set forth by the Guidelines," *id.*, at 717, and " 'impermissibly varied by *replacing* the 100:1 quantity ratio inherent in the advisory Guidelines range with a 20:1 quantity ratio,' " *ibid.* (quoting *Spears I*, *supra*, at 1178). Spears again petitioned for a writ of certiorari. Because the Eighth Circuit's decision on remand conflicts with our decision in *Kimbrough*, we grant the petition for certiorari and reverse.

In *Kimbrough*, we held that "under *Booker*, the cocaine Guidelines, like all other Guidelines, are advisory only," 552 U. S., at 91, and that "it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence 'greater than necessary' to achieve § 3553(a)'s purpose, *even in a mine-run case*," *id.*, at 110 (emphasis added). The correct interpretation of that holding is the one offered by the dissent in *Spears II:*

> "The Court thus established that even when a particular defendant in a crack cocaine case presents no special mitigating circumstances—no outstanding service to country or community, no unusually disadvantaged childhood, no overstated criminal history score, no post-offense rehabilitation—a sentencing court may nonetheless vary downward from the advisory guideline range. The court may do so based solely on its view that the 100-to-1 ratio embodied in the sentencing guidelines for the treatment of crack cocaine versus powder cocaine creates 'an unwarranted disparity within the meaning of

> § 3553(a),' and is 'at odds with § 3553(a).' The only fact necessary to justify such a variance is the sentencing court's disagreement with the guidelines—its policy view that the 100-to-1 ratio creates an unwarranted disparity." 533 F. 3d, at 719 (opinion of Colloton, J.) (citations omitted).

Kimbrough considered and rejected the position taken by the Eighth Circuit below. It noted that "a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case 'outside the "heartland" to which the Commission intends individual Guidelines to apply.'" 552 U. S., at 109 (quoting *Rita* v. *United States*, 551 U. S. 338, 351 (2007)). The implication was that an "inside the heartland" departure (which is necessarily based on a policy disagreement with the Guidelines and necessarily disagrees on a "categorical basis") may be entitled to less respect. Our opinion said, however, that the "crack cocaine Guidelines . . . present no occasion for elaborative discussion of this matter because those Guidelines do not exemplify the Commission's exercise of its characteristic institutional role." 552 U. S., at 109. *Kimbrough* thus holds that with respect to the crack cocaine Guidelines, a categorical disagreement with and variance from the Guidelines is not suspect.

That was indeed the point of *Kimbrough:* a recognition of district courts' authority to vary from the crack cocaine Guidelines based on *policy* disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case. The latter proposition was already established pre-*Kimbrough*, see *United States* v. *Booker*, 543 U. S. 220, 245–246 (2005), and the Government conceded as much in *Kimbrough.* 552 U. S., at 102, n. 13. That the Government did not prevail in *Kimbrough* proves that its concession—"that a district court may vary from the 100-to-1 ratio if it does so 'based on the individualized circumstance[s]' of a particular case,"

ibid.—understated the extent of district courts' sentencing discretion.

In drawing a distinction between "individualized, case-specific" consideration of the Guidelines' ratio and categorical rejection and replacement of that ratio, the Eighth Circuit relied in part, *Spears II*, *supra*, at 717, on the following passage from *Kimbrough:*

> "The [district] court did not purport to establish a ratio of its own. Rather, it appropriately framed its final determination in line with § 3553(a)'s overarching instruction to 'impose a sentence sufficient, but not greater than necessary' to accomplish the sentencing goals advanced in § 3553(a)(2)." 552 U. S., at 111.

This says that it was "appropriate" for the District Court in *Kimbrough* not to specify what ratio it was using, but merely to proceed with § 3553(a) analysis. The Eighth Circuit read that to mean that district courts, in the course of their individualized determinations, *may not categorically disagree with the Guidelines ratio, and (consequently) may not substitute their own ratio for that of the Guidelines.* If it meant that, our vacating of the Eighth Circuit's judgment in *Spears I* would have been inexplicable, because that supposedly impermissible disagreement and substitution was precisely the reason for *Spears I*'s reversal of the District Court. See *Spears I*, 469 F. 3d, at 1175–1176. As a logical matter, of course, rejection of the 100:1 ratio, explicitly approved by *Kimbrough*, necessarily implies adoption of some other ratio to govern the mine-run case. A sentencing judge who is given the power to reject the disparity created by the crack-to-powder ratio must also possess the power to apply a different ratio which, in his judgment, corrects the disparity. Put simply, the ability to reduce a mine-run defendant's sentence necessarily permits adoption of a replacement ratio.

To the extent the above quoted language has obscured *Kimbrough*'s holding, we now clarify that district courts are

entitled to reject and vary categorically from the crack cocaine Guidelines based on a policy disagreement with those Guidelines. Here, the District Court's choice of replacement ratio was based upon two well-reasoned decisions by other courts, which themselves reflected the Sentencing Commission's expert judgment that a 20:1 ratio would be appropriate in a mine-run case. See *Perry*, 389 F. Supp. 2d, at 307–308; *Smith*, 359 F. Supp. 2d, at 781–782; Report to Congress 106–107, App. A, pp. 3–6.

The alternative approach—adopted by the Eighth Circuit—would likely yield one of two results. Either district courts would treat the Guidelines' policy embodied in the crack-to-powder ratio as mandatory, believing that they are not entitled to vary based on "categorical" policy disagreements with the Guidelines, or they would continue to vary, masking their categorical policy disagreements as "individualized determinations." The latter is institutionalized subterfuge. The former contradicts our holding in *Kimbrough*. Neither is an acceptable sentencing practice.

In opposing Spears' present petition for a writ of certiorari, the Government contends that the Eighth Circuit's opinion stands only for the noncontroversial proposition that a remand for resentencing was warranted in this case because the District Court did not properly consider all of the § 3553(a) sentencing factors. Brief in Opposition 12–13. But the Government did not present that argument below, and the Eighth Circuit's opinion plainly did not rest on that ground. It concluded instead that "the district court may not categorically reject the ratio set forth by the Guidelines." *Spears II*, *supra*, at 717. The Eighth Circuit has since read its own opinion to mean what it says, see *United States* v. *Judon*, 284 Fed. Appx. 371, 372 (2008) *(per curiam)*, and so do we. In any event, to the extent the District Court cut short its sentencing analysis, it did so only because it had already determined that a mandatory minimum sentence was required, thus mooting any further arguments for a re-

duced sentence. The decision not to entertain pointless arguments hardly constitutes procedural error.

The dissent contends, *post*, at 269 (opinion of ROBERTS, C. J.), that the Eighth Circuit recognized *Kimbrough*'s core holding when it stated that in conducting "an *individualized assessment* based upon the particular circumstances of a defendant's case, a district court may determine the 100:1 quantity ratio results in a harsher sentence than necessary," *Spears II*, 533 F. 3d, at 717. But that was not *Kimbrough*'s holding; it was the *Government's* position in *Kimbrough*, which did not prevail. And it is expressly contradicted by *Kimbrough*'s holding that district courts are entitled to vary from the crack cocaine Guidelines in a mine-run case where there are no "particular circumstances" that would otherwise justify a variance from the Guidelines' sentencing range.

The dissent believes that "[t]his petition involves the arguably distinct issue whether district courts that do disagree with the policy underlying the Guidelines may adopt their own *categorical* crack-powder ratios in place of the ratio set forth in the Guidelines." *Post*, at 269. But that is in fact not distinct from the issue we addressed in *Kimbrough*. To say that the judge who considers the 100:1 ratio excessive cannot apply a different ratio is to say that the *Kimbrough*-sanctioned district-court disagreement with the 100:1 ratio cannot honestly be given effect. It is absurd to think that a sentence which is reasonable in light of the statutory sentencing factors, see 18 U. S. C. § 3553(a), becomes unreasonable if the sentencing judge chooses to specify his disagreement, and the degree of his disagreement, with the 100:1 ratio, which is the entire basis for his Guidelines departure.

The dissent says that "*Apprendi*, *Booker*, *Rita*, *Gall*, and *Kimbrough* have given the lower courts a good deal to digest over a relatively short period." *Post*, at 270. True enough—and we should therefore promptly remove from the menu the Eighth Circuit's offering, a smuggled-in dish that is indigestible. Finally, the dissent points out that other courts have

followed the Eighth Circuit's course, see *United States* v. *Russell*, 537 F. 3d 6, 11 (CA1 2008); *United States* v. *Gunter*, 527 F. 3d 282, 286 (CA3 2008). Both of those courts, like the Eighth Circuit, seized upon the language from *Kimbrough* quoted above in order to stand by the course they had adopted pre-*Kimbrough*—and in the case of the First Circuit, despite this Court's having vacated and remanded, in light of *Kimbrough*, the prior First Circuit judgment which had established that course. See *Pho* v. *United States*, 552 U. S. 1091 (2008). If the error of those opinions is, as we think, evident, they demonstrate the need to clarify at once the holding of *Kimbrough*.

* * *

The petition for certiorari and the motion for leave to proceed *in forma pauperis* are 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 KENNEDY would grant the petition for a writ of certiorari and set the case for oral argument.

JUSTICE THOMAS dissents.

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, dissenting.

I dissent from the Court's summary reversal in this case. As explained by the majority here and the dissenting judges below, there are cogent arguments that the Eighth Circuit's decision was contrary to our decision last Term in *Kimbrough* v. *United States*, 552 U. S. 85 (2007). But I do not think any error is so apparent as to warrant the bitter medicine of summary reversal, and I think there are good reasons not to address the question presented at this time.

In the decision below, the Court of Appeals recognized *Kimbrough*'s core holding that district courts have authority to depart from the Guidelines based on policy concerns: "In considering the overall goals of sentencing under [18 U. S. C.] § 3553(a) and conducting an *individualized assessment* based upon the particular circumstances of a defendant's case, a district court may determine the 100:1 quantity ratio results in a harsher sentence than necessary." 533 F. 3d 715, 717 (CA8 2008). This petition involves the arguably distinct issue whether district courts that do disagree with the policy underlying the Guidelines may adopt their own *categorical* crack-powder ratios in place of the ratio set forth in the Guidelines.

There is at least some language in *Kimbrough* that seems to support the Court of Appeals' holding. In *Kimbrough*, we noted with apparent approval that the District Court "*did not purport to establish a ratio of its own.*" 552 U. S., at 111 (emphasis added). Rather, we held, the District Court "appropriately framed its final determination in line with § 3553(a)'s overarching instruction to impose a sentence sufficient, but not greater than necessary to accomplish the sentencing goals advanced in § 3553(a)(2)." *Ibid.* (internal quotation marks omitted).

Two other Courts of Appeals agree with the Eighth Circuit's interpretation of this language. See *United States* v. *Russell*, 537 F. 3d 6, 11 (CA1 2008) (emphasizing "the importance of individualized, case-by-case sentencing determinations, rather than a reliance on generalized ratios"); *United States* v. *Gunter*, 527 F. 3d 282, 286 (CA3 2008) ("[A] district court may not employ a 'rubber stamp' approach that categorically rejects the crack/powder disparity without an individualized assessment of the § 3553(a) factors"). The majority cites no court of appeals decision contrary to that of the Eighth Circuit in this case.

This is not the stuff of summary reversal. The majority may well be correct that its holding today *follows* from *Kim-*

brough, but it is not clear to me that this result was part and parcel of the holding in that case, especially in light of the language quoted above.

At the same time, I do not believe this case meets our normal criteria for plenary consideration. As noted, there is no split in the lower courts on the question whether a district court may replace the crack-powder ratio in the Guidelines with a categorical ratio of the court's own choosing. And, as explained above, I do not think the Court of Appeals has "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." This Court's Rule 10(a). In other words, this is exactly the sort of issue that could benefit from further attention in the courts of appeals. We should not rush to answer a novel question about the application of a 1-year-old decision in the absence of a pronounced conflict among the circuits.

Apprendi, *Booker*, *Rita*, *Gall*, and *Kimbrough* have given the lower courts a good deal to digest over a relatively short period. We should give them some time to address the nuances of these precedents before adding new ones. As has been said, a plant cannot grow if you constantly yank it out of the ground to see if the roots are healthy.

Syllabus

CRAWFORD *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE

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

No. 06–1595. Argued October 8, 2008—Decided January 26, 2009

In response to questions from an official of respondent local government (Metro) during an internal investigation into rumors of sexual harassment by the Metro School District employee relations director (Hughes), petitioner Crawford, a 30-year employee, reported that Hughes had sexually harassed her. Metro took no action against Hughes, but soon fired Crawford, alleging embezzlement. She filed suit under Title VII of the Civil Rights Act of 1964, claiming that Metro was retaliating for her report of Hughes's behavior, in violation of 42 U. S. C. § 2000e–3(a), which makes it unlawful "for an employer to discriminate against any . . . employe[e]" who (1) "has opposed any practice made an unlawful employment practice by this subchapter" (opposition clause), or (2) "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter" (participation clause). The court granted Metro summary judgment, and the Sixth Circuit affirmed, holding that the opposition clause demanded "active, consistent" opposing activities, whereas Crawford had not initiated any complaint prior to the investigation, and finding that the participation clause did not cover Metro's internal investigation because it was not conducted pursuant to a Title VII charge pending with the Equal Employment Opportunity Commission.

Held: The antiretaliation provision's protection extends to an employee who speaks out about discrimination not on her own initiative, but in answering questions during an employer's internal investigation. Because "oppose" is undefined by statute, it carries its ordinary dictionary meaning of resisting or contending against. Crawford's statement is thus covered by the opposition clause, as an ostensibly disapproving account of Hughes's sexually obnoxious behavior toward her. "Oppose" goes beyond "active, consistent" behavior in ordinary discourse, and may be used to speak of someone who has taken no action at all to advance a position beyond disclosing it. Thus, a person can "oppose" by responding to someone else's questions just as surely as by provoking the discussion. Nothing in the statute requires a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when

asked a question. Metro unconvincingly argues for the Sixth Circuit's active, consistent opposition rule, claiming that employers will be less likely to raise questions about possible discrimination if a retaliation charge is easy to raise when things go badly for an employee who responded to enquiries. Employers, however, have a strong inducement to ferret out and put a stop to discriminatory activity in their operations because *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 765, and *Faragher* v. *Boca Raton*, 524 U. S. 775, 807, hold "[a]n employer . . . subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with . . . authority over the employee." The Circuit's rule could undermine the *Ellerth-Faragher* scheme, along with the statute's "'primary objective'" of "avoid[ing] harm" to employees, *Faragher*, *supra*, at 806, for if an employee reporting discrimination in answer to an employer's questions could be penalized with no remedy, prudent employees would have a good reason to keep quiet about Title VII offenses. Because Crawford's conduct is covered by the opposition clause, this Court does not reach her argument that the Sixth Circuit also misread the participation clause. Metro's other defenses to the retaliation claim were never reached by the District Court, and thus remain open on remand. Pp. 276–280.

211 Fed. Appx. 373, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 280.

Eric Schnapper argued the cause for petitioner. With him on the briefs was *Ann Buntin Steiner*.

Lisa S. Blatt argued the cause for the United States as *amicus curiae* in support of petitioner. With her on the brief were former *Solicitor General Clement*, *Solicitor General Garre*, *Acting Assistant Attorney General Becker*, *Dennis J. Dimsey*, *Angela M. Miller*, *Ronald S. Cooper*, *Carolyn L. Wheeler*, and *Jennifer S. Goldstein*.

Francis H. Young argued the cause for respondent. With him on the brief was *James L. Charles*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Marc Dann*, Attorney General of Ohio, *William P. Marshall*, Solicitor General, *Benjamin C. Mizer* and *Kimberly A. Olson*, Deputy So-

JUSTICE SOUTER delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.* (2000 ed. and Supp. V), forbids retaliation by employers against employees who report workplace race or gender discrimination. The question here is whether this protection extends to an employee who speaks out about discrimination not on her own initiative, but in answering questions during an employer's internal investigation. We hold that it does.

I

In 2002, respondent Metropolitan Government of Nashville and Davidson County, Tennessee (Metro), began looking into rumors of sexual harassment by the Metro School District's

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licitors, and *Susan A. Choe*, *Patrick M. Dull*, and *Duffy W. Jamieson*, Assistant Attorneys General, by *Roberto J. Sánchez-Ramos*, Secretary of Justice of Puerto Rico, and by the Attorneys General for their respective States as follows: *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Richard Blumenthal* of Connecticut, *Beau Biden* of Delaware, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Jack Conway* of Kentucky, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Mike McGrath* of Montana, *Anne Milgram* of New Jersey, *Gary K. King* of New Mexico, *Andrew M. Cuomo* of New York, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, and *Darrell V. McGraw, Jr.*, of West Virginia; for the Leadership Conference on Civil Rights et al. by *Michael L. Foreman* and *Michael B. de Leeuw;* for the National Employment Lawyers Association et al. by *Bruce B. Elfvin*, *Christina M. Royer*, *Mary L. Heen*, *Adele P. Kimmel*, and *Catherine K. Ruckelshaus;* for the National Women's Law Center et al. by *Melissa Hart*, *Marcia D. Greenberger*, *Jocelyn F. Samuels*, and *Dina R. Lassow;* and for the Tennessee Education Association et al. by *Richard L. Colbert* and *Courtney L. Wilbert.*

Briefs of *amici curiae* urging affirmance were filed for the Chamber of Commerce of the United States of America by *Catherine E. Stetson*, *Jessica L. Ellsworth*, *Robin S. Conrad*, and *Shane Brennan;* for the Equal Employment Advisory Council et al. by *Rae T. Vann*, *Alexandra Tsiros*, *Karen R. Harned*, and *Elizabeth G. Milito;* and for the National School Boards Association by *Francisco M. Negrón, Jr.*, *Lisa E. Soronen*, *F. Damon Kitchen*, *Jack R. Wallace*, and *Robert J. Sniffen.*

employee relations director, Gene Hughes.[1] 211 Fed. Appx. 373, 374 (CA6 2006). When Veronica Frazier, a Metro human resources officer, asked petitioner Vicky Crawford, a 30-year Metro employee, whether she had witnessed "inappropriate behavior" on the part of Hughes, *id.*, at 374–375, Crawford described several instances of sexually harassing behavior: once, Hughes had answered her greeting, "'Hey Dr. Hughes, [w]hat's up?,'" by grabbing his crotch and saying "'[Y]ou know what's up'"; he had repeatedly "'put his crotch up to [her] window'"; and on one occasion he had entered her office and "'grabbed her head and pulled it to his crotch,'" *id.*, at 375, and n. 1. Two other employees also reported being sexually harassed by Hughes. *Id.*, at 375. Although Metro took no action against Hughes, it did fire Crawford and the two other accusers soon after finishing the investigation, saying in Crawford's case that it was for embezzlement. *Ibid.* Crawford claimed Metro was retaliating for her report of Hughes's behavior and filed a charge of a Title VII violation with the Equal Employment Opportunity Commission (EEOC), followed by this suit in the United States District Court for the Middle District of Tennessee. *Ibid.*

The Title VII antiretaliation provision has two clauses, making it "an unlawful employment practice for an employer to discriminate against any of his employees . . . [1] because he has opposed any practice made an unlawful employment practice by this subchapter, or [2] because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U. S. C. § 2000e–3(a). The one is known as the "opposition clause," the other as the "participation clause," and Crawford accused Metro of violating both.

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[1] Because this case arises out of the District Court's grant of summary judgment for Metro, "we are required to view all facts and draw all reasonable inferences in favor of the nonmoving party, [Crawford]." *Brosseau* v. *Haugen*, 543 U. S. 194, 195, n. 2 (2004) *(per curiam)*.

The District Court granted summary judgment for Metro. It held that Crawford could not satisfy the opposition clause because she had not "instigated or initiated any complaint," but had "merely answered questions by investigators in an already-pending internal investigation, initiated by someone else." Memorandum Opinion, No. 3:03–cv–0996 (MD Tenn., Jan. 6, 2005), App. C to Pet. for Cert. 16a–17a. It concluded that her claim also failed under the participation clause, which Sixth Circuit precedent confined to protecting "'an employee's participation in an employer's internal investigation . . . where that investigation occurs pursuant to a pending EEOC charge'" (not the case here). *Id.*, at 15a (emphasis deleted) (quoting *Abbott* v. *Crown Motor Co.*, 348 F. 3d 537, 543 (CA6 2003)).

The Court of Appeals affirmed on the same grounds, holding that the opposition clause "'demands active, consistent "opposing" activities to warrant . . . protection against retaliation,'" 211 Fed. Appx., at 376 (quoting *Bell* v. *Safety Grooving & Grinding, LP*, 107 Fed. Appx. 607, 610 (CA6 2004)), whereas Crawford did "not claim to have instigated or initiated any complaint prior to her participation in the investigation, nor did she take any further action following the investigation and prior to her firing," 211 Fed. Appx., at 376. Again like the trial judge, the Court of Appeals understood that Crawford could show no violation of the participation clause because her "'employer's internal investigation'" was not conducted "'pursuant to a pending EEOC charge.'" *Ibid.* (quoting *Abbott*, *supra*, at 543).

Because the Sixth Circuit's decision conflicts with those of other Circuits, particularly as to the opposition clause, see, *e. g.*, *McDonnell* v. *Cisneros*, 84 F. 3d 256, 262 (CA7 1996), we granted Crawford's petition for certiorari. 552 U. S. 1162 (2008). We now reverse and remand for further proceedings.

II

The opposition clause makes it "unlawful . . . for an employer to discriminate against any . . . employe[e] . . . because he has opposed any practice made . . . unlawful . . . by this subchapter." § 2000e–3(a). The term "oppose," being left undefined by the statute, carries its ordinary meaning, *Perrin* v. *United States*, 444 U. S. 37, 42 (1979): "[t]o resist or antagonize . . . ; to contend against; to confront; resist; withstand," Webster's New International Dictionary 1710 (2d ed. 1957). Although these actions entail varying expenditures of energy, "RESIST frequently implies more active striving than OPPOSE." *Ibid.;* see also Random House Dictionary of the English Language 1359 (2d ed. 1987) (defining "oppose" as "to be hostile or adverse to, as in opinion").

The statement Crawford says she gave to Frazier is thus covered by the opposition clause, as an ostensibly disapproving account of sexually obnoxious behavior toward her by a fellow employee, an answer she says antagonized her employer to the point of sacking her on a false pretense. Crawford's description of the louche goings-on would certainly qualify in the minds of reasonable jurors as "resist[ant]" or "antagoni[stic]" to Hughes's treatment, if for no other reason than the point argued by the Government and explained by an EEOC guideline: "When an employee communicates to her employer a belief that the employer has engaged in . . . a form of employment discrimination, that communication" virtually always "constitutes the employee's *opposition* to the activity." Brief for United States as *Amicus Curiae* 9 (citing 2 EEOC Compliance Manual §§ 8–II–B(1), (2), p. 614:0003 (Mar. 2003)); see also *Federal Express Corp.* v. *Holowecki*, 552 U. S. 389, 399 (2008) (explaining that EEOC compliance manuals "reflect 'a body of experience and informed judgment to which courts and litigants may properly resort for guidance' " (quoting *Bragdon* v. *Abbott*, 524 U. S. 624, 642 (1998))). It is true that one can imagine exceptions, like an employee's description of a supervisor's racist joke as

hilarious, but these will be eccentric cases, and this is not one of them.[2]

The Sixth Circuit thought answering questions fell short of opposition, taking the view that the clause "'demands active, consistent "opposing" activities to warrant . . . protection against retaliation,'" 211 Fed. Appx., at 376 (quoting *Bell*, *supra*, at 610), and that an employee must "instigat[e] or initiat[e]" a complaint to be covered, 211 Fed. Appx., at 376. But though these requirements obviously exemplify opposition as commonly understood, they are not limits of it.

"Oppose" goes beyond "active, consistent" behavior in ordinary discourse, where we would naturally use the word to speak of someone who has taken no action at all to advance a position beyond disclosing it. Countless people were known to "oppose" slavery before Emancipation, or are said to "oppose" capital punishment today, without writing public letters, taking to the streets, or resisting the government. And we would call it "opposition" if an employee took a stand against an employer's discriminatory practices not by "instigating" action, but by standing pat, say, by refusing to follow a supervisor's order to fire a junior worker for discriminatory reasons. Cf. *McDonnell*, *supra*, at 262 (finding employee covered by Title VII of the Civil Rights Act of 1964 where his employer retaliated against him for failing to prevent his subordinate from filing an EEOC charge). There is, then, no reason to doubt that a person can "oppose" by responding to someone else's question just as surely as by provoking the discussion, and nothing in the statute requires

[2] Metro suggests in passing that it was unclear whether Crawford actually opposed Hughes's behavior because some of her defensive responses were "inappropriate," such as telling Hughes to "bite me" and "flip[ping] him a bird." Brief for Respondent 1–2 (internal quotation marks omitted). This argument fails not only because at the summary judgment stage we must "view all facts and draw all reasonable inferences in [Crawford's] favor," *Brosseau*, 543 U. S., at 195, n. 2, but also because Crawford gave no indication that Hughes's gross clowning was anything but offensive to her.

a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question.

Metro and its *amici* support the Circuit panel's insistence on "active" and "consistent" opposition by arguing that the lower the bar for retaliation claims, the less likely it is that employers will look into what may be happening outside the executive suite. As they see it, if retaliation is an easy charge when things go bad for an employee who responded to enquiries, employers will avoid the headache by refusing to raise questions about possible discrimination.

The argument is unconvincing, for we think it underestimates the incentive to enquire that follows from our decisions in *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742 (1998), and *Faragher* v. *Boca Raton*, 524 U. S. 775 (1998). *Ellerth* and *Faragher* hold "[a]n employer . . . subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with . . . authority over the employee." *Ellerth*, *supra*, at 765; *Faragher*, *supra*, at 807. Although there is no affirmative defense if the hostile environment "culminates in a tangible employment action" against the employee, *Ellerth*, 524 U. S., at 765, an employer does have a defense "[w]hen no tangible employment action is taken" if it "exercised reasonable care to prevent and correct promptly any" discriminatory conduct and "the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise," *ibid.* Employers are thus subject to a strong inducement to ferret out and put a stop to any discriminatory activity in their operations as a way to break the circuit of imputed liability. *Ibid.;* see also Brief for Petitioner 24–28, and nn. 31–35 (citing studies demonstrating that *Ellerth* and *Faragher* have prompted many employers to adopt or strengthen procedures for investigating, preventing, and correcting discrimi-

natory conduct). The possibility that an employer might someday want to fire someone who might charge discrimination traceable to an internal investigation does not strike us as likely to diminish the attraction of an *Ellerth-Faragher* affirmative defense.

That aside, we find it hard to see why the Sixth Circuit's rule would not itself largely undermine the *Ellerth-Faragher* scheme, along with the statute's "'primary objective'" of "avoid[ing] harm" to employees. *Faragher*, *supra*, at 806 (quoting *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 417 (1975)). If it were clear law that an employee who reported discrimination in answering an employer's questions could be penalized with no remedy, prudent employees would have a good reason to keep quiet about Title VII offenses against themselves or against others. This is no imaginary horrible given the documented indications that "[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination." Brake, Retaliation, 90 Minn. L. Rev. 18, 20 (2005); see also *id.*, at 37, and n. 58 (compiling studies). The appeals court's rule would thus create a real dilemma for any knowledgeable employee in a hostile work environment if the boss took steps to assure a defense under our cases. If the employee reported discrimination in response to the enquiries, the employer might well be free to penalize her for speaking up. But if she kept quiet about the discrimination and later filed a Title VII claim, the employer might well escape liability, arguing that it "exercised reasonable care to prevent and correct [any discrimination] promptly" but "the plaintiff employee unreasonably failed to take advantage of . . . preventive or corrective opportunities provided by the employer." *Ellerth*, *supra*, at 765. Nothing in the statute's text or our precedent supports this catch-22.[3]

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[3] Metro also argues that "[r]equiring the employee to actually initiate a complaint . . . conforms with the employee's 'obligation of reasonable care to avoid harm' articulated in *Faragher* and *Ellerth*." Brief for Respond-

Because Crawford's conduct is covered by the opposition clause, we do not reach her argument that the Sixth Circuit misread the participation clause as well. But that does not mean the end of this case, for Metro's motion for summary judgment raised several defenses to the retaliation charge besides the scope of the two clauses; the District Court never reached these others owing to its ruling on the elements of retaliation, and they remain open on remand.

III

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

It is so ordered.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the judgment.

The question in this case is whether Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (2000 ed. and Supp. V), prohibits retaliation against an employee who testifies in an internal investigation of alleged sexual harass-

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ent 28 (quoting *Faragher* v. *Boca Raton*, 524 U. S. 775, 807 (1998)). But that mitigation requirement only applies to employees who are suffering discrimination and have the opportunity to fix it by "tak[ing] advantage of any preventive or corrective opportunities provided by the employer," 524 U. S., at 807; it is based on the general principle "that a victim has a duty 'to use such means as are reasonable under the circumstances to avoid or minimize . . . damages,'" *id.*, at 806 (quoting *Ford Motor Co.* v. *EEOC*, 458 U. S. 219, 231, n. 15 (1982)). We have never suggested that employees have a legal obligation to report discrimination against others to their employer on their own initiative, let alone lose statutory protection by failing to speak. Extending the mitigation requirement so far would make no sense; employees will often face retaliation not for opposing discrimination they themselves face, but for reporting discrimination suffered by others. Thus, they are not "victims" of anything until they are retaliated against, and it would be absurd to require them to "mitigate" damages they may be unaware they will suffer.

ment. I agree with the Court that the "opposition clause" of § 2000e–3(a) (2000 ed.) prohibits retaliation for such conduct. I also agree with the Court's primary reasoning, which is based on "the point argued by the Government and explained by an [Equal Employment Opportunity Commission (EEOC)] guideline: 'When an employee communicates to her employer a belief that the employer has engaged in . . . a form of employment discrimination, that communication' virtually always 'constitutes the employee's *opposition* to the activity.' " *Ante*, at 276. I write separately to emphasize my understanding that the Court's holding does not and should not extend beyond employees who testify in internal investigations or engage in analogous purposive conduct.

As the Court concludes, the term "oppose" does not denote conduct that necessarily rises to the level required by the Sixth Circuit—*i. e.*, conduct that is " 'consistent' " and "instigated or initiated" by the employee. 211 Fed. Appx. 373, 376 (2006). The primary definitions of the term "oppose" do, however, require conduct that is active and purposive. See Webster's New International Dictionary 1709–1710 (2d ed. 1953); Random House Dictionary of the English Language 1010 (1966) (hereinafter Random Dict.); 10 Oxford English Dictionary 866–867 (2d ed. 1989). For example, the first three definitions of the term in the dictionary upon which the Court principally relies are as follows:

> "1. to act against or provide resistance to; combat. 2. to stand in the way of; hinder; obstruct. 3. to set as an opponent or adversary." Random Dict. 1359 (2d ed. 1987).

In accordance with these definitions, petitioner contends that the statutory term "oppose" means "taking action (including making a statement) to end, prevent, redress, or correct unlawful discrimination." Brief for Petitioner 40.

In order to decide the question that is before us, we have no need to adopt a definition of the term "oppose" that is

broader than the definition that petitioner advances. But in dicta, the Court notes that the fourth listed definition in the Random House Dictionary of the English Language goes further, defining "oppose" to mean "'to be hostile or adverse to, *as in opinion.*'" *Ante*, at 276 (emphasis added). Thus, this definition embraces silent opposition.

While this is certainly *an* accepted usage of the term "oppose," the term is not always used in this sense, and it is questionable whether silent opposition is covered by the opposition clause of 42 U. S. C. § 2000e–3(a). It is noteworthy that all of the other conduct protected by this provision—making a charge, testifying, or assisting or participating in an investigation, proceeding, or hearing—requires active and purposive conduct. "'That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well.'" *S. D. Warren Co.* v. *Maine Bd. of Environmental Protection*, 547 U. S. 370, 378 (2006) (quoting *Beecham* v. *United States*, 511 U. S. 368, 371 (1994)).

An interpretation of the opposition clause that protects conduct that is not active and purposive would have important practical implications. It would open the door to retaliation claims by employees who never expressed a word of opposition to their employers. To be sure, in many cases, such employees would not be able to show that management was aware of their opposition and thus would not be able to show that their opposition caused the adverse actions at issue. But in other cases, such employees might well be able to create a genuine factual issue on the question of causation. Suppose, for example, that an employee alleges that he or she expressed opposition while informally chatting with a co-worker at the proverbial water cooler or in a workplace telephone conversation that was overheard by a co-worker. Or suppose that an employee alleges that such a conversation occurred after work at a restaurant or tavern frequented by co-workers or at a neighborhood picnic attended by a friend or relative of a supervisor.

Some courts hold that an employee asserting a retaliation claim can prove causation simply by showing that the adverse employment action occurred within a short time after the protected conduct. See, *e. g.*, *Clark County School Dist.* v. *Breeden*, 532 U. S. 268, 273 (2001) *(per curiam)* (noting that some cases "accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case"); see also *Gorman-Bakos* v. *Cornell Cooperative Extension of Schenectady Cty.*, 252 F. 3d 545, 554 (CA2 2001); *Conner* v. *Schnuck Markets, Inc.*, 121 F. 3d 1390, 1395 (CA10 1997); *Dey* v. *Colt Constr. & Development Co.*, 28 F. 3d 1446, 1458 (CA7 1994). As a result, an employee claiming retaliation may be able to establish causation simply by showing that, within some time period prior to the adverse action, the employer, by some indirect means, became aware of the views that the employee had expressed. Where the protected conduct consisted of a private conversation, application of this rule would be especially problematic because of uncertainty regarding the point in time when the employer became aware of the employee's private expressions of disapproval.

The number of retaliation claims filed with the EEOC has proliferated in recent years. See U. S. Equal Employment Opportunity Commission, Charge Statistics: FY 1997 Through FY 2007, http://www.eeoc.gov/stats/charges.html; Charge Statistics: FY 1992 Through FY 1996, http://www.eeoc.gov/stats/charges-a.html (as visited Jan. 16, 2009, and available in Clerk of Court's case file) (showing that retaliation charges filed with the EEOC doubled between 1992 and 2007). An expansive interpretation of protected opposition conduct would likely cause this trend to accelerate.

The question whether the opposition clause shields employees who do not communicate their views to their employers through purposive conduct is not before us in this case; the answer to that question is far from clear; and I do not understand the Court's holding to reach that issue here.

For present purposes, it is enough to hold that the opposition clause does protect an employee, like petitioner, who testifies about unlawful conduct in an internal investigation.

Syllabus

KENNEDY, EXECUTRIX OF THE ESTATE OF KENNEDY, DECEASED *v.* PLAN ADMINISTRATOR FOR DUPONT SAVINGS AND INVESTMENT PLAN ET AL.

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

No. 07–636. Argued October 7, 2008—Decided January 26, 2009

The Employee Retirement Income Security Act of 1974 (ERISA), as relevant here, obligates administrators to manage ERISA plans "in accordance with the documents and instruments governing" them, 29 U. S. C. § 1104(a)(1)(D); requires covered pension benefit plans to "provide that benefits . . . may not be assigned or alienated," § 1056(d)(1); and exempts from this bar qualified domestic relations orders (QDROs), § 1056(d)(3). The decedent, William Kennedy, participated in his employer's savings and investment plan (SIP), with power both to designate a beneficiary to receive the funds upon his death and to replace or revoke that designation as prescribed by the plan administrator. Under the terms of the plan, if there is no surviving spouse or designated beneficiary at the time of death, distribution is made as directed by the estate's executor or administrator. Upon their marriage, William designated Liv Kennedy his SIP beneficiary and named no contingent beneficiary. Their subsequent divorce decree divested Liv of her interest in the SIP benefits, but William did not execute a document removing Liv as the SIP beneficiary. On William's death, petitioner Kari Kennedy, his daughter and the executrix of his Estate, asked for the SIP funds to be distributed to the Estate, but the plan administrator relied on William's designation form and paid them to Liv. The Estate filed suit, alleging that Liv had waived her SIP benefits in the divorce and thus respondents, the employer and the SIP plan administrator (together, DuPont), had violated ERISA by paying her. As relevant here, the District Court entered summary judgment for the Estate, ordering DuPont to pay the benefits to the Estate. The Fifth Circuit reversed, holding that Liv's waiver was an assignment or alienation of her interest to the Estate barred by § 1056(d)(1).

Held:

1. Because Liv did not attempt to direct her interest in the SIP benefits to the Estate or any other potential beneficiary, her waiver did not constitute an assignment or alienation rendered void under § 1056(d)(1). Pp. 292–299.

(a) Given the legal meaning of "assigned" and "alienated," it is fair to say that Liv did not assign or alienate anything to William or to the Estate. The Fifth Circuit's broad reading—that Liv's waiver indirectly transferred her interest to the next possible beneficiary, here the Estate—is questionable. It would be odd to speak of an estate as the transferee of its own decedent's property or of the decedent in his lifetime as his own transferee. It would also be strange under the Treasury regulation that defines "assignment" and "alienation." Moreover, it is difficult to see how certain waivers not barred by the antialienation provision, *e. g.*, a surviving spouse's ability to waive a survivor's annuity or lump-sum payment, see *Boggs* v. *Boggs*, 520 U. S. 833, 843; 29 U. S. C. §§ 1055(a), (b)(1)(C), (c)(2), would be permissible under the Fifth Circuit's reading. These doubts, and exceptions calling the Fifth Circuit's reading into question, point the Court toward the law of trusts that "serves as ERISA's backdrop." *Beck* v. *PACE Int'l Union*, 551 U. S. 96, 101. Section 1056(d)(1) is much like a spendthrift trust provision barring assignment or alienation of a benefit, see *Boggs*, *supra*, at 852, and the cognate trust law is highly suggestive here. The general principle that a designated spendthrift beneficiary can disclaim his trust interest magnifies the improbability that a statute written with an eye on the old law would effectively force a beneficiary to take an interest willy-nilly. The Treasury reads its own regulation to mean that the antialienation provision is not violated by a beneficiary's waiver "where the beneficiary does not attempt to direct her interest in pension benefits to another person." Brief for United States as *Amicus Curiae* 18. Being neither "plainly erroneous [n]or inconsistent with the regulation," the Treasury Department's interpretation is controlling. *Auer* v. *Robbins*, 519 U. S. 452, 461. ERISA's QDRO provisions shed no light on the validity of a waiver by a non-QDRO. Pp. 292–297.

(b) DuPont's additional reasons for saying that ERISA barred Liv's waiver are unavailing. Pp. 297–299.

2. Although Liv's waiver was not nullified by § 1056's express terms, the plan administrator did its ERISA duty by paying the SIP benefits to Liv in conformity with the plan documents. ERISA provides no exception to the plan administrator's duty to act in accordance with plan documents. Thus, the Estate's claim stands or falls by "the terms of the plan," 29 U. S. C. § 1132(a)(1)(B), a straightforward rule that lets employers "'establish a uniform administrative scheme, [with] a set of standard procedures to guide processing of claims and disbursement of benefits,'" *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148. By giving a plan participant a clear set of instructions for making his own instructions clear, ERISA forecloses any justification for enquiries into expressions of intent, in favor of the virtues of adhering to an uncomplicated rule.

Less certain rules could force plan administrators to examine numerous external documents purporting to be waivers and draw them into litigation like this over those waivers' meaning and enforceability. The guarantee of simplicity is not absolute, since a QDRO's enforceability may require an administrator to look for beneficiaries outside plan documents notwithstanding § 1104(a)(1)(D). But an administrator enforcing a QDRO must be said to enforce plan documents, not ignore them, and a QDRO enquiry is relatively discrete, given its specific and objective criteria. These are good and sufficient reasons for holding the line, just as the Court did in holding that ERISA preempted state laws that could blur the bright-line requirement to follow plan documents in distributing benefits. See *Boggs*, *supra*, at 850, and *Egelhoff*, *supra*, at 143. What goes for inconsistent state law goes for a federal common law of waiver that might obscure a plan administrator's duty to act "in accordance with the documents and instruments." See *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 259. This case points out the wisdom of protecting the plan documents rule. Under the SIP, Liv was William's designated beneficiary. The plan provided a way to disclaim an interest in the SIP account, which Liv did not purport to follow. The plan administrator therefore did exactly what § 1104(a)(1)(D) required and paid Liv the benefits. Pp. 299–304.

497 F. 3d 426, affirmed.

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

David A. Furlow argued the cause for petitioner. With him on the briefs were *Kevin Pennell* and *Stacy L. Kelly*.

Mark I. Levy argued the cause for respondents. With him on the brief were *Adam H. Charnes*, *John M. Vine*, *Seth J. Safra*, *Theodore P. Metzler*, *Raymond Michael Ripple*, and *Donna L. Goodman*.

Leondra R. Kruger argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were former *Solicitor General Clement*, *Assistant Attorney General Hochman*, *Deputy Solicitor General Kneedler*, *Robert F. Hoyt*, *Donald L. Korb*, *Nathaniel I. Spiller*, and *Edward D. Sieger*.*

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*Briefs of *amici curiae* urging affirmance were filed for AARP by *Mary Ellen Signorille* and *Melvin R. Radowitz;* for the American Benefits Council et al. by *Kent A. Mason;* and for the Western Conference of Teamsters Pension Trust Fund by *R. Bradford Huss*.

JUSTICE SOUTER delivered the opinion of the Court.

The Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, 29 U. S. C. § 1001 *et seq.*, generally obligates administrators to manage ERISA plans "in accordance with the documents and instruments governing" them. § 1104(a)(1)(D). At a more specific level, the Act requires covered pension benefit plans to "provide that benefits . . . under the plan may not be assigned or alienated," § 1056(d)(1), but this bar does not apply to qualified domestic relations orders (QDROs), § 1056(d)(3). The question here is whether the terms of the limitation on assignment or alienation invalidated the act of a divorced spouse, the designated beneficiary under her ex-husband's ERISA pension plan, who purported to waive her entitlement by a federal common law waiver embodied in a divorce decree that was not a QDRO. We hold that such a waiver is not rendered invalid by the text of the antialienation provision, but that the plan administrator properly disregarded the waiver owing to its conflict with the designation made by the former husband in accordance with plan documents.

I

The decedent, William Kennedy, worked for E. I. DuPont de Nemours & Company and was a participant in its savings and investment plan (SIP), with power both to "designate any beneficiary or beneficiaries . . . to receive all or part" of the funds upon his death, and to "replace or revoke such designation." App. 48. The plan requires "[a]ll authorizations, designations and requests concerning the Plan [to] be made by employees in the manner prescribed by the [plan administrator]," *id.*, at 52, and provides forms for designating or changing a beneficiary, *id.*, at 34, 56–57. If at the time the participant dies "no surviving spouse exists and no beneficiary designation is in effect, distribution shall be made to, or in accordance with the directions of, the executor or administrator of the decedent's estate." *Id.*, at 48.

The SIP is an ERISA "'employee pension benefit plan,'" 497 F. 3d 426, 427 (CA5 2007); 29 U. S. C. § 1002(2), and the parties do not dispute that the plan satisfies ERISA's anti-alienation provision, § 1056(d)(1), which requires it to "provide that benefits provided under the plan may not be assigned or alienated."[1] The plan does, however, permit a beneficiary to submit a "qualified disclaimer" of benefits as defined under the Tax Code, see 26 U. S. C. § 2518, which has the effect of switching the beneficiary to an "alternate . . . determined according to a valid beneficiary designation made by the deceased." Supp. Record 86–87 (Exh. 15).

In 1971, William married Liv Kennedy, and, in 1974, he signed a form designating her to take benefits under the SIP, but naming no contingent beneficiary to take if she disclaimed her interest. 497 F. 3d, at 427. William and Liv divorced in 1994, subject to a decree that Liv "is . . . divested of all right, title, interest, and claim in and to . . . [a]ny and all sums . . . the proceeds [from], and any other rights related to any . . . retirement plan, pension plan, or like benefit program existing by reason of [William's] past or present or future employment." App. to Pet. for Cert. 64–65. William did not, however, execute any documents removing Liv as the SIP beneficiary, 497 F. 3d, at 428, even though he did execute a new beneficiary-designation form naming his daughter, Kari Kennedy, as the beneficiary under DuPont's Pension and Retirement Plan, also governed by ERISA.

On William's death in 2001, petitioner Kari Kennedy was named executrix and asked DuPont to distribute the SIP

[1] The plan states that "[e]xcept as provided by Section 401(a)(13) of the [Internal Revenue] Code, no assignment of the rights or interests of account holders under this Plan will be permitted or recognized, nor shall such rights or interests be subject to attachment or other legal processes for debts." App. 50–51. Title 26 U. S. C. § 401(a)(13)(A), in language substantially tracking the text of § 1056(d)(1), provides that "[a] trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated."

funds to William's estate (hereinafter Estate). *Ibid.* DuPont, instead, relied on William's designation form and paid the balance of some $400,000 to Liv. *Ibid.* The Estate then sued respondents DuPont and the SIP plan administrator (together, DuPont), claiming that the divorce decree amounted to a waiver of the SIP benefits on Liv's part, and that DuPont had violated ERISA by paying the benefits to William's designee.[2]

So far as it matters here, the District Court entered summary judgment for the Estate, to which it ordered DuPont to pay the value of the SIP benefits. The court relied on Fifth Circuit precedent establishing that a beneficiary can waive his rights to the proceeds of an ERISA plan "'provided that the waiver is explicit, voluntary, and made in good faith.'" App. to Pet. for Cert. 38 (quoting *Manning* v. *Hayes*, 212 F. 3d 866, 874 (CA5 2000)).

The Fifth Circuit nonetheless reversed, distinguishing prior decisions enforcing federal common law waivers of ERISA benefits because they involved life-insurance policies, which are considered "'welfare plan[s]'" under ERISA and consequently free of the antialienation provision. 497 F. 3d, at 429. The Court of Appeals held that Liv's waiver constituted an assignment or alienation of her interest in the SIP benefits to the Estate, and so could not be honored. *Id.*, at 430. The court relied heavily on the ERISA provision for bypassing the antialienation provision when a marriage

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[2] The Estate now says that William's beneficiary-designation form for the Pension and Retirement Plan applied to the SIP as well, but the form on its face applies only to DuPont's "Pension and Retirement Plan." App. 62. In the District Court, in fact, the Estate stipulated that William "never executed any forms or documents to remove or replace Liv Kennedy as his sole beneficiary under either the SIP or [a plan that merged into the SIP]." *Id.*, at 28. In any event, the Estate did not raise this argument in the Court of Appeals, and we will not address it in the first instance. See *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 645–646 (1992).

breaks up: under 29 U. S. C. § 1056(d)(3),[3] a court order that satisfies certain statutory requirements is known as a QDRO, which is exempt from the bar on assignment or alienation. Because the Kennedys' divorce decree was not a QDRO, the Fifth Circuit reasoned that it could not give effect to Liv's waiver incorporated in it, given that "ERISA provides a specific mechanism—the QDRO—for addressing the elimination of a spouse's interest in plan benefits, but that mechanism is *not* invoked." 497 F. 3d, at 431.

We granted certiorari to resolve a split among the Courts of Appeals and State Supreme Courts over a divorced spouse's ability to waive pension plan benefits through a divorce decree not amounting to a QDRO.[4] 552 U. S. 1178 (2008). We subsequently realized that this case implicates the further split over whether a beneficiary's federal common law waiver of plan benefits is effective where that waiver is inconsistent with plan documents,[5] and after oral argument we invited supplemental briefing on that latter issue, upon

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[3] Section 1056(d)(3)(A) provides that the antialienation provision "shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order."

[4] Compare *Altobelli* v. *IBM Corp.*, 77 F. 3d 78 (CA4 1996) (federal common law waiver in divorce decree does not conflict with antialienation provision); *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F. 2d 275 (CA7 1990) (en banc) (same); *Keen* v. *Weaver*, 121 S. W. 3d 721 (Tex. 2003) (same), with *McGowan* v. *NJR Serv. Corp.*, 423 F. 3d 241 (CA3 2005) (federal common law waiver in divorce decree barred by antialienation provision).

[5] Compare *Altobelli*, *supra* (federal common law waiver controls); *Mohamed* v. *Kerr*, 53 F. 3d 911 (CA8 1995) (same); *Brandon* v. *Travelers Ins. Co.*, 18 F. 3d 1321 (CA5 1994) (same); *Fox Valley*, *supra* (same); *Strong* v. *Omaha Constr. Industry Pension Plan*, 270 Neb. 1, 701 N. W. 2d 320 (2005) (same); *Keen*, *supra* (same), with *Metropolitan Life Ins. Co.* v. *Marsh*, 119 F. 3d 415 (CA6 1997) (plan documents control); *Krishna* v. *Colgate Palmolive Co.*, 7 F. 3d 11 (CA2 1993) (same).

which the disposition of this case ultimately turns. We now affirm, albeit on reasoning different from the Fifth Circuit's rationale.

II

A

By its terms, the antialienation provision, § 1056(d)(1), requires a plan to provide expressly that benefits be neither "assigned" nor "alienated," the operative verbs having histories of legal meaning: to "assign" is "[t]o transfer; as to assign property, or some interest therein," Black's Law Dictionary 152 (4th rev. ed. 1968), and to "alienate" is "[t]o convey; to transfer the title to property," *id.*, at 96. We think it fair to say that Liv did not assign or alienate anything to William or to the Estate later standing in his shoes.

The Fifth Circuit saw the waiver as an assignment or alienation to the Estate, thinking that Liv's waiver transferred the SIP benefits to whoever would be next in line; without a designated contingent beneficiary, the Estate would take them. The court found support in the applicable Treasury Department regulation that defines "assignment" and "alienation" to include

> "[a]ny direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary." 26 CFR § 1.401(a)–13(c)(1)(ii) (2008).

See *Boggs* v. *Boggs*, 520 U. S. 833, 851–852 (1997) (relying upon the regulation to interpret the meaning of "assignment" and "alienation" in § 1056(d)(1)). The Circuit treated Liv's waiver as an " 'indirect arrangement' " whereby the Estate gained an " 'interest enforceable against the plan.' " 497 F. 3d, at 430.

Casting the alienation net this far, though, raises questions that leave one in doubt. Although it is possible to speak of

the waiver as an "arrangement" having the indirect effect of a transfer to the next possible beneficiary, it would be odd usage to speak of an estate as the transferee of its own decedent's property, just as it would be to speak of the decedent in his lifetime as his own transferee. And treating the estate or even the ultimate estate beneficiary as the assignee or transferee would be strange under the terms of the regulation: it would be hard to say the estate or future beneficiary "acquires" a right or interest when at the time of the waiver there was no estate and the beneficiary of a future estate might be anyone's guess. If there were a contingent beneficiary (or the participant made a subsequent designation) the estate would get no interest; as for an estate beneficiary, the identity could ultimately turn on the law of intestacy applied to facts as yet unknown, or on the contents of the participant's subsequent will, or simply on the participant's future exercise of (or failure to invoke) the power to designate a new beneficiary directly under the terms of the plan. Thus, if such a waiver created an "arrangement" assigning or transferring anything under the statute, the assignor would be blindfolded, operating, at best, on the fringe of what "assignment" or "alienation" normally suggests.

The questionability of this broad reading is confirmed by exceptions to it that are apparent right off the bat. Take the case of a surviving spouse's interest in pension benefits, for example. Depending on the circumstances, a surviving spouse has a right to a survivor's annuity or to a lump-sum payment on the death of the participant, unless the spouse has waived the right and the participant has eliminated the survivor annuity benefit or designated a different beneficiary. See *Boggs, supra,* at 843; 29 U. S. C. §§ 1055(a), (b)(1)(C), (c)(2). This waiver by a spouse is plainly not barred by the antialienation provision. Likewise, DuPont concedes that a qualified disclaimer under the Tax Code, which allows a party to refuse an interest in property and thereby eliminate federal tax, would not violate the anti-

alienation provision. See Brief for Respondents 21–23; 26 U. S. C. § 2518. In each example, though, we fail to see how these waivers would be permissible under the Fifth Circuit's reading of the statute and regulation.

Our doubts, and the exceptions that call the Fifth Circuit's reading into question, point us toward authority we have drawn on before, the law of trusts that "serves as ERISA's backdrop." *Beck* v. *PACE Int'l Union*, 551 U. S. 96, 101 (2007). We explained before that § 1056(d)(1) is much like a spendthrift trust provision barring assignment or alienation of a benefit, see *Boggs, supra,* at 852, and the cognate trust law is highly suggestive here. Although the beneficiary of a spendthrift trust traditionally lacked the means to transfer his beneficial interest to anyone else, he did have the power to disclaim prior to accepting it, so long as the disclaimer made no attempt to direct the interest to a beneficiary in his stead. See 2 Restatement (Third) of Trusts § 58(1), Comment *c*, p. 359 (2001) ("A designated beneficiary of a spendthrift trust is not required to accept or retain an interest prescribed by the terms of the trust. . . . On the other hand, a purported disclaimer by which the beneficiary attempts to direct who is to receive the interest is a precluded transfer"); E. Griswold, Spendthrift Trusts § 524, p. 603 (2d ed. 1947) ("The American cases, though not entirely clear, generally take the view that the interest under a spendthrift trust may be disclaimed"); *Roseberry* v. *Moncure*, 245 Va. 436, 439, 429 S. E. 2d 4, 6 (1993) ("'If a trust is created without notice to the beneficiary or the beneficiary has not accepted the beneficial interest under the trust, he can disclaim'" (quoting 1 A. Scott & W. Fratcher, Law of Trusts § 36.1, p. 389 (4th ed. 1987) (hereinafter Fratcher))).

We do not mean that the whole law of spendthrift trusts and disclaimers turns up in § 1056(d)(1), but the general principle that a designated spendthrift can disclaim his trust interest magnifies the improbability that a statute written with an eye on the old law would effectively force a benefi-

ciary to take an interest willy-nilly. Common sense and common law both say that "[t]he law certainly is not so absurd as to force a man to take an estate against his will." *Townson* v. *Tickell*, 3 Barn. & Ald. 31, 36, 106 Eng. Rep. 575, 576–577 (K. B. 1819).[6]

The Treasury is certainly comfortable with the state of the old law, for the way it reads its own regulation "no party 'acquires from' a beneficiary a 'right or interest enforceable against a plan' pursuant to a beneficiary's waiver of rights where the beneficiary does not attempt to direct her interest in pension benefits to another person." Brief for United States as *Amicus Curiae* 18. And, being neither "plainly erroneous [n]or inconsistent with the regulation," the Treas-

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[6] DuPont argues that Liv's waiver would have been an invalid disclaimer at common law because it was given for consideration in the divorce settlement. But the authorities DuPont cites fail to support the proposition that a beneficiary's otherwise valid disclaimer was invalid at common law because she received consideration. See *Roseberry* v. *Moncure*, 245 Va., at 439, 429 S. E. 2d, at 6; *Smith* v. *Bank of Del.*, 43 Del. Ch. 124, 126–127, 219 A. 2d 576, 577 (1966); *Preminger* v. *Union Bank & Trust Co.*, 54 Mich. App. 361, 368–369, 220 N. W. 2d 795, 798–799 (1974); 4 Fratcher § 337.1 (4th ed. 1989); 1 Restatement (Second) of Trusts § 36, Comment *c* (1957). It is true that the receipt of consideration prevents a beneficiary from making a qualified disclaimer for gift tax purposes, see 26 CFR § 25.2518–2 (2008), and there is common law authority for the proposition that a renunciation by a devisee is ineffective against existing creditors if "it is shown that those who would take such property on renunciation had agreed to pay to the devisee something of value in consideration of such renunciation." 6 W. Bowe & D. Parker, Page on Law of Wills § 49.5, p. 48 (2005); see also *Schoonover* v. *Osborne*, 193 Iowa 474, 478–479, 187 N. W. 20, 22 (1922). But at common law the receipt of consideration did not necessarily render a disclaimer invalid. See *Commerce Trust Co.* v. *Fast*, 396 S. W. 2d 683, 686–687 (Mo. 1965); *Central Nat. Bank* v. *Eells*, 5 Ohio Misc. 187, 189–192, 215 N. E. 2d 77, 80–81 (Ohio P. Ct. 1965); *In re Wimperis*, [1914] 1 Ch. 502, 508–510; see also *In re Estate of Baird*, 131 Wash. 2d 514, 519, n. 5, 933 P. 2d 1031, 1034, n. 5 (1997). In any event, our point is not that Liv's waiver was a valid disclaimer at common law: only that reading the terms of 29 U. S. C. § 1056(d)(1) to bar all non-QDRO waivers is unsound in light of background common law principles.

ury Department's interpretation of its regulation is controlling. *Auer* v. *Robbins*, 519 U. S. 452, 461 (1997) (internal quotation marks omitted).[7]

The Fifth Circuit found "significant support" for its contrary holding in the QDRO subsections, reasoning that "[i]n the marital-dissolution context, the QDRO provisions supply the *sole* exception to the anti-alienation provision," 497 F. 3d, at 430, a point that echoes in DuPont's argument here. But the negative implication of the QDRO language is not that simple. If a QDRO provided a way for a former spouse like Liv merely to waive benefits, this would be powerful evidence that the antialienation provision was meant to deny any effect to a waiver within a divorce decree but not a QDRO, else there would have been no need for the QDRO exception. But this is not so, and DuPont's argument rests on a false premise. In fact, a beneficiary seeking only to relinquish her right to benefits cannot do this by a QDRO, for a QDRO by definition requires that it be the "creat[ion] or recogni[tion of] the existence of an alternate payee's right to, or assign[ment] to an alternate payee [of] the right

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[7] It is true that the Government's position regarding the applicability of the antialienation provision to a waiver has fluctuated. The Labor Department previously took the position that "application of such a federal common-law waiver rule to pension plans would conflict with ERISA's anti-alienation provision." Brief for Secretary of Labor as *Amicus Curiae* in *Keen* v. *Weaver*, No. 01–0447 (Tex. 2003), p. 16. And it likewise asserted that "waiver of pension benefits is generally impermissible under [§ 1056(d)(1)]." Brief for Secretary of Labor as *Amicus Curiae* in *In re Estate of Egelhoff*, No. 67626–7 (Wash. 2001), p. 5. The Labor Department has reconsidered that view and has now taken the Treasury's position. Brief for United States as *Amicus Curiae* 20, n. 6. But "the change in interpretation alone presents no separate ground for disregarding the [Treasury's and the Labor] Department's present interpretation." *Long Island Care at Home, Ltd.* v. *Coke*, 551 U. S. 158, 171 (2007). Nor does the fact that the interpretation is stated in a legal brief make it unworthy of deference, as "[t]here is simply no reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter in question." *Auer*, 519 U. S., at 462.

to, receive all or a portion of the benefits payable with respect to a participant under a plan." 29 U. S. C. § 1056(d)(3)(B)(i)(I). There is no QDRO for a simple waiver; there must be some succeeding designation of an alternate payee.[8] Not being a mechanism for simply renouncing a claim to benefits, then, the QDRO provisions shed no light on whether a beneficiary may waive by a non-QDRO.

In sum, Liv did not attempt to direct her interest in the SIP benefits to the Estate or any other potential beneficiary, and accordingly we think that the better view is that her waiver did not constitute an assignment or alienation rendered void under the terms of § 1056(d)(1).

B

DuPont has three other reasons for saying that Liv's waiver was barred by ERISA. They are unavailing.

First, it argues that even if the waiver is not an assignment or alienation barred under the terms of § 1056(d)(1), § 1056(d)(3)(A) still prohibits it, in providing that § 1056(d)(1) "shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order [that is not a QDRO]." At the very least, DuPont reasons, Liv's waiver included a "recognition" of William's rights with respect to the SIP benefits. But DuPont overlooks the point that when subsection (d)(3)(A) provides that the bar to assignments or alienations extends to non-QDROs, it does nothing to expand the scope of prohibited assignment and alienation under subsection (d)(1). Whether Liv's action is seen as a waiver or as a domestic relations order that incorporated a waiver, subsection

[8] Even if one understands Liv's waiver to have resulted somehow in her interest reverting to William, he does not qualify as an "alternate payee," which is defined by statute as "any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant." 29 U. S. C. § 1056(d)(3)(K).

(d)(1) does not cover it and § 1056(d)(3)(A) does not independently bar it.

Second, DuPont relies upon § 1056(d)(3)(H)(iii)(II), providing that if a domestic relations order is not a QDRO, "the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order." According to DuPont, because the divorce decree was not a QDRO this provision calls for paying benefits as if there had been no order. But DuPont has wrenched this language out of its setting, reading clause (iii) of subparagraph (H) as if there were no clause (i):

> "During any period in which the issue of whether a domestic relations order is a qualified [QDRO] domestic relations order is being determined . . . the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the 'segregated amounts') which would have been payable to the alternate payee during such period if the order had been determined to be a [QDRO]." § 1056(d)(3)(H)(i).

Thus it is clear that subparagraph (H) speaks of a domestic relations order that distributes certain benefits (the "segregated amounts") to an alternate payee, when the question for the plan administrator is whether the order is effective as a QDRO. That is the circumstance in which, for want of a QDRO, clause (iii) tells the plan administrator not to pay the alternate, but to distribute the segregated amounts as if there had been no order. Clause (iii) does not, as DuPont suggests, state a general rule that a non-QDRO is a nullity in any proceeding that would affect the determination of a beneficiary. And of course clause (iii) says nothing here at all; the divorce decree names no alternate payee, and there are consequently no "segregated amounts."

Third, DuPont claims that a plan cannot recognize a waiver of benefits in a non-QDRO divorce decree because

ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan," with "State law" being defined to include "decisions" or "other State action having the effect of law."[9] §§ 1144(a), (c)(1). DuPont says that Liv's waiver, expressed in a state-court decision and related to an employee benefit plan, is thus preempted. But recognizing a waiver in a divorce decree would not be giving effect to state law; the argument is that the waiver should be treated as a creature of federal common law, in which case its setting in a state divorce decree would be only happenstance. A court would merely be applying federal law to a document that might also have independent significance under state law. See, *e. g.*, *Melton* v. *Melton*, 324 F. 3d 941, 945–946 (CA7 2003); *Clift* v. *Clift*, 210 F. 3d 268, 271–272 (CA5 2000); *Lyman Lumber Co.* v. *Hill*, 877 F. 2d 692, 693–694 (CA8 1989).

III

The waiver's escape from inevitable nullity under the express terms of the antialienation clause does not, however, control the decision of this case, and the question remains whether the plan administrator was required to honor Liv's waiver with the consequence of distributing the SIP balance to the Estate.[10] We hold that it was not, and that the plan

[9] This preemption provision does not apply to QDROs. See § 1144(b)(7).

[10] Despite our following answer to the question here, our conclusion that § 1056(d)(1) does not make a nullity of a waiver leaves open any questions about a waiver's effect in circumstances in which it is consistent with plan documents. Nor do we express any view as to whether the Estate could have brought an action in state or federal court against Liv to obtain the benefits after they were distributed. Compare *Boggs* v. *Boggs*, 520 U. S. 833, 853 (1997) ("If state law is not pre-empted, the diversion of retirement benefits will occur regardless of whether the interest in the pension plan is enforced against the plan or the recipient of the pension benefit"), with *Sweebe* v. *Sweebe*, 474 Mich. 151, 156–159, 712 N. W. 2d 708, 712–713 (2006) (distinguishing *Boggs* and holding that "while a plan administrator must pay benefits to the named beneficiary as required by ERISA," after the benefits are distributed "the consensual terms of a prior contractual agree-

administrator did its statutory ERISA duty by paying the benefits to Liv in conformity with the plan documents.

ERISA requires "[e]very employee benefit plan [to] be established and maintained pursuant to a written instrument," 29 U. S. C. § 1102(a)(1), "specify[ing] the basis on which payments are made to and from the plan," § 1102(b)(4). The plan administrator is obliged to act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [Title I] and [Title IV] of [ERISA]," § 1104(a)(1)(D), and ERISA provides no exemption from this duty when it comes time to pay benefits. On the contrary, § 1132(a)(1)(B) (which the Estate happens to invoke against DuPont here) reinforces the directive, with its provision that a participant or beneficiary may bring a cause of action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

The Estate's claim therefore stands or falls by "the terms of the plan," § 1132(a)(1)(B), a straightforward rule of hewing to the directives of the plan documents that lets employers "'establish a uniform administrative scheme, [with] a set of standard procedures to guide processing of claims and disbursement of benefits,'"[11] *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 148 (2001) (quoting *Fort Halifax Packing Co.* v. *Coyne*, 482 U. S. 1, 9 (1987)); see also *Curtiss-Wright Corp.* v.

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ment may prevent the named beneficiary from retaining those proceeds"); *Pardee* v. *Pardee*, 2005 OK CIV App. 27, ¶¶ 20, 27, 112 P. 3d 308, 313–314, 315–316 (2004) (distinguishing *Boggs* and holding that ERISA did not preempt enforcement of allocation of ERISA benefits in state-court divorce decree as "the pension plan funds were no longer entitled to ERISA protection once the plan funds were distributed").

[11] We express no view regarding the ability of a participant or beneficiary to bring a cause of action under 29 U. S. C. § 1132(a)(1)(B) where the terms of the plan fail to conform to the requirements of ERISA and the party seeks to recover under the terms of the statute.

Schoonejongen, 514 U. S. 73, 83 (1995) (ERISA's statutory scheme "is built around reliance on the face of written plan documents"). The point is that by giving a plan participant a clear set of instructions for making his own instructions clear, ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: "simple administration, avoid[ing] double liability, and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F. 2d 275, 283 (CA7 1990) (Easterbrook, J., dissenting).

And the cost of less certain rules would be too plain. Plan administrators would be forced "to examine a multitude of external documents that might purport to affect the dispensation of benefits," *Altobelli* v. *IBM Corp.*, 77 F. 3d 78, 82–83 (CA4 1996) (Wilkinson, C. J., dissenting), and be drawn into litigation like this over the meaning and enforceability of purported waivers. The Estate's suggestion that a plan administrator could resolve these sorts of disputes through interpleader actions merely restates the problem with the Estate's position: it would destroy a plan administrator's ability to look at the plan documents and records conforming to them to get clear distribution instructions, without going into court.

The Estate of course is right that this guarantee of simplicity is not absolute. The very enforceability of QDROs means that sometimes a plan administrator must look for the beneficiaries outside plan documents notwithstanding § 1104(a)(1)(D); § 1056(d)(3)(J) provides that a "person who is an alternate payee under a [QDRO] shall be considered for purposes of any provision of [ERISA] a beneficiary under the plan." But this in effect means that a plan administrator who enforces a QDRO must be said to enforce plan documents, not ignore them. In any case, a QDRO enquiry is relatively discrete, given the specific and objective criteria

for a domestic relations order that qualifies as a QDRO,[12] see §§ 1056(d)(3)(C), (D), requirements that amount to a statutory checklist working to "spare [an administrator] from litigation-fomenting ambiguities," *Metropolitan Life Ins. Co.* v. *Wheaton*, 42 F. 3d 1080, 1084 (CA7 1994). This is a far cry from asking a plan administrator to figure out whether a claimed federal common law waiver was knowing and voluntary, whether its language addressed the particular benefits at issue, and so forth, on into factually complex and subjective determinations. See, *e. g.*, *Altobelli*, *supra*, at 83 (Wilkinson, C. J., dissenting) ("[W]aiver provisions are often sweeping in their terms, leaving their precise effect on plan benefits unclear"); *Mohamed* v. *Kerr*, 53 F. 3d 911, 915 (CA8 1995) (making "fact-driven determination" that marriage termination agreement constituted a valid waiver under federal common law).

These are good and sufficient reasons for holding the line, just as we have done in cases of state laws that might blur the bright-line requirement to follow plan documents in distributing benefits. Two recent preemption cases are instructive here. *Boggs* v. *Boggs*, 520 U. S. 833, held that ERISA preempted a state law permitting the testamentary transfer of a nonparticipant spouse's community property in-

[12] To qualify as a QDRO, a divorce decree must "clearly specif[y]" the name and last known mailing address of the participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee or the manner in which such amount or percentage is to be determined; the number of payments or period to which the order applies; and each plan to which such order applies. § 1056(d)(3)(C). A domestic relations order cannot qualify as a QDRO if it requires a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; requires the plan to provide increased benefits; or requires the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO. § 1056(d)(3)(D). A plan is required to establish written procedures for determining whether a domestic relations order is a QDRO. § 1056(d)(3)(G)(ii).

terest in undistributed pension plan benefits. We rejected the entreaty to create "through case law . . . a new class of persons for whom plan assets are to be held and administered," explaining that "[t]he statute is not amenable to this sweeping extratextual extension." *Id.*, at 850. And in *Egelhoff* we held that ERISA preempted a state law providing that the designation of a spouse as the beneficiary of a nonprobate asset is revoked automatically upon divorce. 532 U. S., at 143. We said the law was at fault for standing in the way of making payments "simply by identifying the beneficiary specified by the plan documents," *id.*, at 148, and thus for purporting to "undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators," *id.*, at 149–150 (quoting *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 142 (1990)); see *Egelhoff*, *supra*, at 147, n. 1 (identifying "the conflict between the plan documents (which require making payments to the named beneficiary) and the statute (which requires making payments to someone else)").

What goes for inconsistent state law goes for a federal common law of waiver that might obscure a plan administrator's duty to act "in accordance with the documents and instruments." See *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 259 (1993) ("The authority of courts to develop a 'federal common law' under ERISA . . . is not the authority to revise the text of the statute"). And this case does as well as any other in pointing out the wisdom of protecting the plan documents rule. Under the terms of the SIP Liv was William's designated beneficiary. The plan provided an easy way for William to change the designation, but for whatever reason he did not. The plan provided a way to disclaim an interest in the SIP account, but Liv did not purport to follow it.[13]

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[13] The Estate does not contend that Liv's waiver was a valid disclaimer under the terms of the plan. We do not address a situation in which the plan documents provide no means for a beneficiary to renounce an interest in benefits.

The plan administrator therefore did exactly what § 1104(a)(1)(D) required: "the documents control, and those name [the ex-wife]." *McMillan* v. *Parrott*, 913 F. 2d 310, 312 (CA6 1990).

It is no answer, as the Estate argues, that William's beneficiary-designation form should not control because it is not one of the "documents and instruments governing the plan" under § 1104(a)(1)(D) and was not treated as a plan document by the plan administrator. That is beside the point. It is uncontested that the SIP and the summary plan description are "documents and instruments governing the plan." See *Curtiss-Wright Corp.*, 514 U. S., at 84 (explaining that 29 U. S. C. §§ 1024(b)(2) and (b)(4) require a plan administrator to make available the "governing plan documents"). Those documents provide that the plan administrator will pay benefits to a participant's designated beneficiary, with designations and changes to be made in a particular way. William's designation of Liv as his beneficiary was made in the way required; Liv's waiver was not.[14]

IV

Although Liv's waiver was not rendered a nullity by the terms of § 1056, the plan administrator properly distributed the SIP benefits to Liv in accordance with the plan documents. The judgment of the Court of Appeals is affirmed on the latter ground.

It is so ordered.

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[14] The Estate also contends that requiring a plan administrator to distribute benefits in conformity with plan documents will allow a beneficiary who murders a participant to obtain benefits under the terms of the plan. The "slayer" case is not before us, and we do not address it. See *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 152 (2001) (declining to decide whether ERISA preempts state statutes forbidding a murdering heir from receiving property as a result of the killing).

Syllabus

UNITED STATES *v.* EURODIF S. A. ET AL.

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

No. 07–1059. Argued November 4, 2008—Decided January 26, 2009*

Nuclear utilities generally procure their fuel, "low enriched uranium" (LEU), through one of two types of contracts. Under an "enriched uranium product" (EUP) contract, the utility simply pays the enricher cash for LEU of a desired quantity and "assay," *i. e.*, its percentage of the isotope necessary for a nuclear reaction. The amount of energy required to enrich a quantity of "feed uranium" to a given assay is described in terms of an industry standard called a "separative work unit" (SWU). Under a "SWU contract," the utility provides a quantity of feed uranium and pays the enricher for the SWUs to produce the required LEU quantity and assay. SWU contracts do not require that the required number of SWUs actually be applied to the utility's uranium. Because feed uranium is fungible and essentially trades like a commodity, and because profitable operation of an enrichment plant requires the constant processing of feed uranium from the enricher's undifferentiated stock, the LEU provided to a utility under a SWU contract cannot be traced to the particular unenriched uranium the utility provided.

Petitioners (collectively, USEC), who run the only uranium enrichment factory in the United States, petitioned the Commerce Department for relief under the Tariff Act of 1930, which calls for "antidumping" duties on "foreign merchandise" sold in this country at "less than its fair value," 19 U. S. C. § 1673, but does not touch international sales of services. USEC alleged that LEU imported from European countries under both EUP and SWU contracts was being sold in the United States at less than fair value and was materially harming domestic industry. In its final determination, the Department concluded that LEU from France, including LEU acquired under SWU contracts, was being sold here at less than fair value. Among other things, the Department rejected the claim that such transactions were sales of enrichment services, as provided in SWU contracts. The Court of International Trade (CIT) ultimately reversed, noting the "legal fiction" expressed in SWU contracts that the very feed uranium delivered by a utility to an en-

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*Together with No. 07–1078, *USEC Inc. et al.* v. *Eurodif S. A. et al.*, also on certiorari to the same court.

richer is enriched and then returned as LEU to the utility. Finding that the record did not support a determination that the enricher has any ownership rights, the CIT reasoned that the Department's decision was unsupported by substantial evidence and not in accordance with law. The Federal Circuit affirmed, approaching the issues much as the CIT had.

Held: The Department's take on the transactions at issue as sales of goods rather than services reflects a permissible interpretation and application of § 1673. Because § 1677(1) gives this determination to the Department in the first instance, the Department's interpretation governs in the absence of unambiguous statutory language to the contrary or an unreasonable resolution of ambiguous language. See, *e. g.*, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837. Two threshold propositions must be accepted. First, the Department reasonably concluded that § 1673 is not limited by its terms to cash-only sales. If that were the case, any sale of a manufactured product could be exempted from the section's operation by a contractual term stating part of the purchase price in terms of a commodity. Second, since public law is not constrained by private fiction, see, *e. g.*, *Tcherepnin* v. *Knight*, 389 U. S. 332, 336, the Department is not bound by the legal fiction created by SWU contracts that the very feed uranium delivered by a utility to an enricher is enriched and then returned as LEU to the utility. Thus, the test of the Department's position turns first on whether the statute clearly excludes a transaction involving mixed payment for LEU that may and almost certainly will be produced from uranium feed distinct from what the utility provides. Although it is undisputed that § 1673 applies to the sale of goods, not services, the section simply does not speak with the precision necessary to say definitively whether it applies to the LEU and the agreement giving the utility a right to get it. This is the very situation in which the Court looks to an authoritative agency for a decision about a statute's scope. Once the choice is made, the Court asks only whether the department's application of the statute was reasonable. Where, as here, cash plus an untracked fungible commodity are exchanged for a substantially transformed version of the same commodity, the Department may reasonably treat the transaction as the sale of a good under § 1673. Cf. *Powder Co.* v. *Burkhardt*, 97 U. S. 110, 116. The Department's position is reinforced by practical reasons aimed at preserving antidumping duties' effectiveness. It is undisputed that such duties apply to LEU sold to a domestic utility by foreign enrichers under an EUP contract calling for a single cash price that is less than fair value. Such a transaction obviously opens the domestic enrichment industry to material injury, the very

threat that § 1673 was meant to counter. But the same injury will occur if a SWU contract is untouchable. Under a SWU contract, the domestic utility pays cash to a third party for unenriched uranium and provides this along with additional cash in exchange for LEU; any EUP contract could be structured as a SWU contract simply by splitting the transaction in two, one contract to buy unenriched uranium and another to enrich it. And the restructuring would not stop with uranium; contracts for many types of goods would be replaced by separate contracts for the goods and for processing services, and antidumping duties would primarily chastise the uncreative. The Department's attempt to foreclose this absurd result by treating such transactions as sales of goods is eminently reasonable. Pp. 316–322.

506 F. 3d 1051, reversed and remanded.

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

Deputy Solicitor General Stewart argued the cause for the United States in No. 07–1059. On the briefs in No. 07–1059 were former *Solicitor General Garre*, *Assistant Attorney General Katsas*, *Deputy Solicitor General Kneedler*, *Leondra R. Kruger*, *John B. Bellinger III*, *Daniel J. Dell'Orto*, *John D. McInerney*, *David R. Mason, Jr.*, *Quentin M. Baird*, and *David R. Hill*. *H. Bartow Farr III* argued the cause for petitioners USEC Inc. et al. in No. 07–1078. With him on the briefs were *Sheldon E. Hochberg*, *Eric C. Emerson*, *Charles G. Cole*, *Michael A. Vatis*, *John P. Nolan*, *Peter B. Saba*, and *James A. Schoettler, Jr.*

Caitlin J. Halligan argued the cause for respondents in both cases. With her on the brief for respondent Eurodif S. A. et al. were *Stuart M. Rosen*, *Gregory Silbert*, *W. Andrew Ryu*, and *Lisa R. Eskow*. *Nancy A. Fischer*, *Stephan E. Becker*, *David J. Cynamon*, *Joshua D. Fitzhugh*, and *Christine J. Sohar* filed a brief for respondent Ad Hoc Utilities Group.†

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†*David A. Hartquist*, *Kathleen W. Cannon*, *Jonathan P. Hiatt*, and *Paul Whitehead* filed a brief for the Committee to Support U. S. Trade Laws et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for Alcoa, Inc., by *Catherine E. Stetson*, *Lewis E. Leibowitz*, and *Jessica L. Ellsworth;* for

JUSTICE SOUTER delivered the opinion of the Court.

Section 731 of the Tariff Act of 1930 calls for "antidumping" duties on "foreign merchandise" sold in the United States at "less than its fair value," 19 U. S. C. § 1673, but does not touch international sales of services. These cases test the application of this antidumping provision to imports of low enriched uranium (LEU), a highly processed derivative of natural uranium used as nuclear fuel, when domestic utilities contract to obtain LEU for cash plus unenriched uranium delivered to a foreign enricher. Although the parties' contracts call these transactions sales of uranium enrichment services, the Commerce Department treats them as sales of "foreign merchandise" subject to the antidumping provision. The issue is whether the Commerce Department's way of seeing the transactions as sales of goods rather than services reflects a permissible interpretation and application of § 1673. We hold that it does.

I

There are five steps in transforming elemental uranium into fuel rods for nuclear powerplants. After uranium ore is mined, it is milled into uranium concentrate called "yellowcake," which is next converted into uranium hexafluoride gas or "feed uranium." The fissionable isotope in unenriched feed uranium is then concentrated, producing LEU in pellet form, which is in turn made into uranium fuel rods. These cases are about the fourth step: enriching uranium feedstock into LEU.

The uranium isotope needed for a nuclear reaction, U–235, amounts only to 0.711 percent by weight of natural uranium. Uranium whose concentration or "assay," of U–235 has been

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the National Atomic Co. "Kazatomprom" by *Thomas B. Wilner* and *Robert S. LaRussa;* and for Techsnabexport by *Carolyn B. Lamm, Frank J. Schweitzer, Adams C. Lee,* and *Joanna M. Ritcey-Donohue.*

Gregory S. Coleman, Edward C. Dawson, Marc S. Tabolsky, and *Stephen R. McAllister* filed a brief for Raj Bhala as *amicus curiae.*

enhanced to 20 percent or more is weapons-grade, highly enriched uranium, whereas LEU has a U–235 assay of 3 to 5 percent, making it useful as nuclear fuel. One way to produce LEU, and the method at issue in these cases, is gaseous diffusion,[1] whereby gaseous feed uranium is pushed through a long series of filters, separating the gas into two streams. The stream passing through the filters (the "product stream") gains a higher concentration of the lighter U–235 isotope than the stream that is filtered out (the "tails"). Because the concentration reached at each individual filter is minor, the gas must be forced through hundreds or even thousands of filters, at great expenditure of electricity, before the product stream reaches the desired assay. The amount of energy required to enrich a quantity of feed uranium to a given assay is measured in terms of an industry standard called a "separative work unit" or SWU (pronounced "swoo"). In practice, however, a given degree of enrichment will depend on adjusting the quantities of two separate variables, feed uranium and electricity, in inverse proportions. Thus, if the electric rate is stable but the value of feed uranium falls, an enricher may produce LEU by "overfeeding," subjecting a greater quantity of feed uranium to fewer SWUs, and when the value of feed uranium goes up and electricity does not, "underfeeding" can use more SWUs to squeeze extra U–235 from the tails.

Nuclear utilities generally get LEU in one of two ways. Under an "enriched uranium product" or "EUP" contract, a utility simply buys a desired quantity and assay of LEU for cash. Under a "SWU contract," the utility provides a quantity of feed uranium and pays the enricher for the SWUs to produce the quantity and assay of LEU called for.[2] Despite

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[1] LEU can also be produced through a centrifuge method or by backblending unenriched uranium with weapons-grade uranium.

[2] Many SWU contracts give the utility the option of providing a comparable quantity of uranium concentrate in lieu of the specified feed uranium. App. 13, 83, 268–269 (Sealed).

their name, SWU contracts do not require that the contractual number of SWUs actually be applied to the quantity of uranium provided, Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium From France, 66 Fed. Reg. 65877, 65884 (2001) (hereinafter LEU from France); rather, the enricher remains free to overfeed or underfeed so long as it delivers the specified LEU. Moreover, because feed uranium is fungible, and "for all intents and purposes, trades like a commodity," *ibid.*, and because profitable operation of an enrichment plant requires the constant processing of feed uranium from the enricher's undifferentiated stock, the LEU provided to a utility under a SWU contract cannot be traced to the particular unenriched uranium the utility provided.

Petitioners, USEC Inc. and its subsidiary, United States Enrichment Corporation (USEC collectively), run the only uranium enrichment factory in the United States,[3] which was built by the United States Government in the 1950s and run by various federal agencies until it was leased to USEC in 1998. In December 2000, USEC petitioned the Commerce Department for relief under § 731 of the Tariff Act, alleging that LEU imported from France and other European countries under both EUP and SWU contracts was being sold in the United States at less than fair value and was materially harming domestic industry. Notice of Initiation of Antidumping Duty Investigations: Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom, 66 Fed. Reg. 1080 (2001).

Section 731 of the Tariff Act of 1930, as added by § 101 of the Trade Agreements Act of 1979, 93 Stat. 162, as amended, 19 U. S. C. § 1673, provides a two-step process to address

[3] There are only five major uranium enrichers in the world, a scarcity that illustrates the "huge financial investment in facilities and a technically skilled work force" necessary to support the enrichment process. LEU from France, 66 Fed. Reg. 65884.

harm to domestic manufacturing from foreign goods sold at an unfair price:

> "If—
>
> "(1) the administering authority [the Secretary of Commerce] determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and
>
> "(2) the [United States International Trade] Commission determines that—
>
> "(A) an industry in the United States—
>
> "(i) is materially injured, or
>
> "(ii) is threatened with material injury, or
>
> "(B) the establishment of an industry in the United States is materially retarded,
>
> "by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,
>
> "then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. . . . "

See also § 1677(1) (designating the Secretary of Commerce as the " 'administering authority' "); § 1677(2) (explaining that the term " 'Commission' " refers to the United States International Trade Commission).

The Tariff Act's antidumping provision derives from similar terms in the Anti-Dumping Act, 1921, 42 Stat. 11, which were adopted to "protec[t] our industries and labor against a now common species of commercial warfare of dumping goods on our markets at less than cost or home value if necessary until our industries are destroyed . . . ." H. R. Rep. No. 1, 67th Cong., 1st Sess., 23 (1921).

Following the USEC charges, the Commerce Department opened an investigation into the practices of respondents, a

French enricher, Eurodif S. A., its owner, Compagnie Général des Matières Nucléaires (now AREVA NC), its U. S. subsidiary, COGEMA (now AREVA NC, Inc.), and United States utilities that consume LEU (Eurodif collectively). Eurodif conceded that EUP contracts were for the sale of LEU, but argued that SWU contracts involved only the sale of uranium enrichment services, and were therefore outside the scope of § 1673. LEU from France, 66 Fed. Reg. 65882–65883.

In its final determination, the Commerce Department concluded that LEU from France, including LEU acquired under SWU contracts, was being sold, or likely to be sold, in the United States at less than fair value.[4] *Id.*, at 65878. In deciding that SWU contracts are for a sale of LEU, not enrichment services, the Department stressed several features of the transactions. First, because the enrichment process accounts for approximately 60 percent of the value of LEU and works a "substantial transformation" on uranium feedstock, *id.*, at 65881, enrichment creates "the essential character" of LEU, *id.*, at 65884. Second, "enrichers not only have complete control over the enrichment process, but in fact control the level of usage of the natural uranium provided." *Ibid.* Third, the utilities themselves take no part in the manufacture of LEU and are the sole purchasers of the product. *Ibid.*

The Commerce Department also rejected the argument that LEU transferred pursuant to SWU contracts should not be considered "sold" in light of a "tolling" regulation then (but no longer) in effect. *Ibid.* The regulation stated that a "toller," a subcontractor who sells processing services in,

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[4] The Commerce Department concluded in a separate determination that LEU from the United Kingdom, Germany, and the Netherlands was not being sold, or likely to be sold, at less than fair value. Notice of Final Determinations of Sales at Not Less Than Fair Value: Low Enriched Uranium From the United Kingdom, Germany and the Netherlands, *id.*, at 65886.

or material for incorporation into, subject merchandise, would not be considered a manufacturer or producer "where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise." 19 CFR § 351.401(h) (2000) (withdrawn in Import Administration, Withdrawal of Regulations Governing the Treatment of Subcontractors ("Tolling" Operations), 73 Fed. Reg. 16517 (2008) (hereinafter Tolling Operations)). This regulation, the Commerce Department explained, was intended to apply in situations where a good is first sold by a manufacturer and then resold by an exporter or reseller. LEU from France, 66 Fed. Reg. 65880. The regulation provides that in such a situation the second sale should be used to calculate the U. S. price and normal value of the manufactured good; however, the Commerce Department concluded, the regulation was not meant to preclude antidumping duties where a manufacturer makes the only relevant sale that can be used to establish U. S. price and normal value. *Ibid.; id.*, at 65884–65885.

Finally, the Commerce Department reasoned that language in SWU contracts speaking of the transactions as the sale of enrichment services could not control, lest deferring to the parties' characterizations allow them to "convert trade in goods into trade in so-called 'manufacturing services,' . . . thereby exposing industries to injury by unfair trade practices without the remedy of the [antidumping] laws." *Id.*, at 65881. In economic reality, the Commerce Department said, "the contracts designated as SWU contracts are functionally equivalent to those designated as EUP transactions." *Id.*, at 65885.[5]

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[5] In February 2002, the International Trade Commission found that imports of LEU from France materially injured the enrichment industry in the United States, allowing the imposition of antidumping duties. U. S. Int'l Trade Comm'n, Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom (Pub. No. 3486).

Eurodif challenged the Department's determination before the Court of International Trade (CIT), which remanded for "a more persuasive explanation" of the tolling regulation. *USEC Inc.* v. *United States*, 259 F. Supp. 2d 1310, 1326 (2003). On remand, the Commerce Department repeated that the tolling regulation governed which price should be used to calculate antidumping duties, not whether imports are subject to the antidumping provision in the first instance. Final Remand Determination, USEC Inc. and United States Enrichment Corp. v. United States (June 23, 2003), App. G to Pet. for Cert. 211a (hereinafter Final Remand Determination). The Department further explained its conclusion that SWU contracts lead to transfers of LEU for consideration. The contracts and other evidence in the record convinced the Department that "enrichers own, and hold title to, all the LEU they produce," *id.*, at 217a, a conclusion grounded on findings that "enrichers hold inventories of uranium from various sources, including uranium owned by the enricher itself, and produce LEU without relying solely upon the input from a particular customer." *Id.*, at 221a. Finally, the Department emphasized that the enrichers "have complete control over the enrichment process and control the amount of uranium and energy actually used in producing the LEU." *Id.*, at 231a.

The CIT was unconvinced and reversed, relying on what it candidly recognized as a "legal fiction" expressed in SWU contracts, "that the very feed uranium delivered by a utility to an enricher is enriched and then returned as LEU to the utility." *USEC Inc.* v. *United States*, 281 F. Supp. 2d 1334, 1339 (2003). The CIT reasoned, because "nothing in the record support[ed] a determination that the enricher has any ownership rights," the Commerce Department's determination was "unsupported by substantial evidence and not in accordance with law." *Id.*, at 1340.

USEC challenged this conclusion in an interlocutory appeal to the Court of Appeals for the Federal Circuit, which

affirmed. *Eurodif S. A.* v. *United States*, 411 F. 3d 1355 (2005) *(Eurodif I)*. The court approached the issues much as the CIT had, with the observation that "the SWU contracts in this case do not evidence any intention by the parties to vest the enrichers with ownership rights in the delivered unenriched uranium or the finished LEU." *Id.*, at 1362. It recalled that in a previous case, *Florida Power & Light Co.* v. *United States*, 307 F. 3d 1364 (CA Fed. 2002), it had accepted the Government's position that SWU contracts were for services, not for "'disposal of personal property,'" and so were outside the cause of action provided by the Contract Disputes Act of 1978, 41 U. S. C. § 601 *et seq.* *Eurodif I*, *supra*, at 1363, and n. 3 (quoting *Florida Power & Light Co.*, *supra*, at 1373). While the court conceded that SWU agreements "do 'not fall neatly' either into the category of contracts for services or the category of contracts for the sale of goods," 411 F. 3d, at 1364 (quoting *Florida Power & Light Co.*, *supra*, at 1373–1374), it still concluded that "even under the deferential standard of review that we apply in this case, we choose not to ignore our previous holdings," *Eurodif I*, *supra*, at 1363.

Shortly after this decision, we held in *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982–983 (2005), that a court's choice of one reasonable reading of an ambiguous statute does not preclude an implementing agency from later adopting a different reasonable interpretation. On rehearing, the Federal Circuit responded to *National Cable & Telecommunications Assn.* by explaining that it had not rejected the Commerce Department's position because it conflicted with the prior interpretive choice that carried the day in *Florida Power & Light*. *Eurodif S. A.* v. *United States*, 423 F. 3d 1275, 1277–1278 (2005). The Circuit, rather, saw no statutory uncertainty to be resolved: "the antidumping duty statute unambiguously applies to the sale of goods and not services" and "it is clear that [SWU] contracts are contracts for services and not

goods." *Id.*, at 1278. After final judgment was entered, *Eurodif S. A.* v. *United States*, 506 F. 3d 1051, 1053 (CA Fed. 2007), we granted certiorari, 553 U. S. 1003 (2008), to consider whether transactions under SWU contracts may be subjected to antidumping duties under the Tariff Act. We now reverse.

II

The issue is not whether, for purposes of 19 U. S. C. § 1673, the better view is that a SWU contract is one for the sale of services, not goods. The statute gives this determination to the Department of Commerce in the first instance, § 1677(1), and when the Department exercises this authority in the course of adjudication, its interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous.[6] *United States* v. *Mead Corp.*, 533 U. S. 218, 229–230 (2001) (citing *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)). This is so even after a change in regulatory treatment, which "is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework." *National Cable & Telecommunications Assn.*, 545 U. S., at 981. "'[T]he whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency.'" *Ibid.* (quoting *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 742 (1996)).[7]

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[6] The specific factual findings on which an agency relies in applying its interpretation are conclusive unless unsupported by substantial evidence. 5 U. S. C. § 706(2)(E).

[7] Respondents' assertion that the Commerce Department's prior tolling regulation is inconsistent with its position in these cases is therefore beside the point. For the reasons given by the Department in its remand determination, we are not convinced that the tolling regulation precludes viewing SWU transactions as the sale of LEU; but even if it did, it has since been withdrawn, Tolling Operations, 73 Fed. Reg. 16517, and cannot now constrain the Commerce Department's interpretive authority under *Chevron*. *National Cable & Telecommunications Assn.*, 545 U. S., at 981

In approaching the Department's position on the application of § 1673, two threshold propositions must be taken as given. First, we think the Department reasonably concluded that § 1673 is not limited by its terms to cash-only sales. Otherwise, any sale of a manufactured product could be exempted from the operation of § 1673 by a contractual term stating part of the purchase price in terms of a commodity.[8]

Second, in applying § 1673, the Commerce Department is not bound by the "legal fiction [created by SWU contracts] that the very feed uranium delivered by a utility to an enricher is enriched and then returned as LEU to the utility." *USEC*, 281 F. Supp. 2d, at 1339. The parties are free to contract as they wish, and they may genuinely regard SWU agreements as contracts for the sale of enrichment services. But, whatever the significance of such a term in a contract dispute, cf. *Florida Power & Light Co.*, 307 F. 3d 1364, it is well settled that in reading regulatory and taxation statutes, "form should be disregarded for substance and the emphasis

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("Unexplained inconsistency is, at most, a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the Administrative Procedure Act"). Likewise, even if the position taken by the Department of Energy in *Florida Power & Light Co.* v. *United States*, 307 F. 3d 1364 (CA Fed. 2002), was inconsistent with the Government's position here, it would not speak to the deference owed the Commerce Department under *Chevron*.

[8] Respondents argue that, after determining that SWU contracts involved the sale of LEU, the Commerce Department employed an impermissible methodology by constructing the normal value of the LEU based on the combined costs to Eurodif of obtaining feed uranium and enrichment. Brief for Respondent Eurodif S. A. et al. 48–50. These calculations, respondents argue, "were a charade, underscoring that the antidumping law[s] cannot be applied to these SWU contracts." *Id.*, at 48. To the degree respondents' argument is that antidumping duties may never be applied to mixed cash-commodity sales, it is doomed by implausibility. If respondents are contending that the Commerce Department's dumping determination improperly assessed the normal value of LEU, they are raising an issue well outside the scope of our grant of certiorari.

should be on economic reality," *Tcherepnin* v. *Knight*, 389 U. S. 332, 336 (1967). See also *Frank Lyon Co.* v. *United States*, 435 U. S. 561, 573 (1978) ("'In the field of taxation, administrators of the laws, and the courts, are concerned with substance and realities, and formal written documents are not rigidly binding'" (quoting *Helvering* v. *F. & R. Lazarus & Co.*, 308 U. S. 252, 255 (1939))). Surrender to private contractual terms is especially uncalled for in dealing with international tariffs, as Congress saw when it amended the Tariff Act to say that the sale of foreign merchandise includes "the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise." Trade and Tariff Act of 1984, § 602(b)(2), 98 Stat. 3024, 19 U. S. C. § 1673.

Since public law is not constrained by private fiction, the test of the Department's position turns first on whether the statute clearly excludes a transaction involving mixed payment for LEU that may and almost certainly will be produced from uranium feed distinct from what the utility provides. No one disputes that § 1673 applies to the sale of goods, not services, LEU from France, 66 Fed. Reg. 65882–65883. Nor do we think anyone would deny that the exchange of cash combined with a commodity for a product that uses that very commodity as a constituent material is sometimes a sale of services and sometimes a sale of goods, the distinction being clear at the extremes. A customer who comes to a laundry with cash and dirty shirts is clearly purchasing cleaning services, not clean shirts. And a customer who provides cash and sand to a manufacturer of generic silicon processors is clearly buying computer chips rather than sand enhancement services.

But the line blurs when the facts get more complicated, and SWU contracts exemplify a class of transactions that the Federal Circuit recognized does "'not fall neatly' either into the category of contracts for services or the category of contracts for the sale of goods." *Eurodif I*, 411 F. 3d, at 1364

(quoting *Florida Power & Light Co.*, *supra*, at 1373–1374). The agreement is not like the laundry ticket, which says that the same shirts are supposed to come back, just minus the dirt around the collar. And it is not on all fours with the agreement of the chip buyer and the manufacturer, in which it is inescapable that the silicon processors delivered are a separate good from the sand provided. Section 1673 simply does not speak with the precision necessary to say definitively whether it applies to the LEU and the agreement that gives the utility a right to get it.

This is the very situation in which we look to an authoritative agency for a decision about the statute's scope, which is defined in cases at the statutory margin by the agency's application of it, and once the choice is made we ask only whether the department's application was reasonable. As to that, the Commerce Department relied on two related characteristics of these transactions in deciding SWU contracts should be treated as a sale of LEU. It stressed that the utility in a SWU contract provides cash plus a fungible commodity that is not tracked after its delivery to the enricher, in exchange for a product owned by the enricher.[9]

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[9] Eurodif argues that the Commerce Department erred in concluding that enrichers own LEU prior to its delivery under a SWU contract. *Id.*, at 36–37. While the precise form of this argument is unclear, it fails under any reading. Respondents seem to mean that the Commerce Department's interpretation of § 1673 is impermissible as being inconsistent with the formal terms of SWU contracts, an argument we rejected above. The argument could also be read to suggest that the Commerce Department lacked substantial evidence to conclude that, contractual formalities aside, enrichers in fact own the LEU provided under SWU contracts prior to its delivery. But the evidence in the record not only supports the Department's conclusion, it compels it. It is undisputed that the LEU delivered under a SWU contract is not actually derived from the feed uranium provided as consideration; as the CIT observed, the notion that the same feed uranium delivered by a utility to an enricher is enriched and then returned as LEU to the utility is "a legal fiction." *USEC Inc.* v. *United States*, 281 F. Supp. 2d 1334, 1339 (2003). Moreover, the enricher is free to vary the amount of feed uranium used to produce an order of LEU,

And it recognized that the enrichment process results in a substantial transformation of the unenriched uranium.

The combination of these characteristics reasonably captures a common understanding of the sale of a good. Because an individual's shirts are not fungible, they are tracked during the cleaning process and returned to the same customer who brought them in; there are no good reasons to treat them as owned for a time by the laundry, and no one does. And without any transfer of ownership, the salient feature of the transaction is the cleaning of the shirt, a service. Conversely, where a constituent material is untracked and fungible, ownership is usually seen as transferred, and the transaction is less likely to be a sale of services, as the Court explained years ago in distinguishing a common law bailment from a sale:

> "[W]here logs are delivered to be sawed into boards, or leather to be made into shoes, rags into paper, olives into oil, grapes into wine, wheat into flour, if the product of the identical articles delivered is to be returned to the original owner in a new form, it is said to be a bailment, and the title never vests in the manufacturer. If, on the other hand, the manufacturer is not bound to return the same wheat or flour or paper, but may deliver any other of equal value, it is said to be a sale or a loan, and the title to the thing delivered vests in the manufacturer." *Powder Co.* v. *Burkhardt*, 97 U. S. 110, 116 (1878).[10]

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either stockpiling feed uranium or supplementing its stores from other sources. Finally, the SWU contracts at issue provide that the utility retains title to the feed uranium until delivery of the LEU, at which point it obtains title in the LEU. In light of this process, some entity must own the LEU prior to delivery and obtain title to the feed uranium after delivery, absent some modern analog to the abhorrent possibility of an abeyance of seizen; the enricher is the only serious candidate.

[10] Common law definitions do not necessarily control the meaning of terms in modern trade laws; we merely mean to show the long pedigree of the distinction relied upon by the Commerce Department.

And when the manufacturer is not only free to return different material, but also substantially transforms the material it uses, it is even more likely that the object of the transaction will be seen as a new product, not work on enduring material of primary interest to the buyer. After all, what makes the hypothetical exchange of sand for silicon processors so obviously a sale of goods is the extreme transformation brought about by the chip manufacturer.

These are good analytical grounds to show that SWU transactions are reasonably placed within the ambit of sale of goods, and the Department's reliance on them is reinforced by practical reasons aimed at preserving the effectiveness of antidumping duties. There is no dispute that LEU sold under an EUP contract at less than fair value must be subjected to antidumping duties under § 1673, there being a clear sale of goods when a domestic utility pays a single sale price in cash for the feed uranium and enrichment components represented by LEU. If foreign enrichers set this price below the fair value of LEU, the domestic enrichment industry is obviously open to material injury, the very threat the antidumping statute was meant to counter, see H. R. Rep. No. 1, at 23. But the same injury would occur if a SWU contract were untouchable. Under a SWU contract, the domestic utility pays cash to a third party for unenriched uranium and provides this along with additional cash in exchange for LEU; any EUP contract could be structured as a SWU contract simply by splitting the transaction in two, one contract to buy unenriched uranium and another to enrich it.[11] And the restructuring would not stop with uranium;

[11] This would be particularly easy in these cases, since COGEMA, Eurodif's parent company, "is a major world supplier of natural uranium for the production of LEU." Final Remand Determination, App. G to Pet. for Cert. 221a, n. 38. In fact, many SWU contracts provide that if a utility fails to deliver feed uranium, the enricher will substitute feed uranium of its own, which may then be purchased from the enricher. App. 13–14, 185–186, 537 (Sealed).

contracts for imported pasta would be replaced by separate contracts for wheat and wheat processing services, sweater imports would give way to separate contracts for wool and knitting services, and antidumping duties would primarily chastise the uncreative.[12] The Commerce Department's attempt to foreclose this absurd result by treating SWU transactions as sales of goods is eminently reasonable.

III

Where a domestic buyer's cash and an untracked, fungible commodity are exchanged with a foreign contractor for a substantially transformed version of the same commodity, the Commerce Department may reasonably treat the transaction as the sale of a good under § 1673. We therefore reverse the judgment of the Federal Circuit and remand the cases for further proceedings consistent with this opinion.

It is so ordered.

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[12] Eurodif suggests the Commerce Department could combat such circumvention of antidumping duties by taxing domestic downstream sales of such products. Brief for Respondent Eurodif S. A. et al. 53–54. But this ignores the substantial number of manufactured goods that are not resold. More fundamentally, this argument fails to explain why the Commerce Department should be required to chase after downstream resellers when the first sale has the same economic substance.

Syllabus

ARIZONA *v.* JOHNSON

CERTIORARI TO THE COURT OF APPEALS OF ARIZONA

No. 07–1122. Argued December 9, 2008—Decided January 26, 2009

In *Terry* v. *Ohio*, 392 U. S. 1, this Court held that a "stop and frisk" may be conducted without violating the Fourth Amendment's ban on unreasonable searches and seizures if two conditions are met. First, the investigatory stop (temporary detention) must be lawful, a requirement met in an on-the-street encounter when a police officer reasonably suspects that the person apprehended is committing or has committed a crime. Second, to proceed from a stop to a frisk (patdown for weapons), the officer must reasonably suspect that the person stopped is armed and dangerous. For the duration of a traffic stop, the Court recently confirmed, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers. *Brendlin* v. *California*, 551 U. S. 249, 255.

While patrolling near a Tucson neighborhood associated with the Crips gang, police officers serving on Arizona's gang task force stopped an automobile for a vehicular infraction warranting a citation. At the time of the stop, the officers had no reason to suspect the car's occupants of criminal activity. Officer Trevizo attended to respondent Johnson, the back-seat passenger, whose behavior and clothing caused Trevizo to question him. After learning that Johnson was from a town with a Crips gang and had been in prison, Trevizo asked him to get out of the car in order to question him further, out of the hearing of the front-seat passenger, about his gang affiliation. Because she suspected that he was armed, she patted him down for safety when he exited the car. During the patdown, she felt the butt of a gun. At that point, Johnson began to struggle, and Trevizo handcuffed him. Johnson was charged with, *inter alia*, possession of a weapon by a prohibited possessor. The trial court denied his motion to suppress the evidence, concluding that the stop was lawful and that Trevizo had cause to suspect Johnson was armed and dangerous. Johnson was convicted. The Arizona Court of Appeals reversed. While recognizing that Johnson was lawfully seized, the court found that, prior to the frisk, the detention had evolved into a consensual conversation about his gang affiliation. Trevizo, the court therefore concluded, had no right to pat Johnson down even if she had reason to suspect he was armed and dangerous. The Arizona Supreme Court denied review.

Held: Officer Trevizo's patdown of Johnson did not violate the Fourth Amendment's prohibition on unreasonable searches and seizures. Pp. 330–334.

(a) *Terry* established that, in an investigatory stop based on reasonably grounded suspicion of criminal activity, the police must be positioned to act instantly if they have reasonable cause to suspect that the persons temporarily detained are armed and dangerous. 392 U. S., at 24. Because a limited search of outer clothing for weapons serves to protect both the officer and the public, a patdown is constitutional. *Id.*, at 23–24, 27, 30–31. Traffic stops, which "resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*," *Berkemer* v. *McCarty*, 468 U. S. 420, 439, n. 29, are "especially fraught with danger to police officers," *Michigan* v. *Long*, 463 U. S. 1032, 1047, who may minimize the risk of harm by exercising " 'unquestioned command of the situation,' " *Maryland* v. *Wilson*, 519 U. S. 408, 414. Three decisions cumulatively portray *Terry*'s application in a traffic-stop setting. In *Pennsylvania* v. *Mimms*, 434 U. S. 106 *(per curiam)*, the Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendmen[t]," *id.*, at 111, n. 6, because the government's "legitimate and weighty" interest in officer safety outweighs the "*de minimis*" additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle, *id.*, at 110–111. Citing *Terry*, the Court further held that a driver, once outside the stopped vehicle, may be patted down for weapons if the officer reasonably concludes that the driver might be armed and dangerous. 434 U. S., at 112. *Wilson*, 519 U. S., at 413, held that the *Mimms* rule applies to passengers as well as drivers, based on "the same weighty interest in officer safety." *Brendlin*, 551 U. S., at 263, held that a passenger is seized, just as the driver is, "from the moment [a car stopped by the police comes] to a halt on the side of the road." A passenger's motivation to use violence during the stop to prevent apprehension for a crime more grave than a traffic violation is just as great as that of the driver. 519 U. S., at 414. And as "the passengers are already stopped by virtue of the stop of the vehicle," *id.*, at 413–414, "the additional intrusion on the passenger is minimal," *id.*, at 415. Pp. 330–332.

(b) The Arizona Court of Appeals recognized that, initially, Johnson was lawfully detained incident to the legitimate stop of the vehicle in which he was a passenger, but concluded that once Officer Trevizo began questioning him on a matter unrelated to the traffic stop, patdown authority ceased to exist, absent reasonable suspicion that Johnson had engaged, or was about to engage, in criminal activity. The court portrayed the interrogation as consensual, and, Johnson emphasizes, Tre-

vizo testified that Johnson could have refused to exit the vehicle and to submit to the patdown. But Trevizo also testified that she never advised Johnson he did not have to answer her questions or otherwise cooperate with her. A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. An officer's inquiries into matters unrelated to the justification for the traffic stop do not convert the encounter into something other than a lawful seizure, so long as the inquiries do not measurably extend the stop's duration. See *Muehler* v. *Mena*, 544 U. S. 93, 100–101. A reasonable passenger would understand that during the time a car is lawfully stopped, he or she is not free to terminate the encounter with the police and move about at will. Nothing occurred in this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free "to depart without police permission." *Brendlin*, 551 U. S., at 257. Trevizo was not required by the Fourth Amendment to give Johnson an opportunity to depart without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her. Pp. 332–334.

217 Ariz. 58, 170 P. 3d 667, reversed and remanded.

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

Joseph L. Parkhurst, Assistant Attorney General of Arizona, argued the cause for petitioner. With him on the briefs were *Terry Goddard*, Attorney General, *Mary R. O'Grady*, Solicitor General, *Kent E. Cattani*, Chief Counsel, and *Diane Leigh Hunt*, Assistant Attorney General.

Toby J. Heytens argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were former *Solicitor General Garre, Acting Assistant Attorney General Friedrich*, and *Deputy Solicitor General Dreeben.*

Andrew J. Pincus argued the cause for respondent. With him on the brief were *Charles Rothfeld*, *M. Edith Cunningham*, and *Dan M. Kahan.**

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Michael A. Scodro*, Solicitor General, and *Jane Elinor Notz*, Deputy Solicitor General,

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority of police officers to "stop and frisk" a passenger in a motor vehicle temporarily seized upon police detection of a traffic infraction. In a pathmarking decision, *Terry* v. *Ohio*, 392 U. S. 1 (1968), the Court considered whether an investigatory stop (temporary detention) and frisk (patdown for weapons) may be conducted without violating the Fourth Amendment's ban on unreasonable searches and seizures. The Court upheld "stop and frisk" as constitutionally permissible if two conditions are met. First, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, *Terry* determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police

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and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Steve Carter* of Indiana, *Steve Six* of Kansas, *Jack Conway* of Kentucky, *G. Steven Rowe* of Maine, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Anne Milgram* of New Jersey, *Gary K. King* of New Mexico, *Roy Cooper* of North Carolina, *Nancy H. Rogers* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Robert F. McDonnell* of Virginia, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for Americans for Effective Law Enforcement, Inc., et al. by *Wayne W. Schmidt, James P. Manak, Richard Weintraub, Michael E. McNeff, Eric B. Edwards,* and *Bernard J. Farber;* for the Criminal Justice Legal Foundation by *Kent S. Scheidegger;* and for the National League of Cities et al. by *Richard Ruda.*

Meir Feder, *Donald B. Ayer*, and *Samuel Estreicher* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

officer must reasonably suspect that the person stopped is armed and dangerous.

For the duration of a traffic stop, we recently confirmed, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers. *Brendlin* v. *California*, 551 U. S. 249, 255 (2007). Accordingly, we hold that, in a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

I

On April 19, 2002, Officer Maria Trevizo and Detectives Machado and Gittings, all members of Arizona's gang task force, were on patrol in Tucson near a neighborhood associated with the Crips gang. At approximately 9 p.m., the officers pulled over an automobile after a license plate check revealed that the vehicle's registration had been suspended for an insurance-related violation. Under Arizona law, the violation for which the vehicle was stopped constituted a civil infraction warranting a citation. At the time of the stop, the vehicle had three occupants—the driver, a front-seat passenger, and a passenger in the back seat, Lemon Montrea Johnson, the respondent here. In making the stop the officers had no reason to suspect anyone in the vehicle of criminal activity. See App. 29–30.

The three officers left their patrol car and approached the stopped vehicle. Machado instructed all of the occupants to keep their hands visible. *Id.*, at 14. He asked whether there were any weapons in the vehicle; all responded no.

Id., at 15. Machado then directed the driver to get out of the car. Gittings dealt with the front-seat passenger, who stayed in the vehicle throughout the stop. See *id.*, at 31. While Machado was getting the driver's license and information about the vehicle's registration and insurance, see *id.*, at 42–43, Trevizo attended to Johnson.

Trevizo noticed that, as the police approached, Johnson looked back and kept his eyes on the officers. *Id.*, at 12. When she drew near, she observed that Johnson was wearing clothing, including a blue bandana, that she considered consistent with Crips membership. *Id.*, at 17. She also noticed a scanner in Johnson's jacket pocket, which "struck [her] as highly unusual and cause [for] concern," because "most people" would not carry around a scanner that way "unless they're going to be involved in some kind of criminal activity or [are] going to try to evade the police by listening to the scanner." *Id.*, at 16. In response to Trevizo's questions, Johnson provided his name and date of birth but said he had no identification with him. He volunteered that he was from Eloy, Arizona, a place Trevizo knew was home to a Crips gang. Johnson further told Trevizo that he had served time in prison for burglary and had been out for about a year. 217 Ariz. 58, 60, 170 P. 3d 667, 669 (App. 2007).

Trevizo wanted to question Johnson away from the front-seat passenger to gain "intelligence about the gang [Johnson] might be in." App. 19. For that reason, she asked him to get out of the car. *Ibid.* Johnson complied. Based on Trevizo's observations and Johnson's answers to her questions while he was still seated in the car, Trevizo suspected that "he might have a weapon on him." *Id.*, at 20. When he exited the vehicle, she therefore "patted him down for officer safety." *Ibid.* During the patdown, Trevizo felt the butt of a gun near Johnson's waist. 217 Ariz., at 60, 170 P. 3d, at 669. At that point Johnson began to struggle, and Trevizo placed him in handcuffs. *Ibid.*

Johnson was charged in state court with, *inter alia*, possession of a weapon by a prohibited possessor. He moved to suppress the evidence as the fruit of an unlawful search. The trial court denied the motion, concluding that the stop was lawful and that Trevizo had cause to suspect Johnson was armed and dangerous. See App. 74–78. A jury convicted Johnson of the gun-possession charge. See 217 Ariz., at 60–61, 170 P. 3d, at 669–670.

A divided panel of the Arizona Court of Appeals reversed Johnson's conviction. *Id.*, at 59, 170 P. 3d, at 668. Recognizing that "Johnson was [lawfully] seized when the officers stopped the car," *id.*, at 62, 170 P. 3d, at 671, the court nevertheless concluded that prior to the frisk the detention had "evolved into a separate, consensual encounter stemming from an unrelated investigation by Trevizo of Johnson's possible gang affiliation," *id.*, at 64, 170 P. 3d, at 673. Absent "reason to believe Johnson was involved in criminal activity," the Arizona appeals court held, Trevizo "had no right to pat him down for weapons, even if she had reason to suspect he was armed and dangerous." *Ibid.*

Judge Espinosa dissented. He found it "highly unrealistic to conclude that merely because [Trevizo] was courteous and Johnson cooperative, the ongoing and virtually simultaneous chain of events [had] somehow 'evolved into a consensual encounter' in the few short moments involved." *Id.*, at 66, 170 P. 3d, at 675. Throughout the episode, he stressed, Johnson remained "seized as part of [a] valid traffic stop." *Ibid.* Further, he maintained, Trevizo "had a reasonable basis to consider [Johnson] dangerous," *id.*, at 67, 170 P. 3d, at 676, and could therefore ensure her own safety and that of others at the scene by patting down Johnson for weapons.

The Arizona Supreme Court denied review. No. CR–07–0290–PR, 2007 Ariz. LEXIS 154 (Nov. 29, 2007). We granted certiorari, 554 U. S. 916 (2008), and now reverse the judgment of the Arizona Court of Appeals.

II

A

We begin our consideration of the constitutionality of Officer Trevizo's patdown of Johnson by looking back to the Court's leading decision in *Terry* v. *Ohio*, 392 U. S. 1 (1968). *Terry* involved a stop for interrogation of men whose conduct had attracted the attention of a patrolling police officer. The officer's observation led him reasonably to suspect that the men were casing a jewelry shop in preparation for a robbery. He conducted a patdown, which disclosed weapons concealed in the men's overcoat pockets. This Court upheld the lower courts' determinations that the interrogation was warranted and the patdown, permissible. See *id.*, at 8.

Terry established the legitimacy of an investigatory stop "in situations where [the police] may lack probable cause for an arrest." *Id.*, at 24. When the stop is justified by suspicion (reasonably grounded, but short of probable cause) that criminal activity is afoot, the Court explained, the police officer must be positioned to act instantly on reasonable suspicion that the persons temporarily detained are armed and dangerous. *Ibid.* Recognizing that a limited search of outer clothing for weapons serves to protect both the officer and the public, the Court held the patdown reasonable under the Fourth Amendment. *Id.*, at 23–24, 27, 30–31.

"[M]ost traffic stops," this Court has observed, "resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*." *Berkemer* v. *McCarty*, 468 U. S. 420, 439, n. 29 (1984). Furthermore, the Court has recognized that traffic stops are "especially fraught with danger to police officers." *Michigan* v. *Long*, 463 U. S. 1032, 1047 (1983). "'The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized,'" we have stressed, "'if the officers routinely exercise unquestioned command of the situation.'" *Maryland* v. *Wilson*, 519 U. S. 408, 414 (1997) (quoting *Michigan* v. *Summers*, 452 U. S. 692, 702–703

(1981)); see *Brendlin*, 551 U. S., at 258. Three decisions cumulatively portray *Terry*'s application in a traffic-stop setting: *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1977) *(per curiam); Maryland* v. *Wilson*, 519 U. S. 408 (1997); and *Brendlin* v. *California*, 551 U. S. 249 (2007).

In *Mimms*, the Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." 434 U. S., at 111, n. 6. The government's "legitimate and weighty" interest in officer safety, the Court said, outweighs the "*de minimis*" additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle. *Id.*, at 110–111. Citing *Terry* as controlling, the Court further held that a driver, once outside the stopped vehicle, may be patted down for weapons if the officer reasonably concludes that the driver "might be armed and presently dangerous." 434 U. S., at 112.

Wilson held that the *Mimms* rule applied to passengers as well as to drivers. Specifically, the Court instructed that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." 519 U. S., at 415. "[T]he same weighty interest in officer safety," the Court observed, "is present regardless of whether the occupant of the stopped car is a driver or passenger." *Id.*, at 413.

It is true, the Court acknowledged, that in a lawful traffic stop, "[t]here is probable cause to believe that the driver has committed a minor vehicular offense," but "there is no such reason to stop or detain the passengers." *Ibid.* On the other hand, the Court emphasized, the risk of a violent encounter in a traffic-stop setting "stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." *Id.*, at 414. "[T]he motivation of a passenger to employ violence to prevent apprehension of such a crime," the Court stated, "is every bit as great as

that of the driver." *Ibid.* Moreover, the Court noted, "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle," *id.*, at 413–414, so "the additional intrusion on the passenger is minimal," *id.*, at 415.

Completing the picture, *Brendlin* held that a passenger is seized, just as the driver is, "from the moment [a car stopped by the police comes] to a halt on the side of the road." 551 U. S., at 263. A passenger therefore has standing to challenge a stop's constitutionality. *Id.*, at 256–259.

After *Wilson*, but before *Brendlin*, the Court had stated, in dictum, that officers who conduct "routine traffic stop[s]" may "perform a 'patdown' of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous." *Knowles* v. *Iowa*, 525 U. S. 113, 117–118 (1998). That forecast, we now confirm, accurately captures the combined thrust of the Court's decisions in *Mimms*, *Wilson*, and *Brendlin*.

B

The Arizona Court of Appeals recognized that, initially, Johnson was lawfully detained incident to the legitimate stop of the vehicle in which he was a passenger. See 217 Ariz., at 64, 170 P. 3d, at 673. But, that court concluded, once Officer Trevizo undertook to question Johnson on a matter unrelated to the traffic stop, *i. e.*, Johnson's gang affiliation, patdown authority ceased to exist, absent reasonable suspicion that Johnson had engaged, or was about to engage, in criminal activity. See *id.*, at 65, 170 P. 3d, at 674. In support of the Arizona court's portrayal of Trevizo's interrogation of Johnson as "consensual," Johnson emphasizes Trevizo's testimony at the suppression hearing. Responding to the prosecutor's questions, Trevizo affirmed her belief that Johnson could have "refused to get out of the car" and "to turn around for the pat down." App. 41.

It is not clear why the prosecutor, in opposing the suppression motion, sought to portray the episode as consensual. Cf. *Florida* v. *Bostick*, 501 U. S. 429 (1991) (holding that po-

lice officers' search of a bus passenger's luggage can be based on consent). In any event, Trevizo also testified that she never advised Johnson he did not have to answer her questions or otherwise cooperate with her. See App. 45. And during cross-examination, Trevizo did not disagree when defense counsel asked "in fact, you weren't seeking [Johnson's] permission . . . ?" *Id.*, at 36. As the dissenting judge observed, "consensual" is an "unrealistic" characterization of the Trevizo-Johnson interaction. "[T]he encounter . . . took place within minutes of the stop"; the patdown followed "within mere moments" of Johnson's exit from the vehicle; beyond genuine debate, the point at which Johnson could have felt free to leave had not yet occurred. See 217 Ariz., at 66, 170 P. 3d, at 675.[1]

A lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave. See *Brendlin*, 551 U. S., at 258. An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop. See *Muehler* v. *Mena*, 544 U. S. 93, 100–101 (2005).

In sum, as stated in *Brendlin*, a traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will. See 551 U. S., at 257. Nothing occurred in

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[1] The Court of Appeals majority did not assert that Johnson reasonably could have felt free to leave. Instead, the court said "a reasonable person in Johnson's position would have felt free to remain in the vehicle." 217 Ariz. 58, 64, 170 P. 3d 667, 673 (2007). That position, however, appears at odds with our decision in *Maryland* v. *Wilson*, 519 U. S. 408 (1997). See *supra*, at 331–332.

this case that would have conveyed to Johnson that, prior to the frisk, the traffic stop had ended or that he was otherwise free "to depart without police permission." *Ibid.* Officer Trevizo surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her.[2]

* * *

For the reasons stated, the judgment of the Arizona Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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[2] The Arizona Court of Appeals assumed, "without deciding, that Trevizo had reasonable suspicion that Johnson was armed and dangerous." 217 Ariz., at 64, 170 P. 3d, at 673. We do not foreclose the appeals court's consideration of that issue on remand.

Syllabus

VAN DE KAMP ET AL. *v.* GOLDSTEIN

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

No. 07–854. Argued November 5, 2008—Decided January 26, 2009

Respondent Goldstein was released from a California prison after he filed a successful federal habeas petition alleging that his murder conviction depended, in critical part, on the false testimony of a jailhouse informant who had received reduced sentences for providing prosecutors with favorable testimony in other cases; that prosecutors knew, but failed to give his attorney, this potential impeachment information; and that, among other things, that failure had led to his erroneous conviction. Once released, Goldstein filed this suit under 42 U. S. C. § 1983, asserting the prosecution violated its constitutional duty to communicate impeachment information, see *Giglio* v. *United States*, 405 U. S. 150, 154, due to the failure of petitioners, supervisory prosecutors, to properly train or supervise prosecutors or to establish an information system containing potential impeachment material about informants. Claiming absolute immunity, petitioners asked the District Court to dismiss the complaint, but the court declined, finding that the conduct was "administrative," not "prosecutorial," and hence fell outside the scope of an absolute immunity claim. The Ninth Circuit, on interlocutory appeal, affirmed.

Held: Petitioners are entitled to absolute immunity in respect to Goldstein's supervision, training, and information-system management claims. Pp. 340–349.

(a) Prosecutors are absolutely immune from liability in § 1983 suits brought against prosecutorial actions that are "intimately associated with the judicial phase of the criminal process," *Imbler* v. *Pachtman*, 424 U. S. 409, 428, 430, because of "concern that harassment by unfounded litigation" could both "cause a deflection of the prosecutor's energies from his public duties" and lead him to "shade his decisions instead of exercising the independence of judgment required by his public trust," *id.*, at 423. However, absolute immunity may not apply when a prosecutor is not acting as "an officer of the court," but is instead engaged in, say, investigative or administrative tasks. *Id.*, at 431, n. 33. To decide whether absolute immunity attaches to a particular prosecutorial activity, one must take account of *Imbler*'s "functional" considerations. The fact that one constitutional duty in *Imbler* was positive (the duty to supply "information relevant to the defense") rather than nega-

tive (the duty not to "use . . . perjured testimony") was not critical to the finding of absolute immunity. *Ibid.*, n. 34. Pp. 340–343.

(b) Although Goldstein challenges administrative procedures, they are procedures that are directly connected with a trial's conduct. A prosecutor's error in a specific criminal trial constitutes an essential element of the plaintiff's claim. The obligations here are thus unlike administrative duties concerning, *e. g.*, workplace hiring. Moreover, they necessarily require legal knowledge and the exercise of related discretion, *e. g.*, in determining what information should be included in training, supervision, or information-system management. Given these features, absolute immunity must follow. Pp. 343–349.

(1) Had Goldstein brought a suit directly attacking supervisory prosecutors' actions related to an individual trial, instead of one involving administration, all the prosecutors would have enjoyed absolute immunity under *Imbler*. Their behavior, individually or separately, would have involved "[p]reparation . . . for . . . trial," 424 U. S., at 431, n. 33, and would have been "intimately associated with the judicial phase of the criminal process," *id.*, at 430. The only difference between *Imbler* and the hypothetical, *i. e.*, that a supervisor or colleague might be liable *instead of* the trial prosecutor, is not critical. P. 345.

(2) Just as supervisory prosecutors are immune in a suit directly attacking their actions in an individual trial, they are immune here. The fact that the office's *general* supervision and training methods are at issue is not a critical difference for present purposes. The relevant management tasks concern how and when to make impeachment information available at trial, and, thus, are directly connected with a prosecutor's basic trial advocacy duties. In terms of *Imbler*'s functional concerns, a suit claiming that a supervisor made a mistake directly related to a particular trial and one claiming that a supervisor trained and supervised inadequately seem very much alike. The type of "faulty training" claim here rests in part on a consequent error by an individual prosecutor in the midst of trial. If, as *Imbler* says, the threat of damages liability for such an error could lead a trial prosecutor to take account of that risk when making trial-related decisions, so, too, could the threat of more widespread liability throughout the office lead both that prosecutor and other office prosecutors to take account of such a risk. Because better training or supervision might prevent most prosecutorial errors at trial, permission to bring suit here would grant criminal defendants permission to bring claims for other trial-related training or supervisory failings. Further, such suits could "pose substantial danger of liability even to the honest prosecutor." *Imbler*, 424 U. S., at 425. And defending prosecutorial decisions, often years later, could impose "unique and intolerable burdens upon a prosecutor responsible

annually for hundreds of indictments and trials." *Id.*, at 425–426. Permitting this suit to go forward would also create practical anomalies. A trial prosecutor would remain immune for intentional misconduct, while her supervisor might be liable for negligent training or supervision. And the ease with which a plaintiff could restyle a complaint charging trial failure to one charging a training or supervision failure would eviscerate *Imbler*. Pp. 346–348.

(3) The differences between an information management system and training or supervision do not require a different outcome, for the critical element of any information system is the information it contains. Deciding what to include and what not to include is little different from making similar decisions regarding training, for it requires knowledge of the law. Moreover, were this claim allowed, a court would have to review the office's legal judgments, not simply about *whether* to have an information system but also about *what kind* of system is appropriate, and whether an appropriate system would have included *Giglio*-related information *about one particular kind of informant*. Such decisions—whether made before or during trial—are "intimately associated with the judicial phase of the criminal process," *Imbler*, *supra*, at 430, and all *Imbler*'s functional considerations apply. Pp. 348–349.

481 F. 3d 1170, reversed and remanded.

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

Timothy T. Coates argued the cause for petitioners. With him on the briefs was *Steven J. Renick*.

Deputy Solicitor General Dreeben argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were former *Solicitor General Garre*, *Assistant Attorney General Katsas*, *Lisa S. Blatt*, *Barbara L. Herwig*, and *Mark W. Pennak*.

E. Joshua Rosenkranz argued the cause for respondent. With him on the brief were *Timothy S. Mehok*, *William H. Forman*, *Ronald O. Kaye*, *David S. McLane*, *Marilyn E. Bednarski*, and *David A. Thomas*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Kansas et al. by *Stephen N. Six*, Attorney General of Kansas, *Stephen R. McAllister*, Solicitor General, and *Jared S. Maag*, Deputy Solicitor General, by *Kevin T. Kane*, Chief State's Attorney of Connecticut, by *Peter*

JUSTICE BREYER delivered the opinion of the Court.

We here consider the scope of a prosecutor's absolute immunity from claims asserted under Rev. Stat. § 1979, 42

J. Nickles, Acting Attorney General of the District of Columbia, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Edmund G. Brown, Jr.*, of California, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Jack Conway* of Kentucky, *James D. Caldwell* of Louisiana, *G. Steven Rowe* of Maine, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Gary K. King* of New Mexico, *Andrew Cuomo* of New York, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Nancy H. Rogers* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Robert F. McDonnell* of Virginia, *Robert M. McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B. Van Hollen* of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for Cook County, Illinois, by *Richard A. Devine*, *Patrick T. Driscoll, Jr.*, and *Paul A. Castiglione;* for Los Angeles County, California, by *Steve Cooley*, *Lael R. Rubin*, *Brentford Ferreira*, and *Roberta Schwartz;* for the City of New York by *Michael A. Cardozo*, *Leonard J. Koerner*, and *Elizabeth Susan Natrella;* for the National Association of Counties et al. by *Richard Ruda;* and for the National District Attorneys Association et al. by *W. Scott Thorpe*.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *M. Allen Hopper*, *Steven R. Shapiro*, and *Jeffrey L. Fisher;* for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Sean H. Donahue*, and *David T. Goldberg;* and for the Innocence Network et al. by *Peter D. Isakoff*, *Peter J. Neufeld*, and *Barry Scheck*.

Briefs of *amici curiae* were filed for Law Professors by *John R. Cuti* and *Margaret Z. Johns;* and for the New York State District Attorneys Association by *Anthony J. Servino*, *James A. Murphy III*, *Anthony J. Girese*, and *Mark Dwyer*.

U. S. C. § 1983. See *Imbler* v. *Pachtman*, 424 U. S. 409 (1976). We ask whether that immunity extends to claims that the prosecution failed to disclose impeachment material, see *Giglio* v. *United States*, 405 U. S. 150 (1972), due to: (1) a failure properly to train prosecutors, (2) a failure properly to supervise prosecutors, or (3) a failure to establish an information system containing potential impeachment material about informants. We conclude that a prosecutor's absolute immunity extends to all these claims.

I

In 1998, respondent Thomas Goldstein (then a prisoner) filed a habeas corpus action in the Federal District Court for the Central District of California. He claimed that in 1980 he was convicted of murder; that his conviction depended in critical part upon the testimony of Edward Floyd Fink, a jailhouse informant; that Fink's testimony was unreliable, indeed false; that Fink had previously received reduced sentences for providing prosecutors with favorable testimony in other cases; that at least some prosecutors in the Los Angeles County District Attorney's Office knew about the favorable treatment; that the office had not provided Goldstein's attorney with that information; and that, among other things, the prosecution's failure to provide Goldstein's attorney with this potential impeachment information had led to his erroneous conviction. *Goldstein* v. *Long Beach*, 481 F. 3d 1170, 1171–1172 (CA9 2007).

After an evidentiary hearing the District Court agreed with Goldstein that Fink had not been truthful and that if the prosecution had told Goldstein's lawyer that Fink had received prior rewards in return for favorable testimony it might have made a difference. The court ordered the State either to grant Goldstein a new trial or to release him. The Court of Appeals affirmed the District Court's determination. And the State decided that, rather than retry Goldstein (who had already served 24 years of his sentence), it would release him. App. 54–55, 59–60.

Upon his release Goldstein filed this § 1983 action against petitioners, the former Los Angeles County district attorney and chief deputy district attorney. Goldstein's complaint (which for present purposes we take as accurate) asserts in relevant part that the prosecution's failure to communicate to his attorney the facts about Fink's earlier testimony-related rewards violated the prosecution's constitutional duty to "insure communication of all relevant information on each case [including agreements made with informants] to every lawyer who deals with it." *Giglio, supra,* at 154. Moreover, it alleges that this failure resulted from the failure of petitioners (the office's chief supervisory attorneys) adequately to train and to supervise the prosecutors who worked for them as well as their failure to establish an information system about informants. And it asks for damages based upon these training, supervision, and information-system related failings.

Petitioners, claiming absolute immunity from such a § 1983 action, asked the District Court to dismiss the complaint. See *Imbler, supra.* The District Court denied the motion to dismiss on the ground that the conduct asserted amounted to "administrative," not "prosecutorial," conduct; hence it fell outside the scope of the prosecutor's absolute immunity to § 1983 claims. The Ninth Circuit, considering petitioners' claim on an interlocutory appeal, affirmed the District Court's "no immunity" determination. We now review the Ninth Circuit's decision, and we reverse its determination.

II

Over a half century ago Chief Judge Learned Hand explained that a prosecutor's absolute immunity reflects "a balance" of "evils." *Gregoire* v. *Biddle,* 177 F. 2d 579, 581 (CA2 1949). "[I]t has been thought in the end better," he said, "to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Ibid.* In *Imbler, supra,* this

Court considered prosecutorial actions that are "intimately associated with the judicial phase of the criminal process." *Id.*, at 430. And, referring to Chief Judge Hand's views, it held that prosecutors are absolutely immune from liability in § 1983 lawsuits brought under such circumstances. *Id.*, at 428.

The § 1983 action at issue was that of a prisoner freed on a writ of habeas corpus who subsequently sought damages from his former prosecutor. His action, like the action now before us, tracked the claims that a federal court had found valid when granting his habeas corpus petition. In particular, the prisoner claimed that the trial prosecutor had permitted a fingerprint expert to give false testimony, that the prosecutor was responsible for the expert's having suppressed important evidence, and that the prosecutor had introduced a misleading artist's sketch into evidence. *Id.*, at 416.

In concluding that the prosecutor was absolutely immune, the Court pointed out that legislators have long "enjoyed absolute immunity for their official actions," *id.*, at 417; that the common law granted immunity to "judges and . . . jurors acting within the scope of their duties," *id.*, at 423; and that the law had also granted prosecutors absolute immunity from common-law tort actions, say, those underlying a "decision to initiate a prosecution," *id.*, at 421. The Court then held that the "same considerations of public policy that underlie" a prosecutor's common-law immunity "countenance absolute immunity under § 1983." *Id.*, at 424. Those considerations, the Court said, arise out of the general common-law "concern that harassment by unfounded litigation" could both "cause a deflection of the prosecutor's energies from his public duties" and also lead the prosecutor to "shade his decisions instead of exercising the independence of judgment required by his public trust." *Id.*, at 423.

Where § 1983 actions are at issue, the Court said, both sets of concerns are present and serious. The "public trust of

the prosecutor's office would suffer" were the prosecutor to have in mind his "own potential" damages "liability" when making prosecutorial decisions—as he might well were he subject to § 1983 liability. *Id.*, at 424. This is no small concern, given the frequency with which criminal defendants bring such suits, *id.*, at 425 ("[A] defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate"), and the "substantial danger of liability even to the honest prosecutor" that such suits pose when they survive pretrial dismissal, *ibid.;* see also *ibid.* (complex, close, fair-trial questions "often would require a virtual retrial of the criminal offense in a new forum, and the resolution of some technical issues by the lay jury"). A "prosecutor," the Court noted, "inevitably makes many decisions that could engender colorable claims of constitutional deprivation. Defending these decisions, often years after they were made, could impose unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials." *Id.*, at 425–426. The Court thus rejected the idea of applying the less-than-absolute "qualified immunity" that the law accords to other "executive or administrative officials," noting that the "honest prosecutor would face greater difficulty" than would those officials "in meeting the standards of qualified immunity." *Id.*, at 425. Accordingly, the immunity that the law grants prosecutors is "absolute." *Id.*, at 424.

The Court made clear that absolute immunity may not apply when a prosecutor is not acting as "an officer of the court," but is instead engaged in other tasks, say, investigative or administrative tasks. *Id.*, at 431, n. 33. To decide whether absolute immunity attaches to a particular kind of prosecutorial activity, one must take account of the "functional" considerations discussed above. See *Burns* v. *Reed*, 500 U. S. 478, 486 (1991) (collecting cases applying "functional approach" to immunity); *Kalina* v. *Fletcher*, 522 U. S. 118, 127, 130 (1997). In *Imbler*, the Court concluded that the

"reasons for absolute immunity appl[ied] with full force" to the conduct at issue because it was "intimately associated with the judicial phase of the criminal process." 424 U. S., at 430. The fact that one constitutional duty at issue was a positive duty (the duty to supply "information relevant to the defense") rather than a negative duty (the duty not to "use . . . perjured testimony") made no difference. *Id.*, at 431, n. 34. After all, a plaintiff can often transform a positive into a negative duty simply by reframing the pleadings; in either case, a constitutional violation is at issue. *Ibid.*

Finally, the Court specifically reserved the question whether or when "similar reasons require immunity for those aspects of the prosecutor's responsibility that cast him in the role of an administrator . . . rather than that of advocate." *Id.*, at 430–431. It said that "[d]rawing a proper line between these functions may present difficult questions, but this case does not require us to anticipate them." *Id.*, at 431, n. 33.

In the years since *Imbler*, we have held that absolute immunity applies when a prosecutor prepares to initiate a judicial proceeding, *Burns*, *supra*, at 492, or appears in court to present evidence in support of a search warrant application, *Kalina*, *supra*, at 126. We have held that absolute immunity does not apply when a prosecutor gives advice to police during a criminal investigation, see *Burns*, *supra*, at 496, when the prosecutor makes statements to the press, *Buckley* v. *Fitzsimmons*, 509 U. S. 259, 277 (1993), or when a prosecutor acts as a complaining witness in support of a warrant application, *Kalina*, *supra*, at 132 (SCALIA, J., concurring). This case, unlike these earlier cases, requires us to consider how immunity applies where a prosecutor is engaged in certain administrative activities.

III

Goldstein claims that the district attorney and his chief assistant violated their constitutional obligation to provide

his attorney with impeachment-related information, see *Giglio*, 405 U. S. 150, because, as the Court of Appeals wrote, they failed "to adequately train and supervise deputy district attorneys on that subject," 481 F. 3d, at 1176, and because, as Goldstein's complaint adds, they "failed to create any system for the Deputy District Attorneys handling criminal cases to access information pertaining to the benefits provided to jailhouse informants and other impeachment information," App. 45. We agree with Goldstein that, in making these claims, he attacks the office's administrative procedures. We are also willing to assume with Goldstein, but purely for argument's sake, that *Giglio* imposes certain obligations as to training, supervision, or information-system management.

Even so, we conclude that prosecutors involved in such supervision or training or information-system management enjoy absolute immunity from the kind of legal claims at issue here. Those claims focus upon a certain kind of administrative obligation—a kind that itself is directly connected with the conduct of a trial. Here, unlike with other claims related to administrative decisions, an individual prosecutor's error in the plaintiff's specific criminal trial constitutes an essential element of the plaintiff's claim. The administrative obligations at issue here are thus unlike administrative duties concerning, for example, workplace hiring, payroll administration, the maintenance of physical facilities, and the like. Moreover, the types of activities on which Goldstein's claims focus necessarily require legal knowledge and the exercise of related discretion, *e. g.*, in determining what information should be included in the training or the supervision or the information-system management. And in that sense also Goldstein's claims are unlike claims of, say, unlawful discrimination in hiring employees. Given these features of the case before us, we believe absolute immunity must follow.

A

We reach this conclusion by initially considering a hypothetical case that involves supervisory or other office prosecutors but does not involve administration. Suppose that Goldstein had brought such a case, seeking damages not only from the trial prosecutor but also from a supervisory prosecutor or from the trial prosecutor's colleagues—all on the ground that they should have found and turned over the impeachment material about Fink. *Imbler* makes clear that all these prosecutors would enjoy absolute immunity from such a suit. The prosecutors' behavior, taken individually or separately, would involve "[p]reparation . . . for . . . trial," 424 U. S., at 431, n. 33, and would be "intimately associated with the judicial phase of the criminal process" because it concerned the evidence presented at trial, *id.*, at 430. And all of the considerations that this Court found to militate in favor of absolute immunity in *Imbler* would militate in favor of immunity in such a case.

The only difference we can find between *Imbler* and our hypothetical case lies in the fact that, in our hypothetical case, a prosecutorial supervisor or colleague might himself be liable for damages *instead of* the trial prosecutor. But we cannot find that difference (in the pattern of liability among prosecutors within a single office) to be critical. Decisions about indictment or trial prosecution will often involve more than one prosecutor within an office. We do not see how such differences in the pattern of liability among a group of prosecutors in a single office could alleviate *Imbler*'s basic fear, namely, that the threat of damages liability would affect the way in which prosecutors carried out their basic court-related tasks. Moreover, this Court has pointed out that "it is the interest in protecting the proper functioning of the office, rather than the interest in protecting its occupant, that is of primary importance." *Kalina*, 522 U. S., at 125. Thus, we must assume that the prosecutors in our hypothetical suit would enjoy absolute immunity.

B

Once we determine that supervisory prosecutors are immune in a suit directly attacking their actions related to an individual trial, we must find they are similarly immune in the case before us. We agree with the Court of Appeals that the office's *general* methods of supervision and training are at issue here, but we do not agree that that difference is critical for present purposes. That difference does not preclude an intimate connection between prosecutorial activity and the trial process. The management tasks at issue, insofar as they are relevant, concern how and when to make impeachment information available at a trial. They are thereby directly connected with the prosecutor's basic trial advocacy duties. And, in terms of *Imbler*'s functional concerns, a suit charging that a supervisor made a mistake directly related to a particular trial, on the one hand, and a suit charging that a supervisor trained and supervised inadequately, on the other, would seem very much alike.

That is true, in part, for the practical reason that it will often prove difficult to draw a line between *general* office supervision or office training (say, related to *Giglio*) and *specific* supervision or training related to a particular case. To permit claims based upon the former is almost inevitably to permit the bringing of claims that include the latter. It is also true because one cannot easily distinguish, for immunity purposes, between claims based upon training or supervisory failures related to *Giglio* and similar claims related to other constitutional matters (obligations under *Brady* v. *Maryland*, 373 U. S. 83 (1963), for example). And that being so, every consideration that *Imbler* mentions militates in favor of immunity.

As we have said, the type of "faulty training" claim at issue here rests in necessary part upon a consequent error by an individual prosecutor in the midst of trial, namely, the plaintiff's trial. If, as *Imbler* says, the threat of damages liability for such an error could lead a trial prosecutor to take

account of that risk when making trial-related decisions, so, too, could the threat of more widespread liability throughout the office (ultimately traceable to that trial error) lead both that prosecutor and other office prosecutors as well to take account of such a risk. Indeed, members of a large prosecutorial office, when making prosecutorial decisions, could have in mind the "consequences in terms of" damages liability whether they are making general decisions about supervising or training or whether they are making individual trial-related decisions. *Imbler*, 424 U. S., at 424.

Moreover, because better training or supervision might prevent most, if not all, prosecutorial errors at trial, permission to bring such a suit here would grant permission to criminal defendants to bring claims in other similar instances, in effect claiming damages for (trial-related) training or supervisory failings. Cf. *Imbler*, *supra*. Further, given the complexity of the constitutional issues, inadequate training and supervision suits could, as in *Imbler*, "pose substantial danger of liability even to the honest prosecutor." *Id.*, at 425. Finally, as *Imbler* pointed out, defending prosecutorial decisions, often years after they were made, could impose "unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials." *Id.*, at 425–426.

At the same time, to permit this suit to go forward would create practical anomalies. A trial prosecutor would remain immune, even for *intentionally* failing to turn over, say *Giglio* material; but her supervisor might be liable for *negligent* training or supervision. Small prosecution offices where supervisors can personally participate in all of the cases would likewise remain immune from prosecution; but large offices, making use of more general officewide supervision and training, would not. Most important, the ease with which a plaintiff could restyle a complaint charging a trial failure so that it becomes a complaint charging a failure of training or supervision would eviscerate *Imbler*.

We conclude that the very reasons that led this Court in *Imbler* to find absolute immunity require a similar finding in this case. We recognize, as Chief Judge Hand pointed out, that sometimes such immunity deprives a plaintiff of compensation that he undoubtedly merits; but the impediments to the fair, efficient functioning of a prosecutorial office that liability could create lead us to find that *Imbler* must apply here.

C

We treat separately Goldstein's claim that the Los Angeles County District Attorney's Office should have established a system that would have permitted prosecutors "handling criminal cases to access information pertaining to the benefits provided to jailhouse informants and other impeachment information." App. 45. We do so because Goldstein argues that the creation of an information management system is a more purely administrative task, less closely related to the "judicial phase of the criminal process," *Imbler*, *supra*, at 430, than are supervisory or training tasks. He adds that technically qualified individuals other than prosecutors could create such a system and that they could do so prior to the initiation of criminal proceedings.

In our view, however, these differences do not require a different outcome. The critical element of any information system is the information it contains. Deciding what to include and what not to include in an information system is little different from making similar decisions in respect to training. Again, determining the criteria for inclusion or exclusion requires knowledge of the law.

Moreover, the absence of an information system is relevant here if, and only if, a proper system would have included information about the informant Fink. Thus, were this claim allowed, a court would have to review the office's legal judgments, not simply about *whether* to have an information system but also about *what kind* of system is appropriate, and whether an appropriate system would have included

Giglio-related information *about one particular kind of trial informant.* Such decisions—whether made prior to or during a particular trial—are "intimately associated with the judicial phase of the criminal process." *Imbler*, *supra*, at 430; see *Burns*, 500 U. S., at 486. And, for the reasons set out above, all *Imbler*'s functional considerations (and the anomalies we mentioned earlier, *supra*, at 346–347) apply here as well.

We recognize that sometimes it would be easy for a court to determine that an office's decision about an information system was inadequate. Suppose, for example, the office had no system at all. But the same could be said of a prosecutor's trial error. Immunity does not exist to help prosecutors in the easy case; it exists because the easy cases bring difficult cases in their wake. And, as *Imbler* pointed out, the likely presence of too many difficult cases threatens, not prosecutors, but the public, for the reason that it threatens to undermine the necessary independence and integrity of the prosecutorial decisionmaking process. Such is true of the kinds of claims before us, to all of which *Imbler*'s functional considerations apply. Consequently, where a § 1983 plaintiff claims that a prosecutor's management of a trial-related information system is responsible for a constitutional error at his or her particular trial, the prosecutor responsible for the system enjoys absolute immunity just as would the prosecutor who handled the particular trial itself.

* * *

For these reasons we conclude that petitioners are entitled to absolute immunity in respect to Goldstein's claims that their supervision, training, or information-system management was constitutionally inadequate. Accordingly, 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.

NELSON, AKA ZIKEE *v.* UNITED STATES

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

No. 08–5657. Decided January 26, 2009

In sentencing petitioner Nelson under the United States Sentencing Guidelines, the District Court stated that the Guidelines were presumptively reasonable. The Fourth Circuit affirmed, rejecting Nelson's argument that the District Court erred in relying on that presumption. After this Court vacated the judgment and remanded in light of *Rita* v. *United States*, 551 U. S. 338, the Fourth Circuit reaffirmed. It acknowledged that under *Rita*, while courts of appeals "may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines," *id.*, at 347, "the sentencing court does not enjoy the benefit of legal presumption that the Guidelines sentence should apply," *id.*, at 351. It nonetheless upheld the sentence, finding that the District Court treated the Guidelines as advisory rather than as mandatory.

Held: The Fourth Circuit erred in rejecting Nelson's argument that the District Court impermissibly applied a presumption of reasonableness to his Guidelines range. This Court stated fairly explicitly in *Rita* that a sentencing court may not presume that a sentence within the applicable Guidelines range is reasonable. *Ibid.* The fact that the District Judge did not treat the Guidelines as mandatory is beside the point. The Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.

Certiorari granted; 276 Fed. Appx. 331, reversed and remanded.

PER CURIAM.

Lawrence Nelson was convicted of one count of conspiracy to distribute and to possess with intent to distribute more than 50 grams of cocaine base. See 21 U. S. C. § 846. The District Court calculated Nelson's sentencing range under the United States Sentencing Guidelines, and imposed a sentence of 360 months in prison (the bottom of the range). During sentencing, the judge explained that under Fourth Circuit precedent, " 'the Guidelines are considered presump-

tively reasonable,' " so that " 'unless there's a good reason in the [statutory sentencing] factors . . . , the Guideline sentence is the reasonable sentence.' " Pet. for Cert. 10.

The United States Court of Appeals for the Fourth Circuit affirmed Nelson's conviction and sentence. *United States* v. *Nelson*, 237 Fed. Appx. 819 (2007) *(per curiam)*. It noted that within-Guidelines sentences are presumptively reasonable, and rejected Nelson's argument that the District Court's reliance on that presumption was error. *Id.*, at 821.

Nelson filed a petition for a writ of certiorari. We granted the petition, vacated the judgment, and remanded the case to the Fourth Circuit for further consideration in light of *Rita* v. *United States*, 551 U. S. 338 (2007). *Nelson* v. *United States*, 552 U. S. 1163 (2008).

On remand and without further briefing, the Fourth Circuit again affirmed the sentence. 276 Fed. Appx. 331 (2008) *(per curiam)*. The court acknowledged that under *Rita*, while courts of appeals "may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines," 551 U. S., at 347, "the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply," *id.*, at 351. Instead, the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U. S. C. § 3553(a), explaining any variance from the former with reference to the latter. Nonetheless, the Fourth Circuit upheld the sentence, finding that the District Court did not treat the Guidelines as "mandatory" but rather understood that they were only advisory. 276 Fed. Appx., at 333.

Nelson has again filed a petition for a writ of certiorari, reasserting, *inter alia*, essentially the same argument he made before us the first time: that the District Court's statements clearly indicate that it impermissibly applied a pre-

sumption of reasonableness to his Guidelines range. The United States admits that the Fourth Circuit erred in rejecting that argument following our remand; we agree.

Our cases do not allow a sentencing court to presume that a sentence within the applicable Guidelines range is reasonable. In *Rita* we said as much, in fairly explicit terms: "We repeat that the presumption before us is an *appellate* court presumption. . . . [T]he sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply." 551 U. S., at 351. And in *Gall* v. *United States*, 552 U. S. 38 (2007), we reiterated that district judges, in considering how the various statutory sentencing factors apply to an individual defendant, "may not presume that the Guidelines range is reasonable." *Id.*, at 50.

In this case, the Court of Appeals quoted the above language from *Rita* but affirmed the sentence anyway after finding that the District Judge did not treat the Guidelines as mandatory. That is true, but beside the point. The Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable. We think it plain from the comments of the sentencing judge that he did apply a presumption of reasonableness to Nelson's Guidelines range. Under our recent precedents, that constitutes error.

The petition for certiorari and the motion for leave to proceed *in forma pauperis* are 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 BREYER, with whom JUSTICE ALITO joins, concurring in the judgment.

The Solicitor General confessed that the U. S. Court of Appeals for the Fourth Circuit erred. Given the nature of the error, and in light of the Solicitor General's confession, I would grant the petition for certiorari, vacate the judgment of the Court of Appeals, and remand for further proceedings.

Syllabus

YSURSA, SECRETARY OF STATE OF IDAHO, ET AL. *v.* POCATELLO EDUCATION ASSOCIATION ET AL.

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

No. 07–869. Argued November 3, 2008—Decided February 24, 2009

Idaho's Right to Work Act permits public employees to authorize payroll deductions for general union dues, but prohibits such deductions for union political activities. Respondents—a group of Idaho public employee unions—sued, alleging that the ban on payroll deductions for political activities violated the First and Fourteenth Amendments. The District Court upheld the ban at the state level, but struck it down as it applies to local governments. In affirming, the Ninth Circuit stated that, while Idaho has the ultimate control over local governmental units, it did not actually operate or control their payroll deduction systems. The court applied strict scrutiny to hold that the statute was unconstitutional as applied at the local level.

Held: Idaho's ban on political payroll deductions, as applied to local governmental units, does not infringe the unions' First Amendment rights. Pp. 358–364.

(a) Content-based restrictions on speech are "presumptively invalid" and subject to strict scrutiny. *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177, 188. The First Amendment does not, however, impose an obligation on government to subsidize speech. See *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 549. Idaho's law does not restrict political speech, but rather declines to promote that speech by allowing public employee checkoffs for political activities. Idaho's public employee unions are free to engage in such speech as they see fit. They simply are barred from enlisting the State in support of that endeavor. Idaho's decision to limit public employee payroll deductions as it has does not infringe the unions' First Amendment rights. The State accordingly need only demonstrate a rational basis to justify the ban. Idaho's justification is the interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics. See, *e. g.*, *Civil Service Comm'n* v. *Letter Carriers,* 413 U. S. 548, 565. And the State's response to the problem is limited to its source—political payroll deductions. Cf. *Davenport*, *supra.* The ban plainly serves the State's interest in separating public employment from political activities. Pp. 358–361.

(b) The ban at issue is valid at the local level. The same deferential review applies whether the ban is directed at state or local governmental entities. Political subdivisions have never been considered sovereign entities but are instead "subordinate governmental instrumentalities." *Reynolds* v. *Sims*, 377 U. S. 533, 575. The State's legislative action is subject to First Amendment scrutiny whether it is applicable at the state level, the local level, both, or some subpart of either, but no case suggests that a different analysis applies depending on the level of government affected. The ban furthers Idaho's interest in separating the operation of government from partisan politics, and that interest extends to all public employers at whatever level of government. Pp. 362–364.

504 F. 3d 1053, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined, and in which GINSBURG, J., joined as to Parts I and III. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 364. BREYER, J., filed an opinion concurring in part and dissenting in part, *post*, p. 365. STEVENS, J., *post*, p. 370, and SOUTER, J., *post*, p. 375, filed dissenting opinions.

Clay R. Smith, Deputy Attorney General of Idaho, argued the cause for petitioners. With him on the briefs were *Lawrence G. Wasden*, Attorney General, and *James D. Carlson*, Deputy Attorney General.

Jeremiah A. Collins argued the cause for respondents. With him on the brief were *Laurence S. Gold*, *John E. Rumel*, *John F. Greenfield*, and *Orrin D. Baird*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Utah et al. by *Mark L. Shurtleff*, Attorney General of Utah, *Annina M. Mitchell*, Solicitor General, and *Nancy L. Kemp*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Douglas F. Gansler* of Maryland, *Kelly A. Ayotte* of New Hampshire, and *Greg Abbott* of Texas; for Americans for Limited Government by *Kevin A. Hall;* for the Evergreen Freedom Foundation et al. by *Michael J. Reitz;* for the Mountain States Legal Foundation by *William Perry Pendley;* and for the Utah Taxpayers Association et al. by *Maxwell A. Miller*.

Deborah J. La Fetra and *Timothy M. Sandefur* filed a brief for the Pacific Legal Foundation as *amicus curiae*.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Under Idaho law, a public employee may elect to have a portion of his wages deducted by his employer and remitted to his union to pay union dues. He may not, however, choose to have an amount deducted and remitted to the union's political action committee, because Idaho law prohibits payroll deductions for political activities. A group of unions representing Idaho public employees challenged this limitation. They conceded that the limitation was valid as applied at the state level, but argued that it violated their First Amendment rights when applied to county, municipal, school district, and other local public employers.

We do not agree. The First Amendment prohibits government from "abridging the freedom of speech"; it does not confer an affirmative right to use government payroll mechanisms for the purpose of obtaining funds for expression. Idaho's law does not restrict political speech, but rather declines to promote that speech by allowing public employee checkoffs for political activities. Such a decision is reasonable in light of the State's interest in avoiding the appearance that carrying out the public's business is tainted by partisan political activity. That interest extends to government at the local as well as state level, and nothing in the First Amendment prevents a State from determining that its political subdivisions may not provide payroll deductions for political activities.

I

Idaho's Right to Work Act declares that the "right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization or on refusal to join, affiliate with, or financially or otherwise support a labor organization." 1985 Idaho Sess. Laws ch. 2, § 1 (codified at Idaho Code § 44–2001 (Michie 2003)). As part of that policy, the Act prohibits any requirement for the payment of dues or fees to a labor organization

as a condition of employment, § 44–2003, but authorizes employers to deduct union fees from an employee's wages with the employee's "signed written authorization," § 44–2004(1). The Act covers all employees, "including all employees of the state and its political subdivisions." § 44–2011.

Prior to 2003, employees could authorize both a payroll deduction for general union dues and a payroll deduction for union political activities conducted through a political action committee. App. 55–56, 83–84. In 2003, the Idaho Legislature passed the Voluntary Contributions Act (VCA). 2003 Sess. Laws chs. 97 and 340 (codified at Idaho Code §§ 44–2601 through 44–2605, and § 44–2004). That legislation, among other things, amended the Right to Work Act by adding a prohibition on payroll deductions for political purposes. That amendment provides: "Deductions for political activities as defined in chapter 26, title 44, Idaho Code, shall not be deducted from the wages, earnings or compensation of an employee." § 44–2004(2). The term "political activities" is defined as "electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee or political issues committee or in support of or against any ballot measure." § 44–2602(1)(e). Violations of § 44–2004(2) are punishable by a fine not exceeding $1,000 or up to 90 days of imprisonment, or both. § 44–2007.

Shortly before the VCA was to take effect, plaintiff labor organizations sued the Bannock County prosecuting attorney, the Idaho secretary of state, and the Idaho attorney general in their official capacities, alleging that the ban on political payroll deductions was unconstitutional under the First and Fourteenth Amendments to the United States Constitution. App. 18–41.[1] The District Court rejected that argu-

[1] The unions also challenged other provisions of the VCA, including one requiring labor organizations to establish a "separate segregated fund" for political activities. Idaho Code §§ 44–2601 through 44–2605 (Michie 2003); see App. 27–34. In response to that challenge, the State agreed to strike "all of the VCA except for its ban on political payroll deductions." *Poca-*

ment with respect to public employers at the state level, concluding that the First Amendment does not compel the State "to subsidize speech by providing, at its own expense, payroll deductions for the purpose of paying union dues or association fees for State employees." *Pocatello Ed. Assn.* v. *Heideman*, 2005 WL 3241745, *2 (D Idaho, Nov. 23, 2005). The ban was valid at the state level because "the State is incurring costs to set up and maintain the [payroll deduction] program." *Ibid.* The court struck down the VCA, however, "to the extent that it applies to local governments and private employers," because the State had failed to identify any subsidy it provided to such employers to administer payroll deductions. *Id.*, at *2 (footnote omitted), *6.

The state defendants appealed, contending that the ban on political payroll deductions may be constitutionally applied to local government employees. *Pocatello Ed. Assn.* v. *Heideman*, 504 F. 3d 1053, 1057 (CA9 2007). Neither party challenged the District Court's rulings as to private and state-level employees, and therefore the only issue remaining concerned application of the ban to local government employees.

The Court of Appeals agreed with the District Court that there was "no subsidy by the State of Idaho for the payroll deduction systems of local governments." *Id.*, at 1059. The appellate court remarked that "the generalized lawmaking power held by the legislature with respect to a state's political subdivisions does not establish that the state is acting as a proprietor" with respect to local government em-

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tello Ed. Assn. v. *Heideman*, 2005 WL 3241745, *1 (D Idaho, Nov. 23, 2005). The State asserted that the ban could be "given effect since it operates without reference to the existence of a separate segregated fund." *Ibid.* (internal quotation marks omitted). The unions do not dispute that the ban on political payroll deductions is severable from the other challenged provisions. Plaintiffs' Reply Memorandum in Support of Their Motion for Summary Judgment and in Opposition to the State Defendants' Motion for Summary Judgment in No. Civ. 03–256–E–BLW (D Idaho, Aug. 15, 2005), p. 3 (hereinafter Plaintiffs' Reply Memorandum).

ployers. *Id.*, at 1064. The court instead regarded the relationship between the State and its political subdivisions as analogous to that between the State and a regulated private utility. See *id.*, at 1063–1065 (citing *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530 (1980)). While "Idaho has the ultimate power of control over the units of government at issue," it did not "actually operat[e] or contro[l] the payroll deduction systems of local units of government." 504 F. 3d, at 1068. The court therefore applied strict scrutiny to Idaho's decision to prevent local government employers from allowing payroll deductions for political purposes, and held the statute unconstitutional as applied at the local level. *Ibid.*

We granted certiorari, 552 U. S. 1294 (2008), and now reverse.

II

Restrictions on speech based on its content are "presumptively invalid" and subject to strict scrutiny. *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177, 188 (2007); *R. A. V.* v. *St. Paul*, 505 U. S. 377, 382 (1992). The unions assert that the ban on checkoffs for political activities falls into this category because the law singles out political speech for disfavored treatment.

The First Amendment, however, protects the right to be free from government abridgment of speech. While in some contexts the government must accommodate expression, it is not required to assist others in funding the expression of particular ideas, including political ones. "[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 549 (1983); cf. *Smith* v. *Highway Employees*, 441 U. S. 463, 465 (1979) (*per curiam*) ("First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize [a labor] association and bargain with it").

The court below concluded, and Idaho does not dispute, that "unions face substantial difficulties in collecting funds for political speech without using payroll deductions." 504 F. 3d, at 1058. But the parties agree that the State is not constitutionally obligated to provide payroll deductions at all. See Plaintiffs' Reply Memorandum 10; see also *Toledo Area AFL–CIO Council* v. *Pizza*, 154 F. 3d 307, 319–320 (CA6 1998); cf. *Charlotte* v. *Firefighters*, 426 U. S. 283, 286 (1976) ("Court would reject . . . contention . . . that respondents' status as union members or their interest in obtaining a dues checkoff . . . entitle[s] them to special treatment under the Equal Protection Clause"). While publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, Idaho is under no obligation to aid the unions in their political activities. And the State's decision not to do so is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit. They simply are barred from enlisting the State in support of that endeavor. Idaho's decision to limit public employer payroll deductions as it has "is not subject to strict scrutiny" under the First Amendment. *Regan*, 461 U. S., at 549.

Given that the State has not infringed the unions' First Amendment rights, the State need only demonstrate a rational basis to justify the ban on political payroll deductions. *Id.*, at 546–551. The prohibition is not "aim[ed] at the suppression of dangerous ideas," *id.*, at 548 (internal quotation marks omitted), but is instead justified by the State's interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics. We have previously recognized such a purpose in upholding limitations on public employee political activities. See *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 565 (1973) (public perception of partiality can undermine confidence in representative government); *Public Workers* v. *Mitchell*, 330 U. S. 75, 96–100 (1947) (Congress may limit political acts by

public officials to promote integrity in the discharge of official duties); cf. *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 809 (1985) (limitations on speech may be justified by interest in "avoiding the appearance of political favoritism"); *Greer* v. *Spock*, 424 U. S. 828, 839 (1976) (upholding policy aimed at keeping official military activities "wholly free of entanglement with partisan political campaigns of any kind"). Banning payroll deductions for political speech similarly furthers the government's interest in distinguishing between internal governmental operations and private speech. Idaho's decision to allow payroll deductions for some purposes but not for political activities is plainly reasonable.[2]

Davenport guides our resolution here. That case also involved a distinction based on the content of speech: Specific consent was required from nonunion members before agency fees charged to them could be used for election-related activities, but consent was not required with respect to agency fees used for other purposes. 551 U. S., at 181–182. We rejected the unions' argument that this requirement violated

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[2] JUSTICE BREYER finds this analysis inapplicable because the challenged provision removes politically related deductions from an existing system. *Post*, at 366 (opinion concurring in part and dissenting in part). But available deductions do not have tenure; a legislature is free to address concerns as they arise.

JUSTICE BREYER would also subject the ban to more exacting scrutiny by analogizing it to various direct restrictions on expression. See *post*, at 367–368. That analogy misses the mark. A decision not to assist fundraising that may, as a practical matter, result in fewer contributions is simply not the same as directly limiting expression. Cf. *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 550 (1983) ("Although [a union] does not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom" (internal quotation marks omitted)). We therefore would not subject Idaho's statute to the "open-ended rough-and-tumble of factors" proposed by the dissent as an alternative to rational basis review. *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 547 (1995); see *post*, at 368.

the First Amendment because it turned on the content of the speech at issue. *Id.*, at 188–190. We recognized that the statute, rather than suppressing union speech, simply declined to assist that speech by granting the unions the right to charge agency fees for election activities. That decision was reasonable given the State's interest in preserving the integrity of the election process. *Ibid.* We also concluded that the State did "not have to enact an across-the-board limitation . . . to vindicate [its] more narrow concern." *Id.*, at 189.

Here the restriction is on the use of a checkoff to fund political activities, but the same analysis governs. Idaho does not suppress political speech but simply declines to promote it through public employer checkoffs for political activities. The concern that political payroll deductions might be seen as involving public employers in politics arises only because Idaho permits public employer payroll deductions in the first place. As in *Davenport*, the State's response to that problem is limited to its source—in this case, political payroll deductions. The ban on such deductions plainly serves the State's interest in separating public employment from political activities.[3]

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[3] JUSTICE BREYER suggests that the ban on political payroll deductions may not be applied evenhandedly to all politically related deductions. *Post*, at 369–370. JUSTICE STEVENS goes further and would find the ban unconstitutional in all its applications as discriminatory. *Post*, at 370 (dissenting opinion). The District Court, however, noted that the ban "is not viewpoint-based," 2005 WL 3241745, *3; the unions acknowledged in their Court of Appeals brief that they "have not attempted to establish that Section 44–2004(2) is based on viewpoint discrimination," Brief for Plaintiffs-Appellees in No. 06–35004 (CA9), p. 18, n. 13; and nothing in the Questions Presented before this Court raised any issue of viewpoint discrimination.

The ban on political payroll deductions is by its terms not limited to any particular type of political contribution. Nothing in the record suggests that public employers permit deductions for some political activities but not for those of unions. Idaho's attorney general—charged with enforcing the ban—explicitly confirmed that it "applies to all organizations, to any

III

The question remains whether the ban is valid at the local level. The unions abandoned their challenge to the restriction at the state level, but contend that strict scrutiny is still warranted when the ban is applied to local government employers. In that context, the unions argue, the State is no longer declining to facilitate speech through its own payroll system, but is obstructing speech in the local governments' payroll systems. See Brief for Respondents 44–46. We find that distinction unpersuasive, and hold that the same deferential review applies whether the prohibition on payroll deductions for political speech is directed at state or local governmental entities.

"Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities." *Reynolds* v. *Sims*, 377 U. S. 533, 575 (1964). They are instead "subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." *Ibid.*; see also *Louisiana ex rel. Folsom* v. *Mayor and Administrators of New Orleans*, 109 U. S. 285, 287 (1883) ("Municipal corporations are instrumentalities of the State for the convenient administration of government within their limits"). State political subdivisions are "merely . . . department[s] of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit." *Trenton* v. *New Jersey*, 262 U. S. 182, 187 (1923). Here the Idaho Legislature has elected to withhold from *all* public employers the power to provide payroll deductions for political activities.

The State's legislative action is of course subject to First Amendment and other constitutional scrutiny whether that

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deduction regarding political issues, applies regardless of viewpoint or message, applies to all employers, and it does not single out any candidates or issues." App. 110. If the ban is not enforced evenhandedly, plaintiffs are free to bring an as-applied challenge. See *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 587 (1998).

action is applicable at the state level, the local level, both, or some subpart of either. But we are aware of no case suggesting that a different analysis applies under the First Amendment depending on the level of government affected, and the unions have cited none. The ban on political payroll deductions furthers Idaho's interest in separating the operation of government from partisan politics. That interest extends to all public employers at whatever level of government.

In reaching the opposite conclusion, the Court of Appeals invoked our decision in *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530. In that case, we held that a state commission could not, consistent with the First Amendment, prohibit a privately owned electric utility from discussing controversial issues in its bill inserts. *Id.*, at 544. We ruled that the fact that the State regulated the utility did not authorize the prohibition. *Id.*, at 540. The Court of Appeals concluded that the same analysis applied here, and that "the State's broad powers of control over local government entities are solely those of a regulator, analogous to the [state commission's] regulatory powers over [the private utility]." 504 F. 3d, at 1065.

That analogy is misguided. A private corporation is subject to the government's legal authority to regulate its conduct. A political subdivision, on the other hand, is a subordinate unit of government created by the State to carry out delegated governmental functions. A private corporation enjoys constitutional protections, see *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 778, n. 14 (1978), but a political subdivision, "created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." *Williams* v. *Mayor of Baltimore*, 289 U. S. 36, 40 (1933); see *Trenton* v. *New Jersey*, *supra*, at 185 (municipality, as successor to a private water company, does not enjoy against the State the same constitutional rights as

the water company: "The relations existing between the State and the water company were not the same as those between the State and the City").

Both the District Court and the Court of Appeals found it significant that "there is no subsidy by the State of Idaho for the payroll deduction systems of local governments." 504 F. 3d, at 1059; see also 2005 WL 3241745, *2. The Court of Appeals emphasized that there was no evidence that "Idaho has attempted to use its asserted powers to manage the day-to-day operations of local government personnel." 504 F. 3d, at 1067. Given the relationship between the State and its political subdivisions, however, it is immaterial how the State allocates funding or management responsibilities between the different levels of government. The question is whether the State must affirmatively assist political speech by allowing public employers to administer payroll deductions for political activities. For the reasons set forth in this opinion, the answer is no.

* * *

The Court of Appeals ruling that Idaho Code § 44–2004(2) is unconstitutional with respect to local units of government is reversed.

It is so ordered.

JUSTICE GINSBURG, concurring in part and concurring in the judgment.

The classification question this case presents can be answered without extended discussion. The parties agree here, as they did in the Court of Appeals, that Idaho's ban on payroll deductions for political activities violates First Amendment limitations as applied to the private sector. They also agree here, as they did before the Ninth Circuit, that the ban is permissible as applied to state-level government entities. See *ante,* at 357, 362; Tr. of Oral Arg. 4. The sole question posed for this Court's decision is the appro-

priate placement of the State's political subdivisions: For the purpose at hand, should the Court align local-government employment with private-sector employment or with state-level employment?

"Given the relationship between the State and its political subdivisions," the Court persuasively explains, "it is immaterial how the State allocates funding or management responsibilities between the different levels of government." *Ante*, at 364. I agree that, in the context here involved, the Constitution compels no distinction between state and local governmental entities. I therefore join Parts I and III of the Court's opinion and concur in the Court's judgment.

JUSTICE BREYER, concurring in part and dissenting in part.

In Part III of its opinion, the Court points out that the law ordinarily treats municipalities as creatures of the State. See *Reynolds* v. *Sims*, 377 U. S. 533, 575 (1964). Hence the fact that a state statute, rather than a municipal ordinance, limits the use of the municipality's payroll deduction system is beside the point. I agree that this is so, and I agree with JUSTICE SOUTER's discussion about the relationship between the State and the municipality.

I do not agree, however, with the Court's further analysis of the pertinent legal question—whether the state statute violates the First Amendment. Nor do I agree with its ultimate conclusion. Rather, in my view, we should remand this case for further consideration.

The Court's First Amendment analysis emphasizes its characterization of the statute as not "abridging" a union's or a worker's "freedom of speech," but rather "declin[ing] to promote" that speech. *Ante*, at 355 (internal quotation marks omitted). I agree that the First Amendment does not prohibit government from "*declining to promote*" speech. It says that government shall not "*abridg[e]* the freedom of

speech." (Emphasis added.) But I do not think the distinction particularly useful in this case.

That is because here the distinction is neither easy to draw nor likely to prove determinative. Sometimes, I concede, the distinction may help. Were there no payroll deduction system at all and were the unions arguing for the creation of such a system from scratch, one might characterize their claim as seeking the *promotion* of speech. But that is not the situation here. A deduction system already exists. The unions attack a separate statutory provision that removes politically related deductions from that system. And linguistically speaking, one need not characterize such an attack as (1) seeking speech *promotion* rather than (2) seeking to prevent an *abridgment* of political-speech-related activity that otherwise (*i. e.*, in the absence of the exception) would occur. In such an instance, the debate over characterization is more metaphysical than practical.

More importantly, the characterization quite possibly does not matter. Suppose, for example, a somewhat similar statutory exception picks and chooses among political causes, prohibiting deductions that help one political party while permitting deductions that help another. The First Amendment result could not turn upon whether one described the exception as an "abridgment" or a "promotion" failure. And, as I shall explain, *infra*, at 369–370, such may be the case here.

I disagree with the Court's characterizations in another respect. The Court says that because the exception "has not infringed the unions' First Amendment rights," "strict scrutiny" does not apply and, thus, the State "need only demonstrate *a rational basis*"—the standard of review applicable to any ordinary legislation that does not infringe fundamental rights—"to justify the ban on political payroll deductions." *Ante*, at 359 (emphasis added). I agree that the exception does not call for "strict scrutiny"—a categorization that almost always proves fatal to the law in question.

After all, the exception does not restrict the content of the unions' speech, impose a prior restraint on that speech, or ban union speech on political issues altogether.

But I disagree with the Court in that I believe there is a First Amendment interest at stake. The exception affects speech, albeit indirectly, by restricting a channel through which speech-supporting finance might flow. As a result, the alternative to "strict scrutiny" is not necessarily a form of "rational basis" review—a test that almost every restriction will pass. And instead of applying either "strict scrutiny" or "rational basis" review to the statutory exception, I would ask the question that this Court has asked in other speech-related contexts, namely, whether the statute imposes a burden upon speech that is disproportionate in light of the other interests the government seeks to achieve. See *Burdick* v. *Takushi*, 504 U. S. 428, 433–434 (1992) (election regulation); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 403 (2000) (BREYER, J., concurring) (collecting cases); see also, *e. g.*, *Thompson* v. *Western States Medical Center*, 535 U. S. 357, 388 (2002) (BREYER, J., dissenting) (discussing the Court's application of this approach in the commercial speech context); *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727, 740–747 (1996) (plurality opinion) (cable programming regulation); *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568 (1968) (government employee speech). Constitutional courts in other nations also have used similar approaches when facing somewhat similar problems. See, *e. g.*, *Libman* v. *Quebec* (Attorney General), [1997] 3 S. C. R. 569 (Canada) (applying proportionality in the campaign finance context); *Bowman* v. *United Kingdom*, 26 Eur. Ct. H. R. 1 (1998) (same); *Midi Television (Pty) Ltd* v. *Director of Public Prosecutions* 2007 SCA 56 (S. Afr.) (applying proportionality in the freedom of press context); *Bakri* v. *Israel Film Council*, HCJ 316/303 (Isr. Sup. Ct. 2003) (applying proportionality in the freedom of expression context).

In these cases the Court has sought to determine whether the harm to speech-related interests is disproportionate in light of the degree of harm, justifications, and potential alternatives. In doing so, it has considered the seriousness of the speech-related harm the provision will likely cause, the importance of the provision's countervailing objectives, the extent to which the statute will tend to achieve those objectives, and whether there are other less restrictive ways of doing so. In light of these considerations, it has determined whether ultimately the statute works speech-related harm that is out of proportion to its justifications. See *Board of Trustees of State Univ. of N. Y.* v. *Fox*, 492 U. S. 469, 480 (1989) (describing need for a "fit" between legislative ends and means "whose scope is 'in proportion to the interest served' "); *United States* v. *American Library Assn., Inc.*, 539 U. S. 194, 217–218 (2003) (BREYER, J., concurring in judgment).

Where context calls for "strict scrutiny," one would not necessarily ask these proportionality questions; but I would ask them in other contexts calling for less than ordinary legislative leeway in light of the fact that constitutionally protected expression is at issue. See *id.*, at 218. To do so, in my view, helps structure what the Court sometimes calls an "intermediate scrutiny" inquiry. See *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622 (1994).

Applying this analysis here, I would find the statutory exception constitutional, but only if I were convinced that the exception applied evenhandedly among similar politically related contributions. If so, the provision would still negatively affect speech-related interests, for it would close off one channel through which individuals might provide speech-enabling funds to political institutions. But, as the majority points out, many other channels for those funds exist, and the State has a strong interest in "avoiding the reality or appearance of government favoritism or entanglement with partisan politics," *ante*, at 359. I would conse-

quently find the restriction justified as proportionately serving a legitimate, important governmental need. Cf. *Fox*, *supra*, at 480.

It is not clear, however, whether the particular exception before us does, in fact, operate evenhandedly. To read the statute without more, I concede, suggests evenhandedness. The provision says that "[d]eductions for political activities *as defined in chapter 26, title 44*, Idaho Code, shall not be deducted from the wages, earnings or compensation of an employee." Idaho Code § 44–2004(2) (Michie 2003) (emphasis added). And chapter 26, title 44, Idaho Code, defines "political activities" without special reference to labor organizations. See § 44–2602(1)(e).

Nonetheless, certain features of the provision suggest it may affect some politically related deductions, namely, labor-related deductions, but not others. Title 44 of the Idaho Code—entitled "Labor"—is about *labor* activities. And the ban on payroll deductions for political activities was enacted as part of a statute in which *every other* provision is concerned solely with union activities. See Voluntary Contributions Act, 2003 Idaho Sess. Laws chs. 97 and 340 (codified at Idaho Code §§ 44–2601 through 44–2605 and § 44–2004). At the same time, the provision containing the payroll deduction ban is immediately followed by another related provision that expressly mentions labor unions. See § 44–2004(3) ("Nothing in this chapter shall prohibit an employee from personally paying contributions for political activities . . . to a *labor organization* unless such payment is prohibited by law" (emphasis added)).

It is important to know whether the exception concerns only labor-related political deductions (while allowing other similar deductions) or treats all alike. A restriction that applies to the political activities of unions alone would seem unlikely to further the government's justifying objective, namely, providing the appearance of political neutrality. And in that case, the provision could well bring about

speech-related harm that is disproportionate to the statute's tendency to further the government's "neutrality" objective.

Because the Court of Appeals analyzed the issue as if the State "regulated" its municipalities (as government might regulate a private firm), it did not resolve the questions I have just described. I would remand the case so that it can decide whether the parties appropriately raised those matters and, if so, consider them. Accordingly, I would vacate the Court of Appeals' judgment and remand the case.

JUSTICE STEVENS, dissenting.

In both the public and private sector, payroll managers routinely remit portions of employees' wages to third parties pursuant to the employees' written instructions. For decades, employers in Idaho had discretion to allow such payroll deductions. In 2003, however, the State enacted the Voluntary Contributions Act (VCA), 2003 Sess. Laws chs. 97 and 340 (codified at Idaho Code § 44–2004 and §§ 44–2601 through 44–2605 (Michie 2003)), which, among other things, prohibits employers from allowing any payroll deduction for "political activities," § 44–2004(2). For several reasons, I cannot conclude as the Court does that this restriction on payroll deductions was reasonably calculated to further the State's "interest in separating the operation of government from partisan politics," *ante*, at 363. Because it is clear to me that the restriction was intended to make it more difficult for unions to finance political speech, I would hold it unconstitutional in all its applications.

I

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828 (1995). On its face, § 44–2004(2) restricts payroll deductions for all political activities, and petitioners contend that the State reasonably enacted § 44–

2004(2) "to avoid either the appearance or the reality of public employer involvement in . . . electoral politics." Tr. of Oral Arg. 15. Several features of the statute, however, belie its purported viewpoint neutrality.

That the restriction was more narrowly intended to target union fundraising is first evidenced by its statutory context. The other provisions of the VCA with which § 44–2004(2) was enacted pertain exclusively to unions.[1] For instance, § 44–2603 requires unions to create separate funds for political activities and places restrictions on unions' solicitation of political contributions; § 44–2604 makes it a misdemeanor, among other things, for unions to make expenditures for political activities from union dues; and § 44–2605 establishes registration and reporting requirements for union political funds. The provisions proximate to § 44–2004(2), which were enacted roughly two decades earlier as part of the Right to Work Act, 1985 Sess. Laws ch. 2, § 1 (codified at Idaho Code § 44–2001 *et seq.*), are similarly directed at union activities. Even the subsection immediately preceding § 44–2004(2) is aimed specifically at unions: Section 44–2004(1) prohibits payroll deductions for union dues, fees, assessments, or other charges without an employee's prior written authorization. And, finally, § 44–2004(2) is codified in a title of the Idaho Code entitled "Labor" and in a chapter entitled "Right to Work." Together, these statutory features strongly suggest that the Idaho Legislature enacted § 44–2004(2) specifically to impede union fundraising.

The statute's discriminatory purpose is further evidenced by its substantial overinclusiveness and underinclusiveness with respect to the State's asserted interest in passing the legislation. Petitioners contend that the restriction was

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[1] Respondents also challenged these provisions of the VCA, and petitioners conceded their invalidity earlier in this litigation, acknowledging that they violated the First Amendment by restricting the ability of labor organizations to solicit political contributions. See *Pocatello Ed. Assn.* v. *Heideman*, 504 F. 3d 1053, 1057 (CA9 2007).

enacted to further the State's interest in avoiding the appearance or actuality of public employer involvement in partisan politics. See Tr. of Oral Arg. 15. But, as enacted, § 44–2004(2) prohibited private as well as public employers from making payroll deductions for political activities. As petitioners admitted at oral argument, "the State has no interest in . . . private employers' determination to be involved or not involved in political matters." *Id.*, at 6. That petitioners conceded the invalidity of § 44–2004(2) as applied to private employers earlier in this litigation does not require us to ignore the breadth of the statute the State enacted in assessing the provision's scope and purpose. Consideration of the provision actually passed by the legislature makes clear that the State's asserted interest in the restriction is not compatible with its breadth.

The State's interest in avoiding the appearance or reality of employer political involvement is also inconsistent with its decision not to restrict deductions for charitable activities. Such deductions will often present a similar risk of creating an appearance of political involvement as deductions for covered political activities. Yet the State has made no effort to distinguish this type of political activity. As with the State's decision to apply § 44–2004(2) to private employers, its failure to apply the restriction to charitable deductions produces a significant mismatch between the restriction's reach and its asserted purpose.

To my mind, it is clear from these features of the legislation that § 44–2004(2)'s prohibition on payroll deductions for "political activities" was intended to target union political activity. Cf. *Chamber of Commerce of United States* v. *Brown*, 554 U. S. 60, 70–71, 73 (2008) (noting that a rule restricting the use of state funds to promote or oppose unionization impermissibly expressed a pro-union preference, thereby chilling one side of the public debate).[2] The majori-

[2] It may even be true that § 44–2004(2) only affects union political activity, as petitioners can point to no evidence that another entity is affected

ty's facile assertion that the First Amendment does not confer a right to government subsidization of private speech cannot validate an evidently discriminatory restriction on fundraising for political speech.[3]

II

Although the statute's discriminatory purpose provides an adequate ground for deciding this case, I briefly note my disagreement with the majority's analysis of § 44–2004(2)'s constitutionality as applied to local government employees. The Court of Appeals found this application of the provision invalid due to the State's failure to show that it "actually operates or controls the payroll deduction systems of local units of government." *Pocatello Ed. Assn.* v. *Heideman*, 504 F. 3d 1053, 1068 (CA9 2007).[4] In the absence of evidence of such control, the Court of Appeals held, "the State has a relatively weak interest in preventing [respondents] from exercising their First Amendment rights." *Ibid.*

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by the statute. See Tr. of Oral Arg. 8. But it is unnecessary to determine whether other entities are actually affected by the restriction in light of its clearly discriminatory purpose.

[3] The discriminatory nature of § 44–2004(2) distinguishes it from the restriction we upheld in *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177 (2007)—a decision on which the majority heavily relies. In that case, state law authorized public-sector unions to charge nonmembers an agency fee equivalent to membership dues and to have employers collect that fee through payroll deductions. Respondent challenged the validity of a state ballot initiative requiring public-sector unions to obtain nonmembers' affirmative authorization before using their fees for political purposes. We held that the affirmative-authorization provision did not violate respondent's First Amendment rights because it merely placed a viewpoint-neutral limitation on an "extraordinary" state-law entitlement allowing it to collect and spend the money of government employees. *Id.*, at 189–190. By contrast, § 44–2004(2) is not a limitation on a state-law entitlement that specifically benefits unions but rather a union-specific exclusion from a generally available benefit.

[4] The State conceded at oral argument before the Court of Appeals that it is not the proprietor of local government workplaces or their payroll deduction programs. See 504 F. 3d, at 1065.

Unlike the Court of Appeals, the majority omits any examination of the relationship Idaho has established with its political subdivisions. Rather, the majority finds it sufficient to assert that States, as the creators of local government, retain the authority to grant or withdraw subdivision powers and privileges. *Ante*, at 362. The fact of that authority, however, hardly proves that the particular relationship between a State and its political subdivisions is irrelevant to our constitutional inquiry. All States do not treat their subdivisions the same, and those differences are sometimes consequential.

We have in other contexts recognized the constitutional significance of the relationship a State chooses to establish with its political subdivisions. For instance, in *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 280 (1977), we stated that the answer to the question whether a school board should "be treated as an arm of the State partaking of the State's Eleventh Amendment immunity . . . depends, at least in part, upon the nature of the entity created by state law." And in *McMillian* v. *Monroe County*, 520 U. S. 781, 786 (1997), we held that whether a sheriff has county or state policymaking authority for purposes of determining liability under Rev. Stat. § 1979, 42 U. S. C. § 1983, is ascertained by reference to "the actual function of a governmental official," which is in turn "dependent on the definition of the official's functions under relevant state law." In both cases, the constitutional analysis turned in part on the way the State had structured its relationship with its political subdivisions.

Although we have not previously considered the implications of the state-subdivision relationship in the First Amendment context, we have repeatedly recognized the significance of an analogous inquiry: whether the government, in imposing speech restrictions, is acting in its capacity as regulator or proprietor. See, *e. g.*, *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177, 189 (2007); *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 805–806

(1985). Accordingly, I cannot agree with the majority's assertion that, because political subdivisions are instrumentalities of the State, "it is immaterial how the State allocates funding or management responsibilities between the different levels of government," *ante*, at 364. Relationships between state and local governments are more varied, and the consequences of that variation are more significant, than the majority's analysis admits.

Because my conclusion that § 44–2004(2) discriminates against labor organizations is sufficient to decide this case, I find it unnecessary to fully consider the implications of Idaho's relationship with its political subdivisions. Rather, I note the significance of this relationship to urge its careful consideration in future cases.

III

The majority avoids acknowledging § 44–2004(2)'s evidently discriminatory purpose only by examining the statute out of context and ignoring its initial applicability to private employers. Considering the provision as enacted, I cannot find it justified as the majority does by "the State's interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics," *ante*, at 359. The impermissible purpose that quite obviously motivated the enactment of the VCA and fully justified its invalidation as applied to private employers should have produced a judgment in this case holding the entire statute invalid, rather than a judgment producing a new statute that the Idaho Legislature did not enact.

I respectfully dissent.

JUSTICE SOUTER, dissenting.

If I thought this case should be classified solely as one about the First Amendment's limits on a State's management of its own affairs, I would join the judgment, and as it is I agree with much of the Court's opinion. So far as Idaho's

law affects freedom of expression, I am not persuaded there is sufficient reason to treat the State's statutory prohibition differently depending on the unit of its government employing the worker whose salary deduction would fund political activity. There is no question in this case that the lower echelons of Idaho government are creatures of the State exercising state power in discharging what are ultimately state responsibilities. Nor is there any apparent reason to think the State's asserted legitimate interest differs according to the level of government doing the State's work, whether that interest is having a firewall between public administration and politics or simply exercising a power to decide whether public employees who administer payrolls should spend work time advancing private political speech.

But I find it impossible to stop there. Although this case comes to us as one about the scope of the public business the State is free, within reasonable limits, to manage as it thinks wise, the specter of another First Amendment category, one of superior significance, is too insistent to ignore. It is true that government may choose to manage its own affairs in ways that draw reasonable subject-matter lines affecting speech, being free, for example, to sell space on its buses for advertising soap but not politicians. See *Lehman* v. *Shaker Heights*, 418 U. S. 298 (1974). But a government is not free to draw those lines as a way to discourage or suppress the expression of viewpoints it disagrees with, *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 806, 811–812 (1985); *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 46, 49 (1983); only narrow tailoring to serve a compelling state interest could justify that kind of selectivity, see *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000).

This difference between viewpoint discrimination and neutral regulation of governmental activity is on point in this case. For although the State invokes its legitimate interest in keeping public administration free from political involve-

ment as its reason for Idaho Code § 44–2004(2) (Michie 2003), this ostensibly viewpoint-neutral rationale suffers from the circumstances JUSTICE STEVENS describes in detail, see *ante*, at 371–373 (dissenting opinion). Every other provision of the amendatory act in which § 44–2004(2) was included deals with unions, the statute amended regulates unions, and all this legislation is placed in the State's labor law codification. *Ante*, at 371. Union speech, and nothing else, seems to have been on the legislative mind.

The Court's answer to this recalls *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177 (2007), in suggesting that Idaho was merely limiting a self-created risk of entangling public administration with politics, which followed from authorizing public payroll deductions for union benefit in the first place, *ante*, at 360–361. But the scope of the state enactment that imposes the prohibition places that explanation in question, for the statute goes beyond constraining the government as employer, and criminalizes deductions for political purposes even when administered by private employers, an application of the law the State concedes is unconstitutional. *Pocatello Ed. Assn.* v. *Heideman*, 504 F. 3d 1053, 1057 (CA9 2007). Hence a reader of the statute may fairly suspect that Idaho's legislative object was not efficient, clean government, but that unions' political viewpoints were its target, selected out of all the politics the State might filter from its public workplaces.

What to do about this reasonable suspicion of viewpoint discrimination is a dilemma. We can hardly disregard it, for it affects the weight this case can carry as precedent; a decision that ignores the elephant in the room is a decision with diminished authority. But the potential issue of viewpoint discrimination that should be addressed in this case is not before us. Although the unions' brief alludes to viewpoint discrimination in several places, that is not the focus of their argument. The unions, instead, aim at showing that the State is acting as a regulator of local governments (much as

it regulates private corporations), not as a manager setting limits to what government will do with public resources; consequently they rest their position on the argument that any state discrimination against political speech is illegitimate, however consistently all shades of political speech may be treated. And even if we could properly recast the case by remanding to consider viewpoint discrimination, see *Cornelius*, *supra*, at 811–812, a remand could only affect the application of the statute to subordinate units of government; the unions have accepted the constitutionality of applying the law to the State, where an effort at viewpoint discrimination would be as unconstitutional as it would be at the level of a town.

The upshot is that if we decide the case as it comes to us we will shut our eyes to a substantial, if not the substantial, issue raised by the facts. But if we were to expand the issues presented to us by remanding for enquiry into viewpoint discrimination, we would risk having to wink later at an unconstitutional application of the law to the State, owing to the unions' decision not to challenge that application either in the Ninth Circuit or before us. This is a good description of a case that should not be in this Court as a vehicle to refine First Amendment doctrine.

I would dismiss the writ of certiorari as improvidently granted, and I respectfully dissent.

Syllabus

CARCIERI, GOVERNOR OF RHODE ISLAND, ET AL. *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL.

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

No. 07–526. Argued November 3, 2008—Decided February 24, 2009

The Indian Reorganization Act (IRA), enacted in 1934, authorizes the Secretary of the Interior, a respondent here, to acquire land and hold it in trust "for the purpose of providing land for Indians," 25 U. S. C. § 465, and defines "Indian" to "include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction," § 479. The Narragansett Tribe was placed under the Colony of Rhode Island's formal guardianship in 1709. It agreed to relinquish its tribal authority and sell all but two acres of its remaining reservation land in 1880, but then began trying to regain its land and tribal status. From 1927 to 1937, federal authorities declined to give it assistance because they considered the Tribe to be under state, not federal, jurisdiction. In a 1978 agreement settling a dispute between the Tribe and Rhode Island, the Tribe received title to 1,800 acres of land in petitioner Charlestown in exchange for relinquishing claims to state land based on aboriginal title; and it agreed that the land would be subject to state law. The Tribe gained formal recognition from the Federal Government in 1983, and the Secretary of the Interior accepted a deed of trust to the 1,800 acres in 1988. Subsequently, a dispute arose over whether the Tribe's plans to build housing on an additional 31 acres of land it had purchased complied with local regulations. While litigation was pending, the Secretary accepted the 31-acre parcel into trust. The Interior Board of Indian Appeals upheld that decision, and petitioners sought review. The District Court granted summary judgment to the Secretary and other officials, determining that § 479's plain language defines "Indian" to include members of all tribes in existence in 1934, but does not require a tribe to have been federally recognized on that date; and concluding that, since the Tribe is currently federally recognized and was in existence in 1934, it is a tribe under § 479. In affirming, the First Circuit found § 479 ambiguous as to the meaning of "now under Federal jurisdiction," applied the principles of *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843, and deferred to the Secretary's construction of the provision to allow the land to be taken into trust.

Held: Because the term "now under Federal jurisdiction" in § 479 unambiguously refers to those tribes that were under federal jurisdiction when the IRA was enacted in 1934, and because the Narragansett Tribe was not under federal jurisdiction in 1934, the Secretary does not have the authority to take the 31-acre parcel into trust. Pp. 387–396.

(a) When a statute's text is plain and unambiguous, *United States* v. *Gonzales*, 520 U. S. 1, 4, the statute must be applied according to its terms, see, *e. g.*, *Dodd* v. *United States*, 545 U. S. 353, 359. Here, whether the Secretary has authority to take the parcel into trust depends on whether the Narragansetts are members of a "recognized Indian tribe now under Federal jurisdiction," which, in turn, depends on whether "now" refers to 1998, when the Secretary accepted the parcel into trust, or 1934, when Congress enacted the IRA. The ordinary meaning of "now," as understood at the time of enactment, was at "the present time; at this moment; at the time of speaking." That definition is consistent with interpretations given "now" by this Court both before and after the IRA's passage. See, *e. g.*, *Franklin* v. *United States*, 216 U. S. 559, 569; *Montana* v. *Kennedy*, 366 U. S. 308, 310–311. It also aligns with the word's natural reading in the context of the IRA. Furthermore, the Secretary's current interpretation is at odds with the Executive Branch's construction of § 479 at the time of enactment. The Secretary's additional arguments in support of his contention that "now" is ambiguous are unpersuasive. There is also no need to consider the parties' competing views on whether Congress had a policy justification for limiting the Secretary's trust authority to tribes under federal jurisdiction in 1934, since Congress' use of "now" in § 479 speaks for itself and "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253–254. Pp. 387–393.

(b) The Court rejects alternative arguments by the Secretary and his *amici* that rely on statutory provisions other than § 479 to support the Secretary's decision to take the parcel into trust for the Narragansetts. Pp. 393–395.

497 F. 3d 15, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, and ALITO, JJ., joined. BREYER, J., filed a concurring opinion, *post*, p. 396. SOUTER, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, J., joined, *post*, p. 400. STEVENS, J., filed a dissenting opinion, *post*, p. 401.

Theodore B. Olson argued the cause for petitioners. With him on the briefs for petitioner Carcieri, Governor of Rhode

Island, were *Matthew D. McGill*, *Amir C. Tayrani*, and *Claire J. Richards*. *Patrick C. Lynch*, Attorney General of Rhode Island, and *Neil F. X. Kelly*, Assistant Attorney General, filed briefs for petitioner State of Rhode Island. *Joseph S. Larisa, Jr.*, filed briefs for petitioner Town of Charlestown, Rhode Island.

Deanne E. Maynard argued the cause for respondents. With her on the brief were former *Solicitor General Garre*, *Assistant Attorney General Tenpas*, *Deputy Solicitor General Kneedler*, *William B. Lazarus*, and *Elizabeth Ann Peterson*.*

JUSTICE THOMAS delivered the opinion of the Court.

The Indian Reorganization Act (IRA or Act) authorizes the Secretary of the Interior, a respondent in this case, to acquire land and hold it in trust "for the purpose of providing

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Richard Blumenthal*, Attorney General of Connecticut, and *Robert J. Deichert*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Dustin McDaniel* of Arkansas, *Bill McCollum* of Florida, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Stephen N. Six* of Kansas, *James D. Caldwell* of Louisiana, *Martha Coakley* of Massachusetts, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Jon C. Bruning* of Nebraska, *Anne Milgram* of New Jersey, *Wayne Stenehjem* of North Dakota, *Nancy H. Rogers* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Lawrence E. Long* of South Dakota, *Greg Abbott* of Texas, and *Mark L. Shurtleff* of Utah; for the Citizens Equal Rights Foundation et al. by *John Benjamin Carroll* and *Bruce N. Goodsell;* and for the Council of State Governments et al. by *Richard Ruda* and *Dan M. Kahan.*

Briefs of *amici curiae* urging affirmance were filed for Law Professors Specializing in Federal Indian Law by *Richard A. Guest*, *Colette Routel*, and *Robert T. Anderson*, *pro se;* for the Narragansett Indian Tribe by *Thomas C. Goldstein*, *Patricia A. Millett*, and *John F. Killoy, Jr.;* for the National Congress of American Indians by *Ian Heath Gershengorn*, *Sam Hirsch*, and *Riyaz A. Kanji;* for the Standing Rock Sioux Tribe et al. by *Douglas B. L. Endreson* and *William R. Perry;* and for Frederick E. Hoxie et al. by *David T. Goldberg* and *Sean H. Donahue.*

land for Indians." § 5, 48 Stat. 985, 25 U. S. C. § 465. The IRA defines the term "Indian" to "include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." § 479. The Secretary notified petitioners—the State of Rhode Island, its Governor, and the town of Charlestown, Rhode Island—that he intended to accept in trust a parcel of land for use by the Narragansett Indian Tribe in accordance with his claimed authority under the statute. In proceedings before the Interior Board of Indian Appeals (IBIA), the District Court, and the Court of Appeals for the First Circuit, petitioners unsuccessfully challenged the Secretary's authority to take the parcel into trust.

In reviewing the determination of the Court of Appeals, we are asked to interpret the statutory phrase "now under Federal jurisdiction" in § 479. Petitioners contend that the term "now" refers to the time of the statute's enactment, and permits the Secretary to take land into trust for members of recognized tribes that were "under Federal jurisdiction" in 1934. Respondents argue that the word "now" is an ambiguous term that can reasonably be construed to authorize the Secretary to take land into trust for members of tribes that are "under Federal jurisdiction" at the time that the land is accepted into trust.

We agree with petitioners and hold that, for purposes of § 479, the phrase "now under Federal jurisdiction" refers to a tribe that was under federal jurisdiction at the time of the statute's enactment. As a result, § 479 limits the Secretary's authority to taking land into trust for the purpose of providing land to members of a tribe that was under federal jurisdiction when the IRA was enacted in June 1934. Because the record in this case establishes that the Narragansett Tribe was not under federal jurisdiction when the IRA was enacted, the Secretary does not have the authority

to take the parcel at issue into trust. We reverse the judgment of the Court of Appeals.

I

At the time of colonial settlement, the Narragansett Indian Tribe was the indigenous occupant of much of what is now the State of Rhode Island. See Final Determination for Federal Acknowledgement of Narragansett Indian Tribe of Rhode Island, 48 Fed. Reg. 6177 (1983) (hereinafter Final Determination). Initial relations between colonial settlers, the Narragansett Tribe, and the other Indian tribes in the region were peaceful, but relations deteriorated in the late 17th century. The hostilities peaked in 1675 and 1676 during the 2-year armed conflict known as King Philip's War. Hundreds of colonists and thousands of Indians died. See E. Schultz & M. Tougias, King Philip's War 5 (1999). The Narragansett Tribe, having been decimated, was placed under formal guardianship by the Colony of Rhode Island in 1709. 48 Fed. Reg. 6177, 6178.[1]

Not quite two centuries later, in 1880, the State of Rhode Island convinced the Narragansett Tribe to relinquish its tribal authority as part of an effort to assimilate tribal members into the local population. See *Narragansett Indian Tribe* v. *National Indian Gaming Comm'n*, 158 F. 3d 1335, 1336 (CADC 1998). The Tribe also agreed to sell all but two acres of its remaining reservation land for $5,000. *Ibid.* Almost immediately, the Tribe regretted its decisions and embarked on a campaign to regain its land and tribal status. *Ibid.* In the early 20th century, members of the Tribe sought economic support and other assistance from the Fed-

[1] The Narragansett Tribe recognized today is the successor to two tribes, the Narragansett and the Niantic Tribes. The two predecessor Tribes shared territory and cultural traditions at the time of European settlement and effectively merged in the aftermath of King Philip's War. See Final Determination, 48 Fed. Reg. 6178.

eral Government. But, in correspondence spanning a 10-year period from 1927 to 1937, federal officials declined their request, noting that the Tribe was, and always had been, under the jurisdiction of the New England States, rather than the Federal Government.

Having failed to gain recognition or assistance from the United States or from the State of Rhode Island, the Tribe filed suit in the 1970's to recover its ancestral land, claiming that the State had misappropriated its territory in violation of the Indian Non-Intercourse Act, 25 U. S. C. § 177.[2] The claims were resolved in 1978 by enactment of the Rhode Island Indian Claims Settlement Act, 92 Stat. 813, 25 U. S. C. § 1701 *et seq.* Under the agreement codified by the Settlement Act, the Tribe received title to 1,800 acres of land in Charlestown, Rhode Island, in exchange for relinquishing its past and future claims to land based on aboriginal title. The Tribe also agreed that the 1,800 acres of land received under the Settlement Act "shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island." § 1708(a); see also § 1712(a).

The Narragansett Tribe's ongoing efforts to gain recognition from the United States Government finally succeeded in 1983. 48 Fed. Reg. 6177. In granting formal recognition, the Bureau of Indian Affairs (BIA) determined that "the Narragansett community and its predecessors have existed autonomously since first contact, despite undergoing many modifications." *Id.*, at 6178. The BIA referred to the Tribe's "documented history dating from 1614" and noted that "all of the current membership are believed to be able to trace to at least one ancestor on the membership lists of the Narragansett community prepared after the 1880 Rhode

[2] Title 25 U. S. C. § 177 provides, in pertinent part, that "[n]o purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

Island 'detribalization' act." *Ibid.* After obtaining federal recognition, the Tribe began urging the Secretary to accept a deed of trust to the 1,800 acres conveyed to it under the Rhode Island Indian Claims Settlement Act. 25 CFR § 83.2 (2008) (providing that federal recognition is needed before an Indian tribe may seek "the protection, services, and benefits of the Federal government"). The Secretary acceded to the Tribe's request in 1988. See *Charlestown* v. *Eastern Area Director, Bur. of Indian Affairs*, 18 IBIA 67, 69 (1989).[3]

In 1991, the Tribe's housing authority purchased an additional 31 acres of land in the town of Charlestown adjacent to the Tribe's 1,800 acres of settlement lands. Soon thereafter, a dispute arose about whether the Tribe's planned construction of housing on that parcel had to comply with local regulations. *Narragansett Indian Tribe* v. *Narragansett Elec. Co.*, 89 F. 3d 908, 911–912 (CA1 1996). The Tribe's primary argument for noncompliance—that its ownership of the parcel made it a "dependent Indian community" and thus "Indian country" under 18 U. S. C. § 1151—ultimately failed. 89 F. 3d, at 913–922. But, while the litigation was pending, the Tribe sought an alternative solution to free itself from compliance with local regulations: It asked the Secretary to accept the 31-acre parcel into trust for the Tribe pursuant to 25 U. S. C. § 465. By letter dated March 6, 1998, the Secretary notified petitioners of his acceptance of the Tribe's land into trust. Petitioners appealed the Secretary's decision to the IBIA, which upheld the Secretary's decision. See *Charlestown* v. *Eastern Area Director, Bureau of Indian Affairs*, 35 IBIA 93 (2000).

Petitioners sought review of the IBIA decision pursuant to the Administrative Procedure Act, 5 U. S. C. § 702. The

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[3] The Tribe, the town, and the Secretary previously litigated issues relating to the Secretary's acceptance of these 1,800 acres, and that matter is not presently before this Court. See generally *Charlestown*, 18 IBIA 67; *Rhode Island* v. *Narragansett Indian Tribe*, 19 F. 3d 685 (CA1 1994); *Narragansett Indian Tribe* v. *Rhode Island*, 449 F. 3d 16 (CA1 2006).

District Court granted summary judgment in favor of the Secretary and other Department of Interior officials. As relevant here, the District Court determined that the plain language of 25 U. S. C. § 479 defines "Indian" to include members of all tribes in existence in 1934, but does not require a tribe to have been federally recognized on that date. *Carcieri* v. *Norton*, 290 F. Supp. 2d 167, 179–181 (RI 2003). According to the District Court, because it is currently "federally-recognized" and "existed at the time of the enactment of the IRA," the Narragansett Tribe qualifies "as an 'Indian tribe' within the meaning of § 479." *Id.*, at 181. As a result, "the secretary possesses authority under § 465 to accept lands into trust for the benefit of the Narragansetts." *Ibid.*

The Court of Appeals for the First Circuit affirmed, first in a panel decision, *Carcieri* v. *Norton*, 423 F. 3d 45 (2005), and then sitting en banc, 497 F. 3d 15 (2007). Although the Court of Appeals acknowledged that "[o]ne might have an initial instinct to read the word 'now' [in § 479] . . . to mean the date of [the] enactment of the statute, June 18, 1934," the court concluded that there was "ambiguity as to whether to view the term . . . as operating at the moment Congress enacted it or at the moment the Secretary invokes it." *Id.*, at 26. The Court of Appeals noted that Congress has used the word "now" in other statutes to refer to the time of the statute's application, not its enactment. *Id.*, at 26–27. The Court of Appeals also found that the particular statutory context of § 479 did not clarify the meaning of "now." On one hand, the Court of Appeals noted that another provision within the IRA, 25 U. S. C. § 472, uses the term "now or hereafter," which supports petitioners' argument that "now," by itself, does not refer to future events. But on the other hand, § 479 contains the particular application date of "June 18, 1934," suggesting that if Congress had wanted to refer to the date of enactment, it could have done so more

specifically. 497 F. 3d, at 27. The Court of Appeals further reasoned that both interpretations of "now" are supported by reasonable policy explanations, *id.*, at 27–28, and it found that the legislative history failed to "clearly resolve the issue," *id.*, at 28.

Having found the statute ambiguous, the Court of Appeals applied the principles set forth in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984), and deferred to the Secretary's construction of the provision. 497 F. 3d, at 30. The court rejected petitioners' arguments that the Secretary's interpretation was an impermissible construction of the statute. *Id.*, at 30–34. It also held that petitioners had failed to demonstrate that the Secretary's interpretation was inconsistent with earlier practices of the Department of the Interior. Furthermore, the court determined that even if the interpretation were a departure from the Department's prior practices, the decision should be affirmed based on the Secretary's "reasoned explanation for his interpretation." *Id.*, at 34.

We granted certiorari, 552 U. S. 1229 (2008), and now reverse.

II

This case requires us to apply settled principles of statutory construction under which we must first determine whether the statutory text is plain and unambiguous. *United States* v. *Gonzales*, 520 U. S. 1, 4 (1997). If it is, we must apply the statute according to its terms. See, *e. g.*, *Dodd* v. *United States*, 545 U. S. 353, 359 (2005); *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004); *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000); *Caminetti* v. *United States*, 242 U. S. 470, 485 (1917).

The Secretary may accept land into trust only for "the purpose of providing land for Indians." 25 U. S. C. § 465. "Indian" is defined by statute as follows:

> "The term 'Indian' as used in this Act shall include all persons of Indian descent who are *members of any recognized Indian tribe now under Federal jurisdiction*, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. . . . The term 'tribe' wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. . . . " § 479 (emphasis added).

The parties are in agreement, as are we, that the Secretary's authority to take the parcel in question into trust depends on whether the Narragansetts are members of a "recognized Indian Tribe now under Federal jurisdiction." *Ibid.* That question, in turn, requires us to decide whether the word "now under Federal jurisdiction" refers to 1998, when the Secretary accepted the 31-acre parcel into trust, or 1934, when Congress enacted the IRA.

We begin with the ordinary meaning of the word "now," as understood when the IRA was enacted. *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries*, 512 U. S. 267, 272 (1994); *Moskal* v. *United States*, 498 U. S. 103, 108–109 (1990). At that time, the primary definition of "now" was "[a]t the present time; at this moment; at the time of speaking." Webster's New International Dictionary 1671 (2d ed. 1934); see also Black's Law Dictionary 1262 (3d ed. 1933) (defining "now" to mean "[a]t this time, or at the present moment," and noting that " '[n]ow' as used in a statute *ordinarily* refers to the date of its taking effect . . . " (emphasis added)). This definition is consistent with interpretations given to the word "now" by this Court, both before and after passage of the IRA, with respect to its use in other statutes. See, *e. g.*, *Franklin* v. *United States*, 216 U. S. 559, 568–569 (1910) (interpreting a federal criminal statute to have "adopted such punishment as the laws of the

State in which such place is situated *now* provide for the like offense" (citing *United States* v. *Paul*, 6 Pet. 141 (1832); internal quotation marks omitted)); *Montana* v. *Kennedy*, 366 U. S. 308, 310–311 (1961) (interpreting a statute granting citizenship status to foreign-born "children of persons who *now* are, or have been, citizens of the United States" (internal quotation marks omitted; emphasis added and deleted)).

It also aligns with the natural reading of the word within the context of the IRA. For example, in the original version of 25 U. S. C. § 465, which provided the same authority to the Secretary to accept land into trust for "the purpose of providing land for Indians," Congress explicitly referred to current events, stating "[t]hat no part of such funds shall be used to acquire additional land outside of the exterior boundaries of [the] Navajo Indian Reservation . . . in the event that the proposed Navajo boundary extension measures *now* pending in Congress . . . become law." IRA, § 5, 48 Stat. 985 (emphasis added).[4] In addition, elsewhere in the IRA, Congress expressly drew into the statute contemporaneous *and* future events by using the phrase "now or hereafter." See 25 U. S. C. § 468 (referring to "the geographic boundaries of any Indian reservation now existing or established hereafter"); § 472 (referring to "Indians who may be appointed . . . to the various positions maintained, now or hereafter, by the Indian Office"). Congress' use of the word "now" in this provision, without the accompanying phrase "or hereafter," thus provides further textual support for the conclusion that the term refers solely to events contemporaneous with the Act's enactment. See *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 452 (2002) ("[W]hen Congress includes particular language in one section of a statute

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[4] The current version of § 465 provides "[t]hat no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation . . . in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law."

but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" (internal quotation marks omitted)).

Furthermore, the Secretary's current interpretation is at odds with the Executive Branch's construction of this provision at the time of enactment. In correspondence with those who would assist him in implementing the IRA, the Commissioner of Indian Affairs, John Collier, explained:

> "Section 19 of the Indian Reorganization Act of June 18, 1934 (48 Stat. L., 988), provides, in effect, that the term 'Indian' as used therein shall include—(1) all persons of Indian descent who are members of any recognized tribe *that was under Federal jurisdiction at the date of the Act* . . . ." Letter from John Collier, Commissioner, to Superintendents (Mar. 7, 1936), Lodging of Respondents (emphasis added).[5]

Thus, although we do not defer to Commissioner Collier's interpretation of this unambiguous statute, see *Estate of*

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[5] In addition to serving as Commissioner of Indian Affairs, John Collier was "a principal author of the [IRA]." *United States* v. *Mitchell*, 463 U. S. 206, 221, n. 21 (1983). And, as both parties note, he appears to have been responsible for the insertion of the words "now under Federal jurisdiction" into what is now 25 U. S. C. § 479. See Hearings on S. 2755 et al.: A Bill to Grant to Indians Living Under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise, before the Senate Committee on Indian Affairs, 73d Cong., 2d Sess., pt. 2, p. 266 (1934). Also, the record contains a 1937 letter from Commissioner Collier in which, even after the passage of the IRA, he stated that the Federal Government still lacked any jurisdiction over the Narragansett Tribe. App. 23a–24a. Commissioner Collier's responsibilities related to implementing the IRA make him an unusually persuasive source as to the meaning of the relevant statutory language and the Tribe's status under it. See *Christensen* v. *Harris County*, 529 U. S. 576, 587 (2000) (explaining that an Executive Branch statutory interpretation that lacks the force of law is "entitled to respect . . . to the extent that those interpretations have the 'power to persuade'" (some internal quotation marks omitted)).

Cowart v. *Nicklos Drilling Co.*, 505 U. S. 469, 476 (1992), we agree with his conclusion that the word "now" in § 479 limits the definition of "Indian," and therefore limits the exercise of the Secretary's trust authority under § 465 to those members of tribes that were under federal jurisdiction at the time the IRA was enacted.

The Secretary makes two other arguments in support of his contention that the term "now" as used in § 479 is ambiguous. We reject them both. First, the Secretary argues that although the "use of 'now' can refer to the time of enactment" in the abstract, "it can also refer to the time of the statute's application." Brief for Respondents 18. But the susceptibility of the word "now" to alternative meanings "does not render the word . . . whenever it is used, ambiguous," particularly where "all but one of the meanings is ordinarily eliminated by context." *Deal* v. *United States*, 508 U. S. 129, 131–132 (1993). Here, the statutory context makes clear that "now" does not mean "now or hereafter" or "at the time of application." Had Congress intended to legislate such a definition, it could have done so explicitly, as it did in §§ 468 and 472, or it could have omitted the word "now" altogether. Instead, Congress limited the statute by the word "now" and "we are obliged to give effect, if possible, to every word Congress used." *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 339 (1979).

Second, the Secretary argues that § 479 left a gap for the agency to fill by using the phrase "shall include" in its introductory clause. Brief for Respondents 26–27. The Secretary, in turn, claims to have permissibly filled that gap by defining "'Tribe'" and "'Individual Indian'" without reference to the date of the statute's enactment. *Id.*, at 28 (citing 25 CFR §§ 151.2(b), (c)(1) (2008)). But, as explained above, Congress left no gap in 25 U. S. C. § 479 for the agency to fill. Rather, it explicitly and comprehensively defined the term by including only three discrete definitions: "[1] members of any recognized Indian tribe now under Federal jurisdiction,

and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and . . . [3] all other persons of one-half or more Indian blood." *Ibid.* In other statutory provisions, Congress chose to expand the Secretary's authority to particular Indian tribes not necessarily encompassed within the definitions of "Indian" set forth in § 479.[6] Had it understood the word "include" in § 479 to encompass tribes other than those satisfying one of the three § 479 definitions, Congress would have not needed to enact these additional statutory references to specific Tribes.

The Secretary and his *amici* also go beyond the statutory text to argue that Congress had no policy justification for limiting the Secretary's trust authority to those tribes under federal jurisdiction in 1934, because the IRA was intended to strengthen Indian communities as a whole, regardless of their status in 1934. Petitioners counter that the main purpose of § 465 was to reverse the loss of lands that Indians sustained under the General Allotment Act, see *Atkinson Trading Co.* v. *Shirley*, 532 U. S. 645, 650, n. 1 (2001), so the statute was limited to tribes under federal jurisdiction at that time because they were the tribes who lost their lands. We need not consider these competing policy views, because Congress' use of the word "now" in § 479 speaks for itself and "courts must presume that a legislature says in a statute what it means and means in a statute what it says there."

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[6] See, *e. g.*, 25 U. S. C. § 473a ("Sections . . . 465 . . . and 479 of this title shall after May 1, 1936, apply to the Territory of Alaska"); § 1041e(a) ("The [Shawnee] Tribe shall be eligible to have land acquired in trust for its benefit pursuant to section 465 of this title . . . "); § 1300b–14(a) ("[Sections 465 and 479 of this title are] hereby made applicable to the [Texas] Band [of Kickapoo Indians] . . . "); § 1300g–2(a) ("[Sections 465 and 479] shall apply to the members of the [Ysleta del Ser Pueblo] tribe, the tribe, and the reservation").

Connecticut Nat. Bank v. *Germain*, 503 U. S. 249, 253–254 (1992).[7]

III

The Secretary and his supporting *amici* also offer two alternative arguments that rely on statutory provisions other than the definition of "Indian" in § 479 to support the Secretary's decision to take this parcel into trust for the Narragansett Tribe. We reject both arguments.

First, the Secretary and several *amici* argue that the definition of "Indian" in § 479 is rendered irrelevant by the broader definition of "tribe" in § 479 and by the fact that the statute authorizes the Secretary to take title to lands "in the name of the United States in trust for the *Indian tribe* or individual Indian for which the land is acquired." § 465 (emphasis added); Brief for Respondents 12–14. But the definition of "tribe" in § 479 itself refers to "any *Indian* tribe" (emphasis added), and therefore is limited by the temporal restrictions that apply to § 479's definition of "Indian." See § 479 ("The term 'tribe' wherever used in this Act shall be construed to refer to any *Indian* tribe, organized band, pueblo, or the Indians residing on one reservation" (emphasis added)). And, although § 465 authorizes the United States to take land in trust for an Indian tribe, § 465 limits the Secretary's exercise of that authority "for the purpose of providing land for Indians." There simply is no legitimate way to circumvent the definition of "Indian" in delineating the Secretary's authority under §§ 465 and 479.[8]

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[7] Because we conclude that the language of § 465 unambiguously precludes the Secretary's action with respect to the parcel of land at issue in this case, we do not address petitioners' alternative argument that the Rhode Island Indian Claims Settlement Act, 92 Stat. 813, 25 U. S. C. § 1701 *et seq.*, precludes the Secretary from exercising his authority under § 465.

[8] For this reason, we disagree with the argument made by JUSTICE STEVENS that the term "Indians" in § 465 has a different meaning than the definition of "Indian" provided in § 479, and that the term's meaning in § 465 is controlled by later-enacted regulations governing the Secretary's

Second, *amicus* National Congress of American Indians (NCAI) argues that 25 U. S. C. § 2202, which was enacted as part of the Indian Land Consolidation Act (ILCA), Title II, 96 Stat. 2517, overcomes the limitations set forth in § 479 and, in turn, authorizes the Secretary's action. Section 2202 provides:

> "The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s)."

NCAI argues that the "ILCA independently grants authority under Section 465 for the Secretary to execute the challenged trust acquisition." NCAI Brief 8. We do not agree.

The plain language of § 2202 does not expand the power set forth in § 465, which requires that the Secretary take land into trust only "for the purpose of providing land for Indians." Nor does § 2202 alter the definition of "Indian" in § 479, which is limited to members of tribes that were under federal jurisdiction in 1934.[9] See *supra*, at 387–393. Rather, § 2202 by its terms simply ensures that tribes may benefit from § 465 even if they opted out of the IRA pursuant to

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recognition of tribes like the Narragansetts. See *post*, at 404–406, 409–411 (dissenting opinion). When Congress has enacted a definition with "detailed and unyielding provisions," as it has in § 479, this Court must give effect to that definition even when "'it could be argued that the line should have been drawn at a different point.'" *INS* v. *Hector*, 479 U. S. 85, 88–89 (1986) *(per curiam)* (quoting *Fiallo* v. *Bell*, 430 U. S. 787, 798 (1977)).

[9] NCAI notes that the ILCA's definition of "tribe" "means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust." § 2201. But § 2201 is, by its express terms, applicable only to Chapter 24 of Title 25 of the United States Code. *Ibid.* The IRA is codified in Chapter 14 of Title 25. See § 465. Section 2201, therefore, does not itself alter the authority granted to the Secretary by § 465.

§ 478, which allowed tribal members to reject the application of the IRA to their tribe. § 478 ("This Act shall not apply to any reservation wherein a majority of the adult Indians . . . shall vote against its application"). As a result, there is no conflict between § 2202 and the limitation on the Secretary's authority to take lands contained in § 465. Rather, § 2202 provides additional protections to those who satisfied the definition of "Indian" in § 479 at the time of the statute's enactment, but opted out of the IRA shortly thereafter.

NCAI's reading of § 2202 also would nullify the plain meaning of the definition of "Indian" set forth in § 479 and incorporated into § 465. Consistent with our obligation to give effect to every provision of the statute, *Reiter*, 442 U. S., at 339, we will not assume that Congress repealed the plain and unambiguous restrictions on the Secretary's exercise of trust authority in §§ 465 and 479 when it enacted § 2202. "We have repeatedly stated . . . that absent 'a clearly expressed congressional intention,' . . . [a]n implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.'" *Branch* v. *Smith*, 538 U. S. 254, 273 (2003) (plurality opinion) (quoting *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974), and *Posadas* v. *National City Bank*, 296 U. S. 497, 503 (1936)).

IV

We hold that the term "now under Federal jurisdiction" in § 479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934. None of the parties or *amici*, including the Narragansett Tribe itself, has argued that the Tribe was under federal jurisdiction in 1934. And the evidence in the record is to the contrary. 48 Fed. Reg. 6177. Moreover, the petition for writ of certiorari filed in this case specifically represented that "[i]n 1934, the Narragansett Indian Tribe . . . was neither federally recognized nor under the juris-

diction of the federal government." Pet. for Cert. 6. Respondents' brief in opposition declined to contest this assertion. See Brief in Opposition 2–7. Under our rules, that alone is reason to accept this as fact for purposes of our decision in this case. See this Court's Rule 15.2. We therefore reverse the judgment of the Court of Appeals.

It is so ordered.

JUSTICE BREYER, concurring.

I join the Court's opinion with three qualifications. *First*, I cannot say that the statute's language by itself is determinative. Linguistically speaking, the word "now" in the phrase "now under Federal jurisdiction," 25 U. S. C. § 479, may refer to a tribe's jurisdictional status as of 1934. But one could also read it to refer to the time the Secretary of the Interior exercises his authority to take land "for Indians." § 465. Compare *Montana* v. *Kennedy*, 366 U. S. 308, 311–312 (1961) ("now" refers to time of statutory enactment), with *Difford* v. *Secretary of Health and Human Servs.*, 910 F. 2d 1316, 1320 (CA6 1990) ("now" refers to time of exercise of delegated authority); *In re Lusk's Estate*, 336 Pa. 465, 467–468, 9 A. 2d 363, 365 (1939) (property "now" owned refers to property owned when a will becomes operative). I also concede that the Court owes the Interior Department the kind of interpretive respect that reflects an agency's greater knowledge of the circumstances in which a statute was enacted, cf. *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944). Yet because the Department then favored the Court's present interpretation, see *infra*, at 397, that respect cannot help the Department here.

Neither can *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), help the Department. The scope of the word "now" raises an interpretive question of considerable importance; the provision's legislative history makes clear that Congress focused directly upon that language, believing it definitively resolved a specific un-

derlying difficulty; and nothing in that history indicates that Congress believed departmental expertise should subsequently play a role in fixing the temporal reference of the word "now." These circumstances indicate that Congress did not intend to delegate interpretive authority to the Department. Consequently, its interpretation is not entitled to *Chevron* deference, despite linguistic ambiguity. See *United States* v. *Mead Corp.*, 533 U. S. 218, 227, 229–230 (2001).

Second, I am persuaded that "now" means "in 1934" not only for the reasons the Court gives but also because an examination of the provision's legislative history convinces me that Congress so intended. As I read that history, it shows that Congress expected the phrase would make clear that the Secretary could employ § 465's power to take land into trust in favor only of those tribes in respect to which the Federal Government already had the kinds of obligations that the words "under Federal jurisdiction" imply. See Hearings on S. 2755 et al.: A Bill to Grant to Indians Living Under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise, before the Senate Committee on Indian Affairs, 73d Cong., 2d Sess., pt. 2, pp. 263–266 (1934). Indeed, the very Department official who suggested the phrase to Congress during the relevant legislative hearings subsequently explained its meaning in terms that the Court now adopts. See Letter from John Collier, Commissioner, to Superintendents (Mar. 7, 1936), Lodging of Respondents (explaining that § 479 included "persons of Indian descent who are members of any recognized tribe that was under Federal jurisdiction at the date of the Act").

Third, an interpretation that reads "now" as meaning "in 1934" may prove somewhat less restrictive than it at first appears. That is because a tribe may have been "under Federal jurisdiction" in 1934 even though the Federal Government did not believe so at the time. We know, for exam-

ple, that following the Indian Reorganization Act's enactment, the Department compiled a list of 258 Tribes covered by the Act; and we also know that it wrongly left certain tribes off the list. See Brief for Law Professors Specializing in Federal Indian Law as *Amicus Curiae* 22–24; Quinn, Federal Acknowledgment of American Indian Tribes: Historical Development of a Legal Concept, 34 Am. J. Legal Hist. 331, 356–359 (1990). The Department later recognized some of those Tribes on grounds that showed that it should have recognized them in 1934 even though it did not. And the Department has sometimes considered that circumstance sufficient to show that a tribe was "under Federal jurisdiction" in 1934—even though the Department did not know it at the time.

The statute, after all, imposes no time limit upon recognition. See § 479 ("The term 'Indian' . . . shall include all persons of Indian descent who are members of *any recognized* Indian tribe now under Federal jurisdiction . . . " (emphasis added)). And administrative practice suggests that the Department has accepted this possibility. The Department, for example, did not recognize the Stillaguamish Tribe until 1976, but its reasons for recognition in 1976 included the fact that the Tribe had maintained treaty rights against the United States since 1855. Consequently, the Department concluded that land could be taken into trust for the Tribe. See Memorandum from Associate Solicitor, Indian Affairs, to Assistant Secretary, Indian Affairs, Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe (Oct. 1, 1980), Lodging of Respondents 6–7. Similarly, in 1934 the Department thought that the Grand Traverse Band of Ottawa and Chippewa Indians had long since been dissolved. *Grand Traverse Band of Ottawa & Chippewa Indians* v. *Office of U. S. Attorney for Western Dist. of Mich.*, 369 F. 3d 960, 961, and n. 2 (CA6 2004). But later the Department recognized the Tribe, considering it to have existed continuously since 1675. 45 Fed. Reg. 19321

(1980). Further, the Department in the 1930's thought that an anthropological study showed that the Mole Lake Tribe no longer existed. But the Department later decided that the study was wrong, and it then recognized the Tribe. See Memorandum from the Solicitor to the Commissioner of Indian Affairs 2758, 2762–2763 (Feb. 8, 1937) (recognizing the Mole Lake Indians as a separate Tribe).

In my view, this possibility—that later recognition reflects earlier "Federal jurisdiction"—explains some of the instances of early Department administrative practice to which JUSTICE STEVENS refers. I would explain the other instances to which JUSTICE STEVENS refers as involving the taking of land "for" a tribe with members who fall under that portion of the statute that defines "Indians" to include "persons of one-half or more Indian blood," § 479. See 1 Dept. of Interior, Opinions of the Solicitor Relating to Indian Affairs, 1917–1974, pp. 706–707 (Shoshone Indians), 724–725 (St. Croix Chippewas), 747–748 (Nahma and Beaver Indians) (1979).

Neither the Narragansett Tribe nor the Secretary has argued that the Tribe was under federal jurisdiction in 1934. Nor have they claimed that any member of the Narragansett Tribe satisfies the "one-half or more Indian blood" requirement. And I have found nothing in the briefs that suggests the Narragansett Tribe could prevail on either theory. Each of the administrative decisions just discussed involved post-1934 recognition on grounds that implied a 1934 relationship between the Tribe and Federal Government that could be described as jurisdictional, for example, a treaty with the United States (in effect in 1934), a (pre-1934) congressional appropriation, or enrollment (as of 1934) with the Indian Office. I can find no similar indication of 1934 federal jurisdiction here. Instead, both the State and Federal Government considered the Narragansett Tribe as under *state*, but not under *federal*, jurisdiction in 1934. And until the 1970's there was "little Federal contact with the Nar-

ragansetts as a group." Memorandum from Deputy Assistant Secretary—Indian Affairs (Operations) to Assistant Secretary—Indian Affairs, Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgment of Narragansett Indian Tribe of Rhode Island Pursuant to 25 CFR 83, p. 8 (July 29, 1982). Because I see no realistic possibility that the Narragansett Tribe could prevail on the basis of a theory alternative to the theories argued here, I would not remand this case.

With the qualifications here expressed, I join the Court's opinion and its judgment.

JUSTICE SOUTER, with whom JUSTICE GINSBURG joins, concurring in part and dissenting in part.

Save as to one point, I agree with JUSTICE BREYER's concurring opinion, which in turn concurs with the opinion of the Court, subject to the three qualifications JUSTICE BREYER explains. I have, however, a further reservation that puts me in the dissenting column.

The disposition of the case turns on the construction of the language from 25 U. S. C. § 479, "any recognized Indian tribe now under Federal jurisdiction." Nothing in the majority opinion forecloses the possibility that the two concepts, recognition and jurisdiction, may be given separate content. As JUSTICE BREYER makes clear in his concurrence, the statute imposes no time limit upon recognition, and in the past, the Department of the Interior has stated that the fact that the United States Government was ignorant of a tribe in 1934 does not preclude that tribe from having been under federal jurisdiction at that time. See Memorandum from Associate Solicitor, Indian Affairs, to Assistant Secretary, Indian Affairs, Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe (Oct. 1, 1980), Lodging of Respondents 7. And giving each phrase its own meaning would be consistent with established principles of statutory interpretation.

During oral argument, however, respondents explained that the Secretary's more recent interpretation of this statutory language had "understood recognition and under Federal jurisdiction at least with respect to tribes to be one and the same." Tr. of Oral Arg. 42. Given the Secretary's position, it is not surprising that neither he nor the Tribe raised a claim that the Tribe was under federal jurisdiction in 1934: they simply failed to address an issue that no party understood to be present. The error was shared equally all around, and there is no equitable demand that one side be penalized when both sides nodded.

I can agree with JUSTICE BREYER that the current record raises no particular reason to expect that the Tribe might be shown to have been under federal jurisdiction in 1934, but I would not stop there. The very notion of jurisdiction as a distinct statutory condition was ignored in this litigation, and I know of no body of precedent or history of practice giving content to the condition sufficient for gauging the Tribe's chances of satisfying it. So I see no reason to deny the Secretary and the Narragansett Tribe an opportunity to advocate a construction of the "jurisdiction" phrase that might favor their position here.

I would therefore reverse and remand with opportunity for respondents to pursue a "jurisdiction" claim and respectfully dissent from the Court's straight reversal.*

JUSTICE STEVENS, dissenting.

Congress has used the term "Indian" in the Indian Reorganization Act of 1934 to describe those individuals who are entitled to special protections and benefits under federal Indian law. The Act specifies that benefits shall be available to individuals who qualify as Indian either as a result of

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*Depending on the outcome of proceedings on remand, it might be necessary to address the second potential issue in this case, going to the significance of the Rhode Island Indian Claims Settlement Act, 25 U. S. C. § 1701 *et seq.* There is no utility in confronting it now.

blood quantum or as descendants of members of "any recognized Indian tribe now under Federal jurisdiction." 25 U. S. C. § 479. In contesting the Secretary of the Interior's acquisition of trust land for the Narragansett Tribe of Rhode Island, the parties have focused on the meaning of "now" in the Act's definition of "Indian." Yet to my mind, whether "now" means 1934 (as the Court holds) or the present time (as respondents would have it) sheds no light on the question whether the Secretary's actions on behalf of the Narragansett were permitted under the statute. The plain text of the Act clearly authorizes the Secretary to take land into trust for Indian tribes as well as individual Indians, and it places no temporal limitation on the definition of "Indian tribe."[1] Because the Narragansett Tribe is an Indian tribe within the meaning of the Act, I would affirm the judgment of the Court of Appeals.

I

This case involves a challenge to the Secretary of the Interior's acquisition of a 31-acre parcel of land in Charlestown, Rhode Island, to be held in trust for the Narragansett Tribe.[2]

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[1] In 25 U. S. C. § 479, Congress defined both "Indian" and "tribe." Section 479 states, in relevant part:

"The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. . . . The term 'tribe' wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation."

Notably the word "now," which is used to define one of the categories of Indians, does not appear in the definition of "tribe."

[2] In 1991, the Narragansett Tribe purchased the 31-acre parcel in fee simple from a private developer. In 1998, the Bureau of Indian Affairs notified the State of the Secretary's decision to take the land into unreserved trust for the Tribe. The Tribe "acquired [the land] for the express purpose of building much needed low-income Indian Housing via a contract between the Narragansett Indian Wetuomuck Housing Authority

That Tribe has existed as a continuous political entity since the early 17th century. Although it was once one of the most powerful tribes in New England, a series of wars, epidemics, and difficult relations with the State of Rhode Island sharply reduced the Tribe's ancestral landholdings.

Two blows, delivered centuries apart, exacted a particularly high toll on the Tribe. First, in 1675, King Philip's War essentially destroyed the Tribe, forcing it to accept the Crown as sovereign and to submit to the guardianship of the Colony of Rhode Island. Then, in 1880, the State of Rhode Island passed a "detribalization" law that abolished tribal authority, ended the State's guardianship of the Tribe, and attempted to sell all tribal lands. The Narragansett originally assented to detribalization and ceded all but two acres of its ancestral land. In return, the Tribe received $5,000. See Memorandum from Deputy Assistant Secretary-Indian Affairs (Operations) to Assistant Secretary-Indian Affairs (Operations) 4 (July 29, 1982) (Recommendation for Acknowledgment).

Recognizing that its consent to detribalization was a mistake, the Tribe embarked on a century-long campaign to recoup its losses.[3] Obtaining federal recognition was critical to this effort. The Secretary officially recognized the Narragansett as an Indian tribe in 1983, Final Determination for Federal Acknowledgement of Narragansett Indian Tribe of Rhode Island, 48 Fed. Reg. 6177, and with that recognition the Tribe qualified for the bundle of federal benefits established in the Indian Reorganization Act of 1934 (IRA or

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(NIWHA) and the Department of Housing and Urban Development (HUD)." App. 46a.

[3] Indeed, this litigation stems in part from the Tribe's suit against (and subsequent settlement with) Rhode Island and private landowners on the ground that the 1880 sale violated the Indian Non-Intercourse Act of June 30, 1834, § 12, 4 Stat. 730, 25 U. S. C. § 177, which prohibited sales of tribal land without "treaty or convention entered into pursuant to the Constitution."

Act),[4] 25 U. S. C. § 461 *et seq.* The Tribe's attempt to exercise one of those rights, the ability to petition the Secretary to take land into trust for the Tribe's benefit, is now vigorously contested in this litigation.

II

The Secretary's trust authority is located in 25 U. S. C. § 465. That provision grants the Secretary power to take "in trust for [an] Indian tribe or individual Indian" "any interest in lands . . . for the purpose of providing land for Indians."[5] The Act's language could not be clearer: To effectuate the Act's broad mandate to revitalize tribal development and cultural self-determination, the Secretary can take land into trust for a tribe or he can take land into trust for an individual Indian.

Though Congress outlined the Secretary's trust authority in § 465, it specified which entities would be considered

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[4] The IRA was the cornerstone of the Indian New Deal. "The intent and purpose of the [IRA] was 'to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.'" *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 152 (1973) (quoting H. R. Rep. No. 1804, 73d Cong., 2d Sess., 6 (1934)). See generally F. Cohen, Handbook of Federal Indian Law § 1.05 (2005) (hereinafter Cohen); G. Taylor, The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934–45 (1980).

[5] Section 465 reads more fully:

"The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

. . . . .

"Title to any lands or rights acquired pursuant to this Act . . . shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation."

"tribes" and which individuals would qualify as "Indian" in § 479. An individual Indian, § 479 tells us, "shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction" as well as "all other persons of one-half or more Indian blood." A tribe, § 479 goes on to state, "shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." Because federal recognition is generally required before a tribe can receive federal benefits, the Secretary has interpreted this definition of "tribe" to refer only to recognized tribes. See 25 CFR § 83.2 (2008) (stating that recognition "is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes"); § 151.2 (defining "tribe" for the purposes of land acquisition to mean "any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, . . . which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs").[6]

Having separate definitions for "Indian" and "tribe" is essential for the administration of IRA benefits. The statute reflects Congress' intent to extend certain benefits to individual Indians, *e. g.*, 25 U. S. C. § 471 (offering loans to Indian students for tuition at vocational and trade schools); § 472 (granting hiring preferences to Indians seeking federal employment related to Indian affairs), while directing other benefits to tribes, *e. g.*, § 476 (allowing tribes to adopt consti-

[6] The regulations that govern the tribal recognition process, 25 CFR § 83 *et seq.* (2008), were promulgated pursuant to the President's general mandate established in the early 1830's to manage "all Indian affairs and . . . all matters arising out of Indian relations," 25 U. S. C. § 2, and to "prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs," § 9. Thus, contrary to the argument pressed by the Governor of Rhode Island before this Court, see Reply Brief for Petitioner Carcieri 9, the requirement that a tribe be federally recognized before it is eligible for trust land does not stem from the IRA.

tutions and bylaws); § 470 (giving loans to Indian-chartered corporations).

Section 465, by giving the Secretary discretion to steer benefits to tribes and individuals alike, is therefore unique. But establishing this broad benefit scheme was undoubtedly intentional: The original draft of the IRA presented to Congress directed the Secretary to take land into trust only for entities such as tribes. Compare H. R. 7902, 73d Cong., 2d Sess., 30 (1934) ("Title to any land acquired pursuant to the provisions of this section shall be taken in the name of the United States in trust *for the Indian tribe or community for whom the land is acquired*" (emphasis added)), with 25 U. S. C. § 465 ("Title to any lands or rights acquired pursuant to this Act . . . shall be taken in the name of the United States in trust *for the Indian tribe or individual Indian for which the land is acquired*" (emphasis added)).

The Secretary has long exercised his § 465 trust authority in accordance with this design. In the years immediately following the adoption of the IRA, the Solicitor of the Department of the Interior repeatedly advised that the Secretary could take land into trust for federally recognized tribes and for individual Indians who qualified for federal benefits by lineage or blood quantum.

For example, in 1937, when evaluating whether the Secretary could purchase approximately 2,100 acres of land for the Mole Lake Chippewa Indians of Wisconsin, the Solicitor instructed that the purchase could not be "completed until it is determined whether the beneficiary of the trust title should be designated as a band or whether the title should be taken for the individual Indians in the vicinity of Mole Lake who are of one half or more Indian blood." Memorandum from Solicitor to Commissioner of Indian Affairs 2758 (Feb. 8, 1937). Because the Mole Lake Chippewa was not yet recognized by the Federal Government as an Indian tribe, the Solicitor determined that the Secretary had two options: "Either the Department should provide recognition

of this group, or title to the purchased land should be taken on behalf of the individuals who are of one half or more Indian blood." *Id.*, at 2763.

The tribal trust and individual trust options were similarly outlined in other post-1934 opinion letters, including those dealing with the Shoshone Indians of Nevada, the St. Croix Chippewa Indians of Wisconsin, and the Nahma and Beaver Island Indians of Michigan. See 1 Dept. of Interior, Opinions of the Solicitor Relating to Indian Affairs, 1917–1974, pp. 706–707, 724–725, 747–748 (1979). Unless and until a tribe was formally recognized by the Federal Government and therefore eligible for trust land, the Secretary would take land into trust for individual Indians who met the blood quantum threshold.

Modern administrative practice has followed this well-trodden path. Absent a specific statute recognizing a tribe and authorizing a trust land acquisition,[7] the Secretary has exercised his trust authority—now governed by regulations promulgated in 1980 after notice-and-comment rulemaking, 25 CFR § 151 *et seq.;* 45 Fed. Reg. 62034—to acquire land

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[7] Although Congress has passed specific statutes granting the Secretary authority to take land into trust for certain tribes, it would be a mistake to conclude that the Secretary lacks residual authority to take land into trust under §5 of the IRA, 25 U. S. C. §465. Some of these statutes place explicit limits on the Secretary's trust authority and can be properly read as establishing the outer limit of the Secretary's trust authority with respect to the specified tribes. See, *e. g.,* § 1724(d) (authorizing trust land for the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe of Maine, and the Penobscot Tribe of Maine). Other statutes, while identifying certain parcels the Secretary will take into trust for a tribe, do not purport to diminish the Secretary's residual authority under § 465. See, *e. g.,* § 1775c(a) (Mohegan Tribe); § 1771d (Wampanoag Tribe); § 1747(a) (Miccosukee Tribe). Indeed, the Secretary has invoked his § 465 authority to take additional land into trust for the Miccosukee Tribe despite the existence of a statute authorizing and directing him to acquire certain land for the Tribe. See Post-Argument En Banc Brief for National Congress of American Indians et al. as *Amici Curiae* 7 and App. 9 in No. 03–2647 (CA1).

for federally recognized Indian tribes like the Narragansett. The Grand Traverse Band of Ottowa and Chippewa Indians, although denied federal recognition in 1934 and 1943, see Dept. of Interior, Office of Federal Acknowledgement, Memorandum from Acting Deputy Commissioner to Assistant Secretary 4 (Oct. 3, 1979) (GTB–V001–D002), was the first Tribe the Secretary recognized under the 1980 regulations, see 45 Fed. Reg. 19322. Since then, the Secretary has used his trust authority to expand the Tribe's land base. See, *e. g.*, 49 Fed. Reg. 2025–2026 (1984) (setting aside a 12.5-acre parcel as reservation land for the Tribe's exclusive use). The Tunica-Biloxi Tribe of Louisiana has similarly benefited from administrative recognition, 46 Fed. Reg. 38411 (1981), followed by tribal trust acquisition. And in 2006, the Secretary took land into trust for the Snoqualmie Tribe which, although unrecognized as an Indian tribe in the 1950's, regained federal recognition in 1999. See 71 Fed. Reg. 5067 (taking land into trust for the Tribe); 62 Fed. Reg. 45864 (1997) (recognizing the Snoqualmie as an Indian tribe).

This brief history of § 465 places the case before us into proper context. Federal recognition, regardless of when it is conferred, is the necessary condition that triggers a tribe's eligibility to receive trust land. No party has disputed that the Narragansett Tribe was properly recognized as an Indian tribe in 1983. See 48 Fed. Reg. 6177. Indeed, given that the Tribe has a documented history that stretches back to 1614 and has met the rigorous criteria for administrative recognition, Recommendation for Acknowledgment 1, 7–18, it would be difficult to sustain an objection to the Tribe's status. With this in mind, and in light of the Secretary's longstanding authority under the plain text of the IRA to acquire tribal trust land, it is perfectly clear that the Secretary's land acquisition for the Narragansett was entirely proper.

III

Despite the clear text of the IRA and historical pedigree of the Secretary's actions on behalf of the Narragansett, the majority holds that one word ("now") nestled in one clause in one of § 479's several definitions demonstrates that the Secretary acted outside his statutory authority in this case. The consequences of the majority's reading are both curious and harsh: curious because it turns "now" into the most important word in the IRA, limiting not only some individuals' eligibility for federal benefits but also a tribe's; harsh because it would result in the unsupportable conclusion that, despite its 1983 administrative recognition, the Narragansett Tribe is not an Indian tribe under the IRA.

In the Court's telling, when Congress granted the Secretary power to acquire trust land "for the purpose of providing land for *Indians*," 25 U. S. C. § 465 (emphasis added), it meant to permit land acquisitions for those persons whose tribal membership qualify them as "Indian" as defined by § 479. In other words, the argument runs, the Secretary can acquire trust land for "persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." § 479. This strained construction, advanced by petitioners, explains the majority's laserlike focus on the meaning of "now": If the Narragansett Tribe was not recognized or under federal jurisdiction in 1934, the Tribe's members do not belong to an Indian tribe "now under Federal jurisdiction" and would therefore not be "Indians" under § 465 by virtue of their tribal membership.

Petitioners' argument works only if one reads "Indians" (in the phrase in § 465 "providing land for Indians") to refer to individuals, not an Indian tribe. To petitioners, this reading is obvious; the alternative, they insist, would be "nonsensical." Reply Brief for Petitioner State of Rhode Island 3. This they argue despite the clear evidence of Congress' intent to provide the Secretary with the option of acquiring

either tribal trusts or individual trusts in service of "providing land for Indians." And they ignore unambiguous evidence that Congress used "Indian tribe" and "Indians" interchangeably in other parts of the IRA. See § 475 (discussing "any claim or suit of any *Indian tribe* against the United States" in the first sentence and "any claim of such *Indians* against the United States" in the last sentence (emphasis added)).

In any event, this much must be admitted: Without the benefit of context, a reasonable person could conclude that "Indians" refers to multiple individuals who each qualify as "Indian" under the IRA. An equally reasonable person could also conclude that "Indians" is meant to refer to a collective, namely, an Indian tribe. Because "[t]he meaning—or ambiguity—of certain words or phrases may only become evident when placed in context," *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 132 (2000), the proper course of action is to widen the interpretive lens and look to the rest of the statute for clarity. Doing so would lead to § 465's last sentence, which specifies that the Secretary is to hold land in trust "for the Indian tribe or individual Indian for which the land is acquired." Put simply, in § 465 Congress used the term "Indians" to refer both to tribes and individuals.[8]

The majority nevertheless dismisses this reading of the statute. The Court notes that even if the Secretary has authority to take land into trust for a tribe, it must be an "*Indian* tribe," with § 479's definition of "Indian" determining a tribe's eligibility. The statute's definition of "tribe," the majority goes on to state, itself makes reference to "Indian tribe." Thus, the Court concludes, "[t]here simply is no legitimate way to circumvent the definition of 'Indian' in delin-

[8] The majority continues to insist, quite incorrectly, that Congress meant the term "Indians" in § 465 to have the same meaning as the term "Indian" in § 479. That the text of the statute tells a different story appears to be an inconvenience the Court would rather ignore.

eating the Secretary's authority under . . . § 479." *Ante*, at 393.

The majority bypasses a straightforward explanation on its way to a circular one. Requiring that a tribe be an "Indian tribe" does not demand immediate reference to the definition of "Indian"; instead, it simply reflects the requirement that the tribe in question be formally recognized as an Indian tribe. As explained above, the Secretary has limited benefits under federal Indian law—including the acquisition of trust land—to recognized tribes. Recognition, then, is the central requirement for being considered an "Indian tribe" for purposes of the Act. If a tribe satisfies the stringent criteria established by the Secretary to qualify for federal recognition, including the requirement that the tribe prove that it "has existed as a community from historical times until the present," 25 CFR § 83.7(b), it is *a fortiori* an "Indian tribe" as a matter of law.

The Narragansett Tribe is no different. In 1983, upon meeting the criteria for recognition, the Secretary gave notice that "the Narragansett Indian Tribe . . . exists as an *Indian tribe*." 48 Fed. Reg. 6178 (emphasis added). How the Narragansett could be an Indian tribe in 1983 and yet not be an Indian tribe today is a proposition the majority cannot explain.

The majority's retort, that because "tribe" refers to "Indian," the definition of "Indian" must control which groups can be considered a "tribe," is entirely circular. Yes, the word "tribe" is defined in part by reference to "Indian tribe." But the word "Indian" is also defined in part by reference to "Indian tribe." Relying on one definition to provide content to the other is thus "completely circular and explains nothing." *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 323 (1992).

The Governor of Rhode Island, for his part, adopts this circular logic and offers two examples of why reading the statute any other way would be implausible. He first argues

that if § 479's definition of "Indian" does not determine a tribe's eligibility, the Secretary would have authority to take land into trust "for the benefit of any group that he deems, at his whim and fancy, to be an 'Indian tribe.'" Reply Brief for Petitioner Carcieri 7. The Governor caricatures the Secretary's discretion. This Court has long made clear that Congress—and therefore the Secretary—lacks constitutional authority to "bring a community or body of people within [federal jurisdiction] by arbitrarily calling them an Indian tribe." *United States* v. *Sandoval*, 231 U. S. 28, 46 (1913). The Governor's next objection, that condoning the acquisition of trust land for the Narragansett Tribe would allow the Secretary to acquire land for an Indian tribe that lacks Indians, is equally unpersuasive. As a general matter, to obtain federal recognition, a tribe must demonstrate that its "membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity." 25 CFR § 83.7(e). If the Governor suspects that the Narragansett is not an Indian tribe because it may lack members who are blood quantum Indians, he should have challenged the Secretary's decision to recognize the Tribe in 1983 when such an objection could have been properly received.[9]

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[9] The Department of the Interior found "a high degree of retention of [Narragansett] family lines" between 1880 and 1980, and remarked that "[t]he close intermarriage and the stability of composition, plus the geographic stability of the group, reflect the maintenance of a socially distinct community." Recommendation for Acknowledgment 10. It also noted that the Narragansett "require applicants for full voting membership to trace their Narragansett Indian bloodlines back to the 'Detribalization Rolls of 1880–84.'" *Id.*, at 16. The record in this case does not tell us how many members of the Narragansett currently qualify as "Indian" by meeting the individual blood quantum requirement. Indeed, it is possible that a significant number of the Narragansett are blood quantum Indians. Accordingly, nothing the Court decides today prevents the Secretary from taking land into trust for those members of the Tribe who independently qualify as "Indian" under 25 U. S. C. § 479.

Although the record does not demonstrate how many members of the Narragansett qualify as blood quantum Indians, JUSTICE BREYER never-

In sum, petitioners' arguments—and the Court's conclusion—are based on a misreading of the statute. "[N]ow," the temporal limitation in the definition of "Indian," only affects an individual's ability to qualify for federal benefits under the IRA. If this case were about the Secretary's decision to take land into trust for an individual who was incapable of proving her eligibility by lineage or blood quantum, I would have no trouble concluding that such an action was contrary to the IRA. But that is not the case before us. By taking land into trust for a validly recognized Indian Tribe, the Secretary acted well within his statutory authority.[10]

IV

The Court today adopts a cramped reading of a statute Congress intended to be "sweeping" in scope. *Morton* v. *Mancari*, 417 U. S. 535, 542 (1974). In so doing, the Court

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theless assumes that no member of the Tribe is a blood quantum Indian. *Ante*, at 399 (concurring opinion). This assumption is misguided for two reasons. To start, the record's silence on this matter is to be expected; the parties have consistently focused on the Secretary's authority to take land into trust for the Tribe, not for individual members of the Tribe. There is thus no legitimate basis for interpreting the lack of record evidence as affirmative proof that none of the Tribe's members are "Indian." Second, neither the statute nor the relevant regulations mandate that a tribe have a threshold amount of blood quantum Indians as members in order to receive trust land. JUSTICE BREYER's unwarranted assumption about the Narragansett's membership, even if true, would therefore also be irrelevant to whether the Secretary's actions were proper.

[10] Petitioners advance the additional argument that the Secretary lacks authority to take land into trust for the Narragansett because the Rhode Island Indian Claims Settlement Act, 92 Stat. 813, 25 U. S. C. § 1701 *et seq.*, implicitly repealed the Secretary's § 465 trust authority as applied to lands in Rhode Island. This claim plainly fails. While the Tribe agreed to subject the 1,800 acres it obtained in the Settlement Act to the State's civil and criminal laws, § 1708(a), the 31-acre parcel of land at issue here was not part of the settlement lands. And, critically, nothing in the text of the Settlement Act suggests that Congress intended to prevent the Secretary from acquiring additional parcels of land in Rhode Island that would be exempt from the State's jurisdiction.

ignores the "principle deeply rooted in [our] Indian jurisprudence" that "'statutes are to be construed liberally in favor of the Indians.'" *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251, 269 (1992) (quoting *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 767–768 (1985)); see also Cohen § 2.02[1], p. 119 ("The basic Indian law canons of construction require that treaties, agreements, statutes, and executive orders be liberally construed in favor of the Indians").

Given that the IRA plainly authorizes the Secretary to take land into trust for an Indian tribe, and in light of the Narragansett's status as such, the Court's decision can be best understood as protecting one sovereign (the State) from encroachment from another (the Tribe). Yet in matters of Indian law, the political branches have been entrusted to mark the proper boundaries between tribal and state jurisdiction. See U. S. Const., Art. I, § 8, cl. 3; *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163, 192 (1989); *Worcester* v. *Georgia*, 6 Pet. 515, 559 (1832). With the IRA, Congress drew the boundary in a manner that favors the Narragansett. I respectfully dissent.

UNITED STATES *v.* HAYES

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

No. 07–608. Argued November 10, 2008—Decided February 24, 2009

In 1996, Congress extended the federal Gun Control Act of 1968's prohibition on possession of a firearm by convicted felons to include persons convicted of "a misdemeanor crime of domestic violence," 18 U. S. C. § 922(g)(9). Responding to a 911 call reporting domestic violence, police officers discovered a rifle in respondent Hayes's home. Based on this and other evidence, Hayes was charged under §§ 922(g)(9) and 924(a)(2) with possessing firearms after having been convicted of a misdemeanor crime of domestic violence. The indictment identified as the predicate misdemeanor offense Hayes's 1994 conviction for battery against his then-wife, in violation of West Virginia law. Hayes moved to dismiss the indictment on the ground that his 1994 conviction did not qualify as a predicate offense under § 922(g)(9) because West Virginia's generic battery law did not designate a domestic relationship between aggressor and victim as an element of the offense. When the District Court denied the motion, Hayes entered a conditional guilty plea and appealed. The Fourth Circuit reversed, holding that a § 922(g)(9) predicate offense must have as an element a domestic relationship between offender and victim.

Held: A domestic relationship, although it must be established beyond a reasonable doubt in a § 922(g)(9) firearms possession prosecution, need not be a defining element of the predicate offense. Pp. 420–430.

(a) The definition of "misdemeanor crime of domestic violence," contained in § 921(a)(33)(A), imposes two requirements. First, the crime must have, "as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." § 921(a)(33)(A)(ii). Second, it must be "committed by" a person who has a specified domestic relationship with the victim. *Ibid.* The definition does not, however, require the predicate-offense statute to include, as an element, the existence of that domestic relationship. Instead, it suffices for the Government to charge and prove a prior conviction that was, in fact, for "an offense . . . committed by" the defendant against a spouse or other domestic victim. Pp. 420–426.

(1) As an initial matter, § 921(a)(33)(A)'s use of the singular word "element" suggests that Congress intended to describe only one required element, the use of force. Had Congress also meant to make the

specified relationship a predicate-offense element, it likely would have used the plural "elements," as it has done in other offense-defining provisions. See, *e. g.*, 18 U. S. C. § 3559(c)(2)(A). Treating the specified relationship as a predicate-offense element is also awkward as a matter of syntax. It requires the reader to regard "the use or attempted use of physical force, or the threatened use of a deadly weapon," as an expression modified by the relative clause "committed by." It is more natural, however, to say a person "commit[s]" an "offense" than to say one "commit[s]" a "use." Pp. 421–423.

(2) The Fourth Circuit's textual arguments to the contrary are unpersuasive. First, that court noted, clause (ii) is separated from clause (i)—which defines "misdemeanor"—by a line break and a semicolon, while clause (ii)'s components—force and domestic relationship—are joined in an unbroken word flow. Such less-than-meticulous drafting hardly shows that Congress meant to exclude from § 922(g)(9)'s prohibition domestic abusers convicted under generic assault or battery laws. As structured, § 921(a)(33)(A) defines "misdemeanor crime of domestic violence" by addressing in clause (i) the meaning of "misdemeanor," and in clause (ii) "crime of domestic violence." Because a "crime of domestic violence" involves both a use of force and a domestic relationship, joining these features together in clause (ii) would make sense even if Congress had no design to confine laws qualifying under § 921(a)(33)(A) to those designating as elements both use of force and domestic relationship. A related statutory provision, 25 U. S. C. § 2803(3)(C), indicates that Congress did not ascribe substantive significance to the placement of line breaks and semicolons in 18 U. S. C. § 921(a)(33)(A). Second, the Fourth Circuit relied on the "rule of the last antecedent" to read "committed by" as modifying the immediately preceding use-of-force phrase rather than the earlier word "offense." The last-antecedent rule, however, "is not an absolute and can assuredly be overcome by other indicia of meaning." *Barnhart* v. *Thomas*, 540 U. S. 20, 26. Applying the rule here would require the Court to accept the unlikely premises that Congress employed the singular "element" to encompass two distinct concepts, and that it adopted the awkward construction "commi[t]" a use. The rule, moreover, would render the word "committed" superfluous, for Congress could have conveyed the same meaning by referring simply to "the use . . . of physical force . . . by a current or former spouse . . . ." Pp. 423–426.

(b) Practical considerations strongly support this Court's reading of § 921(a)(33)(A). By extending the federal firearm prohibition to persons convicted of misdemeanor crimes of domestic violence, § 922(g)(9)'s proponents sought to close a loophole: Existing felon-in-possession laws often failed to keep firearms out of the hands of domestic abusers, for

such offenders generally were not charged with, or convicted of, felonies. Construing § 922(g)(9) to exclude the domestic abuser convicted under a generic use-of-force statute would frustrate Congress' manifest purpose. The statute would have been a dead letter in some two-thirds of the States because, in 1996, only about one-third of them had criminal statutes specifically proscribing *domestic* violence. Hayes argues that the measure that became §§ 922(g)(9) and 921(a)(33)(A), though it initially may have had a broadly remedial purpose, was revised and narrowed during the legislative process, but his argument is not corroborated by the revisions he identifies. Indeed, § 922(g)(9)'s Senate sponsor observed that a domestic relationship often would not be a designated element of the predicate offense. Such remarks are "not controlling," *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118, but the legislative record is otherwise silent. Pp. 426–429.

(c) The rule of lenity, on which Hayes also relies, applies only when a statute is ambiguous. Section 921(a)(33)(A)'s definition, though not a model of the careful drafter's art, is also not "grievous[ly] ambigu[ous]." *Huddleston* v. *United States*, 415 U. S. 814, 831. The text, context, purpose, and what little drafting history there is all point in the same direction: Congress defined "misdemeanor crime of domestic violence" to include an offense "committed by" a person who had a specified domestic relationship with the victim, whether or not the misdemeanor statute itself designates the domestic relationship as an element of the crime. P. 429.

482 F. 3d 749, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, SOUTER, BREYER, and ALITO, JJ., joined, and in which THOMAS, J., joined as to all but Part III. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 430.

Nicole A. Saharsky argued the cause for the United States. On the brief were *Solicitor General Garre*, *Acting Assistant Attorney General Friedrich*, *Deputy Solicitor General Dreeben*, *Leondra R. Kruger*, and *Thomas E. Booth*.

Troy Nino Giatras argued the cause for respondent. With him on the brief were *Michael F. Smith*, *James F. Gehrke*, *Kimberly Horsley Allen*, and *John H. Dudley, Jr.**

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*Briefs of *amici curiae* urging reversal were filed for the Brady Center to Prevent Gun Violence et al. by *Bert H. Deixler* and *Daniel R. Vice;* for the National Network to End Domestic Violence et al. by *Helen Geros-*

JUSTICE GINSBURG delivered the opinion of the Court.*

The federal Gun Control Act of 1968, 18 U. S. C. § 921 *et seq.*, has long prohibited possession of a firearm by any person convicted of a felony. In 1996, Congress extended the prohibition to include persons convicted of "a misdemeanor crime of domestic violence." § 922(g)(9). The definition of "misdemeanor crime of domestic violence," contained in § 921(a)(33)(A), is at issue in this case. Does that term cover a misdemeanor battery whenever the battered victim was in fact the offender's spouse (or other relation specified in § 921(a)(33)(A))? Or, to trigger the possession ban, must the predicate misdemeanor identify as an element of the crime a domestic relationship between aggressor and victim? We hold that the domestic relationship, although it must be established beyond a reasonable doubt in a § 922(g)(9) firearms possession prosecution, need not be a defining element of the predicate offense.

I

In 2004, law enforcement officers in Marion County, West Virginia, came to the home of Randy Edward Hayes in response to a 911 call reporting domestic violence. Hayes consented to a search of his home, and the officers discovered a rifle. Further investigation revealed that Hayes had recently possessed several other firearms as well. Based on this evidence, a federal grand jury returned an indictment in 2005, charging Hayes, under §§ 922(g)(9) and 924(a)(2), with

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tathos Guyton and *Joan S. Meier;* and for Senator Frank R. Lautenberg et al. by *Betty Jo Christian.*

Briefs of *amici curiae* urging affirmance were filed for the Eagle Forum Education and Legal Defense Fund by *Douglas G. Smith;* for the Gun Owners Foundation by *Herbert W. Titus, William J. Olson,* and *John S. Miles;* and for the Second Amendment Foundation, Inc., by *Alan Gura.*

Neal Goldfarb filed a brief for Professors of Linguistics and Cognitive Science as *amici curiae.*

*JUSTICE THOMAS joins all but Part III of this opinion.

three counts of possessing firearms after having been convicted of a misdemeanor crime of domestic violence.

The indictment identified Hayes's predicate misdemeanor crime of domestic violence as a 1994 conviction for battery in violation of West Virginia law.[1] The victim of that battery, the indictment alleged, was Hayes's then-wife—a person who "shared a child in common" with Hayes and "who was cohabitating with . . . him as a spouse." App. 3.[2]

Asserting that his 1994 West Virginia battery conviction did not qualify as a predicate offense under § 922(g)(9), Hayes moved to dismiss the indictment. Section 922(g)(9), Hayes maintained, applies only to persons previously convicted of an offense that has as an element a domestic relationship between aggressor and victim. The West Virginia statute under which he was convicted in 1994, Hayes observed, was a generic battery proscription, not a law designating a domestic relationship between offender and victim as an element of the offense. The United States District Court for the Northern District of West Virginia rejected Hayes's argument and denied his motion to dismiss the indictment.

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[1] West Virginia's battery statute provides: "[A]ny person [who] unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person, . . . shall be guilty of a misdemeanor." W. Va. Code Ann. § 61–2–9(c) (Lexis 2005).

[2] The indictment stated, in relevant part:

"Defendant RANDY EDWARD HAYES' February 24, 1994 Battery conviction . . . constituted a misdemeanor crime of domestic violence because:

"a. Battery is a misdemeanor under State law in West Virginia;

"b. Battery has, as an element, the use and attempted use of physical force;

"c. Defendant RANDY EDWARD HAYES committed the offense of Battery against the victim:

"i. who was his current spouse; and

"ii. who was a person with whom he shared a child in common; and

"iii. who was cohabitating with and had cohabitated with him as a spouse." App. 2–3 (bold typeface deleted).

377 F. Supp. 2d 540, 541–542 (2005). Hayes then entered a conditional guilty plea and appealed.

In a 2-to-1 decision, the United States Court of Appeals for the Fourth Circuit reversed. A § 922(g)(9) predicate offense, the Court of Appeals held, must "have as an element a domestic relationship between the offender and the victim." 482 F. 3d 749, 751 (2007). In so ruling, the Fourth Circuit created a split between itself and the nine other Courts of Appeals that had previously published opinions deciding the same question.[3] According to those courts, § 922(g)(9) does not require that the offense predicate to the defendant's firearm possession conviction have as an element a domestic relationship between offender and victim. We granted certiorari, 552 U. S. 1279 (2008), to resolve this conflict.

II

Section 922(g)(9) makes it "unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence . . . [to] possess in or affecting commerce, any firearm or ammunition." Section 921(a)(33)(A) defines "misdemeanor crime of domestic violence" as follows:

> "[T]he term 'misdemeanor crime of domestic violence' means an offense that—
>
> "(i) is a misdemeanor under Federal, State, or Tribal law; and
>
> "(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or

[3] See *United States* v. *Heckenliable*, 446 F. 3d 1048, 1049 (CA10 2006); *United States* v. *Belless*, 338 F. 3d 1063, 1067 (CA9 2003); *White* v. *Department of Justice*, 328 F. 3d 1361, 1364–1367 (CA Fed. 2003); *United States* v. *Shelton*, 325 F. 3d 553, 562 (CA5 2003); *United States* v. *Kavoukian*, 315 F. 3d 139, 142–144 (CA2 2002); *United States* v. *Barnes*, 295 F. 3d 1354, 1358–1361 (CADC 2002); *United States* v. *Chavez*, 204 F. 3d 1305, 1313–1314 (CA11 2000); *United States* v. *Meade*, 175 F. 3d 215, 218–221 (CA1 1999); *United States* v. *Smith*, 171 F. 3d 617, 619–621 (CA8 1999).

> guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." (Footnote omitted.)

This definition, all agree, imposes two requirements: First, a "misdemeanor crime of domestic violence" must have, "as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." Second, it must be "committed by" a person who has a specified domestic relationship with the victim. The question here is whether the language of § 921(a)(33)(A) calls for a further limitation: Must the statute describing the predicate offense include, as a discrete element, the existence of a domestic relationship between offender and victim? In line with the large majority of the Courts of Appeals, we conclude that § 921(a)(33)(A) does not require a predicate-offense statute of that specificity. Instead, in a § 922(g)(9) prosecution, it suffices for the Government to charge and prove a prior conviction that was, in fact, for "an offense . . . committed by" the defendant against a spouse or other domestic victim.

We note as an initial matter that § 921(a)(33)(A) uses the word "element" in the singular, which suggests that Congress intended to describe only one required element. Immediately following the word "element," § 921(a)(33)(A)(ii) refers to the use of force (undoubtedly a required element) and thereafter to the relationship between aggressor and victim, *e. g.*, a current or former spouse. The manner in which the offender acts, and the offender's relationship with the victim, are "conceptually distinct attributes." *United States* v. *Meade*, 175 F. 3d 215, 218 (CA1 1999).[4] Had Con-

[4] Hayes observes, see Brief for Respondent 24–25, that Congress has used the singular "element" in defining a "crime of violence" to require both an action (the use of force) and its object (the person of another). See, *e. g.*, 18 U. S. C. § 16(a) (defining "crime of violence" as "an offense

gress meant to make the latter as well as the former an element of the predicate offense, it likely would have used the plural "elements," as it has done in other offense-defining provisions. See, *e. g.*, 18 U. S. C. § 3559(c)(2)(A) ("[T]he term 'assault with intent to commit rape' means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse."). Cf. Black's Law Dictionary 559 (8th ed. 2004) (defining "element" as "[a] constituent part of a claim that must be proved for the claim to succeed <Burke failed to prove the element of proximate cause in prosecuting his negligence claim>").[5]

Treating the relationship between aggressor and victim as an element of the predicate offense is also awkward as a matter of syntax. It requires the reader to regard "the use or attempted use of physical force, or the threatened use of a deadly weapon" as an expression modified by the relative clause "committed by." In ordinary usage, however, we

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that has as an element the use, attempted use, or threatened use of physical force against the person or property of another"). Although one might conceive of an action and its object as separate elements, it is unsurprising that Congress would have chosen to denominate "the use of force against another" as a single, undifferentiated element. In contrast, the two requirements set out in § 921(a)(33)(A)(ii)—the use of force and the existence of a specified relationship between aggressor and victim—are not readily conceptualized as a single element.

[5] Invoking the Dictionary Act, Hayes contends that the singular "element" encompasses the plural "elements." See Brief for Respondent 25. The Dictionary Act provides that, "unless the context indicates otherwise," "words importing the singular include and apply to several persons, parties, or things." 1 U. S. C. § 1. On the rare occasions when we have relied on this rule, doing so was "necessary to carry out the evident intent of the statute." *First Nat. Bank in St. Louis* v. *Missouri*, 263 U. S. 640, 657 (1924). As we explain *infra*, at 426–429, Hayes's reading of 18 U. S. C. § 921(a)(33)(A) does not accord with Congress' aim in extending the gun possession ban.

would not say that a person "commit[s]" a "use." It is more natural to say that a person "commit[s]" an "offense." See, *e. g.*, *United States* v. *Belless*, 338 F. 3d 1063, 1066 (CA9 2003) ("One can 'commit' a crime or an offense, but one does not 'commit' 'force' or 'use.' ").

In reaching the conclusion that § 921(a)(33)(A) renders both the use of force and a domestic relationship between aggressor and victim necessary elements of a qualifying predicate offense, the Fourth Circuit majority relied on two textual arguments. First, the court noted that clause (ii) is separated from clause (i) by a line break and a semicolon; in contrast, the components of clause (ii)—force and domestic relationship—are joined in an unbroken word flow. See 482 F. 3d, at 753.

Had Congress placed the "committed by" phrase in its own clause, set off from clause (ii) by a semicolon or a line break, the lawmakers might have better conveyed that "committed by" modifies only "offense" and not "use" or "element." Congress' less-than-meticulous drafting, however, hardly shows that the legislators meant to exclude from § 922(g)(9)'s firearm possession prohibition domestic abusers convicted under generic assault or battery provisions.

As structured, § 921(a)(33)(A) defines "misdemeanor crime of domestic violence" by addressing in clause (i) the meaning of "misdemeanor" and, in turn, in clause (ii), "crime of domestic violence." Because a "crime of domestic violence" involves both a use of force and a domestic relationship, joining these features together in clause (ii) would make sense even if Congress had no design to confine laws qualifying under § 921(a)(33)(A) to those designating as elements both use of force and domestic relationship between aggressor and victim. See *id.*, at 761 (Williams, J., dissenting). See also *United States* v. *Barnes*, 295 F. 3d 1354, 1358–1360, 1361 (CADC 2002) ("The fact that the Congress somewhat awkwardly included the 'committed by' phrase in subpart (ii) (in-

stead of adding a subpart (iii)) is not significant in view of the *un*natural reading that would result if 'committed by' were construed to modify 'use of force.' ").

A related statutory provision, 25 U. S. C. § 2803(3)(C), indicates that Congress did not ascribe substantive significance to the placement of line breaks and semicolons in 18 U. S. C. § 921(a)(33)(A). In 2006, Congress amended § 921(a)(33)(A)(i) to include misdemeanors under "[t]ribal law" as predicate offenses. As a companion measure, Congress simultaneously enacted § 2803(3)(C), which employs use-of-force and domestic-relationship language virtually identical to the language earlier placed in § 921(a)(33)(A)(i), except that § 2803(3)(C) uses no semicolon or line break.

Section 2803(3)(C) authorizes federal agents to "make an arrest without a warrant for an offense committed in Indian country if—"

> "the offense is a misdemeanor crime of domestic violence . . . and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim . . . ."

At the time Congress enacted § 2803(3)(C), the Courts of Appeals uniformly agreed that § 921(a)(33)(A) did not limit predicate offenses to statutory texts specifying both a use of force and a domestic relationship as offense elements. Congress presumably knew how § 921(a)(33)(A) had been construed, and presumably intended § 2803(3)(C) to bear the same meaning. See *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U. S. 71, 85–86 (2006) ("[W]hen 'judicial

interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well.' " (quoting *Bragdon* v. *Abbott*, 524 U. S. 624, 645 (1998))). Relying on spacing and punctuation to hem in § 921(a)(33)(A), while reading § 2803(3)(C) to contain no similar limitation, would create a disjunction between these two provisions that Congress could not have intended.

As a second justification for its construction of § 921(a)(33)(A), the Court of Appeals invoked the "rule of the last antecedent," under which "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas*, 540 U. S. 20, 26 (2003). The words "committed by" immediately follow the use-of-force language, the court observed, and therefore should be read to modify that phrase, not the earlier word "offense." See 482 F. 3d, at 753–755. The rule of the last antecedent, however, "is not an absolute and can assuredly be overcome by other indicia of meaning." *Barnhart*, 540 U. S., at 26.[6]

Applying the rule of the last antecedent here would require us to accept two unlikely premises: that Congress employed the singular "element" to encompass two distinct concepts, and that it adopted the awkward construction "commi[t]" a "use." See *supra*, at 421–423. Moreover, as the dissent acknowledges, *post*, at 433, the last-antecedent rule

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[6] As the United States points out, the Court of Appeals "itself recognized the flexibility of the rule [of the last antecedent]." Brief for United States 20, n. 7. Under a strict application of the rule, the "committed by" phrase would modify only its immediate antecedent, *i. e.*, "the threatened use of a deadly weapon," and not the entire phrase "use or attempted use of physical force, or the threatened use of a deadly weapon." The court rightly regarded such a reading as implausible. See 482 F. 3d 749, 755 (CA4 2007).

would render the word "committed" superfluous: Congress could have conveyed the same meaning by referring simply to the "use . . . of [physical] force . . . by a current or former spouse . . . ." See Tr. of Oral Arg. 29. "Committed" retains its operative meaning only if it is read to modify "offense."

Most sensibly read, then, § 921(a)(33)(A) defines "misdemeanor crime of domestic violence" as a misdemeanor offense that (1) "has, as an element, the use [of force]," and (2) is committed by a person who has a specified domestic relationship with the victim. To obtain a conviction in a § 922(g)(9) prosecution, the Government must prove beyond a reasonable doubt that the victim of the predicate offense was the defendant's current or former spouse or was related to the defendant in another specified way. But that relationship, while it must be established, need not be denominated an element of the predicate offense.[7]

III

Practical considerations strongly support our reading of § 921(a)(33)(A)'s language. Existing felon-in-possession laws, Congress recognized, were not keeping firearms out of the hands of domestic abusers, because "many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies." 142 Cong. Rec. 22985 (1996) (statement of Sen. Lautenberg). By extending the federal firearm prohibition to persons convicted of "misdemeanor crime[s] of domestic violence," proponents of § 922(g)(9) sought to "close this dangerous loophole." *Id.*, at 22986.

Construing § 922(g)(9) to exclude the domestic abuser convicted under a generic use-of-force statute (one that does not

[7] We find it not at all "surprising"—indeed, it seems to us "most natural"—to read § 921(a)(33)(A) to convey that a person convicted of battering a spouse or other domestic victim has committed a "crime of domestic violence," whether or not the statute of conviction happens to contain a domestic-relationship element. Cf. *post*, at 431.

designate a domestic relationship as an element of the offense) would frustrate Congress' manifest purpose. Firearms and domestic strife are a potentially deadly combination nationwide. See, *e. g.*, Brief for Brady Center To Prevent Gun Violence et al. as *Amici Curiae* 8–15; Brief for National Network To End Domestic Violence et al. as *Amici Curiae* 2–8. Yet, as interpreted by the Fourth Circuit, § 922(g)(9) would have been "a dead letter" in some two-thirds of the States from the very moment of its enactment. 482 F. 3d, at 762 (Williams, J., dissenting).

As of 1996, only about one-third of the States had criminal statutes that specifically proscribed *domestic* violence. See Brief for United States 23, n. 8.[8] Even in those States, domestic abusers were (and are) routinely prosecuted under generally applicable assault or battery laws. See Tr. of Oral Arg. 19. And no statute defining a distinct federal misdemeanor designated as an element of the offense a domestic relationship between aggressor and victim. Yet Congress defined "misdemeanor crime of domestic violence" to include "misdemeanor[s] under Federal . . . law." § 921(a)(33)(A)(i). Given the paucity of state and federal statutes targeting *domestic* violence, we find it highly improbable that Congress meant to extend § 922(g)(9)'s firearm possession ban only to the relatively few domestic abusers prosecuted under laws rendering a domestic relationship an element of the offense. See *Barnes*, 295 F. 3d, at 1364 (rejecting the view that "Congress remedied one disparity—between felony and misdemeanor domestic violence convictions—while at the same time creating a new disparity among (and sometimes, within) states").[9]

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[8] Additional States have enacted such statutes since 1996, but about one-half of the States still prosecute domestic violence exclusively under generally applicable criminal laws. See Brief for United States 23–24, and n. 9.

[9] Generally, as in this case, it would entail no "'elaborate factfinding process,'" *post*, at 436, to determine whether the victim of a violent assault

The measure that became §§ 922(g)(9) and 921(a)(33)(A), Hayes acknowledges, initially may have had a broadly remedial purpose, see Brief for Respondent 28–29, but the text of the proposal, he maintains, was revised and narrowed while the measure remained in the congressional hopper. The compromise reflected in the text that gained passage, Hayes argues, restricted the legislation to offenses specifically denominating a domestic relationship as a defining element. The changes Hayes identifies, however, do not corroborate his argument.

Congress did revise the language of § 921(a)(33)(A) to spell out the use-of-force requirement. The proposed legislation initially described the predicate domestic-violence offense as a "crime of violence . . . committed by" a person who had a domestic relationship with the victim. 142 Cong. Rec. 5840. The final version replaced the unelaborated phrase "crime of violence" with the phrase "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." This apparently last-minute insertion may help to explain some of the syntactical awkwardness of the enacted language, but it does not evince an intention to convert the "committed by" phrase into a required element of the predicate offense.

Indeed, in a floor statement discussing the revised version of § 922(g)(9), Senator Frank Lautenberg, the sponsor of the provision, observed that a domestic relationship between aggressor and victim often would not be a designated element of the predicate offense:

> "[C]onvictions for domestic violence-related crimes often are for crimes, such as assault, that are not explicitly identified as related to domestic violence. Therefore, it will not always be possible for law enforcement authorities to determine from the face of someone's criminal record whether a particular misdemeanor con-

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was the perpetrator's "current or former spouse" or bore one of the other domestic relationships specified in § 921(a)(33)(A)(ii) to the perpetrator.

> viction involves domestic violence, as defined in the new law." *Id.*, at 26675.

The remarks of a single Senator are "not controlling," *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118 (1980), but, as Hayes recognizes, the legislative record is otherwise "absolutely silent." See Tr. of Oral Arg. 32, 35. It contains no suggestion that Congress intended to confine § 922(g)(9) to abusers who had violated statutes rendering the domestic relationship between aggressor and victim an element of the offense.

IV

The rule of lenity, Hayes contends, provides an additional reason to construe §§ 922(g)(9) and 921(a)(33)(A) to apply only to predicate offenses that specify a domestic relationship as an element of the crime. "[T]he touchstone of the rule of lenity is statutory ambiguity." *Bifulco* v. *United States*, 447 U. S. 381, 387 (1980) (internal quotation marks omitted). We apply the rule "only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute." *United States* v. *Shabani*, 513 U. S. 10, 17 (1994). Section 921(a)(33)(A)'s definition of "misdemeanor crime of domestic violence," we acknowledge, is not a model of the careful drafter's art. See *Barnes*, 295 F. 3d, at 1356. But neither is it "grievous[ly] ambigu[ous]." *Huddleston* v. *United States*, 415 U. S. 814, 831 (1974). The text, context, purpose, and what little there is of drafting history all point in the same direction: Congress defined "misdemeanor crime of domestic violence" to include an offense "committed by" a person who had a specified domestic relationship with the victim, whether or not the misdemeanor statute itself designates the domestic relationship as an element of the crime.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the

case is remanded for further proceedings consistent with this opinion.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA joins, dissenting.

A person convicted of a "misdemeanor crime of domestic violence" is prohibited from possessing a firearm. 18 U. S. C. § 922(g)(9). The question before the Court is whether the definition of "misdemeanor crime of domestic violence" in § 921(a)(33)(A) includes misdemeanor offenses with no domestic-relationship element.

Section 921(a)(33)(A) provides:

> "[T]he term 'misdemeanor crime of domestic violence' means an offense that—
>
> "(i) is a misdemeanor under Federal, State, or Tribal law; and
>
> "(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." (Footnote omitted.)

The majority would read the "committed by" phrase in clause (ii) to modify the word "offense" in the opening clause of subparagraph (A), leapfrogging the word "element" at the outset of clause (ii). That reading does not require the specified domestic relationship in clause (ii) to be an element of the predicate misdemeanor statute. Individuals convicted under generic use-of-force statutes containing no reference to domestic violence would therefore be subject to prosecution under § 922(g)(9).

The Court of Appeals held to the contrary that "committed by" modifies the immediately preceding phrase: "the use or attempted use of physical force, or the threatened use of a deadly weapon." § 921(a)(33)(A); 482 F. 3d 749, 753–754 (CA4 2007). Read that way, a domestic relationship is an element of the prior offense.

That seems to be the most natural reading right off the bat. The term at issue is "misdemeanor crime of domestic violence." That is a defined term—so the definition certainly must be parsed—but it would be at least surprising to find from that parsing that a "misdemeanor crime of domestic violence" need not by its terms have anything to do with domestic violence.

1. The grammatical rule of the last antecedent indicates that the domestic relationship is a required element of the predicate offense. That rule instructs that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas*, 540 U. S. 20, 26 (2003). Pursuant to that rule, the "committed by" phrase in clause (ii) is best read to modify the preceding phrase "the use or attempted use of physical force, or the threatened use of a deadly weapon." See 482 F. 3d, at 754–755. By not following the usual grammatical rule, the majority's reading requires jumping over two line breaks, clause (i), a semicolon, and the first portion of clause (ii) to reach the more distant antecedent ("offense"). Due to the floating "that" after "offense," if "committed by" modified "offense" the text would read "offense that committed by."

The majority counters that people do not ordinarily say someone "commit[s]" a "use" of force. See *ante*, at 423. True enough, but only because "use" of force is a term that encompasses a variety of conduct, which if listed separately would not pose the objection the majority raises (*e. g.*, commits a battery, robbery, or kidnaping). There is no reason to believe that the reasonable drafting decision to insert "use" of

force rather than coming up with a laundry list of offenses was meant to alter the meaning of the statute.

The majority also relies on Congress's use of the word "element" in the singular. From that, the majority infers that Congress intended to describe only one required element—the use of force. *Ante*, at 421–422. In its view, Congress would have used the plural "elements" if it meant to encompass both the use of force and the offender's relationship with the victim. *Ibid.*

That argument is contrary to the Dictionary Act, which specifies that unless the context indicates otherwise, "words importing the singular include and apply to several persons, parties, or things." 1 U. S. C. § 1; see *Rowland* v. *California Men's Colony, Unit II Men's Advisory Council*, 506 U. S. 194, 200 (1993). More significantly, reading "element" as limited to the singular does not resolve what that element is. See *United States* v. *Barnes*, 295 F. 3d 1354, 1369 (CADC 2002) (Sentelle, J., dissenting). A single element often contains multiple components. In the very provision at issue, the "threatened use of a deadly weapon" includes three concepts: (1) the threatened use (2) of a weapon (3) that is deadly.

In other statutes, Congress has used the word "element" in the singular to refer to the use of force and its object. See, *e. g.*, 18 U. S. C. § 16(a) (defining "crime of violence" as "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another"). The majority finds it "unsurprising" that Congress would have chosen to combine the mode of aggression and its object in a "single, undifferentiated element." *Ante*, at 422, n. 4. It asserts, however, that Congress would not have so joined the use of force and the offender's relationship with the victim, because those requirements "are not readily conceptualized as a single element." *Ibid.* That distinction is elusive; both 18 U. S. C. § 16(a) and the provision at issue here contain as distinct components the

act (use of force) and the target (person or property in the former case, domestic-relationship victim in the latter).

The majority also points out that interpreting "committed by" to modify the "use" of force would render the word "committed" superfluous. That may be so, but as shown, reading "committed by" to modify "offense" has its own flaws. All this goes to show that the statute is not an example of elegant syntax under either reading. The majority properly acknowledges that, under its view, the statutory language reflects "less-than-meticulous drafting" and "syntactical awkwardness," and "is not a model of the careful drafter's art." *Ante*, at 423, 428, 429. I am willing to acknowledge the same with respect to my reading. But I conclude from such reciprocal shortcomings that the text is at least ambiguous.

2. That brings us to the structure of the statute. The most natural reading of the statute, as it is laid out, is that the underlying misdemeanor must have as an element the use of force committed by a person in a domestic relationship with the victim. The definition of "misdemeanor crime of domestic violence" is twice qualified: first, by the relative clause "is a misdemeanor under Federal, State, or Tribal law"; and second, by the relative clause "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by [a person in a specified domestic relationship with the victim]." § 921(a)(33)(A) (footnote omitted). The fact that Congress included the domestic-relationship language in the clause of the statute designating the element of the predicate offense strongly suggests that it is in fact part of the required element.

The majority's contrary reading requires restructuring the statute and adding words. The majority first must place the "committed by" phrase in its own clause—set off by a line break, a semicolon, or "(iii)"—to indicate that "committed by" refers all the way back to "offense." And, as noted, because the word "that" appears at the end of subparagraph (A), the statute would then read "an offense that committed

by." To arrive at its reading, the majority must ignore the floating "that" or add "and is" before "committed by."

The Government would define "misdemeanor crime of domestic violence" as "an offense, committed by a person with a domestic relationship with the victim, that is a misdemeanor and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." Brief for United States 13; see also Tr. of Oral Arg. 8–9. That reading also requires rearranging the statute. The "committed by" phrase would have to be severed from clause (ii) and moved up to appear after the word "offense" in subparagraph (A). Changing and rearranging the wording as the Government does to explain what the actual words mean is, in any event, not a compelling line of argument.

The majority attempts to diminish the magnitude of these alterations by stating that the lawmakers might have better conveyed their intent by setting off the "committed by" phrase with "a semicolon" or "a line break." *Ante*, at 423. But those are not insignificant revisions; they alter the structure of the statute, and we have recognized that structure is often critical in resolving verbal ambiguity. See *Castillo* v. *United States*, 530 U. S. 120, 124 (2000) ("The statute's structure clarifies any ambiguity inherent in its literal language"). I therefore respectfully disagree with the majority that "misdemeanor crime of domestic violence" is most sensibly read as including misdemeanor offenses without a domestic-relationship element.

3. Moving beyond text and structure, the majority recognizes that there is "little . . . drafting history," *ante*, at 429, but gamely trots out what there is: a statement on the floor of the Senate by the bill's sponsor, see *ante*, at 428–429. Such tidbits do not amount to much. See *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118 (1980). This is especially true here where the statement was delivered the day the legislation was passed and *after* the House of Representatives had passed the pertinent pro-

vision. See *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 568 (2005); see also Brief for Respondent 33. The majority nonetheless looks to the floor statement because "the legislative record is otherwise 'absolutely silent.' " *Ante*, at 429. But that is no reason to accord the statement significance: We dismiss the value of such statements due to their inherent flaws as guides to legislative intent, flaws that persist (and indeed may be amplified) in the absence of other indicia of intent.

The majority also finds it "highly improbable that Congress meant to extend § 922(g)(9)'s firearm possession ban only to the relatively few domestic abusers prosecuted under laws rendering a domestic relationship an element of the offense." *Ante*, at 427. In its view, construing § 922(g)(9) to exclude persons convicted under a generic use-of-force statute would "frustrate Congress' manifest purpose," *ante*, at 427, of keeping guns out of the hands of domestic abusers. See *ante*, at 426 (quoting statement of Sen. Lautenberg, 142 Cong. Rec. 22985 (1996)).

Invoking the *sponsor's* objective as *Congress's* manifest purpose, however, "ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action." *Board of Governors, FRS* v. *Dimension Financial Corp.*, 474 U. S. 361, 373–374 (1986). Legislative enactments are the result of negotiations between competing interests; "the final language of the legislation may reflect hard-fought compromises." *Id.*, at 374. Even if there were sufficient sentiment to extend the gun ban, individual legislators might have disagreed on the appropriate reach of the new provision. See *ibid.* Some members might well have been willing to extend the ban beyond individuals convicted of felonies, but only if the predicate misdemeanor by its terms was addressed to domestic violence.

4. The majority's approach will entail significant problems in application. Under the interpretation adopted by the court below, it is easy to determine whether an individual is

covered by the gun ban: Simply look to the record of the prior conviction. Under the majority's approach, on the other hand, it will often be necessary to go beyond the fact of conviction and "engage in an elaborate factfinding process regarding the defendant's prior offens[e]," *Taylor* v. *United States*, 495 U. S. 575, 601 (1990), to determine whether it happened to involve domestic violence.

That is one reason we adopted a categorical approach to predicate offenses under the Armed Career Criminal Act, 18 U. S. C. § 924(e)(1), "looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions." *Taylor*, *supra*, at 600; see *Shepard* v. *United States*, 544 U. S. 13, 19 (2005) (Court considered "predicate offens[e] in terms not of prior conduct but of prior 'convictions' and the 'element[s]' of crimes"). As we warned in *Taylor* and reaffirmed in *Shepard*, "the practical difficulties and potential unfairness of a factual approach are daunting." *Taylor*, *supra*, at 601; see *Shepard*, *supra*, at 20. Those same concerns are implicated here, given that the majority would require juries and courts to look at the particular facts of a prior conviction to determine whether it happened to involve domestic violence, rather than simply looking to the elements of the predicate offense. See *ante*, at 421.

5. Taking a fair view, the text of § 921(a)(33)(A) is ambiguous, the structure leans in the defendant's favor, the purpose leans in the Government's favor, and the legislative history does not amount to much. This is a textbook case for application of the rule of lenity.

"Because construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than that clearly warranted by the text." *Crandon* v. *United States*, 494 U. S. 152, 160 (1990). It cannot fairly be said here that the text "clearly warrants" the counterintuitive conclusion that a "crime of domestic violence" need not

have domestic violence as an element. That leaves the majority's arguments about legislative history and statutory purpose. This is not the "rare" case in which such grounds provide "fair warning," especially given that there is nothing wrong with the conduct punished—possessing a firearm—if the prior misdemeanor is not covered by the statute.

If the rule of lenity means anything, it is that an individual should not go to jail for failing to conduct a 50-state survey or comb through obscure legislative history. Ten years in jail is too much to hinge on the will-o'-the-wisp of statutory meaning pursued by the majority.

Syllabus

PACIFIC BELL TELEPHONE CO., DBA AT&T CALIFORNIA, ET AL. *v.* LINKLINE COMMUNICATIONS, INC., ET AL.

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

No. 07–512. Argued December 8, 2008—Decided February 25, 2009

Petitioners (hereinafter AT&T) own infrastructure and facilities needed to provide "DSL" service, a method of connecting to the Internet at high speeds over telephone lines. As a condition for a recent merger, the Federal Communications Commission requires AT&T to provide wholesale DSL transport service to independent firms at a price no greater than the retail price of AT&T's DSL service. The plaintiffs in this case, respondents here, are independent Internet service providers that compete with AT&T in the retail DSL market in California. The plaintiffs do not own all the facilities needed to supply DSL service, and must lease wholesale DSL transport service from AT&T. They filed suit under § 2 of the Sherman Act, asserting that AT&T unlawfully "squeezed" their profit margins by setting a high price for the wholesale DSL transport service it sells and a low price for its own retail DSL service. This maneuver allegedly placed the plaintiffs at a competitive disadvantage, allowing AT&T to maintain monopoly power in the DSL market. AT&T moved for judgment on the pleadings, arguing that the plaintiffs' claims were foreclosed by *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, 540 U. S. 398, 410, in which this Court held that a firm with no antitrust duty to deal with its rivals has no obligation to provide those rivals with a "sufficient" level of service. The District Court found that AT&T had no antitrust duty to deal with the plaintiffs, but nonetheless denied the motion, holding that *Trinko* did not address price-squeeze claims. The court certified its order for interlocutory appeal on the question whether *Trinko* bars price-squeeze claims when the parties are required to deal by federal communications law, but not antitrust law. The Ninth Circuit affirmed, holding that *Trinko* did not address the viability of price-squeeze claims, and thus the plaintiffs' complaint stated a potentially valid § 2 claim.

Held:

1. The case is not moot. The plaintiffs now agree that their claims must meet the *Brooke Group* test for predatory pricing, apparently apart from their price-squeeze theory. That test established two requirements for predatory pricing: below-cost retail pricing and a " 'dan-

gerous probability' " that the defendant will recoup any lost profits, see *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 222–224. Despite the plaintiffs' new position, the parties continue to seek different relief: AT&T seeks reversal of the decision below and dismissal of the complaint, while the plaintiffs seek leave to amend their complaint to allege a *Brooke Group* claim. It is also not clear that the plaintiffs have unequivocally abandoned their price-squeeze claims. Prudential concerns favor answering the question presented; absent a decision on the merits, the Circuit conflict that this Court granted certiorari to resolve would persist. Pp. 446–447.

2. A price-squeeze claim may not be brought under § 2 when the defendant has no antitrust duty to deal with the plaintiff at wholesale. Pp. 447–457.

(a) Businesses are generally free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing. See *United States* v. *Colgate & Co.*, 250 U. S. 300, 307. But in rare circumstances, a dominant firm may incur antitrust liability for purely unilateral conduct, such as charging "predatory" prices. *Brooke Group, supra,* at 222–224. There are also limited circumstances in which a firm's unilateral refusal to deal with its rivals can give rise to antitrust liability. See *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U. S. 585, 608–611. Here, plaintiffs do not allege predatory pricing, and the District Court concluded that there was no antitrust duty to deal. Plaintiffs challenge a different type of unilateral conduct in which a firm "squeezes" its competitors' profit margins. This requires the defendant to operate in both the wholesale ("upstream") and retail ("downstream") markets. By raising the wholesale price of inputs while cutting its own retail prices, the defendant can raise competitors' costs while putting downward pressure on their revenues. Price-squeeze plaintiffs assert that defendants must leave them a "fair" or "adequate" margin between wholesale and retail prices. Pp. 447–449.

(b) Where there is no duty to deal at the wholesale level and no predatory pricing at the retail level, a firm is not required to price both of these services in a manner that preserves its rivals' profit margins. Pp. 449–452.

(i) Any challenge to AT&T's *wholesale* prices is foreclosed by a straightforward application of *Trinko*. The claim in *Trinko* addressed the quality of Verizon's support services, while the claims in this case challenge AT&T's pricing structure. But for antitrust purposes, there is no meaningful distinction between price and nonprice components of a transaction. The nub of the complaint in both cases is identical—the plaintiffs alleged that the defendants (upstream monopolists) abused their power in the wholesale market to prevent rival firms from compet-

ing effectively in the retail market. But a firm with no antitrust duty to deal in the wholesale market has no obligation to deal under terms and conditions favorable to its competitors. See *Trinko, supra,* at 410. Had AT&T simply stopped providing DSL transport service to the plaintiffs, it would not have run afoul of the Sherman Act. Thus, it was not required to offer this service at the wholesale prices the plaintiffs would have preferred. Pp. 449–451.

(ii) The other component of a price-squeeze claim is the assertion that the defendant's *retail* prices are "too low." Here too plaintiffs' claims find no support in existing antitrust doctrine. "[C]utting prices in order to increase business often is the very essence of competition." *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.,* 475 U. S. 574, 594. To avoid chilling aggressive price competition, the Court has carefully limited the circumstances under which plaintiffs can state a Sherman Act claim by alleging that the defendant's prices are too low. See *Brooke Group, supra,* at 222–224. The complaint at issue here has no allegation that AT&T's conduct met either *Brooke Group* requirement. Recognizing a price-squeeze claim where the defendant's retail price remains above cost would invite the precise harm the Court sought to avoid in *Brooke Group*: Firms might raise retail prices or refrain from aggressive price competition to avoid potential antitrust liability. See 509 U. S., at 223. Pp. 451–452.

(c) Institutional concerns also counsel against recognizing such claims. This Court has repeatedly emphasized the importance of clear rules in antitrust law. Recognizing price-squeeze claims would require courts simultaneously to police both the wholesale and retail prices to ensure that rival firms are not being squeezed. Courts would be aiming at a moving target, since it is the *interaction* between these two prices that may result in a squeeze. Moreover, firms seeking to avoid price-squeeze liability will have no safe harbor for their pricing practices. The most commonly articulated standard for price squeezes is that the defendant must leave its rivals a "fair" or "adequate" margin between wholesale and retail prices; this test is nearly impossible for courts to apply without conducting complex proceedings like rate-setting agencies. Some *amici* argue that a price squeeze should be presumed if the defendant's wholesale price exceeds its retail price. But if both the wholesale price and the retail price are independently lawful, there is no basis for imposing antitrust liability simply because a vertically integrated firm's wholesale price is greater than or equal to its retail price. Pp. 452–455.

(d) The District Court on remand should consider whether an amended complaint filed by the plaintiffs states a claim upon which relief may be granted under the pleading standard articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U. S. 544, 561–563; whether plaintiffs should be

given leave to amend their complaint to bring a *Brooke Group* claim; and such other matters properly before it. Pp. 455–457.

503 F. 3d 876, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. BREYER, J., filed an opinion concurring in the judgment, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post*, p. 457.

Aaron M. Panner argued the cause for petitioners. With him on the briefs was *Michael K. Kellogg.*

Deanne E. Maynard argued the cause for the United States as *amicus curiae* urging vacatur. With her on the brief were former *Solicitor General Garre*, *Assistant Attorney General Barnett*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General O'Connell*, *Catherine G. O'Sullivan*, and *David Seidman.*

Maxwell M. Blecher argued the cause and filed a brief for respondents.

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*Briefs of *amici curiae* urging reversal were filed for the Commonwealth of Virginia et al. by *Robert F. McDonnell*, Attorney General of Virginia, *Stephen R. McCullough*, State Solicitor General, *William C. Mims*, Chief Deputy Attorney General, *Sarah Oxenham Allen*, Assistant Attorney General, and *William E. Thro*, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Steve Six* of Kansas, *Jon C. Bruning* of Nebraska, *W. A. Drew Edmondson* of Oklahoma, *Mark L. Shurtleff* of Utah, and *Robert M. McKenna* of Washington; for Abbott Laboratories by *Gene C. Schaerr*, *Steffen N. Johnson*, *Charles B. Klein*, *James F. Hurst*, and *Linda T. Coberly;* for Verizon Communications Inc. et al. by *John Thorne*, *Richard G. Taranto*, *Jan S. Amundson*, and *Quentin Riegel;* and for the Washington Legal Foundation by *Mark J. Botti*, *Daniel J. Popeo*, and *Richard A. Samp.*

Briefs of *amici curiae* were filed for COMPTEL by *Samuel L. Feder*, *Elaine J. Goldenberg*, and *Mary C. Albert;* and for Professors and Scholars in Law and Economics by *J. Gregory Sidak* and *Robert H. Bork*, both *pro se.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The plaintiffs in this case, respondents here, allege that a competitor subjected them to a "price squeeze" in violation of § 2 of the Sherman Act. They assert that such a claim can arise when a vertically integrated firm sells inputs at wholesale and also sells finished goods or services at retail. If that firm has power in the wholesale market, it can simultaneously raise the wholesale price of inputs and cut the retail price of the finished good. This will have the effect of "squeezing" the profit margins of any competitors in the retail market. Those firms will have to pay more for the inputs they need; at the same time, they will have to cut their retail prices to match the other firm's prices. The question before us is whether such a price-squeeze claim may be brought under § 2 of the Sherman Act when the defendant is under no antitrust obligation to sell the inputs to the plaintiff in the first place. We hold that no such claim may be brought.

I

This case involves the market for digital subscriber line (DSL) service, which is a method of connecting to the Internet at high speeds over telephone lines. AT&T[1] owns much of the infrastructure and facilities needed to provide DSL service in California. In particular, AT&T controls most of what is known as the "last mile"—the lines that connect homes and businesses to the telephone network. Competing DSL providers must generally obtain access to AT&T's facilities in order to serve their customers.

Until recently, the Federal Communications Commission (FCC) required incumbent phone companies such as AT&T

[1] Petitioners consist of several corporate entities and subsidiaries, and their names and corporate structures have changed frequently over the course of this litigation. For simplicity, we will refer to all the petitioners as "AT&T."

to sell transmission service to independent DSL providers, under the theory that this would spur competition. See *In re Appropriate Framework for Broadband Access to Internet Over Wireline Facilities*, 20 FCC Rcd. 14853, 14868 (2005). In 2005, the FCC largely abandoned this forced-sharing requirement in light of the emergence of a competitive market beyond DSL for high-speed Internet service; DSL now faces robust competition from cable companies and wireless and satellite services. *Id.*, at 14879–14887. As a condition for a recent merger, however, AT&T remains bound by the mandatory interconnection requirements, and is obligated to provide wholesale "DSL transport" service to independent firms at a price no greater than the retail price of AT&T's DSL service. *In re AT&T Inc.*, 22 FCC Rcd. 5662, 5814 (2007).

The plaintiffs are four independent Internet service providers (ISPs) that compete with AT&T in the retail DSL market. Plaintiffs do not own all the facilities needed to supply their customers with this service. They instead lease DSL transport service from AT&T pursuant to the merger conditions described above. AT&T thus participates in the DSL market at both the wholesale and retail levels; it provides plaintiffs and other independent ISPs with wholesale DSL transport service, and it also sells DSL service directly to consumers at retail.

In July 2003, the plaintiffs brought suit in District Court, alleging that AT&T violated § 2 of the Sherman Act, 15 U. S. C. § 2, by monopolizing the DSL market in California. The complaint alleges that AT&T refused to deal with the plaintiffs, denied the plaintiffs access to essential facilities, and engaged in a "price squeeze." App. 18–19. Specifically, plaintiffs contend that AT&T squeezed their profit margins by setting a high wholesale price for DSL transport and a low retail price for DSL Internet service. This maneuver allegedly "exclude[d] and unreasonably impede[d] competi-

tion," thus allowing AT&T to "preserve and maintain its monopoly control of DSL access to the Internet." *Ibid.*

In *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, 540 U. S. 398, 410 (2004), we held that a firm with no antitrust duty to deal with its rivals at all is under no obligation to provide those rivals with a "sufficient" level of service. Shortly after we issued that decision, AT&T moved for judgment on the pleadings, arguing that the plaintiffs' claims in this case were foreclosed by *Trinko.* The District Court held that AT&T had no antitrust duty to deal with the plaintiffs, App. to Pet. for Cert. 77a–85a, but it denied the motion to dismiss with respect to the price-squeeze claims, *id.*, at 86a–90a. The court acknowledged that AT&T's argument "has a certain logic to it," but held that *Trinko* "simply does not involve price-squeeze claims." App. to Pet. for Cert. 86a. The District Court also noted that price-squeeze claims have been recognized by several Circuits and "are cognizable under existing antitrust standards." *Id.*, at 89a, and n. 27.

At the District Court's request, plaintiffs then filed an amended complaint providing greater detail about their price-squeeze claims. AT&T again moved to dismiss, arguing that price-squeeze claims could only proceed if they met the two established requirements for predatory pricing: below-cost retail pricing and a "'dangerous probability'" that the defendant will recoup any lost profits. See *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 222–224 (1993). The District Court did not reach the issue whether *all* price-squeeze claims must meet the *Brooke Group* requirements, because it concluded that the amended complaint, "generously construed," satisfied those criteria. App. to Pet. for Cert. 46a–49a, 56a. The court also certified its earlier order for interlocutory appeal on the question whether "*Trinko* bars price squeeze claims where the parties are compelled to deal under the federal communications laws." *Id.*, at 56a–57a.

On interlocutory appeal, the Court of Appeals for the Ninth Circuit affirmed the District Court's denial of AT&T's motion for judgment on the pleadings on the price-squeeze claims. *linkline Communications, Inc.* v. *SBC California, Inc.*, 503 F. 3d 876 (2007). The court emphasized that "*Trinko* did not involve a price squeezing theory." *Id.*, at 883. Because "a price squeeze theory formed part of the fabric of traditional antitrust law prior to *Trinko*," the Court of Appeals concluded that "those claims should remain viable notwithstanding either the telecommunications statutes or *Trinko*." *Ibid.* Based on the record before it, the court held that plaintiffs' original complaint stated a potentially valid claim under § 2 of the Sherman Act.

Judge Gould dissented, noting that "the notion of a 'price squeeze' is itself in a squeeze between two recent Supreme Court precedents." *Id.*, at 886. A price-squeeze claim involves allegations of both a high wholesale price and a low retail price, so Judge Gould analyzed each component separately. He concluded that "*Trinko* insulates from antitrust review the setting of the upstream price." *Id.*, at 886–887. With respect to the downstream price, he argued that "the retail side of a price squeeze cannot be considered to create an antitrust violation if the retail pricing does not satisfy the requirements of *Brooke Group*, which set unmistakable limits on what can be considered to be predatory within the meaning of the antitrust laws." *Id.*, at 887 (citing *Brooke Group*, *supra*, at 222–224). Judge Gould concluded that the plaintiffs' complaint did not satisfy these requirements because it contained no allegations that the retail price was set below cost and that those losses could later be recouped. 503 F. 3d, at 887. Judge Gould would have allowed the plaintiffs to amend their complaint if they could, in good faith, raise predatory pricing claims meeting the *Brooke Group* requirements. 503 F. 3d, at 887.

We granted certiorari, 554 U. S. 916 (2008), to resolve a conflict over whether a plaintiff can bring price-squeeze

claims under § 2 of the Sherman Act when the defendant has no antitrust duty to deal with the plaintiff. See *Covad Communications Co.* v. *Bell Atlantic Corp.*, 398 F. 3d 666, 673–674 (CADC 2005) (holding that *Trinko* bars such claims). We reverse.

II

This case has assumed an unusual posture. The plaintiffs now assert that they agree with Judge Gould's dissenting position that price-squeeze claims must meet the *Brooke Group* requirements for predatory pricing. They ask us to vacate the decision below in their favor and remand with instructions that they be given leave to amend their complaint to allege a *Brooke Group* claim. In other words, plaintiffs are no longer pleased with their initial theory of the case, and ask for a mulligan to try again under a different theory. Some *amici* argue that the case is moot in light of this confession of error. They contend that "[w]ith both petitioners and respondents now aligned on [the same] side of the question presented, *no party* with a concrete stake in this case's outcome is advocating for the contrary position." Brief for COMPTEL 6.

We do not think this case is moot. First, the parties continue to seek different relief. AT&T asks us to reverse the judgment of the Court of Appeals and remand with instructions to dismiss the complaint at issue. The plaintiffs ask that we vacate the judgment and remand with instructions that they be given leave to amend their complaint. The parties thus continue to be adverse not only in the litigation as a whole, but in the specific proceedings before this Court.

Second, it is not clear that the plaintiffs have unequivocally abandoned their price-squeeze claims. In their brief and at oral argument, the plaintiffs continue to refer to their "pricing squeeze claim." See Brief for Respondents 13. They appear to acknowledge that those claims must meet the *Brooke Group* requirements, but it is not clear whether they believe the necessary showing can be made in at least partial

reliance on the sort of price-squeeze theory accepted by the Court of Appeals. At one point, for example, the plaintiffs suggest that "the DSL transport price" may be pertinent to their claims going forward under the theory of Judge Gould's dissent; that opinion, however, concluded that *Trinko* "in essence takes the issu[e] of wholesale pricing out of the case." 503 F. 3d, at 886. Given this ambiguity, the case before us remains a live dispute appropriate for decision. Cf. *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189 (2000) (a party's voluntary conduct renders a case moot only if it is " 'absolutely clear' " the party will take that course of action).

Amici also argue that we should dismiss the writ of certiorari because of the "lack of adversarial presentation" by an interested party. Brief for COMPTEL 7. To the contrary, prudential concerns favor our answering the question presented. Plaintiffs defended the Court of Appeals' decision at the certiorari stage, and the parties have invested a substantial amount of time, effort, and resources in briefing and arguing the merits of this case. In the absence of a decision from this Court on the merits, the Court of Appeals' decision would presumably remain binding precedent in the Ninth Circuit, and the Circuit conflict we granted certiorari to resolve would persist. Two *amici* have submitted briefs defending the Court of Appeals' decision on the merits, and we granted the motion of one of those *amici* to participate in oral argument. 555 U. S. 1029 (2008). We think it appropriate to proceed to address the question presented.

III

A

Section 2 of the Sherman Act makes it unlawful to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations." Ch. 647, 26 Stat. 209, 15 U. S. C. § 2. Simply pos-

sessing monopoly power and charging monopoly prices does not violate § 2; rather, the statute targets "the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States* v. *Grinnell Corp.*, 384 U. S. 563, 570–571 (1966).

As a general rule, businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing. See *United States* v. *Colgate & Co.*, 250 U. S. 300, 307 (1919). But there are rare instances in which a dominant firm may incur antitrust liability for purely unilateral conduct. For example, we have ruled that firms may not charge "predatory" prices—below-cost prices that drive rivals out of the market and allow the monopolist to raise its prices later and recoup its losses. *Brooke Group*, 509 U. S., at 222–224. Here, however, the complaint at issue does not contain allegations meeting those requirements. App. 10–24.

There are also limited circumstances in which a firm's unilateral refusal to deal with its rivals can give rise to antitrust liability. See *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U. S. 585, 608–611 (1985). Here, however, the District Court held that AT&T had no such antitrust duty to deal with its competitors, App. to Pet. for Cert. 84a–85a, and this holding was not challenged on appeal.[2]

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[2] The Court of Appeals assumed that any duty to deal arose only from FCC regulations, 503 F. 3d 876, 878–879, n. 6 (CA9 2007), and the question on which we granted certiorari made the same assumption. Even aside from the District Court's reasoning, App. to Pet. for Cert. 77a–85a, it seems quite unlikely that AT&T would have an antitrust duty to deal with the plaintiffs. Such a duty requires a showing of monopoly power, but—as the FCC has recognized, *In re Appropriate Framework for Broadband Access to Internet Over Wireline Facilities*, 20 FCC Rcd. 14853, 14879–14887 (2005)—the market for high-speed Internet service is now quite competitive; DSL providers face stiff competition from cable companies and wireless and satellite providers.

The challenge here focuses on retail prices—where there is no predatory pricing—and the terms of dealing—where there is no duty to deal. Plaintiffs' price-squeeze claims challenge a different type of unilateral conduct in which a firm "squeezes" the profit margins of its competitors. This requires the defendant to be operating in two markets, a wholesale ("upstream") market and a retail ("downstream") market. A firm with market power in the upstream market can squeeze its downstream competitors by raising the wholesale price of inputs while cutting its own retail prices. This will raise competitors' costs (because they will have to pay more for their inputs) and lower their revenues (because they will have to match the dominant firm's low retail price). Price-squeeze plaintiffs assert that defendants must leave them a "fair" or "adequate" margin between the wholesale price and the retail price. In this case, we consider whether a plaintiff can state a price-squeeze claim when the defendant has no obligation under the antitrust laws to deal with the plaintiff at wholesale.

B

1. A straightforward application of our recent decision in *Trinko* forecloses any challenge to AT&T's *wholesale* prices. In *Trinko*, Verizon was required by statute to lease its network elements to competing firms at wholesale rates. 540 U. S., at 402–403. The plaintiff—a customer of one of Verizon's rivals—asserted that Verizon denied its competitors access to interconnection support services, making it difficult for those competitors to fill their customers' orders. *Id.*, at 404–405. The complaint alleged that this conduct in the upstream market violated § 2 of the Sherman Act by impeding the ability of independent carriers to compete in the downstream market for local telephone service. *Ibid.*

We held that the plaintiff's claims were not actionable under § 2. Given that Verizon had no antitrust duty to deal with its rivals at all, we concluded that "Verizon's alleged

insufficient assistance in the provision of service to rivals" did not violate the Sherman Act. *Id.*, at 410. *Trinko* thus makes clear that if a firm has no antitrust duty to deal with its competitors at wholesale, it certainly has no duty to deal under terms and conditions that the rivals find commercially advantageous.

In this case, as in *Trinko*, the defendant has no antitrust duty to deal with its rivals at wholesale; any such duty arises only from FCC regulations, not from the Sherman Act. See *supra*, at 448. There is no meaningful distinction between the "insufficient assistance" claims we rejected in *Trinko* and the plaintiffs' price-squeeze claims in the instant case. The *Trinko* plaintiff challenged the quality of Verizon's interconnection service, while this case involves a challenge to AT&T's pricing structure. But for antitrust purposes, there is no reason to distinguish between price and nonprice components of a transaction. See, *e. g.*, *American Telephone & Telegraph Co.* v. *Central Office Telephone, Inc.*, 524 U. S. 214, 223 (1998) ("Any claim for excessive rates can be couched as a claim for inadequate services and vice versa"). The nub of the complaint in both *Trinko* and this case is identical—the plaintiffs alleged that the defendants (upstream monopolists) abused their power in the wholesale market to prevent rival firms from competing effectively in the retail market. *Trinko* holds that such claims are not cognizable under the Sherman Act in the absence of an antitrust duty to deal.

The District Court and the Court of Appeals did not regard *Trinko* as controlling because that case did not directly address price-squeeze claims. 503 F. 3d, at 883; App. to Pet. for Cert. 86a; see also Brief for COMPTEL as *Amicus Curiae* 27–30. This is technically true, but the reasoning of *Trinko* applies with equal force to price-squeeze claims. AT&T could have squeezed its competitors' profits just as effectively by providing poor-quality interconnection service to the plaintiffs, as Verizon allegedly did in *Trinko*. But a firm with no duty to deal in the wholesale market has no

obligation to deal under terms and conditions favorable to its competitors. If AT&T had simply stopped providing DSL transport service to the plaintiffs, it would not have run afoul of the Sherman Act. Under these circumstances, AT&T was not required to offer this service at the wholesale prices the plaintiffs would have preferred.

2. The other component of a price-squeeze claim is the assertion that the defendant's *retail* prices are "too low." Here too plaintiffs' claims find no support in our existing antitrust doctrine.

"[C]utting prices in order to increase business often is the very essence of competition." *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 594 (1986). In cases seeking to impose antitrust liability for prices that are too low, mistaken inferences are "especially costly, because they chill the very conduct the antitrust laws are designed to protect." *Ibid.*; see also *Brooke Group*, 509 U. S., at 226; *Cargill, Inc.* v. *Monfort of Colo., Inc.*, 479 U. S. 104, 121–122, n. 17 (1986). To avoid chilling aggressive price competition, we have carefully limited the circumstances under which plaintiffs can state a Sherman Act claim by alleging that prices are too low. Specifically, to prevail on a predatory pricing claim, a plaintiff must demonstrate that: (1) "the prices complained of are below an appropriate measure of its rival's costs"; and (2) there is a "dangerous probability" that the defendant will be able to recoup its "investment" in below-cost prices. *Brooke Group*, *supra*, at 222–224. "Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition." *Atlantic Richfield Co.* v. *USA Petroleum Co.*, 495 U. S. 328, 340 (1990).

In the complaint at issue in this interlocutory appeal, App. 10–24, there is no allegation that AT&T's conduct met either of the *Brooke Group* requirements. Recognizing a price-squeeze claim where the defendant's retail price remains above cost would invite the precise harm we sought to avoid

in *Brooke Group*: Firms might raise their retail prices or refrain from aggressive price competition to avoid potential antitrust liability. See 509 U. S., at 223 ("As a general rule, the exclusionary effect of prices above a relevant measure of cost either reflects the lower cost structure of the alleged predator, and so represents competition on the merits, or is beyond the practical ability of a judicial tribunal to control without courting intolerable risks of chilling legitimate price cutting").

3. Plaintiffs' price-squeeze claim, looking to the relation between retail and wholesale prices, is thus nothing more than an amalgamation of a meritless claim at the retail level and a meritless claim at the wholesale level. If there is no duty to deal at the wholesale level and no predatory pricing at the retail level, then a firm is certainly not required to price *both* of these services in a manner that preserves its rivals' profit margins.[3]

C

1. Institutional concerns also counsel against recognition of such claims. We have repeatedly emphasized the importance of clear rules in antitrust law. Courts are ill suited "to act as central planners, identifying the proper price, quantity, and other terms of dealing." *Trinko*, 540 U. S., at 408. "'No court should impose a duty to deal that it cannot

[3] Like the Court of Appeals, 503 F. 3d, at 880, *amici* argue that price-squeeze claims have been recognized by Courts of Appeals for many years, beginning with Judge Hand's opinion in *United States* v. *Aluminum Co. of America*, 148 F. 2d 416 (CA2 1945) (*Alcoa*). In that case, the Government alleged that Alcoa was using its monopoly power in the upstream aluminum ingot market to squeeze the profits of downstream aluminum sheet fabricators. The court concluded: "That it was unlawful to set the price of 'sheet' so low and hold the price of ingot so high, seems to us unquestionable, provided, as we have held, that on this record the price of ingot must be regarded as higher than a 'fair price.'" *Id.*, at 438. Given developments in economic theory and antitrust jurisprudence since *Alcoa*, we find our recent decisions in *Trinko* and *Brooke Group* more pertinent to the question before us.

explain or adequately and reasonably supervise. The problem should be deemed irremedia[ble] by antitrust law when compulsory access requires the court to assume the day-to-day controls characteristic of a regulatory agency.' " *Id.*, at 415 (quoting Areeda, Essential Facilities: An Epithet in Need of Limiting Principles, 58 Antitrust L. J. 841, 853 (1989)); see also *Concord* v. *Boston Edison Co.*, 915 F. 2d 17, 25 (CA1 1990) (Breyer, C. J.) ("[A]ntitrust courts normally avoid direct price administration, relying on rules and remedies . . . that are easier to administer").

It is difficult enough for courts to identify and remedy an alleged anticompetitive practice at one level, such as predatory pricing in retail markets or a violation of the duty-to-deal doctrine at the wholesale level. See *Brooke Group*, *supra*, at 225 (predation claims "requir[e] an understanding of the extent and duration of the alleged predation, the relative financial strength of the predator and its intended victim, and their respective incentives and will"); *Trinko*, *supra*, at 408. Recognizing price-squeeze claims would require courts simultaneously to police both the wholesale and retail prices to ensure that rival firms are not being squeezed. And courts would be aiming at a moving target, since it is the *interaction* between these two prices that may result in a squeeze.

Perhaps most troubling, firms that seek to avoid price-squeeze liability will have no safe harbor for their pricing practices. See *Concord*, *supra*, at 22 (antitrust rules "must be clear enough for lawyers to explain them to clients"). At least in the predatory pricing context, firms know they will not incur liability as long as their retail prices are above cost. *Brooke Group*, *supra*, at 223. No such guidance is available for price-squeeze claims. See, *e. g.*, 3B P. Areeda & H. Hovenkamp, Antitrust Law ¶ 767c, p. 138 (3d ed. 2008) ("[A]ntitrust faces a severe problem not only in recognizing any § 2 [price-squeeze] offense, but also in formulating a suitable remedy").

The most commonly articulated standard for price squeezes is that the defendant must leave its rivals a "fair" or "adequate" margin between the wholesale price and the retail price. See *Concord*, *supra*, at 23–25; *Alcoa*, 148 F. 2d 416, 437–438 (CA2 1945). One of our colleagues has highlighted the flaws of this test in Socratic fashion:

> "[H]ow is a judge or jury to determine a 'fair price?' Is it the price charged by other suppliers of the primary product? None exist. Is it the price that competition 'would have set' were the primary level not monopolized? How can the court determine this price without examining costs and demands, indeed without acting like a rate-setting regulatory agency, the rate-setting proceedings of which often last for several years? Further, how is the court to decide the proper size of the price 'gap?' Must it be large enough for all independent competing firms to make a 'living profit,' no matter how inefficient they may be? . . . And how should the court respond when costs or demands change over time, as they inevitably will?" *Concord*, *supra*, at 25.

Some *amici* respond to these concerns by proposing a "transfer price test" for identifying an unlawful price squeeze: A price squeeze should be presumed if the upstream monopolist could not have made a profit by selling at its retail rates if it purchased inputs at its own wholesale rates. Brief for American Antitrust Institute (AAI) 30; Brief for COMPTEL 16–19; see *Ray* v. *Indiana & Mich. Elec. Co.*, 606 F. Supp. 757, 776–777 (ND Ill. 1984). Whether or not that test is administrable, it lacks any grounding in our antitrust jurisprudence. An upstream monopolist with no duty to deal is free to charge whatever wholesale price it would like; antitrust law does not prohibit lawfully obtained monopolies from charging monopoly prices. *Trinko*, *supra*, at 407 ("The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it

is an important element of the free-market system"). Similarly, the Sherman Act does not forbid—indeed, it *encourages*—aggressive price competition at the retail level, as long as the prices being charged are not predatory. *Brooke Group*, 509 U. S., at 223–224. If both the wholesale price and the retail price are independently lawful, there is no basis for imposing antitrust liability simply because a vertically integrated firm's wholesale price happens to be greater than or equal to its retail price.

2. *Amici* assert that there are circumstances in which price squeezes may harm competition. For example, they assert that price squeezes may raise entry barriers that fortify the upstream monopolist's position; they also contend that price squeezes may impair nonprice competition and innovation in the downstream market by driving independent firms out of business. See Brief for AAI 11–15; *Concord*, *supra*, at 23–24.

The problem, however, is that *amici* have not identified any independent competitive harm caused by price squeezes above and beyond the harm that would result from a duty-to-deal violation at the wholesale level or predatory pricing at the retail level. See 3A P. Areeda & H. Hovenkamp, Antitrust Law ¶ 767c, p. 126 (2d ed. 2002) ("[I]t is difficult to see any *competitive* significance [of a price squeeze] apart from the consequences of vertical integration itself"). To the extent a monopolist violates one of these doctrines, the plaintiffs have a remedy under existing law. We do not need to endorse a new theory of liability to prevent such harm.

IV

Lastly, as mentioned above, plaintiffs have asked us for leave to amend their complaint to bring a *Brooke Group* predatory pricing claim. We need not decide whether leave to amend should be granted. Our grant of certiorari was limited to the question whether price-squeeze claims are cognizable in the absence of an antitrust duty to deal. The

Court of Appeals addressed only AT&T's motion for judgment on the pleadings on the plaintiffs' *original* complaint.[4] For the reasons stated, we hold that the price-squeeze claims set forth in that complaint are not cognizable under the Sherman Act.

Plaintiffs have also filed an amended complaint, and the District Court concluded that this complaint, generously construed, could be read as alleging conduct that met the *Brooke Group* requirements for predatory pricing. App. to Pet. for Cert. 47a–52a, 56a. That order, however, applied the "no set of facts" pleading standard that we have since rejected as too lenient. See *Bell Atlantic Corp.* v. *Twombly*, 550 U. S. 544, 561–563 (2007). It is for the District Court on remand to consider whether the amended complaint states a claim upon which relief may be granted in light of the new pleading standard we articulated in *Twombly*, whether plaintiffs should be given leave to amend their complaint to bring a claim under *Brooke Group*, and such other matters properly before it. Even if the amended complaint is further amended to add a *Brooke Group* claim, it may not survive a motion to dismiss. For if AT&T can bankrupt the plaintiffs by refusing to deal altogether, the plaintiffs must demonstrate why the law prevents AT&T from putting them out of

[4] We note a procedural irregularity with this case: Normally, an amended complaint supersedes the original complaint. See 6 C. Wright & A. Miller, Federal Practice & Procedure § 1476, pp. 556–557 (2d ed. 1990). Here, the District Court addressed the amended complaint in its 2005 order, App. to Pet. for Cert. 36a–52a, but the court only certified its 2004 order—addressing the *original* complaint—for interlocutory appeal, *id.*, at 56a–57a. Both parties, as well as the Solicitor General, have expressed confusion about whether the amended complaint and the 2005 order are properly before this Court. See Brief for Petitioners 9, n. 6 (noting "some ambiguity" about which order was certified); Brief for United States as *Amicus Curiae* 17 ("[I]t is unclear whether the 2005 Order and the amended complaint are properly at issue in this interlocutory appeal"); Brief for Respondents 8–10. The Court of Appeals majority did not address any of the District Court's holdings from the 2005 order, so we decline to consider those issues at this time.

business by pricing them out of the market. Nevertheless, such questions are for the District Court to decide in the first instance. We do not address these issues here, as they are outside the scope of the question presented and were not addressed by the Court of Appeals in the decision below. See *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005) ("[W]e are a court of review, not of first view").

* * *

Trinko holds that a defendant with no antitrust duty to deal with its rivals has no duty to deal under the terms and conditions preferred by those rivals. 540 U. S., at 409–410. *Brooke Group* holds that low prices are only actionable under the Sherman Act when the prices are below cost and there is a dangerous probability that the predator will be able to recoup the profits it loses from the low prices. 509 U. S., at 222–224. In this case, plaintiffs have not stated a duty-to-deal claim under *Trinko* and have not stated a predatory pricing claim under *Brooke Group*. They have nonetheless tried to join a wholesale claim that cannot succeed with a retail claim that cannot succeed, and alchemize them into a new form of antitrust liability never before recognized by this Court. We decline the invitation to recognize such claims. Two wrong claims do not make one that is right.

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 BREYER, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join, concurring in the judgment.

I would accept respondents' concession that the Ninth Circuit majority's "price squeeze" holding is wrong, I would vacate the Circuit's decision, and I would remand the case in order to allow the District Court to determine whether respondents may proceed with their "predatory pricing" claim

as set forth in Judge Gould's dissenting Ninth Circuit opinion. *linkLine Communications, Inc.* v. *SBC California, Inc.*, 503 F. 3d 876, 887 (2007).

A "price squeeze" claim finds its natural home in a Sherman Act § 2 monopolization case where the Government as plaintiff seeks to show that a defendant's monopoly power rests, not upon "skill, foresight and industry," *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 430 (CA2 1945) *(Alcoa)*, but upon exclusionary conduct, *United States* v. *Grinnell Corp.*, 384 U. S. 563, 576 (1966). As this Court pointed out in *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, 540 U. S. 398 (2004), the "'means of illicit exclusion, like the means of legitimate competition, are myriad.'" *Id.*, at 414 (quoting *United States* v. *Microsoft Corp.*, 253 F. 3d 34, 58 (CADC 2001) (en banc) *(per curiam)*). They may involve a "course of dealing" that, even if profitable, indicates a "willingness to forsake short-term profits to achieve an anticompetitive end." *Trinko*, *supra*, at 409. See, *e. g.*, *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U. S. 585, 610–611 (1985); Complaint in *United States* v. *International Business Machines Corp.*, Civil Action No. 69 Civ. 200 (SDNY, filed Jan. 17, 1969), ¶ 20(c), reprinted in F. Fisher, J. McGowan, & J. Greenwood, Folded, Spindled, and Mutilated: Economic Analysis and *U. S.* v. *IBM*, App. 357 (1983). And, as Judge Hand wrote many years ago, a "price squeeze" may fall within that latter category. *Alcoa*, *supra*, at 437–438. As a matter of logic, it may be that a particular price squeeze can only be exclusionary if a refusal by the monopolist to sell to the "squeezed customer" would also be exclusionary. But a court, faced with a price squeeze rather than a refusal to deal, is unlikely to find the latter (hypothetical) question any easier to answer than the former.

I would try neither to answer these hypothetical questions here nor to foreshadow their answer. We have before us a regulated firm. During the time covered by the complaint,

petitioners were required to provide wholesale digital subscriber line (DSL) transport service as a common carrier, charging "just and reasonable" rates that were not "unreasonabl[y] discriminat[ory]." 47 U. S. C. §§ 201(b), 202(a) (2000 ed.). And, in my view, a purchaser from a regulated firm (which, if a natural monopolist, is lawfully such) cannot win an antitrust case simply by showing that it is "squeezed" between the regulated firm's wholesale price (to the plaintiff) and its retail price (to customers for whose business both firms compete). When a regulatory structure exists to deter and remedy anticompetitive harm, the costs of antitrust enforcement are likely to be greater than the benefits. See *Concord* v. *Boston Edison Co.*, 915 F. 2d 17, 26–29 (CA1 1990). Cf. 3 P. Areeda & D. Turner, Antitrust Law ¶¶ 834–836, pp. 344–355 (1978) (whether a particular course of conduct counts as "exclusionary" for antitrust purposes depends upon a host of factors, including, for example, the market position of the defendant, the nature of the market, and the nature of the defendant's conduct).

Unlike *Concord*, the regulators here controlled prices only at the wholesale level. See 915 F. 2d, at 29. But respondents do not claim that that regulatory fact makes any difference; and rightly so, for as far as I can tell, respondents could have gone to the regulators and asked for petitioners' wholesale prices to be lowered in light of the alleged price squeeze. Cf. *FPC* v. *Conway Corp.*, 426 U. S. 271, 279 (1976); 3 Areeda & Turner, *supra*, ¶ 726e, at 219–220.

Respondents now seek to show only that the defendant engaged in predatory pricing, within the terms of this Court's decision in *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209 (1993). The District Court can determine whether there is anything in the procedural history of this case that bars respondents from asserting their predatory pricing claim. And if not, it can decide the merits of that claim. As I said, I would remand the case so that it can do so.

Syllabus

PLEASANT GROVE CITY, UTAH, ET AL. *v.* SUMMUM

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

No. 07–665. Argued November 12, 2008—Decided February 25, 2009

Pioneer Park (Park), a public park in petitioner Pleasant Grove City (City), has at least 11 permanent, privately donated displays, including a Ten Commandments monument. In rejecting the request of respondent Summum, a religious organization, to erect a monument containing the Seven Aphorisms of Summum, the City explained that it limited Park monuments to those either directly related to the City's history or donated by groups with longstanding community ties. After the City put that policy and other criteria into writing, respondent renewed its request, but did not describe the monument's historical significance or respondent's connection to the community. The City rejected the request, and respondent filed suit, claiming that the City and petitioner officials had violated the First Amendment's Free Speech Clause by accepting the Ten Commandments monument but rejecting respondent's proposed monument. The District Court denied respondent's preliminary injunction request, but the Tenth Circuit reversed. Noting that it had previously found the Ten Commandments monument to be private rather than government speech and that public parks have traditionally been regarded as public forums, the court held that, because the exclusion of the monument was unlikely to survive strict scrutiny, the City was required to erect it immediately.

Held: The placement of a permanent monument in a public park is a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause. Pp. 467–481.

(a) Because that Clause restricts government regulation of private speech but not government speech, whether petitioners were engaging in their own expressive conduct or providing a forum for private speech determines which precedents govern here. Pp. 467–470.

(1) A government entity "is entitled to say what it wishes," *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833, and to select the views that it wants to express, see, *e. g.*, *Rust* v. *Sullivan*, 500 U. S. 173, 194. It may exercise this same freedom when it receives private assistance for the purpose of delivering a government-controlled message. See *Johanns* v. *Livestock Marketing Assn.*, 544 U. S. 550, 562. This does not mean that there are no restraints on government speech. For example, government speech must comport with the Es-

tablishment Clause. In addition, public officials' involvement in advocacy may be limited by law, regulation, or practice; and a government entity is ultimately "accountable to the electorate and the political process for its advocacy," *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 235. Pp. 467–469.

(2) In contrast, government entities are strictly limited in their ability to regulate private speech in "traditional public fora." *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 800. Reasonable time, place, and manner restrictions are allowed, see *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 45, but content-based restrictions must satisfy strict scrutiny, *i. e.*, they must be narrowly tailored to serve a compelling government interest, see *Cornelius, supra*, at 800. Restrictions based on viewpoint are also prohibited. *Carey* v. *Brown*, 447 U. S. 455, 463. Government restrictions on speech in a "designated public forum" are subject to the same strict scrutiny as restrictions in a traditional public forum. *Cornelius, supra*, at 800. And where government creates a forum that is limited to use by certain groups or dedicated to the discussion of certain subjects, *Perry Ed. Assn.*, *supra*, at 46, n. 7, it may impose reasonable and viewpoint-neutral restrictions, see *Good News Club* v. *Milford Central School*, 533 U. S. 98, 106–107. Pp. 469–470.

(b) Permanent monuments displayed on public property typically represent government speech. Governments have long used monuments to speak to the public. Thus, a government-commissioned and government-financed monument placed on public land constitutes government speech. So, too, are privately financed and donated monuments that the government accepts for public display on government land. While government entities regularly accept privately funded or donated monuments, their general practice has been one of selective receptivity. Because city parks play an important role in defining the identity that a city projects to its residents and the outside world, cities take care in accepting donated monuments, selecting those that portray what the government decisionmakers view as appropriate for the place in question, based on esthetics, history, and local culture. The accepted monuments are meant to convey and have the effect of conveying a government message and thus constitute government speech. Pp. 470–472.

(c) Here, the Park's monuments clearly represent government speech. Although many were donated in completed form by private entities, the City has "effectively controlled" their messages by exercising "final approval authority" over their selection. *Johanns*, *supra*, at 560–561. The City has selected monuments that present the image that the City wishes to project to Park visitors; it has taken ownership of most of the

monuments in the Park, including the Ten Commandments monument; and it has now expressly set out selection criteria. Pp. 472–473.

(d) Respondent's legitimate concern that the government speech doctrine not be used as a subterfuge for favoring certain viewpoints does not mean that a government entity should be required to embrace publicly a privately donated monument's "message" in order to escape Free Speech Clause restrictions. A city engages in expressive conduct by accepting and displaying a privately donated monument, but it does not necessarily endorse the specific meaning that any particular donor sees in the monument. A government's message may be altered by the subsequent addition of other monuments in the same vicinity. It may also change over time. Pp. 473–478.

(e) "[P]ublic forum principles . . . are out of place in the context of this case." *United States* v. *American Library Assn., Inc.*, 539 U. S. 194, 205. The forum doctrine applies where a government property or program is capable of accommodating a large number of public speakers without defeating the essential function of the land or program, but public parks can accommodate only a limited number of permanent monuments. If governments must maintain viewpoint neutrality in selecting donated monuments, they must either prepare for cluttered parks or face pressure to remove longstanding and cherished monuments. Were public parks considered traditional public forums for the purpose of erecting privately donated monuments, most parks would have little choice but to refuse all such donations. And if forum analysis would lead almost inexorably to closing of the forum, forum analysis is out of place. *Capitol Square Review and Advisory Bd.* v. *Pinette*, 515 U. S. 753, distinguished. Pp. 478–480.

483 F. 3d 1044, reversed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, in which GINSBURG, J., joined, *post*, p. 481. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 482. BREYER, J., filed a concurring opinion, *post*, p. 484. SOUTER, J., filed an opinion concurring in the judgment, *post*, p. 485.

Jay Alan Sekulow argued the cause for petitioners. With him on the briefs were *Stuart J. Roth*, *Colby M. May*, *James M. Henderson, Sr.*, *Walter M. Weber*, *Thomas P. Monaghan*, *Francis J. Manion*, *Edward L. White III*, *Geoffrey R. Surtees*, *John P. Tuskey*, *Laura B. Hernandez*, *Patricia A. Mil-*

lett, *Vincent P. McCarthy*, *Ann-Louise Lohr*, *Kristina J. Wenberg*, *Shannon D. Woodruff*, and *Erik M. Zimmerman.*

Deputy Solicitor General Joseffer argued the cause for the United States as *amicus curiae* urging reversal. On the brief were former *Solicitor General Garre*, *Assistant Attorney General Katsas*, *Deputy Solicitor General Kneedler*, *Toby J. Heytens*, *Robert M. Loeb*, *Lowell V. Sturgill, Jr.*, and *Randolph J. Myers.*

Pamela Harris argued the cause for respondent. With her on the brief were *Walter Dellinger*, *Irving L. Gornstein*, *Shannon Pazur*, *Brian M. Barnard*, and *Martin S. Lederman.**

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*Briefs of *amici curiae* urging reversal were filed for the Commonwealth of Virginia et al. by *Robert F. McDonnell*, Attorney General of Virginia, *William E. Thro*, State Solicitor General, *Stephen R. McCullough*, Deputy State Solicitor General, and *William C. Mims*, Chief Deputy Attorney General, by *Roberto J. Sánchez-Ramos*, Secretary of Justice of Puerto Rico, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *James D. Caldwell* of Louisiana, *Michael A. Cox* of Michigan, *Kelly A. Ayotte* of New Hampshire, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, and *Mark L. Shurtleff* of Utah; for the City of New York by *Michael A. Cardozo*, *Leonard J. Koerner*, *Edward F. X. Hart*, and *Jane L. Gordon;* for the City of Casper, Wyoming, et al. by *Patrick T. Gillen*, *William C. Luben*, *Kathryn L. Walker*, *James L. Charles*, *Charles Whitman*, *Robert West*, and *Patricia K. Kelly;* for the Alliance Defense Fund et al. by *Benjamin W. Bull*, *Jordan W. Lorence*, *Kevin H. Theriot*, and *William L. Saunders;* for the American Catholic Lawyers Association by *Edward C. Lyons;* for the American Humanist Association et al. by *Robert V. Ritter;* for the American Jewish Committee et al. by *Ayesha N. Khan*, *Richard B. Katskee*, *Aram A. Schvey*, *Heather L. Weaver*, *Jeffrey P. Sinensky*, *Kara H. Stein*, *Steven M. Freeman*, *Steven C. Sheinberg*, *K. Hollyn Hollman*, *Kathryn Kolbert*, and *Judith E. Schaeffer;* for the American Legion et al. by *Kelly J. Shackelford*, *Hiram S. Sasser III*, *Daniel J. Murphy*, *Philip B. Onderdonk*, *Jr.*, and *Lawrence M. Maher;* for the Becket Fund for Religious Liberty et al. by *Kevin J. Hasson* and *Eric C. Rassbach;* for Faith and Action et al. by *Bernard P. Reese;* for the Foundation for Free Expression by *Deborah J. Dewart* and *James*

JUSTICE ALITO delivered the opinion of the Court.

This case presents the question whether the Free Speech Clause of the First Amendment entitles a private group to insist that a municipality permit it to place a permanent monument in a city park in which other donated monuments were previously erected. The Court of Appeals held that the municipality was required to accept the monument because a public park is a traditional public forum. We conclude, however, that although a park is a traditional public forum for speeches and other transitory expressive acts, the display of a permanent monument in a public park is not a form of expression to which forum analysis applies. Instead, the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause.

I

A

Pioneer Park (or Park) is a 2.5-acre public park located in the Historic District of Pleasant Grove City (or City) in Utah. The Park currently contains 15 permanent displays, at least 11 of which were donated by private groups or indi-

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L. Hirsen; for the Foundation for Moral Law et al. by *Gregory M. Jones* and *Benjamin D. Dupré;* for the International Municipal Lawyers Association by *Mary Jean Dolan;* for the James Madison Center for Free Speech by *James Bopp, Jr.;* for the Jewish Social Policy Action Network et al. by *Theodore R. Mann, Seth Kreimer,* and *Jeffrey I. Pasek;* for Liberty Counsel by *Mathew D. Staver, Anita L. Staver, Steve Crampton,* and *Mary E. McAlister;* and for the National Legal Foundation by *Steven W. Fitschen* and *Barry C. Hodge.*

Marc D. Stern filed a brief for the American Jewish Congress as *amicus curiae* urging affirmance.

Briefs of *amici curiae* were filed for the Boy Scouts of America by *George A. Davidson, Carla A. Kerr, Savvas A. Foukas, Scott H. Christensen,* and *David K. Park;* for the Center for Inquiry et al. by *Barry Levenstam* and *Ronald A. Lindsay;* and for the Rutherford Institute by *John W. Whitehead* and *James J. Knicely.*

viduals. These include a historic granary, a wishing well, the City's first fire station, a September 11 monument, and a Ten Commandments monument donated by the Fraternal Order of Eagles in 1971.

Respondent Summum is a religious organization founded in 1975 and headquartered in Salt Lake City, Utah. On two separate occasions in 2003, Summum's president wrote a letter to the City's mayor requesting permission to erect a "stone monument," which would contain "the Seven Aphorisms of SUMMUM"[1] and be similar in size and nature to the Ten Commandments monument. App. 57, 59. The City denied the requests and explained that its practice was to limit monuments in the Park to those that "either (1) directly relate to the history of Pleasant Grove, or (2) were donated by groups with long-standing ties to the Pleasant Grove community." *Id.*, at 61. The following year, the City passed a resolution putting this policy into writing. The resolution also mentioned other criteria, such as safety and esthetics.

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[1] Respondent's brief describes the church and the Seven Aphorisms as follows:

"The Summum church incorporates elements of Gnostic Christianity, teaching that spiritual knowledge is experiential and that through devotion comes revelation, which 'modifies human perceptions, and transfigures the individual.' *See* The Teachings of Summum are the Teachings of Gnostic Christianity, http://www.summum.us/philosophy/gnosticism.shtml (visited Aug. 15, 2008).

"Central to Summum religious belief and practice are the Seven Principles of Creation (the 'Seven Aphorisms'). According to Summum doctrine, the Seven Aphorisms were inscribed on the original tablets handed down by God to Moses on Mount Sinai. . . . Because Moses believed that the Israelites were not ready to receive the Aphorisms, he shared them only with a select group of people. In the Summum Exodus account, Moses then destroyed the original tablets, traveled back to Mount Sinai, and returned with a second set of tablets containing the Ten Commandments. *See* The Aphorisms of Summum and the Ten Commandments, http://www.summum.us/philosophy/tencommandments.shtml (visited Aug. 15, 2008)." Brief for Respondent 1–2.

In May 2005, respondent's president again wrote to the mayor asking to erect a monument, but the letter did not describe the monument, its historical significance, or Summum's connection to the community. The city council rejected this request.

B

In 2005, respondent filed this action against the City and various local officials (petitioners), asserting, among other claims, that petitioners had violated the Free Speech Clause of the First Amendment by accepting the Ten Commandments monument but rejecting the proposed Seven Aphorisms monument. Respondent sought a preliminary injunction directing the City to permit Summum to erect its monument in Pioneer Park. After the District Court denied Summum's preliminary injunction request, No. 2:05CV00638, 2006 WL 3421838 (D Utah, Nov. 22, 2006), respondent appealed, pressing solely its free speech claim.

A panel of the Tenth Circuit reversed. 483 F. 3d 1044 (2007). The panel noted that it had previously found the Ten Commandments monument to be private rather than government speech. See *Summum* v. *Ogden*, 297 F. 3d 995 (2002). Noting that public parks have traditionally been regarded as public forums, the panel held that the City could not reject the Seven Aphorisms monument unless it had a compelling justification that could not be served by more narrowly tailored means. See 483 F. 3d, at 1054. The panel then concluded that the exclusion of respondent's monument was unlikely to survive this strict scrutiny, and the panel therefore held that the City was required to erect Summum's monument immediately.

The Tenth Circuit denied the City's petition for rehearing en banc by an equally divided vote. 499 F. 3d 1170 (2007). Judge Lucero dissented, arguing that the Park was not a traditional public forum for the purpose of displaying monuments. *Id.*, at 1171. Judge McConnell also dissented, con-

tending that the monuments in the Park constitute government speech. *Id.*, at 1174.

We granted certiorari, 552 U. S. 1294 (2008), and now reverse.

II

No prior decision of this Court has addressed the application of the Free Speech Clause to a government entity's acceptance of privately donated, permanent monuments for installation in a public park, and the parties disagree sharply about the line of precedents that governs this situation. Petitioners contend that the pertinent cases are those concerning government speech. Respondent, on the other hand, agrees with the Court of Appeals panel that the applicable cases are those that analyze private speech in a public forum. The parties' fundamental disagreement thus centers on the nature of petitioners' conduct when they permitted privately donated monuments to be erected in Pioneer Park. Were petitioners engaging in their own expressive conduct? Or were they providing a forum for private speech?

A

If petitioners were engaging in their own expressive conduct, then the Free Speech Clause has no application. The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. See *Johanns* v. *Livestock Marketing Assn.*, 544 U. S. 550, 553 (2005) ("[T]he Government's own speech . . . is exempt from First Amendment scrutiny"); *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U. S. 94, 139, n. 7 (1973) (Stewart, J., concurring) ("Government is not restrained by the First Amendment from controlling its own expression"). A government entity has the right to "speak for itself." *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 229 (2000). "[I]t is entitled to say what it wishes," *Rosenberger* v. *Rector and Visitors of Univ.*

of Va., 515 U. S. 819, 833 (1995), and to select the views that it wants to express, see *Rust* v. *Sullivan*, 500 U. S. 173, 194 (1991); *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 598 (1998) (SCALIA, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view").

Indeed, it is not easy to imagine how government could function if it lacked this freedom. "If every citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it radically transformed." *Keller* v. *State Bar of Cal.*, 496 U. S. 1, 12–13 (1990). See also *Johanns*, 544 U. S., at 574 (SOUTER, J., dissenting) ("To govern, government has to say something, and a First Amendment heckler's veto of any forced contribution to raising the government's voice in the 'marketplace of ideas' would be out of the question" (footnote omitted)).

A government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message. See *id.*, at 562 (opinion of the Court) (where the government controls the message, "it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources"); *Rosenberger*, *supra*, at 833 (a government entity may "regulate the content of what is or is not expressed . . . when it enlists private entities to convey its own message").

This does not mean that there are no restraints on government speech. For example, government speech must comport with the Establishment Clause. The involvement of public officials in advocacy may be limited by law, regulation, or practice. And of course, a government entity is ultimately "accountable to the electorate and the political process for its advocacy." *Southworth*, 529 U. S., at 235. "If the

citizenry objects, newly elected officials later could espouse some different or contrary position." *Ibid.*

B

While government speech is not restricted by the Free Speech Clause, the government does not have a free hand to regulate private speech on government property. This Court long ago recognized that members of the public retain strong free speech rights when they venture into public streets and parks, "which 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 45 (1983) (quoting *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 515 (1939) (opinion of Roberts, J.)). In order to preserve this freedom, government entities are strictly limited in their ability to regulate private speech in such "traditional public fora." *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 800 (1985). Reasonable time, place, and manner restrictions are allowed, see *Perry Ed. Assn.*, *supra*, at 45, but any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest, see *Cornelius*, *supra*, at 800, and restrictions based on viewpoint are prohibited, see *Carey* v. *Brown*, 447 U. S. 455, 463 (1980).

With the concept of the traditional public forum as a starting point, this Court has recognized that members of the public have free speech rights on other types of government property and in certain other government programs that share essential attributes of a traditional public forum. We have held that a government entity may create "a designated public forum" if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose. See *Cornelius*, 473 U. S., at 802. Gov-

ernment restrictions on speech in a designated public forum are subject to the same strict scrutiny as restrictions in a traditional public forum. *Id.*, at 800.

The Court has also held that a government entity may create a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects. *Perry Ed. Assn.*, *supra*, at 46, n. 7. In such a forum, a government entity may impose restrictions on speech that are reasonable and viewpoint neutral. See *Good News Club* v. *Milford Central School*, 533 U. S. 98, 106–107 (2001).

III

There may be situations in which it is difficult to tell whether a government entity is speaking on its own behalf or is providing a forum for private speech, but this case does not present such a situation. Permanent monuments displayed on public property typically represent government speech.

Governments have long used monuments to speak to the public. Since ancient times, kings, emperors, and other rulers have erected statues of themselves to remind their subjects of their authority and power. Triumphal arches, columns, and other monuments have been built to commemorate military victories and sacrifices and other events of civic importance. A monument, by definition, is a structure that is designed as a means of expression. When a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure. Neither the Court of Appeals nor respondent disputes the obvious proposition that a monument that is commissioned and financed by a government body for placement on public land constitutes government speech.

Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the govern-

ment accepts and displays to the public on government land. It certainly is not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated. And because property owners typically do not permit the construction of such monuments on their land, persons who observe donated monuments routinely—and reasonably—interpret them as conveying some message on the property owner's behalf. In this context, there is little chance that observers will fail to appreciate the identity of the speaker. This is true whether the monument is located on private property or on public property, such as national, state, or city park land.

We think it is fair to say that throughout our Nation's history, the general government practice with respect to donated monuments has been one of selective receptivity. A great many of the monuments that adorn the Nation's public parks were financed with private funds or donated by private parties. Sites managed by the National Park Service contain thousands of privately designed or funded commemorative objects, including the Statue of Liberty, the Marine Corps War Memorial (the Iwo Jima monument), and the Vietnam Veterans Memorial. States and cities likewise have received thousands of donated monuments. See, *e. g.*, App. to Brief for International Municipal Lawyers Association as *Amicus Curiae* 15a–29a (hereinafter IMLA Brief) (listing examples); Brief for American Legion et al. as *Amici Curiae* 7, and n. 2 (same). By accepting monuments that are privately funded or donated, government entities save tax dollars and are able to acquire monuments that they could not have afforded to fund on their own.

But while government entities regularly accept privately funded or donated monuments, they have exercised selectivity. An example discussed by the city of New York as *amicus curiae* is illustrative. In the wake of the controversy generated in 1876 when the city rejected the donor's

proposed placement of a donated monument to honor Daniel Webster, the city adopted rules governing the acceptance of artwork for permanent placement in city parks, requiring, among other things, that "any proposed gift of art had to be viewed either in its finished condition or as a model before acceptance." Brief for City of New York as *Amicus Curiae* 4–5 (hereinafter NYC Brief). Across the country, "municipalities generally exercise editorial control over donated monuments through prior submission requirements, design input, requested modifications, written criteria, and legislative approvals of specific content proposals." IMLA Brief 21.

Public parks are often closely identified in the public mind with the government unit that owns the land. City parks—ranging from those in small towns, like Pioneer Park in Pleasant Grove City, to those in major metropolises, like Central Park in New York City—commonly play an important role in defining the identity that a city projects to its own residents and to the outside world. Accordingly, cities and other jurisdictions take some care in accepting donated monuments. Government decisionmakers select the monuments that portray what they view as appropriate for the place in question, taking into account such content-based factors as esthetics, history, and local culture. The monuments that are accepted, therefore, are meant to convey and have the effect of conveying a government message, and they thus constitute government speech.

IV

A

In this case, it is clear that the monuments in Pleasant Grove's Pioneer Park represent government speech. Although many of the monuments were not designed or built by the City and were donated in completed form by private entities, the City decided to accept those donations and to display them in the Park. Respondent does not claim that

the City ever opened up the Park for the placement of whatever permanent monuments might be offered by private donors. Rather, the City has "effectively controlled" the messages sent by the monuments in the Park by exercising "final approval authority" over their selection. *Johanns*, 544 U. S., at 560–561. The City has selected those monuments that it wants to display for the purpose of presenting the image of the City that it wishes to project to all who frequent the Park; it has taken ownership of most of the monuments in the Park, including the Ten Commandments monument that is the focus of respondent's concern; and the City has now expressly set forth the criteria it will use in making future selections.

B

Respondent voices the legitimate concern that the government speech doctrine not be used as a subterfuge for favoring certain private speakers over others based on viewpoint. Respondent's suggested solution is to require a government entity accepting a privately donated monument to go through a formal process of adopting a resolution publicly embracing "the message" that the monument conveys. See Brief for Respondent 33–34, 57.

We see no reason for imposing a requirement of this sort. The parks of this country contain thousands of donated monuments that government entities have used for their own expressive purposes, usually without producing the sort of formal documentation that respondent now says is required to escape Free Speech Clause restrictions. Requiring all of these jurisdictions to go back and proclaim formally that they adopt all of these monuments as their own expressive vehicles would be a pointless exercise that the Constitution does not mandate.

In this case, for example, although respondent argues that Pleasant Grove City has not adequately "controll[ed] the message," *id.*, at 31, of the Ten Commandments monument, the City took ownership of that monument and put it on per-

manent display in a park that it owns and manages and that is linked to the City's identity. All rights previously possessed by the monument's donor have been relinquished. The City's actions provided a more dramatic form of adoption than the sort of formal endorsement that respondent would demand, unmistakably signifying to all Park visitors that the City intends the monument to speak on its behalf. And the City has made no effort to abridge the traditional free speech rights—the right to speak, distribute leaflets, etc.—that may be exercised by respondent and others in Pioneer Park.

What respondent demands, however, is that the City "adopt" or "embrace" "the message" that it associates with the monument. *Id.*, at 33–34, 57. Respondent seems to think that a monument can convey only one "message"—which is, presumably, the message intended by the donor—and that, if a government entity that accepts a monument for placement on its property does not formally embrace *that* message, then the government has not engaged in expressive conduct.

This argument fundamentally misunderstands the way monuments convey meaning. The meaning conveyed by a monument is generally not a simple one like "'Beef. It's What's for Dinner.'" *Johanns*, *supra*, at 554. Even when a monument features the written word, the monument may be intended to be interpreted, and may in fact be interpreted by different observers, in a variety of ways. Monuments called to our attention by the briefing in this case illustrate this phenomenon.

What, for example, is "the message" of the Greco-Roman mosaic of the word "Imagine" that was donated to New York City's Central Park in memory of John Lennon? See NYC Brief 18; App. to *id.*, at A5. Some observers may "imagine" the musical contributions that John Lennon would have made if he had not been killed. Others may think of the lyrics of the Lennon song that obviously inspired the mosaic

and may "imagine" a world without religion, countries, possessions, greed, or hunger.[2]

Or, to take another example, what is "the message" of the "large bronze statue displaying the word 'peace' in many world languages" that is displayed in Fayetteville, Arkansas?[3]

These text-based monuments are almost certain to evoke different thoughts and sentiments in the minds of different observers, and the effect of monuments that do not contain text is likely to be even more variable. Consider, for exam-

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[2] The lyrics are as follows:

"Imagine there's no heaven
It's easy if you try
No hell below us
Above us only sky
Imagine all the people
Living for today . . .

"Imagine there's no countries
It isn't hard to do
Nothing to kill or die for
And no religion too
Imagine all the people
Living life in peace . . .

"You may say I'm a dreamer
But I'm not the only one
I hope someday you'll join us
And the world will be as one

"Imagine no possessions
I wonder if you can
No need for greed or hunger
A brotherhood of man
Imagine all the people
Sharing all the world . . .

"You may say I'm a dreamer
But I'm not the only one
I hope someday you'll join us
And the world will live as one." J. Lennon, Imagine, on Imagine (Apple Records 1971).

[3] See IMLA Brief 6–7.

ple, the statue of Pancho Villa that was given to the city of Tucson, Arizona, in 1981 by the Government of Mexico with, according to a Tucson publication, "a wry sense of irony."[4] Does this statue commemorate a "revolutionary leader who advocated for agrarian reform and the poor" or "a violent bandit"? IMLA Brief 13.

Contrary to respondent's apparent belief, it frequently is not possible to identify a single "message" that is conveyed by an object or structure, and consequently, the thoughts or sentiments expressed by a government entity that accepts and displays such an object may be quite different from those of either its creator or its donor.[5] By accepting a privately donated monument and placing it on city property, a city engages in expressive conduct, but the intended and perceived significance of that conduct may not coincide with the thinking of the monument's donor or creator. Indeed, when a privately donated memorial is funded by many small donations, the donors themselves may differ in their interpretation of the monument's significance.[6] By accepting such a monument, a government entity does not necessarily endorse

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[4] The Presidio Trail: A Historical Walking Tour of Downtown Tucson, online at http://www.visittucson.org/includes/media/docs/DowntownTour.pdf (as visited Feb. 24, 2009, and available in Clerk of Court's case file).

[5] Museum collections illustrate this phenomenon. Museums display works of art that express many different sentiments, and the significance of a donated work of art to its creator or donor may differ markedly from a museum's reasons for accepting and displaying the work. For example, a painting of a religious scene may have been commissioned and painted to express religious thoughts and feelings. Even if the painting is donated to the museum by a patron who shares those thoughts and feelings, it does not follow that the museum, by displaying the painting, intends to convey or is perceived as conveying the same "message."

[6] For example, the Vietnam Veterans Memorial Fund is a private organization that obtained funding from over 650,000 donors for the construction of the memorial itself. These donors expressed a wide range of personal sentiments in contributing money for the memorial. See, *e. g.*, J. Scruggs & J. Swerdlow, To Heal a Nation: The Vietnam Veterans Memorial 23–28, 159 (1985).

the specific meaning that any particular donor sees in the monument.

The message that a government entity conveys by allowing a monument to remain on its property may also be altered by the subsequent addition of other monuments in the same vicinity. For example, following controversy over the original design of the Vietnam Veterans Memorial, a compromise was reached that called for the nearby addition of a flagstaff and bronze Three Soldiers statue, which many believed changed the overall effect of the memorial. See, *e. g.*, J. Mayo, War Memorials as Political Landscape: The American Experience and Beyond 202–203, 205 (1988); K. Hass, Carried to the Wall: American Memory and the Vietnam Veterans Memorial 15–18 (1998).

The "message" conveyed by a monument may change over time. A study of war memorials found that "people reinterpret" the meaning of these memorials as "historical interpretations" and "the society around them changes." Mayo, *supra*, at 8–9.

A striking example of how the interpretation of a monument can evolve is provided by one of the most famous and beloved public monuments in the United States, the Statue of Liberty. The statue was given to this country by the Third French Republic to express republican solidarity and friendship between the two countries. See J. Res. 6, 44th Cong., 2d Sess. (1877), 19 Stat. 410 (accepting the statue as an "expressive and felicitous memorial of the sympathy of the citizens of our sister Republic"). At the inaugural ceremony, President Cleveland saw the statue as an emblem of international friendship and the widespread influence of American ideals. See Inauguration of the Statue of Liberty Enlightening the World 30 (1887). Only later did the statue come to be viewed as a beacon welcoming immigrants to a land of freedom. See Public Papers of the Presidents, Ronald Reagan, Vol. 2, July 3, 1986, pp. 918–919 (1989), Remarks at the Opening Ceremonies of the Statue of Liberty Centen-

nial Celebration in New York, New York; J. Higham, The Transformation of the Statue of Liberty, in Send These To Me 74–80 (rev. ed. 1984).

C

Respondent and the Court of Appeals analogize the installation of permanent monuments in a public park to the delivery of speeches and the holding of marches and demonstrations, and they thus invoke the rule that a public park is a traditional public forum for these activities. But "public forum principles . . . are out of place in the context of this case." *United States* v. *American Library Assn., Inc.*, 539 U. S. 194, 205 (2003) (plurality opinion). The forum doctrine has been applied in situations in which government-owned property or a government program was capable of accommodating a large number of public speakers without defeating the essential function of the land or the program. For example, a park can accommodate many speakers and, over time, many parades and demonstrations. The Combined Federal Campaign permits hundreds of groups to solicit donations from federal employees. See *Cornelius*, 473 U. S., at 804–805. A public university's student activity fund can provide money for many campus activities. See *Rosenberger*, 515 U. S., at 825. A public university's buildings may offer meeting space for hundreds of student groups. See *Widmar* v. *Vincent*, 454 U. S. 263, 274–275 (1981). A school system's internal mail facilities can support the transmission of many messages to and from teachers and school administrators. See *Perry Ed. Assn.*, 460 U. S., at 39, 46–47. See also *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666, 680–681 (1998) (noting that allowing any candidate to participate in a televised political debate would be burdensome on "logistical grounds" and "would result in less speech, not more").

By contrast, public parks can accommodate only a limited number of permanent monuments. Public parks have been used, " 'time out of mind, . . . for purposes of assembly, com-

municating thoughts between citizens, and discussing public questions,'" *Perry Ed. Assn.*, *supra*, at 45 (quoting *Hague*, 307 U. S., at 515 (opinion of Roberts, J.)), but "one would be hard pressed to find a 'long tradition' of allowing people to permanently occupy public space with any manner of monuments," 499 F. 3d, at 1173 (Lucero, J., dissenting from denial of rehearing en banc).

Speakers, no matter how long-winded, eventually come to the end of their remarks; persons distributing leaflets and carrying signs at some point tire and go home; monuments, however, endure. They monopolize the use of the land on which they stand and interfere permanently with other uses of public space. A public park, over the years, can provide a soapbox for a very large number of orators—often, for all who want to speak—but it is hard to imagine how a public park could be opened up for the installation of permanent monuments by every person or group wishing to engage in that form of expression.

Respondent contends that this issue "can be dealt with through content-neutral time, place and manner restrictions, including the option of a ban on all unattended displays." Brief for Respondent 14. On this view, when France presented the Statue of Liberty to the United States in 1884, this country had the option of either (1) declining France's offer or (2) accepting the gift, but providing a comparable location in the harbor of New York for other statues of a similar size and nature (*e. g.*, a Statue of Autocracy, if one had been offered by, say, the German Empire or Imperial Russia).

While respondent and some of its *amici* deride the fears expressed about the consequences of the Court of Appeals holding in this case, those concerns are well founded. If government entities must maintain viewpoint neutrality in their selection of donated monuments, they must either "brace themselves for an influx of clutter" or face the pressure to remove longstanding and cherished monuments.

See 499 F. 3d, at 1175 (McConnell, J., dissenting from denial of rehearing en banc). Every jurisdiction that has accepted a donated war memorial may be asked to provide equal treatment for a donated monument questioning the cause for which the veterans fought. New York City, having accepted a donated statue of one heroic dog (Balto, the sled dog who brought medicine to Nome, Alaska, during a diphtheria epidemic)[7] may be pressed to accept monuments for other dogs who are claimed to be equally worthy of commemoration. The obvious truth of the matter is that if public parks were considered to be traditional public forums for the purpose of erecting privately donated monuments, most parks would have little choice but to refuse all such donations. And where the application of forum analysis would lead almost inexorably to closing of the forum, it is obvious that forum analysis is out of place.

Respondent compares the present case to *Capitol Square Review and Advisory Bd.* v. *Pinette*, 515 U. S. 753 (1995), but that case involved a very different situation—a request by a private group, the Ku Klux Klan, to erect a cross for a period of 16 days on public property that had been opened up for similar temporary displays, including a Christmas tree and a menorah. See *id.*, at 758. Although some public parks can accommodate and may be made generally available for temporary private displays, the same is rarely true for permanent monuments.

To be sure, there are limited circumstances in which the forum doctrine might properly be applied to a permanent monument—for example, if a town created a monument on which all of its residents (or all those meeting some other criterion) could place the name of a person to be honored or some other private message. But as a general matter, forum analysis simply does not apply to the installation of permanent monuments on public property.

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[7] See NYC Brief 2; App. to Brief for American Catholic Lawyers Association as *Amicus Curiae* 1a–10.

V

In sum, we hold that the City's decision to accept certain privately donated monuments while rejecting respondent's is best viewed as a form of government speech. As a result, the City's decision is not subject to the Free Speech Clause, and the Court of Appeals erred in holding otherwise. We therefore reverse.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring.

This case involves a property owner's rejection of an offer to place a permanent display on its land. While I join the Court's persuasive opinion, I think the reasons justifying the city's refusal would have been equally valid if its acceptance of the monument, instead of being characterized as "government speech," had merely been deemed an implicit endorsement of the donor's message. See *Capitol Square Review and Advisory Bd.* v. *Pinette*, 515 U. S. 753, 801–802 (1995) (STEVENS, J., dissenting).

To date, our decisions relying on the recently minted government speech doctrine to uphold government action have been few and, in my view, of doubtful merit. See, *e. g.*, *Garcetti* v. *Ceballos*, 547 U. S. 410 (2006); *Johanns* v. *Livestock Marketing Assn.*, 544 U. S. 550 (2005); *Rust* v. *Sullivan*, 500 U. S. 173 (1991). The Court's opinion in this case signals no expansion of that doctrine. And by joining the Court's opinion, I do not mean to indicate agreement with our earlier decisions. Unlike other decisions relying on the government speech doctrine, our decision in this case excuses no retaliation for, or coercion of, private speech. Cf. *Garcetti*, 547 U. S., at 438 (SOUTER, J., dissenting); *Rust*, 500 U. S., at 212 (Blackmun, J., dissenting). Nor is it likely, given the near certainty that observers will associate permanent displays with the governmental property owner, that the gov-

ernment will be able to avoid political accountability for the views that it endorses or expresses through this means. Cf. *Johanns*, 544 U. S., at 571–572 (SOUTER, J., dissenting). Finally, recognizing permanent displays on public property as government speech will not give the government free license to communicate offensive or partisan messages. For even if the Free Speech Clause neither restricts nor protects government speech, government speakers are bound by the Constitution's other proscriptions, including those supplied by the Establishment and Equal Protection Clauses. Together with the checks imposed by our democratic processes, these constitutional safeguards ensure that the effect of today's decision will be limited.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

As framed and argued by the parties, this case presents a question under the Free Speech Clause of the First Amendment. I agree with the Court's analysis of that question and join its opinion in full. But it is also obvious that from the start, the case has been litigated in the shadow of the First Amendment's *Establishment* Clause: the city wary of associating itself too closely with the Ten Commandments monument displayed in the park, lest that be deemed a breach in the so-called "wall of separation between church and State," *Reynolds* v. *United States*, 98 U. S. 145, 164 (1879); respondent exploiting that hesitation to argue that the monument is not government speech because the city has not sufficiently "adopted" its message. Respondent menacingly observed that while the city could have formally adopted the monument as its own, that "might of course raise Establishment Clause issues." Brief for Respondent 34, n. 11.

The city ought not fear that today's victory has propelled it from the Free Speech Clause frying pan into the Establishment Clause fire. Contrary to respondent's intimations,

there are very good reasons to be confident that the park displays do not violate *any* part of the First Amendment.

In *Van Orden* v. *Perry*, 545 U. S. 677 (2005), this Court upheld against Establishment Clause challenge a virtually identical Ten Commandments monument, donated by the very same organization (the Fraternal Order of Eagles), which was displayed on the grounds surrounding the Texas State Capitol. Nothing in that decision suggested that the outcome turned on a finding that the monument was only "private" speech. To the contrary, all the Justices agreed that government speech was at issue, but the Establishment Clause argument was nonetheless rejected. For the plurality, that was because the Ten Commandments "have an undeniable historical meaning" in addition to their "religious significance," *id.*, at 690 (opinion of Rehnquist, C. J.). JUSTICE BREYER, concurring in the judgment, agreed that the monument conveyed a permissible secular message, as evidenced by its location in a park that contained multiple monuments and historical markers; by the fact that it had been donated by the Eagles "as part of that organization's efforts to combat juvenile delinquency"; and by the length of time (40 years) for which the monument had gone unchallenged. *Id.*, at 701–703. See also *id.*, at 739–740 (SOUTER, J., dissenting).

Even accepting the narrowest reading of the narrowest opinion necessary to the judgment in *Van Orden*, there is little basis to distinguish the monument in this case: Pioneer Park includes "15 permanent displays," *ante*, at 464 (opinion of the Court); it was donated by the Eagles as part of its national effort to combat juvenile delinquency, Brief for Respondent 3; and it was erected in 1971, *ibid.*, which means it is approaching its (momentous!) 40th anniversary.

The city can safely exhale. Its residents and visitors can now return to enjoying Pioneer Park's wishing well, its historic granary—and, yes, even its Ten Commandments monument—without fear that they are complicit in an establishment of religion.

JUSTICE BREYER, concurring.

I agree with the Court and join its opinion. I do so, however, on the understanding that the "government speech" doctrine is a rule of thumb, not a rigid category. Were Pleasant Grove City (City) to discriminate in the selection of permanent monuments on grounds unrelated to the display's theme, say, solely on political grounds, its action might well violate the First Amendment.

In my view, courts must apply categories such as "government speech," "public forums," "limited public forums," and "nonpublic forums" with an eye toward their purposes—lest we turn "free speech" doctrine into a jurisprudence of labels. Cf. *United States* v. *Kokinda*, 497 U. S. 720, 740–743 (1990) (Brennan, J., dissenting). Consequently, we must sometimes look beyond an initial categorization. And, in doing so, it helps to ask whether a government action burdens speech disproportionately in light of the action's tendency to further a legitimate government objective. See, *e. g.*, *Ysursa* v. *Pocatello Ed. Assn.*, *ante*, at 365–368 (BREYER, J., concurring in part and dissenting in part); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 404 (2000) (BREYER, J., concurring).

Were we to do so here, we would find—for reasons that the Court sets forth—that the City's action, while preventing Summum from erecting its monument, does not disproportionately restrict Summum's freedom of expression. The City has not closed off its parks to speech; no one claims that the City prevents Summum's members from engaging in speech in a form more transient than a permanent monument. Rather, the City has simply reserved some space in the park for projects designed to further other than free-speech goals. And that is perfectly proper. After all, parks do not serve speech-related interests alone. To the contrary, cities use park space to further a variety of recreational, historical, educational, esthetic, and other civic interests. To reserve to the City the power to pick and choose

among proposed monuments according to criteria reasonably related to one or more of these legitimate ends restricts Summum's expression, but, given the impracticality of alternatives and viewed in light of the City's legitimate needs, the restriction is not disproportionate. Analyzed either way, as "government speech" or as a proportionate restriction on Summum's expression, the City's action here is lawful.

JUSTICE SOUTER, concurring in the judgment.

I agree with the Court that the Ten Commandments monument is government speech, that is, an expression of a government's position on the moral and religious issues raised by the subject of the monument. See *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 235 (2000) (noting government speech may "promote [government's] own policies or . . . advance a particular idea"). And although the government should lose when the character of the speech is at issue and its governmental nature has not been made clear, see *Johanns* v. *Livestock Marketing Assn.*, 544 U. S. 550, 577 (2005) (SOUTER, J., dissenting), I also agree with the Court that the city need not satisfy the particular formality urged by Summum as a condition of recognizing that the expression here falls within the public category. I have qualms, however, about accepting the position that public monuments are government speech categorically. See *ante*, at 470–471 ("Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the government accepts and displays to the public on government land").

Because the government speech doctrine, as JUSTICE STEVENS notes, *ante*, at 481 (concurring opinion), is "recently minted," it would do well for us to go slow in setting its bounds, which will affect existing doctrine in ways not yet explored. Even though, for example, Establishment Clause issues have been neither raised nor briefed before us, there

is no doubt that this case and its government speech claim has been litigated by the parties with one eye on the Establishment Clause, see *ante*, at 482 (SCALIA, J., concurring). The interaction between the "government speech doctrine" and Establishment Clause principles has not, however, begun to be worked out.

The case shows that it may not be easy to work out. After today's decision, whenever a government maintains a monument it will presumably be understood to be engaging in government speech. If the monument has some religious character, the specter of violating the Establishment Clause will behoove it to take care to avoid the appearance of a flatout establishment of religion, in the sense of the government's adoption of the tenets expressed or symbolized. In such an instance, there will be safety in numbers, and it will be in the interest of a careful government to accept other monuments to stand nearby, to dilute the appearance of adopting whatever particular religious position the single example alone might stand for. As mementoes and testimonials pile up, however, the chatter may well make it less intuitively obvious that the government is speaking in its own right simply by maintaining the monuments.

If a case like that occurred, as suspicion grew that some of the permanent displays were not government speech at all (or at least had an equally private character associated with private donors), a further Establishment Clause prohibition would surface, the bar against preferring some religious speakers over others. See *Wallace* v. *Jaffree*, 472 U. S. 38, 113 (1985) (Rehnquist, J., dissenting) ("The Clause was also designed to stop the Federal Government from asserting a preference for one religious denomination or sect over others"). But the government could well argue, as a development of government speech doctrine, that when it expresses its own views, it is free of the Establishment Clause's stricture against discriminating among religious

sects or groups. Under this view of the relationship between the two doctrines, it would be easy for a government to favor some private religious speakers over others by its choice of monuments to accept.

Whether that view turns out to be sound is more than I can say at this point. It is simply unclear how the relatively new category of government speech will relate to the more traditional categories of Establishment Clause analysis, and this case is not an occasion to speculate. It is an occasion, however, to try to keep the inevitable issues open, and as simple as they can be. One way to do that is to recognize that there are circumstances in which government maintenance of monuments does not look like government speech at all. Sectarian identifications on markers in Arlington Cemetery come to mind. And to recognize that is to forgo any categorical rule at this point.

To avoid relying on a *per se* rule to say when speech is governmental, the best approach that occurs to me is to ask whether a reasonable and fully informed observer would understand the expression to be government speech, as distinct from private speech the government chooses to oblige by allowing the monument to be placed on public land. This reasonable observer test for governmental character is of a piece with the one for spotting forbidden governmental endorsement of religion in the Establishment Clause cases. See, *e. g.*, *County of Allegheny* v. *American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 630, 635–636 (1989) (O'Connor, J., concurring in part and concurring in judgment). The adoption of it would thus serve coherence within Establishment Clause law, and it would make sense of our common understanding that some monuments on public land display religious symbolism that clearly does not express a government's chosen views.

Application of this observer test provides the reason I find the monument here to be government expression.

SUMMERS ET AL. *v.* EARTH ISLAND INSTITUTE ET AL.

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

No. 07–463. Argued October 8, 2008—Decided March 3, 2009

After the U. S. Forest Service approved the Burnt Ridge Project, a salvage sale of timber on 238 acres of fire-damaged federal land, respondent environmentalist organizations filed suit to enjoin the Service from applying its regulations exempting such small sales from the notice, comment, and appeal process it uses for more significant land management decisions, and to challenge other regulations that did not apply to Burnt Ridge. The District Court granted a preliminary injunction against the sale, and the parties then settled their dispute as to Burnt Ridge. Although concluding that the sale was no longer at issue, and despite the Government's argument that respondents therefore lacked standing to challenge the regulations, the court nevertheless proceeded to adjudicate the merits of their challenges, invalidating several regulations, including the notice and comment and the appeal provisions. Among its rulings, the Ninth Circuit affirmed the determination that the latter regulations, which were applicable to Burnt Ridge, were contrary to law, but held that challenges to other regulations not at issue in that project were not ripe for adjudication.

Held: Respondents lack standing to challenge the regulations still at issue absent a live dispute over a concrete application of those regulations. Pp. 492–501.

(a) In limiting the judicial power to "Cases" and "Controversies," Article III restricts it to redressing or preventing actual or imminently threatened injury to persons caused by violation of law. See, *e. g.*, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 559–560. The standing doctrine reflects this fundamental limitation, requiring that "the plaintiff . . . 'alleg[e] such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal-court jurisdiction," *Warth* v. *Seldin*, 422 U. S. 490, 498–499. Here, respondents can demonstrate standing only if application of the regulations will affect *them* in such a manner. Pp. 492–494.

(b) As organizations, respondents can assert their members' standing. Harm to their members' recreational, or even their mere esthetic, interests in the national forests will suffice to establish the requisite concrete and particularized injury, see *Sierra Club* v. *Morton*, 405 U. S. 727, 734–736, but generalized harm to the forest or the environment will not alone

suffice. Respondents have identified no application of the invalidated regulations that threatens imminent and concrete harm to their members' interests. Respondents' argument that they have standing based on Burnt Ridge fails because, after voluntarily settling the portion of their lawsuit relevant to Burnt Ridge, respondents and their members are no longer under threat of injury from that project. The remaining affidavit submitted in support of standing fails to establish that any member has concrete plans to visit a site where the challenged regulations are being applied in a manner that will harm that member's concrete interests. Additional affidavits purporting to establish standing were submitted after judgment had already been entered and notice of appeal filed, and are thus untimely. Pp. 494–496.

(c) Respondents' argument that they have standing because they have suffered procedural injury—*i. e.*, they have been denied the ability to file comments on some Forest Service actions and will continue to be so denied—fails because such a deprivation without some concrete interest affected thereby is insufficient to create Article III standing. See, *e. g.*, *Defenders of Wildlife*, *supra*, at 572, n. 7. Pp. 496–497.

(d) The dissent's objections are addressed and rejected. Pp. 497–500.

490 F. 3d 687, reversed in part and affirmed in part.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. KENNEDY, J., filed a concurring opinion, *post*, p. 501. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post*, p. 501.

Then-*Deputy Solicitor General Kneedler* argued the cause for petitioners. With him on the briefs were former *Solicitors General Clement* and *Garre*, *Assistant Attorney General Tenpas*, *Malcolm L. Stewart*, *Katherine W. Hazard*, and *Marc L. Kesselman*.

Matt G. Kenna argued the cause for respondents. With him on the brief was *Scott L. Nelson*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Forest & Paper Association et al. by *Thomas R. Lundquist*, *Steven P. Quarles*, *J. Michael Klise*, *Duane J. Desiderio*, *Thomas J. Ward*, *William R. Murray*, and *Douglas T. Nelson;* for Douglas Timber Operators et al. by *Caroline C. Lobdell;* and for the Pacific Legal Foundation by *M. Reed Hopper* and *Damien M. Schiff.*

A brief of *amicus curiae* urging affirmance was filed for the State of California *ex rel.* Edmund G. Brown, Jr., Attorney General of California,

JUSTICE SCALIA delivered the opinion of the Court.

Respondents are a group of organizations dedicated to protecting the environment. (We will refer to them collectively as "Earth Island.") They seek to prevent the United States Forest Service from enforcing regulations that exempt small fire-rehabilitation and timber-salvage projects from the notice, comment, and appeal process used by the Forest Service for more significant land management decisions. We must determine whether respondents have standing to challenge the regulations in the absence of a live dispute over a concrete application of those regulations.

I

In 1992, Congress enacted the Forest Service Decision-making and Appeals Reform Act (Appeals Reform Act or Act), Pub. L. 102–381, Tit. III, § 322, 106 Stat. 1419, note following 16 U. S. C. § 1612. Among other things, this required the Forest Service to establish a notice, comment, and appeal process for "proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974." *Ibid.*

The Forest Service's regulations implementing the Act provided that certain of its procedures would not be applied to projects that the Service considered categorically excluded from the requirement to file an environmental impact statement (EIS) or environmental assessment (EA). 36 CFR §§ 215.4(a) (notice and comment), 215.12(f) (appeal) (2008). Later amendments to the Forest Service's manual of implementing procedures, adopted by rule after notice and

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by *Mr. Brown, pro se, J. Matthew Rodriguez*, Chief Assistant Attorney General, *Kenneth Alex*, Senior Assistant Attorney General, *Sally Magnani Knox*, Supervising Deputy Attorney General, and *Raissa S. Lerner*, Deputy Attorney General.

Amanda C. Leiter filed a brief for Law Professors as *amici curiae.*

comment, provided that fire-rehabilitation activities on areas of less than 4,200 acres, and salvage-timber sales of 250 acres or less, did not cause a significant environmental impact and thus would be categorically exempt from the requirement to file an EIS or EA. 68 Fed. Reg. 33824 (2003) (Forest Service Handbook (FSH) 1909.15, ch. 30, § 31.2(11)); 68 Fed. Reg. 44607 (FSH 1909.15, ch. 30, § 31.2(13)). This had the effect of excluding these projects from the notice, comment, and appeal process.

In the summer of 2002, fire burned a significant area of the Sequoia National Forest. In September 2003, the Service issued a decision memo approving the Burnt Ridge Project, a salvage sale of timber on 238 acres damaged by that fire. Pursuant to its categorical exclusion of salvage sales of less than 250 acres, the Forest Service did not provide notice in a form consistent with the Appeals Reform Act, did not provide a period of public comment, and did not make an appeal process available.

In December 2003, respondents filed a complaint in the Eastern District of California, challenging the failure of the Forest Service to apply to the Burnt Ridge Project § 215.4(a) of its regulations implementing the Appeals Reform Act (requiring prior notice and comment), and § 215.12(f) of the regulations (setting forth an appeal procedure). The complaint also challenged six other Forest Service regulations implementing the Act that were not applied to the Burnt Ridge Project. They are irrelevant to this appeal.

The District Court granted a preliminary injunction against the Burnt Ridge salvage-timber sale. Soon thereafter, the parties settled their dispute over the Burnt Ridge Project and the District Court concluded that "the Burnt Ridge timber sale is not at issue in this case." *Earth Island Inst.* v. *Pengilly,* 376 F. Supp. 2d 994, 999 (ED Cal. 2005). The Government argued that, with the Burnt Ridge dispute settled, and with no other project before the court in which respondents were threatened with injury in fact, respond-

ents lacked standing to challenge the regulations; and that absent a concrete dispute over a particular project a challenge to the regulations would not be ripe. The District Court proceeded, however, to adjudicate the merits of Earth Island's challenges. It invalidated five of the regulations (including §§ 215.4(a) and 215.12(f)), *id.*, at 1011, and entered a nationwide injunction against their application, *Earth Island Inst.* v. *Ruthenbeck*, No. CIV F–03–6386 JKS, 2005 WL 5280466, *2 (Sept. 20, 2005).

The Ninth Circuit held that Earth Island's challenges to regulations not at issue in the Burnt Ridge Project were not ripe for adjudication because there was "not a sufficient 'case or controversy'" before the court to sustain a facial challenge. *Earth Island Inst.* v. *Ruthenbeck*, 490 F. 3d 687, 696 (2007) (amended opinion). It affirmed, however, the District Court's determination that §§ 215.4(a) and 215.12(f), which were applicable to the Burnt Ridge Project, were contrary to law, and upheld the nationwide injunction against their application.

The Government sought review of the question whether Earth Island could challenge the regulations at issue in the Burnt Ridge Project, and if so whether a nationwide injunction was appropriate relief. We granted certiorari, 552 U. S. 1162 (2008).

II

In limiting the judicial power to "Cases" and "Controversies," Article III of the Constitution restricts it to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law. Except when necessary in the execution of that function, courts have no charter to review and revise legislative and executive action. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 559–560 (1992); *Los Angeles* v. *Lyons*, 461 U. S. 95, 111–112 (1983). This limitation "is founded in concern about the proper—and

properly limited—role of the courts in a democratic society." *Warth* v. *Seldin*, 422 U. S. 490, 498 (1975). See *United States* v. *Richardson*, 418 U. S. 166, 179 (1974).

The doctrine of standing is one of several doctrines that reflect this fundamental limitation. It requires federal courts to satisfy themselves that "the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal-court jurisdiction." *Warth*, *supra*, at 498–499. He bears the burden of showing that he has standing for each type of relief sought. See *Lyons*, *supra*, at 105. To seek injunctive relief, a plaintiff must show that he is under threat of suffering "injury in fact" that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury. *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 180–181 (2000). This requirement assures that "there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party," *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 221 (1974). Where that need does not exist, allowing courts to oversee legislative or executive action "would significantly alter the allocation of power . . . away from a democratic form of government," *Richardson*, *supra*, at 188 (Powell, J., concurring).

The regulations under challenge here neither require nor forbid any action on the part of respondents. The standards and procedures that they prescribe for Forest Service appeals govern only the conduct of Forest Service officials engaged in project planning. "[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." *Defenders of*

Wildlife, *supra*, at 562. Here, respondents can demonstrate standing only if application of the regulations by the Government will affect *them* in the manner described above.

It is common ground that the respondent organizations can assert the standing of their members. To establish the concrete and particularized injury that standing requires, respondents point to their members' recreational interests in the national forests. While generalized harm to the forest or the environment will not alone support standing, if that harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice. *Sierra Club* v. *Morton*, 405 U. S. 727, 734–736 (1972).

Affidavits submitted to the District Court alleged that organization member Ara Marderosian had repeatedly visited the Burnt Ridge site, that he had imminent plans to do so again, and that his interests in viewing the flora and fauna of the area would be harmed if the Burnt Ridge Project went forward without incorporation of the ideas he would have suggested if the Forest Service had provided him an opportunity to comment. The Government concedes this was sufficient to establish Article III standing with respect to Burnt Ridge. Brief for Petitioners 28. Marderosian's threatened injury with regard to that project was originally one of the bases for the present suit. After the District Court had issued a preliminary injunction, however, the parties settled their differences on that score. Marderosian's injury in fact with regard to that project has been remedied, and it is, as the District Court pronounced, "not at issue in this case." 376 F. Supp. 2d, at 999. We know of no precedent for the proposition that when a plaintiff has sued to challenge the lawfulness of certain action or threatened action but has settled that suit, he retains standing to challenge the basis for that action (here, the regulation in the abstract), apart from any concrete application that threatens imminent harm to his interests. Such a holding would fly in the face of Article III's injury-in-fact requirement. See *Lyons*, *supra*, at 111.

Respondents have identified no other application of the invalidated regulations that threatens imminent and concrete harm to the interests of their members. The only other affidavit relied on was that of Jim Bensman.* He asserted, first, that he had suffered injury in the past from development on Forest Service land. That does not suffice for several reasons: because it was not tied to application of the challenged regulations, because it does not identify any particular site, and because it relates to past injury rather than imminent future injury that is sought to be enjoined.

Bensman's affidavit further asserts that he has visited many national forests and plans to visit several unnamed national forests in the future. Respondents describe this as a mere failure to "provide the name of each timber sale that affected [Bensman's] interests," Brief for Respondents 44. It is much more (or much less) than that. It is a failure to allege that *any* particular timber sale or other project claimed to be unlawfully subject to the regulations will impede a specific and concrete plan of Bensman's to enjoy the national forests. The national forests occupy more than 190 million acres, an area larger than Texas. See Meet the Forest Service, http://www.fs.fed.us/aboutus/meetfs.shtml (as visited Feb. 27, 2009, and available in Clerk of Court's case file). There may be a chance, but is hardly a likelihood, that Bensman's wanderings will bring him to a parcel about to be affected by a project unlawfully subject to the regulations. Indeed, without further specification it is impossible to tell *which* projects are (in respondents' view) unlawfully subject to the regulations. The allegations here present a weaker likelihood of concrete harm than that which we found insufficient in *Lyons,* 461 U. S. 95, where a plaintiff who alleged

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*After the District Court had entered judgment, and after the Government had filed its notice of appeal, respondents submitted additional affidavits to the District Court. We do not consider these. If respondents had not met the challenge to their standing at the time of judgment, they could not remedy the defect retroactively.

that he had been injured by an improper police chokehold sought injunctive relief barring use of the hold in the future. We said it was "no more than conjecture" that Lyons would be subjected to that chokehold upon a later encounter. *Id.*, at 108. Here we are asked to assume not only that Bensman will stumble across a project tract unlawfully subject to the regulations, but also that the tract is about to be developed by the Forest Service in a way that harms his recreational interests, and that he would have commented on the project but for the regulation. Accepting an intention to visit the national forests as adequate to confer standing to challenge any Government action affecting any portion of those forests would be tantamount to eliminating the requirement of concrete, particularized injury in fact.

The Bensman affidavit does refer specifically to a series of projects in the Allegheny National Forest that are subject to the challenged regulations. It does not assert, however, any firm intention to visit their locations, saying only that Bensman "'want[s] to'" go there. Brief for Petitioners 6. This vague desire to return is insufficient to satisfy the requirement of imminent injury: "Such 'some day' intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require." *Defenders of Wildlife*, 504 U. S., at 564.

Respondents argue that they have standing to bring their challenge because they have suffered procedural injury, namely, that they have been denied the ability to file comments on some Forest Service actions and will continue to be so denied. But deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing. Only a "person who has been accorded a procedural right to protect *his concrete interests* can assert that right without meeting all the normal standards for redressability and immediacy." *Id.*, at 572, n. 7 (emphasis added).

Respondents alleged such injury in their challenge to the Burnt Ridge Project, claiming that but for the allegedly unlawful abridged procedures they would have been able to oppose the project that threatened to impinge on their concrete plans to observe nature in that specific area. But Burnt Ridge is now off the table.

It makes no difference that the procedural right has been accorded by Congress. That can loosen the strictures of the redressability prong of our standing inquiry—so that standing existed with regard to the Burnt Ridge Project, for example, despite the possibility that Earth Island's allegedly guaranteed right to comment would not be successful in persuading the Forest Service to avoid impairment of Earth Island's concrete interests. See *ibid.* Unlike redressability, however, the requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute.

> "[I]t would exceed [Article III's] limitations if, at the behest of Congress and in the absence of any showing of concrete injury, we were to entertain citizen suits to vindicate the public's nonconcrete interest in the proper administration of the laws. . . . [T]he party bringing suit must show that the action injures him in a concrete and personal way." *Id.*, at 580–581 (KENNEDY, J., concurring in part and concurring in judgment).

III

The dissent proposes a hitherto unheard-of test for organizational standing: whether, accepting the organization's self-description of the activities of its members, there is a statistical probability that some of those members are threatened with concrete injury. Since, for example, the Sierra Club asserts in its pleadings that it has more than " '700,000 members nationwide, including thousands of members in California' who 'use and enjoy the Sequoia National Forest,' " *post*, at 502 (opinion of BREYER, J.), it is probable (according to the dissent) that some (unidentified) members have planned to

visit some (unidentified) small parcels affected by the Forest Service's procedures and will suffer (unidentified) concrete harm as a result. This novel approach to the law of organizational standing would make a mockery of our prior cases, which have required plaintiff-organizations to make specific allegations establishing that at least one identified member had suffered or would suffer harm. In *Defenders of Wildlife*, *supra*, at 563, we held that the organization lacked standing because it failed to "submit affidavits . . . showing, through specific facts . . . that one or more of [its] members would . . . be 'directly' affected" by the allegedly illegal activity. *Morton*, 405 U. S. 727, involved the same Sierra Club that is a party in the present case, and a project in the Sequoia National Forest. The principal difference from the present case is that the challenged project was truly massive, involving the construction of motels, restaurants, swimming pools, parking lots, and other structures on 80 acres of the Forest, plus ski lifts, ski trails, and a 20-mile access highway. We did not engage in an assessment of statistical probabilities that one of the Sierra Club's members would be adversely affected, but held that the Sierra Club lacked standing. We said:

> "The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development. Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents." *Id.*, at 735.

And in *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 235 (1990), we noted that the affidavit provided by the city to establish standing would be insufficient because it did not name the individuals who were harmed by the challenged license-revocation program. This requirement of naming the affected members has never been dispensed with in light of

statistical probabilities, but only where *all* the members of the organization are affected by the challenged activity. See, *e. g.*, *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 459 (1958) (all organization members affected by release of membership lists).

A major problem with the dissent's approach is that it accepts the organizations' self-descriptions of their membership, on the simple ground that "no one denies" them, *post*, at 506. But it is well established that the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties. *Bender* v. *Williamsport Area School Dist.*, 475 U. S. 534, 541 (1986). Without individual affidavits, how is the court to assure itself that the Sierra Club, for example, has "'thousands of members'" who "'use and enjoy the Sequoia National Forest'"? And, because to establish standing plaintiffs must show that they "use the area affected by the challenged activity and not an area roughly in the vicinity of" a project site, *Defenders of Wildlife*, 504 U. S., at 566 (internal quotation marks omitted), how is the court to assure itself that some of these members plan to make use of the specific sites upon which projects may take place? Or that these same individuals will find their recreation burdened by the Forest Service's use of the challenged procedures? While it is certainly possible—perhaps even likely—that one individual will meet all of these criteria, that speculation does not suffice. "Standing," we have said, "is not 'an ingenious academic exercise in the conceivable' . . . [but] requires . . . a factual showing of perceptible harm." *Ibid.* In part because of the difficulty of verifying the facts upon which such probabilistic standing depends, the Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm—surely not a difficult task here, when so many thousands are alleged to have been harmed.

The dissent would have us replace the requirement of "'imminent'" harm, which it acknowledges our cases estab-

lish, see *post*, at 505, with the requirement of "'a *realistic* threat' that reoccurrence of the challenged activity would cause [the plaintiff] harm 'in the reasonably near future,'" *ibid*. That language is taken, of course, from an opinion that did *not* find standing, so the seeming expansiveness of the test made not a bit of difference. The problem for the dissent is that the timely affidavits no more meet that requirement than they meet the usual formulation. They fail to establish that the affiants' members will *ever* visit one of the small parcels at issue.

The dissent insists, however, that we should also have considered the late-filed affidavits. It invokes Federal Rule of Civil Procedure 15(d) (West 2008 rev. ed.), which says that "[t]he court may permit supplementation even though the original pleading is defective in stating a claim or defense." So also does Rule 21 permit joinder of parties "at any time." But the latter no more permits joinder of parties, than the former permits the supplementation of the record, in the circumstances here: *after the trial is over, judgment has been entered, and a notice of appeal has been filed.* The dissent cites no instance in which "supplementation" has been permitted to resurrect and alter the outcome in a case that has gone to judgment, and indeed after notice of appeal had been filed. If Rule 15(b) allows additional facts to be inserted into the record after appeal has been filed, we are at the threshold of a brave new world of trial practice in which Rule 60 has been swallowed whole by Rule 15(b).

* * *

Since we have resolved this case on the ground of standing, we need not reach the Government's contention that plaintiffs have not demonstrated that the regulations are ripe for review under the Administrative Procedure Act. We likewise do not reach the question whether, if respond-

ents prevailed, a nationwide injunction would be appropriate. And we do not disturb the dismissal of respondents' challenge to the remaining regulations, which has not been appealed.

The judgment of the Court of Appeals is reversed in part and affirmed in part.

It is so ordered.

JUSTICE KENNEDY, concurring.

I join in full the opinion of the Court. As the opinion explains, "deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing." *Ante*, at 496. The procedural injury must "impair a separate concrete interest." *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 572 (1992).

This case would present different considerations if Congress had sought to provide redress for a concrete injury "giv[ing] rise to a case or controversy where none existed before." *Id.*, at 580 (KENNEDY, J., concurring in part and concurring in judgment). Nothing in the statute at issue here, however, indicates Congress intended to identify or confer some interest separate and apart from a procedural right.

JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join, dissenting.

The Court holds that the Sierra Club and its members (along with other environmental organizations) do not suffer any " 'concrete injury' " when the Forest Service sells timber for logging on many thousands of small (250-acre or less) woodland parcels without following legally required procedures—procedures which, if followed, could lead the Service to cancel or to modify the sales. *Ante*, at 497. Nothing in the record or the law justifies this counterintuitive conclusion.

I

A

The plaintiffs, respondents in this case, are five environmental organizations. The Earth Island Institute, a California organization, has over 15,000 members in the United States, over 3,000 of whom "use and enjoy the National Forests of California for recreational, educational, aesthetic, spiritual and other purposes." Corrected Complaint for Declaratory and Injunctive Relief in Case No. CIV–F–03–630 REC DLB (ED Cal.), ¶ 8, App. 31 (hereinafter Complaint). The Sequoia ForestKeeper, a small organization, has "100 plus" members who "use the forests of the Southern Sierra Nevada for activities such as hiking, bird and animal watching, aesthetic enjoyment, quiet contemplation, fishing and scientific study." *Id.*, ¶ 9, at 32. Heartwood, Inc., located in Illinois and Indiana, is a coalition of environmental organizations with "members" who "continually use the National Forests for the purposes of ecological health, recreation, aesthetic enjoyment, and other purposes." *Id.*, ¶ 10, at 33. The Center for Biological Diversity, located in Arizona, California, New Mexico, and Washington, has over 5,000 members who "use Forest Service lands," and who are "dedicated to the preservation, protection, and restoration of biological diversity, native species and ecosystems in the Western United States and elsewhere." *Id.*, ¶ 11, at 33. The Sierra Club has more than "700,000 members nationwide, including thousands of members in California" who "use and enjoy the Sequoia National Forest" for "outdoor recreation and scientific study of various kinds, including nature study, birdwatching, photography, fishing, canoeing, hunting, backpacking, camping, solitude, and a variety of other activities." *Id.*, ¶ 12, at 34.

These five organizations point to a federal law that says the Forest Service "shall establish a notice and comment process," along with a procedure for filing administrative

"appeals," for "proposed actions . . . concerning projects and activities implementing land and resource management plans . . . ." § 322, 106 Stat. 1419, note following 16 U. S. C. § 1612. They add that the Service has exempted from "notice, comment, and appeal" processes its decisions that allow, among other things, salvage-timber sales on burned forest lands of less than 250 acres in size. 36 CFR §§ 215.4(a), 215.12(f) (2008); see also 68 Fed. Reg. 44607–44608 (2003) (describing projects exempted). And they claim that the Service's refusal to provide notice, comment, and appeal procedures violates the statute. Complaint ¶¶ 105–106, App. 61.

B

The majority says that the plaintiffs lack *constitutional* standing to raise this claim. It holds that the dispute between the five environmental groups and the Forest Service consists simply of an abstract challenge; it does not amount to the concrete "Cas[e]" or "Controvers[y]" that the Constitution grants federal courts the power to resolve. Art. III, § 2, cl. 1. I cannot agree that this is so.

To understand the *constitutional* issue that the majority decides, it may prove helpful to imagine that Congress enacted a *statutory* provision that expressly permitted environmental groups like respondents here to bring cases just like the present one, provided (1) that the group has members who have used salvage-timber parcels in the past and are likely to do so in the future, and (2) that the group's members have opposed Forest Service timber sales in the past (using notice, comment, and appeal procedures to do so) and will likely use those procedures to oppose salvage-timber sales in the future. The majority cannot, and does not, claim that such a statute would be unconstitutional. See *Massachusetts* v. *EPA*, 549 U. S. 497, 516–518 (2007); *Sierra Club* v. *Morton*, 405 U. S. 727, 734–738 (1972). How then can it find the present case constitutionally unauthorized?

I believe the majority answers this question as follows: It recognizes, as this Court has held, that a plaintiff has constitutional standing if the plaintiff demonstrates (1) an "'injury in fact,'" (2) that is "fairly traceable" to the defendant's "challenged action," and which (3) a "favorable [judicial] decision" will likely prevent or redress. *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 180–181 (2000). The majority does not deny that the plaintiffs meet the latter two requirements. It focuses only upon the first, the presence of "actual," as opposed to "conjectural or hypothetical," injury. *Id.*, at 180. In doing so, it properly agrees that the "organizations" here can "assert the standing of their members." *Ante*, at 494. It points out that injuries to the "members' recreational" or even "mere esthetic interests . . . will suffice." *Ibid.* It does not claim that the *procedural* nature of the plaintiffs' claim makes the difference here, for it says only that "deprivation of a procedural right *without some concrete interest*" thereby affected, *i. e.*, "a procedural right *in vacuo*," would prove "insufficient to create Article III standing." *Ante*, at 496 (emphasis added); see also *EPA*, *supra*, at 517–518. The majority assumes, as do I, that these unlawful Forest Service procedures will lead to substantive actions, namely, the sales of salvage timber on burned lands, that might not take place if the proper procedures were followed. But the majority then finds that the plaintiffs have not sufficiently demonstrated that these salvage-timber sales cause the plaintiffs an actual injury, that is, harm to the recreational, esthetic, or other environmental interests of organization members. *Ante*, at 494–496. To put the matter in terms of my hypothetical statute, the majority holds that the plaintiff organizations, while showing that they have members who have used salvage-timber sale parcels in the past (*i. e.*, parcels that the Service does not subject to the notice, comment, and appeal procedures required by law), have failed to show that they have members likely to use such parcels in the future.

II

How can the majority credibly claim that salvage-timber sales, and similar projects, are unlikely to harm the asserted interests of the members of these environmental groups? The majority apparently does so in part by arguing that the Forest Service actions are not "imminent"—a requirement more appropriately considered in the context of ripeness or the necessity of injunctive relief. See *Ohio Forestry Assn., Inc.* v. *Sierra Club*, 523 U. S. 726, 734 (1998). I concede that the Court has sometimes used the word "imminent" in the context of constitutional standing. But it has done so primarily to emphasize that the harm in question—the harm that was not "imminent"—was merely "conjectural" or "hypothetical" or otherwise speculative. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992) (internal quotation marks omitted). Where the Court has directly focused upon the matter, *i. e.*, where, as here, a plaintiff has *already* been subject to the injury it wishes to challenge, the Court has asked whether there is a *realistic likelihood* that the challenged future conduct will, in fact, recur and harm the plaintiff. That is what the Court said in *Los Angeles* v. *Lyons*, 461 U. S. 95 (1983), a case involving a plaintiff's attempt to enjoin police use of chokeholds. The Court wrote that the plaintiff, who had been subject to the unlawful chokehold in the past, would have had standing had he shown "a *realistic* threat" that reoccurrence of the challenged activity would cause him harm "in the reasonably near future." *Id.*, at 107, n. 7, 108 (emphasis added). Precedent nowhere suggests that the "realistic threat" standard contains identification requirements more stringent than the word "realistic" implies. See *Blum* v. *Yaretsky*, 457 U. S. 991, 1000 (1982).

How could the Court impose a stricter criterion? Would courts deny *standing* to a holder of a future interest in property who complains that a life tenant's waste of the land will almost inevitably hurt the value of his interest—though he will have no personal interest for several years into the fu-

ture? Would courts deny *standing* to a landowner who complains that a neighbor's upstream dam constitutes a nuisance—even if the harm to his downstream property (while bound to occur) will not occur for several years? Would courts deny *standing* to an injured person seeking a protection order from future realistic (but nongeographically specific) threats of further attacks?

To the contrary, a threat of future harm may be realistic even where the plaintiff cannot specify precise times, dates, and GPS coordinates. Thus, we recently held that Massachusetts has *standing* to complain of a procedural failing, namely, the Environmental Protection Agency's failure properly to determine whether to restrict carbon dioxide emissions, even though that failing would create Massachusetts-based harm which (though likely to occur) might not occur for several decades. *EPA*, 549 U. S., at 522–523.

The Forest Service admits that it intends to conduct thousands of further salvage-timber sales and other projects exempted under the challenged regulations "in the reasonably near future." See Defendants' Motion to Clarify and Amend Judgment in No. CIV–F–03–6386–JKS–DLB (ED Cal.), pp. 13–14. How then can the Court deny that the plaintiffs have shown a "realistic" threat that the Forest Service will continue to authorize (without the procedures claimed necessary) salvage-timber sales, and other Forest Service projects, that adversely affect the recreational, esthetic, and environmental interests of the plaintiffs' members?

Consider: Respondents allege, and the Government has conceded, that the Forest Service took wrongful actions (such as selling salvage timber) "thousands" of times in the two years prior to suit. *Id.*, at 6; see also *id.*, Exh. 2, Decl. of Gloria Manning, Associate Deputy Chief for National Forest System ¶ 6, p. 3 (identifying 3,377 "proposed decisions," "[a]s of July 1, 2005," that would be excluded from notice, comment, and appeal procedures). The Complaint alleges, and no one denies, that the organizations, the Sierra Club for

example, have hundreds of thousands of members who use forests regularly across the Nation for recreational, scientific, esthetic, and environmental purposes. Complaint ¶¶ 8–12, App. 31–34. The Complaint further alleges, and no one denies, that these organizations (and their members), believing that actions such as salvage-timber sales harm those interests, regularly oppose salvage-timber sales (and similar actions) in proceedings before the agency. *Ibid.* And the Complaint alleges, and no one denies, that the organizations intend to continue to express their opposition to such actions in those proceedings in the future. *Ibid.*

Consider further: The affidavit of a member of Sequoia ForestKeeper, Ara Marderosian, attached to the Complaint, specifies that Marderosian had visited the Burnt Ridge Project site in the past and intended to return. The majority concedes that this is sufficient to show that Marderosian had standing to challenge the Burnt Ridge Project. The majority must therefore agree that "at least one identified member ha[s] suffered . . . harm." *Ante*, at 498. Why then does it find insufficient the affidavit, also attached to the Complaint, of Jim Bensman, a member of Heartwood, Inc.? That affidavit states, among other things, that Bensman has visited 70 national forests, that he has visited some of those forests "hundreds of times," that he has often visited the Allegheny National Forest in the past, that he has "probably commented on a thousand" Forest Service projects including salvage-timber sale proposals, that he intends to continue to comment on similar Forest Service proposals, and that the Forest Service plans in the future to conduct salvage-timber sales on 20 parcels in the Allegheny National Forest—one of the forests he has visited in the past. ¶¶ 6, 13, App. E to Pet. for Cert. 68a, 69a, 71a.

The Bensman affidavit does not say *which particular* sites will be affected by future Forest Service projects, but the Service itself has conceded that it will conduct thousands of exempted projects in the future. Why is more specificity

needed to show a "realistic" threat that a project will impact land Bensman uses? To know, virtually for certain, that snow will fall in New England this winter is not to know the name of each particular town where it is bound to arrive. The law of standing does not require the latter kind of specificity. How could it? And *Sierra Club* v. *Morton*, 405 U. S. 727, on which the majority so heavily relies, involved plaintiffs who challenged (true, a "massive") development, but only on a single previously determined site, about 80 acres in size, in a portion of the forest with a "limited . . . number of visitors." *Id.*, at 728. The Court's unwillingness to infer harm to the Sierra Club's members there does not demand a similar unwillingness here, where the challenge is to procedures affecting "thousands" of sites, involving hundreds of times as much acreage, where the precise location of each may not yet be known. In *Sierra Club* v. *Morton*, it may have been unreasonable simply to assume that members would suffer an "injury in fact." But here, given the very different factual circumstances, it is unreasonable to believe they would not.

Whatever doubt may remain is settled by the affidavits the plaintiffs submitted after the Burnt Ridge dispute was settled (while the other claims in the Complaint remained alive). The majority says it will not consider those affidavits because they were submitted "[a]fter the District Court had entered judgment." *Ante*, at 495, n. But the plaintiffs submitted the affidavits after judgment (in opposition to the Government's motion for a stay) because the Burnt Ridge dispute on which they had relied to show standing at the outset of suit had by that point been settled. No longer wishing to rely solely on evidence of their members' interest in that particular project, the plaintiff organizations submitted several other affidavits. Why describe this perfectly sensible response to the settlement of some of the Complaint's claims as a "retroactiv[e]" attempt to "me[e]t the challenge to their standing at the time of judgment"? *Ibid.*

In fact, the Government did not challenge standing until that point, so of course respondents (who all agree had standing at the outset) did not respond with affidavits until later—when their standing was challenged. This can hardly be characterized as an attempt to "resurrect and alter the outcome" in the case. *Ante*, at 500. Regardless, the Constitution does not bar the filing of further affidavits, nor does any statute. The Federal Rules of Civil Procedure contain no such bar. Indeed, those Rules provide a judge with liberal discretion to permit a plaintiff to amend a complaint—even after one dispute (of several) is settled. So why would they not permit the filing of affidavits—at least with the judge's permission? See Fed. Rule Civ. Proc. 15(d) (West 2008 rev. ed.) ("The court may permit supplementation even though the original pleading is defective in stating a claim or defense").

The affidavits in question describe a number of then-pending Forest Service projects, all excluded from notice, comment, and appeal under the Forest Service regulations and all scheduled to take place on parcels that the plaintiff organizations' members use. Erik Ryberg, for example, a member of the Center for Biological Diversity, described in his affidavit a proposed logging project scheduled for the Payette National Forest—an area with which he is "personally familiar." ¶ 6, App. 90. A second affidavit filed by Jim Bensman described a salvage-timber sale scheduled for the Hoosier National Forest—an area Bensman had visited "multiple times" and to which he planned to return in the coming weeks—and one planned for the Daniel Boone National Forest—also used by Bensman—which would "impact [Heartwood's] members['] use of the areas." ¶¶ 8–9, *id.*, at 85–86. The affidavits also describe, among other things, the frequency with which the organizations' members routinely file administrative appeals of salvage-timber sales and identify a number of proposed and pending projects that certain Sierra Club members wished to appeal. See Decl. of René Voss

¶ 3, *id.*, at 94 (describing a proposed logging and prescribed burn planned for the Gallatin National Forest); Decl. of Craig Thomas ¶¶ 3, 13, *id.*, at 95, 98 (describing Thomas' "use" and "enjoy[ment]" of the "Sierra Nevada national forests for recreational, aesthetic, scientific and professional pursuits," and attesting to "eighteen separate logging projects," all categorically excluded, proposed for one such forest tract).

These allegations and affidavits more than adequately show a "realistic threat" of injury to plaintiffs brought about by reoccurrence of the challenged conduct—conduct that the Forest Service thinks lawful and *admits* will reoccur. Many years ago the Ninth Circuit warned that a court should not "be blind to what must be necessarily known to every intelligent person." *In re Wo Lee*, 26 F. 471, 475 (1886). Applying that standard, I would find standing here.

* * *

I recognize that the Government raises other claims and bases upon which to deny standing or to hold that the case is not ripe for adjudication. I believe that these arguments are without merit. But because the majority does not discuss them here, I shall not do so either.

With respect, I dissent.

NEGUSIE *v.* HOLDER, ATTORNEY GENERAL

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

No. 07–499. Argued November 5, 2008—Decided March 3, 2009

The Immigration and Nationality Act (INA) bars an alien from obtaining refugee status in this country if he "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." 8 U. S. C. § 1101(a)(42). This so-called "persecutor bar" applies to those seeking asylum or withholding of removal, but does not disqualify an alien from receiving a temporary deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). During the time petitioner, an Eritrean national, was forced to work as a prison guard in that country, the prisoners he guarded were persecuted on grounds protected under § 1101(a)(42). After escaping to the United States, petitioner applied for asylum and withholding of removal. Concluding that he assisted in the persecution of prisoners by working as an armed guard, the Immigration Judge denied relief on the basis of the persecutor bar, but granted deferral of removal under CAT because petitioner was likely to be tortured if returned to Eritrea. The Board of Immigration Appeals (BIA) affirmed in all respects, holding, *inter alia*, that the persecutor bar applies even if the alien's assistance in persecution was coerced or otherwise the product of duress. The BIA followed its earlier decisions finding *Fedorenko* v. *United States*, 449 U. S. 490, controlling. The Fifth Circuit affirmed, relying on its precedent following the same reasoning.

Held: The BIA and Fifth Circuit misapplied *Fedorenko* as mandating that whether an alien is compelled to assist in persecution is immaterial for persecutor-bar purposes. The BIA must interpret the statute, free from this mistaken legal premise, in the first instance. Pp. 516–525.

(a) Under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843, the BIA is entitled to deference in interpreting ambiguous INA provisions, see, *e. g.*, *INS* v. *Aguirre-Aguirre*, 526 U. S. 415, 424–425. When the BIA has not spoken on "a matter that statutes place primarily in agency hands," this Court's ordinary rule is to remand to allow "the BIA . . . to address the matter in the first instance in light of its own experience." *INS* v. *Orlando Ventura*, 537 U. S. 12, 16–17. Pp. 516–517.

(b) As there is substance both to petitioner's contention that involuntary acts cannot implicate the persecutor bar because "persecution" presumes moral blameworthiness, and to the Government's argument that the question at issue is answered by the statute's failure to provide an exception for coerced conduct, it must be concluded that the INA has an ambiguity that the BIA should address in the first instance. *Fedorenko*, which addressed a different statute enacted for a different purpose, does not control the BIA's interpretation of this persecutor bar. In holding that voluntariness was not required with respect to such a bar in the Displaced Persons Act of 1948 (DPA), *Fedorenko* contrasted the omission there of the word "voluntary" with the word's inclusion in a related statutory subsection. 449 U. S., at 512. Because Congress did not use the word "voluntary" anywhere in the persecutor bar at issue here, its omission cannot carry the same significance as it did in *Fedorenko*. Moreover, the DPA's exclusion of even those involved in nonculpable, involuntary assistance in persecution was enacted in part to address the Holocaust and its horror, see *id.*, at 511, n. 32, whereas the persecutor bar in this case was enacted as part of the Refugee Act of 1980, which was designed to provide a general rule for the ongoing treatment of all refugees and displaced persons, see, *e. g.*, *Aguirre-Aguirre*, *supra*, at 427. Pp. 517–520.

(c) Whether a BIA determination that the persecution bar contains no exception for coerced conduct would be reasonable, and thus owed *Chevron* deference, is a legitimate question; but it is not presented here. In denying petitioner relief, the BIA recited a rule it has developed in its cases: An alien's motivation and intent are irrelevant to the issue whether he "assisted" in persecution; rather, his actions' objective effect controls. A reading of those decisions confirms that the BIA has not exercised its interpretive authority but, instead, has deemed its interpretation to be mandated by *Fedorenko*. This error prevented the BIA from fully considering the statutory question presented. Its mistaken assumption stems from a failure to recognize the inapplicability of the statutory construction principle invoked in *Fedorenko*, as well as a failure to appreciate the differences in statutory purpose. The BIA is not bound to apply the *Fedorenko* rule to the persecutor bar here at issue. Whether the statute permits such an interpretation based on a different course of reasoning must be determined in the first instance by the agency. Pp. 521–523.

(d) Because the BIA has not yet exercised its *Chevron* discretion to interpret the statute, the proper course is to remand to it for additional investigation or explanation, *e. g.*, *Gonzales* v. *Thomas*, 547 U. S. 183, 186, allowing it to bring its expertise to bear on the matter, evaluate the evidence, make an initial determination, and thereby help a court

later determine whether its decision exceeds the leeway that the law provides, *e. g.*, *id.*, at 186–187. Pp. 523–524.

231 Fed. Appx. 325, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, SOUTER, GINSBURG, and ALITO, JJ., joined. SCALIA, J., filed a concurring opinion, in which ALITO, J., joined, *post*, p. 525. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which BREYER, J., joined, *post*, p. 528. THOMAS, J., filed a dissenting opinion, *post*, p. 538.

Andrew J. Pincus argued the cause for petitioner. With him on the briefs were *Charles A. Rothfeld* and *Dan Kahan*.

Assistant Attorney General Katsas argued the cause for respondent. With him on the brief were former *Solicitor General Garre*, then-*Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Dupree*, *Nicole A. Saharsky*, *Donald E. Keener*, *Keith I. McManus*, and *Jennifer J. Keeney*.*

JUSTICE KENNEDY delivered the opinion of the Court.

An alien who fears persecution in his homeland and seeks refugee status in this country is barred from obtaining that relief if he has persecuted others.

> "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." Immigration and National-

*Briefs of *amici curiae* urging reversal were filed for Advocates for Human Rights by *Benjamin Casper* and *Heather McElroy;* for the American Jewish Congress et al. by *Charles G. Moerdler*, *Christian Fletcher*, *Marc D. Stern*, *Jeffrey P. Sinensky*, and *Kara H. Stein;* for the Becket Fund for Religious Liberty et al. by *Eric C. Rassbach;* for Human Rights First et al. by *Steven H. Schulman* and *Patricia A. Millett;* for the Office of the United Nations High Commissioner for Refugees by *H. Elizabeth Dallam* and *Pamela Goldberg;* and for Scholars of International Refugee Law by *Mark C. Fleming* and *Deborah Anker*.

ity Act (INA), § 101, 66 Stat. 166, as added by Refugee Act of 1980, § 201(a), 94 Stat. 102–103, 8 U. S. C. § 1101(a)(42).

This so-called "persecutor bar" applies to those seeking asylum, § 1158(b)(2)(A)(i), or withholding of removal, § 1231(b)(3)(B)(i). It does not disqualify an alien from receiving a temporary deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100–20, p. 20, 1465 U. N. T. S. 85; 8 CFR § 1208.17(a) (2008).

In this case the Board of Immigration Appeals (BIA) determined that the persecutor bar applies even if the alien's assistance in persecution was coerced or otherwise the product of duress. In so ruling the BIA followed its earlier decisions that found *Fedorenko* v. *United States*, 449 U. S. 490 (1981), controlling. The Court of Appeals for the Fifth Circuit, in affirming the agency, relied on its precedent following the same reasoning. We hold that the BIA and the Court of Appeals misapplied *Fedorenko*. We reverse and remand for the agency to interpret the statute, free from the error, in the first instance.

I

Petitioner in this Court is Daniel Girmai Negusie, a dual national of Eritrea and Ethiopia, his father having been a national of the former and his mother of the latter. Born and educated in Ethiopia, he left there for Eritrea around the age of 18 to see his mother and find employment. The year was 1994. After a few months in Eritrea, state officials took custody of petitioner and others when they were attending a movie. He was forced to perform hard labor for a month and then was conscripted into the military for a time. War broke out between Ethiopia and Eritrea in 1998, and he was conscripted again.

When petitioner refused to fight against Ethiopia, his other homeland, the Eritrean Government incarcerated him. Prison guards punished petitioner by beating him with sticks and placing him in the hot sun. He was released after two years and forced to work as a prison guard, a duty he performed on a rotating basis for about four years. It is undisputed that the prisoners he guarded were being persecuted on account of a protected ground—*i. e.*, "race, religion, nationality, membership in a particular social group, or political opinion." 8 U. S. C. § 1101(a)(42). Petitioner testified that he carried a gun, guarded the gate to prevent escape, and kept prisoners from taking showers and obtaining fresh air. He also guarded prisoners to make sure they stayed in the sun, which he knew was a form of punishment. He saw at least one man die after being in the sun for more than two hours. Petitioner testified that he had not shot at or directly punished any prisoner and that he helped prisoners on various occasions. Petitioner escaped from the prison and hid in a container, which was loaded on board a ship heading to the United States. Once here he applied for asylum and withholding of removal.

In a careful opinion the Immigration Judge, W. Wayne Stogner, found that petitioner's testimony, for the most part, was credible. He concluded that petitioner assisted in persecution by working as an armed guard. The judge determined that although "there's no evidence to establish that [petitioner] is a malicious person or that he was an aggressive person who mistreated the prisoners, . . . the very fact that he helped [the government] in the prison compound where he had reason to know that they were persecuted constitutes assisting in the persecution of others and bars [petitioner] from" obtaining asylum or withholding of removal. App. to Pet. for Cert. 16a–17a (citing, *inter alia*, *Fedorenko*, *supra*). The judge, however, granted deferral of removal under CAT because petitioner was likely to be tortured if returned to Eritrea.

The BIA affirmed the denial of asylum and withholding. It noted petitioner's role as an armed guard in a facility where "prisoners were tortured and left to die out in the sun . . . on account of a protected ground." App. to Pet. for Cert. 6a. The BIA held that "[t]he fact that [petitioner] was compelled to participate as a prison guard, and may not have actively tortured or mistreated anyone, is immaterial." *Ibid.* That is because "'an alien's motivation and intent are irrelevant to the issue of whether he "assisted" in persecution . . . . [I]t is the objective effect of an alien's actions which is controlling.'" *Ibid.* (quoting *Matter of Fedorenko*, 19 I. & N. Dec. 57, 69 (BIA 1984)). The BIA also affirmed the grant of deferral of removal under CAT.

On petition for review the Court of Appeals agreed with the BIA that whether an alien is compelled to assist in persecution is immaterial for persecutor-bar purposes. *Negusie* v. *Gonzales*, 231 Fed. Appx. 325, 326 (2007) *(per curiam)* (citing *Fedorenko*, *supra*, at 512, n. 34). We granted certiorari. 552 U. S. 1255 (2008).

II

Consistent with the rule in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984), the BIA is entitled to deference in interpreting ambiguous provisions of the INA. The question here is whether an alien who was compelled to assist in persecution can be eligible for asylum or withholding of removal. We conclude that the BIA misapplied our precedent in *Fedorenko* as mandating that an alien's motivation and intent are irrelevant to the issue whether an alien assisted in persecution. The agency must confront the same question free of this mistaken legal premise.

A

It is well settled that "principles of *Chevron* deference are applicable to this statutory scheme." *INS* v. *Aguirre-Aguirre*, 526 U. S. 415, 424 (1999). Congress has charged

the Attorney General with administering the INA, and a "ruling by the Attorney General with respect to all questions of law shall be controlling." 8 U. S. C. § 1103(a)(1). Judicial deference in the immigration context is of special importance, for executive officials "exercise especially sensitive political functions that implicate questions of foreign relations." *INS* v. *Abudu*, 485 U. S. 94, 110 (1988). The Attorney General's decision to bar an alien who has participated in persecution "may affect our relations with [the alien's native] country or its neighbors. The judiciary is not well positioned to shoulder primary responsibility for assessing the likelihood and importance of such diplomatic repercussions." *Aguirre-Aguirre*, 526 U. S., at 425.

The Attorney General, in turn, has delegated to the BIA the "'discretion and authority conferred upon the Attorney General by law'" in the course of "'considering and determining cases before it.'" *Ibid.* (quoting 8 CFR § 3.1(d)(1) (1998)). As a consequence, "the BIA should be accorded *Chevron* deference as it gives ambiguous statutory terms 'concrete meaning through a process of case-by-case adjudication.'" *Aguirre-Aguirre*, *supra*, at 425 (quoting *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 448–449 (1987)). When the BIA has not spoken on "a matter that statutes place primarily in agency hands," our ordinary rule is to remand to "giv[e] the BIA the opportunity to address the matter in the first instance in light of its own expertise." *INS* v. *Orlando Ventura*, 537 U. S. 12, 16–17 (2002) *(per curiam)*.

B

The parties disagree over whether coercion or duress is relevant in determining if an alien assisted or otherwise participated in persecution. As there is substance to both contentions, we conclude that the statute has an ambiguity that the agency should address in the first instance.

Petitioner argues that the statute's plain language makes clear that involuntary acts do not implicate the persecutor

bar because "'persecution'" presumes moral blameworthiness. Brief for Petitioner 23–28. He invokes principles of criminal culpability, concepts of international law, and the rule of lenity. *Id.*, at 28–45. Those arguments may be persuasive in determining whether a particular agency interpretation is reasonable, but they do not demonstrate that the statute is unambiguous. Petitioner all but conceded as much at argument in this Court when he indicated that the BIA has discretion to construe the duress defense in either a narrow or a broad way. Tr. of Oral Arg. 20–24.

The Government, on the other hand, asserts that the statute does not allow petitioner's construction. "The statutory text," the Government says, "directly answers that question: there is no exception" for conduct that is coerced because Congress did not include one. Brief for Respondent 11. We disagree. The silence is not conclusive. The question is whether the statutory text mandates that coerced actions must be deemed assistance in persecution. On that point the statute, in its precise terms, is not explicit. Nor is this a case where it is clear that Congress had an intention on the precise question at issue. Cf. *Cardoza-Fonseca*, *supra*, at 448–449.

The Government, like the BIA and the Court of Appeals, relies on *Fedorenko* to provide the answer. This reliance is not without some basis, as the Court there held that voluntariness was not required with respect to another persecutor bar. 449 U. S., at 512. To the extent, however, the Government deems *Fedorenko* to be controlling, it is in error.

In *Fedorenko*, the Court interpreted the Displaced Persons Act of 1948 (DPA), 62 Stat. 1009. The DPA was enacted "to enable European refugees driven from their homelands by the [second world] war to emigrate to the United States without regard to traditional immigration quotas." 449 U. S., at 495. Section 2(b) of the DPA provides relief to "any displaced person or refugee as defined in Annex I of the Constitution of the International Refugee Organiza-

tion" of the United Nations (IRO Constitution). 62 Stat. 1009. The IRO Constitution, as codified by Congress, excludes any individual "who can be shown: *(a)* to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or *(b)* to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations." Annex I, Pt. II, § 2, 62 Stat. 3051–3052.

The *Fedorenko* Court held that "an individual's service as a concentration camp armed guard—whether voluntary or involuntary—made him ineligible for a visa" under § 2*(a)* of the IRO Constitution. 449 U. S., at 512. That Congress did not adopt a voluntariness requirement for § 2*(a)*, the Court noted, "is plain from comparing § 2*(a)* with § 2*(b)*, which excludes only those individuals who '*voluntarily* assisted the enemy forces.'" *Ibid.* The Court relied on the principle of statutory construction that "the deliberate omission of the word 'voluntary' from § 2*(a)* compels the conclusion that the statute made *all* those who assisted in persecution of civilians ineligible for visas." *Ibid.*

Fedorenko does not compel the same conclusion in the case now before us. The textual structure of the statute in *Fedorenko* ("voluntary" is in one subsection but not the other) is not part of the statutory framework considered here. Congress did not use the word "voluntary" in any subsection of the persecutor bar, so its omission cannot carry the same significance.

The difference between the statutory scheme in *Fedorenko* and the one here is confirmed when we "'look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.'" *Dada* v. *Mukasey*, 554 U. S. 1, 16 (2008) (quoting *Gozlon-Peretz* v. *United States*, 498 U. S. 395, 407 (1991)). Both statutes were enacted to reflect principles set forth in international agreements, but the principles differ in significant respects.

As discussed, Congress enacted the DPA in 1948 as part of an international effort to address individuals who were forced to leave their homelands during and after the Second World War. *Fedorenko, supra,* at 495. The DPA excludes those who "voluntarily assisted the enemy forces since the outbreak of the second world war," 62 Stat. 3052, as well as all who "assisted the enemy in persecuting civil populations of countries," *id.*, at 3051. The latter exclusion clause makes no reference to culpability. The exclusion of even those involved in nonculpable, involuntary assistance in Nazi persecution, as an expert testified in *Fedorenko,* may be "'[b]ecause the crime against humanity that is involved in the concentration camp puts it into a different category.'" 449 U. S., at 511, n. 32.

The persecutor bar in this case, by contrast, was enacted as part of the Refugee Act of 1980. Unlike the DPA, which was enacted to address not just the postwar refugee problem but also the Holocaust and its horror, the Refugee Act was designed to provide a general rule for the ongoing treatment of all refugees and displaced persons. As this Court has twice recognized, "'one of Congress' primary purposes' in passing the Refugee Act was to implement the principles agreed to in the 1967 United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U. S. T. 6224, T. I. A. S. 6577 (1968)," as well as the "United Nations Convention Relating to the Status of Refugees, 189 U. N. T. S. 150 (July 28, 1951), reprinted in 19 U. S. T. 6259." *Aguirre-Aguirre,* 526 U. S., at 427 (quoting *Cardoza-Fonseca,* 480 U. S., at 436–437).

These authorities illustrate why *Fedorenko,* which addressed a different statute enacted for a different purpose, does not control the BIA's interpretation of this persecutor bar. Whatever weight or relevance these various authorities may have in interpreting the statute should be considered by the agency in the first instance, and by any subsequent reviewing court, after our remand.

C

The Government argues that "if there were any ambiguity in the text, the Board's determination that the bar contains no such exception is reasonable and thus controlling." Brief for Respondent 11. Whether such an interpretation would be reasonable, and thus owed *Chevron* deference, is a legitimate question; but it is not now before us. The BIA deemed its interpretation to be mandated by *Fedorenko*, and that error prevented it from a full consideration of the statutory question here presented.

In denying relief in this case the BIA recited a rule that has developed in its own case law in reliance on *Fedorenko:* "[A]n alien's motivation and intent are irrelevant to the issue of whether he 'assisted' in persecution . . . . [I]t is the objective effect of an alien's actions which is controlling." App. to Pet. for Cert. 6a. The rule is based on three earlier decisions: *Matter of Laipenieks,* 18 I. & N. Dec. 433 (1983); *Matter of Fedorenko,* 19 I. & N. Dec. 57; and *Matter of Rodriguez-Majano,* 19 I. & N. Dec. 811 (1988).

In *Matter of Laipenieks,* the BIA applied the Court's *Fedorenko* analysis of the DPA to a different postwar statute, which provided for the deportation of anyone associated with the Nazis who "ordered, incited, assisted, or otherwise participated" in persecution based on a protected ground. 8 U. S. C. § 1182(a)(3)(E)(i). Finding no agency or judicial decision on point, the BIA relied on *Fedorenko.* It recognized that the unique structure of the *Fedorenko* statute was not present in § 1182(a)(3)(E)(i), but the BIA nevertheless adopted wholesale the *Fedorenko* rule: "[A]s in *Fedorenko,* . . . the plain language of [§ 1182(a)(3)(E)(i)] mandates a literal interpretation, and the omission of an intent element compels the conclusion that [§ 1182(a)(3)(E)(i)] makes all those who assisted in the specific persecution deportable." 18 I. & N. Dec., at 464 (emphasis deleted). In other words, "particular motivations or intent . . . is not a relevant factor." *Ibid.*

The second decision, *Matter of Fedorenko*, also dealt with § 1182(a)(3)(E)(i), and it involved the same alien whose citizenship was revoked by this Court's *Fedorenko* decision. This time the agency sought to deport him. Fedorenko responded by requesting suspension of deportation. He argued that, unlike the DPA's bar on any assistance—voluntary or involuntary—in persecution, see *Fedorenko*, *supra*, at 512, the text and structure of § 1182(a)(3)(E)(i) required deportation only of those who voluntarily assisted in persecuting others. The BIA rejected that distinction, noting that it was foreclosed by *Matter of Laipenieks:* "It may be, as [Fedorenko] argues, that his service at Treblinka was involuntary. . . . We need not resolve the issue, however, because as a matter of law [Fedorenko's] motivations for serving as a guard at Treblinka are immaterial to the question of his deportability under" § 1182(a)(3)(E)(i). 19 I. & N. Dec., at 69–70.

Later, the BIA applied this Court's *Fedorenko* rule to the persecutor bar that is at issue in the present case. In *Matter of Rodriguez-Majano*, the BIA granted relief because the alien's coerced conduct as a guerrilla was not persecution based on a protected ground. 19 I. & N. Dec., at 815–816. Nevertheless, in reaching its conclusion the BIA incorporated without additional analysis the *Fedorenko* rule as applied in *Matter of Laipenieks* and reiterated in *Matter of Fedorenko*. 19 I. & N. Dec., at 814–815. The BIA reaffirmed that "[t]he participation or assistance of an alien in persecution need not be of his own volition to bar him from relief." *Id.*, at 814 (citing *Fedorenko*, 449 U. S. 490).

Our reading of these decisions confirms that the BIA has not exercised its interpretive authority but, instead, has determined that *Fedorenko* controls. This mistaken assumption stems from a failure to recognize the inapplicability of the principle of statutory construction invoked in *Fedorenko*, as well as a failure to appreciate the differences in statutory purpose. The BIA is not bound to apply the *Fedorenko* rule

that motive and intent are irrelevant to the persecutor bar at issue in this case. Whether the statute permits such an interpretation based on a different course of reasoning must be determined in the first instance by the agency.

III

Having concluded that the BIA has not yet exercised its *Chevron* discretion to interpret the statute in question, "'"the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation."'" *Gonzales* v. *Thomas*, 547 U. S. 183, 186 (2006) *(per curiam)* (quoting *Ventura*, 537 U. S., at 16, in turn quoting *Florida Power & Light Co.* v. *Lorion*, 470 U. S. 729, 744 (1985)). This remand rule exists, in part, because "ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps . . . involves difficult policy choices that agencies are better equipped to make than courts." *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 980 (2005).

Justice Stevens would have the Court provide a definite answer to the question presented and then remand for further proceedings. That approach, however, is in tension with the "ordinary 'remand' rule." *Ventura*, *supra*, at 18; see also *Cajun Elec. Power Cooperative, Inc.* v. *FERC*, 924 F. 2d 1132, 1136 (CADC 1991) (opinion for the court by Silberman, J., joined by R. Ginsburg and Thomas, JJ.) ("[I]f an agency erroneously contends that Congress' intent has been clearly expressed and has rested on that ground, we remand to require the agency to consider the question afresh in light of the ambiguity we see"). *Thomas* is illustrative. There, the agency had not determined whether a family may constitute a social group for the purposes of refugee status. The Ninth Circuit held that the family can constitute a protected social group and that the particular family at issue did qualify. 547 U. S., at 184–185. The Solicitor General sought re-

view in this Court on "whether the Ninth Circuit erred in holding, in the first instance and without prior resolution of the questions by the relevant administrative agency, that members of a family can and do constitute a particular social group, within the meaning of the Act." *Id.*, at 185 (internal quotation marks omitted). He argued that the Ninth Circuit's decision violated the *Ventura* ordinary remand rule. We agreed and summarily reversed. 547 U. S., at 184–185.

Ventura and *Thomas* counsel a similar result here. Because of the important differences between the statute before us and the one at issue in *Fedorenko*, we find it appropriate to remand to the agency for its initial determination of the statutory interpretation question and its application to this case. The agency's interpretation of the statutory meaning of "persecution" may be explained by a more comprehensive definition, one designed to elaborate on the term in anticipation of a wide range of potential conduct; and that expanded definition in turn may be influenced by how practical, or impractical, the standard would be in terms of its application to specific cases. These matters may have relevance in determining whether its statutory interpretation is a permissible one.

As the Court said in *Ventura* and reiterated in *Thomas*, " '[t]he agency can bring its expertise to bear upon the matter; it can evaluate the evidence; it can make an initial determination; and, in doing so, it can, through informed discussion and analysis, help a court later determine whether its decision exceeds the leeway that the law provides.' " 547 U. S., at 186–187 (quoting *Ventura*, *supra*, at 17). If the BIA decides to adopt a standard that considers voluntariness to some degree, it may be prudent and necessary for the Immigration Judge to conduct additional factfinding based on the new standard. Those determinations are for the agency to make in the first instance.

* * *

We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE ALITO joins, concurring.

I agree with the Court that "the statute has an ambiguity," *ante*, at 517, with respect to whether an alien who was coerced to assist in persecution is barred from obtaining asylum in the United States. I agree that the agency is entitled to answer that question. *Ibid.* See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984). And I agree that a remand is in order, to give the agency an opportunity to clarify whether its affirmative answer was premised on an erroneous view that this Court's decision in *Fedorenko* v. *United States*, 449 U. S. 490 (1981), compelled it. *Ante*, at 523.

I would not agree to remand if I did not think that the agency has the option of adhering to its decision. The majority appears to leave that question undecided, *ante*, at 518 (reserving whether "a particular agency interpretation is reasonable"); two Justices forthrightly disagree and would require the agency to recognize at least some sort of duress exception, *post*, at 534–535 (STEVENS, J., concurring in part and dissenting in part).

But good reasons for the agency's current practice exist—reasons adequate to satisfy the requirement that an agency act reasonably in choosing among various possible constructions of an ambiguous statute. The statute does not mandate the rule precluding the duress defense but does not foreclose it either; the agency is free to retain that rule so long as the choice to do so is soundly reasoned, not based on irrelevant or arbitrary factors (like the *Fedorenko* precedent).

The primary contention to the contrary is, in short, that barring aliens who persecuted under duress would punish purely "nonculpable" conduct. That argument suffers from at least three unjustified leaps of logic.

First, it implicitly adopts a view of "culpability" that is neither the only view nor one necessarily applicable here. The culpability of one who harms another under coercion is, and has always been, a subject of intense debate, raising profound questions of moral philosophy and individual responsibility. (The so-called "Nuremberg defense" comes readily to mind.) At common law, duress was not an accepted defense to intentional killing, see 2 W. LaFave, Substantive Criminal Law § 9.7(b), pp. 74–75 (2d ed. 2003); and in modern times, some States do not allow it as a defense to lesser crimes, see *id.*, at 81–82, and n. 50. Notably, there is no historical support for the duress defense when a soldier follows a military order he knows to be unlawful. *Id.*, § 9.7(g), at 86; see also, *e. g.*, *Axtell's Case*, Kel. J. 13, 84 Eng. Rep. 1060 (K. B. 1660); *Prosecutor* v. *Erdemović*, [1997] 2 ICTY Jud. Rep. 1610, 1635 (Int'l Crim. Trib. for Former Yugoslavia). It is therefore far from clear that precluding a duress defense here would, as petitioner alleges, "disregard principles of blame . . . 'universal and persistent' in American law." Brief for Petitioner 32 (quoting *Morissette* v. *United States*, 342 U. S. 246, 250 (1952)). All of this suggests that those who are coerced to commit wrong are at least *sometimes* "culpable" enough to be treated as criminals.

More importantly, this is not a criminal matter. This Court has long understood that an "order of deportation is not a punishment for crime." *Fong Yue Ting* v. *United States*, 149 U. S. 698, 730 (1893). Asylum is a benefit accorded by grace, not by entitlement, and withholding that benefit from all who have intentionally harmed others—whether under coercion or not—is not unreasonable.

Second, petitioner assumes that the persecutor bar must have been intended merely to punish wrongdoing. But in

the context of immigration law, "culpability" as a relevant factor in determining admissibility is only one facet of a more general consideration: desirability. And there may well be reasons to think that those who persecuted others, even under duress, would be relatively undesirable as immigrants. If, for example, the asylum laws grant entry to those who suffered the persecution, might it not be imprudent to also grant entry to the coerced persecutor, who may end up living in the same community as one of his victims? The Nation has a legitimate interest in preventing the importation of ethnic strife from remote parts of the world, and the agency may resolve the statutory ambiguity in a way that safeguards that interest.

Finally, *even if* culpability is the only relevant factor, and *even if* a narrow, criminal-law based view of culpability is the authoritative one, a bright-line rule excluding all persecutors—whether acting under coercion or not—might *still* be the best way for the agency to effectuate the statutory scheme. See generally Cox & Posner, Second-Order Structure of Immigration Law, 59 Stan. L. Rev. 809 (2007). Immigration judges already face the overwhelming task of attempting to recreate, by a limited number of witnesses speaking through (often poor-quality) translation, events that took place years ago in foreign, usually impoverished countries. See *Dia* v. *Ashcroft*, 353 F. 3d 228, 261–262 (CA3 2003) (en banc) (Alito, J., concurring in part and dissenting in part). Adding on top of that the burden of adjudicating claims of duress and coercion, which are extremely difficult to corroborate and necessarily pose questions of degree that require intensely fact-bound line-drawing, would increase the already inherently high risk of error. And the *cost* of error (viz., allowing *un*-coerced persecutors to remain in the country permanently) might reasonably be viewed by the agency as significantly greater than the cost of overinclusion under a bright-line rule (viz., denial of asylum to some coerced persecutors—who might anyway be entitled to protec-

tion under the Convention Against Torture, which includes no analogous persecutor bar).

It is worth noting that although the agency's "objective effects" approach to the statute would seem to sweep beyond the duress scenario to encompass even an alien who had no idea that his actions would "objectively" assist in persecution, see *Castañeda-Castillo* v. *Gonzales*, 488 F. 3d 17, 20 (CA1 2007) (en banc), there is no reason why the agency cannot consider questions of *knowledge* separate and apart from questions of *duress*. Both can be said to relate to the mental state of the persecutor,* but they present different problems which can be grappled with separately. The agency need not provide an "all-embracing answer," *ibid.*, in the present case. It may evaluate problems one by one as they arise, and whatever it might decide about an unknowing persecutor is irrelevant to petitioner, who knew exactly what he was doing.

To be clear, I do not endorse any particular rule. It is to agency officials, not to the Members of this Court, that Congress has given discretion to choose among permissible interpretations of the statute. They deserve to be told clearly whether we are serious about allowing them to exercise that discretion, or are rather firing a warning shot across the bow.

JUSTICE STEVENS, with whom JUSTICE BREYER joins, concurring in part and dissenting in part.

The narrow question of statutory construction presented by this case is whether the so-called "persecutor bar," 8 U. S. C. §§ 1101(a)(42), 1158(b)(2)(A)(i), 1231(b)(3)(B), disqualifies from asylum or withholding of removal an alien whose

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*The rationale for the duress defense, however, is conventionally "not that the defendant . . . somehow loses his mental capacity to commit the crime in question," but rather that "even though he has done the act the crime requires and has the mental state which the crime requires, his conduct . . . is excused." 2 W. LaFave, Substantive Criminal Law § 9.7(a), p. 73 (2d ed. 2003).

conduct was coerced or otherwise the product of duress. If the answer to that threshold question is "no," courts should defer to the Attorney General's evaluation of particular circumstances that may or may not establish duress or coercion in individual cases. But the threshold question the Court addresses today is a "pure question of statutory construction for the courts to decide." *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 446 (1987). For that reason, while I agree with the Court's cogent explanation of why its misguided decision in *Fedorenko* v. *United States*, 449 U. S. 490 (1981), does not govern our interpretation of the persecutor bar, I would provide a definite answer to the question presented and then remand for further proceedings.

I

Judicial deference to agencies' views on statutes they administer was not born in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), nor did the "singularly judicial role of marking the boundaries of agency choice," *Young* v. *Community Nutrition Institute*, 476 U. S. 974, 988 (1986) (STEVENS, J., dissenting), die with that case. In the years before *Chevron*, this Court recognized that statutory interpretation is a multifaceted enterprise, ranging from a precise construction of statutory language to a determination of what policy best effectuates statutory objectives. We accordingly acknowledged that a complete interpretation of a statutory provision might demand both judicial construction and administrative explication. *E. g.*, *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111 (1944) (construing the term "employee" in the National Labor Relations Act but deferring to the National Labor Relations Board's finding that newsboys were employees); see Nathanson, Administrative Discretion in the Interpretation of Statutes, 3 Vand. L. Rev. 470 (1950).

Chevron adhered to this approach. There, we recognized that the Clean Air Act did not define "stationary sources,"

42 U. S. C. § 7502(b)(6) (1982 ed.), but rather implicitly delegated to the Environmental Protection Agency (EPA) the policy question whether States could treat entire plants or only their discrete pollution-emitting devices as sources of pollution for purposes of the Act's permit program. Congress left a gap for the agency to fill, and the agency brought its expertise, political acuity, and information-gathering abilities to bear in doing so. See *Chevron*, 467 U. S., at 865–866.[1] In keeping with precedent, see *id.*, at 843–845, and nn. 9, 11–14, our opinion reaffirmed both that "[t]he judiciary is the final authority on issues of statutory construction," *id.*, at 843, n. 9, and that courts should defer to an agency's reasonable formulation of policy in response to an explicit or implicit congressional delegation of authority. The *Chevron* framework thus accounts for the different institutional competencies of agencies and courts: Courts are expert at statutory construction, while agencies are expert at statutory implementation. That the distinction can be subtle does not lessen its importance.

In the 25 years since *Chevron* was decided, this Court has continued to recognize that courts and agencies play complementary roles in the project of statutory interpretation. We have repeatedly held that "ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion." *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 980 (2005). But even when confronted with a statute that involves a de-

[1] Notably, the EPA cast its activity not as statutory construction but as public administration; its rulemaking sought to achieve policy goals, such as reducing regulatory complexity and promoting plant modernization. See 46 Fed. Reg. 50766 (1981). To be sure, the EPA argued that its regulation defining "stationary source" as an entire plant was permissible under the Clean Air Act, but the agency treated its rulemaking as a matter of fashioning sound policy, not of discerning the meaning of "stationary source" in the statute.

gree of ambiguity—as most statutes do—we have not abdicated our judicial role. The fact that Congress has left a gap for the agency to fill means that courts should defer to the agency's reasonable gap-filling decisions, not that courts should cease to mark the bounds of delegated agency choice.[2]

In cases involving agency adjudication, we have sometimes described the court's role as deciding pure questions of statutory construction and the agency's role as applying law to fact. See, *e. g.*, *Cardoza-Fonseca*, 480 U. S. 421; *NLRB* v. *Food & Commercial Workers*, 484 U. S. 112 (1987); see also *Republic of Austria* v. *Altmann*, 541 U. S. 677, 701–702 (2004). While this phrasing is peculiar to the adjudicatory context, the principle applies to *Chevron*'s domain more broadly. In the context of agency rulemaking, for instance, we might distinguish between pure questions of statutory interpretation and policymaking, or between central legal issues and interstitial questions. See *Barnhart* v. *Walton*, 535 U. S. 212, 222 (2002).[3] The label is immaterial. What matters is the principle: Certain aspects of statutory interpretation remain within the purview of the courts, even when the statute is not entirely clear, while others are properly understood as delegated by Congress to an expert and accountable administrative body. Statutory language may thus admit of both judicial construction and agency exposition.

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[2] Cf. *United States* v. *Mead Corp.*, 533 U. S. 218, 236–238 (2001); *Barnhart* v. *Walton*, 535 U. S. 212, 222 (2002) (noting that *Mead* "indicated that whether a court should give *[Chevron]* deference depends in significant part upon the interpretive method used and the nature of the question at issue").

[3] The Administrative Procedure Act draws a similar distinction in providing that courts "shall decide all relevant questions of law [and] interpret constitutional and statutory provisions" but shall review "agency action, findings, and conclusions" under the arbitrary and capricious/abuse-of-discretion standard. 5 U. S. C. § 706.

II

Two of this Court's cases construing the Immigration and Nationality Act (INA), 66 Stat. 166, 8 U. S. C. § 1101 *et seq.*, illustrate the proper division of responsibility between courts and agencies and highlight when *Chevron* deference is appropriate and when it is not. In *Cardoza-Fonseca*, the question was whether the standard of INA § 243(h), 8 U. S. C. § 1253(h) (1982 ed.), which requires an alien to show that she is more likely than not to be subject to persecution if she is deported, also governs applications for asylum under § 208(a), 8 U. S. C. § 1158(a) (1982 ed.), which authorizes the Attorney General to grant asylum to an alien who has a well-founded fear of persecution in her home country. After considering the INA's language, its legislative history, and the United Nations Protocol that Congress had implemented, the Court determined that the two standards are not the same.

In so holding, we decisively rejected the Government's contention, echoed by JUSTICE SCALIA's concurrence in the judgment, that the Board of Immigration Appeals' (BIA) interpretation of the statute merited deference under our then-recent decision in *Chevron*. "The question whether Congress intended the two standards to be identical is a pure question of statutory construction for the courts to decide," we stated. 480 U. S., at 446. We therefore did not defer to the BIA's interpretation of the two standards as equivalent but instead employed traditional tools of statutory construction and "concluded that Congress did not intend the two standards to be identical." *Ibid.*[4]

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[4] JUSTICE SCALIA objected in particular to the majority's holding that pure questions of statutory construction are for the courts, not agencies, to decide; he insisted this was unfaithful to *Chevron*, "since in *Chevron* the Court deferred to the Environmental Protection Agency's abstract interpretation of the phrase 'stationary source.'" 480 U. S., at 455 (opinion concurring in judgment). The majority rejected JUSTICE SCALIA's argument, recognizing that *Chevron* involved an agency's complex policy

Importantly, we recognized that *Chevron* deference need not be an all-or-nothing venture. Even after the question of the standards' equivalency was resolved, there remained the question of their application. We explained: "The narrow legal question whether the two standards are the same is, of course, quite different from the question of interpretation that arises in each case in which the agency is required to apply either or both standards to a particular set of facts." 480 U. S., at 448. And we noted that applying the INA was a task particularly suited to the agency's unique competencies: "There is obviously some ambiguity in a term like 'well-founded fear' which can only be given concrete meaning through a process of case-by-case adjudication. In that process of filling '"any gap left, implicitly or explicitly by Congress,"' the courts must respect the interpretation of the agency to which Congress has delegated the responsibility for administering the statutory program." *Ibid.* (quoting *Chevron*, 467 U. S., at 843, in turn quoting *Morton* v. *Ruiz*, 415 U. S. 199, 231 (1974)).

In *INS* v. *Aguirre-Aguirre*, 526 U. S. 415 (1999), the Court encountered just the type of agency decision *Cardoza-Fonseca* indicated would warrant *Chevron* deference. The BIA had denied withholding of deportation because it found that the respondent had "committed a serious nonpolitical crime" before he entered the United States, 8 U. S. C. § 1253(h)(2)(C) (1994 ed.). The Court of Appeals reversed the agency's decision and required it to supplement its balancing test with specific additional factors (such as whether the respondent's acts were grossly out of proportion to their objective and whether the acts were politically necessary and successful).

We reversed the Court of Appeals, concluding that *Chevron* deference should be accorded to the BIA "as it gives

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judgment about how to fill a statutory gap, not a pure question of statutory construction. See 480 U. S., at 445–448, and n. 29 (quoting extensively from *Chevron*).

ambiguous statutory terms 'concrete meaning through a process of case-by-case adjudication.'" 526 U. S., at 425 (quoting *Cardoza-Fonseca*, 480 U. S., at 448). The BIA's formulation of a test to apply the statutory standard in individual cases and its application of that test in respondent's case were precisely the sort of agency actions that merited judicial deference.

III

The threshold question the Court addresses today is the kind of "pure question of statutory construction for the courts to decide" that we answered in *Cardoza-Fonseca*, *id.*, at 446, rather than a fact-intensive question of the kind we addressed in *Aguirre-Aguirre*. Just as we decided the narrow legal question presented in *Cardoza-Fonseca* but did not "attempt to set forth a detailed description of how the 'well-founded fear' test should be applied," 480 U. S., at 448, I would decide the narrow legal question now before us and remand for the agency to determine how the persecutor bar applies in individual cases.[5]

For reasons similar to those set forth in my dissent in *Fedorenko*, I think it plain that the persecutor bar does not dis-

[5] The majority suggests that this approach is inconsistent with the "'ordinary "remand" rule'" articulated in *Gonzales* v. *Thomas*, 547 U. S. 183 (2006) *(per curiam)*, and *INS* v. *Orlando Ventura*, 537 U. S. 12 (2002) *(per curiam)*. *Ante*, at 523–524. But those cases involved exactly the sort of application of law to fact that is within the agency's purview. In *Thomas*, the Court of Appeals decided that the family at issue "fell within the scope of the statutory term 'particular social group.'" 547 U. S., at 185. We noted that the BIA had not considered this question, which "require[d] determining the facts and deciding whether the facts as found f[e]ll within a statutory term." *Id.*, at 186. Accordingly, we held that the court should have remanded to the agency. Similarly, in *Ventura*, the Court of Appeals addressed an issue that the BIA had not reached and concluded that conditions in Guatemala had so improved that no realistic threat of persecution currently existed. The Government argued that the court had not respected "the BIA's role as fact-finder," 537 U. S., at 16, and we agreed, reversing the court's judgment insofar as it had not remanded to the agency.

qualify from asylum or withholding of removal an alien whose conduct was coerced or otherwise the product of duress. Although I agree in full with the Court's conclusion that the majority opinion in *Fedorenko* does not govern our interpretation of the persecutor bar, the differences the Court highlights between the Displaced Persons Act of 1948 (DPA), 62 Stat. 1009, and the Refugee Act of 1980, 94 Stat. 102, only strengthen my conclusion that *voluntary* assistance in persecution is required and that duress and coercion vitiate voluntariness.

The *Fedorenko* Court's construction of the DPA threatened to exclude from the United States concentration camp prisoners who were forced to assist the Nazis in the persecution of other prisoners. In my view, this construction was insupportable—the DPA's exclusion of persons who "assisted the enemy in persecuting civil populations," Constitution of the International Refugee Organization, Annex I, Pt. II, § 2*(a)*, 62 Stat. 3051, did not extend to concentration camp prisoners who did so involuntarily. These prisoners were victims, not persecutors.

Without an exception for involuntary action, the Refugee Act's bar would similarly treat entire classes of victims as persecutors. The Act does not support such a reading. The language of the persecutor bar is most naturally read to denote culpable conduct, and this reading is powerfully supported by the statutory context and legislative history.

As this Court has previously recognized—and as the majority acknowledges again today—Congress passed the Refugee Act to implement the United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U. N. T. S. 150 (hereinafter Convention), reprinted in 19 U. S. T. 6259, and the 1967 United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U. S. T. 6223, T. I. A. S. No. 6577 (hereinafter Protocol). These treaties place a mandatory obligation on signatory states not to "expel or return ('refouler') a refugee in any manner whatsoever to . . . terri-

tories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Convention, Art. 33(1), 19 U. S. T., at 6276; Protocol, Art. I, 19 U. S. T., at 6225. The Refugee Act's withholding of removal provision specifically tracks this language. 8 U. S. C. § 1231(b)(3)(A); see H. R. Rep. No. 96–608, p. 18 (1979) (withholding of removal provision "clearly reflects our legal obligations under international agreements," specifically Convention Article 33).[6]

The Convention excludes from the *nonrefoulement* obligation of Article 33 persons who have "committed a crime against peace, a war crime, or a crime against humanity." Convention, Art. 1(F)*(a)*, 19 U. S. T., at 6263. It is this exception that the persecutor bar reflects. See, *e. g.*, H. R. Rep. No. 96–608, at 18 (persecutor bar encompasses "exceptions . . . provided in the Convention relating to aliens who have themselves participated in persecution"); H. R. Conf. Rep. No. 96–781, p. 20 (1980). The language of the Convention's exception is critical: We do not normally convict individuals of *crimes* when their actions are coerced or otherwise involuntary. Indeed, the United Nations Handbook,

[6] Asylum and withholding of removal address concerns different from those addressed by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and its implementing regulations. CAT, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 85; 8 CFR §§ 1208.16–1208.18 (2008). The CAT prohibits a state party from returning any person to a country where there is substantial reason to believe he might be tortured, but its definition of torture covers a narrower class of harms, imposed by a narrower class of actors, than the asylum and withholding of removal provisions. Most importantly, the CAT limits its definition of torture to acts "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," Pt. I, Art. 1, ¶ 1, p. 19, while asylum and withholding of removal are available to victims of harm inflicted by private actors, without regard to state involvement, see, *e. g.*, *In re Kasinga*, 21 I. & N. Dec. 357, 365 (BIA 1996); *In re H—*, 21 I. & N. Dec. 337, 343–344 (BIA 1996).

to which the Court has looked for guidance in the past, states that all relevant factors, including "mitigating circumstances," must be considered in determining whether an alien's acts are of a "criminal nature" as contemplated by Article 1(F). Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status ¶¶ 157, 162 (reedited Jan. 1992). Other states parties to the Convention and Protocol likewise read the Convention's exception as limited to culpable conduct.[7] When we interpret treaties, we consider the interpretations of the courts of other nations, and we should do the same when Congress asks us to interpret a statute in light of a treaty's language. See *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 226–228 (1996). Congress' effort to conform United States law to the standard set forth in the U. N. Convention and Protocol shows that it intended the persecutor bar to apply only to culpable, voluntary acts—and it underscores that Congress did not delegate the question presented by this case to the agency.

While I would hold that the persecutor bar does not automatically disqualify from asylum or withholding of removal an alien who acted involuntarily,[8] I would leave for the Attor-

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[7] See, *e. g.*, *Canada* v. *Asghedom*, [2001] F. C. T. 972, ¶ 28 (Can. Fed. Ct.); *Gurung* v. *Secretary of State for Home Dept.*, [2002] UKIAT 4870, ¶¶ 108–110 (U. K. Immigr. App. Trib.); *SRYYY* v. *Minister for Immigration & Multicultural & Indigenous Affairs*, [2005] 147 F. C. R. 1, ¶¶ 126–128 (Austl. Fed. Ct.); Refugee Appeal No. 2142/94, pp. 12–14 (N. Z. Refugee Status App. Auth., Mar. 20, 1997). Notions of culpability have deep roots in asylum law. See generally 2 H. Grotius, De Jure Belli ac Pacis Libri Tres, ch. XXI, § V(1), p. 530 (J. Scott ed., F. Kelsey et al. transl., 1925) ("[P]laces of asylum were available [in ancient times] for those from whose hands a chance missile had slain a man" and for those with "innocent" minds).

[8] Other considerations that are not presented in this case, such as an alien's lack of knowledge that he was involved in a persecutory act, could likewise indicate that he did not act with the requisite culpability. See, *e. g.*, *Castañeda-Castillo* v. *Gonzales*, 488 F. 3d 17, 20–22 (CA1 2007) (en banc); *Hernandez* v. *Reno*, 258 F. 3d 806, 814 (CA8 2001).

ney General—and, through his own delegation, the BIA—the question how the voluntariness standard should be applied. The agency would retain the ability, for instance, to define duress and coercion; to determine whether or not a balancing test should be employed; and, of course, to decide whether any individual asylum-seeker's acts were covered by the persecutor bar. Those are the sorts of questions suited to the agency's unique competencies in administering the INA. The threshold question before the Court is not.

IV

Because I remain convinced that the narrower interpretation of *Chevron* endorsed by the Court in *Cardoza-Fonseca* was more faithful to the rationale of that case than the broader view the Court adopts today, I am unable to join its opinion. I would answer the question of law that this case presents with an unequivocal "no" and remand to the agency for further proceedings.

JUSTICE THOMAS, dissenting.

The "persecutor bar" in the Immigration and Nationality Act (INA) denies asylum and the withholding of removal to any alien who has "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." 8 U. S. C. §§ 1101(a)(42), 1158(b)(2)(A), 1231(b)(3)(B)(i). The Board of Immigration Appeals (BIA), principally relying on this Court's decision in *Fedorenko* v. *United States*, 449 U. S. 490 (1981), held that the statute does not require that the persecution be voluntarily inflicted. The Court of Appeals for the Fifth Circuit affirmed.

According to the Court, *Fedorenko*, which construed the similar text of a persecution bar in the Displaced Persons Act of 1948 (DPA), is largely irrelevant to the question presented here. See *ante*, at 518–523; see also *ante*, at 525

(SCALIA, J., concurring). The majority further holds that the INA is ambiguous as to "whether coercion or duress is relevant in determining if an alien assisted or otherwise participated in persecution" and that the agency, therefore, should interpret the statute in the first instance to determine whether it reasonably can be read to include a voluntariness requirement. *Ante*, at 517, 523–524; see also *ante*, at 525 (SCALIA, J., concurring). I disagree with both of these conclusions. Because the INA unambiguously precludes any inquiry into whether the persecutor acted voluntarily, *i. e.*, free from coercion or duress, I would affirm the judgment of the Court of Appeals. I respectfully dissent.

I

Petitioner Daniel Girmai Negusie testified to the Immigration Judge (IJ) that he was forced to work as an armed guard for four years at an Eritrean prison camp where prisoners were persecuted because of their religious beliefs. According to petitioner, part of his job was "to firmly control the prisoners, to punish the prisoners, too, by exposing them" to the extreme heat of the African sun. App. 58. The guards "would . . . hold [a] stick [with] their hand" and follow prisoners who were being forced to "roll on the ground in the sun." *Id.*, at 23. Because "it was extremely hot," prisoners would quickly "get tired and [feel] shortness of breath and stop" rolling. *Id.*, at 24. They were then beaten. Prisoners typically could not survive this punishment for more than two hours. Indeed, at least one prisoner died from sun exposure while petitioner stood guard. See *ante*, at 515 (majority opinion).

Petitioner testified that, as a guard, he prevented the prisoners from showering and forbade them from leaving their rooms for fresh air. This form of punishment was particularly severe because the prisons were "built from stone and bricks" with "no cooling system, no ventilation, no windows," and intolerable heat. App. 20, 30. Petitioner also pre-

vented prisoner escapes, for which the punishment was forced sun exposure. And, although petitioner never used "electricity to torture" prisoners, he was aware that his supervisor did. *Id.*, at 61–62.

But petitioner, who had converted to Protestantism when he was confined as a prisoner at the camp, also testified that he did not want to persecute any of the prisoners because his new religion taught him "to be merciful." *Id.*, at 34. Thus, at times he disobeyed his orders. On one occasion, he gave water to a prisoner who was dying from sun exposure. On another occasion, he let female prisoners take showers after they had been denied that privilege "for a long time." *Id.*, at 37. Petitioner also occasionally allowed some of the prisoners to "go outside during the night and during the evenings and . . . refresh themselves in the fresh air." *Id.*, at 37–38.

After four years as a prison guard, petitioner deserted his post, swam to a shipping container, and hid inside. See *ante*, at 515 (majority opinion). The container arrived in the United States with petitioner inside on December 20, 2004. Petitioner applied for asylum and the withholding of removal under the INA, 8 U. S. C. § 1101 *et seq.* He also applied for protection under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), under which it is "the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." Foreign Affairs Reform and Restructuring Act of 1998, § 2242(a), 112 Stat. 2681–822, note following 8 U. S. C. § 1231, p. 263 (United States Policy with Respect to Involuntary Return of Persons in Danger of Subjection to Torture (hereinafter CAT Policy)). See also CAT, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 85. Petitioner feared that, if returned to Eritrea, he would "be

executed" because he had converted to Protestantism and deserted his military post. App. 65, 68.

The INA provides the Executive with the discretion to grant asylum to aliens that are "unable or unwilling" to return to their 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." 8 U. S. C. §§ 1101(a)(42)(A), 1158(b)(1). The INA also requires the Executive to withhold removal of aliens to a country in which there is a "clear probability" that their "life or freedom would be threatened" because of their "race, religion, nationality, membership in a particular social group, or political opinion." § 1231(b)(3)(A). However, the INA prohibits the Executive from granting asylum or withholding removal if an 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." § 1158(b)(2)(A)(i) (asylum); § 1231(b)(3)(B) (withholding of removal). Nonetheless, in light of the CAT's requirement that "[n]o State Party shall . . . return . . . a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture," Art. 3, S. Treaty Doc. No. 100–20, at 20, regulations implementing that convention provide "deferral of removal" to aliens subject to the INA persecutor bar who would more likely than not be tortured if removed to their home country.[1] 8 CFR

[1] "Deferral of removal" was created to accommodate Congress' direction to exclude those who fall within the INA persecutor bar "[t]o the maximum extent consistent with the obligations of the United States under the [CAT]" not to return an alien to a country in which he or she will be tortured. CAT Policy (c), at 263. To accomplish that goal, deferral of removal provides "a less permanent form of protection than withholding of removal and one that is more easily and quickly terminated if it becomes possible to remove the alien consistent with Article 3" of the CAT, 64 Fed. Reg. 8480 (1999), while also "ensur[ing] that [such aliens] are not returned to a country where they would be tortured," *id.*, at 8481.

§§ 1208.16(c)(4), (d)(2), 1208.17(a) (2008); see also CAT Policy (b), at 263 (requiring federal agencies to "prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT], subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention").

The IJ denied petitioner's applications for asylum and the withholding of removal, but granted him deferral of removal. The BIA affirmed. In their view, petitioner's conduct objectively qualified as assistance or participation in the persecution of others based on religion. See *ante*, at 515–516 (majority opinion). Relying on *Fedorenko*, the IJ and BIA found that even if petitioner was "compelled to participate as a prison guard" against his wishes, his "motivation and intent are irrelevant to the issue of whether he 'assisted' in persecution." *Ante*, at 516 (some internal quotation marks omitted). Therefore, petitioner was ineligible for asylum or the withholding of removal under the INA. The IJ and BIA agreed, however, that petitioner qualified for deferral of removal because it is "more likely than not that he would be tortured" if returned to Eritrea given that its "government has used deadly force and threatened to use deadly force against deserters." App. to Pet. for Cert. 20a, 19a. The Court of Appeals affirmed. See *Negusie* v. *Gonzales*, 231 Fed. Appx. 325, 326 (CA5 2007) *(per curiam)*.

II

As with all statutory interpretation questions, construction of the INA's persecutor bar must begin with the plain language of the statute. See *Jimenez* v. *Quarterman*, *ante*, at 118 (citing *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004)). If the text of a statute governing agency action "'directly addresse[s] the precise question at issue,'" then "'that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'" *National Assn. of Home Builders* v.

Defenders of Wildlife, 551 U. S. 644, 665 (2007) (quoting *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984)).

A

A court must first "look to the particular statutory language at issue." *K mart Corp.* v. *Cartier, Inc.*, 486 U. S. 281, 291 (1988). As the majority acknowledges, see *ante*, at 518, the text of the INA's persecutor bar neither includes the term "voluntary" nor contains an exception for involuntary, coerced conduct. The statute instead applies to *any* alien who "ordered, incited, assisted, or otherwise participated in the persecution of any person" on account of a protected ground. 8 U. S. C. §§ 1101(a)(42), 1158(b)(2)(A)(i), 1231(b)(3)(B)(i).

The statute's key terms also do not imply any voluntariness requirement for persecution. Under the ordinary meaning of the term "persecution" at the time of the statute's enactment in 1980 and its reenactment in 1996, the act of persecution alone is sufficient to classify one's conduct as persecution. See Webster's Ninth New Collegiate Dictionary 877 (1991) (hereinafter Webster's Ninth) (defining "persecution" as "the act or practice of persecuting esp. those who differ in origin, religion, or social outlook"); see also Webster's New Collegiate Dictionary 855 (1975) (hereinafter Webster's) (same). The term itself includes no intrinsic *mens rea* requirement. As a result, an individual can "persecute"—meaning "harass in a manner designed to injure, grieve, or afflict"—without having designed the act or intended for injury, grief, or affliction to occur. Webster's Ninth 877; see also Webster's 855 (same).

The persecutor bar's inclusion of those who "assist" or "participate" confirms that it does not include a voluntariness requirement. The term "assist" is defined as "to give support or aid," Webster's Ninth 109, or "to help," Oxford American Dictionary 36 (1980) (hereinafter Oxford). See

also Black's Law Dictionary 111 (5th ed. 1979) (hereinafter Black's) (defining "assist" as "[t]o help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary"). And "participate" means simply "to take part," Webster's Ninth 858, or "to have a share, to take part in something," Oxford 487; see also Black's 1007 (defining "participate" as "[t]o receive or have a part or share of; to partake of; experience in common with others; to have or enjoy a part or share in common with others"). Accordingly, this Court has concluded that the ordinary meanings of "assist" and "participate" do not "connote voluntariness." *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 211 (1998) (participate); see also *Fedorenko*, 449 U. S., at 512 (assist). These are "terms and concepts of breadth," *Russello* v. *United States*, 464 U. S. 16, 21–22 (1983), that require only that an individual take "*some* part in" an activity, or help it to occur in some way, *Reves* v. *Ernst & Young*, 507 U. S. 170, 178–179 (1993) (emphasis in original). Even if participation or assistance is coerced, it remains participation or assistance just the same.

B

In addition to the particular statutory section of the INA before the Court, "the language and design of the statute as a whole" is instructive in determining the provision's plain meaning. *K mart Corp.*, *supra*, at 291; see also *Amoco Production Co.* v. *Gambell*, 480 U. S. 531, 552–553 (1987). Here, the INA's design and structure buttress the conclusion that the persecutor bar applies irrespective of voluntariness.

First, Congress has evidenced its ability to both specifically require voluntary conduct and explicitly exclude involuntary conduct in other provisions of the INA. See *infra*, at 552–553. For example, Congress has barred admission to the United States of totalitarian party members unless their membership was "involuntary," 8 U. S. C. § 1182(a)(3)(D)(ii), and it has provided for the termination of asylum when an alien "has voluntarily availed himself or herself" of another

country's protections, § 1158(c)(2)(D). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello*, *supra*, at 23 (internal quotation marks omitted); see, *e. g.*, *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 452–454 (2002). The absence of a voluntariness requirement in the INA persecutor bar is no exception.

Second, federal immigration law provides calibrated remedies, which include partial refuge for specified aliens who have both suffered from and inflicted persecution. Those who have been persecuted and have not engaged in persecution may receive both asylum and the withholding of removal. §§ 1231(b)(3)(A), 1158(b)(1)(A). Those at the other end of the spectrum, who have not been persecuted but have persecuted others, may not receive either asylum or the withholding of removal. §§ 1231(b)(3)(B)(i), 1158(b)(2)(A)(i). And finally, for many individuals who (like petitioner) have both persecuted others and been persecuted, the scheme provides temporary refuge; they will receive deferral of removal under the CAT if they will face torture upon their return to their home country. CAT Policy (a), at 263; see also 8 CFR §§ 1208.13(a), 1208.16(d)(2).

Where "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions," courts should not read one part of the legislative regime (the INA) to provide a different, and conflicting, solution to a problem that has already been specifically addressed elsewhere in the federal immigration regime (regulations implementing the CAT). *Varity Corp.* v. *Howe*, 516 U. S. 489, 519 (1996) (THOMAS, J., dissenting); see also *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U. S. 11, 19 (1979). Federal law provides only partial protection to a victim of persecution who has also engaged in persecution, voluntarily or not. There simply is no justification for writ-

ing into the INA's persecutor bar the greater protections of asylum and the withholding of removal for individuals who were coerced into engaging in persecution. That is, the "assumption of inadvertent omission" of a voluntariness requirement in the INA "is rendered especially suspect upon close consideration of [a statute's] interlocking, interrelated, and interdependent remedial scheme" that addresses the specific problem at issue in a conflicting way. *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134, 146–147 (1985).[2]

C

Finally, Congress is aware of a judicial interpretation of statutory language and "adopt[s] that interpretation when it re-enacts a statute without change." *Lorillard* v. *Pons*, 434 U. S. 575, 580 (1978); see also *Traynor* v. *Turnage*, 485 U. S. 535, 546 (1988); 2B N. Singer & J. Singer, Sutherland on Statutory Construction § 49.9, pp. 127–133 (7th ed. 2008). Here, the statutory and decisional backdrop against which Congress enacted the INA's persecutor bar counsels against grafting a voluntariness requirement onto the statute.

When Congress enacted the INA's persecutor bar, it essentially retained the language used in similar predecessor statutes. Under the 1948 DPA persecutor bar, entry was denied

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[2] It also is important to acknowledge that the object of the INA is to codify Congress' policy decisions "'pertaining to the entry of aliens and their right to remain'" in the United States—decisions that are "'entrusted exclusively to Congress.'" *Kleindienst* v. *Mandel*, 408 U. S. 753, 766, 767 (1972) (quoting *Galvan* v. *Press*, 347 U. S. 522, 531–532 (1954)). In fact, "over no conceivable subject is the legislative power of Congress more complete than it is over" the decision of Congress to admit or to exclude aliens. *Oceanic Steam Nav. Co.* v. *Stranahan*, 214 U. S. 320, 339 (1909). Courts therefore must enforce the immigration policy decision reflected in a statute's plain terms, even if Congress has chosen "to forbid the entrance of foreigners within its dominions" altogether, *Fong Yue Ting* v. *United States*, 149 U. S. 698, 705 (1893). Likewise, here, where Congress has made a judgment about which persons to admit and exclude from the country, it is not for this Court to question the wisdom of that choice.

to all who "'assisted the enemy in persecuting civil[ians].'" *Fedorenko*, *supra*, at 495 (quoting 62 Stat. 3051). In 1950, Congress added a second persecutor bar to the DPA that applied "to any person who advocated or assisted in the persecution of any person because of race, religion, or national origin." § 13, 64 Stat. 227. In the years that followed, Congress continued to use this same broad language in denying asylum to specific categories of persecutors. See, *e. g.*, § 105, 91 Stat. 1224 (denying permanent residence to aliens from Vietnam, Laos, and Cambodia "who ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion"); 8 U. S. C. §§ 1182(a)(3)(E), 1227(a)(4)(D) (authorizing the exclusion of anyone who had been associated with Nazi forces and had "ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion"); § 14(a), 67 Stat. 406 (imposing persecutor bar on "any person who personally advocated or assisted in the persecution of . . . [a] group of persons because of race, religion, or national origin").

Congress then enacted the INA bar in 1980. This statute comprehensively labeled as a persecutor "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." § 201(a), 94 Stat. 102–103. Congress reenacted the INA's persecutor bar in 1996 and retained its breadth. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), §§ 305(a)(3), 601(a)(1), 604(a), 110 Stat. 3009–602, 3009–689, 3009–691.

Congress' uninterrupted use of this broad statutory language, which parallels the persecutor bars dating back to 1948, was not accidental. By the time of the 1996 reenactment, this Court had specifically interpreted the plain language of the predecessor bars to apply regardless of the voluntariness of a persecutor's conduct. See *Fedorenko*,

449 U. S., at 512 (1948 DPA bar); see also *United States* v. *Koreh*, 59 F. 3d 431, 439 (CA3 1995) (1950 DPA bar); *United States* v. *Schmidt*, 923 F. 2d 1253, 1258 (CA7 1991) (1948 DPA bar); *Maikovskis* v. *INS*, 773 F. 2d 435, 445–446 (CA2 1985) (8 U. S. C. § 1251(a)(19) (1982 ed.), transferred to § 1227(a)(4)(D) (2006 ed.)). In particular, this Court had held that the phrase in the 1948 DPA bar, "assisted the enemy in persecuting civil[ians]," contained no " 'involuntary assistance' exception." *Fedorenko*, 449 U. S., at 512. Rather, the statute's "plain language" made clear that "an individual's service as a concentration camp armed guard—whether voluntary or involuntary—made him ineligible for a visa." *Ibid.*

In light of this legal backdrop, Congress' decisions in 1980 and 1996 to retain a persecutor bar that broadly applies to anyone who "assisted, or otherwise participated in the persecution" of any person, §§ 1158(b)(2)(A)(i), 1231(b)(3)(B), is significant evidence that Congress did not intend to include any involuntariness exception in the INA bar. This Court must assume, absent textual proof to the contrary, that Congress was aware of the *Fedorenko* decision when it reenacted the persecutor bar and thus "adopt[ed] that interpretation when it re-enact[ed the] statute without change," *Lorillard*, *supra*, at 580.

D

In sum, the INA's persecutor bar does not require that assistance or participation in persecution be voluntary or uncoerced to fall within the statute's reach. It instead "mandates precisely" what it says: "[A]n individual's service as a [prison] camp armed guard—whether voluntary or involuntary—ma[kes] him ineligible for" asylum or withholding of removal if the guard's service involved assistance or participation in the persecution of another person on account of a protected ground. *Fedorenko*, *supra*, at 512. Here, it is undisputed that petitioner served at a prison camp where guards persecuted prisoners because of their religious beliefs. See *ante*, at 515 (majority opinion). It also is undis-

puted that petitioner carried out the persecution by preventing prisoners from escaping and by standing guard while at least one prisoner died from sun exposure. *Ibid.* Petitioner, therefore, "assisted, or otherwise participated," in persecution and thus is statutorily disqualified from receiving asylum or withholding of removal under the INA.[3]

III

The majority nevertheless concludes the statute's "silence," *ante*, at 518, creates ambiguity, and therefore remands the case to the BIA for it to determine, in the first instance, whether persecution must be voluntary to fall within the terms of the INA's persecutor bar. "The Court's efforts to derive ambiguity from th[e] utmost clarity" of the persecutor bar, however, "are unconvincing" in every respect. *INS* v. *St. Cyr*, 533 U. S. 289, 329 (2001) (SCALIA, J., dissenting).

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[3] JUSTICE STEVENS also finds the language of the INA's persecutor bar "plain," but concludes that it must incorporate a culpability requirement because the statute applies to those whose "acts are of a 'criminal nature.'" See *ante*, at 534, 537 (opinion concurring in part and dissenting in part). I disagree. The decision to admit an alien is a matter of legislative grace, see n. 2, *supra*, for which judicial review has been "consistently classified" as civil in nature, *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 594 (1952); see also *Zadvydas* v. *Davis*, 533 U. S. 678, 720 (2001) (KENNEDY, J., dissenting) (explaining that "'an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative'" (quoting *Landon* v. *Plasencia*, 459 U. S. 21, 32 (1982))). There is no warrant to read criminal-law requirements into a statute that is "nonpunitive in purpose and effect." *Zadvydas*, *supra*, at 690. Further, the conclusory pronouncement in the Office of the United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status ¶ 162 (reedited Jan. 1992), that "it has to be assumed, although this is not specifically stated, that the acts covered by the present clause must also be of a criminal nature," is insufficient to require criminal proof to deny withholding of removal, contra, *ante*, at 536–537 (opinion of STEVENS, J.). The United Nations handbook "is not binding on the Attorney General, the BIA, or United States courts." *INS* v. *Aguirre-Aguirre*, 526 U. S. 415, 427 (1999).

The majority principally finds ambiguity in the statutory text because it does not include either the word "voluntary" or the word "involuntary." See *ante*, at 519. But a statute cannot be deemed ambiguous until the court "exhaust[s] the aid of the 'traditional tools of statutory construction'" and determines that Congress did not resolve the issue under consideration. *Clark* v. *Martinez*, 543 U. S. 371, 402 (2005) (THOMAS, J., dissenting) (quoting *Chevron*, 467 U. S., at 843, n. 9). Deeming a statute with broad terms to be ambiguous for that reason alone essentially requires Congress either to obey a judicially imposed clear-statement rule or accept the risk that the courts may refuse to give full effect to a statute's plain meaning in the name of *Chevron* deference. Not every difficult question of statutory construction amounts to a statutory gap for a federal agency to fill. See *ante*, at 529–531 (opinion of STEVENS, J.). And the Court should not, "in the name of deference, abdicate its responsibility to interpret a statute" simply because it requires some effort. *Global Crossing Telecommunications, Inc.* v. *Metrophones Telecommunications, Inc.*, 550 U. S. 45, 77 (2007) (THOMAS, J., dissenting).

The majority makes no attempt to apply the "traditional tools of statutory construction" to the persecutor bar before retreating to ambiguity. See *ante*, at 517–518. Rather, it merely observes that Congress could have spoken more directly to the issue, which it finds sufficient to render the statute ambiguous on this score. *Ante*, at 518. But the absence of a phrase specifying that the provision applies to both involuntary and voluntary conduct is not definitive proof of ambiguity. It is certainly correct that Congress "'could have spoken in clearer terms,'" *Clark*, 543 U. S., at 402 (THOMAS, J., dissenting), as it almost always can in any statute. However, this "proves nothing" in evaluating whether the statute is ambiguous. *Ibid.* The question before the Court instead is whether Congress has provided an unambiguous answer in the plain language that it chose to

use. Here, for the reasons just explained, the traditional tools of statutory interpretation show with "utmost clarity," *St. Cyr*, *supra*, at 329 (SCALIA, J., dissenting), that the statute applies regardless of the voluntariness of the alien who participates or assists in persecution.[4]

The majority also finds ambiguity based on differences between the INA and the DPA statutory bar considered in *Fedorenko*. In particular, the majority points to the *Fedorenko* Court's reliance on a second part of the DPA persecutor bar, which applied to those who "'*voluntarily* assisted the enemy forces . . . in their operations against the United Nations.'" 449 U. S., at 495, and n. 4 (quoting 62 Stat. 3052; emphasis added). The Court noted that "[u]nder traditional principles of statutory construction, the deliberate omission of the word 'voluntary' from § 2(a)," which addressed the assistance of persecution—but not from § 2(b)—"compel[led] the conclusion that the statute made *all* those who assisted in the persecution of civilians ineligible for visas." 449 U. S., at 512. According to the majority, because the INA persecutor bar, unlike the DPA bar, does not include a provision limited by the word "voluntarily" adjacent to the provision that is not so limited, the absence of the adverb here cannot carry the significance given it in *Fedorenko*. See *ante*, at 519.

The majority's reasoning is flawed. The mere fact that the INA's persecutor bar is not accompanied by a neighbor-

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[4] Because this Court should not delegate the interpretation of the persecutor bar's plain meaning to a federal agency, see *Board of Governors, FRS* v. *Dimension Financial Corp.*, 474 U. S. 361, 368 (1986), it is largely irrelevant whether the BIA properly relied on *Fedorenko* v. *United States*, 449 U. S. 490 (1981), in interpreting the statute, see *ante*, at 521–523 (majority opinion); *ante*, at 525 (SCALIA, J., concurring). In any event, the BIA's construction of the INA's persecutor bar correctly reflected the text of the provision. There is no reason to remand the question to the agency when only one construction of the statute is permissible and the agency's original decision adopted that proper construction. See *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982–985 (2005).

ing provision containing the word "voluntarily" does not negate the significance of the term's absence when other INA provisions are explicitly limited to actions undertaken voluntarily. As noted above, see *supra*, at 544–545, the INA imposes a voluntariness requirement in a host of statutory provisions, see, *e. g.*, 8 U. S. C. § 1158(c)(2)(D) (terminating asylum when alien has "voluntarily" availed himself of the protection of his country); §§ 1182(a)(3)(D)(i)–(ii) (denying admission and naturalization to those who have been members of, or affiliated with, "the Communist or any other totalitarian party" unless that membership or affiliation was "involuntary"); § 1182(d)(3)(B)(i) (2006 ed., Supp. I) (denying admission to those who have "voluntarily and knowingly" engaged in, endorsed, espoused, or persuaded others to endorse, espouse, or support terrorist activity); § 1229c(a)(1) (allowing an alien to "voluntarily" depart the United States); §§ 1424(a), (d) (precluding naturalization for members of certain totalitarian parties, unless membership was "involuntary"); § 1481(a) (providing for loss of nationality by "voluntarily" performing certain specified acts with the intention of relinquishing nationality).[5]

In the immigration and naturalization context, then, Congress is certainly capable of declaring its preference for a voluntariness requirement. That Congress' explicit references to voluntariness appear in other sections of this particular statutory scheme, rather than in subsections of §§ 1158 or 1231, is immaterial. Cf. *Russello*, 464 U. S., at 23; *Barn-*

[5] Moreover, in the Refugee Act of 1980, which added the persecutor bar to the INA, Congress separately codified its desire to "promote opportunities for resettlement or voluntary repatriation." § 101(a), 94 Stat. 102, note following 8 U. S. C. § 1521. In 1996, when Congress reenacted the statutory text, it retained the persecution bar's broad language while again restricting other sections to voluntary conduct. See IIRIRA, § 304, 110 Stat. 3009–587 (relating to "voluntary departure"); § 402, *id.*, at 3009–656 (relating to "voluntary" participation in pilot programs for confirming employment eligibility); § 604, *id.*, at 3009–692 (providing for termination of asylum when alien "voluntarily" takes certain actions).

hart, 534 U. S., at 452–454. And the fact that Congress, in the course of making structural revisions to the statutory regime, eliminated the specific dichotomy the Court noted in *Fedorenko* does not undermine the critical point: The INA expressly includes a voluntariness requirement in several places but does not impose such a requirement in the persecution bar. Thus, the omission of the word "voluntarily" from the persecutor bar in the INA is just as conclusive as its omission from the persecutor bar in the DPA. With respect to both statutes, the deliberate omission "compels the conclusion that the statute made *all* those who assisted in the persecution of civilians ineligible for visas." 449 U. S., at 512.

Finally, the majority concludes that the DPA bar is distinguishable from the INA bar because the former was enacted in the context of the "'"crime against humanity that [was] involved in the concentration camp,"'" which was so horrific that it is in a category all its own. *Ante*, at 520 (quoting *Fedorenko*, *supra*, at 511, n. 32). In that unique context, the majority reasons, it made sense to exclude "even those involved in nonculpable, involuntary assistance in Nazi persecution." *Ante*, at 520. But the majority cannot intend to suggest that all acts of persecution during the Second World War were inherently more depraved or reprehensible than all acts of persecution that have occurred in the decades since the INA's enactment.

Certainly, no such conclusion is compelled by the statutory text. Congress has steadfastly condemned *all* acts of persecution. See 22 U. S. C. §§ 6401(a)(5)–(7) (noting that "Congress has recognized and denounced acts of religious persecution," which can be "severe and violent" and "particularly widespread, systematic, and heinous under totalitarian governments and in countries with militant, politicized religious majorities"); § 6401(b)(5) (announcing that it is the "policy of the United States" to "stan[d] with the persecuted"); § 501, 78 Stat. 1015 ("The Congress condemns the persecution of

any persons because of their religion"); Refugee Act of 1980, § 101(a), 94 Stat. 102, note following 8 U. S. C. §1521 ("The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands"). There is no reason to deny the INA persecutor bar its full meaning based on a speculative assumption that Congress, in 1980, could not have meant to oppose persecution quite as intensely as it did in the aftermath of World War II. Rather, the INA's persecutor bar naturally extends to all acts of persecution and, therefore, requires the denial of asylum and withholding of removal for "even those involved in nonculpable, involuntary assistance in . . . persecution." *Ante*, at 520 (majority opinion).

IV

Because I conclude that the INA's persecutor bar applies whether or not petitioner's assistance or participation in persecution was voluntary, and because it is conceded that petitioner assisted and participated in persecution while serving as an armed prison guard in Eritrea, I would affirm the decision of the Court of Appeals. Accordingly, I respectfully dissent.

WYETH *v.* LEVINE

CERTIORARI TO THE SUPREME COURT OF VERMONT

No. 06–1249. Argued November 3, 2008—Decided March 4, 2009

Petitioner Wyeth manufactures the antinausea drug Phenergan. After a clinician injected respondent Levine with Phenergan by the "IV-push" method, whereby a drug is injected directly into a patient's vein, the drug entered Levine's artery, she developed gangrene, and doctors amputated her forearm. Levine brought a state-law damages action, alleging, *inter alia*, that Wyeth had failed to provide an adequate warning about the significant risks of administering Phenergan by the IV-push method. The Vermont jury determined that Levine's injury would not have occurred if Phenergan's label included an adequate warning, and it awarded damages for her pain and suffering, substantial medical expenses, and loss of her livelihood as a professional musician. Declining to overturn the verdict, the trial court rejected Wyeth's argument that Levine's failure-to-warn claims were pre-empted by federal law because Phenergan's labeling had been approved by the federal Food and Drug Administration (FDA). The Vermont Supreme Court affirmed.

Held: Federal law does not pre-empt Levine's claim that Phenergan's label did not contain an adequate warning about the IV-push method of administration. Pp. 563–581.

(a) The argument that Levine's state-law claims are pre-empted because it is impossible for Wyeth to comply with both the state-law duties underlying those claims and its federal labeling duties is rejected. Although a manufacturer generally may change a drug label only after the FDA approves a supplemental application, the agency's "changes being effected" (CBE) regulation permits certain preapproval labeling changes that add or strengthen a warning to improve drug safety. Pursuant to the CBE regulation, Wyeth could have unilaterally added a stronger warning about IV-push administration, and there is no evidence that the FDA would ultimately have rejected such a labeling change. Wyeth's cramped reading of the CBE regulation and its broad assertion that unilaterally changing the Phenergan label would have violated federal law governing unauthorized distribution and misbranding of drugs are based on the fundamental misunderstanding that the FDA, rather than the manufacturer, bears primary responsibility for drug labeling. It is a central premise of the Federal Food, Drug, and Cosmetic Act (FDCA) and the FDA's regulations that the manufacturer bears responsibility for the content of its label at all times. Pp. 568–573.

(b) Wyeth's argument that requiring it to comply with a state-law duty to provide a stronger warning would interfere with Congress' purpose of entrusting an expert agency with drug labeling decisions is meritless because it relies on an untenable interpretation of congressional intent and an overbroad view of an agency's power to pre-empt state law. The history of the FDCA shows that Congress did not intend to pre-empt state-law failure-to-warn actions. In advancing the argument that the FDA must be presumed to have established a specific labeling standard that leaves no room for different state-law judgments, Wyeth relies not on any statement by Congress but on the preamble to a 2006 FDA regulation declaring that state-law failure-to-warn claims threaten the FDA's statutorily prescribed role. Although an agency regulation with the force of law can pre-empt conflicting state requirements, this case involves no such regulation but merely an agency's assertion that state law is an obstacle to achieving its statutory objectives. Where, as here, Congress has not authorized a federal agency to pre-empt state law directly, the weight this Court accords the agency's explanation of state law's impact on the federal scheme depends on its thoroughness, consistency, and persuasiveness. Cf., *e. g.*, *Skidmore* v. *Swift & Co.*, 323 U. S. 134. Under this standard, the FDA's 2006 preamble does not merit deference: It is inherently suspect in light of the FDA's failure to offer interested parties notice or opportunity for comment on the pre-emption question; it is at odds with the available evidence of Congress' purposes; and it reverses the FDA's own longstanding position that state law is a complementary form of drug regulation without providing a reasoned explanation. *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, is distinguished. Pp. 573–581.

183 Vt. 76, 944 A. 2d 179, affirmed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, *post*, p. 581. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 582. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA, J., joined, *post*, p. 604.

Seth P. Waxman argued the cause for petitioner. With him on the briefs were *Paul R. Q. Wolfson*, *Bert W. Rein*, *Allan R. Keyes*, and *R. Joseph O'Rourke*.

Then-*Deputy Solicitor General Kneedler* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were former *Solicitor General Clem-*

ent, then-*Assistant Attorney General Katsas*, *Daryl Joseffer*, *Douglas N. Letter*, *Peter R. Maier*, and *Gerald F. Masoudi*.

David C. Frederick argued the cause for respondent. With him on the brief were *Scott H. Angstreich*, *Scott K. Attaway*, *Brendan J. Crimmins*, and *Richard I. Rubin*.*

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America by *Alan E. Untereiner*, *Robin S. Conrad*, and *Amar D. Sarwal;* for DRI-The Voice of the Defense Bar by *Daniel E. Troy*, *Rebecca K. Wood*, *Eamon P. Joyce*, and *Michael W. Davis;* for the Generic Pharmaceutical Association by *Jay P. Lefkowitz* and *Michael D. Shumsky;* for PhRMA et al. by *Robert A. Long, Jr.*, and *Paul W. Schmidt;* for the Product Liability Advisory Council, Inc., by *Kenneth S. Geller* and *Andrew E. Tauber;* for the Washington Legal Foundation et al. by *Eric G. Lasker*, *Daniel J. Popeo*, and *Richard A. Samp;* and for John E. Calfee et al. by *Joe G. Hollingsworth*, *Katharine R. Latimer*, and *Eric G. Lasker*.

Briefs of *amici curiae* urging affirmance were filed for the State of Vermont et al. by *William H. Sorrell*, Attorney General of Vermont, *Kevin O. Leske*, Assistant Attorney General, by *Dan Schweitzer*, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Talis J. Colberg* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *Edmund G. Brown, Jr.*, of California, *John W. Suthers* of Colorado, *Richard Blumenthal* of Connecticut, *Joseph R. Biden III* of Delaware, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Steve Six* of Kansas, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *G. Steven Rowe* of Maine, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Catherine Cortez Masto* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Anne Milgram* of New Jersey, *Gary K. King* of New Mexico, *Andrew M. Cuomo* of New York, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Nancy Rogers* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *Robert F. McDonnell* of Virginia, *Robert M. McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *J. B.*

JUSTICE STEVENS delivered the opinion of the Court.

Directly injecting the drug Phenergan into a patient's vein creates a significant risk of catastrophic consequences. A Vermont jury found that petitioner Wyeth, the manufacturer of the drug, had failed to provide an adequate warning of that risk and awarded damages to respondent Diana Levine to compensate her for the amputation of her arm. The warnings on Phenergan's label had been deemed sufficient by the federal Food and Drug Administration (FDA) when it approved Wyeth's new drug application in 1955 and when it later approved changes in the drug's labeling. The question we must decide is whether the FDA's approvals provide

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Van Hollen of Wisconsin, and *Bruce A. Salzburg* of Wyoming; for AARP et al. by *Charles L. Becker*, *Bruce Vignery*, *Stacy J. Canan*, and *Michael R. Schuster;* for the American Association for Justice by *Louis M. Bograd*, *Francine A. Hochberg*, and *Les Weisbrod;* for the California Medical Association by *Collyn A. Peddie* and *Francisco J. Silva;* for the Center for State Enforcement of Antitrust and Consumer Protection Laws, Inc., by *Thomas W. Merrill* and *Stephen D. Houck;* for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Sean H. Donahue*, and *David T. Goldberg;* for Constitutional and Administrative Law Scholars by *Ernest A. Young* and *Erin Glenn Busby;* for the Consumers Union of United States, Inc., by *Mark R. Savage;* for DES Action by *Aaron M. Levine;* for former FDA Commissioner Dr. Donald Kennedy et al. by *David C. Vladeck;* for Members of Congress by *Jonathan S. Massey;* for the National Conference of State Legislatures by *Elizabeth J. Cabraser;* for the New England Journal of Medicine Editors and Authors by *Gerson H. Smoger*, *Arthur H. Bryant*, and *Leslie A. Brueckner;* for the Senior Citizens League by *John S. Miles*, *Herbert W. Titus*, and *William J. Olson;* for the Texas Medical Association et al. by *R. Brent Cooper*, *Diana L. Faust*, *Jay H. Henderson*, and *Donald P. Wilcox;* for Anju Budhwani, M.D., et al. by *Stanley D. Bernstein;* for Daniel Paul Carpenter et al. by *Gregory S. Coleman* and *Christian J. Ward;* for Mark P. Gergen et al. by *Michael F. Sturley;* for David B. Ross, M.D., Ph.D., et al. by *Michael J. Quirk*, *Mark R. Cuker*, and *Esther E. Berezofsky;* and for Kim Witczak et al. by *Earl Landers Vickery* and W. *Mark Lanier.*

Briefs of *amici curiae* were filed for the Citizens Commission on Human Rights by *Kendrick L. Moxon;* and for the National Coalition Against Censorship by *Erwin Chemerinsky* and *Sharon J. Arkin.*

Wyeth with a complete defense to Levine's tort claims. We conclude that they do not.

I

Phenergan is Wyeth's brand name for promethazine hydrochloride, an antihistamine used to treat nausea. The injectable form of Phenergan can be administered intramuscularly or intravenously, and it can be administered intravenously through either the "IV-push" method, whereby the drug is injected directly into a patient's vein, or the "IV-drip" method, whereby the drug is introduced into a saline solution in a hanging intravenous bag and slowly descends through a catheter inserted in a patient's vein. The drug is corrosive and causes irreversible gangrene if it enters a patient's artery.

Levine's injury resulted from an IV-push injection of Phenergan. On April 7, 2000, as on previous visits to her local clinic for treatment of a migraine headache, she received an intramuscular injection of Demerol for her headache and Phenergan for her nausea. Because the combination did not provide relief, she returned later that day and received a second injection of both drugs. This time, the physician assistant administered the drugs by the IV-push method, and Phenergan entered Levine's artery, either because the needle penetrated an artery directly or because the drug escaped from the vein into surrounding tissue (a phenomenon called "perivascular extravasation") where it came in contact with arterial blood. As a result, Levine developed gangrene, and doctors amputated first her right hand and then her entire forearm. In addition to her pain and suffering, Levine incurred substantial medical expenses and the loss of her livelihood as a professional musician.

After settling claims against the health center and clinician, Levine brought an action for damages against Wyeth, relying on common-law negligence and strict-liability theories. Although Phenergan's labeling warned of the danger of gangrene and amputation following inadvertent intra-

arterial injection,[1] Levine alleged that the labeling was defective because it failed to instruct clinicians to use the IV-drip method of intravenous administration instead of the higher risk IV-push method. More broadly, she alleged that Phenergan is not reasonably safe for intravenous administration because the foreseeable risks of gangrene and loss of limb are great in relation to the drug's therapeutic benefits. App. 14–15.

Wyeth filed a motion for summary judgment, arguing that Levine's failure-to-warn claims were pre-empted by federal law. The court found no merit in either Wyeth's field pre-emption argument, which it has since abandoned, or its conflict pre-emption argument. With respect to the contention that there was an "actual conflict between a specific FDA order," *id.*, at 21, and Levine's failure-to-warn action, the

[1] The warning for "Inadvertent Intra-arterial Injection" stated: "Due to the close proximity of arteries and veins in the areas most commonly used for intravenous injection, extreme care should be exercised to avoid perivascular extravasation or inadvertent intra-arterial injection. Reports compatible with inadvertent intra-arterial injection of Phenergan Injection, usually in conjunction with other drugs intended for intravenous use, suggest that pain, severe chemical irritation, severe spasm of distal vessels, and resultant gangrene requiring amputation are likely under such circumstances. Intravenous injection was intended in all the cases reported but perivascular extravasation or arterial placement of the needle is now suspect. There is no proven successful management of this condition after it occurs. . . . Aspiration of dark blood does not preclude intra-arterial needle placement, because blood is discolored upon contact with Phenergan Injection. Use of syringes with rigid plungers or of small bore needles might obscure typical arterial backflow if this is relied upon alone. When used intravenously, Phenergan Injection should be given in a concentration no greater than 25 mg per mL and at a rate not to exceed 25 mg per minute. When administering any irritant drug intravenously, it is usually preferable to inject it through the tubing of an intravenous infusion set that is known to be functioning satisfactorily. In the event that a patient complains of pain during intended intravenous injection of Phenergan Injection, the injection should be stopped immediately to provide for evaluation of possible arterial placement or perivascular extravasation." App. 390.

court reviewed the sparse correspondence between Wyeth and the FDA about Phenergan's labeling and found no evidence that Wyeth had "earnestly attempted" to strengthen the intra-arterial injection warning or that the FDA had "specifically disallowed" stronger language, *id.*, at 23. The record, as then developed, "lack[ed] any evidence that the FDA set a ceiling on this matter." *Ibid.*

The evidence presented during the 5-day jury trial showed that the risk of intra-arterial injection or perivascular extravasation can be almost entirely eliminated through the use of IV-drip, rather than IV-push, administration. An IV drip is started with saline, which will not flow properly if the catheter is not in the vein and fluid is entering an artery or surrounding tissue. See *id.*, at 50–51, 60, 66–68, 75. By contrast, even a careful and experienced clinician using the IV-push method will occasionally expose an artery to Phenergan. See *id.*, at 73, 75–76. While Phenergan's labeling warned against intra-arterial injection and perivascular extravasation and advised that "[w]hen administering any irritant drug intravenously it is usually preferable to inject it through the tubing of an intravenous infusion set that is known to be functioning satisfactorily," *id.*, at 390, the labeling did not contain a specific warning about the risks of IV-push administration.

The trial record also contains correspondence between Wyeth and the FDA discussing Phenergan's label. The FDA first approved injectable Phenergan in 1955. In 1973 and 1976, Wyeth submitted supplemental new drug applications, which the agency approved after proposing labeling changes. Wyeth submitted a third supplemental application in 1981 in response to a new FDA rule governing drug labels. Over the next 17 years, Wyeth and the FDA intermittently corresponded about Phenergan's label. The most notable activity occurred in 1987, when the FDA suggested different warnings about the risk of arterial exposure, and in 1988, when Wyeth submitted revised labeling incorporating the

proposed changes. The FDA did not respond. Instead, in 1996, it requested from Wyeth the labeling then in use and, without addressing Wyeth's 1988 submission, instructed it to "[r]etain verbiage in current label" regarding intra-arterial injection. *Id.*, at 359. After a few further changes to the labeling not related to intra-arterial injection, the FDA approved Wyeth's 1981 application in 1998, instructing that Phenergan's final printed label "must be identical" to the approved package insert. *Id.*, at 382.

Based on this regulatory history, the trial judge instructed the jury that it could consider evidence of Wyeth's compliance with FDA requirements but that such compliance did not establish that the warnings were adequate. He also instructed, without objection from Wyeth, that FDA regulations "permit a drug manufacturer to change a product label to add or strengthen a warning about its product without prior FDA approval so long as it later submits the revised warning for review and approval." *Id.*, at 228.

Answering questions on a special verdict form, the jury found that Wyeth was negligent, that Phenergan was a defective product as a result of inadequate warnings and instructions, and that no intervening cause had broken the causal connection between the product defects and the plaintiff's injury. *Id.*, at 233–235. It awarded total damages of $7,400,000, which the court reduced to account for Levine's earlier settlement with the health center and clinician. *Id.*, at 235–236.

On August 3, 2004, the trial court filed a comprehensive opinion denying Wyeth's motion for judgment as a matter of law. After making findings of fact based on the trial record (supplemented by one letter that Wyeth found after the trial), the court rejected Wyeth's pre-emption arguments. It determined that there was no direct conflict between FDA regulations and Levine's state-law claims because those regulations permit strengthened warnings without FDA approval on an interim basis and the record contained evidence

of at least 20 reports of amputations similar to Levine's since the 1960's. The court also found that state tort liability in this case would not obstruct the FDA's work because the agency had paid no more than passing attention to the question whether to warn against IV-push administration of Phenergan. In addition, the court noted that state law serves a compensatory function distinct from federal regulation. *Id.*, at 249–252.

The Vermont Supreme Court affirmed. It held that the jury's verdict "did not conflict with FDA's labeling requirements for Phenergan because [Wyeth] could have warned against IV-push administration without prior FDA approval, and because federal labeling requirements create a floor, not a ceiling, for state regulation." 183 Vt. 76, 84, 944 A. 2d 179, 184 (2006). In dissent, Chief Justice Reiber argued that the jury's verdict conflicted with federal law because it was inconsistent with the FDA's conclusion that intravenous administration of Phenergan was safe and effective.

The importance of the pre-emption issue, coupled with the fact that the FDA has changed its position on state tort law and now endorses the views expressed in Chief Justice Reiber's dissent, persuaded us to grant Wyeth's petition for certiorari. 552 U. S. 1161 (2008). The question presented by the petition is whether the FDA's drug labeling judgments "preempt state law product liability claims premised on the theory that different labeling judgments were necessary to make drugs reasonably safe for use." Pet. for Cert. *i*.

II

Wyeth makes two separate pre-emption arguments: first, that it would have been impossible for it to comply with the state-law duty to modify Phenergan's labeling without violating federal law, see *Fidelity Fed. Sav. & Loan Assn.* v. *De la Cuesta*, 458 U. S. 141, 153 (1982), and second, that recognition of Levine's state tort action creates an unacceptable "obstacle to the accomplishment and execution of the full pur-

poses and objectives of Congress," *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941), because it substitutes a lay jury's decision about drug labeling for the expert judgment of the FDA. As a preface to our evaluation of these arguments, we identify two factual propositions decided during the trial court proceedings, emphasize two legal principles that guide our analysis, and review the history of the controlling federal statute.

The trial court proceedings established that Levine's injury would not have occurred if Phenergan's label had included an adequate warning about the risks of the IV-push method of administering the drug. The record contains evidence that the physician assistant administered a greater dose than the label prescribed, that she may have inadvertently injected the drug into an artery rather than a vein, and that she continued to inject the drug after Levine complained of pain. Nevertheless, the jury rejected Wyeth's argument that the clinician's conduct was an intervening cause that absolved it of liability. See App. 234 (jury verdict), 252–254. In finding Wyeth negligent as well as strictly liable, the jury also determined that Levine's injury was foreseeable. That the inadequate label was both a but-for and proximate cause of Levine's injury is supported by the record and no longer challenged by Wyeth.[2]

The trial court proceedings further established that the critical defect in Phenergan's label was the lack of an adequate warning about the risks of IV-push administration. Levine also offered evidence that the IV-push method should

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[2] The dissent nonetheless suggests that physician malpractice was the exclusive cause of Levine's injury. See, *e. g.*, *post*, at 605 (opinion of ALITO, J.) ("[I]t is unclear how a 'stronger' warning could have helped respondent"); *post*, at 619–621 (suggesting that the physician assistant's conduct was the sole cause of the injury). The dissent's frustration with the jury's verdict does not put the merits of Levine's tort claim before us, nor does it change the question we must decide—whether federal law pre-empts Levine's state-law claims.

be contraindicated and that Phenergan should never be administered intravenously, even by the IV-drip method. Perhaps for this reason, the dissent incorrectly assumes that the state-law duty at issue is the duty to contraindicate the IV-push method. See, *e. g.*, *post*, at 611, 628. But, as the Vermont Supreme Court explained, the jury verdict established only that Phenergan's warning was insufficient. It did not mandate a particular replacement warning, nor did it require contraindicating IV-push administration: "There may have been any number of ways for [Wyeth] to strengthen the Phenergan warning without completely eliminating IV-push administration." 183 Vt., at 92, n. 2, 944 A. 2d, at 189, n. 2. We therefore need not decide whether a state rule proscribing intravenous administration would be pre-empted. The narrower question presented is whether federal law pre-empts Levine's claim that Phenergan's label did not contain an adequate warning about using the IV-push method of administration.

Our answer to that question must be guided by two cornerstones of our pre-emption jurisprudence. First, "the purpose of Congress is the ultimate touchstone in every pre-emption case." *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485 (1996) (internal quotation marks omitted); see *Retail Clerks* v. *Schermerhorn*, 375 U. S. 96, 103 (1963). Second, "[i]n all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Lohr*, 518 U. S., at 485 (quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947)).[3]

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[3] Wyeth argues that the presumption against pre-emption should not apply to this case because the Federal Government has regulated drug labeling for more than a century. That argument misunderstands the principle: We rely on the presumption because respect for the States as

In order to identify the "purpose of Congress," it is appropriate to briefly review the history of federal regulation of drugs and drug labeling. In 1906, Congress enacted its first significant public health law, the Federal Food and Drugs Act, ch. 3915, 34 Stat. 768. The Act, which prohibited the manufacture or interstate shipment of adulterated or misbranded drugs, supplemented the protection for consumers already provided by state regulation and common-law liability. In the 1930's, Congress became increasingly concerned about unsafe drugs and fraudulent marketing, and it enacted the Federal Food, Drug, and Cosmetic Act (FDCA), ch. 675, 52 Stat. 1040, as amended, 21 U. S. C. § 301 *et seq.* The FDCA's most substantial innovation was its provision for premarket approval of new drugs. It required every manufacturer to submit a new drug application, including reports of investigations and specimens of proposed labeling, to the FDA for review. Until its application became effective, a manufacturer was prohibited from distributing a drug. The FDA could reject an application if it determined that the drug was not safe for use as labeled, though if the agency failed to act, an application became effective 60 days after the filing. FDCA, § 505(c), 52 Stat. 1052.

"independent sovereigns in our federal system" leads us to assume that "Congress does not cavalierly pre-empt state-law causes of action." *Lohr*, 518 U. S., at 485. The presumption thus accounts for the historic presence of state law but does not rely on the absence of federal regulation.

For its part, the dissent argues that the presumption against preemption should not apply to claims of implied conflict pre-emption at all, *post*, at 623–624, but this Court has long held to the contrary. See, *e. g.*, *California* v. *ARC America Corp.*, 490 U. S. 93, 101–102 (1989); *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 716 (1985); see also *Rush Prudential HMO, Inc.* v. *Moran*, 536 U. S. 355, 387 (2002). The dissent's reliance on *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341 (2001), see *post*, at 624, and n. 14, is especially curious, as that case involved state-law fraud-on-the-agency claims, and the Court distinguished state regulation of health and safety as matters to which the presumption does apply. See 531 U. S., at 347–348.

In 1962, Congress amended the FDCA and shifted the burden of proof from the FDA to the manufacturer. Before 1962, the agency had to prove harm to keep a drug out of the market, but the amendments required the manufacturer to demonstrate that its drug was "safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling" before it could distribute the drug. §§ 102(c), 104(b), 76 Stat. 781, 784. In addition, the amendments required the manufacturer to prove the drug's effectiveness by introducing "substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling." § 102(c), *id.*, at 781.

As it enlarged the FDA's powers to "protect the public health" and "assure the safety, effectiveness, and reliability of drugs," *id.*, at 780, Congress took care to preserve state law. The 1962 amendments added a saving clause, indicating that a provision of state law would only be invalidated upon a "direct and positive conflict" with the FDCA. § 202, *id.*, at 793. Consistent with that provision, state common-law suits "continued unabated despite . . . FDA regulation." *Riegel* v. *Medtronic, Inc.*, 552 U. S. 312, 340 (2008) (GINSBURG, J., dissenting); see *ibid.*, n. 11 (collecting state cases). And when Congress enacted an express pre-emption provision for medical devices in 1976, see § 2, 90 Stat. 574 (codified at 21 U. S. C. § 360k(a)), it declined to enact such a provision for prescription drugs.

In 2007, after Levine's injury and lawsuit, Congress again amended the FDCA. 121 Stat. 823. For the first time, it granted the FDA statutory authority to require a manufacturer to change its drug label based on safety information that becomes available after a drug's initial approval. § 901(a), *id.*, at 924–926. In doing so, however, Congress did not enact a provision in the Senate bill that would have required the FDA to preapprove all changes to drug labels. See S. 1082, 110th Cong., 1st Sess., § 208, pp. 107–114 (2007)

(as passed) (proposing new § 506D). Instead, it adopted a rule of construction to make it clear that manufacturers remain responsible for updating their labels. See 121 Stat. 925–926.

III

Wyeth first argues that Levine's state-law claims are preempted because it is impossible for it to comply with both the state-law duties underlying those claims and its federal labeling duties. See *De la Cuesta*, 458 U. S., at 153. The FDA's premarket approval of a new drug application includes the approval of the exact text in the proposed label. See 21 U. S. C. § 355; 21 CFR § 314.105(b) (2008). Generally speaking, a manufacturer may only change a drug label after the FDA approves a supplemental application. There is, however, an FDA regulation that permits a manufacturer to make certain changes to its label before receiving the agency's approval. Among other things, this "changes being effected" (CBE) regulation provides that if a manufacturer is changing a label to "add or strengthen a contraindication, warning, precaution, or adverse reaction" or to "add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the drug product," it may make the labeling change upon filing its supplemental application with the FDA; it need not wait for FDA approval. §§ 314.70(c)(6)(iii)(A), (C).

Wyeth argues that the CBE regulation is not implicated in this case because a 2008 amendment provides that a manufacturer may only change its label "to reflect newly acquired information." 73 Fed. Reg. 49609. Resting on this language (which Wyeth argues simply reaffirmed the interpretation of the regulation in effect when this case was tried), Wyeth contends that it could have changed Phenergan's label only in response to new information that the FDA had not considered. And it maintains that Levine has not pointed to any such information concerning the risks of IV-push administration. Thus, Wyeth insists, it was impossible for it

to discharge its state-law obligation to provide a stronger warning about IV-push administration without violating federal law. Wyeth's argument misapprehends both the federal drug regulatory scheme and its burden in establishing a pre-emption defense.

We need not decide whether the 2008 CBE regulation is consistent with the FDCA and the previous version of the regulation, as Wyeth and the United States urge, because Wyeth could have revised Phenergan's label even in accordance with the amended regulation. As the FDA explained in its notice of the final rule, "'newly acquired information'" is not limited to new data, but also encompasses "new analyses of previously submitted data." *Id.*, at 49604. The rule accounts for the fact that risk information accumulates over time and that the same data may take on a different meaning in light of subsequent developments: "[I]f the sponsor submits adverse event information to FDA, and then later conducts a new analysis of data showing risks of a different type or of greater severity or frequency than did reports previously submitted to FDA, the sponsor meets the requirement for 'newly acquired information.'" *Id.*, at 49607; see also *id.*, at 49606.

The record is limited concerning what newly acquired information Wyeth had or should have had about the risks of IV-push administration of Phenergan because Wyeth did not argue before the trial court that such information was required for a CBE labeling change. Levine did, however, present evidence of at least 20 incidents prior to her injury in which a Phenergan injection resulted in gangrene and an amputation. See App. 74, 252.[4] After the first such incident came to Wyeth's attention in 1967, it notified the FDA and worked with the agency to change Phenergan's label.

[4] Levine also introduced evidence that Pfizer had withdrawn Vistaril, another antinausea drug, from intravenous use several decades earlier because its intravenous injection had resulted in gangrene and amputations. See App. 79.

In later years, as amputations continued to occur, Wyeth could have analyzed the accumulating data and added a stronger warning about IV-push administration of the drug.

Wyeth argues that if it had unilaterally added such a warning, it would have violated federal law governing unauthorized distribution and misbranding. Its argument that a change in Phenergan's labeling would have subjected it to liability for unauthorized distribution rests on the assumption that this labeling change would have rendered Phenergan a new drug lacking an effective application. But strengthening the warning about IV-push administration would not have made Phenergan a new drug. See 21 U. S. C. § 321(p)(1) (defining "new drug"); 21 CFR § 310.3(h). Nor would this warning have rendered Phenergan misbranded. The FDCA does not provide that a drug is misbranded simply because the manufacturer has altered an FDA-approved label; instead, the misbranding provision focuses on the substance of the label and, among other things, proscribes labels that fail to include "adequate warnings." 21 U. S. C. § 352(f). Moreover, because the statute contemplates that federal juries will resolve most misbranding claims, the FDA's belief that a drug is misbranded is not conclusive. See §§ 331, 332, 334(a)–(b). And the very idea that the FDA would bring an enforcement action against a manufacturer for strengthening a warning pursuant to the CBE regulation is difficult to accept—neither Wyeth nor the United States has identified a case in which the FDA has done so.

Wyeth's cramped reading of the CBE regulation and its broad reading of the FDCA's misbranding and unauthorized distribution provisions are premised on a more fundamental misunderstanding. Wyeth suggests that the FDA, rather than the manufacturer, bears primary responsibility for drug labeling. Yet through many amendments to the FDCA and to FDA regulations, it has remained a central premise of federal drug regulation that the manufacturer bears respon-

sibility for the content of its label at all times. It is charged both with crafting an adequate label and with ensuring that its warnings remain adequate as long as the drug is on the market. See, *e. g.*, 21 CFR § 201.80(e) (requiring a manufacturer to revise its label "to include a warning as soon as there is reasonable evidence of an association of a serious hazard with a drug"); § 314.80(b) (placing responsibility for postmarketing surveillance on the manufacturer); 73 Fed. Reg. 49605 ("Manufacturers continue to have a responsibility under Federal law . . . to maintain their labeling and update the labeling with new safety information").

Indeed, prior to 2007, the FDA lacked the authority to order manufacturers to revise their labels. See 121 Stat. 924–926. When Congress granted the FDA this authority, it reaffirmed the manufacturer's obligations and referred specifically to the CBE regulation, which both reflects the manufacturer's ultimate responsibility for its label and provides a mechanism for adding safety information to the label prior to FDA approval. See *id.*, at 925–926 (stating that a manufacturer retains the responsibility "to maintain its label in accordance with existing requirements, including subpart B of part 201 and *sections 314.70* and 601.12 of title 21, Code of Federal Regulations (or any successor regulations)" (emphasis added)). Thus, when the risk of gangrene from IV-push injection of Phenergan became apparent, Wyeth had a duty to provide a warning that adequately described that risk, and the CBE regulation permitted it to provide such a warning before receiving the FDA's approval.

Of course, the FDA retains authority to reject labeling changes made pursuant to the CBE regulation in its review of the manufacturer's supplemental application, just as it retains such authority in reviewing all supplemental applications. But absent clear evidence that the FDA would not have approved a change to Phenergan's label, we will not conclude that it was impossible for Wyeth to comply with both federal and state requirements.

Wyeth has offered no such evidence. It does not argue that it attempted to give the kind of warning required by the Vermont jury but was prohibited from doing so by the FDA.[5] See Tr. of Oral Arg. 12–13; see also Brief for United States as *Amicus Curiae* 25. And while it does suggest that the FDA intended to prohibit it from strengthening the warning about IV-push administration because the agency deemed such a warning inappropriate in reviewing Phenergan's drug applications, both the trial court and the Vermont Supreme Court rejected this account as a matter of fact. In its decision on Wyeth's motion for judgment as a matter of law, the trial court found "no evidence in this record that either the FDA or the manufacturer gave more than passing attention to the issue of" IV-push versus IV-drip administration. App. 249. The Vermont Supreme Court likewise concluded that the FDA had not made an affirmative decision to preserve the IV-push method or intended to prohibit Wyeth from strengthening its warning about IV-push administration. 183 Vt., at 91–92, 944 A. 2d, at 188–189. Moreover, Wyeth does not argue that it supplied the FDA with an eval-

[5] The record would not, in any event, support such an argument. In 1988, Wyeth did propose different language for Phenergan's warning about intra-arterial injection, adapted from revisions the FDA proposed in 1987. See *id.*, at 339–341, 311–312. When the FDA approved Wyeth's application, it instructed Wyeth to retain the wording in its current label. During the trial court proceedings, Levine indicated that the language proposed in 1988 would have more strongly warned against IV-push administration. But the trial court and the Vermont Supreme Court found that the 1988 warning did not differ in any material respect from the FDA-approved warning. See 183 Vt. 76, 92, 944 A. 2d 179, 189 (2006) ("Simply stated, the proposed warning was different, but not stronger. It was also no longer or more prominent than the original warning . . . "); App. 248–250. Indeed, the United States concedes that the FDA did not regard the proposed warning as substantively different: "[I]t appears the FDA viewed the change as non-substantive and rejected it for formatting reasons." Brief for United States as *Amicus Curiae* 25; see also 183 Vt., at 92–93, 944 A. 2d, at 189.

uation or analysis concerning the specific dangers posed by the IV-push method. We accordingly cannot credit Wyeth's contention that the FDA would have prevented it from adding a stronger warning about the IV-push method of intravenous administration.[6]

Impossibility pre-emption is a demanding defense. On the record before us, Wyeth has failed to demonstrate that it was impossible for it to comply with both federal and state requirements. The CBE regulation permitted Wyeth to unilaterally strengthen its warning, and the mere fact that the FDA approved Phenergan's label does not establish that it would have prohibited such a change.

IV

Wyeth also argues that requiring it to comply with a state-law duty to provide a stronger warning about IV-push administration would obstruct the purposes and objectives of federal drug labeling regulation. Levine's tort claims, it maintains, are pre-empted because they interfere with "Congress's purpose to entrust an expert agency to make drug labeling decisions that strike a balance between competing objectives." Brief for Petitioner 46. We find no merit in this argument, which relies on an untenable interpretation of congressional intent and an overbroad view of an agency's power to pre-empt state law.

Wyeth contends that the FDCA establishes both a floor and a ceiling for drug regulation: Once the FDA has ap-

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[6] The dissent's suggestion that the FDA intended to prohibit Wyeth from strengthening its warning does not fairly reflect the record. The dissent creatively paraphrases a few FDA orders—for instance by conflating warnings about IV-push administration and intra-arterial injection, see, *e. g.*, *post*, at 612–613, 614–651, 618–619—to suggest greater agency attention to the question, and it undertakes a study of Phenergan's labeling that is more elaborate than any FDA order. But even the dissent's account does not support the conclusion that the FDA would have prohibited Wyeth from adding a stronger warning pursuant to the CBE regulation.

proved a drug's label, a state-law verdict may not deem the label inadequate, regardless of whether there is any evidence that the FDA has considered the stronger warning at issue. The most glaring problem with this argument is that all evidence of Congress' purposes is to the contrary. Building on its 1906 Act, Congress enacted the FDCA to bolster consumer protection against harmful products. See *Kordel* v. *United States*, 335 U. S. 345, 349 (1948); *United States* v. *Sullivan*, 332 U. S. 689, 696 (1948). Congress did not provide a federal remedy for consumers harmed by unsafe or ineffective drugs in the 1938 statute or in any subsequent amendment. Evidently, it determined that widely available state rights of action provided appropriate relief for injured consumers.[7] It may also have recognized that state-law remedies further consumer protection by motivating manufacturers to produce safe and effective drugs and to give adequate warnings.

If Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express preemption provision at some point during the FDCA's 70-year history. But despite its 1976 enactment of an express preemption provision for medical devices, see § 2, 90 Stat. 574 (codified at 21 U. S. C. § 360k(a)), Congress has not enacted such a provision for prescription drugs. See *Riegel*, 552 U. S., at 327 ("Congress could have applied the pre-emption clause to the entire FDCA. It did not do so, but instead wrote a pre-emption clause that applies only to medical de-

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[7] Although the first version of the bill that became the FDCA would have provided a federal cause of action for damages for injured consumers, see H. R. 6110, 73d Cong., 1st Sess., § 25 (1933) (as introduced), witnesses testified that such a right of action was unnecessary because common-law claims were already available under state law. See Hearings on S. 1944 before a Subcommittee of the Senate Committee on Commerce, 73d Cong., 2d Sess., 400 (1933) (statement of W. A. Hines); see *id.*, at 403 (statement of J. A. Ladds) ("This act should not attempt to modify or restate the common law with respect to personal injuries").

vices").[8] Its silence on the issue, coupled with its certain awareness of the prevalence of state tort litigation, is powerful evidence that Congress did not intend FDA oversight to be the exclusive means of ensuring drug safety and effectiveness. As Justice O'Connor explained in her opinion for a unanimous Court: "The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them." *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 166–167 (1989) (internal quotation marks omitted); see also *supra*, at 565 (discussing the presumption against pre-emption).

Despite this evidence that Congress did not regard state tort litigation as an obstacle to achieving its purposes, Wyeth nonetheless maintains that, because the FDCA requires the FDA to determine that a drug is safe and effective under the conditions set forth in its labeling, the agency must be presumed to have performed a precise balancing of risks and benefits and to have established a specific labeling standard that leaves no room for different state-law judgments. In advancing this argument, Wyeth relies not on any statement by Congress, but instead on the preamble to a 2006 FDA regulation governing the content and format of prescription drug labels. See Brief for Petitioner 8, 11, 42, 45, and 50 (citing 71 Fed. Reg. 3922 (2006)). In that preamble, the FDA declared that the FDCA establishes "both a 'floor' and a 'ceiling,'" so that "FDA approval of labeling . . . preempts conflicting or contrary State law." *Id.*, at 3934–3935. It further stated that certain state-law actions, such as those involving failure-to-warn claims, "threaten FDA's statutorily

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[8] In 1997, Congress pre-empted certain state requirements concerning over-the-counter medications and cosmetics but expressly preserved product liability actions. See 21 U. S. C. §§ 379r(e), 379s(d) ("Nothing in this section shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State").

prescribed role as the expert Federal agency responsible for evaluating and regulating drugs." *Id.*, at 3935.

This Court has recognized that an agency regulation with the force of law can pre-empt conflicting state requirements. See, *e. g.*, *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000); *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 713 (1985). In such cases, the Court has performed its own conflict determination, relying on the substance of state and federal law and not on agency proclamations of pre-emption. We are faced with no such regulation in this case, but rather with an agency's mere assertion that state law is an obstacle to achieving its statutory objectives. Because Congress has not authorized the FDA to pre-empt state law directly, cf. 21 U. S. C. § 360k (authorizing the FDA to determine the scope of the Medical Devices Amendments' pre-emption clause),[9] the question is what weight we should accord the FDA's opinion.

In prior cases, we have given "some weight" to an agency's views about the impact of tort law on federal objectives when "the subject matter is technica[l] and the relevant history and background are complex and extensive." *Geier*, 529 U. S., at 883. Even in such cases, however, we have not deferred to an agency's *conclusion* that state law is pre-empted. Rather, we have attended to an agency's explanation of how state law affects the regulatory scheme. While

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[9] For similar examples, see 47 U. S. C. §§ 253(a), (d) (2000 ed.) (authorizing the Federal Communications Commission to pre-empt "any [state] statute, regulation, or legal requirement" that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service"); 30 U. S. C. § 1254(g) (2006 ed.) (pre-empting any statute that conflicts with "the purposes and the requirements of this chapter" and permitting the Secretary of the Interior to "set forth any State law or regulation which is preempted and superseded"); and 49 U. S. C. § 5125(d) (2000 ed. and Supp. V) (authorizing the Secretary of Transportation to decide whether a state or local statute that conflicts with the regulation of hazardous waste transportation is pre-empted).

agencies have no special authority to pronounce on preemption absent delegation by Congress, they do have a unique understanding of the statutes they administer and an attendant ability to make informed determinations about how state requirements may pose an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines*, 312 U. S., at 67; see *Geier*, 529 U. S., at 883; *Lohr*, 518 U. S., at 495–496. The weight we accord the agency's explanation of state law's impact on the federal scheme depends on its thoroughness, consistency, and persuasiveness. Cf. *United States* v. *Mead Corp.*, 533 U. S. 218, 234–235 (2001); *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944).

Under this standard, the FDA's 2006 preamble does not merit deference. When the FDA issued its notice of proposed rulemaking in December 2000, it explained that the rule would "not contain policies that have federalism implications or that preempt State law." 65 Fed. Reg. 81103; see also 71 *id.*, at 3969 (noting that the "proposed rule did not propose to preempt state law"). In 2006, the agency finalized the rule and, without offering States or other interested parties notice or opportunity for comment, articulated a sweeping position on the FDCA's pre-emptive effect in the regulatory preamble. The agency's views on state law are inherently suspect in light of this procedural failure.

Further, the preamble is at odds with what evidence we have of Congress' purposes, and it reverses the FDA's own longstanding position without providing a reasoned explanation, including any discussion of how state law has interfered with the FDA's regulation of drug labeling during decades of coexistence. The FDA's 2006 position plainly does not reflect the agency's own view at all times relevant to this litigation. Not once prior to Levine's injury did the FDA suggest that state tort law stood as an obstacle to its statutory mission. To the contrary, it cast federal labeling standards as a floor upon which States could build and repeatedly dis-

claimed any attempt to pre-empt failure-to-warn claims. For instance, in 1998, the FDA stated that it did "not believe that the evolution of state tort law [would] cause the development of standards that would be at odds with the agency's regulations." 63 *id.*, at 66384. It further noted that, in establishing "minimal standards" for drug labels, it did not intend "to preclude the states from imposing additional labeling requirements." *Ibid.*[10]

In keeping with Congress' decision not to pre-empt common-law tort suits, it appears that the FDA traditionally regarded state law as a complementary form of drug regulation. The FDA has limited resources to monitor the 11,000 drugs on the market,[11] and manufacturers have superior ac-

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[10] See also 44 Fed. Reg. 37437 (1979) ("It is not the intent of the FDA to influence the civil tort liability of the manufacturer"); 59 Fed. Reg. 3948 (1994) ("[P]roduct liability plays an important role in consumer protection"); Porter, The *Lohr* Decision: FDA Perspective and Position, 52 Food & Drug L. J. 7, 10 (1997) (former chief counsel to the FDA stating that the FDA regarded state law as complementing the agency's mission of consumer protection).

[11] In 1955, the same year that the agency approved Wyeth's Phenergan application, an FDA advisory committee issued a report finding "conclusively" that "the budget and staff of the [FDA] are inadequate to permit the discharge of its existing responsibilities for the protection of the American public." Citizens Advisory Committee on the FDA, Report to the Secretary of Health, Education, and Welfare, H. R. Doc. No. 227, 84th Cong., 1st Sess., 53. Three recent studies have reached similar conclusions. See FDA Science Board, Report of the Subcommittee on Science and Technology: FDA Science and Mission at Risk 2, 6 (2007), online at http://www.fda.gov/ohrms/dockets/ac/07/briefing/2007-4329b_02_01_FDA%20Report%20on%20Science%20and%20Technology.pdf (all Internet materials as visited Feb. 23, 2009, and available in Clerk of Court's case file) ("[T]he Agency suffers from serious scientific deficiencies and is not positioned to meet current or emerging regulatory responsibilities"); National Academies, Institute of Medicine, The Future of Drug Safety: Promoting and Protecting the Health of the Public 193–194 (2007) ("The [FDA] lacks the resources needed to accomplish its large and complex mission . . . . There is widespread agreement that resources for postmarketing drug safety work are especially inadequate and that resource limi-

cess to information about their drugs, especially in the post-marketing phase as new risks emerge. State tort suits uncover unknown drug hazards and provide incentives for drug manufacturers to disclose safety risks promptly. They also serve a distinct compensatory function that may motivate injured persons to come forward with information. Failure-to-warn actions, in particular, lend force to the FDCA's premise that manufacturers, not the FDA, bear primary responsibility for their drug labeling at all times. Thus, the FDA long maintained that state law offers an additional, and important, layer of consumer protection that complements FDA regulation.[12] The agency's 2006 preamble represents a dramatic change in position.

Largely based on the FDA's new position, Wyeth argues that this case presents a conflict between state and federal law analogous to the one at issue in *Geier*. There, we held that state tort claims premised on Honda's failure to install airbags conflicted with a federal regulation that did not require airbags for all cars. The Department of Transporta-

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tations have hobbled the agency's ability to improve and expand this essential component of its mission"); GAO, Drug Safety: Improvement Needed in FDA's Postmarket Decision-making and Oversight Process 5 (GAO–06–402, 2006), http://www.gao.gov/new.items/d06402.pdf ("FDA lacks a clear and effective process for making decisions about, and providing management oversight of, postmarket safety issues"); see also House Committee on Oversight and Government Reform, Majority Staff Report, FDA Career Staff Objected to Agency Preemption Policies 4 (2008) ("[T]he Office of Chief Counsel ignored the warnings from FDA scientists and career officials that the preemption language [of the 2006 preamble] was based on erroneous assertions about the ability of the drug approval process to ensure accurate and up-to-date drug labels").

[12] See generally Brief for Former FDA Commissioners Drs. Donald Kennedy and David Kessler as *Amici Curiae;* see also Kessler & Vladeck, A Critical Examination of the FDA's Efforts To Preempt Failure-To-Warn Claims, 96 Geo. L. J. 461, 463 (2008); *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 451 (2005) (noting that state tort suits "can serve as a catalyst" by aiding in the exposure of new dangers and prompting a manufacturer or the federal agency to decide that a revised label is required).

tion (DOT) had promulgated a rule that provided car manufacturers with a range of choices among passive restraint devices. *Geier*, 529 U. S., at 875. Rejecting an "'all airbag'" standard, the agency had called for a gradual phase-in of a mix of passive restraints in order to spur technological development and win consumer acceptance. *Id.*, at 879. Because the plaintiff's claim was that car manufacturers had a duty to install airbags, it presented an obstacle to achieving "the variety and mix of devices that the federal regulation sought." *Id.*, at 881.

Wyeth and the dissent contend that the regulatory scheme in this case is nearly identical, but, as we have described, it is quite different. In *Geier*, the DOT conducted a formal rulemaking and then adopted a plan to phase in a mix of passive restraint devices. Examining the rule itself and the DOT's contemporaneous record, which revealed the factors the agency had weighed and the balance it had struck, we determined that state tort suits presented an obstacle to the federal scheme. After conducting our own pre-emption analysis, we considered the agency's explanation of how state law interfered with its regulation, regarding it as further support for our independent conclusion that the plaintiff's tort claim obstructed the federal regime.

By contrast, we have no occasion in this case to consider the pre-emptive effect of a specific agency regulation bearing the force of law. And the FDA's newfound opinion, expressed in its 2006 preamble, that state law "frustrate[s] the agency's implementation of its statutory mandate," 71 Fed. Reg. 3934, does not merit deference for the reasons we have explained.[13] Indeed, the "complex and extensive" regula-

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[13] The United States' *amicus* brief is similarly undeserving of deference. Unlike the Government's brief in *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), which explained the effects of state law on the DOT's regulation in a manner consistent with the agency's prior accounts, see *ibid.*, the Government's explanation of federal drug regulation departs markedly from the FDA's understanding at all times relevant to this case.

tory history and background relevant to this case, *Geier*, 529 U. S., at 883, undercut the FDA's recent pronouncements of pre-emption, as they reveal the longstanding coexistence of state and federal law and the FDA's traditional recognition of state-law remedies—a recognition in place each time the agency reviewed Wyeth's Phenergan label.[14]

In short, Wyeth has not persuaded us that failure-to-warn claims like Levine's obstruct the federal regulation of drug labeling. Congress has repeatedly declined to pre-empt state law, and the FDA's recently adopted position that state tort suits interfere with its statutory mandate is entitled to no weight. Although we recognize that some state-law claims might well frustrate the achievement of congressional objectives, this is not such a case.

V

We conclude that it is not impossible for Wyeth to comply with its state- and federal-law obligations and that Levine's common-law claims do not stand as an obstacle to the accomplishment of Congress' purposes in the FDCA. Accordingly, the judgment of the Vermont Supreme Court is affirmed.

It is so ordered.

Justice Breyer, concurring.

I write separately to emphasize the Court's statement that "we have no occasion in this case to consider the pre-emptive effect of a specific agency regulation bearing the force of law." *Ante*, at 580. State tort law will sometimes help the

[14] Wyeth's more specific contention—that this case resembles *Geier* because the FDA determined that no additional warning on IV-push administration was needed, thereby setting a ceiling on Phenergan's label—is belied by the record. As we have discussed, the FDA did not consider and reject a stronger warning against IV-push injection of Phenergan. See also App. 249–250 ("[A] tort case is unlikely to obstruct the regulatory process when the record shows that the FDA has paid very little attention to the issues raised by the parties at trial").

Food and Drug Administration (FDA) "uncover unknown drug hazards and [encourage] drug manufacturers to disclose safety risks." *Ante*, at 579. But it is also possible that state tort law will sometimes interfere with the FDA's desire to create a drug label containing a specific set of cautions and instructions. I also note that some have argued that state tort law can sometimes raise prices to the point where those who are sick are unable to obtain the drugs they need. See Lasagna, The Chilling Effect of Product Liability on New Drug Development, in The Liability Maze 334, 335–336 (P. Huber & R. Litan eds. 1991). The FDA may seek to determine whether and when state tort law acts as a help or a hindrance to achieving the safe drug-related medical care that Congress sought. *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 506 (1996) (BREYER, J., concurring in part and concurring in judgment); cf. *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 454–455 (2005) (BREYER, J., concurring). It may seek to embody those determinations in lawful specific regulations describing, for example, when labeling requirements serve as a ceiling as well as a floor. And it is possible that such determinations would have pre-emptive effect. See *Lohr*, *supra*, at 505 (opinion of BREYER, J.) (citing *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707 (1985)). I agree with the Court, however, that such a regulation is not at issue in this case.

JUSTICE THOMAS, concurring in the judgment.

I agree with the Court that the fact that the Food and Drug Administration (FDA) approved the label for petitioner Wyeth's drug Phenergan does not pre-empt the state-law judgment before the Court. That judgment was based on a jury finding that the label did not adequately warn of the risk involved in administering Phenergan through the IV-push injection method. Under federal law, without prior approval from the FDA, Wyeth could have "add[ed] or strengthen[ed]" information on its label about "a contraindi-

cation, warning, precaution, or adverse reaction," 21 CFR § 314.70(c)(6)(iii)(A) (2008), or "about dosage and administration that is intended to increase the safe use of the drug product," § 314.70(c)(6)(iii)(C), in order to "reflect newly acquired information," including "new analyses of previously submitted data," about the dangers of IV-push administration of Phenergan, 73 Fed. Reg. 49603, 49609 (2008). It thus was possible for Wyeth to label and market Phenergan in compliance with federal law while also providing additional warning information on its label beyond that previously approved by the FDA. In addition, federal law does not give drug manufacturers an unconditional right to market their federally approved drug at all times with the precise label initially approved by the FDA. The Vermont court's judgment in this case, therefore, did not directly conflict with federal law and is not pre-empted.

I write separately, however, because I cannot join the majority's implicit endorsement of far-reaching implied preemption doctrines. In particular, I have become increasingly skeptical of this Court's "purposes and objectives" pre-emption jurisprudence. Under this approach, the Court routinely invalidates state laws based on perceived conflicts with broad federal policy objectives, legislative history, or generalized notions of congressional purposes that are not embodied within the text of federal law. Because implied pre-emption doctrines that wander far from the statutory text are inconsistent with the Constitution, I concur only in the judgment.

I

A

In order "to ensure the protection of our fundamental liberties," *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985) (internal quotation marks omitted), the "Constitution establishes a system of dual sovereignty between the States and the Federal Government," *Gregory* v. *Ashcroft*,

501 U. S. 452, 457 (1991). The Framers adopted this "'constitutionally mandated balance of power,'" *Atascadero State Hospital*, *supra*, at 242, to "reduce the risk of tyranny and abuse from either front," because a "federalist structure of joint sovereigns preserves to the people numerous advantages," such as "a decentralized government that will be more sensitive to the diverse needs of a heterogeneous society" and "increase[d] opportunity for citizen involvement in democratic processes," *Gregory*, *supra*, at 458. Furthermore, as the Framers observed, the "compound republic of America" provides "a double security . . . to the rights of the people" because "the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments." The Federalist No. 51, p. 266 (M. Beloff ed., 2d ed. 1987).

Under this federalist system, "the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Tafflin* v. *Levitt*, 493 U. S. 455, 458 (1990). In this way, the Supremacy Clause gives the Federal Government "a decided advantage in [a] delicate balance" between federal and state sovereigns. *Gregory*, 501 U. S., at 460. "As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the States." *Ibid.* That is an "extraordinary power in a federalist system." *Ibid.*

Nonetheless, the States retain substantial sovereign authority. U. S. Const., Amdt. 10 ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"); see also *Alden* v. *Maine*, 527 U. S. 706, 713 (1999); *Printz* v. *United States*, 521 U. S. 898, 918–922 (1997); *New York* v. *United States*, 505 U. S. 144, 155–156 (1992); *Gregory*, *supra*, at 457–459; *Tafflin*, *supra*, at 458. In accordance with the text and structure of the Constitution, "[t]he powers delegated by the proposed constitution to the

federal government, are few and defined" and "[t]hose which are to remain in the state governments, are numerous and indefinite." The Federalist No. 45, at 237–238. Indeed, in protecting our constitutional government, "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government." *Texas* v. *White*, 7 Wall. 700, 725 (1869), quoted in *New York* v. *United States*, *supra*, at 162.

As a result, in order to protect the delicate balance of power mandated by the Constitution, the Supremacy Clause must operate only in accordance with its terms. The Clause provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Art. VI, cl. 2.

With respect to federal laws, then, the Supremacy Clause gives "supreme" status only to those that are "made in Pursuance" of "[t]his Constitution." *Ibid.;* see 3 J. Story, Commentaries on the Constitution of the United States § 1831, p. 694 (1833) (hereinafter Story) ("It will be observed, that the supremacy of the laws is attached to those only, which are made in pursuance of the constitution").

Federal laws "made in Pursuance" of the Constitution must comply with two key structural limitations in the Constitution that ensure that the Federal Government does not amass too much power at the expense of the States. The first structural limitation, which the parties have not raised in this case, is "the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones." *Printz*, *supra*, at 919; see also *United States* v. *Mor-*

rison, 529 U. S. 598, 618, n. 8 (2000); *New York* v. *United States*, *supra*, at 155–157; *McCulloch* v. *Maryland*, 4 Wheat. 316, 405 (1819) ("This government is acknowledged by all to be one of enumerated powers").[1]

The second structural limitation is the complex set of procedures that Congress and the President must follow to enact "Laws of the United States." See *INS* v. *Chadha*, 462 U. S. 919, 945–946 (1983) (setting forth the Constitution's Bicameral and Presentment Clauses, Art. I, § 7, cls. 2–3, which "prescribe and define the respective functions of the Congress and of the Executive in the legislative process"). "[T]he Framers were acutely conscious that the bicameral requirement and the Presentment Clauses would serve essential constitutional functions," *Chadha*, 462 U. S., at 951, by allowing the passage of legislation only after it has proceeded through "a step-by-step, deliberate and deliberative process," *id.*, at 959, that was "finely wrought and exhaustively considered" by the Framers, *id.*, at 951. The Supremacy Clause thus requires that pre-emptive effect be given only to those federal standards and policies that are set forth in, or necessarily follow from, the statutory text that was produced through the constitutionally required bicameral and presentment procedures. See Story § 1831, at 694 (Actions of the Federal Government "which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies," are not "the

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[1] This structural limitation may be implicated in a pre-emption case if the federal law at issue is beyond the scope of Congress' enumerated powers. Expansion of congressional power through an "increasingly generous . . . interpretation of the commerce power of Congress," for example, creates "a real risk that Congress will gradually erase the diffusion of power between State and Nation on which the Framers based their faith in the efficiency and vitality of our Republic." *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 583–584 (1985) (O'Connor, J., dissenting); see also *Marbury* v. *Madison*, 1 Cranch 137, 176 (1803) ("The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written").

supreme law of the land. They will be merely acts of usurpation, and will deserve to be treated as such").

B

In light of these constitutional principles, I have become "increasing[ly] reluctan[t] to expand federal statutes beyond their terms through doctrines of implied pre-emption." *Bates* v. *Dow Agrosciences LLC*, 544 U. S. 431, 459 (2005) (THOMAS, J., concurring in judgment in part and dissenting in part). My review of this Court's broad implied pre-emption precedents, particularly its "purposes and objectives" pre-emption jurisprudence, has increased my concerns that implied pre-emption doctrines have not always been constitutionally applied. Under the vague and "potentially boundless" doctrine of "purposes and objectives" pre-emption, *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 907 (2000) (STEVENS, J., dissenting), for example, the Court has pre-empted state law based on its interpretation of broad federal policy objectives, legislative history, or generalized notions of congressional purposes that are not contained within the text of federal law. See, *e. g.*, *Pharmaceutical Research and Mfrs. of America* v. *Walsh*, 538 U. S. 644, 678 (2003) (THOMAS, J., concurring in judgment) (referring to the "concomitant danger of invoking obstacle pre-emption based on the arbitrary selection of one purpose to the exclusion of others"); *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 388–391 (2000) (SCALIA, J., concurring in judgment) (criticizing the majority's reliance on legislative history to discern statutory intent when that intent was "perfectly obvious on the face of th[e] statute"); *Geier*, *supra*, at 874–883 (relying on regulatory history, agency comments, and the Government's litigating position to determine that federal law pre-empted state law).

Congressional and agency musings, however, do not satisfy the Article I, § 7, requirements for enactment of federal law and, therefore, do not pre-empt state law under the Suprem-

acy Clause. When analyzing the pre-emptive effect of federal statutes or regulations validly promulgated thereunder, "[e]vidence of pre-emptive purpose [must be] sought in the text and structure of the [provision] at issue" to comply with the Constitution. *CSX Transp., Inc.* v. *Easterwood*, 507 U. S. 658, 664 (1993); see also *New York* v. *FERC*, 535 U. S. 1, 18 (2002) ("[A] federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority . . . [for] an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it" (internal quotation marks omitted; second alteration in original)); *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564, 617 (1997) (THOMAS, J., dissenting) (noting that "treating unenacted congressional intent as if it were law would be constitutionally dubious"). Pre-emption analysis should not be "[a] freewheeling judicial inquiry into whether a state statute is in tension with federal objectives, but an inquiry into whether the ordinary meanings of state and federal law conflict." *Bates*, *supra*, at 459 (THOMAS, J., concurring in judgment in part and dissenting in part) (internal quotation marks and citation omitted); see also *Geier*, *supra*, at 911 (STEVENS, J., dissenting) ("[P]re-emption analysis is, or at least should be, a matter of precise statutory [or regulatory] construction rather than an exercise in free-form judicial policymaking" (internal quotation marks omitted)). Pre-emption must turn on whether state law conflicts with the text of the relevant federal statute or with the federal regulations authorized by that text. See *Foster* v. *Love*, 522 U. S. 67, 71 (1997) (finding that conflict pre-emption question "turn[ed] entirely on the meaning of the state and federal statutes" at issue before the Court); see also *New York* v. *FERC*, *supra*, at 19.

II

This Court has determined that there are two categories of conflict pre-emption, both of which Wyeth contends are at

issue in this case. First, the Court has found pre-emption "where compliance with both federal and state regulations is a physical impossibility for one engaged in interstate commerce." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132, 142–143 (1963). Second, the Court has determined that federal law pre-empts state law when, "under the circumstances of [a] particular case, [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941).[2]

A

Wyeth first contends that "it would have been impossible for it to comply with the state-law duty to modify Phenergan's labeling without violating federal law." *Ante*, at 563 (opinion for the Court by STEVENS, J.). But, as the majority explains, the text of the relevant federal statutory provisions and the corresponding regulations do not directly conflict with the state-law judgment before us.

This Court has used different formulations of the standard to be used in deciding whether state and federal law conflict, and thus lead to pre-emption, under the "impossibility" doctrine. See, *e. g.*, *Geier*, *supra*, at 873 ("a case in which state law penalizes what federal law requires"); *American Telephone & Telegraph Co.* v. *Central Office Telephone, Inc.*, 524 U. S. 214, 227 (1998) *(AT&T)* (when state-law claims "directly conflict" with federal law), cited in *Geier*, *supra*, at 874 (describing *AT&T* as a "cas[e] involving impossibility"); *Florida*

[2] The majority's pre-emption analysis relies in part on a presumption against pre-emption. *Ante*, at 565, and n. 3 (opinion of STEVENS, J.). Because it is evident from the text of the relevant federal statutes and regulations themselves that the state-law judgment below is not pre-empted, it is not necessary to decide whether, or to what extent, the presumption should apply in a case such as this one, where Congress has not enacted an express pre-emption clause. Cf. *Altria Group, Inc.* v. *Good*, *ante*, at 99–103 (THOMAS, J., dissenting) (rejecting the use of a presumption against pre-emption in express pre-emption cases).

Lime & Avocado Growers, supra, at 142–143 ("where compliance with both federal and state regulations is a physical impossibility"). The Court has generally articulated a very narrow "impossibility standard," see *Crosby,* 530 U. S., at 372–373 (citing *Florida Lime & Avocado Growers, supra,* at 142–143); see also *Sprietsma* v. *Mercury Marine,* 537 U. S. 51, 64–65 (2002); *United States* v. *Locke,* 529 U. S. 89, 109 (2000)—in part because the overly broad sweep of the Court's "purposes and objectives" approach, see *infra,* at 594–604, has rendered it unnecessary for the Court to rely on "impossibility" pre-emption.

The Court, in fact, has not explained why a narrow "physical impossibility" standard is the best proxy for determining when state and federal laws "directly conflict" for purposes of the Supremacy Clause. There could be instances where it is not "physically impossible" to comply with both state and federal law, even when the state and federal laws give directly conflicting commands. See Nelson, Preemption, 86 Va. L. Rev. 225, 260–261 (2000). For example, if federal law gives an individual the right to engage in certain behavior that state law prohibits, the laws would give contradictory commands notwithstanding the fact that an individual could comply with both by electing to refrain from the covered behavior. *Ibid.* Therefore, "physical impossibility" may not be the most appropriate standard for determining whether the text of state and federal laws directly conflict. See *ibid.* (concluding that the Supremacy Clause does not limit direct conflicts to cases with "physically impossible" conflicts and arguing that evidence from the founding supports a standard of "logical-contradiction"); see also *AT&T, supra,* at 227 (requiring that the state-law claims "directly conflict" with federal law); Story § 1836, at 701 (suggesting instead that a state law is pre-empted by the Supremacy Clause when it is "*repugnant* to the constitution of the United States" (emphasis added)).

Nonetheless, whatever the precise constitutional contours of implied pre-emption may be, I am satisfied that it does not operate against respondent's judgment below. The text of the federal laws at issue do not require that the state-court judgment at issue be pre-empted, under either the narrow "physical impossibility" standard, *Florida Lime & Avocado Growers*, *supra*, at 142–143, or a more general "direc[t] conflict" standard, *AT&T*, *supra*, at 227.

Under the FDA's "changes being effected" regulation, 21 CFR § 314.70(c)(6)(iii), which was promulgated pursuant to the FDA's statutory authority, it is physically possible for Wyeth to market Phenergan in compliance with federal and Vermont law. As the majority explains, Wyeth could have changed the warning on its label regarding IV-push without violating federal law. See *ante*, at 568–570. The "changes being effected" regulation allows drug manufacturers to change their labels without the FDA's preapproval if the changes "add or strengthen a contraindication, warning, precaution, or adverse reaction," § 314.70(c)(6)(iii)(A), or "add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the drug product," § 314.70(c)(6)(iii)(C), in order to "reflect newly acquired information," including "new analyses of previously submitted data," 73 Fed. Reg. 49603, 49609. Under the terms of these regulations, after learning of new incidences of gangrene-induced amputation resulting from the IV-push administration of Phenergan, see *ante*, at 569–570, federal law gave Wyeth the authority to change Phenergan's label to "strengthen a . . . warning," "strengthen a . . . precaution," § 314.70(c)(6)(iii)(A), or to "strengthen an instruction about . . . administration [of the IV-push method] . . . to increase the safe use of the drug product," § 314.70(c)(6)(iii)(C). Thus, it was physically possible for Wyeth to comply with a state-law requirement to provide stronger warnings on Phenergan about the risks of the IV-push administration method

while continuing to market Phenergan in compliance with federal law.

In addition, the text of the statutory provisions governing FDA drug labeling, and the regulations promulgated thereunder, do not give drug manufacturers an unconditional right to market their federally approved drug at all times with the precise label initially approved by the FDA. Thus, there is no "direct conflict" between the federal labeling law and the state-court judgment. The statute prohibits the interstate marketing of any drug, except for those that are federally approved. See 21 U. S. C. § 355(a) ("*No person shall* introduce or deliver for introduction into interstate commerce any new drug, *unless* an approval of an application filed pursuant to subsection (b) or (j) of this section is effective with respect to such drug" (emphasis added)). To say, as the statute does, that Wyeth may not market a drug without federal approval (*i. e.*, without an FDA-approved label) is not to say that federal approval gives Wyeth the unfettered right, for all time, to market its drug with the specific label that was federally approved. Initial approval of a label amounts to a finding by the FDA that the label is safe for purposes of gaining federal approval to market the drug. It does not represent a finding that the drug, as labeled, can never be deemed unsafe by later federal action, or as in this case, the application of state law.

Instead, FDA regulations require a drug manufacturer—after initial federal approval of a drug's label—to revise the federally approved label "to include a warning as soon as there is reasonable evidence of an association of a serious hazard with a drug." 21 CFR § 201.80(e). Drug manufacturers are also required to "establish and maintain records and make reports" to the FDA about "[a]ny adverse event associated with the use of a drug in humans, whether or not considered drug related," after it has received federal approval. §§ 314.80(a), (c), (j). In addition, the manufacturer must make periodic reports about "adverse drug experi-

ence[s]" associated with its drug and include "a history of actions taken since the last report because of adverse drug experiences (for example, labeling changes or studies initiated)." §§ 314.80(c)(2)(i)–(ii). When such records and reports are not made, the FDA can withdraw its approval of the drug. § 314.80(j); see also 21 U. S. C. § 355(e) ("The Secretary may . . . withdraw the approval of an application . . . if the Secretary finds . . . that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports"). The FDA may also determine that a drug is no longer safe for use based on "clinical or other experience, tests, or other scientific data." *Ibid.* (approval may be withdrawn if "the Secretary finds . . . that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved").

The text of the statutory provisions and the accompanying regulatory scheme governing the FDA drug approval process, therefore, establish that the FDA's initial approval of a drug is not a guarantee that the drug's label will never need to be changed. And nothing in the text of the statutory or regulatory scheme necessarily insulates Wyeth from liability under state law simply because the FDA has approved a particular label.

In sum, the relevant federal law did not give Wyeth a right that the state-law judgment took away, and it was possible for Wyeth to comply with both federal law and the Vermont-law judgment at issue here. The federal statute and regulations neither prohibited the stronger warning label required by the state judgment, nor insulated Wyeth from the risk of state-law liability. With no "direct conflict" between the federal and state law, then, the state-law judgment is not pre-empted. Cf. *AT&T*, 524 U. S., at 221–226 (finding preemption where federal law forbade common carriers from extending communications privileges requested by state-law

claims); *Foster*, 522 U. S., at 68–69 (finding pre-emption where the federal statute required congressional elections on a particular date different from that provided by state statute).

B

Wyeth also contends that state and federal law conflict because "recognition of [this] state tort action creates an unacceptable 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941), because it substitutes a lay jury's decision about drug labeling for the expert judgment of the FDA." *Ante*, at 563–564 (majority opinion). This Court's entire body of "purposes and objectives" pre-emption jurisprudence is inherently flawed. The cases improperly rely on legislative history, broad atextual notions of congressional purpose, and even congressional inaction in order to pre-empt state law. See *supra*, at 587–588. I, therefore, cannot join the majority's analysis of this claim, see *ante*, at 573–581, or its reaffirmation of the Court's "purposes and objectives" jurisprudence, *ante*, at 573–575 (analyzing congressional purposes); *ante*, at 576–577 (quoting the "'purposes and objectives'" pre-emption standard from *Hines*, 312 U. S., at 67, and *Geier*, 529 U. S., at 883); *ante*, at 579–581, and nn. 13–14 (analyzing this case in light of *Geier*, *supra*).

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The Court first formulated its current "purposes and objectives" pre-emption standard in *Hines* when it considered whether the federal Alien Registration Act pre-empted an Alien Registration Act adopted by the Commonwealth of Pennsylvania. The Court did not find that the two statutes, by their terms, directly conflicted. See *Hines*, *supra*, at 59–60, and n. 1 (citing Pa. Stat. Ann., Tit. 35, §§ 1801–1806 (Purdon Supp. 1940)); 312 U. S., at 60, and n. 5 (citing Act of June 28, 1940, 54 Stat. 670); 312 U. S., at 69–74 (analyzing numerous extratextual sources and finding pre-emption without

concluding that the terms of the federal and state laws directly conflict); see also *id.*, at 78 (Stone, J., dissenting) (noting that "[i]t is conceded that the federal act in operation does not at any point conflict with the state statute").[3] Nonetheless, the Court determined that it was not confined to considering merely the terms of the relevant federal law in conducting its pre-emption analysis. Rather, it went on to ask whether the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*, at 67.

In so doing, the Court looked far beyond the relevant federal statutory text and instead embarked on its own free-ranging speculation about what the purposes of the federal law must have been. See *id.*, at 69–74. In addition to the meaning of the relevant federal text, the Court attempted to discern "[t]he nature of the power exerted by Congress, the object sought to be attained, and the character of the obliga-

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[3] According to the Court, the Pennsylvania Act required:

"every alien 18 years or over, with certain exceptions, to register once each year; provide such information as is required by the statute, plus any 'other information and details' that the Department of Labor and Industry may direct; pay $1 as an annual registration fee; receive an alien identification card and carry it at all times; show the card whenever it may be demanded by any police officer or any agent of the Department of Labor and Industry; and exhibit the card as a condition precedent to registering a motor vehicle in his name or obtaining a license to operate one. . . . Nonexempt aliens who fail to register are subject to a fine . . . or imprisonment . . . . For failure to carry an identification card or for failure to show it upon proper demand, the punishment is a fine . . . or imprisonment . . . ." *Hines*, 312 U. S., at 59–60 (footnote omitted).

The Court explained that the federal Alien Registration Act required: "a single registration of aliens 14 years of age and over; detailed information specified by the Act, plus 'such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General'; finger-printing of all registrants; and secrecy of the federal files . . . . No requirement that aliens carry a registration card to be exhibited to police or others is embodied in the law, and only the wilful failure to register is made a criminal offense . . . ." *Id.*, at 60–61.

tions imposed by the law." *Id.*, at 70. To do so, the Court looked in part to public sentiment, noting that "[o]pposition to laws . . . singling out aliens as particularly dangerous and undesirable groups, is deep-seated in this country." *Ibid.* The Court also relied on statements by particular Members of Congress and on congressional inaction, finding it pertinent that numerous bills with requirements similar to Pennsylvania's law had failed to garner enough votes in Congress to become law. *Id.*, at 71–73, and nn. 32–34. Concluding that these sources revealed a federal purpose to "protect the personal liberties of law-abiding aliens through one uniform national registration system," the Court held that the Pennsylvania law was pre-empted. *Id.*, at 74.

Justice Stone, in dissent, questioned the majority's decision to read an exclusive registration system for aliens into a statute that did not specifically provide such exclusivity. See *id.*, at 75. He noted his concern that state power would be improperly diminished through a pre-emption doctrine driven by the Court's "own conceptions of a policy which Congress ha[d] not expressed and which is not plainly to be inferred from the legislation which it ha[d] enacted." *Ibid.* In his view, nothing that Congress enacted had "denie[d] the states the practicable means of identifying their alien residents and of recording their whereabouts." *Id.*, at 78. Yet, the *Hines* majority employed pre-emption to override numerous state alien-registration laws even though enacted federal law "at no point conflict[ed] with the state legislation and [was] harmonious with it." *Id.*, at 79.[4]

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[4] According to Justice Stone, the *Hines* majority's analysis resembled an inquiry into whether the federal Act "'occupied the field,'" rather than an application of simple conflict pre-emption principles. *Id.*, at 78 (dissenting opinion). Regardless of whether *Hines* involved field or conflict pre-emption, the dissent accurately observed that in assessing the boundaries of the federal law—*i. e.*, the scope of its pre-emptive effect—the Court should look to the federal statute itself, rather than speculate about Congress' unstated intentions. *Id.*, at 78–79. See also *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U. S. 564, 616–617 (1997) (THOMAS, J., dissenting) (noting that "field pre-emption is itself suspect, at

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The consequences of this Court's broad approach to "purposes and objectives" pre-emption are exemplified in this Court's decision in *Geier*, which both the majority and the dissent incorporate into their analysis today. See *ante*, at 579–581, and nn. 13–14; *post*, at 609–612 (opinion of ALITO, J.). In *Geier*, pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act), 80 Stat. 718, 15 U. S. C. § 1381 *et seq.* (1988 ed.), the Department of Transportation (DOT) had promulgated a Federal Motor Vehicle Safety Standard that "required auto manufacturers to equip some but not all of their 1987 vehicles with passive restraints." 529 U. S., at 864–865. The case required this Court to decide whether the Safety Act pre-empted a state common-law tort action in which the plaintiff claimed that an auto manufacturer, though in compliance with the federal standard, should nonetheless have equipped a 1987 automobile with airbags. *Id.*, at 865. The Court first concluded that the Safety Act's express pre-emption provision and its saving clause, read together, did not expressly pre-empt state common-law claims. See *id.*, at 867–868.[5] The Court

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least as applied in the absence of a congressional command that a particular field be pre-empted").

[5] The Safety Act's express pre-emption provision stated in part:

"Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State . . . shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment[,] any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard." 15 U. S. C. § 1392(d) (1988 ed.).

The Safety Act also included a saving clause, which stated: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." § 1397(k). The majority and dissent in *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), agreed that the import of the express pre-emption provision and the saving clause, read together, was that by its terms, the Safety Act did not expressly pre-empt state common-law actions. See *id.*, at 867–868; *id.*, at 895–898 (STEVENS, J., dissenting).

then proceeded to consider whether the state action was nonetheless pre-empted as an "obstacle" to the purposes of the federal law. The Court held that the state tort claim was pre-empted, relying in large part on comments that DOT made when promulgating its regulation, statements that the Government made in its brief to the Court, and regulatory history that related to the federal regulation of passive restraints. See *id.*, at 874–886.

In particular, the majority found that DOT intended to "deliberately provid[e] the manufacturer[s] with a range of choices among different passive restraint devices" and to "bring about a mix of different devices introduced gradually over time," based on comments that DOT made when promulgating its regulation, rather than the Safety Act's text. *Id.*, at 875. The majority also embarked on a judicial inquiry into "why and how DOT sought these objectives," *ibid.*, by considering regulatory history and the Government's brief, which described DOT's safety standard as " 'embod[ying] the Secretary's policy judgment that safety would best be promoted if manufacturers installed *alternative* protection systems in their fleets rather than one particular system in every car,' " *id.*, at 881 (quoting Brief for United States as *Amicus Curiae* in *Geier* v. *American Honda Motor Co.*, O. T. 1999, No. 98–1811, p. 25); see also 529 U. S., at 883–884. Based on this "*ex post* administrative litigating position and inferences from regulatory history and final commentary," *id.*, at 910–911 (STEVENS, J., dissenting), the Court found that the state action was pre-empted because it would have required manufacturers of all cars similar to that in which the plaintiff was injured to "install airbags rather than other passive restraint systems" and would have, therefore, "presented an obstacle to the variety and mix of devices that the federal regulation sought" to phase in gradually, *id.*, at 881.

The Court's decision in *Geier* to apply "purposes and objectives" pre-emption based on agency comments, regulatory

history, and agency litigating positions was especially flawed, given that it conflicted with the plain statutory text of the saving clause within the Safety Act, which explicitly preserved state common-law actions by providing that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law," 15 U. S. C. § 1397(k) (1988 ed.).[6] See *Engine Mfrs. Assn.* v. *South Coast Air Quality Management Dist.*, 541 U. S. 246, 252 (2004) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose" (internal quotation marks omitted)); *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 98 (1991) ("The best evidence of th[e] purpose [of a statute] is the statutory text adopted by both Houses of Congress and submitted to the President"). In addition, the Court's reliance on its divined purpose of the federal law—to gradually phase in a mix of

[6] In addition to the impropriety of looking beyond the plain text of the saving clause to regulatory history, DOT comments, and an administrative litigating position to evaluate the Safety Act's pre-emptive effect, it is unclear that the Court in *Geier* accurately assessed the federal objectives of the relevant federal law. As the dissent in *Geier* pointed out, the purpose of the Safety Act, as stated by Congress, was generally "'to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.'" *Id.*, at 888–889 (opinion of STEVENS, J.) (quoting 15 U. S. C. § 1381 (1988 ed.)). On its face, that goal is of course consistent with a state-law judgment that a particular vehicle needed a passive restraint system that would better protect persons from death and injury during traffic accidents. Furthermore, the dissent observed that "by definition all of the standards established under the Safety Act . . . impose minimum, rather than fixed or maximum, requirements." 529 U. S., at 903 (citing 15 U. S. C. § 1391(2)). Thus, in the dissent's view, the requirements of the DOT regulation were not ceilings, and it was "obvious that the Secretary favored a more rapid increase" than required by the regulations. 529 U. S., at 903. That goal also would be consistent with a state-law judgment finding that a manufacturer acted negligently when it failed to include an airbag in a particular car. See *id.*, at 903–904.

passive restraint systems—in order to invalidate a State's imposition of a greater safety standard was contrary to the more general express statutory goal of the Safety Act "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents," 15 U. S. C. § 1381 (1988 ed.). This Court has repeatedly stated that when statutory language is plain, it must be enforced according to its terms. See *Jimenez* v. *Quarterman*, *ante*, p. 113; see also, *e. g.*, *Dodd* v. *United States*, 545 U. S. 353, 359 (2005); *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004); *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000). The text in *Geier* "directly addressed the precise question at issue" before the Court, so that should have been "the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, 665 (2007) (internal quotation marks omitted). With text that allowed state actions like the one at issue in *Geier*, the Court had no authority to comb through agency commentaries to find a basis for an alternative conclusion.

Applying "purposes and objectives" pre-emption in *Geier*, as in any case, allowed this Court to vacate a judgment issued by another sovereign based on nothing more than assumptions and goals that were untethered from the constitutionally enacted federal law authorizing the federal regulatory standard that was before the Court. See *Watters* v. *Wachovia Bank, N. A.*, 550 U. S. 1, 44 (2007) (STEVENS, J., dissenting) (noting that pre-emption "affects the allocation of powers among sovereigns"). "'[A]n agency literally has no power to act, let alone pre-empt the [law] of a sovereign State, unless and until Congress confers power upon it.'" *New York* v. *FERC*, 535 U. S., at 18 (quoting *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U. S. 355, 374 (1986)). Thus, no agency or individual Member of Congress can pre-empt a State's judgment by merely musing about goals or

intentions not found within or authorized by the statutory text. See *supra*, at 587–588.

The Court's "purposes and objectives" pre-emption jurisprudence is also problematic because it encourages an overly expansive reading of statutory text. The Court's desire to divine the broader purposes of the statute before it inevitably leads it to assume that Congress wanted to pursue those policies "at all costs"—even when the text reflects a different balance. See *Geier*, 529 U. S., at 904 (STEVENS, J., dissenting) (finding no evidence to support the notion that the DOT Secretary intended to advance the purposes of the safety standard "at all costs"); Nelson, 86 Va. L. Rev., at 279–280. As this Court has repeatedly noted, "'it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law.'" *E. g.*, *Norfolk Southern R. Co.* v. *Sorrell*, 549 U. S. 158, 171 (2007) (quoting *Rodriguez* v. *United States*, 480 U. S. 522, 526 (1987) *(per curiam)*). Federal legislation is often the result of compromise between legislators and "groups with marked but divergent interests." See *Ragsdale* v. *Wolverine World Wide, Inc.*, 535 U. S. 81, 93–94 (2002). Thus, a statute's text might reflect a compromise between parties who wanted to pursue a particular goal to different extents. See, *e. g.*, *ibid.* (noting that the Family and Medical Leave Act's provision of only 12 workweeks of yearly leave "was the result of compromise" that must be given effect by courts); *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 257 (1984) (finding that a state law was not preempted though it allegedly frustrated a primary purpose of the Atomic Energy Act because the Act provided that its purpose was to be furthered only "to the extent it is consistent 'with the health and safety of the public'" (quoting 42 U. S. C. § 2013(d) (1982 ed.))); see also Manning, What Divides Textualists from Purposivists? 106 Colum. L. Rev. 70, 104 (2006) ("Legislators may compromise on a statute that does not fully address a perceived mischief, accepting half a loaf to

facilitate a law's enactment"). Therefore, there is no factual basis for the assumption underlying the Court's "purposes and objectives" pre-emption jurisprudence that every policy seemingly consistent with federal statutory text has necessarily been authorized by Congress and warrants pre-emptive effect. Instead, our federal system in general, and the Supremacy Clause in particular, accords pre-emptive effect to only those policies that are actually authorized by and effectuated through the statutory text.

3

The majority, while reaching the right conclusion in this case, demonstrates once again how application of "purposes and objectives" pre-emption requires inquiry into matters beyond the scope of proper judicial review. For example, the majority relies heavily on Congress' failure "during the . . . 70-year history" of the federal Food, Drug, and Cosmetic Act to enact an express pre-emption provision that addresses approval of a drug label by the FDA. *Ante*, at 574. That "silence on the issue, coupled with [Congress'] certain awareness of the prevalence of state tort litigation," the majority reasons, is evidence that Congress did not intend for federal approval of drug labels to pre-empt state tort judgments. *Ante*, at 575; see also *ante*, at 574 (construing from inaction that Congress "[e]vidently [had] determined that widely available state rights of action provided appropriate relief"). Certainly, the absence of a statutory provision pre-empting all state tort suits related to approved federal drug labels is pertinent to a finding that such lawsuits are not pre-empted. But the relevance is in the fact that no statute explicitly pre-empts the lawsuits, and not in any inferences that the Court may draw from congressional silence about the motivations or policies underlying Congress' failure to act. See *Brown* v. *Gardner*, 513 U. S. 115, 121 (1994) ("[C]ongressional silence lacks persuasive significance" (in-

ternal quotation marks omitted)); *O'Melveny & Myers* v. *FDIC*, 512 U. S. 79, 85 (1994) ("[M]atters left unaddressed in [a comprehensive and detailed federal] scheme are presumably left subject to the disposition provided by state law"); *Camps Newfound*, 520 U. S., at 616 ("[O]ur pre-emption jurisprudence explicitly rejects the notion that mere congressional silence on a particular issue may be read as pre-empting state law").

In this case, the majority has concluded from silence that Congress believed state lawsuits pose no obstacle to federal drug approval objectives. See *ante*, at 574–575. That is the required conclusion, but only because it is compelled by the text of the relevant statutory and regulatory provisions, not judicial suppositions about Congress' unstated goals. The fact that the Court reaches the proper conclusion does not justify its speculation about the reasons for congressional inaction. In this case, the Court has relied on the perceived congressional policies underlying inaction to find that state law is *not* pre-empted. But once the Court shows a willingness to guess at the intent underlying congressional inaction, the Court could just as easily rely on its own perceptions regarding congressional inaction to give unduly broad pre-emptive effect to federal law. See, *e. g.*, *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396, 401, 405–408, 429 (2003) (finding that Congress' failure to pass legislation indicating that it disagreed with the President's executive agreement supported, at least in part, the Court's determination that the agreement pre-empted state law). Either approach is illegitimate. Under the Supremacy Clause, state law is pre-empted only by federal law "made in Pursuance" of the Constitution, Art. VI, cl. 2—not by extratextual considerations of the purposes underlying congressional inaction. See *Hoffman* v. *Connecticut Dept. of Income Maintenance*, 492 U. S. 96, 104 (1989) (plurality opinion) (finding that policy arguments that "are not based in the text of the statute . . .

are not helpful"); *TVA* v. *Hill*, 437 U. S. 153, 194 (1978) ("Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute"). Our role, then, is merely "to interpret the language of the statute[s] enacted by Congress." *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 461 (2002).

III

The origins of this Court's "purposes and objectives" pre-emption jurisprudence in *Hines*, and its broad application in cases like *Geier*, illustrate that this brand of the Court's pre-emption jurisprudence facilitates freewheeling, extra-textual, and broad evaluations of the "purposes and objectives" embodied within federal law. This, in turn, leads to decisions giving improperly broad pre-emptive effect to judicially manufactured policies, rather than to the statutory text enacted by Congress pursuant to the Constitution and the agency actions authorized thereby. Because such a sweeping approach to pre-emption leads to the illegitimate—and thus, unconstitutional—invalidation of state laws, I can no longer assent to a doctrine that pre-empts state laws merely because they "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives" of federal law, *Hines*, 312 U. S., at 67, as perceived by this Court. I therefore respectfully concur only in the judgment.

JUSTICE ALITO, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

This case illustrates that tragic facts make bad law. The Court holds that a state tort jury, rather than the Food and Drug Administration (FDA), is ultimately responsible for regulating warning labels for prescription drugs. That result cannot be reconciled with *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), or general principles of conflict pre-emption. I respectfully dissent.

I

The Court frames the question presented as a "narro[w]" one—namely, whether Wyeth has a duty to provide "an adequate warning about using the IV-push method" to administer Phenergan. *Ante*, at 565. But that ignores the antecedent question of who—the FDA or a jury in Vermont—has the authority and responsibility for determining the "adequacy" of Phenergan's warnings. Moreover, it is unclear how a "stronger" warning could have helped respondent, see *ante*, at 573; after all, the physician's assistant who treated her disregarded at least six separate warnings that are already on Phenergan's labeling, so respondent would be hard pressed to prove that a seventh would have made a difference.[1]

More to the point, the question presented by this case is not a "narrow" one, and it does not concern whether Phenergan's label should bear a "stronger" warning. Rather, the real issue is whether a state tort jury can countermand the FDA's considered judgment that Phenergan's FDA-mandated warning label renders its intravenous (IV) use "safe." Indeed, respondent's amended complaint alleged that Phenergan is "not reasonably safe for intravenous administration," App. 15, ¶ 6; respondent's attorney told the jury that Phenergan's label should say, "'Do not use this drug intravenously,'" *id.*, at 32; respondent's expert told the

[1] Indeed, respondent conceded below that Wyeth *did* propose an adequate warning of Phenergan's risks. See Plaintiff Diana Levine's Memorandum in Opposition to Wyeth's Motion for Summary Judgment in *Levine* v. *American Home Products Corp.* (now Wyeth), No. 670–12–01 Wncv (Super. Ct. Washington Cty., Vt.), ¶ 7, p. 26. Specifically, respondent noted: "In 1988, Wyeth proposed language that would have prevented this accident by requiring a running IV and explaining why a running IV will address and reduce the risk [of intra-arterial injection]." *Ibid.* See also *id.*, at 24 ("Although not strong enough, this improved labeling instruction, if followed, would have prevented the inadvertent administration of Phenergan into an artery . . . "). The FDA rejected Wyeth's proposal. See App. 359.

jury, "I think the drug should be labeled 'Not for IV use,'" *id.*, at 59; and during his closing argument, respondent's attorney told the jury, "Thank God we don't rely on the FDA to . . . make the safe[ty] decision. You will make the decision. . . . The FDA doesn't make the decision, you do," *id.*, at 211–212.[2]

Federal law, however, *does* rely on the FDA to make safety determinations like the one it made here. The FDA has long known about the risks associated with IV push in general and its use to administer Phenergan in particular. Whether wisely or not, the FDA has concluded—over the course of extensive, 54-year-long regulatory proceedings—that the drug is "safe" and "effective" when used in accordance with its FDA-mandated labeling. The unfortunate fact that respondent's healthcare providers ignored Phenergan's labeling may make this an ideal medical-malpractice case.[3] But turning a common-law tort suit into a "frontal assault" on the FDA's regulatory regime for drug labeling upsets the well-settled meaning of the Supremacy Clause and our conflict pre-emption jurisprudence. Brief for United States as *Amicus Curiae* 21.

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[2] Moreover, in the trial judge's final charge, he told the jury that "the critical factual issue which you must decide" is whether Phenergan's FDA-mandated label reflects a proper balance between "the risks and benefits of intravenous administration and the potential for injury to patients." *Id.*, at 220. See also 183 Vt. 76, 82, 944 A. 2d 179, 182 (2006) (recognizing that respondent's argument is that Phenergan's "label should not have allowed IV push as a means of administration").

[3] Respondent sued her physician, physician's assistant, and hospital for malpractice. After the parties settled that suit for an undisclosed sum, respondent's physician sent her a letter in which he admitted "'responsibility'" for her injury and expressed his "'profoun[d] regre[t]'" and "'remors[e]'" for his actions. 1 Tr. 178–179 (Mar. 8, 2004) (testimony of Dr. John Matthew); see also App. 102–103 (testimony of physician's assistant Jessica Fisch) (noting that her "sense of grief" was so "great" that she "would have gladly cut off [her own] arm" and given it to respondent). Thereafter, both the physician and the physician's assistant agreed to testify on respondent's behalf in her suit against Wyeth.

II

A

To the extent that "[t]he purpose of Congress is the ultimate touchstone in every pre-emption case," *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485 (1996) (internal quotation marks omitted), Congress made its "purpose" plain in authorizing the FDA—not state tort juries—to determine when and under what circumstances a drug is "safe." "[T]he process for approving new drugs is at least as rigorous as the premarket approval process for medical devices," *Riegel* v. *Medtronic, Inc.*, 552 U. S. 312, 343 (2008) (GINSBURG, J., dissenting), and we held that the latter pre-empted a state-law tort suit that conflicted with the FDA's determination that a medical device was "safe," *id.*, at 324–325 (opinion of the Court).

Under the Federal Food, Drug, and Cosmetic Act (FDCA), a drug manufacturer may not market a new drug before first submitting a new drug application (NDA) to the FDA and receiving the agency's approval. See 21 U. S. C. § 355(a). An NDA must contain, among other things, "the labeling proposed to be used for such drug," § 355(b)(1)(F), "full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use," § 355(b)(1)(A), and "a discussion of why the benefits exceed the risks [of the drug] under the conditions stated in the labeling," 21 CFR § 314.50(d)(5)(viii) (2008). The FDA will approve an NDA only if the agency finds, among other things, that the drug is "safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof," there is "substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof," and the proposed labeling is not "false or misleading in any particular." 21 U. S. C. § 355(d).

After the FDA approves a drug, the manufacturer remains under an obligation to investigate and report any adverse events associated with the drug, see 21 CFR § 314.80, and must periodically submit any new information that may affect the FDA's previous conclusions about the safety, effectiveness, or labeling of the drug, 21 U. S. C. § 355(k). If the FDA finds that the drug is not "safe" when used in accordance with its labeling, the agency "shall" withdraw its approval of the drug. § 355(e). The FDA also "shall" deem a drug "misbranded" if "it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof." § 352(j).

Thus, a drug's warning label "serves as the standard under which the FDA determines whether a product is safe and effective." 50 Fed. Reg. 7470 (1985). Labeling is "[t]he centerpiece of risk management," as it "communicates to health care practitioners the agency's formal, authoritative conclusions regarding the conditions under which the product can be used safely and effectively." 71 Fed. Reg. 3934 (2006). The FDA has underscored the importance it places on drug labels by promulgating comprehensive regulations—spanning an entire part of the Code of Federal Regulations, see 21 CFR pt. 201, with seven subparts and 70 separate sections—that set forth drug manufacturers' labeling obligations. Under those regulations, the FDA must be satisfied that a drug's warning label contains, among other things, "a summary of the essential scientific information needed for the safe and effective use of the drug," § 201.56(1), including a description of "clinically significant adverse reactions," "other potential safety hazards," "limitations in use imposed by them . . . , and steps that should be taken if they occur," § 201.57(c)(6)(i). Neither the FDCA nor its implementing regulations suggest that juries may second-guess the FDA's labeling decisions.

B

1

Where the FDA determines, in accordance with its statutory mandate, that a drug is on balance "safe," our conflict pre-emption cases prohibit any State from countermanding that determination. See, *e. g.*, *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341, 348 (2001) (after the FDA has struck "a somewhat delicate balance of statutory objectives" and determined that petitioner submitted a valid application to manufacture a medical device, a State may not use common law to negate it); *International Paper Co.* v. *Ouellette*, 479 U. S. 481, 494 (1987) (after the Environmental Protection Agency has struck "the balance of public and private interests so carefully addressed by" the federal permitting regime for water pollution, a State may not use nuisance law to "upse[t]" it); *Chicago & North Western Transp. Co.* v. *Kalo Brick & Tile Co.*, 450 U. S. 311, 321 (1981) (after the Interstate Commerce Commission has struck a "balance" between competing interests in permitting the abandonment of a railroad line, a State may not use statutory or common law to negate it).

Thus, as the Court itself recognizes, it is irrelevant in conflict pre-emption cases whether Congress "enacted an express pre-emption provision at some point during the FDCA's 70-year history." *Ante*, at 574; see also *Geier*, 529 U. S., at 869 (holding the absence of an express pre-emption clause "does *not* bar the ordinary working of conflict pre-emption principles"). Rather, the ordinary principles of conflict pre-emption turn solely on whether a State has upset the regulatory balance struck by the federal agency. *Id.*, at 884–885; see also *Chicago & North Western Transp. Co.*, *supra*, at 317 (describing conflict pre-emption as "a two-step process of first ascertaining the construction of the [federal and state laws] and then determining the constitutional ques-

tion whether they are actually in conflict" (internal quotation marks omitted)).

2

A faithful application of this Court's conflict pre-emption cases compels the conclusion that the FDA's 40-year-long effort to regulate the safety and efficacy of Phenergan pre-empts respondent's tort suit. Indeed, that result follows directly from our conclusion in *Geier*.

Geier arose under the National Traffic and Motor Safety Vehicle Act of 1966, which directs the Secretary of the Department of Transportation (DOT) to "establish by order . . . motor vehicle safety standards," 15 U. S. C. § 1392(a) (1988 ed.), which are defined as "minimum standard[s] for motor vehicle performance, or motor vehicle equipment performance," § 1391(2). Acting pursuant to that statutory mandate, the Secretary of Transportation promulgated Federal Motor Vehicle Safety Standard 208, which required car manufacturers to include passive restraint systems (*i. e.*, devices that work automatically to protect occupants from injury during a collision) in a certain percentage of their cars built in or after 1987. See 49 CFR § 571.208 (1999). Standard 208 did not require installation of any particular type of passive restraint; instead, it gave manufacturers the option to install automatic seatbelts, airbags, or any other suitable technology that they might develop, provided the restraint(s) met the performance requirements specified in the rule. *Ibid.*

Alexis Geier drove her 1987 Honda Accord into a tree, and although she was wearing her seatbelt, she nonetheless suffered serious injuries. She then sued Honda under state tort law, alleging that her car was negligently and defectively designed because it lacked a driver's-side airbag. She argued that Congress had empowered the Secretary to set only "minimum standard[s]" for vehicle safety. 15 U. S. C. § 1391(2). She also emphasized that the National Traffic and Motor Safety Vehicle Act contains a saving clause, which

provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." § 1397(k).

Notwithstanding the statute's saving clause, and notwithstanding the fact that Congress gave the Secretary authority to set only "minimum" safety standards, we held Geier's state tort suit pre-empted. In reaching that result, we relied heavily on the view of the Secretary of Transportation—expressed in an *amicus* brief—that Standard 208 " 'embodies the Secretary's policy judgment that safety would best be promoted if manufacturers installed *alternative* protection systems in their fleets rather than one particular system in every car.' " 529 U. S., at 881 (quoting Brief for United States as *Amicus Curiae*, O. T. 1999, No. 98–1811, p. 25). Because the Secretary determined that a menu of alternative technologies was "safe," the doctrine of conflict pre-emption barred Geier's efforts to deem some of those federally approved alternatives "unsafe" under state tort law.

The same rationale applies here. Through Phenergan's label, the FDA offered medical professionals a menu of federally approved, "safe" and "effective" alternatives—including IV push—for administering the drug. Through a state tort suit, respondent attempted to deem IV push "unsafe" and "ineffective." To be sure, federal law does not prohibit Wyeth from contraindicating IV push, just as federal law did not prohibit Honda from installing airbags in all its cars. But just as we held that States may not compel the latter, so, too, are States precluded from compelling the former. See also *Fidelity Fed. Sav. & Loan Assn.* v. *De la Cuesta*, 458 U. S. 141, 155 (1982) ("The conflict does not evaporate because the [agency's] regulation simply permits, but does not compel," the action forbidden by state law). If anything, a finding of pre-emption is even more appropriate here because the FDCA—unlike the National Traffic and Motor Safety Vehicle Act—contains no evidence that Congress in-

tended the FDA to set only "minimum standards," and the FDCA does not contain a saving clause.[4] See also *ante*, at 575 (majority opinion) (conceding Congress' "silence" on the issue).

III

In its attempt to evade *Geier*'s applicability to this case, the Court commits both factual and legal errors. First, as a factual matter, it is demonstrably untrue that the FDA failed to consider (and strike a "balance" between) the specific costs and benefits associated with IV push. Second, as a legal matter, *Geier* does not stand for the legal propositions espoused by the dissenters (and specifically rejected by the majority) in that case. Third, drug labeling by jury verdict undermines both our broader pre-emption jurisprudence and the broader workability of the federal drug-labeling regime.

A

Phenergan's warning label has been subject to the FDA's strict regulatory oversight since the 1950's. For at least the last 34 years, the FDA has focused specifically on whether IV-push administration of Phenergan is "safe" and "effective" when performed in accordance with Phenergan's label. The agency's ultimate decision—to retain IV push as one

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[4] To be sure, Congress recognized the principles of conflict pre-emption in the FDCA. See Drug Amendments of 1962, § 202, 76 Stat. 793 ("Nothing in the amendments made by this Act to the Federal Food, Drug, and Cosmetic Act shall be construed as invalidating any provision of State law . . . unless there is a direct and positive conflict between such amendments and such provision of State law"). But a provision that simply recognizes the background principles of conflict pre-emption is not a traditional "saving clause," and even if it were, it would not displace our conflict pre-emption analysis. See *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 869 (2000) ("[T]he saving clause . . . does *not* bar the ordinary working of conflict pre-emption principles"); *id.*, at 873–874 ("The Court has . . . refused to read general 'saving' provisions to tolerate actual conflict both in cases involving impossibility *and* in 'frustration-of-purpose' cases" (emphasis deleted; citation omitted)).

means for administering Phenergan, albeit subject to stringent warnings—is reflected in the plain text of Phenergan's label (sometimes in boldfaced font and all-capital letters). And the record contains ample evidence that the FDA specifically considered and reconsidered the strength of Phenergan's IV-push-related warnings in light of new scientific and medical data. The majority's factual assertions to the contrary are mistaken.

1

The FDA's focus on IV push as a means of administering Phenergan dates back at least to 1975. In August of that year, several representatives from both the FDA and Wyeth met to discuss Phenergan's warning label. At that meeting, the FDA specifically proposed "that Phenergan Injection should not be used in Tubex®." 2 Record 583, 586 (Plaintiff's Trial Exh. 17, Internal Correspondence from W. E. Langeland to File (Sept. 5, 1975) (hereinafter 1975 Memo)). "Tubex" is a syringe system used exclusively for IV push. See App. 43. An FDA official explained that the agency's concerns arose from medical-malpractice lawsuits involving IV push of the drug, see 1975 Memo 586, and that the FDA was aware of "5 cases involving amputation where the drug had been administered by Tubex together with several additional cases involving necrosis," *id.*, at 586–587. Rather than contraindicating Phenergan for IV push, however, the agency and Wyeth agreed "that there was a need for better instruction regarding the problems of intraarterial injection." *Id.*, at 587.

The next year, the FDA convened an advisory committee to study, among other things, the risks associated with the Tubex system and IV push. App. 294. At the conclusion of its study, the committee recommended an additional IV-push-specific warning for Phenergan's label, see *ibid.*, but did not recommend eliminating IV push from the drug label altogether. In response to the committee's recommendations, the FDA instructed Wyeth to make several changes to

strengthen Phenergan's label, including the addition of uppercase warnings related to IV push. See *id.*, at 279–280, 282–283.

In 1987, the FDA directed Wyeth to amend its label to include the following text:

> "'[1] When used intravenously, [Phenergan] should be given in a concentration no greater than 25 mg/ml and at a rate not to exceed 25 mg/minute. [2] Injection through a properly running intravenous infusion may enhance the possibility of detecting arterial placement.'" *Id.*, at 311–312.

The first of the two quoted sentences refers specifically to IV push; as respondent's medical expert testified at trial, the label's recommended rate of administration (not to exceed 25 mg per minute) refers to "IV push, as opposed to say being in a bag and dripped over a couple of hours." *Id.*, at 52. The second of the two quoted sentences refers to IV drip. See *id.*, at 15–16 (emphasizing that a "running IV" is the same thing as "IV drip").

In its 1987 labeling order, the FDA cited voluminous materials to "suppor[t]" its new and stronger warnings related to IV push and the preferability of IV drip.[5] *Id.*, at 313. One of those articles specifically discussed the relative advantages and disadvantages of IV drip compared to IV push, as

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[5] The FDA cited numerous articles that generally discuss the costs and benefits associated with IV push. See, *e. g.*, Nahrwold & Phelps, Inadvertent Intra-Arterial Injection of Mephenteramine, 70 Rocky Mountain Medical J. 38 (Sept. 1973) (cited in App. 314, no. 14); Albo, Cheung, Ruth, Snyder, & Reemtsma, Effect of Intra-Arterial Injections of Barbiturates, 120 Am. J. of Surgery 676 (1970) (cited in App. 314, no. 12); Corser, Masey, Jacob, Kernoff, & Browne, Ischaemia Following Self-administered Intra-arterial Injection of Methylphenidate and Diamorphine, 40 Anaesthesia 51 (1985) (cited in App. 314, no. 9); Correspondence Regarding Thiopental and Thiamylal (3 letters), 59 Anesthesiology 153–155 (1983) (cited in App. 314, no. 11); Miller, Arthur, & Stratigos, Intra-arterial Injection of a Barbiturate, 23 Anesthesia Progress 25 (1976) (cited in App. 315, no. 19).

well as the costs and benefits of administering Phenergan via IV push.[6] The FDA also cited published case reports from the 1960's of gangrene caused by the intra-arterial injection of Phenergan,[7] and the FDA instructed Wyeth to amend Phenergan's label in accordance with the latest medical research.[8] The FDA also studied drugs similar to Phenergan and cited numerous cautionary articles—one of which urged the agency to consider contraindicating such drugs for IV use altogether.[9]

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[6] See Webb & Lampert, Accidental Arterial Injections, 101 Am. J. Obstetrics & Gynecology 365 (1968) (cited in App. 313, no. 5).

[7] See Hager & Wilson, Gangrene of the Hand Following Intra-arterial Injection, 94 Archives of Surgery 86 (1967) (cited in App. 313, no. 7); Enloe, Sylvester, & Morris, Hazards of Intra-Arterial Injection of Hydroxyzine, 16 Canadian Anaesthetists' Society J. 425 (1969) (hereinafter Enloe) (noting "recent reports" of "the occurrence of severe necrosis and gangrene following [administration of] promethazine (Phenergan®)" (cited in App. 314, no. 15)). See also Mostafavi & Samimi, Accidental Intra-arterial Injection of Promethazine HCl During General Anesthesia, 35 Anesthesiology 645 (1971) (reporting a case of gangrene, which required partial amputation of three fingers, after Phenergan was inadvertently pushed into an artery in the "antecubital" area); Promethazine, p. 7, in Clinical Pharmacology (Gold Standard Multimedia Inc. CD–ROM, version 1.16 (1998)) (noting that "[i]nadvertent intra-arterial injection [of Phenergan] can result in arteriospasm . . . and development of gangrene").

[8] Hager and Wilson noted that the most common reactions to intra-arterial injections of drugs like Phenergan include "[i]mmediate, severe, burning pain," as well as "blanching." 94 Archives of Surgery, at 87–88. The FDA required Wyeth to include Hager and Wilson's observations on Phenergan's label. See App. 311 (requiring the label to warn that "'[t]he first sign [of an intra-arterial injection] may be the patient's reaction to a sensation of fiery burning'" pain and "'[b]lanching'").

[9] See Enloe 427 (discussing hydroxyzine—an antihistamine with chemical properties similar to those of Phenergan—and suggesting its "temporary" benefits can never outweigh the risks of intra-arterial injection); see also Goldsmith & Trieger, Accidental Intra-Arterial Injection: A Medical Emergency, 22 Anesthesia Progress 180 (1975) (noting the risks of intra-arterial administration of hydroxyzine) (cited in App. 315, no. 18); Klatte, Brooks, & Rhamy, Toxicity of Intra-Arterial Barbiturates and Tranquilizing Drugs, 92 Radiology 700 (1969) (same) (cited in App. 314, no. 13). With

In "support" of its labeling order, the FDA also cited numerous articles that singled out the inner crook of the elbow—known as the "antecubital fossa" in the medical community—which is both a commonly used injection site, see *id.*, at 70 (noting that respondent's injection was pushed into "the antecubital space"), and a universally recognized high-risk area for inadvertent intra-arterial injections. One of the articles explained:

> "Because of the numerous superficial positions the ulnar artery might occupy, it has often been entered during attempted venipuncture [of the antecubital fossa]. . . . However, the brachial and the radial arteries might also be quite superficial in the elbow region. . . . The arterial variations of the arm, especially in and about the cubital fossa, are common and numerous. If venipuncture must be performed in this area, a higher index of suspicion must be maintained to forestall misdirected injections." Stone & Donnelly, The Accidental Intra-arterial Injection of Thiopental, 22 Anesthesiol-

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full knowledge of those risks, the FDA retained IV push for Phenergan, although the agency required Wyeth to incorporate observations from the Enloe article into Phenergan's label. Compare Enloe 427 (arguing that "every precaution should be taken to avoid inadvertent intra-arterial injection," including the use of "an obviously well-functioning venoclysis") with App. 312 (the FDA's 1987 changes to Phenergan's label). In contrast, at some time around 1970, the FDA prohibited all intravenous use of hydroxyzine. See *id.*, at 79 (testimony of Dr. Harold Green). The FDA's decision to regulate the two drugs differently—notwithstanding (1) the agency's knowledge of the risks associated with both drugs and (2) the agency's recognition of the relevance of hydroxyzine-related articles and case reports in its regulation of Phenergan—further demonstrates that the FDA intentionally preserved IV-push administration for Phenergan. See also Haas, Correspondence, 33 Anesthesia Progress 281 (1986) ("[Hydroxyzine's] restriction does not lie with the medicine itself, but in the practice and malpractice of intravenous techniques. Unfortunately, the practitioner who knows how to treat injection technique problems is usually not the practitioner with the intravenous technique problems").

ogy 995, 996 (1961) (footnote omitted; cited in App. 315, no. 20).[10]

Based on this and other research, the FDA ordered Wyeth to include a specific warning related to the use of the antecubital space for IV push.[11]

2

When respondent was injured in 2000, Phenergan's label specifically addressed IV push in several passages (sometimes in lieu of and sometimes in addition to those discussed above). For example, the label warned of the risks of intra-arterial injection associated with "aspiration," which is a technique used only in conjunction with IV push.[12] The

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[10] See also Engler, Freeman, Kanavage, Ogden, & Moretz, Production of Gangrenous Extremities by Intra-Arterial Injections, 30 Am. Surgeon 602 (1964) ("Accidental arterial injection most often occurs in the antecubital region because this is a favorite site for venopuncture and in this area the ulnar and brachial arteries are superficial and easily entered" (cited in App. 313, no. 6)); Engler et al., Gangrenous Extremities Resulting from Intra-arterial Injections, 94 Archives of Surgery 644 (1966) (similar) (cited in App. 314, no. 16); Lynas & Bisset, Intra-arterial Thiopentone, 24 Anaesthesia 257 (1969) ("Most [anesthesiologists] agree that injections on the medial aspect of the antecubital fossa are best avoided" (cited in App. 314, no. 8)); Waters, Intra-arterial Thiopentone, 21 Anaesthesia 346 (1966) ("The risk of producing gangrene of the forearm by accidental injection of sodium thiopentone into an artery at the elbow has been recognised for many years" (cited in App. 314, no. 10)); see also Hager & Wilson, 94 Archives of Surgery, at 88 (emphasizing that one of the best ways to prevent inadvertent intra-arterial injections is to be aware of "aberrant or superficial arteries at the antecubital, forearm, wrist, and hand level"); Mostafavi & Samimi, *supra* (warning against antecubital injections).

[11] See App. 311 (requiring Phenergan's label to warn that practitioners should " '[b]eware of the close proximity of arteries and veins at commonly used injection sites and consider the possibility of aberrant arteries' ").

[12] "Aspiration" refers to drawing a small amount of blood back into the needle to determine whether the needle is in an artery or a vein. Ordinarily, arterial blood is brighter than venous blood—but contact with Phenergan causes discoloration, which makes aspiration an unreliable method of protecting against intra-arterial injection. See *id.*, at 282. Therefore, the label warned that when using IV push, a medical professional should

label also cautioned against the use of "syringes with rigid plungers," App. 390, which are used only to administer the drug via IV push. As respondent's medical expert testified at trial, "by talking plungers and rigid needles, that's the way you do it, to push it with the plunger." *Id.*, at 53 (testimony of Dr. John Matthew). Moreover, Phenergan's 2000 label devoted almost a full page to discussing the "Tubex system," see *id.*, at 391, which, as noted above, is used only to administer the drug via IV push.

While Phenergan's label very clearly authorized the use of IV push, it also made clear that IV push is the delivery method of last resort. The label specified that "[t]he preferred parenteral route of administration is by deep intramuscular injection." *Id.*, at 390. If an intramuscular injection is ineffective, then "it is usually preferable to inject [Phenergan] through the tubing of an intravenous infusion set that is known to be functioning satisfactorily." *Ibid.* See also *id.*, at 50–51 (testimony of respondent's medical expert, Dr. John Matthew) (conceding that the best way to determine that an IV set is functioning satisfactorily is to use IV drip). Finally, if for whatever reason a medical professional chooses to use IV push, he or she is on notice that "**INADVERTENT INTRA-ARTERIAL INJECTION CAN RESULT IN GANGRENE OF THE AFFECTED EXTREMITY.**" *Id.*, at 391; see also *id.*, at 390 ("Under no circumstances should Phenergan Injection be given by intra-arterial injection due to the likelihood of severe arteriospasm and the possibility of resultant gangrene").

Phenergan's label also directs medical practitioners to choose veins wisely when using IV push:

> "Due to the close proximity of arteries and veins in the areas most commonly used for intravenous injection, ex-

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beware that "[a]spiration of dark blood does not preclude intra-arterial needle placement, because blood is discolored upon contact with Phenergan Injection." *Id.*, at 390.

> treme care should be exercised to avoid perivascular extravasation or inadvertent intra-arterial injection. Reports compatible with inadvertent intra-arterial injection of Phenergan Injection, usually in conjunction with other drugs intended for intravenous use, suggest that pain, severe chemical irritation, severe spasm of distal vessels, and resultant gangrene requiring amputation are likely under such circumstances." *Ibid.*

Thus, it is demonstrably untrue that, as of 2000, Phenergan's "labeling did not contain a specific warning about the risks of IV-push administration." *Ante*, at 561 (majority opinion). And whatever else might be said about the extensive medical authorities and case reports that the FDA cited in "support" of its approval of IV-push administration of Phenergan, it cannot be said that the FDA "paid no more than passing attention to" IV push, *ante*, at 563 (majority opinion); nor can it be said that the FDA failed to weigh its costs and benefits, Brief for Respondent 50.

3

For her part, respondent does not dispute the FDA's conclusion that IV push has certain benefits. At trial, her medical practitioners testified that they used IV push in order to help her "in a swift and timely way" when she showed up at the hospital for the second time in one day complaining of "intractable" migraines, "terrible pain," inability to "bear light or sound," sleeplessness, hours-long spasms of "retching" and "vomiting," and when "every possible" alternative treatment had "failed." App. 40 (testimony of Dr. John Matthew); *id.*, at 103, 106, 109 (testimony of physician's assistant Jessica Fisch).

Rather than disputing the benefits of IV push, respondent complains that the FDA and Wyeth underestimated its costs (and hence did not provide sufficient warnings regarding its risks). But when the FDA mandated that Phenergan's label read, "**INADVERTENT INTRA-ARTERIAL INJECTION**

CAN RESULT IN GANGRENE OF THE AFFECTED EXTREMITY," *id.*, at 391, and when the FDA required Wyeth to warn that "[u]nder no circumstances should Phenergan Injection be given by intra-arterial injection," *id.*, at 390, the agency could reasonably assume that medical professionals would take care not to inject Phenergan intra-arterially. See also 71 Fed. Reg. 3934 (noting that a drug's warning label "communicates to health care practitioners the agency's formal, authoritative conclusions regarding the conditions under which the product can be used safely and effectively"). Unfortunately, the physician's assistant who treated respondent in this case disregarded Phenergan's label and pushed the drug into the single spot on her arm that is *most* likely to cause an inadvertent intra-arterial injection.

As noted above, when the FDA approved Phenergan's label, it was textbook medical knowledge that the "antecubital fossa" creates a high risk of inadvertent intra-arterial injection, given the close proximity of veins and arteries. See *supra*, at 614–617; see also The Lippincott Manual of Nursing Practice 99 (7th ed. 2001) (noting, in a red-text "NURSING ALERT," that the antecubital fossa is "not recommended" for administering dangerous drugs, "due to [the] potential for extravasation").[13] According to the physician's assistant who injured respondent, however, "[i]t never crossed my mind" that an antecubital injection of Phenergan could hit an artery. App. 110; see also *ibid.* ("[It] just wasn't something that I was aware of at the time"). Oblivious to the risks emphasized in Phenergan's warnings, the physician's assistant pushed a double dose of the drug into an antecubital artery over the course of "[p]robably about three to four minutes," *id.*, at 111; *id.*, at 105, notwithstanding re-

[13] In addition, respondent's own medical expert testified at trial that it is a principle of "basic anatomy" that the antecubital fossa contains aberrant arteries. See 2 Tr. 34–35 (Mar. 9, 2004) (testimony of Dr. Daniel O'Brien); see also *ibid.* (noting that Gray's Anatomy, which is "the Bible of anatomy," also warns of arteries in the antecubital space).

spondent's complaints of a "'burn[ing]'" sensation that she subsequently described as "'one of the most extreme pains that I've ever felt,'" *id.*, at 110, 180–181. And when asked why she ignored Phenergan's label and failed to stop pushing the drug after respondent complained of burning pains, the physician's assistant explained that it would have been "just crazy" to "worr[y] about an [intra-arterial] injection" under the circumstances, *id.*, at 111.

The FDA, however, did not think that the risks associated with IV push—especially in the antecubital space—were "just crazy." That is why Phenergan's label so clearly warns against them.

B

Given the "balance" that the FDA struck between the costs and benefits of administering Phenergan via IV push, *Geier* compels the pre-emption of tort suits (like this one) that would upset that balance. The contrary conclusion requires turning yesterday's dissent into today's majority opinion.

First, the Court denies the existence of a federal-state conflict in this case because Vermont merely countermanded the FDA's determination that IV push is "safe" when performed in accordance with Phenergan's warning label; the Court concludes that there is no conflict because Vermont did not "mandate a particular" label as a "replacement" for the one that the jury nullified, and because the State stopped short of altogether "contraindicating IV-push administration." *Ante*, at 525. But as we emphasized in *Geier* (over the dissent's assertions to the contrary), the degree of a State's intrusion upon federal law is irrelevant—the Supremacy Clause applies with equal force to a state tort law that merely countermands a federal safety determination and to a state law that altogether prohibits car manufacturers from selling cars without airbags. Compare 529 U. S., at 881–882, with *id.*, at 902 (STEVENS, J., dissenting). Indeed, as recently as last Term, we held that the Supremacy Clause pre-

empts a "[s]tate tort law that requires a manufacturer's catheters to be safer, but hence less effective, than the model the FDA has approved . . . ." *Riegel*, 552 U. S., at 325. It did not matter there that the State stopped short of altogether prohibiting the use of FDA-approved catheters—just as it does not matter here that Vermont stopped short of altogether prohibiting an FDA-approved method for administering Phenergan. See also *Lohr*, 518 U. S., at 504 (BREYER, J., concurring in part and concurring in judgment) (noting it would be an "anomalous result" if pre-emption applied differently to a state tort suit premised on the inadequacy of the FDA's safety regulations and a state law that specifically prohibited an FDA-approved design).

Second, the Court today distinguishes *Geier* because the FDA articulated its pre-emptive intent "without offering States or other interested parties notice or opportunity for comment." *Ante*, at 577; see also *ante*, at 580. But the *Geier* Court specifically rejected the argument (again made by the dissenters in that case) that conflict pre-emption is appropriate only where the agency expresses its pre-emptive intent through notice-and-comment rulemaking. Compare 529 U. S., at 885 ("To insist on a specific expression of agency intent to pre-empt, made after notice-and-comment rulemaking, would be in certain cases to tolerate conflicts that an agency, and therefore Congress, is most unlikely to have intended. The dissent, as we have said, apparently welcomes that result . . . . We do not"), with *id.*, at 908–910 (STEVENS, J., dissenting) (emphasizing that "we generally expect an administrative regulation to declare any intention to pre-empt state law with some specificity," and that "[t]his expectation . . . serves to ensure that States will be able to have a dialog with agencies regarding pre-emption decisions *ex ante* through the normal notice-and-comment procedures of the Administrative Procedure Act" (internal quotation marks omitted)). Indeed, pre-emption is arguably more appropriate here than in *Geier* because the FDA (unlike the DOT) declared its pre-emptive intent in the Federal Regis-

ter. See 71 Fed. Reg. 3933–3936. Yet the majority dismisses the FDA's published preamble as "inherently suspect," *ante*, at 577, and an afterthought that is entitled to "no weight," *ante*, at 581. Cf. *Lohr*, *supra*, at 506 (opinion of BREYER, J.) (emphasizing that the FDA has a "special understanding of the likely impact of both state and federal requirements, as well as an understanding of whether (or the extent to which) state requirements may interfere with federal objectives," and that "[t]he FDA can translate these understandings into particularized pre-emptive intentions . . . through statements in 'regulations, preambles, interpretive statements, and responses to comments' ").

Third, the Court distinguishes *Geier* because the DOT's regulation "bear[s] the force of law," whereas the FDA's preamble does not. *Ante*, at 580; see also *ante*, at 576. But it is irrelevant that the FDA's preamble does not "bear the force of law" because the FDA's labeling decisions surely do. See 21 U. S. C. § 355. It is well within the FDA's discretion to make its labeling decisions through administrative adjudications rather than through less formal and less flexible rulemaking proceedings, see *SEC* v. *Chenery Corp.*, 332 U. S. 194 (1947), and we have never previously held that our preemption analysis turns on the agency's choice of the latter over the former. Moreover, it cannot be said that *Geier*'s outcome hinged on the agency's choice to promulgate a rule. See *ante*, at 576, 580–581. The *Geier* Court relied—again over the dissenters' protestations—on materials other than the Secretary's regulation to explain the conflict between state and federal law. Compare 529 U. S., at 881, with *id.*, at 899–900 (STEVENS, J., dissenting), and *ante*, at 582 (BREYER, J., concurring).

Fourth, the Court sandwiches its discussion of *Geier* between the "presumption against pre-emption," *ante*, at 575, and heavy emphasis on "the longstanding coexistence of state and federal law and the FDA's traditional recognition of state-law remedies," *ante*, at 581. But the *Geier* Court specifically rejected the argument (again made by the dis-

senters in that case) that the "presumption against pre-emption" is relevant to the conflict pre-emption analysis. See 529 U. S., at 906–907 (STEVENS, J., dissenting) ("[T]he Court simply ignores the presumption [against pre-emption]"). Rather than invoking such a "presumption," the Court emphasized that it was applying "ordinary," "long-standing," and "experience-proved principles of conflict pre-emption." *Id.*, at 874. Under these principles, the sole question is whether there is an "actual conflict" between state and federal law; if so, then pre-emption follows automatically by operation of the Supremacy Clause. *Id.*, at 871–872. See also *Buckman*, 531 U. S., at 347–348 ("[P]etitioner's dealings with the FDA were prompted by [federal law], and the very subject matter of petitioner's statements [to the FDA] were dictated by [federal law]. Accordingly—and in contrast to situations implicating 'federalism concerns and the historic primacy of state regulation of matters of health and safety'—no presumption against pre-emption obtains in this case" (citation omitted)).[14]

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[14] Thus, it is not true that "this Court has long" applied a presumption against pre-emption in conflict pre-emption cases. *Ante*, at 566, n. 3 (majority opinion). As long ago as *Gibbons* v. *Ogden*, 9 Wheat. 1, 210 (1824), the Court inquired whether a state law "interfer[ed] with," was "contrary to," or "c[a]me into collision with" federal law—and it did so without ever invoking a "presumption." See also Davis, Unmasking the Presumption in Favor of Preemption, 53 S. C. L. Rev. 967, 974 (2002) (noting that many of the Court's early pre-emption cases "resulted in almost automatic pre-emption of concurrent state regulation"). In subsequent years the Court has sometimes acknowledged a limited "presumption against pre-emption," but it nonetheless remained an open question—before today—whether that presumption applied in conflict pre-emption cases. See *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 374, n. 8 (2000) ("We leave for another day a consideration in this context of a presumption against preemption"). Moreover, this Court has never held that the "presumption" applies in an area—such as drug labeling—that has long been "reserved for federal regulation." *United States* v. *Locke*, 529 U. S. 89, 111 (2000). See also *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U. S. 341, 347–348 (2001).

Finally, the *Geier* Court went out of its way to emphasize (yet again over the dissenters' objections) that it placed "some weight" on the DOT's *amicus* brief, which explained the agency's regulatory objectives and the effects of state tort suits on the federal regulatory regime. 529 U. S., at 883; cf. *id.*, at 910–911 (STEVENS, J., dissenting) (criticizing the majority for "uph[olding] a regulatory claim of frustration-of-purposes implied conflict pre-emption based on nothing more than an *ex post* administrative litigating position and inferences from regulatory history and final commentary"). See also *Lohr*, 518 U. S., at 496 (recognizing that the FDA is "uniquely qualified" to explain whether state law conflicts with the FDA's objectives). Yet today, the FDA's explanation of the conflict between state tort suits and the federal labeling regime, set forth in the agency's *amicus* brief, is not even mentioned in the Court's opinion. Instead of relying on the FDA's explanation of its own regulatory purposes, the Court relies on a decade-old and now-repudiated statement, which the majority finds preferable. See *ante*, at 578, 580, n. 13. Cf. *Riegel*, 552 U. S., at 327 (noting that "the agency's earlier position (which the dissent describes at some length and finds preferable) is . . . compromised, indeed deprived of all claim to deference, by the fact that it is no longer the agency's position" (citation omitted)); *Altria Group, Inc.* v. *Good*, *ante*, at 89 (rejecting petitioners' reliance on the pre-emptive effect of the agency's "longstanding policy" because it is inconsistent with the agency's current one). And JUSTICE BREYER suggests that state tort suits may "help the [FDA]," *ante*, at 581–582 (concurring opinion), notwithstanding the FDA's insistence that state tort suits will "disrupt the agency's balancing of health risks and benefits," Brief for United States as *Amicus Curiae* 9.

Geier does not countenance the use of state tort suits to second-guess the FDA's labeling decisions. And the Court's contrary conclusion has potentially far-reaching consequences.

C

By their very nature, juries are ill equipped to perform the FDA's cost-benefit-balancing function. As we explained in *Riegel,* juries tend to focus on the risk of a particular product's design or warning label that arguably contributed to a particular plaintiff's injury, not on the overall benefits of that design or label; "the patients who reaped those benefits are not represented in court." 552 U. S., at 325. Indeed, patients like respondent are the only ones whom tort juries ever see, and for a patient like respondent—who has already suffered a tragic accident—Phenergan's risks are no longer a matter of probabilities and potentialities.

In contrast, the FDA has the benefit of the long view. Its drug-approval determinations consider the interests of all potential users of a drug, including "those who would suffer without new medical [products]" if juries in all 50 States were free to contradict the FDA's expert determinations. *Id.*, at 326. And the FDA conveys its warnings with one voice, rather than whipsawing the medical community with 50 (or more) potentially conflicting ones. After today's ruling, however, parochialism may prevail.

The problem is well illustrated by the labels borne by "vesicant" drugs, many of which are used for chemotherapy. As a class, vesicants are much more dangerous than drugs like Phenergan,[15] but the vast majority of vesicant labels—like Phenergan's—either allow or do not disallow IV push. See Appendix, *infra.* Because vesicant extravasation can have devastating consequences, and because the potentially life-saving benefits of these drugs offer hollow solace to the vic-

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[15] Vesicants may cause "blistering, severe tissue injury, or tissue necrosis" upon extravasation—even if the drug is not injected into an artery. See, *e. g.*, Schulmeister, Administering Vesicants, 9 Clinical J. of Oncology Nursing 469, 469–470 (2005). See also *ante*, at 561 (majority opinion) (noting that Phenergan is labeled as an " 'irritant' "); cf. Brief for Anju Budhwani et al. as *Amici Curiae* 15 (suggesting Phenergan should be considered a "vesicant").

tim of such a tragedy, a jury's cost-benefit analysis in a particular case may well differ from the FDA's.

For example, consider Mustargen (mechlorethamine HCl)—the injectable form of mustard gas—which can be used as an anticancer drug. Mustargen's FDA-approved label warns in several places that "This drug is **HIGHLY TOXIC.**"[16] Indeed, the drug is so highly toxic:

> "Should accidental eye contact occur, copious irrigation for at least 15 minutes with water, normal saline or a balanced salt ophthalmic irrigating solution should be instituted immediately, followed by prompt ophthalmologic consultation. Should accidental skin contact occur, the affected part must be irrigated immediately with copious amounts of water, for at least 15 minutes while removing contaminated clothing and shoes, followed by 2% sodium thiosulfate solution. Medical attention should be sought immediately. Contaminated clothing should be destroyed."[17]

Yet when it comes to administering this highly toxic drug, the label provides that "the drug may be injected *directly into any suitable vein*, [but] it is injected preferably into the rubber or plastic tubing of a flowing intravenous infusion set. This reduces the possibility of severe local reactions due to extravasation or high concentration of the drug." (Emphasis added.) Similarly, the FDA-approved labels for other powerful chemotherapeutic vesicants—including Dactinomycin, Oxaliplatin, Vinblastine, and Vincristine—specifically allow IV push, notwithstanding their devastating effects when extravasated.

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[16] FDA, Oncology Tools Product Label Details, online at http://www.accessdata.fda.gov/scripts/cder/onctools/labels.cfm?GN=meclorethamine,%20nitrogen%20mustard (as visited Mar. 2, 2009, and available in Clerk of Court's case file).

[17] *Ibid.*

The fact that the labels for such drugs allow IV push is striking—both because vesicants are much more dangerous than Phenergan, and also because they are so frequently extravasated, see Boyle & Engelking, Vesicant Extravasation: Myths and Realities, 22 Oncology Nursing Forum 57, 58 (1995) (arguing that the rate of extravasation is "considerably higher" than 6.4% of all vesicant administrations). Regardless of the FDA's reasons for not contraindicating IV push for these drugs, it is odd (to say the least) that a jury in Vermont can now order for Phenergan what the FDA has chosen not to order for mustard gas.[18]

* * *

To be sure, state tort suits can peacefully coexist with the FDA's labeling regime, and they have done so for decades. *Ante,* at 573–575 (majority opinion). But this case is far from peaceful coexistence. The FDA told Wyeth that Phenergan's label renders its use "safe." But the State of Vermont, through its tort law, said: "Not so."

The state-law rule at issue here is squarely pre-empted. Therefore, I would reverse the judgment of the Supreme Court of Vermont.

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[18] The same is true of the FDA's regulation of hydroxyzine. See n. 9, *supra.*

APPENDIX

Vesicant [1]	**IV Push** [2]
Dactinomycin	Specifically allowed
Mechlorethamine (Mustargen)	Specifically allowed
Oxaliplatin	Specifically allowed
Vinblastine	Specifically allowed
Vincristine	Specifically allowed
Bleomycin	Neither mentioned nor prohibited
Carboplatin	Neither mentioned nor prohibited
Dacarbazine	Neither mentioned nor prohibited
Mitomycin	Neither mentioned nor prohibited
Carmustine	Not prohibited; IV drip recommended
Cisplatin	Not prohibited; IV drip recommended
Epirubicin	Not prohibited; IV drip recommended
Etoposide	Not prohibited; IV drip recommended
Ifosfamide	Not prohibited; IV drip recommended
Mitoxantrone	Not prohibited; IV drip recommended
Paclitaxel	Not prohibited; IV drip recommended
Teniposide	Not prohibited; IV drip recommended
Vinorelbine	Not prohibited; IV drip recommended
Daunorubicin	Prohibited
Doxorubicin	Prohibited

[1] Wilkes & Barton-Burke, 2008 Oncology Nursing Drug Handbook 27–33 (2008) (Table 1.6).

[2] IV-push information is derived from the "dosage and administration" sections of individual drug labels (available in Clerk of Court's case file).

Reporter's Note

The next page is purposely numbered 801. The numbers between 629 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 6, 2008, THROUGH MARCH 6, 2009

October 6, 2008

Appeals Dismissed

No. 07–1458. Dean et al. *v.* Leake, Chairman, North Carolina State Board of Elections, et al. Appeal from D. C. E. D. N. C. dismissed for want of jurisdiction. Reported below: 550 F. Supp. 2d 594.

No. 07–1460. Riley, Governor of Alabama *v.* Plump. Appeal from D. C. M. D. Ala. dismissed for want of jurisdiction.

Certiorari Granted—Vacated and Remanded

No. 07–1154. McClellan *v.* United States. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gall* v. *United States*, 552 U. S. 38 (2007). Reported below: 257 Fed. Appx. 654.

No. 07–1334. Improv West Associates et al. *v.* Comedy Club, Inc., et al. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hall Street Associates, L. L. C.* v. *Mattel, Inc.*, 552 U. S. 576 (2008). Reported below: 514 F. 3d 833.

No. 07–10481. Wilson *v.* United States. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gall* v. *United States*, 552 U. S. 38 (2007). Reported below: 254 Fed. Appx. 561.

No. 07–10984. Holman *v.* United States. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Begay* v. *United States*, 553 U. S. 137 (2008). Reported below: 265 Fed. Appx. 757.

No. 07–11443. Banos *v.* California. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pau-*

peris granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Giles* v. *California*, 554 U. S. 353 (2008).

Certiorari Dismissed

No. 07–10169. FEURTADO *v.* DUNIVANT, UNITED STATES MARSHAL, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 244 Fed. Appx. 81.

No. 07–10632. NALI *v.* CITY OF GROSS POINTE WOODS, MICHIGAN, ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–10634. MUHAMMAD *v.* VARGAS ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–10707. STOLLER *v.* SOCIETY FOR THE PREVENTION OF TRADEMARK ABUSE. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 260 Fed. Appx. 267.

No. 07–11004. CURIALE *v.* CASANOVAS ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 07–11185. ROBERSON *v.* GRAZIANO. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 269 Fed. Appx. 334.

No. 07–11249. GIBSON, AKA WILLIS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 255 Fed. Appx. 721.

No. 07–11262. GUTIERREZ BRUNO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 07–11368. PEABODY *v.* UNITED STATES ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 263 Fed. Appx. 560.

No. 08–5170. BARRITT *v.* TRANT. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 262 Fed. Appx. 283.

No. 08–5296. MINNIECHESKE *v.* DANNHOFF ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk

is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–5329. BROWN *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–5442. CURIALE *v.* POTTER, POSTMASTER GENERAL (two judgments). C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–5455. ROLLE *v.* HANKINSON, JUDGE, CIRCUIT COURT OF FLORIDA, SECOND JUDICIAL CIRCUIT. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–5457. AWALA *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–5496. LAFOUNTAIN *v.* HOWES, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–5531. ROLLE *v.* SHERRILL ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–5858. MATHISON *v.* WILEY, WARDEN. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 281 Fed. Appx. 845.

No. 08–5873. PERKINS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 08A69. CORDERO *v.* DELANO ET AL. C. A. 2d Cir. Application for injunction and stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 07M73. FRANCIS *v.* JOINT FORCE HEADQUARTERS NATIONAL GUARD ET AL.;

No. 07M74. FRANCIS *v.* JOINT FORCE HEADQUARTERS NATIONAL GUARD ET AL.;

No. 07M78. DANTZLER *v.* POPE ET AL.;

No. 07M80. R. D. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES;

No. 07M81. DRAKE *v.* DELTA AIR LINES, INC.;

No. 08M1. BERBERICK *v.* WOLFINSOHN ET VIR;

No. 08M2. DELIGIANNIS *v.* APPELLATE DIVISION, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES;

No. 08M3. JOHNSON *v.* POINTE COUPEE PARISH POLICE JURY;

No. 08M5. DONELON, COMMISSIONER OF INSURANCE FOR LOUISIANA *v.* LOUISIANA DIVISION OF ADMINISTRATIVE LAW;

No. 08M6. TAIRU *v.* UNITED STATES;

No. 08M7. MOORE *v.* NEW YORK;

No. 08M8. ROBINSON *v.* ADVENTIST HEALTH SYSTEM, DBA FLORIDA HOSPITAL ORLANDO, ET AL.;

No. 08M11. SMITH *v.* UNITED STATES;

No. 08M12. POIRIER *v.* THURMER, WARDEN, ET AL.;

No. 08M13. NORTON *v.* MUKASEY, ATTORNEY GENERAL, ET AL.;

No. 08M14. HUNTER *v.* WILLIAMS-SONOMA DIRECT ET AL.;

No. 08M15. DOUGLAS *v.* CONNELL, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY; and

No. 08M16. OSBORN *v.* OSBORN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07M75. TODD *v.* EVANS, WARDEN. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 07M76. CAIRNS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS;

No. 07M79. TUCKER *v.* UNITED STATES; and

No. 08M9. SEALED APPELLANT *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 07M77. WILSON *v.* CALIFORNIA; and

No. 08M10. FULLER *v.* TEXAS. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners granted.

No. 08M4. BEAUDETTE *v.* DEPARTMENT OF THE TREASURY. Motion for leave to proceed as a veteran denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $6,673.16 for the period July 1, 2007, through June 30, 2008, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 552 U. S. 804.]

No. 06–1249. WYETH *v.* LEVINE. Sup. Ct. Vt. [Certiorari granted, 552 U. S. 1161.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 06–11206. CHAMBERS *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 553 U. S. 1003.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 07–526. CARCIERI, GOVERNOR OF RHODE ISLAND, ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. 1st Cir. [Certiorari granted, 552 U. S. 1229.] Motions of petitioners Donald L. Carcieri, Governor of Rhode Island, State of Rhode Island, and Town of Charlestown for divided argument denied. Motion of Narragansett Indian Tribe for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 07–591. MELENDEZ-DIAZ *v.* MASSACHUSETTS. App. Ct. Mass. [Certiorari granted, 552 U. S. 1256.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–772. WADDINGTON, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER *v.* SARAUSAD. C. A. 9th Cir. [Certiorari granted, 552 U. S. 1256.] Motion of respondent for appointment of counsel granted. Patricia Novotny, Esq., of Seattle, Wash., is appointed to serve as counsel for respondent in this case.

No. 07–1015. ASHCROFT, FORMER ATTORNEY GENERAL, ET AL. *v.* IQBAL ET AL. C. A. 2d Cir. [Certiorari granted, 554 U. S. 902.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted.

No. 07–1059. UNITED STATES *v.* EURODIF S. A. ET AL.; and No. 07–1078. USEC INC. ET AL. *v.* EURODIF S. A. ET AL. C. A. Fed. Cir. [Certiorari granted, 553 U. S. 1003.] Motion of the Acting Solicitor General to file two volumes of the joint appendix under seal granted.

No. 07–1122. ARIZONA *v.* JOHNSON. Ct. App. Ariz. [Certiorari granted, 554 U. S. 916.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–1239. WINTER, SECRETARY OF THE NAVY, ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 554 U. S. 916.] Motion of the Acting Solicitor General to file one volume of the joint appendix under seal granted.

No. 07–1315. KNOWLES, WARDEN *v.* MIRZAYANCE. C. A. 9th Cir. [Certiorari granted, 554 U. S. 932.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 07–1327. ALBERTSON'S INC. ET AL. *v.* KANTER ET AL. Sup. Ct. Cal.; and

No. 07–1489. TRAINER WORTHAM & CO., INC., ET AL. *v.* BETZ. C. A. 9th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 07–8515. IN RE OSWALD. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [552 U. S. 1177] denied.

No. 07–8521. HARBISON *v.* BELL, WARDEN. C. A. 6th Cir. [Certiorari granted, 554 U. S. 917.] Joint motion to dispense with printing the joint appendix granted.

No. 07–10097. CENSKE *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [553 U. S. 1016] denied.

No. 07–10194. STOLLER *v.* ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [553 U. S. 1063] denied.

No. 07–10486. TEDDER *v.* CULLIVER, WARDEN. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [554 U. S. 915] denied.

No. 07–10992. POTEET, INDIVIDUALLY AND AS NEXT FRIEND OF POTEET, A MINOR *v.* TOWN OF FLOWER MOUND, TEXAS. Ct. App. Tex., 2d Dist.;

No. 07–11192. KING *v.* MARRIOTT INTERNATIONAL, INC. C. A. 4th Cir.;

No. 07–11307. NOBLE *v.* MUKASEY, ATTORNEY GENERAL. C. A. 2d Cir.;

No. 07–11386. ABIDAOUD *v.* MUKASEY, ATTORNEY GENERAL. C. A. 1st Cir.;

No. 07–11411. MOBASHER *v.* BRONX COMMUNITY COLLEGE OF THE CITY UNIVERSITY OF NEW YORK ET AL. C. A. 2d Cir.;

No. 07–11555. SWAKEEN *v.* NEW YORK CITY HEALTH AND HOSPITALS CORP. App. Div., Sup. Ct. N. Y., 1st Jud. Dept.;

No. 08–5003. LACY *v.* NATIONAL RAILROAD PASSENGER CORPORATION. C. A. 3d Cir.;

No. 08–5382. TATUM *v.* CURTIS ET AL. App. Ct. Mass.;

No. 08–5512. TROUT *v.* VIRGINIA. Sup. Ct. Va.;
No. 08–5694. BUCK *v.* UNITED STATES. C. A. 5th Cir.;
No. 08–5786. YEAZEL *v.* UNITED STATES. C. A. 7th Cir.; and
No. 08–5935. IN RE WOLF. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 27, 2008, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 07–11154. IN RE ADAMS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [554 U. S. 916] denied.

No. 07–10375. IN RE FARLEY;
No. 07–11189. IN RE BRADFORD;
No. 07–11349. IN RE DESPENZA;
No. 07–11397. IN RE SCHMIDT;
No. 07–11479. IN RE DAVILA;
No. 07–11614. IN RE BRADFORD;
No. 08–5130. IN RE MORRIS;
No. 08–5199. IN RE DURHAM;
No. 08–5353. IN RE MCGUIGAN;
No. 08–5511. IN RE HERNANDEZ ET AL.;
No. 08–5551. IN RE BELSER;
No. 08–5555. IN RE THOMAS;
No. 08–5604. IN RE CARTER;
No. 08–5615. IN RE RUSTON;
No. 08–5765. IN RE HARRIS;
No. 08–5773. IN RE GORE;
No. 08–5785. IN RE WEST;
No. 08–5847. IN RE WARREN;
No. 08–5890. IN RE BROWN; and
No. 08–5980. IN RE KING. Petitions for writs of habeas corpus denied.

No. 08–5072. IN RE BENNETT;
No. 08–5085. IN RE GEFFKEN; and
No. 08–5140. IN RE EMBREY. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 07–1587. IN RE RICHARDS;
No. 07–7072. IN RE MCCLOUD;

No. 07–10607. In re Hunt;
No. 07–10644. In re Chavis;
No. 07–10772. In re Henderson;
No. 07–10789. In re Zarwell;
No. 07–10843. In re Warren;
No. 07–11023. In re Ocasio;
No. 07–11149. In re Warren;
No. 07–11164. In re Ruston;
No. 07–11236. In re Fields;
No. 07–11312. In re Ward et ux.;
No. 07–11388. In re Anaya;
No. 07–11453. In re Foose;
No. 07–11588. In re Ocasio;
No. 07–11600. In re Darne;
No. 07–11601. In re Darne;
No. 08–5031. In re Re;
No. 08–5117. In re Lattaker;
No. 08–5257. In re Bush;
No. 08–5391. In re Ocasio;
No. 08–5406. In re Shusterman;
No. 08–5467. In re Hunt;
No. 08–5923. In re Terry; and
No. 08–5928. In re Spears. Petitions for writs of mandamus denied.

No. 07–11367. In re Rolle;
No. 07–11378. In re Rolle;
No. 07–11419. In re Rolle; and
No. 07–11465. In re Barkclay. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus dismissed. See this Court's Rule 39.8.

No. 07–10541. In re Engle;
No. 07–10681. In re Short;
No. 07–11275. In re Dukes;
No. 08–5398. In re Scott; and
No. 08–5758. In re Armstrong. Petitions for writs of mandamus and/or prohibition denied.

No. 08–5205. In re Woerth. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's

Rule 39.8. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 08–5949. IN RE RICH. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

Certiorari Denied

No. 07–661. MARULANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 226 Fed. Appx. 709.

No. 07–1042. LETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 483 F. 3d 782.

No. 07–1097. GOLDBLATT *v.* EBERT, TRUSTEE. C. A. 5th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 340.

No. 07–1109. KICKAPOO TRADITIONAL TRIBE OF TEXAS *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 497 F. 3d 491.

No. 07–1112. BUCHANAN, BY AND THROUGH BREWINGTON, PLENARY GUARDIAN OF THE PERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 374 Ill. App. 3d 1127, 944 N. E. 2d 926.

No. 07–1159. METZ *v.* CSX TRANSPORTATION, INC. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 969 So. 2d 1022.

No. 07–1160. EQUAL ACCESS FOR EL PASO, INC., ET AL. *v.* HAWKINS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 509 F. 3d 697.

No. 07–1165. OVERLAND ET AL. *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–1189. HAINS ET AL. *v.* LOGSDON. C. A. 6th Cir. Certiorari denied. Reported below: 492 F. 3d 334.

No. 07–1221. PENA-MURIEL *v.* MUKASEY, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 489 F. 3d 438.

No. 07–1226. WAYTEC ELECTRONICS CORP. *v.* ROHM & HAAS ELECTRONIC MATERIALS, LLC, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 754.

No. 07–1229. GHERINI, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO THE ESTATE OF GHERINI, DECEASED *v.* LAGAMARSINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 81.

No. 07–1232. BAIDA *v.* FIRST UNUM LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 29.

No. 07–1234. LONG ISLAND SAVINGS BANK, FSB, ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 503 F. 3d 1234.

No. 07–1249. RANKIN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–1251. ALEXANDER *v.* UNITED STATES; and
No. 07–10255. MOON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 512 F. 3d 359.

No. 07–1254. STRAUB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 508 F. 3d 1003.

No. 07–1256. WILD WAVES, LLC *v.* NICKELS MIDWAY PIER, LLC, DEBTOR. C. A. 3d Cir. Certiorari denied. Reported below: 255 Fed. Appx. 633.

No. 07–1259. HAAS ET AL. *v.* QUEST RECOVERY SERVICES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 247 Fed. Appx. 670.

No. 07–1262. BUSSELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 504 F. 3d 956.

No. 07–1265. PALMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 507 F. 3d 300.

No. 07–1270. SILVA *v.* BOWIE STATE UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 115.

No. 07–1273. DELFINO ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 510 F. 3d 468.

No. 07–1274. Cross *v.* Reliance Standard Life Insurance Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 708.

No. 07–1281. Kay et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 513 F. 3d 432.

No. 07–1282. Snodgrass *v.* Robinson et al. C. A. 8th Cir. Certiorari denied. Reported below: 512 F. 3d 999.

No. 07–1289. Parm et al. *v.* Shumate, Sheriff, East Carroll Parish, Louisiana. C. A. 5th Cir. Certiorari denied. Reported below: 513 F. 3d 135.

No. 07–1295. Lewis *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 393.

No. 07–1303. Translogic Technology, Inc. *v.* Dudas, Director, Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 504 F. 3d 1249.

No. 07–1310. Valenzuela Grullon *v.* Mukasey, Attorney General, et al. C. A. 2d Cir. Certiorari denied. Reported below: 509 F. 3d 107.

No. 07–1317. Evans *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 616.

No. 07–1318. Hamilton County Public Defender Commission et al. *v.* Powers. C. A. 6th Cir. Certiorari denied. Reported below: 501 F. 3d 592.

No. 07–1322. Hernandez *v.* Mukasey, Attorney General. C. A. 11th Cir. Certiorari denied. Reported below: 513 F. 3d 1336.

No. 07–1328. Acuna, Individually and as Administratrix ad Prosequendum of the Estate of Acuna, Deceased *v.* Turkish et al. Sup. Ct. N. J. Certiorari denied. Reported below: 192 N. J. 399, 930 A. 2d 416.

No. 07–1330. T-Mobile USA, Inc. *v.* Lowden et al. C. A. 9th Cir. Certiorari denied. Reported below: 512 F. 3d 1213.

No. 07–1331. T-Mobile USA, Inc. *v.* Janda et al. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 727.

No. 07–1336. WILCOX ET AL. *v.* UNITED STATES EX REL. STONER. C. A. 9th Cir. Certiorari denied. Reported below: 502 F. 3d 1116.

No. 07–1337. CALDERON-DOMINGUEZ, AKA CALDERON *v.* MUKASEY, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 671.

No. 07–1341. POLICASTRO *v.* KONTOGIANNIS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 429.

No. 07–1346. FEDERAL EXPRESS CORP., DBA FEDEX EXPRESS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 513 F. 3d 360.

No. 07–1347. ALEXANDER *v.* BRIGHAM & WOMEN'S PHYSICIANS ORGANIZATION, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 513 F. 3d 37.

No. 07–1348. BOLDT *v.* BOLDT. Sup. Ct. Ore. Certiorari denied. Reported below: 344 Ore. 1, 176 P. 3d 388.

No. 07–1350. WISNIEWSKI *v.* RODALE, INC. C. A. 3d Cir. Certiorari denied. Reported below: 510 F. 3d 294.

No. 07–1351. TAL ET AL. *v.* DCR FUND I, L. L. C., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 139.

No. 07–1354. BUDD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 496 F. 3d 517.

No. 07–1355. VILLAGE OF MUNDELEIN, ILLINOIS *v.* WISCONSIN CENTRAL RAILROAD. Sup. Ct. Ill. Certiorari denied. Reported below: 227 Ill. 2d 281, 882 N. E. 2d 544.

No. 07–1357. GILLISPIE *v.* MARINA CLUB OF TAMPA, HOMEOWNERS ASSN. INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 805.

No. 07–1358. SPRINT SPECTRUM L. P., DBA SPRINT PCS GROUP, ET AL. *v.* HALL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 822, 876 N. E. 2d 1036.

No. 07–1359. Lampkin-Asam *v.* Volusia County School Board et al. C. A. 11th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 274.

No. 07–1361. Arocho, as Administratrix of the Estate of Veras, et al. *v.* Lehigh County, Pennsylvania, et al. Commw. Ct. Pa. Certiorari denied. Reported below: 922 A. 2d 1010.

No. 07–1362. Martinez-Guerrero *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 664.

No. 07–1365. Slade *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 287 Ga. App. 34, 651 S. E. 2d 352.

No. 07–1366. Stanton et al. *v.* Arizona Life Coalition et al. C. A. 9th Cir. Certiorari denied. Reported below: 515 F. 3d 956.

No. 07–1367. Mallios *v.* Standard Insurance Co. et al. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 237 S. W. 3d 778.

No. 07–1368. Parker et al. *v.* Hurley et al. C. A. 1st Cir. Certiorari denied. Reported below: 514 F. 3d 87.

No. 07–1370. Long John Silver's, Inc. *v.* Cole et al. C. A. 4th Cir. Certiorari denied. Reported below: 514 F. 3d 345.

No. 07–1371. Cambridge Literary Properties, Ltd. *v.* W. Goebel Porzellanfabrik G.m.b.H. & Co. KG. et al. C. A. 1st Cir. Certiorari denied. Reported below: 510 F. 3d 77.

No. 07–1380. Owens, as Conservator of King, an Incapacitated Person *v.* National Health Corp. et al. Sup. Ct. Tenn. Certiorari denied. Reported below: 242 S. W. 3d 437.

No. 07–1383. ShisInday, aka Thomas *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 511 F. 3d 514.

No. 07–1384. Sunderland *v.* Washington Department of Social and Health Services. Ct. App. Wash. Certiorari denied. Reported below: 138 Wash. App. 276, 156 P. 3d 940.

No. 07–1385. Long, Individually and as Personal Representative of the Estate of Long *v.* City and County of Honolulu, Hawaii, et al. C. A. 9th Cir. Certiorari denied. Reported below: 511 F. 3d 901.

No. 07–1386. Kannapien et al. *v.* Quaker Oats Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 507 F. 3d 629.

No. 07–1387. Stroman Realty, Inc. *v.* Wercinski, Commissioner, Arizona Department of Real Estate. C. A. 5th Cir. Certiorari denied. Reported below: 513 F. 3d 476.

No. 07–1388. Nolan *v.* Boeing Corp. Ct. App. Wash. Certiorari denied. Reported below: 136 Wash. App. 1020.

No. 07–1391. Vonner *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 516 F. 3d 382.

No. 07–1392. Drutis et al. *v.* Quebecor World (USA), Inc. C. A. 6th Cir. Certiorari denied. Reported below: 499 F. 3d 608.

No. 07–1393. Farquharson *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 07–1395. Vargas *v.* Local Union No. 32B–32J et al. C. A. 2d Cir. Certiorari denied. Reported below: 251 Fed. Appx. 702.

No. 07–1396. Elshinnawy *v.* Astrue, Commissioner of Social Security. C. A. 3d Cir. Certiorari denied. Reported below: 244 Fed. Appx. 459.

No. 07–1397. Stevenson *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 15.

No. 07–1398. Sowards *v.* Ohio. Ct. App. Ohio, Gallia County. Certiorari denied. Reported below: 2007-Ohio-4863.

No. 07–1399. Scheib et ux. *v.* Mellon Bank et al. C. A. 3d Cir. Certiorari denied.

No. 07–1401. Callahan et al. *v.* Circuit City Stores, Inc. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 971 So. 2d 1116.

No. 07–1404. Nuijten *v.* Dudas, Under Secretary of Commerce for Intellectual Property and Director, Patent

and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 500 F. 3d 1346.

No. 07–1405. Olson *v.* Continental Resources, Inc., et al. Ct. Civ. App. Okla. Certiorari denied.

No. 07–1407. Yong Zhu *v.* Massachusetts Institute of Technology. App. Ct. Mass. Certiorari denied. Reported below: 70 Mass. App. 1103, 874 N. E. 2d 505.

No. 07–1408. Brown *v.* Fisher et al. C. A. 10th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 527.

No. 07–1412. Allen *v.* Arizona. Ct. App. Ariz. Certiorari denied. Reported below: 216 Ariz. 320, 166 P. 3d 111.

No. 07–1413. Munchinski *v.* Solomon, District Attorney, Fayette County, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied.

No. 07–1414. Everson et ux. *v.* Doughton, Individually and in His Official Capacity as Judge, Superior Court of Allegany/Rockingham County, North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 229.

No. 07–1415. Campbell *v.* Phelps, Warden, et al. C. A. 3d Cir. Certiorari denied. Reported below: 515 F. 3d 172.

No. 07–1416. Skoorka *v.* Kean University et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–1417. Stevens *v.* United States District Court for the Southern District of Georgia. C. A. 11th Cir. Certiorari denied.

No. 07–1418. Sanchez *v.* Sanchez. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 07–1420. Cox *v.* California; and
No. 07–1431. Cox *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–1422. Hurley et ux. *v.* Bureau of Immigration and Customs Enforcement et al. C. A. 5th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 726.

No. 07–1424. GALLEGOS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 300.

No. 07–1425. TURNER *v.* PERRY COUNTY COAL CORP. ET AL. Ct. App. Ky. Certiorari denied. Reported below: 242 S. W. 3d 658.

No. 07–1429. LUCERO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 246 S. W. 3d 86.

No. 07–1430. MCCLASKEY *v.* LA PLATA R–II SCHOOL DISTRICT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 867.

No. 07–1433. STEWART *v.* CHILDERS, JUDGE, CIRCUIT COURT OF KENTUCKY, KNOTT, AND MAGOFFIN COUNTIES. C. A. 6th Cir. Certiorari denied.

No. 07–1435. MATTHEWS *v.* MILITARY DEPARTMENT, STATE OF LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 970 So. 2d 1089.

No. 07–1436. CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION *v.* ANDERSON. C. A. 9th Cir. Certiorari denied. Reported below: 516 F. 3d 781.

No. 07–1438. WESTBOUND RECORDS, INC. *v.* JUSTIN COMBS PUBLISHING ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 507 F. 3d 470.

No. 07–1440. BEECHER ET AL. *v.* STATE ELECTRICAL WORK EXAMINING BOARD. App. Ct. Conn. Certiorari denied. Reported below: 104 Conn. App. 655, 934 A. 2d 852.

No. 07–1441. BOZE *v.* BALLEW. C. A. 5th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 644.

No. 07–1442. STEIN *v.* DISCIPLINARY BOARD OF THE SUPREME COURT OF NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 143 N. M. 462, 177 P. 3d 513.

No. 07–1443. LANE *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 07–1444. Mateen et al. *v.* Dicus. Ct. App. Ga. Certiorari denied. Reported below: 286 Ga. App. 760, 650 S. E. 2d 272.

No. 07–1445. Dorn *v.* United States et al. C. A. 11th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 164.

No. 07–1446. Vega-Santiago *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 519 F. 3d 1.

No. 07–1450. Association of Civilian Technicians, New York State Council *v.* Federal Labor Relations Authority. C. A. D. C. Cir. Certiorari denied. Reported below: 507 F. 3d 697.

No. 07–1451. Tantay *v.* Mukasey, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 07–1452. Yanai, Warden *v.* Girts. C. A. 6th Cir. Certiorari denied. Reported below: 501 F. 3d 743.

No. 07–1454. Fashion Valley Mall, LLC *v.* National Labor Relations Board. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 850, 172 P. 3d 742.

No. 07–1455. Fedora Inc. et al. *v.* Thomas. Ct. App. D. C. Certiorari denied. Reported below: 928 A. 2d 699.

No. 07–1456. Forrester *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 156 Cal. App. 4th 1021, 67 Cal. Rptr. 3d 740.

No. 07–1457. Caputo et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 517 F. 3d 935.

No. 07–1462. Bischoff *v.* Louisville and Jefferson County Metropolitan Sewer District et al. C. A. 6th Cir. Certiorari denied.

No. 07–1463. Hall *v.* Continental Airlines, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 252 Fed. Appx. 650.

No. 07–1465. Tyrer *v.* City of South Beloit, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 516 F. 3d 659.

No. 07–1470. United States Steel Corp. et al. *v.* Canadian Lumber Trade Alliance et al. C. A. Fed. Cir. Certiorari denied. Reported below: 517 F. 3d 1319.

No. 07–1471. YEE *v.* STATE COURT ADMINISTRATIVE OFFICE ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–1472. KNUBBE *v.* PORTFOLIO RECOVERY ASSOCIATES. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 07–1473. BISKUPSKI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 503 F. 3d 274.

No. 07–1475. SKELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 514 F. 3d 433.

No. 07–1476. ROYAL SURPLUS LINES INSURANCE CO. *v.* NORTHFIELD INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 508.

No. 07–1477. MORSOVILLO *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 642.

No. 07–1478. HATCH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 514 F. 3d 145.

No. 07–1479. INDYWAY INVESTMENT *v.* OPRI ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–1480. LANG *v.* PAULSON, SECRETARY OF THE TREASURY. C. A. 5th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 668.

No. 07–1481. KING *v.* STATE RESOURCES CORP. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 233 Fed. Appx. 1.

No. 07–1484. KEMP, CHAIRMAN, OKLAHOMA TAX COMMISSION, ET AL. *v.* OSAGE NATION. C. A. 10th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 13.

No. 07–1485. SMITH, WARDEN, ET AL. *v.* AL-AMIN. C. A. 11th Cir. Certiorari denied. Reported below: 511 F. 3d 1317.

No. 07–1487. NAVARRETE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 283 Ga. 156, 656 S. E. 2d 814.

No. 07–1488. DENNETT *v.* CENTRAL INTELLIGENCE AGENCY. C. A. 2d Cir. Certiorari denied. Reported below: 252 Fed. Appx. 343.

No. 07–1490. Tiber Shipping LLC et al. *v.* BP Oil International Ltd. et al. C. A. 5th Cir. Certiorari denied.

No. 07–1491. Crawford, Director, Missouri Department of Corrections, et al. *v.* Roe. C. A. 8th Cir. Certiorari denied. Reported below: 514 F. 3d 789.

No. 07–1492. Klamath Tribes of Oregon et al. *v.* PacifiCorp. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 575.

No. 07–1493. Zapien *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–1494. Sabzevari *v.* Reliable Life Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 392.

No. 07–1495. Cerqueira *v.* American Airlines, Inc. C. A. 1st Cir. Certiorari denied. Reported below: 520 F. 3d 1.

No. 07–1496. Whaley *v.* California Employment Development Department. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–1497. Wheaton *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 267 Fed. Appx. 927.

No. 07–1498. Konan *v.* Sengel et al. C. A. 4th Cir. Certiorari denied. Reported below: 239 Fed. Appx. 780.

No. 07–1499. McKenna *v.* Kruse, dba Security Mortgage Brokers. Sup. Ct. Colo. Certiorari denied. Reported below: 178 P. 3d 1198.

No. 07–1500. Sullivan et al. *v.* City of Augusta, Maine. C. A. 1st Cir. Certiorari denied. Reported below: 511 F. 3d 16.

No. 07–1502. Roberts *v.* Maine Department of Health and Human Services et al. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 471.

No. 07–1503. Gutch *v.* Federal Republic of Germany. C. A. D. C. Cir. Certiorari denied. Reported below: 255 Fed. Appx. 524.

No. 07–1505. Garcia et al. *v.* Santa Clara County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 588.

No. 07–1506. Bell *v.* Bell, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 512 F. 3d 223.

No. 07–1507. Maximum Comfort, Inc. *v.* Leavitt, Secretary of Health and Human Services, et al. C. A. 9th Cir. Certiorari denied. Reported below: 512 F. 3d 1081.

No. 07–1508. Walston *v.* Walston et al. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 07–1509. Anthony, Administratrix of the Succession of Bankston *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 520 F. 3d 374.

No. 07–1510. Dehning *v.* Child Development Services of Fremont County et al. C. A. 10th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 75.

No. 07–1511. Crump *v.* Christie et al. C. A. 4th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 544.

No. 07–1512. Lucas et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 516 F. 3d 316.

No. 07–1513. Schick *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 258 Fed. Appx. 370.

No. 07–1514. Tokarz, dba J. J. Store *v.* Lot Polish Airlines, aka Polskie Linie Lotnicze. C. A. 2d Cir. Certiorari denied. Reported below: 258 Fed. Appx. 377.

No. 07–1515. Daniels et ux. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 269 Fed. Appx. 976.

No. 07–1516. Blige et al. *v.* Davis. C. A. 2d Cir. Certiorari denied. Reported below: 505 F. 3d 90.

No. 07–1517. Purnell *v.* Cedars-Sinai Medical Center et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–1518. Perkins *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 07–1519. McRae, Individually and as Personal Representative of the Estate of Evans, Deceased *v.* Evans. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 201.

No. 07–1520. Chen Xiang *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 268 Fed. Appx. 139.

No. 07–1521. Creed *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 372 Ark. 221, 273 S. W. 3d 494.

No. 07–1522. Clark *v.* Perez, Superintendent, Bedford Hills Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 510 F. 3d 282.

No. 07–1523. Lee *v.* Louisiana. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 964 So. 2d 967.

No. 07–1525. Davidson et ux. *v.* Grossman et al. C. A. 5th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 343.

No. 07–1526. Cemco Investors, LLC, et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 515 F. 3d 749.

No. 07–1528. Tribbett *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 403 Md. 638, 943 A. 2d 1260.

No. 07–1530. Los Angeles Scottish Rite Center, LLC *v.* City of Los Angeles, California, et al. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 156 Cal. App. 4th 108, 67 Cal. Rptr. 3d 207.

No. 07–1531. Herman, Trustee, et al. *v.* Meiselman. C. A. 1st Cir. Certiorari denied. Reported below: 516 F. 3d 5.

No. 07–1532. Weinstein et al. *v.* City of New York Department of Housing Preservation and Development et al. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 39 App. Div. 3d 764, 832 N. Y. S. 2d 443.

No. 07–1533. Kanovsky *v.* Montefiore Medical Center et al. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 3d 938, 834 N. Y. S. 2d 671.

No. 07–1534. Dee *v.* Maine. Sup. Jud. Ct. Me. Certiorari denied.

No. 07–1535. DEE *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 177 P. 3d 218.

No. 07–1536. LEE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 976 So. 2d 109.

No. 07–1537. STRYKER CORP. *v.* TRIMED, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 514 F. 3d 1256.

No. 07–1538. MORSE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 618.

No. 07–1540. ROW *v.* ROW, NKA DEESE, ET AL. Ct. App. N. C. Certiorari denied. Reported below: 185 N. C. App. 450, 650 S. E. 2d 1.

No. 07–1541. AHMED *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 07–1542. KELLY *v.* BASS PRO OUTDOOR WORLD, LLC, DBA BASS PRO SHOPS OUTDOOR WORLD. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 245 S. W. 3d 841.

No. 07–1543. THURNER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 90.

No. 07–1544. TKACHIK *v.* COMERICA, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 443.

No. 07–1545. WATSON *v.* WATSON ET AL. Ct. App. Ky. Certiorari denied.

No. 07–1546. AMERICAN COALITION OF LIFE ACTIVISTS ET AL. *v.* PLANNED PARENTHOOD OF THE COLUMBIA/WILLAMETTE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 518 F. 3d 1013.

No. 07–1548. R. D. M. *v.* TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES. Ct. App. Tenn. Certiorari denied.

No. 07–1549. RIGBY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 291.

No. 07–1551. DE LEON ET AL. *v.* SHIH WEI NAVIGATION CO. LTD. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 487.

No. 07–1552. STUPAKOFF ET AL. *v.* OTTO (GMBH & CO. KG) ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 56.

No. 07–1553. CITY OF THE DALLES, OREGON *v.* T. R. Sup. Ct. Ore. Certiorari denied. Reported below: 344 Ore. 282, 181 P. 3d 758.

No. 07–1555. SCHEERER, AKA RUDOLF *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 513 F. 3d 1244.

No. 07–1557. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 610.

No. 07–1558. DAVET ET UX. *v.* BANK ONE-CLEVELAND, N. A. C. A. 6th Cir. Certiorari denied.

No. 07–1560. VARNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 510.

No. 07–1561. AVILA-SANCHEZ *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 509 F. 3d 1037.

No. 07–1562. CHUN ET AL. *v.* NEW JERSEY ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 194 N. J. 54, 943 A. 2d 114.

No. 07–1563. CONDIT *v.* CHASE BANK, FKA BANK ONE. C. A. 6th Cir. Certiorari denied.

No. 07–1564. DIONISIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 503 F. 3d 78.

No. 07–1565. DRURY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 507 F. 3d 1295.

No. 07–1567. LOWERY, A MINOR, ET AL. *v.* EUVERARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 497 F. 3d 584.

No. 07–1570. HALLIMAN ET VIR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–1571. FUENTES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–1572. WOOD *v.* DEL GIORNO ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 974 So. 2d 95.

No. 07–1573. JAMES *v.* MISSISSIPPI BAR. Sup. Ct. Miss. Certiorari denied. Reported below: 962 So. 2d 528.

No. 07–1574. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 369.

No. 07–1575. NEELY *v.* CITY OF RIVERDALE, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 632.

No. 07–1576. RIDGE CHRYSLER JEEP, LLC, DBA MARQUETTE CHRYSLER JEEP *v.* DAIMLERCHRYSLER FINANCIAL SERVICES AMERICAS LLC. C. A. 7th Cir. Certiorari denied. Reported below: 516 F. 3d 623.

No. 07–1577. THANE INTERNATIONAL, INC., ET AL. *v.* MILKOWSKI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 519 F. 3d 879.

No. 07–1578. MALAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 117.

No. 07–1580. HAGEN *v.* MACDONALD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 373.

No. 07–1581. WILEY *v.* GLASSMAN, CHAIRMAN OF THE BROADCASTING BOARD OF GOVERNORS. C. A. D. C. Cir. Certiorari denied. Reported below: 511 F. 3d 151.

No. 07–1582. COMMISSIONER OF INTERNAL REVENUE *v.* ESTATE OF JELKE, DECEASED, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 507 F. 3d 1317.

No. 07–1583. NAM PYO KIM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 74.

No. 07–1585. MAHMUD *v.* OBERMAN. C. A. 11th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 935.

No. 07–1586. DUMAS ET AL. *v.* BARCOSH, LTD. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 347.

No. 07–1588. ESTATE OF TUCKER ET AL. *v.* INTERSCOPE RECORDS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 515 F. 3d 1019.

No. 07–1589. WAGNER ET AL. *v.* WORLD BOTANICAL GARDENS, INC. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1516, 238 P. 3d 863.

No. 07–1590. SCHLESINGER, AKA POLLACK, ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 514 F. 3d 277 and 261 Fed. Appx. 355.

No. 07–1591. QUIGLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 928 A. 2d 731.

No. 07–1593. DYKSTRA, COMMISSIONER, DEPARTMENT OF CONSUMER AFFAIRS OF THE CITY OF NEW YORK, ET AL. *v.* AUTOMOBILE CLUB OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 520 F. 3d 210.

No. 07–1594. RIVERA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 505 F. 3d 349.

No. 07–1595. GOETZ ET AL. *v.* AMERICAN EXPRESS CO. C. A. 2d Cir. Certiorari denied. Reported below: 515 F. 3d 156.

No. 07–1596. GONZALEZ *v.* SOUTH DAKOTA. 1st Jud. Cir., Yankton County, S. D. Certiorari denied.

No. 07–1597. SHAH *v.* HELEN HAYES HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 252 Fed. Appx. 364.

No. 07–1599. EISEN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 913 A. 2d 940.

No. 07–1600. ALLISON ET UX. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 627.

No. 07–1603. CASPER *v.* SMG, FKA SPECTACOR MANAGEMENT GROUP, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 449.

No. 07–1604. ABAD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 514 F. 3d 271.

No. 07–1605. MICHIGAN FINANCIAL INVESTMENTS, L. L. C. *v.* DETROIT BUILDING AUTHORITY ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 480 Mich. 897, 738 N. W. 2d 766.

No. 07–1606. MARX *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 07–1609. GORDON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 513 F. 3d 659.

No. 07–1610. GAMMINO *v.* SOUTHWESTERN BELL TELEPHONE, L. P. C. A. Fed. Cir. Certiorari denied. Reported below: 267 Fed. Appx. 949.

No. 07–1611. PEQUENO *v.* SCHMIDT. C. A. 5th Cir. Certiorari denied.

No. 07–1612. BOISE CASCADE CORP. *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 216 Ore. App. 338, 174 P. 3d 587.

No. 07–1614. SANDBERG *v.* CITY OF WHEATON, ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1148, 953 N. E. 2d 86.

No. 07–9041. ANGEL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 44.

No. 07–9359. KELLY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 629.

No. 07–9456. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 495 F. 3d 951.

No. 07–9534. AUSBURN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 502 F. 3d 313.

No. 07–9626. BROWNING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 Fed. Appx. 289.

No. 07–9678. YOUNG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–9723. HEMMERLE *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 495 F. 3d 1069.

No. 07–9741. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 248.

No. 07–9793. IWANEJKO *v.* COHEN & GRIGSBY, P. C., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 938.

No. 07–9800. HUBBARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–9806. DOWNING *v.* THOMPSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–9819. SALGADO *v.* HAWS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 714.

No. 07–9849. BAKER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–9894. WATSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 429.

No. 07–9900. SOLTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 510 F. 3d 858.

No. 07–9931. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–9958. NORRIS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–9993. CRAWFORD *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 300.

No. 07–9998. GONZALEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 932.

No. 07–10030. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 991.

No. 07–10039. AYOUB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 532.

No. 07–10067. BUTTERWORTH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 511 F. 3d 71.

No. 07–10081. SMITH *v.* MILLS, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 510 F. 3d 1127.

No. 07–10108. BROADUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 689.

No. 07–10137. HARROD *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 183 Ariz. 519, 218 P. 3d 268.

No. 07–10170. HEARING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 874.

No. 07–10225. BAKER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 970 So. 2d 948.

No. 07–10234. UPTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 512 F. 3d 394.

No. 07–10239. RICKETTS *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 07–10270. SIBLEY *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 979 So. 2d 221.

No. 07–10282. SCHWARTZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 511 F. 3d 403.

No. 07–10320. SALINAS-CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 693.

No. 07–10336. RILEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 932 A. 2d 868.

No. 07–10338. MBODJ *v.* MUKASEY, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 837.

No. 07–10384. LAFFERTY *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 175 P. 3d 530.

No. 07–10408. McBirney *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 741.

No. 07–10436. Navarro-Ramirez *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 07–10458. Ford *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 509 F. 3d 714.

No. 07–10467. Conroy *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 972 So. 2d 181.

No. 07–10475. Loden *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 971 So. 2d 548.

No. 07–10498. Cooper *v.* Dallas Police Assn. et al. C. A. 5th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 735.

No. 07–10511. White *v.* Trapp et al. C. A. 6th Cir. Certiorari denied.

No. 07–10524. Cook *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 07–10526. Steele *v.* Allen. C. A. 6th Cir. Certiorari denied.

No. 07–10540. Coleman *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 07–10543. Reyes Santana *v.* Schriro, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 622.

No. 07–10550. Washington *v.* United States Court of Appeals for the Ninth Circuit. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 144.

No. 07–10551. Washington *v.* United States Court of Appeals for the Ninth Circuit. C. A. 9th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 144.

No. 07–10552. Brown *v.* Donald, Commissioner, Georgia Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 07–10555. WORTHINGTON *v.* ADVOCATE HEALTH CARE, DBA BETHANY HOSPITAL. C. A. 7th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 484.

No. 07–10562. PINEDA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–10568. BRASURE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 1037, 175 P. 3d 632.

No. 07–10569. JOHNSON *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 561.

No. 07–10572. CHASE *v.* TEXAS; and
No. 07–10583. CHASE *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 07–10578. RICHARDSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–10579. STRONG *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 489.

No. 07–10582. ALLEN *v.* CLARK. C. A. 11th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 815.

No. 07–10584. ROARK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 975 So. 2d 429.

No. 07–10587. DUPREE *v.* ALTON ET AL. C. A. 7th Cir. Certiorari denied.

No. 07–10589. DREW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 172.

No. 07–10590. FAUCONIER *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 129.

No. 07–10592. LUGO *v.* LEVINE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 237.

No. 07–10595. THOMAS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 07–10605. HUNTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 243 S. W. 3d 664.

No. 07–10616. Howard *v.* Epps, Commissioner, Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 73.

No. 07–10619. Harrison *v.* Campbell, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 644.

No. 07–10622. Harley *v.* Montgomery et al. C. A. 4th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 621.

No. 07–10623. Calhoun *v.* McKee, Warden. C. A. 6th Cir. Certiorari denied.

No. 07–10625. Cedeno *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 07–10627. Jones *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 987 So. 2d 1156.

No. 07–10628. Parthemore *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 07–10629. McCloud *v.* Almager, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 780.

No. 07–10635. Verde-Eb *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 201 Fed. Appx. 516.

No. 07–10637. Morrison *v.* Ohio. Ct. App. Ohio, Muskingum County. Certiorari denied. Reported below: 2007-Ohio-3799.

No. 07–10638. Mahogany *v.* Supreme Court of Louisiana et al. C. A. 5th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 636.

No. 07–10641. Pribble *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 245 S. W. 3d 466.

No. 07–10643. Miller *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 07–10645. Cornelius *v.* Pollard, Warden. C. A. 7th Cir. Certiorari denied.

No. 07–10646. CARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 513 F. 3d 1164.

No. 07–10647. CAZARES-OLIVAS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 515 F. 3d 726.

No. 07–10649. SOUTHWORTH *v.* CORRECTIONAL MEDICAL SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 917.

No. 07–10651. RAMOS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–10653. SEWARD *v.* PROVINCE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 729.

No. 07–10654. RAGAS *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 960 So. 2d 266.

No. 07–10659. WHITE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–10662. VU ANH LE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 512 F. 3d 128.

No. 07–10664. MCKINNEDY *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied.

No. 07–10665. MILLER *v.* GEORGIA (two judgments). Ct. App. Ga. Certiorari denied.

No. 07–10667. ROBINSON *v.* COAKLEY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 69 Mass. App. 1111, 869 N. E. 2d 633.

No. 07–10668. CALDWELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–10673. GIBSON *v.* CHARLESTON COUNTY DETENTION CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 610.

No. 07–10674. SIMMONS *v.* NEWTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–10682. Davis *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 514 F. 3d 596.

No. 07–10684. Parker *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 14 So. 3d 203.

No. 07–10685. Ezell *v.* Cason, Warden. C. A. 6th Cir. Certiorari denied.

No. 07–10687. Miller *v.* Johnson, Deputy Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 07–10688. Peek *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–10699. Schrader *v.* Allen. Ct. App. N. M. Certiorari denied.

No. 07–10708. Goss *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 361 N. C. 610, 651 S. E. 2d 867.

No. 07–10709. Fratila *v.* Boudloche. C. A. 5th Cir. Certiorari denied.

No. 07–10715. Vasquez-Montalban *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 822.

No. 07–10718. Umphfrey *v.* Missouri. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 242 S. W. 3d 437.

No. 07–10721. Rockman *v.* Chambers, Warden. C. A. 7th Cir. Certiorari denied.

No. 07–10722. Sawyer *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–10723. Rice *v.* Brady, Superintendent, Old Colony Correctional Center. C. A. 1st Cir. Certiorari denied.

No. 07–10725. Lemanski *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–10727. GEARY *v.* WILSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–10729. MCKEEVER *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–10733. SESSA *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY. C. A. 3d Cir. Certiorari denied.

No. 07–10735. FOX *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–10737. GALLAHER *v.* SOUTHERN TUBE FORM, LLC, ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–10738. THOMPSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–10740. GENTRY *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–10742. SCHILS *v.* WASHTENAW COUNTY, MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–10743. SCHILS *v.* WASHTENAW COUNTY, MICHIGAN, ET AL. Ct. App. Mich. Certiorari denied.

No. 07–10744. BRADLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 923.

No. 07–10745. BRODERICK *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 793.

No. 07–10746. BAUBLITZ *v.* INGHAM CIRCUIT JUDGE. Ct. App. Mich. Certiorari denied.

No. 07–10752. SOROKA *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 584.

No. 07–10754. WILLIAMS *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 374 Ill. App. 3d 1145, 944 N. E. 2d 933.

No. 07–10759. LERMA *v.* COOK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 667.

No. 07–10761. BROWN *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 503 F. 3d 1006.

No. 07–10762. AGOFSKY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 516 F. 3d 280.

No. 07–10764. BELCHER *v.* WELLS FARGO BANK, N. A. App. Ct. Conn. Certiorari denied.

No. 07–10765. BUCKNER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 251, 876 N. E. 2d 87.

No. 07–10767. WISDOM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–10768. WADHWA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–10769. JEFFERSON *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–10770. GABRILL *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–10771. GABRILL *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–10774. PUENTES FERNANDEZ *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 502 F. 3d 337.

No. 07–10775. MEADOR *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–10777. STRICKLAND *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–10778. Rodriguez *v.* Brown, Attorney General of California, et al. C. A. 9th Cir. Certiorari denied.

No. 07–10779. Krueger *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–10782. Schils *v.* Washtenaw County, Michigan. Ct. App. Mich. Certiorari denied.

No. 07–10784. Smith *v.* Michigan. Certiorari denied.

No. 07–10790. York *v.* Citifinancial Mortgage Co., Inc. Ct. App. Ind. Certiorari denied. Reported below: 870 N. E. 2d 588.

No. 07–10792. Strum *v.* Palakovich, Superintendent, State Correctional Institution at Smithfield, et al. C. A. 3d Cir. Certiorari denied.

No. 07–10793. Bullette *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–10797. Brothers *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–10808. Higgenbotham *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 07–10809. Mahogany *v.* Muwwakkil et al. C. A. 5th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 681.

No. 07–10811. Grande-Dorantes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 243 Fed. Appx. 12.

No. 07–10814. Van Stuyvesant *v.* Berbary, Superintendent, Collins Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 07–10815. Vazquez-Avila et al. *v.* Mukasey, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 517.

No. 07–10816. Soto *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 22.

No. 07–10818. Freeman *v.* South Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 959.

No. 07–10820. Henry *v.* Mukasey, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 503.

No. 07–10821. Favors *v.* Michigan. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 07–10824. McCrory *v.* Wendling, St. Clair County Prosecutor, et al. C. A. 6th Cir. Certiorari denied.

No. 07–10825. Cotton *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 07–10828. Shusterman *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 258 Fed. Appx. 403.

No. 07–10830. Beasley *v.* Arizona Department of Corrections et al. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 953.

No. 07–10836. Eirby *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 515 F. 3d 31.

No. 07–10837. Cramer *v.* California (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 07–10840. Huertas *v.* City of Camden, New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 245 Fed. Appx. 168.

No. 07–10846. Mejia-Restrepo *v.* Mukasey, Attorney General. C. A. 11th Cir. Certiorari denied.

No. 07–10848. Wright *v.* Transportation Security Administration. C. A. 11th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 894.

No. 07–10849. McIntire *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 516 F. 3d 576.

No. 07–10852. Santos *v.* Mukasey, Attorney General. C. A. 1st Cir. Certiorari denied. Reported below: 516 F. 3d 1.

No. 07–10853. MERCK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 975 So. 2d 1054.

No. 07–10854. KAO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–10857. LOGGINS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 38 Kan. App. 2d xviii, 162 P. 3d 65.

No. 07–10858. SIEBER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–10859. MOLLICA *v.* ROSSI-MOLLICA. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–10860. JOHNSON *v.* MCBRIDE, WARDEN. Certiorari denied.

No. 07–10863. EGGERS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 07–10867. CARRAZCO *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 976 So. 2d 1121.

No. 07–10871. TIMSON *v.* SAMPSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 518 F. 3d 870.

No. 07–10873. WILSON *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 508.

No. 07–10874. MOCK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–10876. BUTTLES *v.* BATTLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–10877. AUSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 517 F. 3d 312.

No. 07–10878. BLOUNT *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 219.

No. 07–10881. DAVIS *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 307.

No. 07–10884. CLARK *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 07–10885. CONARD *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–10888. MCCRAY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 218 Ariz. 252, 183 P. 3d 503.

No. 07–10891. SMITH *v.* LITTLE ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–10893. MACK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–10894. PAYNE *v.* FRIEL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 724.

No. 07–10895. MEDLEY *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–10896. JOHNSON *v.* WOODS, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–10898. COOK *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 843.

No. 07–10899. NORRIS *v.* OHIO. Ct. App. Ohio, Muskingum County. Certiorari denied.

No. 07–10901. SINGLETON *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–10903. SMITH *v.* INDIANA. Ct. App. Ind. Certiorari denied.

No. 07–10904. SAMPSON *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–10906. ELLIS *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 705.

No. 07–10910. COVELLI ET UX. *v.* BENSON. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 151.

No. 07–10911. MENDOZA *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 406.

No. 07–10915. SABEDRA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–10916. ALDRIDGE *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 07–10917. ARZOLA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–10920. BARTON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 240 S. W. 3d 693.

No. 07–10923. MACK *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 596.

No. 07–10925. STOLLER *v.* TEPPER. Sup. Ct. Ill. Certiorari denied.

No. 07–10927. MOTEN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 14 So. 3d 200.

No. 07–10928. MCDONALD *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–10933. HER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–10934. HUMBLES *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 459.

No. 07–10936. HIDDENS *v.* LEIBOLD ET VIR. Ct. App. Ohio, Montgomery County. Certiorari denied. Reported below: 2007-Ohio-2972.

No. 07–10938. KIENZLE *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied. Reported below: 2007-Ohio-4346.

No. 07–10940. MOORE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 517 F. 3d 781.

No. 07–10942. HAO CHI NGUYEN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–10943. AKERS *v.* KESZEI ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–10945. BRANCH *v.* FRANKLIN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 573.

No. 07–10950. CALL *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 257.

No. 07–10951. DOUGLAS *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 666.

No. 07–10952. CUMMINGS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–10953. MITCHELL, AKA MUHAMMAD *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–10955. GUNNEL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–10957. FARROW *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–10958. FEASTER *v.* MARYLAND. Ct. App. Md. Certiorari denied.

No. 07–10961. HILL *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 633.

No. 07–10962. HERTZ *v.* CAROTHERS ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 174 P. 3d 243.

No. 07–10963. HUBBARD *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY. C. A. 3d Cir. Certiorari denied.

No. 07–10964. GRANT *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 357 Ark. 91, 161 S. W. 3d 785.

No. 07–10966. GANS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 267 Fed. Appx. 178.

No. 07–10969. RUBEROE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–10970. DANDAR *v.* GOOD, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–10972. HILL *v.* HILLIER ET AL. C. A. 4th Cir. Certiorari denied.

No. 07–10973. DOYLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 07–10977. JOHNSON *v.* COOPER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–10978. BYRD *v.* KELCHNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–10979. JACKSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 352.

No. 07–10980. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 692.

No. 07–10981. BARRY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–10983. ROHN *v.* WILSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–10987. TUGGLE *v.* KRAMER, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 56.

No. 07–10993. MOFFETT *v.* CULLIVER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–10994. YU LIN *v.* UNIVERSITY OF NEBRASKA-LINCOLN. C. A. 8th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 485.

No. 07–10995. LEWIS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–10996. JOHNSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 07–10997. MARIANO-SANTOS *v.* MILLS, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 593.

No. 07–10998. SHAUN XIN XU *v.* MCLAUGHLIN RESEARCH INSTITUTE FOR BIOMEDICAL SCIENCES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 249 Fed. Appx. 517.

No. 07–11000. WASHINGTON *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 07–11002. CIDLOWSKI *v.* DEPARTMENT OF STATE. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 63.

No. 07–11003. DORSEY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 176 Md. App. 755.

No. 07–11005. DORSEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 969 So. 2d 378.

No. 07–11006. BARNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 206.

No. 07–11008. BELL *v.* GEORGETOWN UNIVERSITY HOSPITAL. C. A. D. C. Cir. Certiorari denied. Reported below: 279 Fed. Appx. 5.

No. 07–11009. BRADFORD *v.* CELLXION, LLC. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 508.

No. 07–11013. MATA *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 07–11014. MARSHALL *v.* MORGAN. C. A. 6th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 789.

No. 07–11015. MARTINEZ *v.* DISTRICT ATTORNEY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11016. MORRISON *v.* VAUGHN, SUPERINTENDENT, ODOM CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 598.

No. 07–11017. MCDONALD *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 976 So. 2d 942.

No. 07–11018. MORRISON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11022. JONES *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. Sup. Ct. Pa. Certiorari denied. Reported below: 592 Pa. 65, 922 A. 2d 906.

No. 07–11024. TIGER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 07–11027. STRICKLAND *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–11029. SATERSTAD *v.* STOVER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 249 Fed. Appx. 955.

No. 07–11034. LESTER *v.* AYERS. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 725.

No. 07–11035. THOMAS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 332.

No. 07–11036. TAYLOR *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 504 F. 3d 416.

No. 07–11037. WATKINS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 245 S. W. 3d 444.

No. 07–11038. POSELEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 613.

No. 07–11040. BOMBASI *v.* GROUNDS ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–11042. DAVIS *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 07–11043. Burrell *v.* LaClair, Superintendent, Great Meadow Correctional Facility, et al. C. A. 2d Cir. Certiorari denied.

No. 07–11047. Tate *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 516 F. 3d 459.

No. 07–11048. Campbell *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 266 Fed. Appx. 23.

No. 07–11049. Wright-Bey *v.* North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 266.

No. 07–11050. Williams *v.* Tristan et al. C. A. 9th Cir. Certiorari denied.

No. 07–11052. Smith *v.* Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied.

No. 07–11053. Reyna *v.* Monroe et al. C. A. 5th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 577.

No. 07–11054. Jones *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–11055. Johnson *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–11056. Rose *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 123 Nev. 24, 163 P. 3d 408.

No. 07–11059. Sancho *v.* Ramirez et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11060. Goins *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 516 F. 3d 416.

No. 07–11061. Guerra *v.* Alameda Police Department et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–11066. Gibbs *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 714.

No. 07–11068. Henderson *v.* Fabian, Commissioner, Minnesota Department of Corrections. Ct. App. Minn. Certiorari denied.

No. 07–11069. HAYES *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11070. GUTIERREZ *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 941.

No. 07–11072. KOZOMAN *v.* HAYNES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 546.

No. 07–11075. LOWERY *v.* CUMMINGS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 409.

No. 07–11077. BRADBERRY *v.* ARPAIO, SHERIFF, MARICOPA COUNTY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 787.

No. 07–11080. BROWN *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 630.

No. 07–11084. THORNTON *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11085. VINES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 571.

No. 07–11086. RAILE *v.* ZAVARAS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 237 Fed. Appx. 331.

No. 07–11088. WILLIAMS *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11093. CASTILLOUX *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11095. ADAMS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–11096. GRAHAM *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 941 A. 2d 848.

No. 07–11099. CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 324.

No. 07–11100. OTIS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 306 Wis. 2d 125, 740 N. W. 2d 901.

No. 07–11103. COVINGTON *v.* SMITH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 871.

No. 07–11104. FRESQUEZ *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–11106. GREEN *v.* REYNOLDS, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 07–11107. HUTCHINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11108. FORD *v.* JENKS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 94.

No. 07–11109. HOLT *v.* LIMESTONE COUNTY SHERIFF'S DEPARTMENT ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 19 So. 3d 923.

No. 07–11110. HOOPER *v.* B&R PROPERTY MANAGEMENT CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–11112. WILSON-X *v.* MARYLAND DEPARTMENT OF HUMAN RESOURCES ET AL. Ct. App. Md. Certiorari denied. Reported below: 403 Md. 667, 944 A. 2d 509.

No. 07–11115. JEEP *v.* JONES ET AL. C. A. 8th Cir. Certiorari denied.

No. 07–11116. JANOE *v.* RACKAUCKAS ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–11118. KNIGHT *v.* MCCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11119. JOHNSON *v.* BOARD OF BAR OVERSEERS OF MASSACHUSETTS ET AL. App. Ct. Mass. Certiorari denied. Reported below: 70 Mass. App. 1113, 877 N. E. 2d 279.

No. 07–11123. THLANG *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–11124. WILLIAMS *v.* SHARRETT ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–11125. WISE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 07–11126. THOMAS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 932 So. 2d 1204.

No. 07–11128. ASTROP *v.* BRUNSWICK. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 269.

No. 07–11129. ASSENBERG *v.* ANACORTES HOUSING AUTHORITY. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 643.

No. 07–11130. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 270.

No. 07–11131. MENDOZA-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 365.

No. 07–11132. BOCHICCIO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11133. BERBER-TINOCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 510 F. 3d 1083.

No. 07–11134. STUPKA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 731.

No. 07–11135. MULHOLLAND *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 07–11136. TURNER *v.* MOONEYHAM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 335.

No. 07–11137. TILLMAN *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11138. WOLLISTON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 961 So. 2d 1141.

No. 07–11139. GOLDBLUM *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 510 F. 3d 204.

No. 07–11141. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 1.

No. 07–11142. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 378.

No. 07–11143. CORTEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11144. JONES *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–11145. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 529.

No. 07–11146. JOHNSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 513 F. 3d 1328.

No. 07–11147. YOUNG *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 07–11148. CRAWFORD *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 07–11150. WALTERS *v.* HUNT, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11151. COLLIER *v.* MUNTEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 672.

No. 07–11152. DEBROW *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–11153. BOONE *v.* VASBINDER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11155. MURPHY *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 07–11156. PHILLIPS *v.* UNITED PARCEL SERVICE, INC. C. A. 5th Cir. Certiorari denied.

No. 07–11157. SANTOS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 104 Conn. App. 599, 935 A. 2d 212.

No. 07–11158. AGHAHOWA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 142.

No. 07–11159. CLARK *v.* ROBERTS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–11160. TORREY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 07–11161. WRIGHT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–11162. SABATER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 219.

No. 07–11163. SCAFF-MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–11165. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–11166. SEYMOUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–11167. RIMMER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 250 S. W. 3d 12.

No. 07–11168. MARTINEZ *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–11169. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 520 F. 3d 414.

No. 07–11170. TIMMONS *v.* MANATT, PHELPS & PHILLIPS, LLP, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–11171. WILKINS *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 638.

No. 07–11172. MATYE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 158 Cal. App. 4th 921, 70 Cal. Rptr. 3d 342.

No. 07–11173. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 593.

No. 07–11174. ABRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 858.

No. 07–11175. BAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 508 F. 3d 1321.

No. 07–11176. AGUILAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 512 F. 3d 485.

No. 07–11177. KILGORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 976 So. 2d 1066.

No. 07–11178. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 270.

No. 07–11179. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 245.

No. 07–11180. SUTTLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–11181. ROUNTREE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 07–11182. GONZALEZ *v.* SABOL, WARDEN. C. A. 1st Cir. Certiorari denied. Reported below: 517 F. 3d 29.

No. 07–11184. HEDRICK *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 07–11186. GARNETT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 275 Va. 397, 657 S. E. 2d 100.

No. 07–11187. BUTTERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 773.

No. 07–11190. ALMASHLEH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 624.

No. 07–11193. MARTINEZ *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 509.

No. 07–11194. MASON *v.* SMITH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 225.

No. 07–11195. WHITTAKER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 594.

No. 07–11196. MARSHALL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11197. LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 250 Fed. Appx. 381.

No. 07–11198. WHITTINGTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 374 Ill. App. 3d 1132, 944 N. E. 2d 928.

No. 07–11199. STEPHENS *v.* HOWERTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 750.

No. 07–11200. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 295.

No. 07–11201. MCNEIL *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11202. POOLE *v.* RICH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 165.

No. 07–11203. NYEMA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–11204. CALDERON-SEGURA, AKA CALDERON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 512 F. 3d 1104.

No. 07–11205. CANNEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 517 F. 3d 1172.

No. 07–11207. CHERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 393.

No. 07–11208. DIAZ *v.* INCH. C. A. 10th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 802.

No. 07–11209. COLE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–11210. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 123.

No. 07–11211. MAGBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 857.

No. 07–11212. KABLITZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 975 So. 2d 545.

No. 07–11213. MADYUN *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11214. JEFFERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–11215. THROWER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–11216. THOMAS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 975 So. 2d 1151.

No. 07–11217. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 266 Fed. Appx. 23.

No. 07–11218. HODGES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 506 F. 3d 1337.

No. 07–11219. LESANE *v.* KENWORTHY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 299.

No. 07–11220. HAYNES *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 422.

No. 07–11221. ROBINSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–11222. RING *v.* HEREDIA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 244 Fed. Appx. 181.

No. 07–11223. SANCHEZ *v.* CONNOLLY, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–11224. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 Fed. Appx. 478.

No. 07–11225. PATTERSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 257.

No. 07–11226. SOBITAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–11227. BILLUPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 152.

No. 07–11228. AUSTIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 879.

No. 07–11229. BEASON *v.* WILKERSON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 109.

No. 07–11230. BROWN *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 07–11231. BUSH *v.* WELLS FARGO BANK, N. A. Ct. App. Colo. Certiorari denied.

No. 07–11234. HOLLIDAY *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 745 N. W. 2d 556.

No. 07–11235. FORBES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–11237. GARDNER *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 511 F. 3d 420.

No. 07–11238. GARLAND *v.* US AIRWAYS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 99.

No. 07–11239. WAYNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–11240. ZANI *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11241. WEIR *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–11242. WATSON *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 268 Fed. Appx. 86.

No. 07–11243. HUTCHINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 777.

No. 07–11244. HATTON *v.* BANK OF AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 58.

No. 07–11245. GORDON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11246. HAYES *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–11248. HICKS *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11250. HUNT *v.* RODRIGUEZ-MENDOZA. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 07–11251. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 232.

No. 07–11252. HOLMES *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11253. EWING *v.* BRANDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11254. HIEU TRUNG NGUYEN *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11255. MCMILLEN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 07–11256. BOLANOS-MORALES, AKA VAZQUEZ-TORRES *v.* UNITED STATES (Reported below: 269 Fed. Appx. 469); AGUIRRE-CAVAZOS, AKA MARTINEZ-CAVAZOS *v.* UNITED STATES (271 Fed. Appx. 406); and PEREZ-VELA, AKA MENDOZA, AKA MENDOZA-PAZ, AKA PEREZ, AKA MENDOZAPAZ *v.* UNITED STATES (273 Fed. Appx. 405). C. A. 5th Cir. Certiorari denied.

No. 07–11257. BENGE *v.* DELOY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11258. ATHON *v.* DIRECT MERCHANTS BANK. C. A. 11th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 602.

No. 07–11259. BOX *v.* STEELE, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 583.

No. 07–11260. ALLARD *v.* ANDERSON, SHERIFF, GREENVILLE, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 711.

No. 07–11261. SHABAZZ *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 07–11263. HAWKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 499 F. 3d 703.

No. 07–11265. GOLDWIRE, AKA COOK *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 274 Fed. Appx. 143.

No. 07–11266. HIGHTOWER *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 629.

No. 07–11267. BABER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11268. BROWN *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11269. MCRAE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 317.

No. 07–11270. CLEMENTS, AKA HERRON, AKA CLEMENTS-HERRON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 522 F. 3d 790.

No. 07–11271. DAYE *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 222 W. Va. 17, 658 S. E. 2d 547.

No. 07–11272. LAUER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11273. MONTAGUE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 60.

No. 07–11274. HIRSCH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11276. CRAWFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 274 Fed. Appx. 151.

No. 07–11277. DIAZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 519 F. 3d 56.

No. 07–11278. CANADY *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11279. DUGGINS *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 316.

No. 07–11280. GUZMAN *v.* FREY, WARDEN. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1134, 952 N. E. 2d 727.

No. 07–11281. MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 321.

No. 07–11282. MARTIN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 285 Conn. 135, 939 A. 2d 524.

No. 07–11283. KARNOFEL *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 07–11284. GOLLEHON *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 1.

No. 07–11285. MONARREZ *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 651.

No. 07–11286. POLITANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 522 F. 3d 69.

No. 07–11287. MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 705.

No. 07–11288. SETTLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 395.

No. 07–11289. Ramirez-Molina, aka Lopez *v.* United States (Reported below: 268 Fed. Appx. 338); Nieto-Esparaza *v.* United States (268 Fed. Appx. 329); and Rosas-Fortis *v.* United States (268 Fed. Appx. 326). C. A. 5th Cir. Certiorari denied.

No. 07–11290. Richardson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 493.

No. 07–11291. Rivas-Lopez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 279.

No. 07–11292. White *v.* Gammon, Superintendent, Moberly Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 07–11293. Coronado *v.* Jones, Director, Oklahoma Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 517 F. 3d 1212.

No. 07–11294. DeJesus *v.* Jones, Warden. C. A. 6th Cir. Certiorari denied.

No. 07–11295. Ramirez-Nolasco *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 314.

No. 07–11297. Stevens, aka Trotter *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 07–11298. Bracero *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 975 F. 3d 1135.

No. 07–11299. Abrego, aka Diaz-Trevino *v.* United States (Reported below: 268 Fed. Appx. 329); Banegas-Hernandez, aka Tinoco Garcia *v.* United States (268 Fed. Appx. 328); Coronado-Majano *v.* United States (268 Fed. Appx. 319); Doroteo-Solano *v.* United States (268 Fed. Appx. 339); Grant-Martinez, aka Martinez-Grant *v.* United States (268 Fed. Appx. 336); Juarez-Godina *v.* United States (268 Fed. Appx. 334); Pacheco-Soria, aka Rodriguez-Ruiz *v.* United States (268 Fed. Appx. 330); Perez-Gonzalez *v.* United States (268 Fed. Appx. 331); Ramirez-Rodriguez, aka Zarate *v.* United States (268 Fed. Appx. 322); Rios-Rosas *v.* United States (268 Fed. Appx. 322); Rodriguez-Resendez *v.* United

States (268 Fed. Appx. 332); Sillas-Cabello *v.* United States (268 Fed. Appx. 320); Torres, aka Lugo *v.* United States (268 Fed. Appx. 334); Torres, aka Rodriguez, aka Torres-Rodriguez *v.* United States (269 Fed. Appx. 382); and Villarreal de Parsons *v.* United States (268 Fed. Appx. 327). C. A. 5th Cir. Certiorari denied.

No. 07–11300. Cooper *v.* South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 07–11303. Sheehy *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–11304. Rylander *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 524.

No. 07–11305. Gurrola-Rodriguez, aka Gurrola *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 732.

No. 07–11306. McGowan *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 990 So. 2d 931.

No. 07–11308. Davis *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 116 Ohio St. 3d 404, 880 N. E. 2d 31.

No. 07–11309. Yearwood *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 518 F. 3d 220.

No. 07–11310. Wallace *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 07–11313. Poole *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1139, 952 N. E. 2d 729.

No. 07–11314. Rohn *v.* Beard, Secretary, Pennsylvania Department of Corrections, et al. C. A. 3d Cir. Certiorari denied. Reported below: 268 Fed. Appx. 190.

No. 07–11315. Smith *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 871.

No. 07–11316. Pepper *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 518 F. 3d 949.

No. 07–11317. BURNETTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 518 F. 3d 942.

No. 07–11318. ANDERSON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 07–11319. NAJERA-NAJERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 519 F. 3d 509.

No. 07–11320. MCSTOOTS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 245 S. W. 3d 790.

No. 07–11321. LANDEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 436.

No. 07–11322. KASZUBA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 375 Ill. App. 3d 262, 873 N. E. 2d 556.

No. 07–11323. JORDAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 07–11324. LONG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1142, 953 N. E. 2d 83.

No. 07–11325. RODRIGUEZ-MORALES *v.* UNITED STATES (Reported below: 268 Fed. Appx. 369); and AGUILAR-BARRAGAN *v.* UNITED STATES (235 Fed. Appx. 255). C. A. 5th Cir. Certiorari denied.

No. 07–11326. SOBARZO *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 720.

No. 07–11327. SPRAU *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 641.

No. 07–11328. SKIPPER *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 07–11329. REDD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–11330. EDWARDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 511 F. 3d 956 and 514 F. 3d 860.

No. 07–11331. CURRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–11332. CORNELIUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 824.

No. 07–11333. GARCIA-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 650.

No. 07–11334. INGRAM *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11335. THOMAS *v.* THOMPSON. C. A. 6th Cir. Certiorari denied.

No. 07–11337. TRAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 519 F. 3d 98.

No. 07–11338. MINER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–11339. NEAL *v.* WEBB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11340. BENITEZ *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–11341. BROWN *v.* PARKER, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 07–11342. BOOTHES *v.* SANDERS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 07–11343. ARAGON-REYNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 437.

No. 07–11344. BLANKENSHIP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 562.

No. 07–11345. MESA-LOPEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 274.

No. 07–11346. BEVERLY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 07–11348. DARNELL *v.* ANDERSON, SHERIFF, TARRANT COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied.

No. 07–11350. CREIGHTON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 943 A. 2d 310.

No. 07–11351. CADDELL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11353. DIXON, AKA LEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 300.

No. 07–11354. SUAREZ *v.* ORTIZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11356. PARKS *v.* PERRY, GOVERNOR OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 366.

No. 07–11357. WILLIAMS *v.* GREGG ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–11358. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–11359. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–11360. SAVAGE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 976 So. 2d 1100.

No. 07–11361. BOOKER *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11362. ARREDONDO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–11363. CARBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 651.

No. 07–11364. CONN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 07–11365. DANNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 Fed. Appx. 14.

No. 07–11366. DIGGS *v.* CITY OF OSCEOLA, ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 469.

No. 07–11369. MERCADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 23.

No. 07–11370. CORONA-VERBERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 509 F. 3d 1105.

No. 07–11371. CHARLES *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 644.

No. 07–11372. SNOWDEN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–11373. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11374. KLYM *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 140 Wash. App. 1016.

No. 07–11375. SALAS-ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 33.

No. 07–11376. SOCHA *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11377. SCHMIDT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 07–11379. WATERMAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 07–11380. TOLBERT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 351.

No. 07–11381. VICE *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 07–11382. WYNN *v.* COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY ET AL. C. A. 11th Cir. Certiorari denied.

No. 07–11383. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 831.

No. 07–11384. CARDONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 388.

No. 07–11385. JACKSON *v.* THOMPSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–11387. ALDAZ-TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 440.

No. 07–11389. DWYER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11390. EBERSOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 603.

No. 07–11391. PURVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–11392. MOORE *v.* RAFFAELE ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–11393. PIERCE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11394. GRIEBEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 93.

No. 07–11395. SANTIAGO-BAEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 07–11396. STRATTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 164.

No. 07–11398. WEATHERLY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 525 F. 3d 265.

No. 07–11399. HARRIS-RORIE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 272 Fed. Appx. 1.

No. 07–11400. WILLIAMS *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–11401. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 555.

No. 07–11402. KELLY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 361.

No. 07–11403. SMITH *v.* CALIFORNIA ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 07–11404. QUINLAN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 976 So. 2d 1100.

No. 07–11405. MORCOS *v.* MORCOS. Sup. Ct. Va. Certiorari denied.

No. 07–11407. KARL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 550.

No. 07–11408. TOVAR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11409. MADONIA *v.* LACLAIR, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–11412. BANEY *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 263 Fed. Appx. 892.

No. 07–11413. AGWU *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 546.

No. 07–11414. BETHEA *v.* VIRGINIA (two judgments). Sup. Ct. Va. Certiorari denied.

No. 07–11415. BRANSON *v.* GAY, WARDEN. Ct. App. Ariz. Certiorari denied.

No. 07–11416. BROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 77.

No. 07–11417. ACKLES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–11418. BOND *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 932 A. 2d 249.

No. 07–11420. REYNOLDS *v.* MCBRIDE, WARDEN. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 07–11421. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 268.

No. 07–11422. CLARK *v.* SNIEZEK, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 266 Fed. Appx. 212.

No. 07–11424. GULLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 526 F. 3d 809.

No. 07–11426. ZUNIGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 07–11427. MURRAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 457.

No. 07–11428. MURPHY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–11429. VERDIN-GARCIA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 516 F. 3d 884.

No. 07–11430. VANCE *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 878 N. E. 2d 910.

No. 07–11431. THOMAS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–11432. VIRSNIEKS *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 521 F. 3d 707.

No. 07–11433. HERNKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 531.

No. 07–11434. HERNANDEZ-HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 519 F. 3d 1236.

No. 07–11435. LAWRENCE *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 517 F. 3d 700.

No. 07–11436. KENFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 695.

No. 07–11437. LEONOR *v.* HOUSTON. C. A. 8th Cir. Certiorari denied.

No. 07–11438. JOHNSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 938 A. 2d 1115.

No. 07–11439. NICARRY *v.* CANNADY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DEPUTY SHERIFF OF SEMINOLE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 166.

No. 07–11440. MOORE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 07–11441. ANGULO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–11442. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 07–11444. BUCK *v.* DEUTSCHE BANK NATIONAL TRUST CO., TRUSTEE FOR LONG BEACH MORTGAGE LOAN TRUST 2003–2, ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 973 So. 2d 181.

No. 07–11445. JORDAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 298.

No. 07–11446. JACKSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–11447. RAMOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 22.

No. 07–11448. SHORT *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 958 So. 2d 93.

No. 07–11449. STEPHENSON *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 165 P. 3d 860.

No. 07–11450. MORALES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 07–11451. SCHRADER *v.* ALLEN. Ct. App. N. M. Certiorari denied.

No. 07–11454. RADICK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 891.

No. 07–11455. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 28.

No. 07–11456. QUANDT *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 933 A. 2d 1250.

No. 07–11457. WHITTINGTON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 546.

No. 07–11459. WILLIAMS *v.* NISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11461. MARTELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 559.

No. 07–11462. KING ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 261.

No. 07–11463. LOPEZ-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 360.

No. 07–11464. BLECHMAN *v.* WASHINGTON MUTUAL BANK ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 157 Cal. App. 4th 662, 69 Cal. Rptr. 3d 87.

No. 07–11466. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 519 F. 3d 822.

No. 07–11467. KOSYLA *v.* CITY OF DES PLAINES, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 823.

No. 07–11468. SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 519 F. 3d 1208.

No. 07–11469. DAVIS *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 07–11470. DIAZ *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 515 F. 3d 149.

No. 07–11471. HIMMELREICH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 Fed. Appx. 100.

No. 07–11472. MERTENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 716.

No. 07–11473. ZUNIGA-HERNANDEZ *v.* OUTLAW, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 07–11474. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–11475. WARNER-FREEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 754.

No. 07–11476. WARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 518 F. 3d 75.

No. 07–11477. DAWSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 283 Ga. 315, 658 S. E. 2d 755.

No. 07–11478. DE LA CERDA, AKA LOPEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11480. SHORT *v.* JETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 07–11481. RICHARD *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 07–11482. SLATER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 177.

No. 07–11483. TELLEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 517 F. 3d 813.

No. 07–11484. KITTRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 338.

No. 07–11485. LARSON *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 515 F. 3d 1057.

No. 07–11486. LAFORTUNE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 520 F. 3d 50.

No. 07–11487. MEDA-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 606.

No. 07–11488. M. R. M. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 513 F. 3d 866.

No. 07–11489. BUTLER *v.* UNITED STATES; and

No. 07–11602. GORDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 816.

No. 07–11490. BAXTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 313.

No. 07–11491. BILAAL *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 07–11492. BRADY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 07–11493. WILSON *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 3d 491.

No. 07–11494. KENNER *v.* BELL, WARDEN. Sup. Ct. Tenn. Certiorari denied.

No. 07–11495. MCANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 721.

No. 07–11496. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 07–11497. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 244 S. W. 3d 144.

No. 07–11498. PARRA LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 07–11499. ROBINSON *v.* GONZELES. C. A. 9th Cir. Certiorari denied.

No. 07–11500. DODGE *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 07–11501. DINSIO *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–11502. DANIELSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 14 So. 3d 201.

No. 07–11503. KENDRICK *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 07–11504. MARK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11505. RIVERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 238.

No. 07–11506. STACY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–11507. TALLEY *v.* ALABAMA DEPARTMENT OF PUBLIC SAFETY ET AL. (Reported below: 260 Fed. Appx. 177); and TALLEY *v.* CITY OF MOODY, ALABAMA (259 Fed. Appx. 280). C. A. 11th Cir. Certiorari denied.

No. 07–11508. TAKAHASHI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 674.

No. 07–11510. VOINCHE *v.* FINE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 373.

No. 07–11511. HARDMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 07–11512. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 313 Fed. Appx. 338.

No. 07–11513. FREEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 722.

No. 07–11514. HAMBLY *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 307 Wis. 2d 98, 745 N. W. 2d 48.

No. 07–11515. HACKETT *v.* TAYLOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 260.

No. 07–11516. FIELDS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 285 Kan. viii, 175 P. 3d 267.

No. 07–11517. HYPOLITE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11518. HOLLOWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 869.

No. 07–11519. HARDAWAY *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–11520. HARRISON *v.* ADAMS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 613.

No. 07–11521. GUEYE *v.* AIRBORNE EXPRESS ET AL. C. A. 6th Cir. Certiorari denied.

No. 07–11522. GUEYE *v.* GUTIERREZ, SECRETARY OF COMMERCE. C. A. 2d Cir. Certiorari denied. Reported below: 277 Fed. Appx. 70.

No. 07–11523. HYLAND *v.* KOLHAGE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 836.

No. 07–11524. HARRIS *v.* ASHLAND HOME CONDOMINIUM. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1132, 952 N. E. 2d 726.

No. 07–11525. SAUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 587.

No. 07–11526. RICO-GOMEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 261.

No. 07–11527. WALLACE *v.* EASON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 502.

No. 07–11528. PINCKNEY *v.* SALAMON. Ct. App. S. C. Certiorari denied.

No. 07–11529. PILGRIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 662.

No. 07–11530. STRAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 831.

No. 07–11531. MCGOVNEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 386.

No. 07–11532. MCARTY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied.

No. 07–11533. YURISICH ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 700.

No. 07–11534. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 333.

No. 07–11535. Bell *v.* Men's Store at Saks Fifth Avenue. C. A. D. C. Cir. Certiorari denied.

No. 07–11536. Avila *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 585.

No. 07–11537. Black *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 525 F. 3d 359.

No. 07–11538. Brown *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 791.

No. 07–11539. Badruddoza *v.* United States Law Enforcement Units et al. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 304.

No. 07–11540. Santana *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 837.

No. 07–11542. Stanko *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 376 S. C. 571, 658 S. E. 2d 94.

No. 07–11543. Stines *v.* Evans, Warden. C. A. 9th Cir. Certiorari denied.

No. 07–11544. Munoz *v.* Palakovich, Superintendent, State Correctional Institution at Smithfield, et al. C. A. 3d Cir. Certiorari denied.

No. 07–11545. Branch-Williams *v.* Department of Veterans Affairs. C. A. Fed. Cir. Certiorari denied.

No. 07–11546. Brown *v.* United States District Court for the Western District of Tennessee. C. A. 6th Cir. Certiorari denied.

No. 07–11547. Friese *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 698.

No. 07–11548. Gallman *v.* Corbett, Attorney General of Pennsylvania, et al. C. A. 3d Cir. Certiorari denied.

No. 07–11549. Goodman *v.* Caldwell et al. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 07–11551. Guadarrama *v.* Superior Court of California, Imperial County et al. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 07–11552. HOLMAN *v.* EBERT. C. A. 2d Cir. Certiorari denied.

No. 07–11553. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 575.

No. 07–11554. MORRIS *v.* ALES GROUP USA, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 07–11556. RHODES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 268.

No. 07–11557. RAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–11558. WATSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 652, 182 P. 3d 543.

No. 07–11561. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 520 F. 3d 504.

No. 07–11562. MCCALVIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11563. CHASE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 930 A. 2d 267.

No. 07–11564. CHAVEZ-CALDERON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 494 F. 3d 1266.

No. 07–11566. EATMON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 992 So. 2d 64.

No. 07–11567. MAYS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11568. KIRKLAND *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–11569. JIMMERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 07–11570. JONES *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 07–11571. Locust *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 571.

No. 07–11572. Thompson *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 07–11573. Wall *v.* Maine. C. A. 1st Cir. Certiorari denied.

No. 07–11574. Downing *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 929 A. 2d 848.

No. 07–11575. Alcivar *v.* Wynne, Secretary of the Air Force. C. A. 10th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 749.

No. 07–11576. Ocasio *v.* McDaniel, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 07–11577. Means *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 07–11578. Banga *v.* Countrywide Home Loans et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 07–11579. Bloom *v.* Kansas. Sup. Ct. Kan. Certiorari denied.

No. 07–11580. Acosta *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11581. Bafford *v.* Township Apartments Assn., Ltd., et al. C. A. 11th Cir. Certiorari denied.

No. 07–11582. Barner *v.* Winn, Warden. C. A. 1st Cir. Certiorari denied.

No. 07–11583. Arrick *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 07–11585. Roberts *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 349.

No. 07–11586. Ruiz *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 19.

No. 07–11587. PETRUS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 07–11589. SHEARD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11590. STEWARD *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 736.

No. 07–11591. ROCKWELL *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 783.

No. 07–11592. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 522 F. 3d 731.

No. 07–11593. RIVAS *v.* UNITED STATES (Reported below: 272 Fed. Appx. 370); RUBIO-ALVAREZ, AKA RUBIO, AKA ALVAREZ RUBIO, AKA RUBIO ALVAREZ, AKA ALVARES RUBIO *v.* UNITED STATES (272 Fed. Appx. 369); SEGOVIA-PORTILLO *v.* UNITED STATES (270 Fed. Appx. 367); and MEDINA-REYES *v.* UNITED STATES (272 Fed. Appx. 367). C. A. 5th Cir. Certiorari denied.

No. 07–11594. SANCHEZ-CACERES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 362.

No. 07–11595. DROW *v.* HOENISCH, SHERIFF, MARATHON COUNTY, WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 307 Wis. 2d 444, 745 N. W. 2d 88.

No. 07–11596. CLOUD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 19 So. 3d 259.

No. 07–11597. MCGOWAN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 07–11598. JOHNSON *v.* MCDANIEL, ATTORNEY GENERAL OF ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 07–11599. BERTRAM *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 747 N. W. 2d 136.

No. 07–11603. GONZALEZ, AKA MONGE-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 212 Fed. Appx. 680.

No. 07–11604. GUTIERREZ-VALDIVIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 07–11605. INNARELLI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 524 F. 3d 286.

No. 07–11606. HERNANDEZ-HERNANDEZ *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 07–11607. HENDERSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 07–11608. LOZANO *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 07–11609. HIRT *v.* HAYNES, JUDGE, 21ST JUDICIAL DISTRICT COURT OF MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 344 Mont. 552, 186 P. 3d 875.

No. 07–11610. FELDER *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 07–11611. NUNEZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 388.

No. 07–11612. JIMENEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 07–11613. PICKARD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 935 A. 2d 19.

No. 07–11616. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 559.

No. 07–11617. RIECHMANN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 966 So. 2d 298.

No. 07–11618. RODZIEWICZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 368.

No. 07–11620. BROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 847.

No. 07–11621. AMMONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 623.

No. 07–11622. CARTER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1140, 953 N. E. 2d 81.

No. 07–11623. STOUT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 599 F. 3d 549.

No. 07–11624. GARCIA-ARELLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 522 F. 3d 477.

No. 07–11625. GILL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 07–11626. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 41.

No. 07–11627. DAVIS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–1. DEVINCENTIS *v.* QUINN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 647.

No. 08–2. MARTIN *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 285 Kan. 994, 179 P. 3d 457.

No. 08–3. AYAD ET AL. *v.* RADIO ONE, INC., ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2007-Ohio-2493.

No. 08–4. TALIK *v.* FEDERAL MARINE TERMINALS, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 117 Ohio St. 3d 496, 885 N. E. 2d 204.

No. 08–5. VAKKER *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 519 F. 3d 143.

No. 08–7. CAIN *v.* TRANSOCEAN OFFSHORE USA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 518 F. 3d 295.

No. 08–9. THOMPSON ET AL. *v.* GREENWOOD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 507 F. 3d 416.

No. 08–10. REYNOLDS ET AL. *v.* CITY OF NEW ORLEANS, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 331.

No. 08–11. ATAMIAN *v.* RICH. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–12. BLAKES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–13. ALMAHDI *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 450 Mass. 1005, 876 N. E. 2d 420.

No. 08–14. LANSING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 849.

No. 08–15. HARBURY *v.* HAYDEN, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 522 F. 3d 413.

No. 08–16. FEREGA *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 286 Ga. App. 808, 650 S. E. 2d 286.

No. 08–18. STARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 372.

No. 08–19. MOOREFIELD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 170.

No. 08–20. SLONE ET AL. *v.* MYERS ET AL. Ct. App. Ga. Certiorari denied. Reported below: 288 Ga. App. 8, 653 S. E. 2d 323.

No. 08–23. MATHESON *v.* GREGOIRE, GOVERNOR OF WASHINGTON, ET AL. Ct. App. Wash. Certiorari denied. Reported below: 139 Wash. App. 624, 161 P. 3d 486.

No. 08–24. PEPE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 897 A. 2d 463.

No. 08–25. HUBBY *v.* HUBBY ET AL. App. Ct. Conn. Certiorari denied.

No. 08–28. SCHAEFER *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 308 Wis. 2d 279, 746 N. W. 2d 457.

No. 08–29. LUFKIN INDUSTRIES, INC. *v.* MCCLAIN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 519 F. 3d 264.

No. 08–30. JONITES, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* EXELON CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 522 F. 3d 721.

No. 08–32. PRICE *v.* GKN AEROSPACE NORTH AMERICA, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 853.

No. 08–34. PENBERTHY ET AL. *v.* AT&T WIRELESS SERVICES, INC. C. A. 11th Cir. Certiorari denied.

No. 08–36. KIRLEW *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 267 Fed. Appx. 125.

No. 08–41. DUPRE *v.* TELXON CORP. ET AL. Ct. App. Ohio, Summit County. Certiorari denied.

No. 08–42. HILL *v.* WILSON, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 519 F. 3d 366.

No. 08–43. INTERNATIONAL RECTIFIER CORP. *v.* IXYS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 515 F. 3d 1353.

No. 08–44. COONEY, FKA ORLANDO *v.* ORLANDO. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1148, 953 N. E. 2d 86.

No. 08–45. BENEFIT RECOVERY, INC. *v.* DONELON, COMMISSIONER OF INSURANCE FOR LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 521 F. 3d 326.

No. 08–46. BOSTON SCIENTIFIC CORP. ET AL. *v.* CORDIS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 511 F. 3d 1157.

No. 08–47. RANGEL ET AL. *v.* MONTEREY COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–48. SCHAAF ET AL. *v.* RESIDENTIAL FUNDING CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 517 F. 3d 544.

No. 08–49. WILLIAMS *v.* J. P. MORGAN CHASE & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 121.

No. 08–50. GRANITE STATE OUTDOOR ADVERTISING, INC. *v.* CITY OF ROSWELL, GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 283 Ga. 417, 658 S. E. 2d 587.

No. 08–51. Grey *v.* Dallas Independent School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 342.

No. 08–53. Staunch *v.* Continental Airlines, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 511 F. 3d 625.

No. 08–54. Ross *v.* Whitaker et al. Ct. App. N. C. Certiorari denied.

No. 08–55. Logix Communications, L. P., dba Logix Communications *v.* Public Utility Commission of Texas et al. C. A. 5th Cir. Certiorari denied. Reported below: 521 F. 3d 361.

No. 08–56. Spaeth *v.* Cherokee Center for Change, Inc., et al. Ct. App. Ga. Certiorari denied.

No. 08–57. Anwar *v.* United States Citizenship & Immigration Services. C. A. 2d Cir. Certiorari denied. Reported below: 273 Fed. Appx. 62.

No. 08–60. House *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 189.

No. 08–62. Persik *v.* Tucci Learning Solutions, Inc., et al. C. A. 9th Cir. Certiorari denied.

No. 08–64. Johnson *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 286 Conn. 427, 944 A. 2d 297.

No. 08–69. Allen *v.* New Orleans Police Department. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 967 So. 2d 606.

No. 08–70. Bonner et ux. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 522 F. 3d 804.

No. 08–72. Strubinger *v.* Pennsylvania Department of Environmental Protection. Commw. Ct. Pa. Certiorari denied.

No. 08–73. Reshard *v.* Lankenau Hospital et al. C. A. 3d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 506.

No. 08–75. Kang *v.* PB Fasteners. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 545.

No. 08–78. ALLISON *v.* CITIZENS FOR AFFORDABLE DENTURES ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–79. RASCO *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 279.

No. 08–80. ROBINSON ET AL. *v.* SHEET METAL WORKERS' NATIONAL PENSION FUND, PLAN A, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 515 F. 3d 93.

No. 08–81. GANESAN *v.* BRANNIGAN ET AL. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 08–83. HOLMAN *v.* CLEMSON UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 270.

No. 08–84. GADOMSKI *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 781.

No. 08–85. PEREZ *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–86. DJUKIC *v.* TURNER. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 08–87. REINSURANCE RESULTS, INC. *v.* INDIANA LUMBERMENS MUTUAL INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 513 F. 3d 652.

No. 08–89. KARIMIAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 244.

No. 08–92. EGGERS *v.* MOORE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 993.

No. 08–93. PALMER *v.* MARYLAND ET AL. Ct. App. Md. Certiorari denied. Reported below: 404 Md. 591, 948 A. 2d 30.

No. 08–94. PENNSYLVANIA *v.* MALLORY ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 596 Pa. 172, 941 A. 2d 686.

No. 08–95. STOYANOV ET AL. *v.* WINTER, SECRETARY OF THE NAVY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 294.

No. 08–96. PINEY RUN PRESERVATION ASSN. *v.* COUNTY COMMISSIONERS OF CARROLL COUNTY, MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 523 F. 3d 453.

No. 08–97. PIPER ET AL. *v.* BINION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 436.

No. 08–98. ROBERTSON ET VIR *v.* VENTURA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 594.

No. 08–99. SEVEN UP PETE VENTURE ET AL. *v.* SCHWEITZER, GOVERNOR OF MONTANA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 523 F. 3d 948.

No. 08–100. SOUTH FORK BAND ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 573.

No. 08–102. AMIRMOKRI *v.* BODMAN, SECRETARY OF ENERGY. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 274.

No. 08–104. GUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 415.

No. 08–105. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–107. LABBE *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 398.

No. 08–109. LAKE FOREST PARTNERS 2, INC. *v.* MICHIGAN DEPARTMENT OF TREASURY. Sup. Ct. Mich. Certiorari denied. Reported below: 480 Mich. 1046, 743 N. W. 2d 881.

No. 08–110. STEARMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied.

No. 08–111. MICHAELS ET UX. *v.* TOWNSHIP OF MACOMB, MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 08–112. CHRIST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 513 F. 3d 762.

No. 08–113. KUPER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 522 F. 3d 302.

No. 08–114. LARSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 212.

No. 08–115. SCHWINN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 464.

No. 08–116. MANBECK *v.* KATONAH-LEWISBORO SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 264 Fed. Appx. 61.

No. 08–117. THOMAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 382.

No. 08–121. SAMSUNG ELECTRONICS CO., LTD. *v.* RAMBUS INC. C. A. Fed. Cir. Certiorari denied. Reported below: 523 F. 3d 1374.

No. 08–122. JEWELCOR INC. ET AL. *v.* KARFUNKEL ET AL., INDIVIDUALLY AND AS PARTNERS TRADING AS M & G EQUITIES. C. A. 3d Cir. Certiorari denied. Reported below: 517 F. 3d 672.

No. 08–123. FIASCHE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 520 F. 3d 694.

No. 08–124. AMIRMOKRI *v.* DEPARTMENT OF ENERGY. C. A. Fed. Cir. Certiorari denied. Reported below: 264 Fed. Appx. 900.

No. 08–126. VIGIL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 523 F. 3d 1258.

No. 08–127. JOHNSON *v.* CITY OF SHOREWOOD, MINNESOTA, ET AL. Ct. App. Minn. Certiorari denied.

No. 08–128. LEWIS *v.* DEPARTMENT OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 268 Fed. Appx. 952.

No. 08–129. ELMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 776.

No. 08–130. GIBSON *v.* ADA COUNTY, IDAHO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 686.

No. 08–131. HILLIARD, TRUSTEE, H. DAVID AND BONITA HILLIARD LIVING TRUST *v.* JACOBS. Ct. App. Ind. Certiorari denied. Reported below: 874 N. E. 2d 1060.

No. 08–133. The Cadle Co. *v.* Friedheim et ux. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 450.

No. 08–136. Sharma *v.* Sharma. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 1111, 881 N. E. 2d 828.

No. 08–137. Al-Arian *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 514 F. 3d 1184.

No. 08–141. George *v.* Ohio. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 08–142. Mendez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 528 F. 3d 811.

No. 08–144. Webster *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 674.

No. 08–147. Yates *v.* District of Columbia. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 312.

No. 08–149. King *v.* New York State Division of Parole et al. C. A. 2d Cir. Certiorari denied. Reported below: 260 Fed. Appx. 375.

No. 08–153. Viar *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 266.

No. 08–156. Day *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 524 F. 3d 1361.

No. 08–157. Gegaj *v.* Mukasey, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 343.

No. 08–158. Hernandez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 291.

No. 08–160. Jacobs et al. *v.* Tapscott et al. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 483.

No. 08–161. Orient Overseas Container Line Limited et al. *v.* Royal Insurance Company of America et al. C. A. 6th Cir. Certiorari denied. Reported below: 525 F. 3d 409.

No. 08–162. Tenesaca Delgado *v.* Mukasey, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 516 F. 3d 65.

No. 08–170. ADAMS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 255.

No. 08–173. LAWRENCE *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 525 F. 3d 916.

No. 08–175. ZONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–176. MILLER *v.* DAVIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 521 F. 3d 1142 and 272 Fed. Appx. 628.

No. 08–178. MILLER-JENKINS *v.* MILLER-JENKINS. Sup. Ct. Vt. Certiorari denied. Reported below: 183 Vt. 647, 949 A. 2d 1082.

No. 08–179. ECHOSTAR COMMUNICATIONS CORP. ET AL. *v.* TIVO, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 516 F. 3d 1290.

No. 08–187. DAVID *v.* MONSANTO CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 516 F. 3d 1009.

No. 08–191. GOODSON *v.* NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL–CIO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 798.

No. 08–193. HART *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 273.

No. 08–200. GRICE, TRUSTEE OF THE HARLEY A. GRICE REVOCABLE TRUST, ET AL. *v.* VERMONT ELECTRIC POWER CO., INC. Sup. Ct. Vt. Certiorari denied. Reported below: 184 Vt. 132, 956 A. 2d 561.

No. 08–202. BATTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 363.

No. 08–203. LEWIS *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 544.

No. 08–211. SMITH, COUNTY EXECUTIVE, BALTIMORE COUNTY, MARYLAND, ET AL. *v.* AES SPARROWS POINT LNG, LLC, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 527 F. 3d 120.

No. 08–232. Daneshvar *v.* Graphic Technology, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 126.

No. 08–238. Poindexter et al. *v.* Illinois ex rel. Illinois Department of Human Services et al. Sup. Ct. Ill. Certiorari denied. Reported below: 229 Ill. 2d 194, 890 N. E. 2d 410.

No. 08–239. Manci *v.* Ball, Koons & Watson et al. Sup. Ct. Ala. Certiorari denied. Reported below: 995 So. 2d 161.

No. 08–247. Yarbrough *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 80.

No. 08–254. Rammelkamp *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 35.

No. 08–265. Reed *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 357.

No. 08–5002. Jones *v.* Social Security Administration. C. A. 9th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 68.

No. 08–5004. Limbrick *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 367.

No. 08–5005. Palmer *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 08–5006. Northcutt *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 266 Fed. Appx. 129.

No. 08–5007. Ortiz *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–5008. Watson *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 08–5009. Williams *v.* Weathersbee, Commandant, United States Disciplinary Barracks, Fort Leavenworth, Kansas, et al. C. A. 10th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 684.

No. 08–5010. Webb *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–5011. ROSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 522 F. 3d 710.

No. 08–5012. ESPIN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 953 So. 2d 781.

No. 08–5013. CHARITY *v.* CARROLL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5014. ROGERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–5015. DELEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 316.

No. 08–5016. CARMON *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5017. JACKSON *v.* LEUTZOW ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5018. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 601.

No. 08–5019. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 847.

No. 08–5021. GONZALES *v.* TAFOYA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 515 F. 3d 1097.

No. 08–5022. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 522 F. 3d 607.

No. 08–5023. KARANJA *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 176 Md. App. 758.

No. 08–5024. STOVER *v.* CITY OF SHORELINE, WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 139 Wash. App. 1007.

No. 08–5026. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–5027. DUNHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 708.

No. 08–5028. Campbell *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1155, 953 N. E. 2d 89.

No. 08–5029. Batan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 622.

No. 08–5030. Burrows *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 905.

No. 08–5032. Shell *v.* Schwartz et al. Sup. Ct. Fla. Certiorari denied. Reported below: 981 So. 2d 1200.

No. 08–5033. Davenport *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 935 A. 2d 8.

No. 08–5036. Harmon *v.* Booher, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 704.

No. 08–5037. Harper *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 527 F. 3d 396.

No. 08–5038. Hahn *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 90.

No. 08–5039. Valencia *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 268, 180 P. 3d 351.

No. 08–5041. Parker *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 952.

No. 08–5042. Hammonds *v.* McGrath, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 687.

No. 08–5043. Mitchell *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy. C. A. 3d Cir. Certiorari denied.

No. 08–5045. Simpson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–5046. Quick *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 08–5047. RANDLE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5048. RICO-SERRANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 430.

No. 08–5049. OLVERA JIMENEZ *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 240 S. W. 3d 384.

No. 08–5050. MACPHAIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 127.

No. 08–5051. LEE *v.* KAYE, CHIEF JUDGE, COURT OF APPEALS OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 10 N. Y. 3d 902, 891 N. E. 2d 302.

No. 08–5052. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 519 F. 3d 816.

No. 08–5053. AGUILAR-RAMIREZ, AKA OLVERA-RAMIREZ *v.* UNITED STATES (Reported below: 272 Fed. Appx. 366); LEMUS-MORALES *v.* UNITED STATES (272 Fed. Appx. 362); and VIZCARRA-CHAIDEZ *v.* UNITED STATES (272 Fed. Appx. 373). C. A. 5th Cir. Certiorari denied.

No. 08–5054. ZAMORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 441.

No. 08–5055. JOHNSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5056. LONG NECK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–5057. AGOSTO-GRAULAU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–5058. ANDERSON *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5059. GARNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 487.

No. 08–5060. LINARES *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 08–5061. JONES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5062. MORALES *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5063. VANDIVERE *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 08–5064. TRIMUAR *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–5065. WARDLAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5066. ALLEN *v.* AMERICAN SIGNATURE FURNITURE, INC., DBA VALUE CITY FURNITURE. C. A. 7th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 507.

No. 08–5067. PALMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 511 F. 3d 1311.

No. 08–5068. JACKSON *v.* CAROLINAS HEALTHCARE SYSTEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 263.

No. 08–5070. SMITH *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 450 Mass. 395, 879 N. E. 2d 87.

No. 08–5071. MCKINZIE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 858.

No. 08–5073. DE ARMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5074. BIROS *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5075. BARR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 256 Fed. Appx. 283.

No. 08–5076. PAYNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 585.

No. 08–5077. FRAZIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5078. HUBBELING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5079. FARIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 730.

No. 08–5080. GRAY *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 520 F. 3d 616.

No. 08–5081. GREEN *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 08–5083. GALLAGHER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 980 So. 2d 1082.

No. 08–5084. HURTADO *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 770.

No. 08–5087. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 370.

No. 08–5088. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 968.

No. 08–5089. TAYLOR *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5090. MCCARY *v.* LEWIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 78.

No. 08–5091. GORDON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 674.

No. 08–5092. PERRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 980 So. 2d 490.

No. 08–5093. LYNCH *v.* KELLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 718.

No. 08–5094. LANGO *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–5095. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5096. LIMON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 698.

No. 08–5097. WILBON *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5098. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5099. ROBINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 528 F. 3d 110.

No. 08–5100. SICKLER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 932 A. 2d 263.

No. 08–5102. D. P. S. *v.* LAWRENCE COUNTY JUVENILE OFFICE. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 08–5103. GENDRON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5104. FREDRICK *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 540.

No. 08–5105. HOLLOWAY *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. C. A. 9th Cir. Certiorari denied.

No. 08–5106. ZAYES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 373 Ill. App. 3d 1156, 943 N. E. 2d 335.

No. 08–5107. VAZQUEZ *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 262.

No. 08–5108. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–5109. EMERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 695.

No. 08–5110. EKPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 830.

No. 08–5111. BURRELL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 08–5112. BANDA *v.* BURLINGTON COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 263 Fed. Appx. 182.

No. 08–5113. RICHARDSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 936 A. 2d 836.

No. 08–5114. RANDLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–5115. ROCKETTE *v.* REID, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 720.

No. 08–5116. LATTAKER *v.* RENDELL, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 230.

No. 08–5118. BONES *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–5119. BALDUINO-SILANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 268 Fed. Appx. 200.

No. 08–5120. CANO-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 371.

No. 08–5121. DORSEY, AKA DAWSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 769.

No. 08–5123. DAVIS *v.* CARLTON, WARDEN. Ct. App. Tenn. Certiorari denied.

No. 08–5124. ALVAREZ-ESPINO *v.* UNITED STATES (Reported below: 272 Fed. Appx. 375); ESPINOZA *v.* UNITED STATES (272 Fed. Appx. 374); GALINDO AGUILERA *v.* UNITED STATES (272 Fed. Appx. 377); HINOJOS OROZCO *v.* UNITED STATES (272 Fed. Appx. 363); LOZANO-PEDROZA *v.* UNITED STATES (272 Fed. Appx. 362); PONCE-RUBIO *v.* UNITED STATES (272 Fed. Appx. 365); VERGARA-TORRES *v.* UNITED STATES (272 Fed. Appx. 364); and VASQUEZ-MORALES *v.* UNITED STATES (272 Fed. Appx. 376). C. A. 5th Cir. Certiorari denied.

No. 08–5125. FRIEL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–5126. LOPEZ-CRUZ *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 08–5127. FLINT *v.* JORDAN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 514 F. 3d 1165.

No. 08–5128. FOSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5129. MEDWAY *v.* SCHWARZENEGGER, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 44.

No. 08–5131. WHITE *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 10 N. Y. 3d 286, 886 N. E. 2d 156.

No. 08–5132. WOODRING *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–5133. VILCHES-NAVARETTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 523 F. 3d 1.

No. 08–5134. MORRIS *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5135. OGBA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 526 F. 3d 214.

No. 08–5137. MOORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 978 So. 2d 1160.

No. 08–5138. PUMPHREY *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–5139. RAYFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5141. MOBLEY *v.* OHIO. Ct. App. Ohio, Fairfield County. Certiorari denied. Reported below: 2007-Ohio-6101.

No. 08–5142. MILLER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 294.

No. 08–5144. WOODRUFF *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 331.

No. 08–5145. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5146. LOVATO *v.* TAPIA, WARDEN. Dist. Ct. N. M., 2d Jud. Dist. Certiorari denied.

No. 08–5147. MARTIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5148. SEELY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 373 Ark. 141, 282 S. W. 3d 778.

No. 08–5149. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5153. ESTRADA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 134.

No. 08–5154. GREGA *v.* HOFMANN, COMMISSIONER, VERMONT DEPARTMENT OF CORRECTIONS, ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–5155. LANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5156. REED *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5157. SMASH *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5158. RAY *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 807.

No. 08–5159. ROBERTSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–5160. SAFFOLD *v.* MENDOZA-POWERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 652.

No. 08–5161. DADE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 600.

No. 08–5162. NEWTON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 08–5163. FOTOPOULOS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 516 F. 3d 1229.

No. 08–5166. BRAILEY *v.* VIRGINIA DEPARTMENT OF TAXATION. Sup. Ct. Va. Certiorari denied.

No. 08–5167. ENRIQUEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5168. WILLIAMS *v.* BENNETT ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–5169. KUPERMAN *v.* SUPREME COURT OF NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 08–5171. DEGRUY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–5172. DAVIS, AKA MILLER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5173. CORNER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–5174. CADEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–5175. WISE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 08–5176. CALLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 931.

No. 08–5177. JOHNSON *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 2007-Ohio-3961.

No. 08–5178. MARZULLO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–5180. McShepard *v.* Ohio. Ct. App. Ohio, Lorain County. Certiorari denied. Reported below: 2007-Ohio-6006.

No. 08–5181. Mansfield *v.* Dormire, Superintendent, Jefferson City Correctional Center. Sup. Ct. Mo. Certiorari denied.

No. 08–5182. Lau *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–5183. Lau *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–5184. Lau *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–5185. Hilliard *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 134.

No. 08–5186. Turner *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 307 Wis. 2d 444, 745 N. W. 2d 88.

No. 08–5187. Williams *v.* Phillips. Sup. Ct. Fla. Certiorari denied. Reported below: 984 So. 2d 521.

No. 08–5188. Goodell *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 08–5189. Greenhill *v.* United States et al. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 315.

No. 08–5190. Haque *v.* Fry's Electronics, Inc. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–5191. Al Ghashiyah *v.* Litscher et al. C. A. 7th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 654.

No. 08–5192. Ragin *v.* Sniezek, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–5193. Spencer *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 08–5194. Wischnewsky *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–5195. Sanchez *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–5196. Senator *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 08–5197. Woody *v.* Tadlock, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 08–5198. Walker *v.* Maynard, Secretary, Maryland Department of Public Safety and Correctional Services, et al. C. A. 4th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 541.

No. 08–5200. Pierre *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 274 Fed. Appx. 152.

No. 08–5201. Lopez-Matias et al. *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 522 F. 3d 150.

No. 08–5202. Jones *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 523 F. 3d 31.

No. 08–5203. Martinez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 281 Fed. Appx. 39.

No. 08–5204. Mata *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 275 Neb. 1, 745 N. W. 2d 229.

No. 08–5206. Toler *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 968 So. 2d 563.

No. 08–5207. Reyes-Lopez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 616.

No. 08–5208. Rios-Corellia *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 08–5209. Shannon *v.* Nebraska. Ct. App. Neb. Certiorari denied.

No. 08–5210. Cousins *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–5212. Cervantez-Valerio *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 417.

No. 08–5213. ZUNI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 733.

No. 08–5215. BHADURI *v.* SUMMIT SECURITY SYSTEMS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 274 Fed. Appx. 42.

No. 08–5216. AMATI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 790.

No. 08–5217. BRADEN *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5219. AFRICA *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–5220. ARAMBULA *v.* CALIFORNIA (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 08–5221. BRADLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–5222. BRADLEY *v.* MISSISSIPPI DEPARTMENT OF CORRECTIONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 250.

No. 08–5223. ALARCON-TAPIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 657.

No. 08–5224. BAILEY *v.* BRANDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5225. GARCIA-BENITEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 296.

No. 08–5227. LYONS *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5228. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 275.

No. 08–5229. ELFGEEH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 515 F. 3d 100.

No. 08–5230. DIAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 524 F. 3d 783.

No. 08–5231. Cole *v.* Bennett, Magistrate Judge, et al. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 249.

No. 08–5232. Matul-Alvarado *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 743.

No. 08–5233. Marquardt *v.* Vanrybroek. Sup. Ct. Wis. Certiorari denied.

No. 08–5234. Nowell *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 799.

No. 08–5235. McQueen *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 865.

No. 08–5237. Webber *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 796.

No. 08–5238. Castro *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 287.

No. 08–5239. Lee *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 08–5240. McKethan *v.* Mantello, Superintendent, Coxsackie Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 522 F. 3d 234.

No. 08–5241. Guarino *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 517 F. 3d 1067.

No. 08–5243. Fairman *v.* Huibregtse, Warden. C. A. 7th Cir. Certiorari denied.

No. 08–5244. Rodriguez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 518.

No. 08–5245. Drummond *v.* Mukasey, Attorney General. C. A. 2d Cir. Certiorari denied.

No. 08–5246. Arteaga *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 08–5247. Edwards *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 264 Fed. Appx. 139.

No. 08–5248. THINH CAO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 523 F. 3d 43.

No. 08–5249. TERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 522 F. 3d 645.

No. 08–5250. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 356.

No. 08–5251. WISDOM *v.* DICKERSON ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1519, 238 P. 3d 867.

No. 08–5252. PEARSON *v.* FINN ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5253. RODRIGUEZ-AMAYA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 521 F. 3d 437.

No. 08–5254. MCDONNELL *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 343 Ore. 557, 176 P. 3d 1236.

No. 08–5255. MORRIS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 292.

No. 08–5256. ROJAS-VEGA *v.* HUGHES ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5258. VAN ANH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 523 F. 3d 43.

No. 08–5259. ALGHAZOULI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 517 F. 3d 1179.

No. 08–5260. BLACKSHEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 235.

No. 08–5261. ADAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 928 A. 2d 731.

No. 08–5263. GUTIERREZ-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 561.

No. 08–5264. FLEMING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 273 Fed. Appx. 87.

No. 08–5265. HAWKINS, AKA MCLENDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 117.

No. 08–5266. HAYNER *v.* CITY OF WASHINGTON COURT HOUSE ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5267. HARRIS *v.* TRANSPORT WORKERS UNION LOCAL 100 ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–5268. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 278 Fed. Appx. 12.

No. 08–5269. JACKSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 311 Wis. 2d 489, 750 N. W. 2d 519.

No. 08–5270. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 523 F. 3d 281.

No. 08–5271. LEMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 258.

No. 08–5272. LONG *v.* ROBERTS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 801.

No. 08–5273. CASTRO, AKA MEJIA-MURCIA, AKA CASTRO-MEJIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 379.

No. 08–5275. COSCO *v.* ABBOTT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 662.

No. 08–5276. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 254.

No. 08–5277. RODRIGUEZ-VENEGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 590.

No. 08–5278. SCOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 652.

No. 08–5279. SINGLETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 236.

No. 08–5280. REED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 401.

No. 08–5281. SANDERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 553.

No. 08–5282. LAFAYELLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 358.

No. 08–5283. BURGESS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 311 Fed. Appx. 378.

No. 08–5284. BULLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 496.

No. 08–5285. AYALA *v.* MORGAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5286. AYYAR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5287. BULLARD *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Davidson County, N. C. Certiorari denied.

No. 08–5289. MCCOY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 212.

No. 08–5290. LUKE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 08–5291. MCKINNEDY *v.* NEWELL. Sup. Ct. S. C. Certiorari denied.

No. 08–5292. POTTS *v.* FEDERAL BUREAU OF PRISONS. C. A. 4th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 266.

No. 08–5293. DANIEL *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–5294. VALDEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–5295. PRESTON *v.* COOPER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 08–5297. VEASEY *v.* CRIMINAL DISTRICT COURT NUMBER TWO, DALLAS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 410.

No. 08–5299. JORDAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 690.

No. 08–5300. CANTU *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5301. SERAPHIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 752.

No. 08–5302. VIET NGUYEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 251 Fed. Appx. 214.

No. 08–5303. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5304. THOMAS *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5305. CONTRERAS-SALDANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 394.

No. 08–5306. MONAHAN *v.* BURTT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 216.

No. 08–5307. VARGAS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–5308. YOUNG *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 216.

No. 08–5310. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 809.

No. 08–5311. WILSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 226.

No. 08–5312. YANG ET UX. *v.* BUCH (two judgments). Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–5313. WILSON *v.* GALLARDO. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 367.

No. 08–5315. MCFARLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 462.

No. 08–5317. NAPLES *v.* NAPLES. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 967 So. 2d 944.

No. 08–5318. EDELKIND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 525 F. 3d 388.

No. 08–5319. CADORNIGA-DOEING *v.* NSH/LONG ISLAND JEWISH HEALTH SYSTEM ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 41 App. Div. 3d 1132, 840 N. Y. S. 2d 442.

No. 08–5320. DOVE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 08–5321. DANIELS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–5322. JACKSON *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 08–5323. MAXWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5324. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 346.

No. 08–5325. RAMOS-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 524 F. 3d 600.

No. 08–5326. SHELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5327. REVELES-ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 522 F. 3d 1044.

No. 08–5328. STENSON *v.* UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 504 F. 3d 873.

No. 08–5330. ANDERSON *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5331. BROWN *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 175 Fed. Appx. 430.

No. 08–5332. ALBA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 512 F. 3d 500.

No. 08–5333. HAYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 236.

No. 08–5334. ANDERSON *v.* UNITED STATES; and
No. 08–5360. HEPPNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 519 F. 3d 744.

No. 08–5335. PATRIDGE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 507 F. 3d 1092.

No. 08–5336. SPRADLEY *v.* CALHOUN ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 980 So. 2d 495.

No. 08–5337. RISQUET *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 276 Fed. Appx. 114.

No. 08–5338. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 08–5339. VIERA *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 977 So. 2d 590.

No. 08–5340. SILVO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–5341. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 172.

No. 08–5343. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 524 F. 3d 1198.

No. 08–5344. CERVANTES-RUBIO *v.* UNITED STATES (Reported below: 275 Fed. Appx. 601); SANDOVAL-HERNANDEZ, AKA SANCHEZ-PEREZ *v.* UNITED STATES (275 Fed. Appx. 676); and REYES-PLATERO, AKA PLATERO *v.* UNITED STATES (278 Fed. Appx. 729). C. A. 9th Cir. Certiorari denied.

No. 08–5345. EMORY *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 565.

No. 08–5346. BARRAGAN SANTANA, AKA GARCIA-BARRAGAN *v.* UNITED STATES (Reported below: 276 Fed. Appx. 629); and

MARTINEZ-NAVARRO *v.* UNITED STATES (285 Fed. Appx. 349). C. A. 9th Cir. Certiorari denied.

No. 08–5347. ARANDA *v.* HERRERA. Ct. App. N. M. Certiorari denied.

No. 08–5348. SILVERIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 524 F. 3d 358.

No. 08–5349. QUINONES ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 511 F. 3d 289.

No. 08–5350. STANFORD *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 248 S. W. 3d 579.

No. 08–5351. WHIGHAM *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 984 So. 2d 521.

No. 08–5352. VAUGHAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 48 App. Div. 3d 1069, 850 N. Y. S. 2d 735.

No. 08–5354. ALI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 985 So. 2d 1090.

No. 08–5355. UDOH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 361.

No. 08–5356. AGUIRRE-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 583.

No. 08–5357. BRATCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 385.

No. 08–5358. BEJAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 616.

No. 08–5361. HOULIHAN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 480 Mich. 1165, 746 N. W. 2d 879.

No. 08–5363. GARCIA-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 518 F. 3d 74.

No. 08–5364. GEE *v.* CHICAGO PUBLIC SCHOOLS. C. A. 7th Cir. Certiorari denied.

No. 08–5365. HAYES, AKA JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 518 F. 3d 989.

No. 08–5366. HARRISON *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 519 F. 3d 952.

No. 08–5367. HALE *v.* WALKER, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 283 Ga. 131, 657 S. E. 2d 227.

No. 08–5368. SANCHEZ-RUIZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 722.

No. 08–5369. CARSTARPHEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 264 Fed. Appx. 154.

No. 08–5370. EVANS *v.* THOMPSON, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT SHIRLEY. C. A. 1st Cir. Certiorari denied. Reported below: 518 F. 3d 1.

No. 08–5371. POOLER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 980 So. 2d 460.

No. 08–5372. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 259.

No. 08–5373. CALDERO MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 291.

No. 08–5374. DRAKE *v.* DONAT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5375. ESPINOZA *v.* ESTEP, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 08–5376. LARSON *v.* HAGERTY ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 756 N. W. 2d 344.

No. 08–5377. KELLER *v.* PORTER HOSPITAL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 729.

No. 08–5378. FIORANI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 241.

No. 08–5379. FRISON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1141, 953 N. E. 2d 82.

No. 08–5380. GARRETT *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 08–5381. VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 837.

No. 08–5383. PRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 516 F. 3d 597.

No. 08–5384. MOORE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1494, 238 P. 3d 840.

No. 08–5386. WILDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 492.

No. 08–5387. PEROCESKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 520 F. 3d 886.

No. 08–5388. CROSBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 332.

No. 08–5389. GARCIA *v.* UNITED STATES; and
No. 08–5458. VIAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 347.

No. 08–5390. POLK *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5393. THOMAS *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5394. LINDBERG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5395. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5396. THOMPSON *v.* CATTERSON, CLERK, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5397. SOTO-PIEDRA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 525 F. 3d 527.

No. 08–5399. RAY *v.* MINOR, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 08–5400. YOUNG *v.* MCCANN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5401. WILLIAMS *v.* LOUISIANA ATTORNEY DISCIPLINARY BOARD. Sup. Ct. La. Certiorari denied. Reported below: 983 So. 2d 886.

No. 08–5402. PETERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–5403. MILLHOUSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5404. PARTHEMORE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–5405. SOLIS *v.* WARD, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–5408. ZEHRUNG *v.* UNITED AUTO WORKERS LOCAL NO. 663. C. A. 7th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 585.

No. 08–5409. WILSON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 08–5410. WENCESLAO *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5412. MCKINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5413. NESBITT *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5414. RENNEKE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 548.

No. 08–5415. JONES *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 257 Fed. Appx. 301.

No. 08–5416. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 899.

No. 08–5417. HUNG HA *v.* ROSS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5418. HUNG HA *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5419. HUNG HA *v.* HARRISON. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5420. WHITMILL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5421. THREATT *v.* BIRKETT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5422. BOYSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 566.

No. 08–5423. BEATY *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 371 Ill. App. 3d 861, 880 N. E. 2d 237.

No. 08–5424. BARNARD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 362 N. C. 244, 658 S. E. 2d 643.

No. 08–5425. ABDULAHI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 523 F. 3d 757.

No. 08–5426. BYRD *v.* WOODLAWN COMMUNITY DEVELOPMENT CORP. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1143, 952 N. E. 2d 731.

No. 08–5427. BACON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1450, 238 P. 3d 793.

No. 08–5428. BUCKLON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5429. ATKINS *v.* MIDDLE RIVER REGIONAL JAIL MEDICAL DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 558.

No. 08–5430. Brewster *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 48 App. Div. 3d 696, 852 N. Y. S. 2d 312.

No. 08–5431. Adams *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 08–5432. Baker *v.* Department of the Army. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 468.

No. 08–5434. Edwards *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 982 So. 2d 688.

No. 08–5435. Concho *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 398.

No. 08–5436. Evans *v.* Haws, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 620.

No. 08–5437. Sengsatheuane *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 355.

No. 08–5438. Sanders *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 275 Fed. Appx. 121.

No. 08–5439. Smith *v.* Patrick, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 588.

No. 08–5440. Senat *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 854.

No. 08–5441. Scuba *v.* Brigano, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 527 F. 3d 479 and 259 Fed. Appx. 713.

No. 08–5443. White *v.* McDaniel, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 08–5446. Mendoza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 522 F. 3d 482.

No. 08–5447. Bryan P. *v.* Los Angeles County Department of Children and Family Services. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5448. Washington *v.* Safer Foundation. C. A. 7th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 484.

No. 08–5449. BYRD *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–5450. POWELL *v.* KELLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 330.

No. 08–5451. MORGAN *v.* DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–5453. CASTLEBERRY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 117 Ohio St. 3d 1475, 884 N. E. 2d 1108.

No. 08–5454. GRANT *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 286 Conn. 499, 944 A. 2d 947.

No. 08–5456. ABU-JAMAL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 596 Pa. 219, 941 A. 2d 1263.

No. 08–5459. TURNBULL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5460. YOUNG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1141, 952 N. E. 2d 730.

No. 08–5461. DYER *v.* OUTLAW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5462. RUSSELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 982 So. 2d 642.

No. 08–5463. SWANBERG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 733.

No. 08–5464. LEIFESTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5465. MARTIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 392.

No. 08–5466. KEPNER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 08–5468. Dreizler *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 08–5469. Briseno-Benavidez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 368.

No. 08–5471. Morris *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 276 Fed. Appx. 202.

No. 08–5472. Morgret *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 275 Fed. Appx. 118.

No. 08–5473. Petersen *v.* Riverview Police Department et al. Ct. App. Mich. Certiorari denied.

No. 08–5474. Rice *v.* Smith et al. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 264.

No. 08–5475. Caviness *v.* Felker, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 455.

No. 08–5476. Burgest *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 519 F. 3d 1307.

No. 08–5477. Buonsignore *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–5478. Christian *v.* Gansheimer, Warden. Sup. Ct. Ohio. Certiorari denied. Reported below: 118 Ohio St. 3d 235, 887 N. E. 2d 1175.

No. 08–5479. Campbell *v.* Reynolds, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 215.

No. 08–5480. Millen *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 842 A. 2d 1264.

No. 08–5481. Carl *v.* Lawler, Superintendent, State Correctional Institution at Huntingdon. C. A. 3d Cir. Certiorari denied.

No. 08–5482. Griffin *v.* Veterans Administration Regional Office et al. C. A. 7th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 28.

No. 08–5483. FIGARO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 273 Fed. Appx. 161.

No. 08–5484. HOUSE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5485. GOODMAN *v.* WALKER, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 08–5486. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 994.

No. 08–5489. HUNT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 357.

No. 08–5490. GALES *v.* CLINE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 646.

No. 08–5491. FORD *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 259.

No. 08–5492. TINAJERO-PORRAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 794.

No. 08–5493. MOORE *v.* KORMAN ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–5494. JERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 792.

No. 08–5495. MARSHALL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 992 So. 2d 762.

No. 08–5497. RUSHWAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 684.

No. 08–5498. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 143.

No. 08–5499. CHOPRA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5500. GONZALEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 512 F. 3d 285.

No. 08–5501. HULLETTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 525 F. 3d 610.

No. 08–5502. BLACKERT *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 980 So. 2d 497.

No. 08–5503. BABBS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 162 Wash. 2d 477, 181 P. 3d 831.

No. 08–5504. BILLMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 257 Fed. Appx. 904.

No. 08–5505. FLOURNOY *v.* ELLIS. C. A. 11th Cir. Certiorari denied.

No. 08–5506. GASKINS *v.* NOLAN ET AL. C. A. 1st Cir. Certiorari denied.

No. 08–5507. HOMER *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–5508. FORD *v.* RODDA ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5509. HADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 866.

No. 08–5510. GOODE *v.* WATSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 266.

No. 08–5515. GUILLEN-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 390.

No. 08–5516. FRAZIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 740.

No. 08–5517. DREWRY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 946 A. 2d 981.

No. 08–5518. COHETZALTITLA-PONCE, AKA AGUILAR-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 730.

No. 08–5519. DEARING *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 779.

No. 08–5520. MILLEN *v.* BURLINGTON COAT FACTORY. C. A. 6th Cir. Certiorari denied.

No. 08–5521. SANCHEZ-GALLARDO, AKA SALINAS-GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 340.

No. 08–5523. QUIROZ *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 879 N. E. 2d 1231.

No. 08–5524. OCHOA-NAVARETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 555.

No. 08–5525. STAHL *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 221.

No. 08–5526. SAMUELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 730.

No. 08–5527. SIMMONS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–5528. WOODBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 221.

No. 08–5529. SYLVESTER, AKA SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 873.

No. 08–5532. BOLDEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 275 Va. 144, 654 S. E. 2d 584.

No. 08–5533. BOWMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 296.

No. 08–5535. BOUSMAN *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5536. WARDELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 218 Fed. Appx. 695.

No. 08–5537. FABIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–5538. HENRY *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5539. CANNON *v.* CLINTON ET AL. C. A. D. C. Cir. Certiorari denied.

No. 08–5540. MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 404.

No. 08–5541. MYERS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 897.

No. 08–5542. STARR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 761.

No. 08–5544. ROSAS-PULIDO *v.* UNITED STATES (Reported below: 526 F. 3d 829); CAMPOS *v.* UNITED STATES (277 Fed. Appx. 505); OCHOA-SALDANA *v.* UNITED STATES (280 Fed. Appx. 374); and MORA-GAONA *v.* UNITED STATES (280 Fed. Appx. 403). C. A. 5th Cir. Certiorari denied.

No. 08–5545. SORRELLS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–5546. RICHARDSON *v.* MCKIE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 282.

No. 08–5547. NEWTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 324.

No. 08–5548. BELL *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 319.

No. 08–5549. ANDERSON *v.* BRUNSON, SUPERINTENDENT CLALLAM BAY CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 08–5550. BELTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 520 F. 3d 80.

No. 08–5552. DEERING, AKA WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5554. DOE *v.* BREDESEN, GOVERNOR OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 507 F. 3d 998.

No. 08–5556. GALLARDO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 497 F. 3d 727.

No. 08–5558. TOLLIVER *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5559. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 479.

No. 08–5560. LIGHT-ROTH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 139 Wash. App. 1093.

No. 08–5562. SOWEWIMO *v.* WRIGHT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5566. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5567. BLACKEAGLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 588.

No. 08–5569. GRAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 563.

No. 08–5570. FIELDS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 08–5571. HUTSON *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5572. FRIAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 521 F. 3d 229.

No. 08–5573. MEDELLIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 280 S. W. 3d 854.

No. 08–5575. PETERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 524 F. 3d 905.

No. 08–5577. PRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 520 F. 3d 753.

No. 08–5579. MCCREE *v.* SHERROD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5580. RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 441 F. 3d 767.

No. 08–5582. JANICEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5583. AKERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 844.

No. 08–5586. BLACKWELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5588. CAREY *v.* JOHNSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 250 Fed. Appx. 781.

No. 08–5589. YOUNG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5590. EGBUNE *v.* DISTRICT COURT OF COLORADO, ARAPAHOE COUNTY. Sup. Ct. Colo. Certiorari denied.

No. 08–5591. CARACCIOLO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 259 Fed. Appx. 324.

No. 08–5592. COTTEN *v.* OBERDIER ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 08–5593. SMITH *v.* JOHNS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–5594. CASTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5595. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–5596. WEIDNER *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 252.

No. 08–5598. MAPLES *v.* ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 08–5600. CRUTCHER *v.* NEVADA ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1460, 238 P. 3d 804.

No. 08–5601. OCHOA-CANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 331.

No. 08–5602. RAY *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1502, 238 P. 3d 848.

No. 08–5607. Cosme-Garcia *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–5611. Martinez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 525 F. 3d 211 and 277 Fed. Appx. 98.

No. 08–5613. Valdez *v.* McKune, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 735.

No. 08–5618. Merica *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 267.

No. 08–5619. Day *v.* Wollenhaupt et al. C. A. 2d Cir. Certiorari denied.

No. 08–5620. Crawford *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 653.

No. 08–5621. Curran *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 525 F. 3d 74.

No. 08–5622. Daigle *v.* Department of Veterans Affairs et al. C. A. 2d Cir. Certiorari denied. Reported below: 260 Fed. Appx. 406.

No. 08–5623. Chatmon *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 08–5625. Eff *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 524 F. 3d 712.

No. 08–5629. Aguirre *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 521.

No. 08–5630. Ali *v.* Department of Health and Human Services. C. A. 9th Cir. Certiorari denied. Reported below: 240 Fed. Appx. 211.

No. 08–5631. Avalos-Perez, aka Avalos-Melgar *v.* United States (Reported below: 276 Fed. Appx. 608); Barajas-Tinoco, aka Tinoco-Barajas *v.* United States (276 Fed. Appx. 400); Cisneros *v.* United States (276 Fed. Appx. 600); Meraz-Chavarria, aka Torres *v.* United States (276 Fed. Appx. 398); Perez-Vasquez, aka Vasquez-Perez, aka Perez *v.* United

States (277 Fed. Appx. 336); Quintana-Holguin *v.* United States (276 Fed. Appx. 40); and Uribe-Salas *v.* United States (276 Fed. Appx. 406). C. A. 5th Cir. Certiorari denied.

No. 08–5632. Pressley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 271.

No. 08–5633. Olson *v.* Peake, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 312 Fed. Appx. 321.

No. 08–5634. Bui Phu Xuan *v.* Fort Worth Star Telegram. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 452.

No. 08–5635. Thebeau *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 662.

No. 08–5636. Smith *v.* Shannon, Superintendent, State Correctional Institution at Frackville, et al. C. A. 3d Cir. Certiorari denied.

No. 08–5637. Jackson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 701.

No. 08–5640. Muresan *v.* United States Trustee et al. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 455.

No. 08–5642. Baez *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–5646. Fernandez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 518 F. 3d 1228.

No. 08–5648. Fermin *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 277 Fed. Appx. 28.

No. 08–5650. Harris *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 6.

No. 08–5651. Flores-Moya *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 662.

No. 08–5653. Major *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 525 F. 3d 193.

No. 08–5656. PETE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 525 F. 3d 844 and 277 Fed. Appx. 730.

No. 08–5659. INYAMA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 351.

No. 08–5660. FONTENEAU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 293.

No. 08–5662. WITHERSPOON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 709.

No. 08–5663. MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 520 F. 3d 749.

No. 08–5664. YONG TAN HUANG *v.* BELL ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–5665. FREEMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 258 Fed. Appx. 372.

No. 08–5668. GREER *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5669. GUYTON *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5671. MCGEE *v.* AUSTIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5672. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5673. CLINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 Fed. Appx. 644.

No. 08–5675. MCKOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 283.

No. 08–5677. NELSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 1242, 185 P. 3d 49.

No. 08–5679. SHOUPE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5680. CARGILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5684. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 655.

No. 08–5685. RAMIREZ-MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 197.

No. 08–5686. VITAGLIANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 520 F. 3d 694.

No. 08–5687. TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 278 Fed. Appx. 108.

No. 08–5688. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 472.

No. 08–5689. TEOUME-LESSANE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 931 A. 2d 478.

No. 08–5690. PENA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 702.

No. 08–5692. BORG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 690.

No. 08–5696. BORKOWSKI *v.* ABOOD. Sup. Ct. Ohio. Certiorari denied. Reported below: 117 Ohio St. 3d 347, 884 N. E. 2d 7.

No. 08–5699. ARDILLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 275 Fed. Appx. 39.

No. 08–5702. PINDER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 08–5703. MARIN-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 302.

No. 08–5704. LEYBA *v.* HARTLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 690.

No. 08–5705. GILLESPIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5706. GRAJEDA-SIFUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 466.

No. 08–5708. LAFLAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 277 Fed. Appx. 18.

No. 08–5709. McDaniel *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–5711. Lentz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 524 F. 3d 501.

No. 08–5712. Kemp *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 08–5713. Legg *v.* United States; and
No. 08–5714. Romans *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 512 F. 3d 326.

No. 08–5717. Tauati *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 08–5718. Womack *v.* Curry, Acting Warden. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 650.

No. 08–5722. Stewart *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 649.

No. 08–5723. Stevens *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 898.

No. 08–5724. Martin *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 526 F. 3d 926.

No. 08–5725. Jones *v.* Larkin. Sup. Ct. Mo. Certiorari denied.

No. 08–5728. Murphy *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 311.

No. 08–5730. Clinton *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 757.

No. 08–5731. Cutsinger *v.* Hawaii. Int. Ct. App. Haw. Certiorari denied. Reported below: 188 Haw. 68, 185 P. 3d 816.

No. 08–5732. Davis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 236.

No. 08–5734. Levon *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–5737. Miller *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 531 F. 3d 340.

No. 08–5739. Reiter *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 08–5742. Sifford *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 261.

No. 08–5743. Abdullahi *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 520 F. 3d 890.

No. 08–5744. Bodkins *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 294.

No. 08–5747. Buchanan *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 08–5749. Brehm *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–5751. Williams *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 942 A. 2d 1190.

No. 08–5753. Wood *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 526 F. 3d 82.

No. 08–5757. Benson *v.* United States District Court for the Eastern District of Arkansas. C. A. 8th Cir. Certiorari denied.

No. 08–5759. Cochran *v.* Stein, United States Trustee. C. A. 7th Cir. Certiorari denied.

No. 08–5761. Houston *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 229 Ill. 2d 1, 890 N. E. 2d 424.

No. 08–5762. Hughes *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 520.

No. 08–5764. Gilbert *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 525 F. 3d 656.

No. 08–5770. Gormley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 289.

No. 08–5776. Coleman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 340.

No. 08–5777. Easky *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 807.

No. 08–5781. LASH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5782. MARO *v.* HOLINKA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5783. KING *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 308 Wis. 2d 395, 746 N. W. 2d 605.

No. 08–5791. KLOPF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 845.

No. 08–5795. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 969.

No. 08–5797. BAXTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5798. BOWEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 527 F. 3d 1065.

No. 08–5799. GANDIA, AKA GORDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 276 Fed. Appx. 10.

No. 08–5800. CONCHAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 383.

No. 08–5801. GIBSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5803. RIVERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 114.

No. 08–5807. HOANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5808. HOWARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 777.

No. 08–5809. RANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 433.

No. 08–5810. SAWYER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 345.

No. 08–5816. KORNICKI *v.* VINCENT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT LAUREL HIGHLANDS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5818. Sobin *v.* District of Columbia. Ct. App. D. C. Certiorari denied. Reported below: 934 A. 2d 372.

No. 08–5820. Ocasio *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 304, 882 N. E. 2d 341.

No. 08–5821. Stubler *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 169.

No. 08–5823. Harris *v.* Kerestes, Superintendent, State Correctional Institution at Mahanoy, et al. C. A. 3d Cir. Certiorari denied.

No. 08–5824. Johnson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 521 F. 3d 1019.

No. 08–5825. Bailey *v.* Miner, Warden, et al. Ct. App. D. C. Certiorari denied.

No. 08–5826. Toua Hong Chang *v.* Minnesota. C. A. 8th Cir. Certiorari denied. Reported below: 521 F. 3d 828.

No. 08–5828. Williamson *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 08–5829. Wright *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 757.

No. 08–5830. Aguila *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 752.

No. 08–5833. Davis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 263.

No. 08–5834. Thyer *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–5835. Holland *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–5836. Marcusse *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 434.

No. 08–5840. King *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 275 Neb. 899, 750 N. W. 2d 674.

No. 08–5842. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 647.

No. 08–5845. SALAS-PAREDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 889.

No. 08–5846. AUSTIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 281 Fed. Appx. 150.

No. 08–5854. BROWN *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 142.

No. 08–5855. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5860. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 212.

No. 08–5862. MARVIN *v.* MENIFEE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5863. JAMESON *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5865. HARRIS *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5869. MANGUAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 267.

No. 08–5870. COUNTESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 244.

No. 08–5871. ESPARZA-RAMOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–5875. ELLIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 525 F. 3d 960.

No. 08–5876. PROUSALIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–5879. LOPEZ-CUEVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 758.

No. 08–5883. JOHNSON *v.* HUDSON, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 188 Ohio St. 3d 308, 888 N. E. 2d 1090.

No. 08–5884. LOZANO-PEDROZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 362.

No. 08–5892. VILLEGAS-DELGADILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 172.

No. 08–5893. BECKER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 81, 879 N. E. 2d 691.

No. 08–5895. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 343.

No. 08–5899. SRIRAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 493.

No. 08–5900. SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 519 F. 3d 927.

No. 08–5901. YOON SHIK PARK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 278 Fed. Appx. 66.

No. 08–5902. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 966.

No. 08–5906. EADY *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 515 F. 3d 587.

No. 08–5909. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 491.

No. 08–5912. COPE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 527 F. 3d 944.

No. 08–5913. DOWDELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 262.

No. 08–5914. DAVIDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–5916. PARKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 527.

No. 08–5917. ODUNZE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 567.

No. 08–5918. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 538.

No. 08–5919. RANDOLPH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 259.

No. 08–5925. DIEGO-BARRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–5927. CAIN *v.* MENIFEE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 420.

No. 08–5930. MARTINEZ ACEVEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 570.

No. 08–5932. BERNAL-PORTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 536.

No. 08–5933. ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 543.

No. 08–5934. PAJARDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 548.

No. 08–5936. NORWOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 157.

No. 08–5938. TABA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 282 Fed. Appx. 1.

No. 08–5941. SANTIAGO-MELENDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–5942. LEI SHI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 525 F. 3d 709.

No. 08–5943. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 345.

No. 08–5944. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 449.

No. 08–5946. MARQUEZ-RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 847.

No. 08–5948. FUENTES-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 692.

No. 08–5952. SOWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5953. DRAKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 450.

No. 08–5956. SILVA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 14.

No. 08–5960. NEWTON *v.* DAVIS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 44.

No. 08–5962. REISS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 991.

No. 08–5963. SIERRA-QUEZADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 410.

No. 08–5966. KING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–5968. BAZUAYE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 311 Fed. Appx. 382.

No. 08–5973. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 514.

No. 08–5974. VIOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–5976. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 476.

No. 08–5977. WEAVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–5981. MARTIN *v.* OUTLAW, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 08–5987. DUNCAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 901.

No. 08–5988. CAMPOS-MALDONADO, AKA CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 531 F. 3d 337.

No. 08–5990. PATINO-PRADO, AKA MARTINEZ, AKA AMADOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 533 F. 3d 304.

No. 08–6008. PIERRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6009. MOYA-ALEGRIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 647.

No. 08–6011. JARVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 08–6012. SPRAGLING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 370.

No. 08–6017. SWAFFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 512 F. 3d 833.

No. 08–6018. ONDILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 863.

No. 08–6019. THOMPSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 38.

No. 08–6021. HAZEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 239.

No. 08–6022. FLORES-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 312.

No. 08–6024. GUARDIOLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 375.

No. 08–6025. HILL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 279 Fed. Appx. 90.

No. 08–6027. HALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 359.

No. 08–6031. SALDARRIAGA-PALACIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6034. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 470.

No. 08–6035. TYLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 241 Fed. Appx. 779.

No. 08–6038. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 1030.

No. 08–6040. ACCIME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 897.

No. 08–6041. ALCALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6043. MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 610.

No. 08–6054. CARROLL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 352.

No. 08–6057. DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 605.

No. 08–6061. PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6063. WORTHON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 520 F. 3d 1173.

No. 08–6065. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 143.

No. 08–6066. ROSARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 78.

No. 07–1182. MICHIGAN CIVIL RIGHTS INITIATIVE COMMITTEE ET AL. *v.* COALITION TO DEFEND AFFIRMATIVE ACTION ET AL. C. A. 6th Cir. Motions of Mountain States Legal Foundation and Citizens in Charge for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 501 F. 3d 775.

No. 07–1201. HENDRIX *v.* HARRINGTON. Sup. Ct. Kan. Motion of Alliance Defense Fund for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 285 Kan. 53, 169 P. 3d 1025.

No. 07–1213. KENTUCKY *v.* LEACH ET UX. Ct. App. Ky. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 07–1261. DIRECTV, INC. *v.* HOA HUYNH ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in

the consideration or decision of this petition. Reported below: 503 F. 3d 847.

No. 07–1434. Dixie National Life Insurance Co. et al. *v.* Ward, Individually and on Behalf of All Others Similarly Situated. C. A. 4th Cir. Motions of South Carolina Department of Insurance and National Association of Insurance Commissioners for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 257 Fed. Appx. 620.

No. 07–1466. Britton et al. *v.* Bayer Corp.; and

No. 07–1467. Albertoni et al. *v.* Bayer Corp. et al. C. A. 9th Cir. Certiorari denied. The Chief Justice took no part in the consideration or decision of these petitions. Reported below: 318 Fed. Appx. 451.

No. 07–1482. Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division *v.* Mines. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 267 Fed. Appx. 356.

No. 07–1504. Hollonbeck et al. *v.* United States Olympic Committee. C. A. 10th Cir. Certiorari denied. The Chief Justice took no part in the consideration or decision of this petition. Reported below: 513 F. 3d 1191.

No. 07–1527. City of Garland, Texas *v.* Dearmore et al. C. A. 5th Cir. Motion of National League of Cities et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 519 F. 3d 517.

No. 07–1550. Southwestern Bell Telephone Co., dba AT&T Texas *v.* Texas Cable Assn. et al. C. A. 5th Cir. Certiorari denied. The Chief Justice took no part in the consideration or decision of this petition. Reported below: 265 Fed. Appx. 210.

No. 07–1568. New York *v.* Hall. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 10 N. Y. 3d 303, 886 N. E. 2d 162.

No. 07–1579. Marin Alliance for Medical Marijuana et al. *v.* United States. C. A. 9th Cir. Certiorari denied.

JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 259 Fed. Appx. 936.

No. 07–1592. DAMON ET UX. *v.* MOORE ET AL. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 520 F. 3d 98.

No. 07–1598. RUIZ RIVERA *v.* PFIZER PHARMACEUTICALS LLC. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 521 F. 3d 76.

No. 07–10652. SAAVEDRA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 262 Fed. Appx. 789.

No. 07–10690. AVERY *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS, ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 08–52. STEINBUCH *v.* HYPERION BOOKS ET AL. C. A. 8th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 518 F. 3d 580.

No. 08–262. HONEYWELL INTERNATIONAL INC. ET AL. *v.* HAMILTON SUNDSTRAND CORP. C. A. Fed. Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition. Reported below: 523 F. 3d 1304.

No. 08–5143. ROSENDO VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari before judgment denied.

No. 08–5530. MCCRAY *v.* RIOS, WARDEN. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 07–1144. STERNGASS *v.* TOWN OF WOODBURY, NEW YORK, ET AL., 553 U. S. 1033;

No. 07–1381. STERNGASS *v.* PALISADES INTERSTATE PARK COMMISSION ET AL., 554 U. S. 919; and

No. 07–9666. HERNANDEZ *v.* TEXAS, 553 U. S. 1036. Petitions for rehearing denied.

OCTOBER 7, 2008

Miscellaneous Order

No. 08A269. LIBERTARIAN PARTY ET AL. *v.* DARDENNE, SECRETARY OF STATE OF LOUISIANA. Application for stay, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

OCTOBER 13, 2008

Certiorari Denied

No. 08–6719 (08A317). COOEY *v.* STRICKLAND, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 544 F. 3d 588.

OCTOBER 14, 2008

Certiorari Granted—Reversed and Remanded. (See No. 07–10689, *ante*, p. 1.)

Certiorari Dismissed

No. 08–5624. COOMBS *v.* KELCHNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–6045. XIANGYUAN ZHU *v.* ST. FRANCIS HEALTH CENTER ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further

petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 278 Fed. Appx. 825.

Miscellaneous Orders

No. 08M17. HAYES *v.* POTTER, POSTMASTER GENERAL;

No. 08M18. MURPHY *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION;

No. 08M19. MOORE *v.* POTTER, POSTMASTER GENERAL, ET AL.; and

No. 08M20. HENNEBERRY *v.* ING CAPITAL ADVISORS, LLC, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 06–1457. MORGAN STANLEY CAPITAL GROUP INC. *v.* PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, ET AL.; and

No. 06–1462. CALPINE ENERGY SERVICES, L. P., ET AL. *v.* PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, ET AL., 554 U. S. 527. Motion of petitioners to retax costs granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 07–588. ENTERGY CORP. *v.* RIVERKEEPER, INC., ET AL.;

No. 07–589. PSEG FOSSIL LLC ET AL. *v.* RIVERKEEPER, INC.; and

No. 07–597. UTILITY WATER ACT GROUP *v.* RIVERKEEPER, INC., ET AL. C. A. 2d Cir. [Certiorari granted, 552 U. S. 1309.] Motion of the Solicitor General for divided argument granted. Motion of respondents Rhode Island et al. for divided argument denied.

No. 07–1059. UNITED STATES *v.* EURODIF S. A. ET AL.; and

No. 07–1078. USEC INC. ET AL. *v.* EURODIF S. A. ET AL. C. A. Fed. Cir. [Certiorari granted, 553 U. S. 1003.] Motion of the Solicitor General for divided argument granted.

No. 07–1223. BELL *v.* KELLY, WARDEN. C. A. 4th Cir. [Certiorari granted, 553 U. S. 1031.] Motions of Former State Court Judges, National Association of Federal Defenders et al., and Vir-

ginia Association of Criminal Defense Lawyers for leave to file briefs as *amici curiae* granted.

No. 08–5787. REYNOLDS *v.* H&R BLOCK SERVICES, INC., ET AL. C. A. 7th Cir.;

No. 08–6076. HARNED *v.* UNITED STATES. C. A. 4th Cir.; and

No. 08–6294. HARPER *v.* UNITED STATES. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 4, 2008, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 08–6265. IN RE WHEELER;

No. 08–6270. IN RE BOOS; and

No. 08–6321. IN RE WORD. Petitions for writs of habeas corpus denied.

No. 08–6243. IN RE CHARLES. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–6360. IN RE DRABOVSKIY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 08–285. IN RE RICHARDSON; and

No. 08–6277. IN RE HAFED. Petitions for writs of mandamus denied.

No. 08–6142. IN RE FEURTADO. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1

(1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Certiorari Granted

No. 07–1437. CARLSBAD TECHNOLOGY, INC. *v.* HIF BIO, INC., ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 508 F. 3d 659.

Certiorari Denied

No. 07–8568. SHELTON *v.* PHELPS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 464 F. 3d 423.

No. 07–10559. PEREZ-LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 974.

No. 07–10802. KELLOGG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 510 F. 3d 188.

No. 07–10935. GODINO-MADRIGAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 355.

No. 07–11247. GABRILL *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 07–11264. FUTCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 518 F. 3d 887.

No. 07–11347. ALSTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 723 So. 2d 148.

No. 07–11352. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 253.

No. 07–11619. RACHAL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 371.

No. 08–106. DE LOS SANTOS MORA *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 524 F. 3d 183.

No. 08–139. HAYES ET AL. *v.* THOMAS & BETTS CORP. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–143. KIM *v.* CITY OF FEDERAL WAY, WASHINGTON, ET AL. Ct. App. Wash. Certiorari denied.

No. 08–145. Wesley *v.* Society National Bank et al. Ct. App. Ore. Certiorari denied. Reported below: 216 Ore. App. 337, 172 P. 3d 304.

No. 08–150. Cash *v.* NADA Retirement Administrators, Inc., dba NADART. C. A. 6th Cir. Certiorari denied.

No. 08–152. Turinski et al. *v.* Local 104 International Association of Fire Fighters et al. C. A. 3d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 184.

No. 08–154. Tuskusky *v.* Department of Corrections Training Academy. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–155. Skadden *v.* Tarquis Alfonso. Sup. Ct. Tex. Certiorari denied. Reported below: 251 S. W. 3d 52.

No. 08–163. McCann *v.* Cochran et al. C. A. 11th Cir. Certiorari denied. Reported below: 526 F. 3d 1370.

No. 08–166. Stephens *v.* Albemarle County, Virginia, et al. C. A. 4th Cir. Certiorari denied. Reported below: 524 F. 3d 485.

No. 08–167. Hill *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 290 Ga. App. 140, 658 S. E. 2d 863.

No. 08–171. Conner *v.* State Farm Mutual Automobile Insurance Co. C. A. 6th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 438.

No. 08–174. Wang *v.* Prudential Financial Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 362.

No. 08–180. Nawrocki et ux. *v.* Nawrocki et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–185. McAndrew *v.* Texas. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 08–209. Hatton *v.* Grigar. C. A. 5th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 706.

No. 08–213. Lopez *v.* Mukasey, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 241 Fed. Appx. 958.

No. 08–215. NDREKA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 269 Fed. Appx. 13.

No. 08–216. PURTELL ET UX. *v.* MASON. C. A. 7th Cir. Certiorari denied. Reported below: 527 F. 3d 615.

No. 08–224. KIRKLAND *v.* TAMPLIN ET AL. Super. Ct. Madison County, Ga. Certiorari denied.

No. 08–228. KIRKLAND *v.* KIRKLAND ET AL. Super. Ct. Madison County, Ga. Certiorari denied.

No. 08–230. PHU DUC NGUYEN *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 279 Fed. Appx. 127.

No. 08–233. WALLACE *v.* FEDERAL JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 311 Fed. Appx. 524.

No. 08–241. COHEN *v.* BEACHSIDE TWO-I HOMEOWNERS' ASSN. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 534.

No. 08–248. NOLLES ET AL. *v.* STATE COMMITTEE FOR THE REORGANIZATION OF SCHOOL DISTRICTS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 524 F. 3d 892.

No. 08–252. ENVIRONMENTAL CONSERVATION ORGANIZATION *v.* CITY OF DALLAS, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 529 F. 3d 519.

No. 08–253. SIMON *v.* COOK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 873.

No. 08–260. BATES *v.* HARVEY. C. A. 11th Cir. Certiorari denied. Reported below: 518 F. 3d 1233.

No. 08–277. GLENN *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1154, 953 N. E. 2d 88.

No. 08–279. SQUIRE *v.* GEER ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 117 Ohio St. 3d 506, 885 N. E. 2d 213.

No. 08–284. COPELAND *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied. Reported below: 2007-Ohio-6168.

No. 08–286. BELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 184.

No. 08–298. BOHN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 430.

No. 08–299. AGFA CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 520 F. 3d 1326.

No. 08–308. BLOWERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 504.

No. 08–317. SCHULZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 517 F. 3d 606.

No. 08–318. GEDDINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 281.

No. 08–329. HILDENBRAND ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 527 F. 3d 466.

No. 08–338. FLAHERTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 666.

No. 08–344. BOGHGOSIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 267 Fed. Appx. 35.

No. 08–346. ROTH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 267 Fed. Appx. 17.

No. 08–5035. HOWARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 1000, 175 P. 3d 13.

No. 08–5069. MALCOM *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 518 F. 3d 624.

No. 08–5309. ROBINSON *v.* ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 08–5553. WILLIBY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 663.

No. 08–5557. CHU YOUNG YI *v.* TOMPKINS, WARDEN. Super. Ct. Tattnall County, Ga. Certiorari denied.

No. 08–5561. MAZIN *v.* STEINBERG ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5563. MIESSE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 139 Wash. App. 1034.

No. 08–5565. SANDERS *v.* RHODES, ADMINISTRATIVE JUDGE, DISTRICT COURT OF PRINCE GEORGE'S COUNTY, MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 403 Md. App. 614, 943 A. 2d 1245.

No. 08–5568. BOHON *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 82.

No. 08–5576. NUNLEY *v.* SHERRY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5578. MOOLTREY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 450 Mass. 794, 882 N. E. 2d 309.

No. 08–5581. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5585. BUIE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 08–5587. OBIORAH *v.* HAYNES, SUPERINTENDENT, WARREN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 265.

No. 08–5597. WILLIAMS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 116 Ohio St. 3d 1516, 880 N. E. 2d 924.

No. 08–5603. WENSEL *v.* HERNANDEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5606. CARTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 980 So. 2d 473.

No. 08–5608. MORENO-CUEVAS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 104 Conn. App. 288, 934 A. 2d 260.

No. 08–5609. MARSH *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–5610. JACKSON *v.* ROUSSEAU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 754.

No. 08–5612. CLAYTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION (two judgments). C. A. 5th Cir. Certiorari denied.

No. 08–5614. JEN-KANG YANG *v.* FIELDS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5616. PARKER *v.* PARKER. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 976 So. 2d 104.

No. 08–5617. MEINEKE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–5626. UMOREN *v.* MCDONALD'S CORPORATION (Reported below: 963 A. 2d 167); UMOREN *v.* SOPHISTICAT ET AL. (949 A. 2d 617); UMOREN *v.* EXPRESS SHIPPING INTERNATIONAL (949 A. 2d 617); and UMOREN *v.* ALADEKOBA SOPHISTICAT ET AL. (949 A. 2d 1113). Ct. App. D. C. Certiorari denied.

No. 08–5627. TICE *v.* WILSON, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 276 Fed. Appx. 125.

No. 08–5628. BROWN *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 515 F. 3d 1072.

No. 08–5638. LYNN *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 08–5639. LOWE *v.* SEARS, ROEBUCK & CO. Ct. App. D. C. Certiorari denied. Reported below: 949 A. 2d 618.

No. 08–5643. ADAMS *v.* HUNT, SUPERINTENDENT, COLUMBUS CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 264.

No. 08–5644. ANTONSSON *v.* KAST. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5647. HALL *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 08–5654. Lopez-Quezada *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 524 F. 3d 600.

No. 08–5655. Lugo *v.* Cate, Secretary, California Department of Corrections and Rehabilitation, et al. C. A. 9th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 714.

No. 08–5658. Espinal *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 08–5666. Garcia *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 246 S. W. 3d 121.

No. 08–5667. Hawkins *v.* Roper, Superintendent, Potosi Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 08–5670. Orozco *v.* Voss, Director, Coalinga State Hospital. C. A. 9th Cir. Certiorari denied.

No. 08–5681. Hayatullah *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–5682. Haynes *v.* Washington Department of Social and Health Services et al. Ct. App. Wash. Certiorari denied.

No. 08–5691. Beaty *v.* Schriro, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied. Reported below: 509 F. 3d 994.

No. 08–5695. Abrams *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 971 So. 2d 1033.

No. 08–5697. Balistreri *v.* Metropolitan Life Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 345.

No. 08–5700. Sullivan *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–5707. Riddle *v.* Liz Claiborne et al. C. A. 2d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 82.

No. 08–5715. Sears *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 08–5719. Tavia *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 08–5720. Therrien *v.* Martin, Warden, et al. C. A. 2d Cir. Certiorari denied.

No. 08–5726. Lopez *v.* Wallace et al. C. A. 11th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 882.

No. 08–5727. Pitts *v.* Folino, Superintendent, State Correctional Institution at Greene, et al. C. A. 3d Cir. Certiorari denied.

No. 08–5729. Edmond *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division, et al. C. A. 5th Cir. Certiorari denied.

No. 08–5735. Lusick *v.* Palakovich, State Correctional Institution at Smithfield, et al. C. A. 3d Cir. Certiorari denied. Reported below: 270 Fed. Appx. 108.

No. 08–5736. Lawrence *v.* Erickson, Superintendent, State Correctional Institution at Retreat. C. A. 3d Cir. Certiorari denied.

No. 08–5738. Dreher *v.* Power, Administrator, East Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied. Reported below: 273 Fed. Appx. 127.

No. 08–5740. Johnson *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5741. Perry *v.* City of Milwaukee Housing Authority et al. C. A. 7th Cir. Certiorari denied.

No. 08–5745. Benning *v.* Webster et al. C. A. 10th Cir. Certiorari denied.

No. 08–5746. Boyd *v.* Rowley, Superintendent, Missouri Eastern Correctional Center, et al. C. A. 8th Cir. Certiorari denied.

No. 08–5748. Apodaca *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–5750. Brown *v.* Kemp, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 08–5752. Wilbon *v.* Thomas et al. C. A. 6th Cir. Certiorari denied.

No. 08–5754. Turner *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 08–5755. Valentine *v.* Dodd. C. A. 4th Cir. Certiorari denied.

No. 08–5760. DeJesus *v.* Lafler, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 594.

No. 08–5763. Guevara *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 08–5769. Hayes *v.* Anderson, Warden. C. A. 5th Cir. Certiorari denied.

No. 08–5771. Gallano *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1141, 953 N. E. 2d 82.

No. 08–5772. Ford *v.* Martel. C. A. 9th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 777.

No. 08–5774. Velazquez *v.* New York. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 47 App. Div. 3d 422, 848 N. Y. S. 2d 654.

No. 08–5775. Watkins *v.* Vasbinder, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–5778. Dolenz *v.* Brinkmann et al. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 974 So. 2d 18.

No. 08–5779. Horton *v.* Parker, Warden. C. A. 10th Cir. Certiorari denied.

No. 08–5780. Fortt *v.* Artistic Beauty College. C. A. 10th Cir. Certiorari denied.

No. 08–5784. Fautenberry *v.* Mitchell, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 515 F. 3d 614.

No. 08–5789. PEARL *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 677.

No. 08–5790. MCGEE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5792. RAY *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5796. SABEDRA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5802. GRAYSON *v.* IOWA. C. A. 8th Cir. Certiorari denied.

No. 08–5804. DUGAS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–5806. POEHL *v.* RANDOLPH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 540.

No. 08–5811. KASKE *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5812. MARTINEZ *v.* ILLINOIS (two judgments). App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1138, 952 N. E. 2d 729 (first judgment); 377 Ill. App. 3d 1142, 953 N. E. 2d 83 (second judgment).

No. 08–5813. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1122, 955 N. E. 2d 184.

No. 08–5814. SUMRELL *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 972 So. 2d 572.

No. 08–5815. LYON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–5819. BARBER *v.* ZUERCHER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5837. JAMISON *v.* COSTCO WHOLESALE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 738.

No. 08–5839. JUSTICE *v.* RALL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 759.

No. 08–5843. SCOTT *v.* BAZZLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 310.

No. 08–5844. MOKE *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 235 Fed. Appx. 681.

No. 08–5849. THOMAS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 48 App. Div. 3d 314, 852 N. Y. S. 2d 83.

No. 08–5852. WALKER *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5859. PARVIZI *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5864. ALFARO *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 08–5867. IVERSON *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–5872. PACHECO *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 1113, 882 N. E. 2d 871.

No. 08–5874. MEADOWS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 08–5886. NANCE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 982 So. 2d 696.

No. 08–5905. EVANS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 249 Fed. Appx. 201.

No. 08–5907. SITOMPUL *v.* MUKASEY, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 696.

No. 08–5908. OBRIECHT *v.* RAEMISCH, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 517 F. 3d 489.

No. 08–5910. DOWNS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 977 So. 2d 572.

No. 08–5931. BROWNLEE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–5950. SIMMONS *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 08–5961. PADRON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–5964. MAGDALENO *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 528.

No. 08–5970. BROWER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 186 N. C. App. 397, 651 S. E. 2d 390.

No. 08–5982. JEFFERSON *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5985. FLETCHER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 376 Ill. App. 3d 1147, 952 N. E. 2d 732.

No. 08–5991. MILLINGTON *v.* TEMPLE UNIVERSITY SCHOOL OF DENTISTRY. C. A. 3d Cir. Certiorari denied. Reported below: 261 Fed. Appx. 363.

No. 08–5992. MOODY *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5996. COLEMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6010. POLICANO *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 507 F. 3d 111.

No. 08–6013. SHOBE *v.* MCKUNE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 854.

No. 08–6015. BACAS *v.* GEREN, SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 329.

No. 08–6016. KITZMAN *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 38 Kan. App. 2d xxvii, 172 P. 3d 1221.

No. 08–6030. SEARS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 987 So. 2d 1215.

No. 08–6036. ROSENBACH *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1130, 955 N. E. 2d 188.

No. 08–6037. BROWN *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 573.

No. 08–6049. JAMES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 08–6050. RYAN ET VIR *v.* ROMAN CATHOLIC BISHOP OF PROVIDENCE ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 941 A. 2d 174.

No. 08–6051. DENNY *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 38 Kan. App. 2d 724, 172 P. 3d 57.

No. 08–6056. CAPERS *v.* ROGERS, ADMINISTRATOR, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6062. GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 528 F. 3d 481.

No. 08–6067. RUSSELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 537 F. 3d 6.

No. 08–6069. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 14.

No. 08–6071. HENRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 519 F. 3d 68.

No. 08–6072. GILLIAN *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–6073. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 377.

No. 08–6075. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 976.

No. 08–6077. HARNED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 262.

No. 08–6078. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 317.

No. 08–6082. CLARKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 38.

No. 08–6084. CROOK *v.* EL PASO INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 477.

No. 08–6087. POLK *v.* MENIFEE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 220.

No. 08–6088. PENA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 534 F. 3d 92.

No. 08–6090. ZANDI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 56.

No. 08–6091. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 304.

No. 08–6092. ZAMARRIPA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 311.

No. 08–6097. GOMEZ *v.* UNITED STATES (Reported below: 280 Fed. Appx. 374); SANCHEZ-VASQUEZ *v.* UNITED STATES; RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES (503 F. 3d 381); BLANCO-ACOSTA, AKA COSTA *v.* UNITED STATES (281 Fed. Appx. 368); GUZMAN-SALDIVAR *v.* UNITED STATES (262 Fed. Appx. 594); and GARCIA-GARCIA *v.* UNITED STATES (281 Fed. Appx. 292). C. A. 5th Cir. Certiorari denied.

No. 08–6098. ROBINSON *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6100. PENTZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 101.

No. 08–6103. JEREMIAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 667.

No. 08–6104. Martis *v.* McKune, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 734.

No. 08–6109. Smith *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 209.

No. 08–6111. Robles-Robles, aka Ortiz-Cabrera, aka Lopez-Loya *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 378.

No. 08–6116. King *v.* Federal Bureau of Prisons et al. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 2.

No. 08–6117. Monday *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–6121. Edelen *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 539 F. 3d 83.

No. 08–6124. Sparrow *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–6126. Servin-Terrasas, aka Servin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 148.

No. 08–6130. Marler *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 527 F. 3d 874.

No. 08–6133. Shields *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 281 Fed. Appx. 100.

No. 08–6134. Avilez-Zamora *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 554.

No. 08–6135. Brennan *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 51.

No. 08–6137. Bens *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 307.

No. 08–6138. Haley *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 529 F. 3d 1308.

No. 08–6143. Francis *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–6144. Hooper *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 929.

No. 08–6145. Gray *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 1099.

No. 08–6147. Bello-Juarez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 646.

No. 08–6148. Ballardo-Villapudua *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 203 Fed. Appx. 779.

No. 08–6149. Aguirre-Calles *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 855.

No. 08–6153. Coleman *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 525 F. 3d 665.

No. 08–6157. Rodriguez *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–6161. Grant *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 08–6162. Giterrez Martinez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 809.

No. 08–6163. Eccleston *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 521 F. 3d 1249.

No. 08–6164. Gutierrez Carrasco *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 291.

No. 08–6166. Dickerson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 733.

No. 08–6167. Dominguez-Rivera *v.* United States (Reported below: 280 Fed. Appx. 386); Martinez-Soto *v.* United States (280 Fed. Appx. 372); Medrano-Mora *v.* United States (280 Fed. Appx. 409); Moreno-Tejeda, aka Hernandez-Campos *v.* United States (280 Fed. Appx. 379); Mosquera-Rengifo *v.* United States (280 Fed. Appx. 385); Ortiz-Corral *v.* United

States (285 Fed. Appx. 114); and Soto-Cervantes, aka Morales Estrada *v.* United States (281 Fed. Appx. 290). C. A. 5th Cir. Certiorari denied.

No. 08–6168. Kelly *v.* Budge, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 1.

No. 08–6169. Lee *v.* Kentucky Cabinet for Health and Family Services et al. Ct. App. Ky. Certiorari denied.

No. 08–6171. Parrish *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 387.

No. 08–6173. Beltran-Gabito *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 861.

No. 08–6174. Brown *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 518.

No. 08–6176. Brown *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 577.

No. 08–6177. Edwards *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 236.

No. 08–6178. Castro *v.* Drug Enforcement Administration et al. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 557.

No. 08–6179. Blanco Rubio *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 266.

No. 08–6180. Ibn Shabazz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 387.

No. 08–6181. Street *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 531 F. 3d 703.

No. 08–6186. Menchaca-Valles *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 243.

No. 08–6187. Parker *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–6188. Jenkins *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 537 F. 3d 1.

No. 08–6189. MARTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 746.

No. 08–6191. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 244.

No. 08–6192. CRAWFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 520 F. 3d 1072.

No. 08–6195. HERNANDEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 383.

No. 08–6196. IBANEZ-ESPINOSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 490.

No. 08–6202. HASSAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 271.

No. 08–6203. GREER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–6206. VIGIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 730.

No. 08–6211. PRATT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 533 F. 3d 34.

No. 08–6212. MCGLON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 257.

No. 08–6214. CAPLAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 61.

No. 08–6217. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 992.

No. 08–6218. QUINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 871.

No. 08–6221. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 278.

No. 08–6236. HYPPOLITE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 89.

No. 08–6237. GALLAGHER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6238. FINLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–6239. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 572.

No. 08–6240. SAUNDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 264.

No. 08–6241. SPANGLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 693.

No. 08–6242. COOK *v.* DREW, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6248. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 940.

No. 08–6254. CHISOLM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 260.

No. 08–6262. KEYS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 411.

No. 08–6263. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6266. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 241.

No. 08–6267. BRUCE ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 256 Fed. Appx. 520.

No. 08–6274. RAMIREZ TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 394.

No. 08–6275. WONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 2.

No. 08–6279. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–6280. JACOBS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 311 Fed. Appx. 535.

No. 08–6281. STUMPNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6285. A. B. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 529 F. 3d 1275.

No. 08–6286. BUI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 381.

No. 08–6290. MURPHY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6292. RUIDIAZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 529 F. 3d 25.

No. 08–6297. ZHENG QU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 615.

No. 08–6301. TORRES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 245.

No. 08–6303. DE LA CRUZ-CUEVAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 581.

No. 08–6305. RUELAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 528.

No. 08–6307. PLAZA-UZETA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 522.

No. 08–6309. SARSAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 585.

No. 08–6317. GRADINARIU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 541.

No. 08–6319. LOVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 259.

No. 08–6322. WINKELMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–6325. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 999.

No. 08–6330. O'KEEFE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6332. NAJERA-GORDILLO, AKA GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 461.

No. 08–6341. TYREE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 279 Fed. Appx. 31.

No. 08–6343. MELVIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 215.

No. 08–6344. WHITING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 595.

No. 08–6345. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 89.

No. 08–6349. BENITEZ *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 08–6354. WOODWARD *v.* ZENK, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 809.

No. 07–1390. MARLOWE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 514 F. 3d 508.

JUSTICE SCALIA, dissenting.

Patrick Marlowe was a prison guard whose failure to provide needed medical care caused a prisoner's death. He was convicted of deprivation of constitutional rights in violation of 18 U. S. C. § 242. Under the then-applicable Sentencing Guidelines, the recommended sentence for civil rights violations was calculated using the base offense level of the crime underlying the civil rights violation. Since Marlowe's jury had not been asked to determine his mental state in connection with the death, the facts resolved by the jury verdict convicted him of no more than involuntary manslaughter through criminal negligence. The base offense level for that crime was 10, which, under the other circumstances of Marlowe's offense, would have produced a recommended sentence of 51 to 63 months. United States Sentencing Commission, Guidelines Manual § 2A1.4 (Nov. 2002). The District Judge, however, determined that Marlowe had possessed the "malice aforethought" required for second-degree murder, which increased the base offense level from 10 to 33, producing a Guidelines-recommended sentence of life. The District Judge sentenced Marlowe to life in prison.

On appeal, the Sixth Circuit applied a presumption of reasonableness to the sentence[1] because, in light of the judge-found fact that Marlowe had possessed the state of mind required for second-degree murder, the sentence was consistent with the Guidelines. *United States* v. *Conatser*, 514 F. 3d 508, 526–527 (2008).[2] In other words, the Sixth Circuit found the life sentence lawful solely because of the judge-found fact that Marlowe had acted with malice aforethought. This falls short of what we have held the right to trial by jury demands: "Any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt." *United States* v. *Booker*, 543 U. S. 220, 244 (2005).

I would grant the petition for certiorari, so that we may either forthrightly apply *Booker* or announce that the case is overruled.

No. 07–1486. PENNSYLVANIA *v.* DUNLAP. Sup. Ct. Pa. Certiorari denied. Reported below: 596 Pa. 147, 941 A. 2d 671.

CHIEF JUSTICE ROBERTS, with whom JUSTICE KENNEDY joins, dissenting.

North Philly, May 4, 2001. Officer Sean Devlin, Narcotics Strike Force, was working the morning shift. Undercover surveillance. The neighborhood? Tough as a three-dollar steak. Devlin knew. Five years on the beat, nine months with the Strike Force. He'd made fifteen, twenty drug busts in the neighborhood.

Devlin spotted him: a lone man on the corner. Another approached. Quick exchange of words. Cash handed over; small objects handed back. Each man then quickly on his own way.

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[1] For the reasons set forth in my separate opinion in *Rita* v. *United States*, 551 U. S. 338, 368 (2007) (concurring in part and concurring in judgment), I believe that it is improper for courts to review for substantive reasonableness sentences that are within the statutory limits. I give *stare decisis* effect, however, to the Court's contrary holding in that case.

[2] Only one of the three-judge panel said that she would have upheld the sentence as reasonable even if it had been calculated as an upward departure from the Guidelines-recommended sentence. 514 F. 3d, at 528–532 (Moore, J., concurring in part and concurring in judgment). If substantive reasonableness review has any meaning, I doubt that a life sentence for negligent homicide could be sustained.

Devlin knew the guy wasn't buying bus tokens. He radioed a description and Officer Stein picked up the buyer. Sure enough: three bags of crack in the guy's pocket. Head downtown and book him. Just another day at the office.

* * *

That was not good enough for the Pennsylvania Supreme Court, which held in a divided decision that the police lacked probable cause to arrest the defendant. The court concluded that a "single, isolated transaction" in a high-crime area was insufficient to justify the arrest, given that the officer did not actually see the drugs, there was no tip from an informant, and the defendant did not attempt to flee. 596 Pa. 147, 159, 941 A. 2d 671, 679 (2007). I disagree with that conclusion, and dissent from the denial of certiorari. A drug purchase was not the only possible explanation for the defendant's conduct, but it was certainly likely enough to give rise to probable cause.

The probable-cause standard is a "nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Maryland* v. *Pringle*, 540 U. S. 366, 370 (2003) (internal quotation marks omitted). What is required is simply "a reasonable ground for belief of guilt," *id.*, at 371 (same)—a "probability, and not a prima facie showing, of criminal activity," *Illinois* v. *Gates*, 462 U. S. 213, 235 (1983) (same). "[A] police officer may draw inferences based on his own experience in deciding whether probable cause exists," *Ornelas* v. *United States*, 517 U. S. 690, 700 (1996), including inferences "that might well elude an untrained person," *United States* v. *Cortez*, 449 U. S. 411, 418 (1981).

On the facts of this case, I think the police clearly had probable cause to arrest the defendant. An officer with drug interdiction experience in the neighborhood saw two men on a street corner—with no apparent familiarity or prior interaction—make a quick hand-to-hand exchange of cash for "'small objects.'" 596 Pa., at 150, 941 A. 2d, at 673. This exchange took place in a high-crime neighborhood known for drug activity, far from any legitimate businesses. Perhaps it is possible to imagine innocent explanations for this conduct, but I cannot come up with any remotely as likely as the drug transaction Devlin believed he had witnessed. In any event, an officer is not required to eliminate all

innocent explanations for a suspicious set of facts to have probable cause to make an arrest. As we explained in *Gates*, "[i]n making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." 462 U. S., at 244, n. 13.

The Pennsylvania Supreme Court emphasized that the police did not actually see any drugs. 596 Pa., at 159, 941 A. 2d, at 679. But Officer Devlin and his partner were conducting undercover surveillance. From a distance, it would be difficult to have a clear view of the small objects that changed hands. As the Commonwealth explains in its petition for certiorari, the "classic" drug transaction is a hand-to-hand exchange, on the street, of cash for small objects. Pet. for Cert. 5–8. The Pennsylvania Supreme Court's decision will make it more difficult for the police to conduct drug interdiction in high-crime areas, unless they employ the riskier practice of having undercover officers actually make a purchase or sale of drugs.

The Pennsylvania court also noted that the defendant did not flee. 596 Pa., at 159, 941 A. 2d, at 679. Flight is hardly a prerequisite to a finding of probable cause. A defendant may well decide that the odds of escape do not justify adding another charge to that of drug possession. And of course there is no suggestion in the record that the defendant had any chance to flee—he was caught redhanded.

Aside from its importance for law enforcement, this question has divided state courts, a traditional ground warranting review on certiorari. This Court's Rule 10(b). The New Jersey Supreme Court has held that an "experienced narcotics officer" had probable cause to make an arrest when—in a vacant lot in a high-drug neighborhood—he "saw defendant and his companion give money to [a] third person in exchange for small unknown objects." *State* v. *Moore*, 181 N. J. 40, 46–47, 853 A. 2d 903, 907 (2004). The Rhode Island Supreme Court reached the same conclusion in a case where the defendants—through their car windows—exchanged cash for a small "bag of suspected narcotics." *State* v. *Castro*, 891 A. 2d 848, 851–854 (2006). In contrast, the Colorado Supreme Court held that a hand-to-hand exchange of unknown objects did not give the police probable cause to make an arrest, even where one of the men was a known drug dealer. *People* v. *Ratcliff*, 778 P. 2d 1371, 1377–1378 (1989). All these

cases have unique factual wrinkles, as any probable-cause case would, but the core fact pattern is the same: experienced police officers observing hand-to-hand exchanges of cash for small, unknown objects in high-crime neighborhoods.

The Pennsylvania Supreme Court speculated that such an exchange could have been perfectly innocent. But as Judge Friendly has pointed out, "[j]udges are not required to exhibit a naiveté from which ordinary citizens are free." *United States* v. *Stanchich*, 550 F. 2d 1294, 1300 (CA2 1977). Based not only on common sense but also his experience as a narcotics officer and his previous work in the neighborhood, Officer Devlin concluded that what happened on that street corner was probably a drug transaction. That is by far the *most* reasonable conclusion, even though our cases only require it to be *a* reasonable conclusion.

I would grant certiorari and reverse the judgment of the Pennsylvania Supreme Court.

No. 07–11584. AVERY *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 08–66. DAVIS *v.* GEORGIA. Sup. Ct. Ga. Motion of The Innocence Project for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 283 Ga. 438, 660 S. E. 2d 354.

No. 08–76. BRUNSON, SUPERINTENDENT, CLALLAM BAY CORRECTIONAL INSTITUTION *v.* HARRIS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 515 F. 3d 1051.

No. 08–288. BRAQUET *v.* UNITED STATES. C. A. 5th Cir. Certiorari before judgment denied.

No. 08–5710. OGUNSALU *v.* NAIR ET AL. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 264 Fed. Appx. 672.

No. 08–6693 (08A307). KELLY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by

him referred to the Court, denied. Certiorari denied. Reported below: 296 Fed. Appx. 381.

No. 08–6722 (08A319). COOEY *v.* KERNS, WARDEN. Sup. Ct. Ohio. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 07–9749. PAGE *v.* ST. LAWRENCE ET AL., 553 U. S. 1037. Petition for rehearing denied.

OCTOBER 20, 2008

Miscellaneous Orders

No. 08M21. YOUNG *v.* UNITED STATES. Motion for leave to proceed as a veteran denied.

No. 137, Orig. MONTANA *v.* WYOMING ET AL. Barton H. Thompson, Esq., of Stanford, Cal., is appointed the Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his reports, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may herafter direct.

Motion of Wyoming to dismiss the bill of complaint is referred to the Special Master for further proceedings. Motion of Anadarko Petroleum Corporation for leave to file a brief as *amicus curiae* is referred to the Special Master. [For earlier order herein, see, *e. g.*, 552 U. S. 1175.]

No. 08–5885. RING *v.* RAMEKER. C. A. 7th Cir.;

No. 08–6339. DISLER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass.; and

No. 08–6450. Hernandez-Sanchez *v.* United States. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 10, 2008, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 08–5848. In re Williams. Petition for writ of mandamus denied.

Certiorari Granted

No. 08–108. Flores-Figueroa *v.* United States. C. A. 8th Cir. Certiorari granted. Reported below: 274 Fed. Appx. 501.

Certiorari Denied

No. 07–1363. Jimenez Viracacha et al. *v.* Mukasey, Attorney General. C. A. 7th Cir. Certiorari denied. Reported below: 518 F. 3d 511.

No. 07–11410. Cordova *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 895.

No. 07–11460. Moore *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 594 Pa. 619, 937 A. 2d 1062.

No. 07–11541. Sykes *v.* Delaware. Sup. Ct. Del. Certiorari denied. Reported below: 953 A. 2d 261.

No. 07–11615. Tirado *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 919.

No. 08–35. Stephens *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 514 F. 3d 703.

No. 08–61. Djokovic *v.* Mukasey, Attorney General. C. A. 6th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 505.

No. 08–91. Stauber *v.* McGrath. Ct. App. Ohio, Fairfield County. Certiorari denied. Reported below: 2007-Ohio-6296.

No. 08–181. Hollywood *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 721, 182 P. 3d 590.

No. 08–182. Canyon County, Idaho *v.* Syngenta Seeds, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 519 F. 3d 969.

No. 08–183. Heritage Coal Co., LLC, fka Peabody Coal Co., LLC *v.* Ambrosia Land Investments, LLC, fka Wilke Window & Door Co., Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 521 F. 3d 778.

No. 08–184. 114 Tenth Avenue Assn., Inc. *v.* NYCTL 1999–1 Trust et al. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 44 App. Div. 3d 576, 845 N. Y. S. 2d 235.

No. 08–186. Sewerage and Water Board of New Orleans *v.* Bennett et al. C. A. 5th Cir. Certiorari denied.

No. 08–189. Stroman Realty, Inc. *v.* Antt et al. C. A. 5th Cir. Certiorari denied. Reported below: 528 F. 3d 382.

No. 08–194. Vesom *v.* Atchison Hospital Assn. et al. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 624.

No. 08–197. Lincoln North Development Corp. *v.* Town of Kearny, New Jersey, et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–201. Arch Lighting Group, Inc. *v.* Genlyte Thomas Group LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 278 Fed. Appx. 1004.

No. 08–206. Fernandez *v.* Arizona. Ct. App. Ariz. Certiorari denied. Reported below: 216 Ariz. 545, 169 P. 3d 641.

No. 08–208. Bowen *v.* Cheuvront, Judge, District Court of Nebraska, Third District. C. A. 8th Cir. Certiorari denied. Reported below: 521 F. 3d 860.

No. 08–222. White Lion Van Lines, Inc., et al. *v.* Palm Beach County, Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 886.

No. 08–244. Connecticut *v.* Cook. Sup. Ct. Conn. Certiorari denied. Reported below: 287 Conn. 237, 947 A. 2d 307.

No. 08–249. Arrow Electronics, Inc. *v.* E.ON AG et al. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 551.

No. 08–280. Slough *v.* Frost. Sup. Ct. Ohio. Certiorari denied. Reported below: 118 Ohio St. 3d 1430, 887 N. E. 2d 1200.

No. 08–300. Jackson, as Next Friend and Parent of Jackson *v.* Mix et al. C. A. 6th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 361.

No. 08–331. Mirch *v.* State Bar of Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1477, 238 P. 3d 822.

No. 08–332. Morales-Garza *v.* Lorenzo-Giguere, Special Litigation Counsel, Voting Section, Department of Justice, Civil Rights Division. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 444.

No. 08–336. Harrison et al. *v.* United States; and
No. 08–6365. Harrison *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 315.

No. 08–342. Diggs *v.* DiGuglielmo, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied.

No. 08–354. Mark *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 284 Fed. Appx. 946.

No. 08–356. Spielvogel *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 823.

No. 08–380. Bontkowski *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 08–387. Tapanes *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 617.

No. 08–391. Fernebok et al. *v.* District of Columbia. C. A. D. C. Cir. Certiorari denied.

No. 08–5001. Evans *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 236.

No. 08–5342. Villegas *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institu-

TIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 378.

No. 08–5362. FRAZIER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 812.

No. 08–5433. JACKSON *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 615.

No. 08–5470. OVERSTREET *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 877 N. E. 2d 144.

No. 08–5832. TAYLOR *v.* FRISBY. Ct. App. Ohio, Allen County. Certiorari denied. Reported below: 2008-Ohio-279.

No. 08–5838. JAMISON *v.* SMITH FOOD & DRUG, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 723.

No. 08–5841. MAPA *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5850. WASHINGTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5851. YOUNG *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–5853. BARBER *v.* JONES, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 710.

No. 08–5856. SHAW *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5857. HALULAKOS *v.* KRYSEVIG ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–5866. ROBINSON *v.* CHURCH ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5868. HARDAWAY *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–5877. PETEREC *v.* NEW YORK. County Ct., Sullivan County, N. Y. Certiorari denied.

No. 08–5880. JACKSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 45 App. Div. 3d 433, 846 N. Y. S. 2d 126.

No. 08–5881. LEBBOS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–5882. KYLES *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5887. WARNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5888. SIMPKINS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 117 Ohio St. 3d 420, 884 N. E. 2d 568.

No. 08–5889. WRIGHT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5891. BOLAND *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 876.

No. 08–5897. MALEK *v.* FRIEL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 659.

No. 08–5903. EVANS *v.* POPE ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5904. STEWART *v.* U. S. BANK, N. A. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 08–5911. DORSEY *v.* KRAVCHUK ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–5915. LUNA *v.* HORNSBY ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–5922. CADOGAN *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5926. CARTER *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5967. LATHAM *v.* MUNICIPALITY OF ANCHORAGE, ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 165 P. 3d 663.

No. 08–5969. MAYS *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–5998. NORTON *v.* CENTRAL INTELLIGENCE AGENCY. C. A. 9th Cir. Certiorari denied.

No. 08–6000. CALHOUN *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. Commw. Ct. Pa. Certiorari denied.

No. 08–6006. WELLS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–6023. GADOMSKI *v.* BURKE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 781.

No. 08–6046. MARTIN *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6079. JOHNSON *v.* BURT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 08–6080. ROOT *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 755.

No. 08–6105. LEONOR *v.* BRITTEN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 574.

No. 08–6110. REDMOND *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6113. DILLON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–6119. LATHAN *v.* JEFFREYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6140. FORD *v.* BURT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 08–6141. GUILBEAU *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–6155. EISIMINGER *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6156. HIGGINBOTHAM *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 983 So. 2d 582.

No. 08–6194. GOLPHIN *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 519 F. 3d 168.

No. 08–6197. SANDERS *v.* GOLDBERG WEISMAN & CAIRO LTD. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 372 Ill. App. 3d 1099, 940 N. E. 2d 307.

No. 08–6198. BACON *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6225. WEST-BEY *v.* PRUETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 250.

No. 08–6233. GRAY *v.* BEREZNAK. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 08–6235. IMBACH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–6296. SMALL *v.* LANTZ, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. Sup. Ct. Conn. Certiorari denied. Reported below: 286 Conn. 707, 946 A. 2d 1203.

No. 08–6304. SKILLICORN *v.* LARKINS, WARDEN, ET AL. Sup. Ct. Mo. Certiorari denied.

No. 08–6310. DUQUE *v.* ERWOOD. C. A. 11th Cir. Certiorari denied.

No. 08–6323. SANTILLANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 540 F. 3d 428.

No. 08–6333. CHILDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6340. C. A. L., A JUVENILE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6348. PETTIS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 186 N. C. App. 116, 651 S. E. 2d 231.

No. 08–6353. SMITH *v.* BERNANKE. C. A. 6th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 356.

No. 08–6363. HILARIO-HILARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 529 F. 3d 65.

No. 08–6364. INGRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 173.

No. 08–6366. HOGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 964.

No. 08–6373. PUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 222.

No. 08–6376. MACKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 249.

No. 08–6377. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 612.

No. 08–6382. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 616.

No. 08–6386. ROHDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6387. STRAHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6388. RUBALCABA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 423.

No. 08–6389. MARTINEZ-SANTIAGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 Fed. Appx. 104.

No. 08–6391. LOWERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 64.

No. 08–6393. TINGLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 524 F. 3d 839.

No. 08–6394. CRISOLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 412.

No. 08–6395. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 519.

No. 08–6396. EMBRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 641.

No. 08–6397. BALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 880.

No. 08–6402. RIVAS-SALINAS, AKA CARRILLO-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 196.

No. 08–6403. SJOTHUN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–6407. RAMIREZ-CONTRERAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 739.

No. 08–6409. NORTON *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 9th Cir. Certiorari denied.

No. 08–6410. WHYLIE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 954 A. 2d 448.

No. 08–6414. CARTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 530 F. 3d 565.

No. 08–6421. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6422. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 214.

No. 08–6425. BULLOCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 376.

No. 08–6427. BUCKLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 525 F. 3d 629.

No. 08–6428. CULBERT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 535 F. 3d 650.

No. 08–6429. CLASEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6432. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 526 F. 3d 155.

No. 08–6433. POLK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 195.

No. 08–6434. WINKELMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–6440. BERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 967.

No. 08–6442. HOLYFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 129.

No. 08–6447. FALCIGLIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–6451. SKANNAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 509.

No. 08–6452. FORBES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 1273.

No. 08–6453. GUTIERREZ-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 645.

No. 08–6455. TRUCCHIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 836.

No. 08–6460. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 150.

No. 08–6464. TOWNSEND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 285.

No. 08–6466. LINARES-HERNANDEZ *v.* UNITED STATES (Reported below: 284 Fed. Appx. 128); and GAMEZ-SILVA *v.* UNITED STATES (289 Fed. Appx. 827). C. A. 5th Cir. Certiorari denied.

No. 08–6471. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6473. CUESTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 358.

No. 08–6481. DRENNON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 516 F. 3d 160.

No. 08–6484. CHING TANG LO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 467.

No. 08–6485. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 950.

No. 08–6489. BRADSHAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 264.

No. 08–6490. RAUCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 730.

No. 08–6493. THORNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 266 Fed. Appx. 96.

No. 07–1559. M. M., BY AND THROUGH HER PARENT AND NATURAL GUARDIAN, L. R. *v.* SPECIAL SCHOOL DISTRICT NO. 1, MINNEAPOLIS, MINNESOTA. C. A. 8th Cir. Motion of Minnesota Disability Law Center for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 512 F. 3d 445.

No. 08–188. VALDERRAMA *v.* HONEYWELL TECHNOLOGY SOLUTIONS, INC. C. A. 4th Cir. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition. Reported below: 267 Fed. Appx. 256.

No. 08–5385. WALKER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 282 Ga. 774, 655 S. E. 2d 439.

Statement of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

The question presented by the petition for certiorari is whether Georgia's current administration of its death penalty violates the Eighth Amendment's guarantee against arbitrariness and discrimination in capital sentencing. Specifically, petitioner charges that the Georgia Supreme Court has "fail[ed] to: (1) conduct meaningful proportionality review, and (2) enforce reporting requirements under Georgia's capital sentencing scheme," as is required to ensure that only the most culpable offenders are put to death. Pet. for Cert. i. In its response to the petition, the State persuasively argues that petitioner did not raise and litigate these claims in state court. That argument provides a legitimate basis for this Court's decision to deny review. I write separately to emphasize that the Court's denial has no precedential effect, see *Teague* v. *Lane*, 489 U. S. 288, 296 (1989), and to note that petitioner's submission is supported by our prior opinions evaluating the constitutionality of the Georgia statute.

Justice Stewart was the principal architect of our death penalty jurisprudence during his tenure on the Court. In his separate opinion in *Furman* v. *Georgia*, 408 U. S. 238, 306 (1972) (concurring), he observed that death sentences imposed pursuant to Georgia's capital sentencing scheme were "cruel and unusual in the same way that being struck by lightning is cruel and unusual." *Id.*, at 309. The Georgia statute in effect at that time placed unfettered discretion in the hands of juries, resulting in the arbitrary, and often discriminatory, issuance of capital sentences. Justice Stewart concluded that the Eighth Amendment cannot tolerate the infliction of a death sentence under a legal system that permits this unique penalty to be wantonly and freakishly imposed. *Id.*, at 310.

The Georgia Legislature amended its capital sentencing scheme after *Furman*, and a challenge to the new scheme reached this Court in *Gregg* v. *Georgia*, 428 U. S. 153 (1976). Our decision in that case to uphold the later enacted statute was founded on an understanding that the new procedures the statute prescribed would protect against the imposition of death sentences influenced by impermissible factors such as race. Among the new procedures was a requirement that the Georgia Supreme Court "compar[e] each death sentence with the sentences imposed on similarly situated defendants to ensure that the sentence of death in a particular case is not disproportionate." *Id.*, at 198 (joint opinion of Stewart, Powell, and STEVENS, JJ.). We assumed that the court would consider whether there were "similarly situated defendants" who had *not* been put to death because that inquiry is an essential part of any meaningful proportionality review.

That assumption was confirmed a few years later in *Zant* v. *Stephens*, 462 U. S. 862 (1983). The question in that case was whether a death sentence was valid notwithstanding the jury's reliance on an invalid aggravating circumstance. As in *Gregg*, our decision to uphold the sentence "depend[ed] in part on the existence of an important procedural safeguard, the mandatory appellate review of each death sentence by the Georgia Supreme Court to avoid arbitrariness and to assure proportionality." 462 U. S., at 890. In response to our certified question regarding the operation of the State's capital sentencing scheme, the Georgia Supreme Court expressly stated that its proportionality review "'uses for comparison purposes not only similar cases in which death was imposed, but similar cases in which death was not

imposed.'" *Id.*, at 880, n. 19.[1] That approach seemed judicious because, quite obviously, a significant number of similar cases in which death was not imposed might well provide the most relevant evidence of arbitrariness in the sentence before the court.

The opinions in another Georgia case, *McCleskey* v. *Kemp*, 481 U. S. 279 (1987), make it abundantly clear that there is a special risk of arbitrariness in cases that involve black defendants and white victims. See also *Turner* v. *Murray*, 476 U. S. 28, 33–37 (1986) (plurality and majority opinions) (discussing the heightened risks of prejudice that inhere in the prosecution of interracial capital offenses). Although there is some indication that those risks have diminished over time, at least the race-of-victim effect persists. See Baldus & Woodworth, Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception, 53 DePaul L. Rev. 1411, 1424–1426 (2004).

It is against that backdrop that I find this case, which involves a black defendant and a white victim, particularly troubling. The State's evidence showed that, on the night of the murder, petitioner and an accomplice drove to the victim's home. After petitioner drew the victim outside, the two engaged in a struggle and petitioner stabbed the victim 12 times. While his accomplice collected the victim's wallet, petitioner used the victim's keys to try to gain access to his house, stating that he "had 'one more to kill.'" When a woman inside the house yelled that she had a gun, petitioner and his accomplice fled. 282 Ga. 774, 775, 653 S. E. 2d 439, 443 (2007). The jury found petitioner guilty of murder, felony murder, armed robbery, aggravated assault, at-

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[1] The salient aspects of Georgia's capital sentencing scheme have changed little since we evaluated them in *Gregg* and *Zant*. By statute, the State must prove at least one of an enumerated list of aggravating circumstances for an offense to be death eligible. Ga. Code Ann. § 17–10–30(b) (2008). The jury then has complete discretion to weigh all aggravating and mitigating factors in determining the sentence. Georgia law requires the State Supreme Court to review each death sentence to determine whether it "was imposed under the influence of passion, prejudice, or any other arbitrary factor" and whether it "is excessive or disproportionate to the penalty imposed in similar cases." § 17–10–35(c). The trial court must in each case transmit the entire record and transcript, along with a special report prepared by the trial judge, to facilitate appellate review. § 17–10–35(a).

tempted burglary, and possession of a firearm during the commission of a crime. After the penalty phase proceeding, the jury concluded that the State had proved five statutory aggravating factors (two of which the Georgia Supreme Court later found invalid, *id.*, at 781, 653 S. E. 2d, at 447), and it sentenced petitioner to death.

Rather than perform a thorough proportionality review to mitigate the heightened risks of arbitrariness and discrimination in this case, the Georgia Supreme Court carried out an utterly perfunctory review. Its undertaking consisted of a single paragraph, only the final sentence of which considered whether imposition of the death penalty in this case was proportionate as compared to the sentences imposed for similar offenses. And even then the court stated its review in the most conclusory terms: "The cases cited in the Appendix support our conclusion that [petitioner's] punishment is not disproportionate in that each involved a deliberate plan to kill and killing for the purpose of receiving something of monetary value." *Id.*, at 782, 653 S. E. 2d, at 447–448. The appendix consists of a string citation of 21 cases in which the jury imposed a death sentence; it makes no reference to the facts of those cases or to the aggravating circumstances found by the jury.

Had the Georgia Supreme Court looked outside the universe of cases in which the jury imposed a death sentence, it would have found numerous cases involving offenses very similar to petitioner's in which the jury imposed a sentence of life imprisonment. See, *e. g.*, *Jones* v. *State*, 279 Ga. 854, 622 S. E. 2d 1 (2005); *Spickler* v. *State*, 276 Ga. 164, 575 S. E. 2d 482 (2003); *Cross* v. *State*, 271 Ga. 427, 520 S. E. 2d 457 (1999); *Jenkins* v. *State*, 268 Ga. 468, 491 S. E. 2d 54 (1997); *LeMay* v. *State*, 265 Ga. 73, 453 S. E. 2d 737 (1995) (the circumstances of the offense are described in *LeMay* v. *State*, 264 Ga. 263, 443 S. E. 2d 274 (1994)); *Cobb* v. *State*, 250 Ga. 1, 295 S. E. 2d 319 (1982). If the Georgia Supreme Court had expanded its inquiry still further, it would have discovered many similar cases in which the State did not even seek death. See, *e. g.*, *Davis* v. *State*, 281 Ga. 871, 644 S. E. 2d 113 (2007); *Wiggins* v. *State*, 280 Ga. 627, 632 S. E. 2d 80 (2006); *Escobar* v. *State*, 279 Ga. 727, 620 S. E. 2d 812 (2005); *Stanley* v. *State*, 261 Ga. 412, 405 S. E. 2d 493 (1991). Cases in both of these categories are eminently relevant to the question whether

a death sentence in a given case is proportionate to the offense.[2] The Georgia Supreme Court's failure to acknowledge these or any other cases outside the limited universe of cases in which the defendant was sentenced to death creates an unacceptable risk that it will overlook a sentence infected by impermissible considerations.[3]

Particularly troubling is that the shortcomings of the Georgia Supreme Court's review are not unique to this case. In the years immediately following *Gregg*, it was that court's regular practice to include in its review cases that did not result in a death sentence. That practice began to change around the time this Court decided *Pulley* v. *Harris*, 465 U. S. 37 (1984). We stated in that case that the Eighth Amendment does not require comparative proportionality review of every capital sentence. *Id.*, at 44–46; see also *McCleskey*, 481 U. S., at 306 ("[W]here the statutory procedures adequately channel the sentencer's discretion, such proportionality review is not constitutionally required"). But that assertion was intended to convey our recognition of differences among the States' capital schemes and the fact that we consider statutes as we find them, 465 U. S., at 45; it was not

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[2] JUSTICE THOMAS states that the Georgia Supreme Court in fact "considered a life sentence in its proportionality review" by examining the sentence of petitioner's accomplice. *Post*, at 989, n. 2 (concurring opinion). As the concurring opinion elsewhere notes, however, the accomplice "was ineligible for the death penalty because he was adjudged mentally retarded." *Post*, at 986. Because petitioner's accomplice is not a "similarly situated defendan[t]," his life sentence does not provide a meaningful point of comparison.

[3] Moreover, even the conclusory review that the Georgia Supreme Court actually undertook was erroneous because it failed to use reasonable comparators. Had the court attended to the facts of the cases cited in the appendix, it would have noted that in almost 30 percent of them the defendant was convicted of two homicides, in contrast to the single homicide for which petitioner was convicted. See *Franks* v. *State*, 278 Ga. 246, 599 S. E. 2d 134 (2004); *Sealey* v. *State*, 277 Ga. 617, 593 S. E. 2d 335 (2004); *Arevalo* v. *State*, 275 Ga. 392, 567 S. E. 2d 303 (2002); *Raheem* v. *State*, 275 Ga. 87, 560 S. E. 2d 680 (2002); *DeYoung* v. *State*, 268 Ga. 780, 493 S. E. 2d 157 (1997); *Ferrell* v. *State*, 261 Ga. 115, 401 S. E. 2d 741 (1991). The court's reliance on such dissimilar comparators further undermines the risk-reducing function served by its review.

meant to undermine our conclusion in *Gregg* and *Zant* that such review is an important component of the Georgia scheme.[4]

Since *Pulley*, the Georgia Supreme Court has significantly narrowed the universe of cases from which it culls comparators. It now appears to be the court's practice never to consider cases in which the jury sentenced the defendant to life imprisonment. See Note, 39 Ga. L. Rev. 631, 657 (2005) (determining that in each of 55 capital cases reviewed by the Georgia Supreme Court between 1994 and 2004, the court exclusively considered other cases resulting in a death sentence). This is not the review that the Georgia Supreme Court represented to us in *Zant*. And the likely result of such a truncated review—particularly in conjunction with the remainder of the Georgia scheme, which does not cabin the jury's discretion in weighing aggravating and mitigating factors—is the arbitrary or discriminatory imposition of death sentences in contravention of the Eighth Amendment.

Petitioner also notes a second failure of the Georgia Supreme Court's review in this case. In all capital cases, Georgia law requires the trial court to transmit, along with the entire record and transcript, a detailed report prepared by the trial judge describing the defendant's history and the circumstances of the case. Ga. Code Ann. § 17–10–35(a). Although it has previously admonished trial courts of the necessity of complying with this rule, see *McDaniel* v. *State*, 271 Ga. 552, 553, 522 S. E. 2d 648, 650 (1999), the Georgia Supreme Court in this case neglected to enforce it. This breakdown in the statutory process is especially troubling when viewed in light of the other shortcomings of that court's

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[4] JUSTICE THOMAS suggests that the Court in *McCleskey* "endorsed" precisely the same proportionality review undertaken by the Georgia Supreme Court in this case. *Post*, at 985. Notably, McCleskey did not challenge the scope of the state court's proportionality review. See Brief for Respondent in *McCleskey* v. *Kemp*, O. T. 1986, No. 84–6811, p. 29. It is thus unsurprising that this Court's brief discussion of the state court's review did not recognize or revisit our observation in *Zant* v. *Stephens*, 462 U. S. 862 (1983), regarding the usual content of that review; indeed, that portion of the Court's discussion does not acknowledge *Zant* at all. See 481 U. S., at 306. I hesitate to read into *McCleskey* this Court's endorsement of the Georgia Supreme Court's abridged proportionality review when that issue was neither briefed by the parties nor thoroughly considered by the Court.

review. "When a defendant's life is at stake, th[is] Court has been particularly sensitive to insure that every safeguard is observed." *Gregg*, 428 U. S., at 187 (joint opinion of Stewart, Powell, and STEVENS, JJ.). The Georgia Supreme Court owes its capital litigants the same duty of care and must take seriously its obligation to safeguard against the imposition of death sentences that are arbitrary or infected by impermissible considerations such as race.

JUSTICE THOMAS, concurring.

Petitioner brutally murdered Lynwood Ray Gresham, and was sentenced to death for his crime. JUSTICE STEVENS objects to the proportionality review undertaken by the Georgia Supreme Court on direct review of petitioner's capital sentence. The Georgia Supreme Court, however, afforded petitioner's sentence precisely the same proportionality review endorsed by this Court in *McCleskey* v. *Kemp*, 481 U. S. 279 (1987); *Pulley* v. *Harris*, 465 U. S. 37 (1984); *Zant* v. *Stephens*, 462 U. S. 862 (1983); and *Gregg* v. *Georgia*, 428 U. S. 153 (1976), and described in *Pulley* as a "safeguard against arbitrary or capricious sentencing" additional to that which is constitutionally required, 465 U. S., at 45. Because the Georgia Supreme Court made no error in applying its statutorily required proportionality review in this case, I concur in the denial of certiorari.

In May 1999, petitioner recruited Gary Lee Griffin to help him "rob and kill a rich white man" and "take the money, take the jewels." Pet. for Cert. 5 (internal quotation marks omitted); 282 Ga. 774, 774–775, 653 S. E. 2d 439, 443 (2007). Petitioner and Griffin packed two bicycles in a borrowed car, dressed in black, and took a knife and stun gun to Gresham's house. Petitioner lured Gresham outside, Pet. for Cert. 5, stabbed him 12 times in the chest and back, and dragged him to the side of the house to die, 282 Ga., at 775, 653 S. E. 2d, at 443. Griffin found Gresham's wallet and house keys and gave the keys to petitioner, who said he had "'one more to kill.'" *Ibid.* However, because Mrs. Gresham and her daughter had been inside their house and had locked the door with chain and foot locks, petitioner did not succeed. The two men then fled the scene on their bicycles. Both were arrested within hours; petitioner was found with Gresham's blood on his clothes and Gresham's keys in his pocket.

The knife used in the attack and a pistol were discovered nearby. *Ibid.*

Petitioner was charged with malice murder, felony murder, armed robbery, aggravated assault, attempted burglary, and possession of a firearm by a convicted felon. *Id.*, at 774, n. 1, 653 S. E. 2d, at 442, n. 1. A jury found him guilty on all charges and recommended the death penalty. *Ibid.* In particular, the jury unanimously found five aggravating factors: that the murder was committed while petitioner was engaged in an armed robbery; that the murder was committed for the purpose of receiving money or a thing of monetary value; that the murder involved torture; that the murder involved aggravated battery; and that the murder was outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind. *Id.*, at 781, 653 S. E. 2d, at 447. The trial court agreed with the jury's recommendation and imposed a sentence of death for the malice-murder conviction. The court also imposed a life sentence for armed robbery and consecutive sentences of 20, 10, and 5 years for the remaining convictions. *Id.*, at 774, n. 1, 653 S. E. 2d, at 442, n. 1.

On direct appeal, the Georgia Supreme Court reviewed each statutory aggravating circumstance supporting the death sentence, see Ga. Code Ann. § 17–10–35(c)(2) (2008), and struck two of them—murder involving torture and murder involving aggravated battery—because they varied from the applicable statutory language, 282 Ga., at 781, 653 S. E. 2d, at 447; Ga. Code Ann. § 17–10–30(b)(7). With three valid statutory aggravating factors remaining and the full weight of the evidence supporting petitioner's conviction, the Georgia Supreme Court found that petitioner was eligible for the death sentence under state law.

The Georgia Supreme Court then reviewed petitioner's death sentence to determine whether it was "excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Ga. Code Ann. § 17–10–35(c)(3). The court first determined that the life sentence imposed on Griffin for the same murder did not render petitioner's death sentence disproportionate. Petitioner was more culpable for the murder, and Griffin was ineligible for the death penalty because he was adjudged mentally retarded. 282 Ga., at 782, 653 S. E. 2d, at 447. The Georgia Supreme Court then examined 21 cases in which a defendant received the death penalty for a "deliberate plan to kill and killing for the purpose of receiving something of mone-

tary value." *Ibid.*, 653 S. E. 2d, at 448. After reviewing these cases, the court concluded that petitioner's death sentence was proportional to other death sentences imposed in Georgia and affirmed. *Ibid.*

There is nothing constitutionally defective about the Georgia Supreme Court's determination. Proportionality review is not constitutionally required in any form. Georgia simply has elected, as a matter of state law, to provide an additional protection for capital defendants. *Pulley*, 465 U. S., at 45. In *Pulley*, the Court considered the history of Georgia's capital sentencing scheme and dismissed JUSTICE STEVENS' assertion that the constitutionality of Georgia's scheme had rested on its willingness to conduct proportionality review. *Id.*, at 44–46, 50; *id.*, at 58–59 (STEVENS, J., concurring in part and concurring in judgment). The Court explained that, although it may have emphasized the role of proportionality review as "an additional safeguard against arbitrarily imposed death sentences" in *Gregg*, *supra*, and *Zant*, *supra*, it had never held that "without comparative proportionality review the [Georgia] statute would be unconstitutional," *Pulley*, *supra*, at 50. JUSTICE STEVENS acknowledged in his *Pulley* concurrence that his interpretation of *Gregg* and *Zant* differed from the Court's. 465 U. S., at 54. He continues to adhere to his distinctive interpretation of *Gregg* and *Zant* today, *ante*, at 980–981, 983–984 (statement respecting denial of certiorari), and questions whether the Georgia scheme as currently administered provides the additional review that he believes is constitutionally required. But, under this Court's precedents, Georgia is not required to provide any proportionality review at all.

Having elected to provide the additional protection of proportionality review, there can be no question that the way in which the Georgia Supreme Court administered that review in this case raised no constitutional issue. The State's proportionality review was lauded in *Gregg* as a protective measure that would ensure that "[i]f a time comes when juries generally do not impose the death sentence in a certain kind of murder case, . . . no defendant convicted under such circumstances will suffer a sentence of death" because there will be no comparable cases to support a finding of proportionality. 428 U. S., at 206 (joint opinion of Stewart, Powell, and STEVENS, JJ.). Then, in *McCleskey*, 481 U. S., at 306, this Court upheld the proportionality review conducted by the Georgia Supreme Court and recognized that the

Georgia court's conclusion was supported by "an appendix containing citations to 13 cases involving generally similar murders."[1] In *McCleskey*, as here, the trial court followed the jury's recommendation and imposed a death sentence for a black defendant who murdered a white victim during an armed robbery. *Id.*, at 283–285; 282 Ga., at 774, 653 S. E. 2d, at 442.

JUSTICE STEVENS nevertheless asserts that there is a "special risk of arbitrariness in cases that involve black defendants and white victims," *ante*, at 981, and that the Georgia Supreme Court should have "looked outside the universe of cases in which the jury imposed a death sentence," *ante*, at 982. But he once again fails to acknowledge that the Court considered and rejected similar arguments in *McCleskey*, see 481 U. S., at 306–319. The *McCleskey* Court considered whether a study based on Georgia's application of the death penalty in the 1970's showed a "major systemic defec[t]" in sentencing that correlates with race. *Id.*, at 313 (internal quotation marks omitted). And although that study found that the death penalty was imposed more often when a black defendant murdered a white victim than when a white defendant murdered a black victim, *id.*, at 286, the Court concluded that the study "[a]t most . . . indicate[d] a discrepancy that appears to correlate with race," *id.*, at 312. According to the Court, "[a]pparent disparities in sentencing are an inevitable part of our criminal justice system," *ibid.*, and there are other aspects of Georgia's discretionary scheme that could explain the apparent discrepancy, *id.*, at 311–313. The study did not "demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital sentencing process." *Id.*, at 313.

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[1] JUSTICE STEVENS accuses the Georgia Supreme Court in this case of engaging in "utterly perfunctory review" because it included "a string citation of 21 cases in which the jury imposed a death sentence" and "ma[de] no reference to the facts of those cases or to the aggravating circumstances found by the jury." *Ante*, at 982. The accusation is entirely without foundation. The proportionality review upheld by this Court in *McCleskey* also contained a string citation of cases that failed to include the detailed discussion of each case's specific facts that JUSTICE STEVENS suggests is somehow required by the Constitution. See *McCleskey* v. *State*, 245 Ga. 108, 116–117, 263 S. E. 2d 146, 152 (1980). The only difference between the string citation here and the string citation approved by this Court in *McCleskey* is that the citation here reflects an examination of at least 50% more cases.

The *McCleskey* Court also considered the universe of cases included in the Georgia Supreme Court's proportionality analysis and held that "absent a showing that the Georgia capital punishment system operates in an arbitrary and capricious manner, [a defendant] cannot prove a constitutional violation by demonstrating that other defendants who may be similarly situated did *not* receive the death penalty." *Id.*, at 306–307 (emphasis in original). The Court in *Gregg* also considered the issue and held that Georgia's scheme would not be ineffective even if, in practice, the Georgia Supreme Court did not consider "nonappealed capital convictions where a life sentence is imposed and cases involving homicides where a capital conviction is not obtained." 428 U. S., at 204, n. 56 (joint opinion of Stewart, Powell, and STEVENS, JJ.).[2] As a result, to the extent that JUSTICE STEVENS suggests that the Court's precedent requires consideration of cases where the death penalty was not imposed, he is simply wrong.

JUSTICE STEVENS' disagreement with this Court's death penalty precedents formed the basis for his dissent from the Court's decision in *McCleskey* and his concurrence in *Pulley*, and he stands by those decisions in his statement today. But *McCleskey*, *Pulley*, *Zant*, and *Gregg* remain the law. Because the Georgia

[2] In *Gregg*, 428 U. S., at 204, n. 56, the Court noted that the Georgia Supreme Court "has the authority to consider such cases" involving "nonappealed capital convictions where a life sentence is imposed and cases involving homicides where a capital conviction is not obtained" and that it "does consider appealed murder cases where a life sentence has been imposed." Petitioner contends, and JUSTICE STEVENS accepts, that the Georgia Supreme Court no longer considers murder cases where a life sentence has been imposed based on a law review note that studied the proportionality review conducted in 55 capital cases reviewed by the Georgia Supreme Court between 1994 and 2004. *Ante*, at 984; Pet. for Cert. 23 (citing Note, Reviewing the Georgia Supreme Court's Efforts at Proportionality Review, 39 Ga. L. Rev. 631 (2005)). But petitioner and JUSTICE STEVENS do not point to any statement from the Georgia Supreme Court that such cases are no longer considered and there is no reason to believe that the court has changed its practice simply because its decisions do not explicitly cite to cases involving life sentences. See *Pulley* v. *Harris*, 465 U. S. 37, 48, n. 8 (1984) ("[T]he fact that . . . [a] court was not explicit about comparative review does not mean none was undertaken"). Moreover, in this case, the Georgia Supreme Court considered a life sentence in its proportionality review as it explicitly evaluated whether the sentence given Griffin for the same murder made petitioner's death sentence disproportionate.

Supreme Court applied them faithfully and without any error, I concur in the denial of certiorari.

OCTOBER 21, 2008

Dismissal Under Rule 46

No. 08–74. LAKE SHASTINA COMMUNITY SERVICES DISTRICT ET AL. *v.* BARE. Ct. App. Cal., 3d App. Dist. Certiorari dismissed under this Court's Rule 46.1.

Miscellaneous Order

No. 08A349. RIES *v.* TEXAS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Denied

No. 08–5898 (08A345). RIES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 522 F. 3d 517.

OCTOBER 28, 2008

Dismissal Under Rule 46

No. 08–503. WILEY ET AL. *v.* AMERICAN ELECTRIC POWER SERVICE CORP., FKA AEP SERVICES CORP., FKA CENTRAL & SOUTH WEST CORP., ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 287 Fed. Appx. 335.

Miscellaneous Order

No. 07–636. KENNEDY, EXECUTRIX OF THE ESTATE OF KENNEDY, DECEASED *v.* PLAN ADMINISTRATOR FOR DUPONT SAVINGS AND INVESTMENT PLAN ET AL. C. A. 5th Cir. [Certiorari granted, 552 U. S. 1178.] The parties are directed to file supplemental briefs addressing the following question: "Whether 29 U. S. C. § 1104(a)(1)(D), mandating administration of a plan in accordance with plan documents, required that the distri-

bution in question be made to Liv Kennedy, even on the assumption that a waiver of her interest was not otherwise subject to statutory bar."

The briefs, not to exceed 4,500 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, November 10, 2008. *Amicus curiae* briefs, not to exceed 3,000 words, may be filed with the Clerk and served upon counsel for the parties on or before 2 p.m., Monday, November 10, 2008.

OCTOBER 30, 2008

Miscellaneous Order

No. 08–6978 (08A380). IN RE WRIGHT. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

OCTOBER 31, 2008

Miscellaneous Order

No. 07–526. CARCIERI, GOVERNOR OF RHODE ISLAND, ET AL. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. 1st Cir. [Certiorari granted, 552 U. S. 1229.] Motions of petitioners Town of Charlestown and State of Rhode Island for reconsideration of motions for divided argument [*ante*, p. 807] denied.

NOVEMBER 3, 2008

Certiorari Dismissed

No. 08–6574. BRUZON *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–6582. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied,

and certiorari dismissed. See this Court's Rule 39.8. Reported below: 269 Fed. Appx. 301.

Miscellaneous Orders

No. 08M22. JAMES *v.* SCRIBNER, WARDEN, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 07–1209. PEAKE, SECRETARY OF VETERANS AFFAIRS *v.* SANDERS; and PEAKE, SECRETARY OF VETERANS AFFAIRS *v.* SIMMONS. C. A. Fed. Cir. [Certiorari granted, 554 U. S. 902.] Motion of respondents for divided argument granted.

No. 07–8521. HARBISON *v.* BELL, WARDEN. C. A. 6th Cir. [Certiorari granted, 554 U. S. 917.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted.

No. 08–6306. WINSETT *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 24, 2008, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 08–6589. IN RE PILCHER;
No. 08–6612. IN RE HAWKINS;
No. 08–6628. IN RE SWAIN; and
No. 08–6671. IN RE WATKINS. Petitions for writs of habeas corpus denied.

No. 08–6737. IN RE EMBREY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 08–6579. IN RE HOUSTON ET AL. Petition for writ of mandamus denied.

Certiorari Granted

No. 08–6. DISTRICT ATTORNEY'S OFFICE FOR THE THIRD JUDICIAL DISTRICT ET AL. *v.* OSBORNE. C. A. 9th Cir. Certiorari granted. Reported below: 521 F. 3d 1118.

No. 08–214. Atlantic Sounding Co., Inc., et al. *v.* Townsend. C. A. 11th Cir. Certiorari granted. Reported below: 496 F. 3d 1282.

Certiorari Denied

No. 07–1453. Cheng Chui Ping *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 07–1468. Manning *v.* Astrue, Commissioner of Social Security. C. A. 10th Cir. Certiorari denied. Reported below: 510 F. 3d 1246.

No. 07–1539. Mower *v.* United States; and
No. 07–11311. Thompson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 518 F. 3d 832.

No. 07–1547. Aguilera et al. *v.* Baca, Individually and in His Official Capacity as Sheriff of Los Angeles County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 510 F. 3d 1161.

No. 07–1608. Seymour et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 519 F. 3d 700.

No. 07–1613. Al-Marbu *v.* Mukasey, Attorney General. C. A. 7th Cir. Certiorari denied. Reported below: 248 Fed. Appx. 748.

No. 07–11031. Miller *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 265 Fed. Appx. 5.

No. 07–11098. Valenciano *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 07–11188. Cueto-Borque *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 924.

No. 07–11206. Commodore *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 462.

No. 08–26. Sakar International, Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 516 F. 3d 1340.

No. 08–33. Smith *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 522 F. 3d 305.

No. 08–59. Role Models America, Inc. *v.* Geren, Secretary of the Army, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 514 F. 3d 1308.

No. 08–101. Van Gorder *v.* Grand Trunk Western Railroad. C. A. 6th Cir. Certiorari denied. Reported below: 509 F. 3d 265.

No. 08–119. Lewis *v.* Tennessee. C. A. 6th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 323.

No. 08–120. Duke et al. *v.* Leake, Chairman, North Carolina State Board of Elections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 524 F. 3d 427.

No. 08–134. Cornelio et al. *v.* National Labor Relations Board et al. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 608.

No. 08–220. Gresbach *v.* Michael C. et al. C. A. 7th Cir. Certiorari denied. Reported below: 526 F. 3d 1008.

No. 08–226. APP International Finance Co., B. V., et al. *v.* Gryphon Domestic VI, LLC, et al. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 45 App. Div. 3d 354, 848 N. Y. S. 2d 612.

No. 08–234. Foley *v.* Allmerica Financial Corp. et al. C. A. 1st Cir. Certiorari denied.

No. 08–243. Thomas *v.* Evansville Vanderburgh School Corporation et al. C. A. 7th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 50.

No. 08–246. Michigan Environmental Council *v.* Michigan Public Service Commission et al. Ct. App. Mich. Certiorari denied. Reported below: 275 Mich. App. 369, 738 N. W. 2d 289.

No. 08–256. Vaile *v.* Porsboll et al. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 669.

No. 08–257. Lofton-Taylor *v.* Verizon Wireless. C. A. 11th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 999.

No. 08–258. Will, Independent Co-Administrator of the Estate of Wheeler *v.* Northwestern University et al. Sup. Ct. Ill. Certiorari denied. Reported below: 227 Ill. 2d 598, 888 N. E. 2d 1189.

No. 08–261. Fehnel *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 931 A. 2d 43.

No. 08–264. Sandberg *v.* City of Wheaton, Illinois. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1127, 955 N. E. 2d 187.

No. 08–266. Nanan et ux. *v.* State Farm Fire & Casualty Co. Ct. App. Ga. Certiorari denied. Reported below: 286 Ga. App. 539, 650 S. E. 2d 283.

No. 08–268. Cain, Warden *v.* Perez. C. A. 5th Cir. Certiorari denied. Reported below: 529 F. 3d 588.

No. 08–271. Illinois Central Railroad Co. *v.* Copple et al. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 379 Ill. App. 3d 426, 882 N. E. 2d 189.

No. 08–273. Clapper *v.* TacCo Falcon Point, Inc. Ct. App. Mich. Certiorari denied.

No. 08–275. Lee *v.* Huntleigh Healthcare, LLC, et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–276. Morris *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 259 Fed. Appx. 414.

No. 08–278. Incor et al. *v.* Fowler et al. C. A. 10th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 590.

No. 08–282. Pandozy *v.* Beaty et al. C. A. 5th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 449.

No. 08–283. Trans-Spec Truck Service, Inc. *v.* Caterpillar, Inc. C. A. 1st Cir. Certiorari denied. Reported below: 524 F. 3d 315.

No. 08–287. Bello *v.* United States District Court for the Northern District of Texas. C. A. 5th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 423.

No. 08–291. Rischon Development Corp. *v.* City of Keller, Texas. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 242 S. W. 3d 161.

No. 08–313. Navarro *v.* Broney Automotive Repairs, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 179.

No. 08–314. Lane *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 932 A. 2d 257.

No. 08–335. Durand *v.* City of Phoenix, Arizona. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 645.

No. 08–337. Ahmed *v.* Ohio. Ct. App. Ohio, Cuyahoga, County. Certiorari denied.

No. 08–343. McLaughlin et al. *v.* Fisher et al. C. A. 3d Cir. Certiorari denied. Reported below: 277 Fed. Appx. 207.

No. 08–350. Johnson et al. *v.* Lowery. C. A. 10th Cir. Certiorari denied. Reported below: 522 F. 3d 1086.

No. 08–353. Lockwood *v.* Beasley et al. C. A. 11th Cir. Certiorari denied.

No. 08–366. Parnigoni *v.* District of Columbia. Ct. App. D. C. Certiorari denied. Reported below: 933 A. 2d 823.

No. 08–371. Hadley *v.* Hawaii Government Employees' Assn. et al. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 683.

No. 08–382. Osahar *v.* Potter, Postmaster General, et al. C. A. 11th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 753.

No. 08–398. Allnut *v.* Commissioner of Internal Revenue. C. A. 4th Cir. Certiorari denied. Reported below: 523 F. 3d 406.

No. 08–400. Freedman *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 520 F. 3d 136.

No. 08–407. Roberts *v.* Peake, Secretary of Veterans Affairs. C. A. 6th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 325.

No. 08–416. LAUERSEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 115.

No. 08–419. COIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 358.

No. 08–422. RYAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 382.

No. 08–429. ERPENBECK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 532 F. 3d 423.

No. 08–433. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 533 F. 3d 623.

No. 08–436. HIGHTOWER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 646.

No. 08–5025. SALINAS-LUCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 404.

No. 08–5034. DE HORTA-GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 519 F. 3d 658.

No. 08–5040. POLINO-MERCEDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 873.

No. 08–5044. ESTRADA-OBREGON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 978.

No. 08–5211. CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 382.

No. 08–5218. BURGEST *v.* MCAFREE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 850.

No. 08–5262. AVILA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5513. WHITT *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 139 Wash. App. 1082.

No. 08–5534. BENTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 523 F. 3d 424.

No. 08–5599. SALINAS-CAMPOS *v.* UNITED STATES (Reported below: 278 Fed. Appx. 386); and RODRIGUEZ-RODRIGUEZ *v.* UNITED STATES (282 Fed. Appx. 348). C. A. 5th Cir. Certiorari denied.

No. 08–5924. CARRASCOSA *v.* MCGUIRE, SHERIFF, BERGEN COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 520 F. 3d 249.

No. 08–5937. BROWN *v.* PUGH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 975.

No. 08–5939. KNIGHT *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 983 So. 2d 348.

No. 08–5940. JACKSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5951. SPURLOCK *v.* UTILITY SERVICE EXPRESS, LLC, ET AL. Sup. Ct. Va. Certiorari denied.

No. 08–5954. COX *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–5955. OWENS *v.* MCMASTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 267.

No. 08–5957. WHITE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 984 So. 2d 521.

No. 08–5959. NELSON *v.* SCHWARTZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 592.

No. 08–5965. SMITH *v.* LOOMIS ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–5971. MARTINEZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 218 Ariz. 421, 189 P. 3d 348.

No. 08–5972. SUNDAY *v.* CIRCUIT COURT OF ALABAMA, LEE COUNTY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–5975. WHITE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 380.

No. 08–5978. WILLIAMS *v.* LEONARD. C. A. 5th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 355.

No. 08–5979. BARNES *v.* RICKS ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–5986. CRAWFORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–5989. PAGE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 1, 186 P. 3d 395.

No. 08–5994. MORGAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–5995. CALDWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–5997. CONLIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6001. CLARK *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–6002. DITTMER *v.* CORNEJO ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6003. DIXON *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–6004. NELSON *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6005. WILLIS *v.* MOSLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6007. RICHMOND *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6014. BEARD *v.* JP MORGAN CHASE BANK NATIONAL ASSN. C. A. 5th Cir. Certiorari denied.

No. 08–6020. JONES *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6028. JOHNSON *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6029. JACOBS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 982 So. 2d 684.

No. 08–6033. TOLLIVER *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–6039. BRYANT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6042. BALLAY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 983 So. 2d 894.

No. 08–6044. HILL *v.* NCO PORTFOLIO MANAGEMENT. Sup. Ct. Ind. Certiorari denied.

No. 08–6047. JOHNSON *v.* ATKINSON. C. A. 9th Cir. Certiorari denied.

No. 08–6048. KILLINGSWORTH *v.* WELLS FARGO BANK. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 08–6052. ROBINSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6053. ROWAN *v.* HARRIS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 836.

No. 08–6060. OLDHAM *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 884 N. E. 2d 434.

No. 08–6068. AVALOS *v.* NIELSEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 621.

No. 08–6085. DJAN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 08–6086. RANDOLPH *v.* TATAROW FAMILY PARTNERS, LTD. Sup. Ct. Fla. Certiorari denied. Reported below: 989 So. 2d 1185.

No. 08–6089. Williams *v.* Moffat, Judge, Superior Court of California, Madera County, et al. C. A. 9th Cir. Certiorari denied.

No. 08–6094. Verdi *v.* Wilkinson County, Georgia, et al. Sup. Ct. Ga. Certiorari denied.

No. 08–6095. Griffin *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–6096. Youngblood *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6102. Love *v.* Curators of the University of Missouri et al. C. A. 8th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 639.

No. 08–6106. Schils *v.* Washtenaw County, Michigan. Ct. App. Mich. Certiorari denied.

No. 08–6107. Messina *v.* Wynder, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6108. Oliver *v.* Corbett, Attorney General of Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 08–6112. O'Neal *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 08–6114. Lee *v.* Prelesnik, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6115. Lopez *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6118. Deeter *v.* Rozum, Superintendent, State Correctional Institution at Somerset, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6120. Craig *v.* Rozum, Superintendent, State Correctional Institution at Somerset, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6123. Ricketts *v.* Mukasey, Attorney General. C. A. 3d Cir. Certiorari denied.

No. 08–6125. Sherratt *v.* Friel, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 763.

No. 08–6127. Tarvin *v.* Texas Board of Criminal Justice et al. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 358.

No. 08–6128. Flores Vera *v.* Texas et al. C. A. 5th Cir. Certiorari denied.

No. 08–6129. Thomas *v.* Baker, Attorney General of Georgia. C. A. 11th Cir. Certiorari denied.

No. 08–6131. Jammer *v.* Harris County, Texas. C. A. 5th Cir. Certiorari denied.

No. 08–6132. Porter *v.* Berghuis, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6136. Bernal *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 706.

No. 08–6139. Hobley *v.* Pliler, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6146. Brockbank *v.* Commodity Futures Trading Commission. C. A. 10th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 707.

No. 08–6150. Garcia *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 239 S. W. 3d 862.

No. 08–6151. Jacobs *v.* Wisconsin. Ct. App. Wis. Certiorari denied.

No. 08–6152. Clements *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 314.

No. 08–6154. Cramer *v.* Duncan, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6159. Hickmon *v.* McCollum, Attorney General of Florida. C. A. 11th Cir. Certiorari denied.

No. 08–6160. Griffin *v.* Zavaras, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 538.

No. 08–6170. Morrison *v.* United States et al. C. A. 9th Cir. Certiorari denied.

No. 08–6172. Boxley *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 596 Pa. 620, 948 A. 2d 742.

No. 08–6182. Sloan *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–6183. Span *v.* Flaherty et al. C. A. 3d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 172.

No. 08–6184. Stanbury *v.* Mukasey, Attorney General, et al. C. A. 2d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 14.

No. 08–6190. Sweeney *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 886 N. E. 2d 1.

No. 08–6201. Brewer *v.* Wisconsin Board of Bar Examiners et al. C. A. 7th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 418.

No. 08–6207. Kidd *v.* Ohio. Ct. App. Ohio, Portage County. Certiorari denied. Reported below: 2007-Ohio-6562.

No. 08–6215. Clayton *v.* Roper, Superintendent, Potosi Correctional Center. C. A. 8th Cir. Certiorari denied. Reported below: 515 F. 3d 784.

No. 08–6216. Elkimya *v.* Department of Homeland Security. C. A. 2d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 24.

No. 08–6224. Torjagbo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 615.

No. 08–6234. Harper *v.* City of Houston, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 351.

No. 08–6244. DAVIS *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6250. MWASI *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 08–6252. SHELL *v.* HOLLYWOOD HOUSING AUTHORITY ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 983 So. 2d 1161.

No. 08–6258. GOULD *v.* WEST. C. A. 2d Cir. Certiorari denied.

No. 08–6278. FULTON *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 08–6311. ERNST *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 756 N. W. 2d 344.

No. 08–6315. HENDRIX *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 527 F. 3d 1149.

No. 08–6316. GRIFFIN *v.* PROSPER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 672.

No. 08–6324. MANCO *v.* ROBERTS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 760.

No. 08–6346. THOMPSON *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 08–6361. HOPKINS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 981 So. 2d 1205.

No. 08–6370. TERRY *v.* HAMRICK, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 284 Ga. 24, 663 S. E. 2d 256.

No. 08–6390. LASH *v.* HOLLIS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 525 F. 3d 636.

No. 08–6399. KEARNEY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–6404. STRICKLAND *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6423. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 948.

No. 08–6431. COGGINS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6468. WAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–6472. PAYTON *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 283 Fed. Appx. 795.

No. 08–6476. SWANSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 66 M. J. 493.

No. 08–6482. MORALES-ALDAHONDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 524 F. 3d 115.

No. 08–6491. TAYLOR *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 275 Mich. App. 177, 737 N. W. 2d 790.

No. 08–6497. EDGERTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 287.

No. 08–6501. DECOLOGERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 530 F. 3d 36.

No. 08–6505. MARSHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 268.

No. 08–6506. LOONEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 532 F. 3d 392.

No. 08–6507. LIZANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 754.

No. 08–6508. LUGO-QUINONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 253.

No. 08–6511. BARBOZA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6512. PRITCHETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 307.

No. 08–6513. BARTLETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–6514. YOUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 124.

No. 08–6516. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 242.

No. 08–6521. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–6522. NORTON *v.* BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–6524. BELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 548.

No. 08–6525. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 863.

No. 08–6529. MAYTUBBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 749.

No. 08–6530. RILEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 717.

No. 08–6531. CLAYTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 707.

No. 08–6532. MURPHY *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 756 N. W. 2d 344.

No. 08–6533. ELDRIDGE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 08–6535. WASHINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6542. MADERA-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 669.

No. 08–6543. NICOLI-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 671.

No. 08–6545. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 303.

No. 08–6550. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 532 F. 3d 1125.

No. 08–6551. PINA-SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 813.

No. 08–6552. PEREZ-RENDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 415.

No. 08–6554. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 245.

No. 08–6555. DIGGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 223.

No. 08–6558. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 538.

No. 08–6564. SAAVEDRA ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 747.

No. 08–6567. BESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6568. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 739.

No. 08–6569. ZAMORA-SOLORZANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 1247.

No. 08–6573. CRAWLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 533 F. 3d 349.

No. 08–6575. ARACENA-SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6576. SANCHES MONTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–6577. HOLMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 532 F. 3d 284.

No. 08–6578. HUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6583. O'KEEFE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6584. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 640.

No. 08–6588. POLLARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 463.

No. 08–6590. LYNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 205.

No. 08–6595. MEANS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 08–6596. WITHERSPOON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 524 F. 3d 549.

No. 08–6599. WIRSCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 159.

No. 08–6600. BOSCH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 928.

No. 08–6601. O'NELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6608. HANSEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 524 F. 3d 841.

No. 08–6611. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 272 Fed. Appx. 134.

No. 08–6615. SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 414.

No. 08–6617. RYLEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 904.

No. 08–6621. ULLAH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 923.

No. 08–6626. TUCKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6629. QUINONEZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 402.

No. 08–6632. SALMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 531 F. 3d 1007.

No. 08–6633. SEALED APPELLANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 526 F. 3d 241.

No. 08–6636. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 903.

No. 08–6639. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 484.

No. 08–6643. CLARK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–6646. PARKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 108 Fed. Appx. 676.

No. 08–6653. LAMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 532 F. 3d 1251.

No. 08–6654. MARTINEZ-GUEVARA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 482.

No. 08–6655. KENNEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6657. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6658. SANCHEZ-MORPHIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 638.

No. 08–6662. SANDERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 283.

No. 08–6669. BOSWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 290 Fed. Appx. 482.

No. 08–6672. WALLACE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 532 F. 3d 126 and 284 Fed. Appx. 126.

No. 08–6674. COX *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–6675. ROLLINGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 201.

No. 08–6676. PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 196.

No. 08–6678. BEST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 301.

No. 08–6679. BRAVO-ALFRE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6681. ADAMSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 591.

No. 08–255. CAIN, WARDEN *v.* KOON. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 277 Fed. Appx. 381.

No. 08–269. CSX TRANSPORTATION, INC. *v.* RIVENBURGH. C. A. 2d Cir. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 280 Fed. Appx. 61.

No. 08–5817. SHARIFI *v.* ALABAMA. Ct. Crim. App. Ala. Motion of Government of the Islamic Republic of Iran for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 993 So. 2d 907.

No. 08–6528. TINKLENBERG *v.* UNITED STATES. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 07–9997. WASHINGTON *v.* JACKSON STATE UNIVERSITY ET AL., 553 U. S. 1024. Motion for leave to file petition for rehearing denied.

NOVEMBER 6, 2008

Certiorari Denied

No. 08–7064 (08A397). TAYLOR *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.

NOVEMBER 7, 2008

Certiorari Granted

No. 08–146. ARTHUR ANDERSEN LLP ET AL. *v.* CARLISLE ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 521 F. 3d 597.

NOVEMBER 10, 2008

Miscellaneous Orders

No. 08M23. ARNETT *v.* COMMISSIONER OF INTERNAL REVENUE. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 08–5072. IN RE BENNETT. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 809] denied.

No. 08–6261. ROBERTSON *v.* UNITED STATES EX REL. WATSON. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 1, 2008, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 08–6748. IN RE COX; and
No. 08–6808. IN RE O'BRYAN. Petitions for writs of habeas corpus denied.

No. 08–6220. IN RE WILLIAMS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 08–31. NUFARM AMERICA'S INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 521 F. 3d 1366.

No. 08–37. CHECK INVESTORS, INC., ET AL. *v.* FEDERAL TRADE COMMISSION; and
No. 08–39. HUTCHINS *v.* FEDERAL TRADE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 502 F. 3d 159.

No. 08–77. BARANSKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 515 F. 3d 857.

No. 08–165. SINGH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 47 App. Div. 3d 733, 849 N. Y. S. 2d 606.

No. 08–177. O'NEILL *v.* COUGHLAN. C. A. 6th Cir. Certiorari denied. Reported below: 511 F. 3d 638.

No. 08–290. UNITED STATES EX REL. FARMER *v.* CITY OF HOUSTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 523 F. 3d 333.

No. 08–292. DAHLQUIST *v.* CITY OF KENT, WASHINGTON, ET AL. Ct. App. Wash. Certiorari denied.

No. 08–297. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* HOLLAND. C. A. 3d Cir. Certiorari denied. Reported below: 519 F. 3d 107.

No. 08–302. ANTHONY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–303. GARVIN *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 945 A. 2d 821.

No. 08–311. ALTHEIMER *v.* SETON CORP., DBA BAPTIST HOSPITAL. C. A. 6th Cir. Certiorari denied.

No. 08–312. NORDBERG *v.* SOUTH STREET SEAPORT CORP. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 43 App. Div. 3d 774, 843 N. Y. S. 2d 20.

No. 08–315. CLARK *v.* NEW YORK CITY TRANSIT AUTHORITY ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 46 App. Div. 3d 360, 847 N. Y. S. 2d 194.

No. 08–316. UNITED STATES EX REL. BOTT ET AL. *v.* SILICON VALLEY COLLEGES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 810.

No. 08–319. HARENDA ENTERPRISES, INC. *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 307 Wis. 2d 604, 746 N. W. 2d 25.

No. 08–320. HAYES *v.* WELLS FARGO BANK, N. A. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 08–321. DUNLEAVY ET AL. *v.* FAR AWAY FARM, LLC, ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 222 W. Va. 252, 664 S. E. 2d 137.

No. 08–323. ERICSSON, INC., ET AL. *v.* AHUJA. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 300.

No. 08–324. CHISOLM *v.* BOLING ET AL. Ct. App. Ga. Certiorari denied. Reported below: 289 Ga. App. 757, 658 S. E. 2d 147.

No. 08–325. MANTA MANAGEMENT CORP. *v.* CITY OF SAN BERNARDINO, CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 400, 181 P. 3d 159.

No. 08–330. NEW YORK LAW PUBLISHING CO. ET AL. *v.* DOE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 527 F. 3d 358 and 543 F. 3d 178.

No. 08–355. STRATTON *v.* BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 988 So. 2d 1103.

No. 08–360. DELGADO *v.* CERTIFIED GROCERS MIDWEST, INC. C. A. 7th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 457.

No. 08–363. GLOWPRODUCTS.COM *v.* LITECUBES, LLC, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 523 F. 3d 1353.

No. 08–379. CONROY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 53 App. Div. 3d 438, 861 N. Y. S. 2d 46.

No. 08–383. THOMPSON *v.* HOWARD BROTHERS INC. Ct. App. Ga. Certiorari denied. Reported below: 289 Ga. App. 273, 657 S. E. 2d 4.

No. 08–438. LINGLE *v.* MITCHELL, SUPERINTENDENT, MOUNTAIN VIEW CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 91.

No. 08–449. MIDDLEBROOKS *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 525 F. 3d 341.

No. 08–456. SISSON *v.* WILCOX ET AL. C. A. D. C. Cir. Certiorari denied.

No. 08–459. MROCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 511.

No. 08–476. GARCIA CISNEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5152. RUNDLE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 76, 180 P. 3d 224.

No. 08–5645. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 526 F. 3d 1334.

No. 08–5701. MCCRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 874.

No. 08–5756. BOUDREAUX *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–6185. PINERO *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–6193. CRAIN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–6199. BURT *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6200. BRADFORD *v.* CHAPELLO. C. A. 6th Cir. Certiorari denied.

No. 08–6204. HUNT *v.* WAGNER ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6208. JONES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6209. JOHNSON *v.* FABIAN, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 08–6210. PEARSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1123, 955 N. E. 2d 185.

No. 08–6213. MCCLURE *v.* REHG, MAYOR, FLORDELL HILLS, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–6219. THOMPSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6222. Ojeda *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 953.

No. 08–6223. Osantowski *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 481 Mich. 103, 748 N. W. 2d 799.

No. 08–6226. Thompson *v.* Lafler, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6227. McGowan *v.* Cantrell et al. C. A. 6th Cir. Certiorari denied.

No. 08–6228. Angulo *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6229. Brown *v.* DiGuglielmo, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6230. Arnold *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–6231. Fuller *v.* Reisch, Secretary, South Dakota Department of Corrections, et al. C. A. 8th Cir. Certiorari denied. Reported below: 253 Fed. Appx. 612.

No. 08–6232. Evans *v.* Roller Derby Skate Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 316 Fed. Appx. 966.

No. 08–6245. Cabrera *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6246. Woods *v.* Lafler, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6247. Vines *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 335.

No. 08–6255. Clark *v.* Finn, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6257. Hiddens *v.* Leibold et al. Ct. App. Ohio, Montgomery County. Certiorari denied. Reported below: 2007-Ohio-6688.

No. 08–6272. SHULER *v.* CUOMO, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–6282. SMITH *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6284. MILLER *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 102.

No. 08–6287. BARCO *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–6302. THOMAS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 08–6327. BRUVOLD *v.* NEW MEXICO. Dist. Ct. N. M., 2d Jud. Dist. Certiorari denied.

No. 08–6342. WILLIAMS *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 289 Fed. Appx. 483.

No. 08–6359. CAPSHAW *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 253 S. W. 3d 7.

No. 08–6401. LAITY *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 288 Fed. Appx. 693.

No. 08–6412. TRAHAN *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 476.

No. 08–6417. OWENS *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 566.

No. 08–6418. CONLEY *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–6448. GOODIE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–6457. WILLIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 08–6465. TOWNSEND *v.* DINGLE, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–6488. Ambort *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 714.

No. 08–6498. Ferguson *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–6546. Wheaton *v.* Walker, Acting Warden. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 316.

No. 08–6557. Velasquez *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 276 Va. 326, 661 S. E. 2d 454.

No. 08–6587. Lindsey *v.* Estep, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 644.

No. 08–6597. Wright *v.* Ayers, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 597.

No. 08–6618. Wilson *v.* McNeil, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 991 So. 2d 389.

No. 08–6634. Cairns *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 240.

No. 08–6688. Carter *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 08–6691. Jolley *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 758.

No. 08–6692. Jacquez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 544.

No. 08–6694. Spencer *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 530 F. 3d 1003.

No. 08–6695. Rowland *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–6696. Jones *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 530 F. 3d 1292.

No. 08–6700. Doherty-Garcia *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–6702. PIRA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 535 F. 3d 724.

No. 08–6707. ABOULISSAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–6712. MERCEDES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 862.

No. 08–6713. URRUTIA-JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 151.

No. 08–6714. HUTCHINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 842.

No. 08–6716. LEWIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 284 Fed. Appx. 940.

No. 08–6720. BERTOLLINI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 582.

No. 08–6721. ARAGON-HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 567.

No. 08–6723. HAFED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 523 F. 3d 680.

No. 08–6729. GONZALEZ-LAUZAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6732. GILMORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 316.

No. 08–6733. SPIVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 240.

No. 08–6738. ESCAJEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 197.

No. 08–6739. DELACRUZ-ALBARADO, AKA ALBARADO DELACRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 176.

No. 08–6741. PIMENTEL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 539 F. 3d 26.

No. 08–6742. MCDANIEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 562.

No. 08–6743. PONCE-CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 96.

No. 08–6744. KEITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 542.

No. 08–6745. LOPEZ-VIVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 327.

No. 08–6746. LIBBETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 905.

No. 08–6747. CARMENATE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 544 F. 3d 105.

No. 08–6750. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 528.

No. 08–6753. BUSTILLOS *v.* UNITED STATES (Reported below: 284 Fed. Appx. 195); CORTEZ-BALLEZA *v.* UNITED STATES (284 Fed. Appx. 204); ORTEGA-AYALA *v.* UNITED STATES (284 Fed. Appx. 204); PULIDO-ZEPEDA, AKA GARCIA *v.* UNITED STATES (284 Fed. Appx. 198); RAMIREZ, AKA RODRIGUEZ *v.* UNITED STATES (284 Fed. Appx. 199); RODRIGUEZ-CORRAL *v.* UNITED STATES (284 Fed. Appx. 205); and VALDEZ-DIAZ *v.* UNITED STATES (284 Fed. Appx. 201). C. A. 5th Cir. Certiorari denied.

No. 08–6754. BORRERO-ACEVEDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 533 F. 3d 11.

No. 08–6755. GADDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 532 F. 3d 783.

No. 08–6758. FINLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–6759. HARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 531 F. 3d 507.

No. 08–6761. TINH THANH HOANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 133.

No. 08–6762. HAWKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 629.

No. 08–6769. MOLLICA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 284 Fed. Appx. 990.

No. 08–6771. Ofray-Campos *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 534 F. 3d 1.

No. 08–6784. Luqman *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 522 F. 3d 613.

No. 08–6787. Lampkin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 27.

No. 08–6803. Washington *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 573.

No. 08–6807. Peoples *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–6810. Abiodun *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 536 F. 3d 162.

No. 08–6814. Brideson *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 08–6819. Blum *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 534 F. 3d 608.

No. 08–6821. Baxter *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 514 F. 3d 1350.

No. 08–6824. Hicks *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 531 F. 3d 49.

No. 08–6826. Comstock *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 531 F. 3d 667.

No. 07–11073. Kelly *v.* California. Sup. Ct. Cal.; and
No. 07–11425. Zamudio *v.* California. Sup. Ct. Cal. Certiorari denied. Justice Souter would grant the petition for writ of certiorari in No. 07–11073. Reported below: No. 07–11073, 42 Cal. 4th 763, 171 P. 3d 548; No. 07–11425, 43 Cal. 4th 327, 181 P. 3d 105.

Statement of Justice Stevens respecting the denial of the petitions for writs of certiorari.

These two capital cases raise questions concerning the admissibility of so-called "victim impact evidence" during the penalty phase of a capital trial. The term is a misnomer in capital cases because the evidence does not describe the impact of the crime

on the victim—his or her death is always an element of the offense itself. Rather, it describes the impact of the victim's death on third parties, usually members of the victim's family.

In the first of these cases, petitioner Douglas Kelly was convicted of murdering 19-year-old Sara Weir. 42 Cal. 4th 763, 171 P. 3d 548 (2007). The prosecution played a 20-minute video consisting of a montage of still photographs and video footage documenting Weir's life from her infancy until shortly before she was killed. The video was narrated by the victim's mother with soft music playing in the background, and it showed scenes of her swimming, horseback riding, and attending school and social functions with her family and friends. The video ended with a view of her grave marker and footage of people riding horseback in Alberta, Canada—the "'kind of heaven'" in which her mother said she belonged. See *id.*, at 796–797, 171 P. 3d, at 570–571.[1]

In the second case, petitioner Samuel Zamudio was convicted of robbing and murdering Elmer and Gladys Benson. 43 Cal. 4th 327, 181 P. 3d 105 (2008). Two of the victims' daughters and two of their grandchildren testified about the effects of the murders on themselves and their families. During one daughter's testimony the prosecution played a video containing 118 photographs of the victims at various stages of their lives, including their childhood and early years of marriage. The photographs showed the couple raising their children, serving in the military, hunting, fishing, vacationing, bowling, celebrating holidays and family events, and attending recognition dinners for Gladys' community service. "The last three photographs in the montage showed, in order, Gladys' grave marker with the inscription readable, Elmer's grave marker with the inscription readable, and both grave markers from a distance, each accompanied by a vase of flowers." *Id.*, at 363, 181 P. 3d, at 134.

In both cases, the California Supreme Court upheld the admissibility of the videos. The court explained that the video admitted during Kelly's sentencing "expressed no outrage" and contained no "clarion call for vengeance," but "just implied sadness." 42 Cal. 4th, at 797, 171 P. 3d, at 571. Similarly, the court held that the video shown during Zamudio's penalty phase proceedings was "'not unduly emotional.'" 43 Cal. 4th, at 367, 181 P. 3d, at 137.

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[1] The full video is available online at http://www.supremecourtus.gov/opinions/video/kelly_v_california.html and in Clerk of Court's case file.

Only one dissenting justice expressed any concern that the evidence had the potential to "imbue the proceedings with 'a legally impermissible level of emotion.'" 42 Cal. 4th, at 803, 171 P. 3d, at 575 (Moreno, J., concurring and dissenting). No member of the court suggested that the evidence shed any light on the character of the offense, the character of the offender, or the defendant's moral culpability.

I

Victim impact evidence made its first appearance in this Court's jurisprudence in 1987. *Booth* v. *Maryland*, 482 U. S. 496 (1987).[2] In earlier landmark cases, such as *Williams* v. *New York*, 337 U. S. 241 (1949), and *Lockett* v. *Ohio*, 438 U. S. 586 (1978), evidence probative of the culpability and character of the offender and the circumstances of the offense had marked the outer limits of the kind of evidence admissible in capital sentencing. Consistent with that precedent, in our first encounter with victim impact evidence, the Court announced a rule that categorically "prohibit[ed] a capital jury from considering victim impact evidence" that "described the personal characteristics of the victims and the emotional impact of the crimes on the family." *Booth*, 482 U. S., at 501–502. It was the unique character of the death penalty that justified *Booth*'s *per se* rule: The opinion relied on the fact that death is a "'punishment different from all other sanctions,'" *id.*, at 509, n. 12, and on our earlier admonition that any decision to impose the death sentence must "'be, and appear to be, based on reason rather than caprice or emotion,'" *id.*, at 508 (quoting *Gardner* v. *Florida*, 430 U. S. 349, 358 (1977) (opinion of STEVENS, J.)).

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[2] Victim impact evidence is a category unmentioned by Wigmore's treatise or other classic works on the law of evidence. Its inclusion in both capital and noncapital cases is a phenomenon of recent origin, arising out of the victims' rights movement of the late 1970's. See Carrington & Nicholson, The Victims' Movement: An Idea Whose Time Has Come, 11 Pepperdine L. Rev. 1, 8 (Symposium 1984) (describing early victories of the victims' rights movement, including passage of the Omnibus Victim and Witness Protection Act of 1982, 96 Stat. 1248, which mandated the inclusion of victim impact statements in federal presentence reports); MacDonald, Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim, 13 Am. Crim. L. Rev. 649, 670 (1975–1976) (describing early "innovative" attempts to integrate victims into the sentencing process).

Throughout the late 1970's and for much of the following decade, the fact that "death is a different kind of punishment from any other that may be imposed in this country," *id.*, at 357, had justified placing limits on its permissible applications, see, *e. g.*, *Godfrey* v. *Georgia*, 446 U. S. 420, 433 (1980) (plurality opinion), and requiring special procedural protections for the defendant, see *Lockett*, 438 U. S., at 604 (plurality opinion). Our decision in *Booth* flowed naturally from the same principle.

Beginning in the late 1980's, however, changes in the Court's capital jurisprudence began to weaken the procedural and substantive safeguards on which we had earlier insisted. In *Tison* v. *Arizona*, 481 U. S. 137 (1987), rather than adhere to the rule announced in *Enmund* v. *Florida*, 458 U. S. 782 (1982), which prohibited death sentences for defendants who neither killed nor intended to kill a victim, a majority of the Court held that felony murder could qualify as a capital offense. Soon thereafter, the Court rejected a challenge to a death sentence based on evidence that a victim's race enhanced the likelihood that a Georgia jury would impose the death penalty. *McCleskey* v. *Kemp*, 481 U. S. 279 (1987). As Justice Blackmun presciently observed, the fact that "death is different" was fast becoming a justification for applying "a *lesser* standard of scrutiny" in capital cases. See *id.*, at 347, 348 (dissenting opinion).

Confirming that observation, the Court's 1991 opinion in *Payne* v. *Tennessee*, 501 U. S. 808, overruled *Booth* in short order, giving prosecutors a powerful new weapon in capital cases. At issue in *Payne* was the admission of penalty phase testimony by the mother of a deceased victim. The woman testified about the effect of the crime on her surviving grandson, who had witnessed the murder of his mother and baby sister and had himself nearly been killed by the same attack. Her testimony powerfully conveyed her grandson's suffering, but "she[d] no light on the defendant's guilt or moral culpability." 501 U. S., at 856 (STEVENS, J., dissenting). By its very poignancy, the testimony "encourage[d] jurors to decide in favor of death rather than life on the basis of their emotions rather than their reason." *Ibid.* Yet, despite the inherent danger posed by such testimony, the Court rejected *Booth*'s *per se* rule barring the admissibility of victim impact evidence in capital proceedings. Declaring such evidence to be

"simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question," 501 U. S., at 825, the Court held that prosecutors should be permitted to present evidence "offering a quick glimpse of the life which [the] defendant chose to extinguish" and "demonstrating the loss to the victim's family and to society . . . result[ing] from the defendant's homicide," *id.*, at 822 (internal quotation marks omitted).

Given *Payne*'s sharp retreat from prior precedent, it is surprising that neither the opinion of the Court nor any of the concurring opinions made a serious attempt to define or otherwise constrain the category of admissible victim impact evidence. Instead, the Court merely gestured toward a standard, noting that, "[i]n the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." *Id.*, at 825. That statement represents the beginning and end of the guidance we have given to lower courts considering the admissibility of victim impact evidence in the first instance.

II

In the years since *Payne* was decided, this Court has left state and federal courts unguided in their efforts to police the hazy boundaries between permissible victim impact evidence and its impermissible, "unduly prejudicial" forms. Following *Payne*'s model, lower courts throughout the country have largely failed to place clear limits on the scope, quantity, or kind of victim impact evidence capital juries are permitted to consider. See generally Logan, Through the Past Darkly: A Survey of the Uses and Abuses of Victim Impact Evidence in Capital Trials, 41 Ariz. L. Rev. 143 (1999). Not only have courts allowed capital sentencing juries to hear brief oral or written testimony from close family members regarding victims and the direct impact of their deaths; they have also allowed testimony from friends, neighbors, and co-workers in the form of poems, photographs, hand-crafted items, and—as occurred in these cases—multimedia video presentations. See Blume, Ten Years of *Payne:* Victim Impact Evidence in Capital Cases, 88 Cornell L. Rev. 257, 271–272 (2003) (collecting cases).

Victim impact evidence is powerful in any form.[3] But in each of these cases, the evidence was especially prejudicial. Although the video shown to each jury was emotionally evocative, it was not probative of the culpability or character of the offender or the circumstances of the offense. Nor was the evidence particularly probative of the impact of the crimes on the victims' family members: The pictures and video footage shown to the juries portrayed events that occurred long before the respective crimes were committed and that bore no direct relation to the effect of crime on the victims' family members.

Equally troubling is the form in which the evidence was presented. As these cases demonstrate, when victim impact evidence is enhanced with music, photographs, or video footage, the risk of unfair prejudice quickly becomes overwhelming. While the video tributes at issue in these cases contained moving portrayals of the lives of the victims, their primary, if not sole, effect was to rouse jurors' sympathy for the victims and increase jurors' antipathy for the capital defendants. The videos added nothing relevant to the jury's deliberations and invited a verdict based on sentiment, rather than reasoned judgment.

I remain convinced that the views expressed in my dissent in *Payne* are sound, and that the *per se* rule announced in *Booth* is both wiser and more faithful to the rule of law than the untethered jurisprudence that has emerged over the past two decades. Yet even under the rule announced in *Payne*, the prosecution's ability to admit such powerful and prejudicial evidence is not boundless.

These videos are a far cry from the written victim impact evidence at issue in *Booth* and the brief oral testimony condoned in *Payne*. In their form, length, and scope, they vastly exceed the

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[3] As one Federal District Judge put it, "I cannot help but wonder if *Payne* . . . would have been decided in the same way if the Supreme Court Justices in the majority had ever sat as trial judges in a federal death penalty case and had observed first hand, rather than through review of a cold record, the unsurpassed emotional power of victim impact testimony on a jury. It has now been over four months since I heard this testimony [in a codefendant's case] and the juror's sobbing during the victim impact testimony still rings in my ears. This is true even though the federal prosecutors in [the case] used admirable restraint in terms of the scope, amount, and length of victim impact testimony." *United States* v. *Johnson*, 362 F. Supp. 2d 1043, 1107 (ND Iowa 2005).

"quick glimpse" the Court's majority contemplated when it overruled *Booth* in 1991. At the very least, the petitions now before us invite the Court to apply the standard announced in *Payne*, and to provide the lower courts with long-overdue guidance on the scope of admissible victim impact evidence. Having decided to tolerate the introduction of evidence that puts a heavy thumb on the prosecutor's side of the scale in death cases, the Court has a duty to consider what reasonable limits should be placed on its use.

JUSTICE BREYER, dissenting.

I would grant certiorari in these cases for many of the reasons set forth in JUSTICE STEVENS' separate statement. In *Payne* v. *Tennessee*, 501 U. S. 808 (1991), the Court held that "if a State decides to permit consideration of" victim impact "evidence, 'the Eighth Amendment erects no *per se* bar.'" *Id.*, at 831 (O'Connor, J., concurring). But three of the six *Payne*-majority Justices, after so characterizing the Court's holding, added that "[i]f, in a particular case, a witness' testimony or a prosecutor's remark so infects the sentencing proceeding as to render it fundamentally unfair, the defendant may seek appropriate relief under the Due Process Clause of the Fourteenth Amendment." *Ibid.*

The question here is whether admission at a death penalty proceeding of a particular film about the victim's life goes beyond due process bounds. I would concede that the film at issue in No. 07–11073 will help the jury understand "the full extent of the harm caused by the crime, including its impact on the victim's family and community." *Id.*, at 830. It will help "remind the jury that the person whose life was taken was a unique human being." *Id.*, at 831. And it will give the jury, at the least, "'a quick glimpse of the life'" the defendant "'chose to extinguish.'" *Id.*, at 830. The film, in my view, is poignant, tasteful, artistic, and, above all, moving.

On the other hand, the film's personal, emotional, and artistic attributes themselves create the legal problem. They render the film's purely emotional impact strong, perhaps unusually so. That emotional impact is driven in part by the music, the mother's voiceover, and the use of scenes without victim or family (for example, the film concludes with a clip of wild horses running free). Those aspects of the film tell the jury little or nothing

about the crime's "circumstances," *People* v. *Robinson*, 37 Cal. 4th 592, 650, 124 P. 3d 363, 402 (2005) (permitting the introduction of penalty-phase victim impact evidence as a "circumstance of the crime" under Cal. Penal Code Ann. § 190.3 factor (a) (West 2008)), but nonetheless produce a powerful purely emotional impact. It is this minimal probity coupled with the video's *purely emotional* impact that may call due process protections into play.

This Court has made clear that "any decision to impose the death sentence" must "be, and appear to be, based on reason rather than caprice or emotion." *Gardner* v. *Florida*, 430 U. S. 349, 358 (1977) (plurality opinion). A review of the film itself, http://www.supremecourtus.gov/opinions/video/kelly_v_california.html, along with the sources to which JUSTICE STEVENS refers, makes clear that the due process problem of disproportionately powerful emotion is a serious one. Cf. *United States* v. *Johnson*, 362 F. Supp. 2d 1043, 1107 (ND Iowa 2005) (describing "juror's sobbing" that "still rings" in judge's "ears"). I understand the difficulty of drawing a line between what is, and is not, constitutionally admissible in this area. But examples can help elucidate constitutional guidelines. And in my view, the Court should grant certiorari and consider these cases in an effort to do so.

Rehearing Denied

No. 07–10118. SMITH *v.* MICHIGAN ET AL., 553 U. S. 1081;

No. 07–11205. CANNEL *v.* UNITED STATES, *ante*, p. 854;

No. 07–11405. MORCOS *v.* MORCOS, *ante*, p. 867;

No. 07–11444. BUCK *v.* DEUTSCHE BANK NATIONAL TRUST CO., TRUSTEE FOR LONG BEACH MORTGAGE LOAN TRUST 2003–2, ET AL., *ante*, p. 869;

No. 07–11451. SCHRADER *v.* ALLEN, *ante*, p. 869;

No. 07–11481. RICHARD *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 871;

No. 08–5190. HAQUE *v.* FRY'S ELECTRONICS, INC., *ante*, p. 900;

No. 08–5291. MCKINNEDY *v.* NEWELL, *ante*, p. 906;

No. 08–5420. WHITMILL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 914; and

No. 08–5528. WOODBERRY *v.* UNITED STATES, *ante*, p. 920. Petitions for rehearing denied.

No. 08–5205. IN RE WOERTH, *ante*, p. 810. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

NOVEMBER 12, 2008

Dismissal Under Rule 46

No. 08–301. DCFS TRUST *v.* JONES. Ct. App. N. Y. Certiorari dismissed under this Court's Rule 46.1. Reported below: 10 N. Y. 3d 550, 890 N. E. 2d 884.

NOVEMBER 14, 2008

Dismissal Under Rule 46

No. 08–168. BORDIER ET CIE ET AL. *v.* LASALA ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 519 F. 3d 121.

Probable Jurisdiction Noted

No. 08–205. CITIZENS UNITED *v.* FEDERAL ELECTION COMMISSION. Appeal from D. C. D. C. Probable jurisdiction noted.

Certiorari Granted

No. 08–22. CAPERTON ET AL. *v.* A. T. MASSEY COAL CO., INC., ET AL. Sup. Ct. App. W. Va. Certiorari granted. Reported below: 223 W. Va. 624, 679 S. E. 2d 223.

No. 08–67. YEAGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 521 F. 3d 367.

No. 08–192. ABUELHAWA *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted. Reported below: 523 F. 3d 415.

No. 08–5274. DEAN *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 517 F. 3d 1224.

NOVEMBER 17, 2008

Certiorari Granted—Vacated and Remanded

No. 07–11550. HUNTER *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Begay* v. *United States*, 553 U. S. 137 (2008).

Certiorari Dismissed

No. 08–6253. ROLLE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8.

No. 08–6347. BASKETT *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–6383. FERQUERON *v.* MICHIGAN. Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–6728. GUILLORY *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 08A347. SCHULZ *v.* UNITED STATES FEDERAL RESERVE SYSTEM ET AL. C. A. 2d Cir. Application for injunction, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 08M24. MICHAU *v.* CANNON, SHERIFF, CHARLESTON COUNTY, SOUTH CAROLINA, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of Kansas for leave to file a surreply denied. [For earlier order herein, see, *e. g.*, 553 U. S. 1092.]

No. 07–512. PACIFIC BELL TELEPHONE CO., DBA AT&T CALIFORNIA, ET AL. *v.* LINKLINE COMMUNICATIONS, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 554 U. S. 916.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of American Antitrust Institute for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and time is

to be divided as follows: 15 minutes for respondents and 15 minutes for *amicus curiae* American Antitrust Institute.

No. 07–543. AT&T Corp. *v.* Hulteen et al. C. A. 9th Cir. [Certiorari granted, 554 U. S. 916.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–1015. Ashcroft, Former Attorney General, et al. *v.* Iqbal et al. C. A. 2d Cir. [Certiorari granted, 554 U. S. 902.] Motion of Ibrahim Turkman et al. for leave to file a brief as *amici curiae* granted.

No. 07–1356. Kansas *v.* Ventris. Sup. Ct. Kan. [Certiorari granted, 554 U. S. 944.] Motion of respondent for appointment of counsel granted. Matthew J. Edge, Esq., of Topeka, Kan., is appointed to serve as counsel for respondent in this case.

No. 07–9712. Puckett *v.* United States. C. A. 5th Cir. [Certiorari granted, 554 U. S. 945.] Motion of petitioner for appointment of counsel granted. Lars Robert Isaacson, Esq., of Lewisville, Tex., is appointed to serve as counsel for petitioner in this case.

No. 07–11368. Peabody *v.* United States et al. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 08–5329. Brown *v.* Beard, Secretary, Pennsylvania Department of Corrections, et al. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 08–6913. In re Chery; and

No. 08–6932. In re Sinquefield. Petitions for writs of habeas corpus denied.

No. 08–5935. In re Wolf;

No. 08–6293. In re Ghee; and

No. 08–6329. In re Cox. Petitions for writs of mandamus and/or prohibition denied.

No. 08–339. In re Rodriguez. Petition for writ of mandamus and/or prohibition denied. The Chief Justice took no part in the consideration or decision of this petition.

Certiorari Denied

No. 07–11386. Abidaoud *v.* Mukasey, Attorney General. C. A. 1st Cir. Certiorari denied. Reported below: 246 Fed. Appx. 2.

No. 08–21. Agri Processor Co., Inc. *v.* National Labor Relations Board. C. A. D. C. Cir. Certiorari denied. Reported below: 514 F. 3d 1.

No. 08–38. Molski et al. *v.* Evergreen Dynasty Corp., dba Mandarin Touch Restaurant. C. A. 9th Cir. Certiorari denied. Reported below: 500 F. 3d 1047.

No. 08–58. Shelby *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 521 F. 3d 367.

No. 08–68. Henry *v.* Mukasey, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 264 Fed. Appx. 62.

No. 08–71. Saintha *v.* Mukasey, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 516 F. 3d 243.

No. 08–82. IMS Engineers-Architects, P. C. *v.* Geren, Secretary of the Army. C. A. Fed. Cir. Certiorari denied. Reported below: 274 Fed. Appx. 898.

No. 08–151. Ohio *v.* Citizens for Tax Reform et al. C. A. 6th Cir. Certiorari denied. Reported below: 518 F. 3d 375.

No. 08–195. Orange County, California *v.* Pierce et al. C. A. 9th Cir. Certiorari denied. Reported below: 526 F. 3d 1190.

No. 08–333. Arnold et al. *v.* Bank of America, N. A., et al. C. A. 8th Cir. Certiorari denied. Reported below: 530 F. 3d 669.

No. 08–340. Doe, Individually and as Next Friend of Doe, a Minor *v.* MySpace, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 528 F. 3d 413.

No. 08–341. Engel *v.* Montana Supreme Court Commission on Practice et al. Sup. Ct. Mont. Certiorari denied. Reported below: 344 Mont. 219, 194 P. 3d 613.

No. 08–347. SCHLAGEL ET UX. *v.* FROHLICH, JUDGE, CIRCUIT COURT OF KENTUCKY, BOONE COUNTY, ET AL. Sup. Ct. Ky. Certiorari denied.

No. 08–361. CAMPION *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 530 F. 3d 899.

No. 08–377. TRENCHFIELD *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 08–386. WILLI ET AL. *v.* AMERICAN AIRLINES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 126.

No. 08–414. CENTURYTEL, INC. *v.* BEATTIE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 511 F. 3d 554.

No. 08–420. ESTRELLA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 48 App. Div. 3d 1283, 851 N. Y. S. 2d 793.

No. 08–494. STOLLER *v.* PURE FISHING, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 528 F. 3d 478.

No. 08–508. RYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 479.

No. 08–527. HIGGS ET AL. *v.* SUPERIOR COURT OF MASSACHUSETTS, PLYMOUTH COUNTY, ET AL. C. A. 1st Cir. Certiorari denied.

No. 08–5082. HAMLETT *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 395.

No. 08–5136. JACKSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 138 Wash. App. 1023.

No. 08–5444. PATRICK *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–5487. HESTER *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 08–5488. GANTT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 978 So. 2d 159.

No. 08–5512. TROUT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–5522. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 411.

No. 08–5678. DOUGLAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 525 F. 3d 225.

No. 08–5716. IRICK *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–5766. HOLLAND *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 519 F. 3d 107.

No. 08–5768. FIELDS *v.* BLEIMAN. C. A. 3d Cir. Certiorari denied. Reported below: 267 Fed. Appx. 144.

No. 08–5786. YEAZEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–5788. VILLARREAL-OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 382.

No. 08–5921. TRAWICK *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 520 F. 3d 1264.

No. 08–6070. GREEN *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 38 Kan. App. 2d 781, 172 P. 3d 1213.

No. 08–6256. GARZA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6268. HURTADO *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 724.

No. 08–6269. ANDERSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied.

No. 08–6273. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–6276. ROBINSON *v.* JONES ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6283. TAYLOR *v.* CITY OF LAKE WORTH, FLORIDA, ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 964 So. 2d 243.

No. 08–6289. LAMON *v.* HUIBREGTSE, WARDEN. Sup. Ct. Wis. Certiorari denied.

No. 08–6299. CROSBY *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 1122, 885 N. E. 2d 174.

No. 08–6308. TIVIS *v.* BEECROFT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 88.

No. 08–6312. BLANCO *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 19.

No. 08–6313. BLAKE O. *v.* PAUL H. ET UX. Ct. App. Ind. Certiorari denied. Reported below: 878 N. E. 2d 900.

No. 08–6314. EDWARDS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–6318. STARNES *v.* OHIO. Ct. App. Ohio, Coshocton County. Certiorari denied.

No. 08–6326. ADAM *v.* YAMAMOTO ET AL. Int. Ct. App. Haw. Certiorari denied. Reported below: 117 Haw. App. 173, 177 P. 3d 361.

No. 08–6328. ALDER *v.* CARUSO, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6331. NORTON *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6334. SHERMAN *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–6335. MCCRAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6336. PERRY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6337. CASON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 105.

No. 08–6338. JEFFERSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 158 Cal. App. 4th 830, 70 Cal. Rptr. 3d 451.

No. 08–6350. BELL *v.* TAYLOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 117.

No. 08–6351. BRIDGEFORTH *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 08–6352. BROWNLOW *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 695.

No. 08–6355. DODD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6356. COLE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6357. CAIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6367. MACK *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6368. RODRIGUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6369. STEWART *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 08–6371. SIMEON *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 08–6372. PEYTON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 253 S. W. 3d 504.

No. 08–6374. TALWAR *v.* CATHOLIC HEALTHCARE PARTNERS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 800.

No. 08–6375. TAYLOR ET AL. *v.* O'NEIL ET AL. Ct. App. Ky. Certiorari denied.

No. 08–6378. Doriss *v.* City of New Haven, Connecticut, et al. C. A. 2d Cir. Certiorari denied. Reported below: 276 Fed. Appx. 36.

No. 08–6379. Cobb *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–6380. Ousley *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 984 So. 2d 985.

No. 08–6381. Lynch *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–6384. Hughes *v.* Minnesota. Sup. Ct. Minn. Certiorari denied. Reported below: 749 N. W. 2d 307.

No. 08–6385. Holt *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied.

No. 08–6398. Carey *v.* Free, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 875.

No. 08–6424. Adeyemi *v.* District of Columbia. C. A. D. C. Cir. Certiorari denied. Reported below: 525 F. 3d 1222.

No. 08–6435. Were *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 118 Ohio St. 3d 448, 890 N. E. 2d 263.

No. 08–6439. McGowan *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–6441. Gharbi *v.* Blakeway et al. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 109.

No. 08–6492. Schreiber *v.* Iowa. Ct. App. Iowa. Certiorari denied. Reported below: 753 N. W. 2d 18.

No. 08–6502. Cano *v.* Bexar County, Texas. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 404.

No. 08–6527. Woodel *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 985 So. 2d 524.

No. 08–6538. Richardson *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 251 S. W. 3d 438.

No. 08–6562. SNEED *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 984 So. 2d 1253.

No. 08–6566. BUTTS *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 354.

No. 08–6677. DOSS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 312 Wis. 2d 570, 754 N. W. 2d 150.

No. 08–6774. YUZARY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–6775. CANANIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 532 F. 3d 764.

No. 08–6778. SANDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 271.

No. 08–6779. SAWAF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6781. REDMOND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 525 F. 3d 583.

No. 08–6782. WHITEHILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 532 F. 3d 746.

No. 08–6785. HARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 75.

No. 08–6791. PABELLON *v.* UNITED STATES PENITENTIARY AT MCCREARY ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6792. BARRAGAN *v.* UNITED STATES;
No. 08–6818. ACOSTA *v.* UNITED STATES; and
No. 08–6846. ZAMORA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 534 F. 3d 574.

No. 08–6796. WOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 295 Fed. Appx. 536.

No. 08–6799. SMITH *v.* CLERK OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 280 Fed. Appx. 1.

No. 08–6801. SPEAGLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 90.

No. 08–6802. ZAVALA *v.* UNITED STATES; and
No. 08–6829. ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 170.

No. 08–6805. SIMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6806. SETTLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6809. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 284.

No. 08–6830. KOWAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 527 F. 3d 741.

No. 08–6834. HOLTZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 548.

No. 08–6839. PHINAZEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 515 F. 3d 511.

No. 08–6841. NATION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6844. PATEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6847. GILBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 383.

No. 08–6848. GRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 283.

No. 08–6850. CARLTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 534 F. 3d 97.

No. 08–6851. DOWLING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6853. GEORGE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 532 F. 3d 933.

No. 08–6855. MUNOZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 156.

No. 08–6859. SALEHI, AKA LATIF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 288 Fed. Appx. 41.

No. 08–6860. SALLIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 457.

No. 08–6862. NEWTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6864. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6866. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 80.

No. 08–6869. DECOLOGERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 530 F. 3d 36.

No. 08–6871. EGIPCIACO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 119.

No. 08–6874. AVILES-COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 536 F. 3d 1.

No. 08–6876. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–6877. T. K. N. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 388.

No. 08–6882. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 14.

No. 08–6886. DAVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 289 Fed. Appx. 436.

No. 08–6887. CAESAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 314 Fed. Appx. 331.

No. 08–6888. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 527 F. 3d 1274.

No. 08–6889. ABRAHAMSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 480.

No. 08–6893. BRYANT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 296 Fed. Appx. 115.

No. 08–204. MARTIN *v.* HOWARD UNIVERSITY ET AL. C. A. D. C. Cir. Motion of National Organization for Women et al. for leave to file a brief as *amici curiae* out of time denied. Certiorari denied. Reported below: 275 Fed. Appx. 2.

No. 08–309. ATTEBURY, CHIEF OPERATING OFFICER, NORTHWEST MISSOURI PSYCHIATRIC REHABILITATION CENTER *v.* REVELS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 519 F. 3d 734.

No. 08–399. CAMPBELL *v.* LOUISIANA. Sup. Ct. La. Motion of Academics for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 983 So. 2d 810.

No. 08–440. BODKIN ET AL. *v.* COOK INLET REGION, INC. Sup. Ct. Alaska. Motions of Douglas M. Branson, William D. English, and John Havelock for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 182 P. 3d 1072.

Rehearing Denied

No. 07–10664. MCKINNEDY *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, *ante*, p. 834;

No. 07–10789. IN RE ZARWELL, *ante*, p. 810;

No. 07–11148. CRAWFORD *v.* TEXAS (two judgments), *ante*, p. 851;

No. 07–11581. BAFFORD *v.* TOWNSHIP APARTMENTS ASSN., LTD., ET AL., *ante*, p. 877;

No. 07–11627. DAVIS *v.* NEW JERSEY, *ante*, p. 880;

No. 08–5068. JACKSON *v.* CAROLINAS HEALTHCARE SYSTEM ET AL., *ante*, p. 893;

No. 08–5233. MARQUARDT *v.* VANRYBROEK, *ante*, p. 903;

No. 08–5634. BUI PHU XUAN *v.* FORT WORTH STAR TELEGRAM, *ante*, p. 925; and

No. 08–5680. CARGILL *v.* UNITED STATES, *ante*, p. 926.

NOVEMBER 18, 2008

Dismissal Under Rule 46

No. 08–6650. WOOTEN *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 540 F. 3d 1019.

Miscellaneous Order

No. 08A440. BEY *v.* BAGLEY, WARDEN. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. THE CHIEF JUSTICE took no part in the consideration or decision of this application.

NOVEMBER 20, 2008

Certiorari Denied

No. 08–7128 (08A428). HUDSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. THE CHIEF JUSTICE took no part in the consideration or decision of this application. Reported below: 273 Fed. Appx. 331.

NOVEMBER 21, 2008

Miscellaneous Order

No. 08A458. GRIFFITH *v.* KENTUCKY DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Ky. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. THE CHIEF JUSTICE took no part in the consideration or decision of this application.

NOVEMBER 24, 2008

Dismissals Under Rule 46

No. 08–219. NISOURCE, INC., ET AL. *v.* GOFF, EXECUTRIX OF THE ESTATE OF TAWNEY, ET AL. Sup. Ct. App. W. Va. Certiorari dismissed under this Court's Rule 46.1.

No. 08–229. NISOURCE, INC., ET AL. *v.* GOFF, EXECUTRIX OF THE ESTATE OF TAWNEY, ET AL. Cir. Ct. Roane County, W. Va. Certiorari dismissed under this Court's Rule 46.1.

NOVEMBER 25, 2008

Certiorari Granted

No. 08–267. UNITED STATES *v.* DENEDO. C. A. Armed Forces. Certiorari granted. Reported below: 66 M. J. 114.

No. 08–681 (08A413). NKEN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 4th Cir. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted, and it is ordered that removal of petitioner is hereby stayed pending further order of the Court. In addition, the application for stay is treated as a petition for writ of certiorari, and certiorari is granted limited to the following question: "Whether the decision of a Court of Appeals to stay an alien's removal pending consideration of the alien's petition for review is governed by the standard set forth in § 242(f)(2) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1252(f)(2), or instead by the traditional test for stays and preliminary injunctive relief."

Petitioner's brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 19, 2008. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, January 7, 2009. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, January 14, 2009.

DECEMBER 1, 2008

Certiorari Dismissed

No. 08–6446. HOBLEY *v.* WACHOVIA CORP. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 275 Fed. Appx. 16.

Miscellaneous Orders

No. 08M25. TAYLOR *v.* UNITED STATES;
No. 08M27. RINGGOLD *v.* LOCKHART;
No. 08M28. ADEJUMOBI *v.* NATIONAL SECURITY AGENCY;
No. 08M29. C. PYRAMID ENTERPRISES ET AL. *v.* E&H STEEL CORP.; and
No. 08M30. DILWORTH *v.* CONTINENTAL CONSTRUCTION CO. INC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08M26. TURNER *v.* UNITED STATES; and
No. 08M31. BANKS *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 07–615. Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran *v.* Elahi. C. A. 9th Cir. [Certiorari granted, 554 U. S. 916.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–984. Coeur Alaska, Inc. *v.* Southeast Alaska Conservation Council et al.; and

No. 07–990. Alaska *v.* Southeast Alaska Conservation Council et al. C. A. 9th Cir. [Certiorari granted, 554 U. S. 931.] Motion of the Solicitor General for divided argument granted.

No. 07–1437. Carlsbad Technology, Inc. *v.* HIF Bio, Inc., et al. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 943.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 07–11004. Curiale *v.* Casanovas et al. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 07–11411. Mobasher *v.* Bronx Community College of the City University of New York et al. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 08–240. Mac's Shell Service Inc. et al. *v.* Shell Oil Products Co. LLC et al.; and

No. 08–372. Shell Oil Products Co. LLC et al. *v.* Mac's Shell Service Inc. et al. C. A. 1st Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 08–5170. Barritt *v.* Trant. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 08–5442. Curiale *v.* Potter, Postmaster General (two judgments). C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 08–6045. Xiangyuan Zhu *v.* St. Francis Health Center et al. C. A. 10th Cir. Motion of petitioner for reconsidera-

tion of order denying leave to proceed *in forma pauperis* [*ante*, p. 940] denied.

No. 08–6360. In re Drabovskiy. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 942] denied.

No. 08–6494. Johnson *v.* University Good Samaritan et al. Sup. Ct. Minn.; and

No. 08–6906. Groseclose *v.* Department of the Navy. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 22, 2008, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 08–7088. In re Perkins. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 07–1427. UFO Chuting of Hawaii, Inc., et al. *v.* Theilen, Chair and Acting Director of the Board of Land and Natural Resources, Hawaii, et al. C. A. 9th Cir. Certiorari denied. Reported below: 508 F. 3d 1189.

No. 07–1569. City of Garden Grove, California *v.* Superior Court of California, Orange County, et al. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 157 Cal. App. 4th 355, 68 Cal. Rptr. 3d 656.

No. 07–10992. Poteet, Individually and as Next Friend of Poteet, a Minor *v.* Town of Flower Mound, Texas. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 218 S. W. 3d 780.

No. 07–11192. King *v.* Marriott International, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 301.

No. 08–8. Watson *v.* Mukasey, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 255 Fed. Appx. 920.

No. 08–27. Eggert *v.* Texas. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 08–65. NEILSON ET AL. *v.* SEABOARD CORP. ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 248 S. W. 3d 27.

No. 08–90. BAYER BIOSCIENCE N. V. *v.* MONSANTO CO. C. A. Fed. Cir. Certiorari denied. Reported below: 275 Fed. Appx. 992.

No. 08–138. MOLA DEVELOPMENT CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 516 F. 3d 1370.

No. 08–196. NEW MEXICO *v.* SNELL. Ct. App. N. M. Certiorari denied. Reported below: 142 N. M. 452, 166 P. 3d 1106.

No. 08–198. HUNTLEIGH USA CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 525 F. 3d 1370.

No. 08–217. CENTRAL WEST VIRGINIA ENERGY CO. ET AL. *v.* WHEELING PITTSBURGH STEEL CORP. ET AL. Cir. Ct. Brooke County, W. Va. Certiorari denied.

No. 08–218. CENTRAL WEST VIRGINIA ENERGY CO. ET AL. *v.* WHEELING PITTSBURGH STEEL CORP. ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 08–223. UNITED STATES *v.* MCWANE, INC.; and
No. 08–364. MCWANE, INC., ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 505 F. 3d 1208.

No. 08–225. OUR CHILDREN'S EARTH FOUNDATION ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 527 F. 3d 842.

No. 08–227. LIDDELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 517 F. 3d 1007.

No. 08–236. FAHRENHOLTZ *v.* WILLIAMS ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 990 So. 2d 99.

No. 08–237. MESSER *v.* OHIO. Ct. App. Ohio, Clermont County. Certiorari denied. Reported below: 2007-Ohio-5899.

No. 08–259. TRANSLOGIC TECHNOLOGY, INC. *v.* HITACHI, LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 250 Fed. Appx. 988.

No. 08–296. Kareem W. *v.* Anonymous et al. Ct. App. N. Y. Certiorari denied. Reported below: 10 N. Y. 3d 579, 890 N. E. 2d 875.

No. 08–334. Walker *v.* Munsell et al. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 388.

No. 08–348. TIP Systems, LLC, et al. *v.* Independent Technologies, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 529 F. 3d 1364.

No. 08–358. Spencer *v.* Chandler et al. Sup. Ct. Miss. Certiorari denied. Reported below: 985 So. 2d 330.

No. 08–367. Islander East Pipeline Co., L. L. C. *v.* McCarthy, Commissioner, Connecticut Department of Environmental Protection, et al. C. A. 2d Cir. Certiorari denied. Reported below: 525 F. 3d 141.

No. 08–369. Tri-State Financial, LLC *v.* Lovald et al. C. A. 8th Cir. Certiorari denied. Reported below: 525 F. 3d 649.

No. 08–370. Gordon, Trustee *v.* Novastar Mortgage, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 524 F. 3d 1175.

No. 08–373. Smith *v.* Consolidated Freightways, Inc. Sup. Ct. Pa. Certiorari denied.

No. 08–375. Lakeview Anesthesia Associates et al. *v.* Kadlec Medical Center et al. C. A. 5th Cir. Certiorari denied. Reported below: 527 F. 3d 412.

No. 08–378. LaCount *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 310 Wis. 2d 85, 750 N. W. 2d 780.

No. 08–384. Villaje del Rio, Ltd. *v.* Colina del Rio, LP. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 263.

No. 08–389. Steinburg *v.* Chesterfield County Planning Commission et al. C. A. 4th Cir. Certiorari denied. Reported below: 527 F. 3d 377.

No. 08–390. Chiplease, Inc., et al. *v.* Steinberg, Chapter 7 Trustee, et al. C. A. 7th Cir. Certiorari denied. Reported below: 528 F. 3d 467.

No. 08–392. INDYWAY INVESTMENT *v.* COOPER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–393. ISAACS *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 240.

No. 08–396. MATICAN *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 524 F. 3d 151.

No. 08–397. BENISTAR LTD. ET AL. *v.* CAHALY ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 451 Mass. 343, 885 N. E. 2d 800.

No. 08–401. ONAWOLA *v.* JOHNS HOPKINS UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 358.

No. 08–404. JOHNSON *v.* TRANSIT MIX CONCRETE & MATERIALS CO. ET AL. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 205 S. W. 3d 92.

No. 08–406. C'EST MOI, INC. *v.* NEW HAMPSHIRE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 519 F. 3d 937.

No. 08–408. CUNNINGHAM *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 881 N. E. 2d 1120.

No. 08–412. SUTTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–415. ASLANI *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 08–417. KOWELL *v.* DONELL, RECEIVER FOR J. T. WALLENBROCK & ASSOCIATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 533 F. 3d 762.

No. 08–418. UMCO ENERGY, INC. *v.* PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION. Commw. Ct. Pa. Certiorari denied. Reported below: 938 A. 2d 530.

No. 08–426. HARBUCK *v.* HOUSTON COUNTY, GEORGIA, ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 284 Ga. 4, 662 S. E. 2d 107.

No. 08–434. HARGROVE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–442. FONTILEA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 642.

No. 08–443. SMITH *v.* FRIEDMAN ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 168 Md. App. 767, 777.

No. 08–451. MADISON MATERIALS CO., INC. *v.* ST. PAUL FIRE & MARINE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 523 F. 3d 541.

No. 08–454. CRUMP-DONAHUE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–471. VENTURE INDUSTRIES CORP. *v.* AUTOLIVE ASP, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 283 Fed. Appx. 808.

No. 08–484. MAYEAUX *v.* CLEAR CREEK INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 341.

No. 08–491. GAY ET AL. *v.* HUNT ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 944 A. 2d 846.

No. 08–492. HOUSTON *v.* AAMES FUNDING CORP. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 44 App. Div. 3d 692, 843 N. Y. S. 2d 660.

No. 08–493. GUTIERREZ ET UX. *v.* GORDON ET UX. Ct. App. N. M. Certiorari denied.

No. 08–496. ARREOLA *v.* CHOUDRY. C. A. 7th Cir. Certiorari denied. Reported below: 533 F. 3d 601.

No. 08–501. GLAZER *v.* RELIANCE STANDARD LIFE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 524 F. 3d 1241.

No. 08–513. PSN ILLINOIS, LLC *v.* IVOCLAR VIVADENT, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 525 F. 3d 1159.

No. 08–522. Boyett et al. *v.* Washington County, Utah, et al. C. A. 10th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 667.

No. 08–523. Daniels, Individually and on Behalf of the Estate of Daniels, Deceased, et al. *v.* City of Dallas, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 321.

No. 08–533. CleanCOALition et al. *v.* TXU Power, dba TXU Generation Co. LP, et al. C. A. 5th Cir. Certiorari denied. Reported below: 536 F. 3d 469.

No. 08–542. Ellis *v.* Grant Thornton LLP. C. A. 4th Cir. Certiorari denied. Reported below: 530 F. 3d 280.

No. 08–544. Hoffecker *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 530 F. 3d 137.

No. 08–553. Cianfarano *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 278 Fed. Appx. 62.

No. 08–555. Stephens *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 312 Wis. 2d 479, 751 N. W. 2d 902.

No. 08–563. Coin Acceptors, Inc. *v.* Mars, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 527 F. 3d 1359.

No. 08–575. Tavarez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 824.

No. 08–577. Martin *v.* United States;
No. 08–589. Stringer *v.* United States; and
No. 08–591. Samper *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 535 F. 3d 929.

No. 08–578. Kay *v.* Federal Communications Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 525 F. 3d 1277.

No. 08–579. Wecht *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 541 F. 3d 493.

No. 08–581. Fernandes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 119.

No. 08–582. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 1034.

No. 08–590. SINIBALDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 922.

No. 08–5003. LACY *v.* NATIONAL RAILROAD PASSENGER CORPORATION. C. A. 3d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 934.

No. 08–5101. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 523 F. 3d 519.

No. 08–5226. GOMEZ-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 523 F. 3d 554.

No. 08–5445. MORENO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 274 Fed. Appx. 86.

No. 08–5452. ROBINSON *v.* BOYD. C. A. 11th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 909.

No. 08–5514. LOPEZ-VELASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 526 F. 3d 804.

No. 08–5649. FAMBRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 526 F. 3d 836.

No. 08–5674. PLUNKETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 294.

No. 08–5693. BUSBY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 253 S. W. 3d 661.

No. 08–5694. BUCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–5805. VELA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 299.

No. 08–5831. WILDER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 526 F. 3d 1.

No. 08–5894. NEVAREZ-PUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 429.

No. 08–5929. GOMEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS

DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 529 F. 3d 322.

No. 08–6093. WALLIN *v.* DEMPEWOLF ET AL.; and
No. 08–6548. WALLIN *v.* BRILL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 820.

No. 08–6400. JEFFERSON *v.* KILMER, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 574.

No. 08–6405. MATTHEWS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 08–6408. RHODES ET AL. *v.* ESTATE OF ROMERO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 675.

No. 08–6411. AYALA *v.* AMERICAN AIRLINES, INC., ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 982 So. 2d 684.

No. 08–6415. ARMANT *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 351.

No. 08–6416. ABDULLAH-BEY *v.* BANK ONE. Sup. Ct. Del. Certiorari denied. Reported below: 954 A. 2d 909.

No. 08–6419. DUGGER *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6420. SPOTTSVILLE *v.* TERRY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–6426. ALBA *v.* MONTFORD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 517 F. 3d 1249.

No. 08–6430. COGGINS *v.* HARRIS. C. A. 11th Cir. Certiorari denied.

No. 08–6436. WELLS *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6438. BROWN *v.* DINWIDDIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 713.

No. 08–6444. HUGHES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 983 So. 2d 270.

No. 08–6445. FOSTER *v.* OHIO. Ct. App. Ohio, Licking County. Certiorari denied. Reported below: 2008-Ohio-29.

No. 08–6449. HOWARD *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 218 Ore. App. 230, 179 P. 3d 752.

No. 08–6454. HILL *v.* HILL ET AL. (two judgments). Sup. Ct. N. C. Certiorari denied. Reported below: 362 N. C. 357, 661 S. E. 2d 739 (second judgment).

No. 08–6456. HIEN VU TU *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 136 Wash. App. 1051.

No. 08–6458. SAAVEDRA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6459. SMITH *v.* O'MALLEY, GOVERNOR OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 997.

No. 08–6461. SHAMBURGER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 988 So. 2d 622.

No. 08–6462. SMITH *v.* FINNAN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 08–6469. OSTROM *v.* EDUCATIONAL CREDIT MANAGEMENT CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 283.

No. 08–6470. VALDIVIA *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6474. BROCK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6477. WHITE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 985 So. 2d 1101.

No. 08–6478. PRUDE *v.* BRADT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–6479. Cardona *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6480. Edgar *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 541.

No. 08–6483. Moore *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 08–6499. Femino *v.* NFA Corp. C. A. 1st Cir. Certiorari denied. Reported below: 274 Fed. Appx. 8.

No. 08–6500. Castillo *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6503. Mears *v.* Wynder, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6509. Fisher *v.* Jackson National Life Insurance Co. Ct. App. Mich. Certiorari denied.

No. 08–6510. Lam *v.* Lam. C. A. 6th Cir. Certiorari denied.

No. 08–6517. Romansky *v.* Folino, Superintendent, State Correctional Institution at Greene. C. A. 3d Cir. Certiorari denied.

No. 08–6518. Rodriguez *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6519. Melendez *v.* Ercole, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 08–6520. Whisenhunt *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 174, 186 P. 3d 496.

No. 08–6523. Johnson *v.* Idaho. Sup. Ct. Idaho. Certiorari denied. Reported below: 145 Idaho 970, 188 P. 3d 912.

No. 08–6526. Torres *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–6534. Ramirez *v.* Guinn et al. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 574.

No. 08–6536. Sifuentes *v.* Prelesnik, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6537. Rogers *v.* Giurbino, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6539. Roy *v.* Wynder, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6540. Sharpe *v.* Stovall, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6544. Moore *v.* Lightfoot et al. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 844.

No. 08–6549. Williams *v.* Georgia. Sup. Ct. Ga. Certiorari denied.

No. 08–6553. Miller *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–6556. Welch *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6563. Shortz *v.* Auburn University at Montgomery. C. A. 11th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 859.

No. 08–6565. Babi *v.* LaClair, Superintendent, Great Meadow Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 08–6572. Stewart *v.* Poway Unified School District. C. A. 9th Cir. Certiorari denied.

No. 08–6585. Lisenko *v.* Mukasey, Attorney General. C. A. 1st Cir. Certiorari denied.

No. 08–6598. Brooks *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 987 So. 2d 1209.

No. 08–6610. HOSLEY *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6613. HARRIS *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6614. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1164, 953 N. E. 2d 92.

No. 08–6625. MCKINNEY *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 450.

No. 08–6645. BALDWIN *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 287 Fed. Appx. 859.

No. 08–6648. MENKES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 410.

No. 08–6659. PITTS *v.* COHEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 271.

No. 08–6660. NGUYEN, AKA KHANH TRAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 134 Wash. App. 863, 142 P. 3d 1117.

No. 08–6690. LETHERBLAIRE *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–6697. JETER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 888 N. E. 2d 1257.

No. 08–6704. PERRY *v.* TURNER, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–6706. DELOR *v.* INTERCOSMOS MEDIA GROUP, INC., DBA DIRECTNIC.COM. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 205.

No. 08–6710. HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–6726. INGRAM *v.* WARDEN, RIVER BEND DETENTION CENTER. C. A. 5th Cir. Certiorari denied.

No. 08–6730. HUBBARD *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–6795. WIDEL *v.* SHELDON, SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6811. BROWN *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 277 Fed. Appx. 993.

No. 08–6812. BARNEY *v.* INGERSOLL-RAND CO. ET AL. (two judgments). Sup. Ct. Miss. Certiorari denied.

No. 08–6833. GONZALEZ *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 982 So. 2d 77.

No. 08–6845. RIVERS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 140 Wash. App. 1042.

No. 08–6856. PULETASI *v.* WILLS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 14.

No. 08–6873. ALLEN *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 287 Fed. Appx. 872.

No. 08–6875. BAKER *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–6881. HOUCK *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 596 Pa. 683, 948 A. 2d 780.

No. 08–6897. SAENZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 163.

No. 08–6898. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 536 F. 3d 155.

No. 08–6899. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 160.

No. 08–6901. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 332.

No. 08–6902. JUNEAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 335.

No. 08–6911. SZAREWICZ *v.* RENDELL, GOVERNOR OF PENNSYLVANIA, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 598 Pa. 15, 952 A. 2d 1170.

No. 08–6916. PIERRE-LOUIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–6919. WADE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 955 A. 2d 200.

No. 08–6920. WHITE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 985 So. 2d 542.

No. 08–6921. MCLAUGHLIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 08–6923. WAGENSELLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–6927. ABARCA-SOTELO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 442.

No. 08–6928. COFFINDAFFER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 92.

No. 08–6930. COLLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–6931. SILMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 224.

No. 08–6933. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 522.

No. 08–6936. LEGRANDE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 43.

No. 08–6940. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 889.

No. 08–6941. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 387.

No. 08–6943. GAVIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 759.

No. 08–6946. SKINNER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6950. VALENTINE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–6951. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 236.

No. 08–6952. PERKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 295 Fed. Appx. 387.

No. 08–6954. PINEDA-LORENZANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 219.

No. 08–6959. KENDRICKS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–6960. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 534 F. 3d 1211.

No. 08–6961. BAEZ RIVERA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 527 F. 3d 891.

No. 08–6962. STEVENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 530 F. 3d 714.

No. 08–6964. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 524.

No. 08–6965. CAZARES-SAENZ, AKA CAZZRES-SAENZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 492.

No. 08–6966. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6967. CARPENTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 131.

No. 08–6973. EZELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 Fed. Appx. 70.

No. 08–6974. MCGAHA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 107.

No. 08–6975. Polite *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–6976. Cotton *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–6977. Curry *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 536 F. 3d 571.

No. 08–6980. Amos *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 270.

No. 08–6981. Bell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 106.

No. 08–6983. Upshaw *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 08–6984. Thigpen *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 08–6985. Warner *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 454.

No. 08–6987. Perez-Morales *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 605.

No. 08–6988. Powell *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 566.

No. 08–6990. Medina-Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 476.

No. 08–6991. Morrison *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 08–6993. Posey *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 765.

No. 08–6994. Pinson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 542 F. 3d 822.

No. 08–6999. Claro *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 583.

No. 08–7003. Snowden *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 78.

No. 08–7004. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 539 F. 3d 835.

No. 08–7012. GEORGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 803.

No. 08–7014. GALVAN-LIZARRAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 655.

No. 08–7015. GAMBLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 592.

No. 08–7016. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7020. VOSS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 874.

No. 08–7021. LAGASSE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 269 Fed. Appx. 87.

No. 08–7025. PICKENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 184.

No. 08–7026. OLSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 534.

No. 08–7027. TRADER *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 987.

No. 08–7028. UNVERZAGT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7029. BRYANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 7.

No. 08–7030. BRANNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 171.

No. 08–7031. CHILDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 253.

No. 08–7035. FOWLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 535 F. 3d 408.

No. 08–7036. GRAHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 538.

No. 08–7038. GOODLETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 699.

No. 08–7040. COOPER *v.* UNITED STATES; and
No. 08–7069. MOSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 234.

No. 08–7041. DRIVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 535 F. 3d 424.

No. 08–7042. JENNINGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 836.

No. 08–7043. MARCOS-MORA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 39.

No. 08–7047. TOBAR-CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 191.

No. 08–7050. BRITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–7055. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7063. VIVANCO-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 483.

No. 08–7065. REID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 523 F. 3d 310.

No. 08–7070. MIRANDA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 110.

No. 08–7071. PUTTICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 242.

No. 08–7073. KLUMP *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 536 F. 3d 113.

No. 08–7075. LIMON-MADERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 18.

No. 08–7078. PEREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 554.

No. 08–7080. BETHEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 667.

No. 08–7081. ARAGONES-DELGADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7084. BROADNAX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 536 F. 3d 695.

No. 08–7085. BLACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 523 F. 3d 892.

No. 08–7087. CARO-GRIMALDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 683.

No. 08–63. NATIONAL MINING ASSN. *v.* KEMPTHORNE, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Motion of American Petroleum Institute et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 512 F. 3d 702.

No. 08–245. KANSAS *v.* SMITH. Sup. Ct. Kan. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 286 Kan. 402, 184 P. 3d 890.

No. 08–250. BRAUN ET AL. *v.* ANN ARBOR CHARTER TOWNSHIP. C. A. 6th Cir. Motion of National Association of Home Builders et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 519 F. 3d 564.

No. 08–293. SPLENDID SHIPPING SENDIRIAN BERHARD *v.* TRANS-TEC ASIA. C. A. 9th Cir. Motion of Malaysia for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 518 F. 3d 1120.

No. 08–395. STAMP *v.* METROPOLITAN LIFE INSURANCE CO. ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 531 F. 3d 84.

No. 08–411. RODRIGUEZ *v.* BROWN ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 285 Fed. Appx. 756.

Rehearing Denied

No. 07–1281. KAY ET AL. *v.* UNITED STATES, *ante*, p. 813;

No. 07–1317. EVANS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 813;

No. 07–1359. LAMPKIN-ASAM *v.* VOLUSIA COUNTY SCHOOL BOARD ET AL., *ante*, p. 815;

No. 07–1405. OLSON *v.* CONTINENTAL RESOURCES, INC., ET AL., *ante*, p. 817;

No. 07–1416. SKOORKA *v.* KEAN UNIVERSITY ET AL., *ante*, p. 817;

No. 07–1444. MATEEN ET AL. *v.* DICUS, *ante*, p. 819;

No. 07–1479. INDYWAY INVESTMENT *v.* OPRI ET AL., *ante*, p. 820;

No. 07–1508. WALSTON *v.* WALSTON ET AL., *ante*, p. 822;

No. 07–1519. MCRAE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF EVANS, DECEASED *v.* EVANS, *ante*, p. 823;

No. 07–1578. MALAN *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 826;

No. 07–1597. SHAH *v.* HELEN HAYES HOSPITAL ET AL., *ante*, p. 827;

No. 07–7072. IN RE MCCLOUD, *ante*, p. 809;

No. 07–9723. HEMMERLE *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 829;

No. 07–10562. PINEDA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 832;

No. 07–10665. MILLER *v.* GEORGIA (two judgments), *ante*, p. 834;

No. 07–10667. ROBINSON *v.* COAKLEY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL., *ante*, p. 834;

No. 07–10687. MILLER *v.* JOHNSON, DEPUTY WARDEN, ET AL., *ante*, p. 835;

No. 07–10764. BELCHER *v.* WELLS FARGO BANK, N. A., *ante*, p. 837;

No. 07–10770. GABRILL *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, *ante*, p. 837;

No. 07–10771. GABRILL *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, *ante*, p. 837;

No. 07–10821. FAVORS *v.* MICHIGAN, *ante*, p. 839;

No. 07–10859. MOLLICA *v.* ROSSI-MOLLICA, *ante*, p. 840;

No. 07–10996. JOHNSON *v.* WASHINGTON, *ante*, p. 845;

No. 07–11023. IN RE OCASIO, *ante*, p. 810;

No. 07–11069. HAYES *v.* FELKER, WARDEN, *ante*, p. 848;

No. 07–11247. GABRILL *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., *ante*, p. 943;

No. 07–11283. KARNOFEL *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 859;

No. 07–11349. IN RE DESPENZA, *ante*, p. 809;

No. 07–11388. IN RE ANAYA, *ante*, p. 810;

No. 07–11453. IN RE FOOSE, *ante*, p. 810;

No. 07–11492. BRADY *v.* WASHINGTON, *ante*, p. 872;

No. 07–11496. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, *ante*, p. 872;

No. 07–11545. BRANCH-WILLIAMS *v.* DEPARTMENT OF VETERANS AFFAIRS, *ante*, p. 875;

No. 07–11554. MORRIS *v.* ALES GROUP USA, INC., ET AL., *ante*, p. 876;

No. 07–11576. OCASIO *v.* MCDANIEL, WARDEN, ET AL., *ante*, p. 877;

No. 07–11588. IN RE OCASIO, *ante*, p. 810;

No. 07–11597. MCGOWAN *v.* MAINE, *ante*, p. 878;

No. 08–9. THOMPSON ET AL. *v.* GREENWOOD ET AL., *ante*, p. 880;

No. 08–73. RESHARD *v.* LANKENAU HOSPITAL ET AL., *ante*, p. 883;

No. 08–95. STOYANOV ET AL. *v.* WINTER, SECRETARY OF THE NAVY, ET AL., *ante*, p. 884;

No. 08–128. LEWIS *v.* DEPARTMENT OF AGRICULTURE, *ante*, p. 886;

No. 08–150. CASH *v.* NADA RETIREMENT ADMINISTRATORS, INC., DBA NADART, *ante*, p. 944;

No. 08–232. DANESHVAR *v.* GRAPHIC TECHNOLOGY, INC., *ante*, p. 889;

No. 08–5066. ALLEN *v.* AMERICAN SIGNATURE FURNITURE, INC., DBA VALUE CITY FURNITURE, *ante*, p. 893;

No. 08–5071. MCKINZIE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 893;

No. 08–5107. VAZQUEZ *v.* RUSHTON, WARDEN, ET AL., *ante*, p. 895;

No. 08–5112. BANDA *v.* BURLINGTON COUNTY, NEW JERSEY, ET AL., *ante*, p. 896;

No. 08–5234. NOWELL *v.* UNITED STATES, *ante*, p. 903;

No. 08–5319. CADORNIGA-DOEING *v.* NSH/LONG ISLAND JEWISH HEALTH SYSTEM ET AL., *ante*, p. 908;

No. 08–5345. Emory *v.* Department of Housing and Urban Development et al., *ante*, p. 909;

No. 08–5347. Aranda *v.* Herrera, *ante*, p. 910;

No. 08–5391. In re Ocasio, *ante*, p. 810;

No. 08–5421. Threatt *v.* Birkett, Warden, et al., *ante*, p. 914;

No. 08–5450. Powell *v.* Keller et al., *ante*, p. 916;

No. 08–5459. Turnbull *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 916;

No. 08–5502. Blackert *v.* Florida, *ante*, p. 919;

No. 08–5520. Millen *v.* Burlington Coat Factory, *ante*, p. 920;

No. 08–5586. Blackwell *v.* California, *ante*, p. 923;

No. 08–5588. Carey *v.* Johnson et al., *ante*, p. 923;

No. 08–5622. Daigle *v.* Department of Veterans Affairs et al., *ante*, p. 924;

No. 08–5750. Brown *v.* Kemp, Warden, et al., *ante*, p. 951;

No. 08–5759. Cochran *v.* Stein, United States Trustee, *ante*, p. 929;

No. 08–5806. Poehl *v.* Randolph et al., *ante*, p. 952;

No. 08–5834. Thyer *v.* United States, *ante*, p. 931; and

No. 08–6321. In re Word, *ante*, p. 942. Petitions for rehearing denied.

No. 07–1466. Britton et al. *v.* Bayer Corp. et al., *ante*, p. 938; and

No. 07–1467. Albertoni et al. *v.* Bayer Corp. et al., *ante*, p. 938. Petitions for rehearing denied. The Chief Justice took no part in the consideration or decision of these petitions.

No. 07–1579. Marin Alliance for Medical Marijuana et al. *v.* United States, *ante*, p. 938. Petition for rehearing denied. Justice Breyer took no part in the consideration or decision of this petition.

December 3, 2008

Miscellaneous Order

No. 08A471. Vail, Secretary of Washington Department of Corrections, et al. *v.* Stenson. C. A. 9th Cir. Application to vacate stay of execution of sentence of death, entered by the United States District Court for the Eastern District of Washing-

ton on November 25, 2008, presented to JUSTICE KENNEDY, and by him referred to the Court, granted.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring.

On November 21, 2008, the Thurston County Superior Court denied respondent's motion for a preliminary injunction that would have prevented the State from executing respondent until the court considered respondent's constitutional challenge to the State's lethal injection protocol. Rebuffed by the state court, respondent immediately filed an identical constitutional challenge under Rev. Stat. § 1979, 42 U. S. C. § 1983, in the United States District Court for the Eastern District of Washington and moved for a preliminary injunction. The District Court concluded that a stay of execution was warranted to allow the state court sufficient time to fully and fairly consider the merits of respondent's constitutional claim. In my view, the entry of the stay was improper. The state court decided under state law that the execution could proceed while respondent's constitutional claim was pending. Accordingly, the District Court should not have entered a stay to give the state court additional time it decided was not warranted. In light of that procedural error, and on that basis alone, I vote to grant the application to vacate the stay of execution entered by the District Court.

DECEMBER 5, 2008

Certiorari Granted

No. 08–368. AL-MARRI *v.* SPAGONE, UNITED STATES NAVY COMMANDER, CONSOLIDATED NAVAL BRIG. C. A. 4th Cir. Certiorari granted. Reported below: 534 F. 3d 213.

No. 08–441. GROSS *v.* FBL FINANCIAL SERVICES, INC. C. A. 8th Cir. Motion of National Employment Lawyers Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 526 F. 3d 356.

DECEMBER 8, 2008

Certiorari Dismissed

No. 08–6602. BRUNO *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–6644. GALLARDO *v.* TACKITT ET AL. Ct. App. Tex., 4th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–6789. TUCKER *v.* MONROE ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 314 Fed. Appx. 433.

No. 08–7060. SENATOR *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7240. BRAMWELL *v.* O'BRIEN, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 279 Fed. Appx. 227.

Miscellaneous Orders

No. 08A348. DOMANTAY *v.* UNITED STATES ET AL. Application for stay, addressed to JUSTICE KENNEDY and referred to the Court, denied.

No. 08A407. DONOFRIO *v.* WELLS, SECRETARY OF STATE OF NEW JERSEY. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. 08M32. PONEK *v.* FLORIDA;

No. 08M33. RICHARDSON *v.* METRO TRANSIT AUTHORITY ET AL.;

No. 08M34. SOTO *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY; and

No. 08M35. JONES *v.* TIDEWATER MARINE LLC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08–304. GRAHAM COUNTY SOIL AND WATER CONSERVATION DISTRICT ET AL. *v.* UNITED STATES EX REL. WILSON. C. A. 4th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 08–5624. COOMBS *v.* KELCHNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 940] denied.

No. 08–6641. PHILLIPS *v.* PRAIRIE EYE CENTER. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 29, 2008, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 08–7243. IN RE EVANS. Petition for writ of habeas corpus denied.

No. 08–6622. IN RE HERBERT. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 07–1566. MARCRUM *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 509 F. 3d 489.

No. 07–9031. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 919 A. 2d 1172.

No. 08–135. CITY OF POCATELLO, IDAHO *v.* IDAHO ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 145 Idaho 497, 180 P. 3d 1048.

No. 08–140. Thompson et al. *v.* Turk. C. A. 9th Cir. Certiorari denied. Reported below: 526 F. 3d 456.

No. 08–190. Curry, a Minor, By and Through His Parents Curry et ux. *v.* Hensinger. C. A. 6th Cir. Certiorari denied. Reported below: 513 F. 3d 570.

No. 08–251. Long et ux., Personal Representatives of the Estate of Long, Deceased *v.* Slaton et al. C. A. 11th Cir. Certiorari denied. Reported below: 508 F. 3d 576.

No. 08–272. Waybright et al. *v.* Frederick County, Maryland, Department of Fire & Rescue Services, et al. C. A. 4th Cir. Certiorari denied. Reported below: 528 F. 3d 199.

No. 08–274. Port Authority Police Benevolent Assn., Inc. *v.* Port Authority of New York and New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 194 N. J. 314, 944 A. 2d 611.

No. 08–281. Weber *v.* Department of Veterans Affairs et al. C. A. 9th Cir. Certiorari denied. Reported below: 521 F. 3d 1061.

No. 08–306. Miller-Jenkins *v.* Miller-Jenkins. Sup. Ct. Va. Certiorari denied. Reported below: 276 Va. 19, 661 S. E. 2d 822.

No. 08–326. Beard, Secretary, Pennsylvania Department of Corrections, et al. *v.* Hannon. C. A. 1st Cir. Certiorari denied. Reported below: 524 F. 3d 275.

No. 08–423. Spacht et ux. *v.* Troyer et al. Ct. App. Ga. Certiorari denied. Reported below: 288 Ga. App. 898, 655 S. E. 2d 656.

No. 08–425. Guerra *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 870.

No. 08–427. Hodgson, Individually and in His Official Capacity as Sheriff, Bristol County, Massachusetts *v.* Davignon et al. C. A. 1st Cir. Certiorari denied. Reported below: 524 F. 3d 91.

No. 08–428. Greenberg *v.* National Geographic Society et al. C. A. 11th Cir. Certiorari denied. Reported below: 533 F. 3d 1244.

No. 08–445. Finisar Corp. *v.* DIRECTV Group, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 523 F. 3d 1323.

No. 08–446. Aristocrat Technologies Australia Pty Ltd. et al. *v.* International Game Technology et al. C. A. Fed. Cir. Certiorari denied. Reported below: 521 F. 3d 1328.

No. 08–450. Silverstein *v.* Experienced Internet.com, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 78.

No. 08–452. Pentagen Technologies International Ltd. *v.* CACI International, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 32.

No. 08–455. Whyte *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 48 App. Div. 3d 1040, 850 N. Y. S. 2d 316.

No. 08–458. Brothers et al. *v.* Summit County, Ohio, et al. C. A. 6th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 518.

No. 08–465. Ate Kays Co. *v.* Pennsylvania Department of General Services. Commw. Ct. Pa. Certiorari denied. Reported below: 943 A. 2d 997.

No. 08–466. Wyche *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 987 So. 2d 23.

No. 08–468. Mohammed *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 951.

No. 08–487. Bell et al. *v.* American Greetings Corp. C. A. 8th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 415.

No. 08–490. Ming Dung, aka Ming Dong *v.* Mukasey, Attorney General. C. A. 7th Cir. Certiorari denied. Reported below: 534 F. 3d 618.

No. 08–520. Larsen et al. *v.* Department of the Navy et al. C. A. D. C. Cir. Certiorari denied. Reported below: 525 F. 3d 1.

No. 08–524. Diaz *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–535. Panse *v.* Norman et al. C. A. 1st Cir. Certiorari denied.

No. 08–548. Alltel Communications, LLC *v.* City of Springfield, Missouri. C. A. 8th Cir. Certiorari denied. Reported below: 531 F. 3d 595.

No. 08–550. Caskey *v.* Colgate-Palmolive Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 535 F. 3d 585.

No. 08–560. Alliance Security Products, Inc., et al. *v.* Fleming & Co., Pharmaceuticals. C. A. 2d Cir. Certiorari denied. Reported below: 290 Fed. Appx. 380.

No. 08–572. Barkmeyer *v.* Rhode Island. Sup. Ct. R. I. Certiorari denied. Reported below: 949 A. 2d 984.

No. 08–574. Rodriguez *v.* Hassell, Chief Justice, Supreme Court of Virginia, et al. Sup. Ct. Va. Certiorari denied.

No. 08–588. Seawell *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 18.

No. 08–607. Gonzalez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 806.

No. 08–609. Kanofsky *v.* Commissioner of Internal Revenue. C. A. 3d Cir. Certiorari denied. Reported below: 271 Fed. Appx. 146.

No. 08–611. Stewart *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 536 F. 3d 714.

No. 08–612. Stafford *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 319.

No. 08–613. Schultz et ux. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 529 F. 3d 343.

No. 08–617. OKPALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–5179. VU NGUYEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 699.

No. 08–5314. KIRKLAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 524.

No. 08–5382. TATUM *v.* CURTIS ET AL. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 1109, 881 N. E. 2d 169.

No. 08–5605. REEVES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 526 F. 3d 732.

No. 08–5767. IGBINOSUN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 528 F. 3d 387.

No. 08–5822. BRANNON *v.* LUCO MOP CO. C. A. 8th Cir. Certiorari denied. Reported below: 521 F. 3d 843.

No. 08–5885. RING *v.* RAMEKER. C. A. 7th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 492.

No. 08–6059. TIELSCH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 934 A. 2d 81.

No. 08–6450. HERNANDEZ-SANCHEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 315 Fed. Appx. 308.

No. 08–6561. RUFUS *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6570. DAWSON *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 481 Mich. 913, 750 N. W. 2d 192.

No. 08–6580. FARLOUGH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–6586. LLOYD *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 883.

No. 08–6592. SMITH *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 44.

No. 08–6593. Richmond *v.* Giurbino, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 434.

No. 08–6594. Bahena *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6603. Saunders *v.* Bright et al. C. A. 3d Cir. Certiorari denied. Reported below: 281 Fed. Appx. 83.

No. 08–6604. Hale *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–6605. Hudson *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 08–6606. Gayle *v.* Johnson, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 211.

No. 08–6607. Irving *v.* Kelly et al. C. A. 6th Cir. Certiorari denied.

No. 08–6609. Holt *v.* Valls et al. Ct. Civ. App. Ala. Certiorari denied. Reported below: 26 So. 3d 1276.

No. 08–6616. Washington *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 08–6619. Woods *v.* White, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6620. Thomas *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6627. Salerno *v.* Michigan. C. A. 6th Cir. Certiorari denied.

No. 08–6630. Brown *v.* Romanowski, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–6631. Garcia Briseno *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 340.

No. 08–6637. Michael *v.* Florida Parole Commission et al. C. A. 11th Cir. Certiorari denied.

No. 08–6638. MORRIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 284 Ga. 1, 662 S. E. 2d 110.

No. 08–6642. PALMER *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 986 So. 2d 328.

No. 08–6647. SMITH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–6649. WILLIAMS *v.* ULEP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 106.

No. 08–6656. LABRANCH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6661. PARKER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–6663. MARTIN *v.* DEVERIES ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–6665. BRYANT ET AL. *v.* RICH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 530 F. 3d 1368.

No. 08–6666. BROWN *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6667. BACCUS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 367 S. C. 41, 625 S. E. 2d 216.

No. 08–6680. BOLING *v.* BOUCHARD, SHERIFF, OAKLAND COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6682. BEAN *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6683. BULINGTON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6684. CABBAGESTALK *v.* TYLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 323.

No. 08–6685. O'NEIL *v.* STOWITZKY, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6686. Criner *v.* Texas Department of Criminal Justice et al. (Reported below: 284 Fed. Appx. 179); and Criner *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–6687. Williams *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 989 So. 2d 93.

No. 08–6689. Leonard *v.* Ohio. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 2007-Ohio-7095.

No. 08–6698. Lewis *v.* Walsh, Superintendent, Sullivan Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 08–6699. Eggleston *v.* Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 164 Wash. 2d 61, 187 P. 3d 233.

No. 08–6703. Trevino *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 08–6705. Torres *v.* Horel, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6709. Hodson *v.* Brooks, Superintendent, State Correctional Institution at Albion, et al. C. A. 3d Cir. Certiorari denied.

No. 08–6711. Lanier *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 08–6715. Jones *v.* Cuomo, Attorney General of New York. C. A. 2d Cir. Certiorari denied. Reported below: 254 Fed. Appx. 6.

No. 08–6717. Johnson *v.* Artus, Superintendent, Clinton Correctional Facility, et al. C. A. 2d Cir. Certiorari denied.

No. 08–6718. Land *v.* Murdoch et al. C. A. 11th Cir. Certiorari denied.

No. 08–6760. Gallardo *v.* Giurbino, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6764. ORTIZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6766. RYDER *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6783. JENKINS *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6786. LIMPIN *v.* WINTER, SECRETARY OF THE NAVY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 286 F. 3d 429.

No. 08–6790. PETERS ET AL. *v.* GUAJOME PARK ACADEMY CHARTER SCHOOL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 49.

No. 08–6793. BADRUDDOZA *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied.

No. 08–6858. ZACKERY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–6891. MAYS *v.* SNYDER ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–6918. BARTHOLOMEW *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–6945. CORONADO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–6996. ROWE *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6997. DICKERSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 188 N. C. App. 166, 654 S. E. 2d 832.

No. 08–7019. DOMANTAY *v.* UNITED STATES ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 988 So. 2d 1098.

No. 08–7072. PARKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 543 F. 3d 790.

No. 08–7083. Bustamante *v.* Mukasey, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 239.

No. 08–7086. Degorski *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 382 Ill. App. 3d 135, 886 N. E. 2d 1070.

No. 08–7098. Savoy *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 504.

No. 08–7104. Cordoba-Martinez, aka Leguizamo-Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 201.

No. 08–7106. Young *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–7109. Ortiz-Graulau, aka Ortiz-Graulan *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 526 F. 3d 16.

No. 08–7110. Dodson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 146.

No. 08–7113. Neder *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 887.

No. 08–7118. Farrior *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 535 F. 3d 210.

No. 08–7119. Gonzales *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 535 F. 3d 1174.

No. 08–7120. Famania-Roche *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 537 F. 3d 71.

No. 08–7129. Iacullo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 858.

No. 08–7130. Wright *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 289 Fed. Appx. 543.

No. 08–7132. Avila-Palacios *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 201.

No. 08–7133. JACINTO-SOTELO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 972.

No. 08–7136. DUVERGE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7138. CAMACHO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 192.

No. 08–7141. NUNEZ-TISCARENO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 69.

No. 08–7142. ROSARIO-PACHE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 292 Fed. Appx. 69.

No. 08–7143. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 536 F. 3d 874.

No. 08–7145. RUBALCABA-VAZQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 354.

No. 08–7150. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7152. HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–7154. GONZALEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–7158. HERNANDEZ-LEBRON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7161. SWEENEY *v.* MUKASEY, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 111.

No. 08–7164. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7165. ROTMISTRENKO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 288 Fed. Appx. 742.

No. 08–7168. SMITH *v.* UNITED STATES; and

No. 08–7214. GESKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 239.

No. 08–7174. STARR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 533 F. 3d 985.

No. 08–7175. TRAMMEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 189.

No. 08–7176. CHAVEZ-CUEVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 853.

No. 08–7179. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 296 Fed. Appx. 179.

No. 08–7181. CARRASCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 190.

No. 08–7182. CONTRERAS-MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 270 Fed. Appx. 693.

No. 08–7183. MORENO DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 192.

No. 08–7184. VITUG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 833.

No. 08–7185. CAMPEAU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 194.

No. 08–7186. COATES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 189.

No. 08–7188. CASTRO NARANJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 191.

No. 08–7192. LARA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7193. JEANETTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 533 F. 3d 651.

No. 08–7195. BEEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 616.

No. 08–7196. LUCERO *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 8.

No. 08–7199. MEDINA-VALENCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 538 F. 3d 831.

No. 08–7201. PUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 449.

No. 08–7205. ANTHONY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 537 F. 3d 863.

No. 08–7206. BROOME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 200.

No. 08–7209. BRIGHTWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 314 Fed. Appx. 426.

No. 08–7210. SHEPARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7211. DESIVO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 288 Fed. Appx. 815.

No. 08–7212. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 799.

No. 08–7213. GILL ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 513 F. 3d 836.

No. 08–7216. JIMENEZ-GUDINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 479.

No. 08–7217. SKRZYPEK ET UX. *v.* UNITED STATES (two judgments). C. A. 7th Cir. Certiorari denied.

No. 08–7218. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 726.

No. 08–7220. YBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 726.

No. 08–7226. MATOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 531 F. 3d 121.

No. 08–7227. COLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 537 F. 3d 923.

No. 08–7230. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 537 F. 3d 611.

No. 08–7238. BRANCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 537 F. 3d 582.

No. 08–6867. KELLY *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari before judgment denied.

No. 08–7082. ADAMS *v.* WARNER BROTHERS PICTURES NETWORK ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 289 Fed. Appx. 456.

Rehearing Denied

No. 07–9456. JOHNSON *v.* UNITED STATES, *ante*, p. 828;

No. 07–10569. JOHNSON *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY, *ante*, p. 832;

No. 07–10709. FRATILA *v.* BOUDLOCHE, *ante*, p. 835;

No. 07–10737. GALLAHER *v.* SOUTHERN TUBE FORM, LLC, ET AL., *ante*, p. 836;

No. 07–10824. MCCRORY *v.* WENDLING, ST. CLAIR COUNTY PROSECUTOR, ET AL., *ante*, p. 839;

No. 07–10876. BUTTLES *v.* BATTLE, WARDEN, *ante*, p. 840;

No. 07–10895. MEDLEY *v.* TURNER, WARDEN, *ante*, p. 841;

No. 07–11124. WILLIAMS *v.* SHARRETT ET AL., *ante*, p. 850;

No. 07–11305. GURROLA-RODRIGUEZ, AKA GURROLA *v.* UNITED STATES, *ante*, p. 861;

No. 07–11318. ANDERSON *v.* COLORADO, *ante*, p. 862;

No. 07–11335. THOMAS *v.* THOMPSON, *ante*, p. 863;

No. 07–11338. MINER *v.* UNITED STATES, *ante*, p. 863;

No. 07–11414. BETHEA *v.* VIRGINIA (two judgments), *ante*, p. 867;

No. 07–11534. THOMAS *v.* UNITED STATES, *ante*, p. 874;

No. 08–13. ALMAHDI *v.* MASSACHUSETTS, *ante*, p. 881;

No. 08–41. DUPRE *v.* TELXON CORP. ET AL., *ante*, p. 882;

No. 08–174. WANG *v.* PRUDENTIAL FINANCIAL CORP. ET AL., *ante*, p. 944;

No. 08–342. DIGGS *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 971;

No. 08–5069. MALCOM *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, *ante*, p. 946;

No. 08–5156. REED *v.* CARROLL, WARDEN, ET AL., *ante*, p. 898;

No. 08–5167. ENRIQUEZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 899;

No. 08–5215. BHADURI *v.* SUMMIT SECURITY SYSTEMS, INC., *ante*, p. 902;

No. 08–5252. PEARSON *v.* FINN ET AL., *ante*, p. 904;

No. 08–5266. HAYNER *v.* CITY OF WASHINGTON COURT HOUSE ET AL., *ante*, p. 905;

No. 08–5267. HARRIS *v.* TRANSPORT WORKERS UNION LOCAL 100 ET AL., *ante*, p. 905;

No. 08–5385. WALKER *v.* GEORGIA, *ante*, p. 979;

No. 08–5417. HUNG HA *v.* ROSS ET AL., *ante*, p. 914;

No. 08–5418. HUNG HA *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, *ante*, p. 914;

No. 08–5419. HUNG HA *v.* HARRISON, *ante*, p. 914;

No. 08–5429. ATKINS *v.* MIDDLE RIVER REGIONAL JAIL MEDICAL DEPARTMENT ET AL., *ante*, p. 914;

No. 08–5485. GOODMAN *v.* WALKER, WARDEN, *ante*, p. 918;

No. 08–5577. PRICE *v.* UNITED STATES, *ante*, p. 922;

No. 08–5633. OLSON *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 925;

No. 08–5644. ANTONSSON *v.* KAST, *ante*, p. 948;

No. 08–5664. YONG TAN HUANG *v.* BELL ET AL., *ante*, p. 926;

No. 08–5668. GREER *v.* BRUNSMAN, WARDEN, *ante*, p. 926;

No. 08–5725. JONES *v.* LARKIN, *ante*, p. 928;

No. 08–5754. TURNER *v.* MISSISSIPPI, *ante*, p. 951;

No. 08–5780. FORTT *v.* ARTISTIC BEAUTY COLLEGE, *ante*, p. 951;

No. 08–5790. MCGEE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 952;

No. 08–5915. LUNA *v.* HORNSBY ET AL., *ante*, p. 973; and

No. 08–6238. FINLEY *v.* UNITED STATES, *ante*, p. 961. Petitions for rehearing denied.

No. 08–416. LAUERSEN *v.* UNITED STATES, *ante*, p. 997. Motion of petitioner to defer consideration of petition for rehearing denied. Petition for rehearing denied.

No. 08–5710. OGUNSALU *v.* NAIR ET AL., *ante*, p. 967. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

DECEMBER 9, 2008

Dismissal Under Rule 46

No. 08–413. JURGENS *v.* UNITED STATES (Reported below: 284 Fed. Appx. 195); and SALAS *v.* UNITED STATES (284 Fed. Appx.

202). C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1.

DECEMBER 12, 2008

Certiorari Granted

No. 08–295. TRAVELERS INDEMNITY CO. ET AL. *v.* BAILEY ET AL.; and

No. 08–307. COMMON LAW SETTLEMENT COUNSEL *v.* BAILEY ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 517 F. 3d 52.

No. 08–310. POLAR TANKERS, INC. *v.* CITY OF VALDEZ, ALASKA. Sup. Ct. Alaska. Certiorari granted. Reported below: 182 P. 3d 614.

DECEMBER 15, 2008

Certiorari Granted—Vacated and Remanded

No. 08–235. RASUL ET AL. *v.* MYERS ET AL. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Boumediene* v. *Bush*, 553 U. S. 723 (2008). Reported below: 512 F. 3d 644.

Certiorari Dismissed

No. 08–6736. BELL-BOSTON *v.* ANN TAYLOR CO. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 296 Fed. Appx. 81.

No. 08–6763. GLOVER *v.* SMITH, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–6765. SMITH *v.* INDIANA. Ct. App. Ind. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 08A469. WROTNOWSKI *v.* BYSIEWICZ, SECRETARY OF STATE OF CONNECTICUT. Sup. Ct. Conn. Application for stay and/or injunction, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 08M36. LEE *v.* GUAVARA ET AL.; and
No. 08M37. WATSON *v.* LAS VEGAS VALLEY WATER DISTRICT. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07–1529. MONTEJO *v.* LOUISIANA. Sup. Ct. La. [Certiorari granted, 554 U. S. 944.] Motion of respondent for divided argument denied.

No. 08–108. FLORES-FIGUEROA *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 969.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 08–6294. HARPER *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 942] denied.

No. 08–7334. IN RE PERRY. Petition for writ of habeas corpus denied.

No. 08–474. IN RE COPPEDGE;
No. 08–475. IN RE DOMMISSE; and
No. 08–7009. IN RE NORTON. Petitions for writs of mandamus denied.

Certiorari Denied

No. 07–11458. TIDWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 521 F. 3d 236.

No. 08–125. NATIONAL INSTITUTE OF MILITARY JUSTICE *v.* DEPARTMENT OF DEFENSE. C. A. D. C. Cir. Certiorari denied. Reported below: 512 F. 3d 677.

No. 08–148. MARTINELLI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 784.

No. 08–210. E. I. DU PONT DE NEMOURS & CO. ET AL. *v.* STANTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 534 F. 3d 986.

No. 08–242. BAIR ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 515 F. 3d 1323.

No. 08–345. ALABAMA ET AL. *v.* POPE. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 960.

No. 08–374. Merix Corp. et al. *v.* Central Laborers Pension Fund. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 599.

No. 08–388. City of Philadelphia, Pennsylvania *v.* Lawrence et al. C. A. 3d Cir. Certiorari denied. Reported below: 527 F. 3d 299.

No. 08–421. Phillips *v.* Gaston County, North Carolina, et al. C. A. 4th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 276.

No. 08–481. Swami, Inc. *v.* Lee et al. Ct. App. Ind. Certiorari denied. Reported below: 879 N. E. 2d 1232.

No. 08–483. Hatfill *v.* New York Times Co. C. A. 4th Cir. Certiorari denied. Reported below: 532 F. 3d 312.

No. 08–486. Mann *v.* Helmig. C. A. 6th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 845.

No. 08–488. Bowie *v.* Personnel Board of Jefferson County, Alabama, et al. C. A. 11th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 884.

No. 08–502. D. G., Guardian ad Litem for J. G., a Minor *v.* North Plainfield Board of Education et al. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 400 N. J. Super. 1, 945 A. 2d 707.

No. 08–507. Sharif et al. *v.* Wellness International Network, Ltd., et al. C. A. 5th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 316.

No. 08–557. National Union Fire Insurance Company of Pittsburgh, Pennsylvania, et al. *v.* Allen et al. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 975 So. 2d 698.

No. 08–587. Stewart *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 575.

No. 08–627. Waris *v.* Harris County Public Health & Environmental Services et al. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 373.

No. 08–628. Marine Forests Society et al. *v.* California Coastal Commission. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 160 Cal. App. 4th 867, 74 Cal. Rptr. 3d 32.

No. 08–5288. Paulcin *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 211.

No. 08–5896. Maples *v.* Circuit Court of Michigan, Macomb County, et al. C. A. 6th Cir. Certiorari denied.

No. 08–6298. Cagle *v.* Branker, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 520 F. 3d 320.

No. 08–6487. Boggs *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 218 Ariz. 325, 185 P. 3d 111.

No. 08–6724. Holt *v.* Valls. Ct. Civ. App. Ala. Certiorari denied. Reported below: 26 So. 3d 1276.

No. 08–6725. Holt *v.* Alabama. Sup. Ct. Ala. Certiorari denied.

No. 08–6731. Gorman *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 985 So. 2d 536.

No. 08–6734. Stiles *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–6735. Schreiner *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 08–6740. Dablon *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 08–6749. Parkison *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 141 Wash. App. 1004.

No. 08–6751. Coggins *v.* Town of Jackson's Gap, Alabama. C. A. 11th Cir. Certiorari denied.

No. 08–6757. Haney *v.* Addison, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 802.

No. 08–6772. TAYLOR *v.* NIKOLITS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 983 So. 2d 1155.

No. 08–6788. JONES *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6797. TROTTER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 535 F. 3d 1286.

No. 08–6896. OLUKUNE *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 277 Fed. Appx. 233.

No. 08–6971. AKINRO *v.* MAHER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 45.

No. 08–7000. BRIDGES *v.* BASSETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 118.

No. 08–7061. ROSS *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–7117. HANTON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 188 N. C. App. 167, 654 S. E. 2d 831.

No. 08–7127. VENTURA *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Moore County, N. C. Certiorari denied.

No. 08–7137. COTTON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Moore County, N. C. Certiorari denied.

No. 08–7157. GEBHART *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 289 Fed. Appx. 402.

No. 08–7187. YARBROUGH *v.* POOLE ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7221. THOMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 523 F. 3d 806.

No. 08–7234. SIEGEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 536 F. 3d 306.

No. 08–7241. SADDLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 538 F. 3d 879.

No. 08–7242. COX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 536 F. 3d 723.

No. 08–7244. COLEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 257 Fed. Appx. 515.

No. 08–7246. HOANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 133.

No. 08–7248. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–7249. VICKERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 540 F. 3d 356.

No. 08–7251. OSORIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 971.

No. 08–7254. MI KYUNG BYUN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 539 F. 3d 982.

No. 08–7255. JACQUES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 824.

No. 08–7256. LOVE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 889.

No. 08–7261. RHABURN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 536 F. 3d 542.

No. 08–7262. TANN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 532 F. 3d 868.

No. 08–7263. ZAPATA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 546 F. 3d 1179.

No. 08–7266. LOFLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 91.

No. 08–7267. LOPEZ-ZAMORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 699.

No. 08–7270. BAUTISTA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 532 F. 3d 667.

No. 08–7271. AHMED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 30.

No. 08–7275. CLOW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7282. ESTREMERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 282 Fed. Appx. 935.

No. 08–7286. ARNAIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7289. SEHEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 553.

No. 08–7291. MARMOLEJOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–7302. WIIG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7308. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 515.

No. 08–7330. HERNANDEZ-CASTILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7331. HATTABAUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 249.

No. 08–517. CURRY, WARDEN *v.* BUTLER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 528 F. 3d 624.

Rehearing Denied

No. 07–1396. ELSHINNAWY *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 816;

No. 07–1462. BISCHOFF *v.* LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT ET AL., *ante*, p. 819;

No. 07–9626. BROWNING *v.* UNITED STATES, *ante*, p. 828;

No. 07–10572. CHASE *v.* TEXAS, *ante*, p. 832;

No. 07–10777. STRICKLAND *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL., *ante*, p. 837;

No. 07–10782. SCHILS *v.* WASHTENAW COUNTY, MICHIGAN, *ante*, p. 838;

No. 07–10790. YORK *v.* CITIFINANCIAL MORTGAGE CO., INC., *ante*, p. 838;

No. 07–11009. BRADFORD *v.* CELLXION, LLC, *ante*, p. 845;

No. 07–11034. LESTER *v.* AYERS, *ante*, p. 846;

No. 07–11053. REYNA *v.* MONROE ET AL., *ante*, p. 847;

No. 07–11059. SANCHO *v.* RAMIREZ ET AL., *ante*, p. 847;

No. 07–11156. PHILLIPS *v.* UNITED PARCEL SERVICE, INC., *ante*, p. 851;

No. 07–11495. MCANDERSON *v.* UNITED STATES, *ante*, p. 872;

No. 07–11514. HAMBLY *v.* WISCONSIN, *ante*, p. 873;

No. 08–360. DELGADO *v.* CERTIFIED GROCERS MIDWEST, INC., *ante*, p. 1013;

No. 08–5181. MANSFIELD *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, *ante*, p. 900;

No. 08–5299. JORDAN *v.* UNITED STATES, *ante*, p. 906;

No. 08–5404. PARTHEMORE *v.* CALIFORNIA, *ante*, p. 913;

No. 08–5405. SOLIS *v.* WARD, WARDEN, *ante*, p. 913;

No. 08–5530. MCCRAY *v.* RIOS, WARDEN, *ante*, p. 939;

No. 08–5565. SANDERS *v.* RHODES, ADMINISTRATIVE JUDGE, DISTRICT COURT OF PRINCE GEORGE'S COUNTY, MARYLAND, *ante*, p. 947;

No. 08–5603. WENSEL *v.* HERNANDEZ, WARDEN, ET AL., *ante*, p. 947;

No. 08–5616. PARKER *v.* PARKER, *ante*, p. 948;

No. 08–5671. MCGEE *v.* AUSTIN, WARDEN, *ante*, p. 926;

No. 08–5707. RIDDLE *v.* LIZ CLAIBORNE ET AL., *ante*, p. 949;

No. 08–5720. THERRIEN *v.* MARTIN, WARDEN, ET AL., *ante*, p. 950;

No. 08–5836. MARCUSSE *v.* UNITED STATES, *ante*, p. 931;

No. 08–5890. IN RE BROWN, *ante*, p. 809;

No. 08–6156. HIGGINBOTHAM *v.* FLORIDA, *ante*, p. 975;

No. 08–6493. THORNE *v.* UNITED STATES, *ante*, p. 979; and

No. 08–6657. KING *v.* UNITED STATES, *ante*, p. 1009. Petitions for rehearing denied.

December 19, 2008

Dismissal Under Rule 46

No. 08–6852. Manning *v.* United States. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 526 F. 3d 611.

January 9, 2009

Miscellaneous Orders

No. 138, Orig. South Carolina *v.* North Carolina. Report of the Special Master received and ordered filed. Motion of plaintiff for leave to file exceptions to the First Interim Report of the Special Master granted. Parties and intervenors may file exceptions to the Report, with supporting briefs, on or before 2 p.m. Friday, February 13, 2009. Reply briefs, if any, are to be filed on or before 2 p.m. Monday, March 9, 2009. Surreply briefs, if any, are to be filed on or before 2 p.m. Monday, March 23, 2009. [For earlier order herein, see, *e. g.*, 552 U. S. 1254.]

No. 07–1356. Kansas *v.* Ventris. Sup. Ct. Kan. [Certiorari granted, 554 U. S. 944.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–88. Vermont *v.* Brillon. Sup. Ct. Vt. [Certiorari granted, 554 U. S. 945.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Probable Jurisdiction Noted

No. 08–322. Northwest Austin Municipal Utility District Number One *v.* Mukasey, Attorney General, et al. Appeal from D. C. D. C. Probable jurisdiction noted. Appellant's brief is to be filed on or before Thursday, February 19, 2009. Appellees' brief is to be filed on or before Wednesday, March 18, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 573 F. Supp. 2d 221.

Certiorari Granted

No. 07–1428. Ricci et al. *v.* DeStefano et al.; and

No. 08–328. Ricci et al. *v.* DeStefano et al. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour

allotted for oral argument. Petitioners' brief is to be filed on or before Thursday, February 19, 2009. Respondents' brief is to be filed on or before Wednesday, March 18, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 530 F. 3d 87.

No. 08–289. HORNE, SUPERINTENDENT, ARIZONA PUBLIC INSTRUCTION *v.* FLORES ET AL.; and

No. 08–294. SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES ET AL. *v.* FLORES ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Petitioners' brief is to be filed on or before Thursday, February 19, 2009. Respondents' brief is to be filed on or before Wednesday, March 18, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 516 F. 3d 1140.

No. 07–1090. REPUBLIC OF IRAQ *v.* BEATY ET AL.; and

No. 08–539. REPUBLIC OF IRAQ ET AL. *v.* SIMON ET AL. C. A. D. C. Cir. Motion of Plaintiffs Against Iraq for leave to file a brief as *amicus curiae* out of time denied. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Petitioners' brief is to be filed on or before Thursday, February 19, 2009. Respondents' brief is to be filed on or before Wednesday, March 18, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: No. 08–539, 529 F. 3d 1187.

JANUARY 12, 2009

Certiorari Granted—Vacated and Remanded

No. 07–11565. DALLANEGRA *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed November 24, 2008.

No. 08–7124. HER *v.* MINNESOTA. Sup. Ct. Minn. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Giles* v. *California*, 554 U. S. 353 (2008). Reported below: 750 N. W. 2d 258.

Certiorari Dismissed

No. 08–6822. SENATOR *v.* SENATOR. Ct. App. Cal., 4th App. Dist., Div. 3. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–6910. HISTON *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–6912. SCHNELLER *v.* ZITOMER, EXECUTRIX OF THE ESTATE OF SCHNELLER. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 929 A. 2d 251.

No. 08–6968. SILER *v.* DILLINGHAM SHIP REPAIR ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 288 Fed. Appx. 400.

No. 08–6970. BELL-BOSTON *v.* SIBLEY MEMORIAL HOSPITAL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 296 Fed. Appx. 81.

No. 08–7006. ROLLE *v.* HANKINSON ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7097. VOHRA *v.* ORANGE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 288 Fed. Appx. 395.

No. 08–7100. MARTIN *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7101. MARTIN *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7146. COGGINS *v.* PARR. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7173. VERA *v.* TULARE COUNTY SHERIFF DEPARTMENT ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7178. LAFRENIERE *v.* BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 283 Fed. Appx. 436.

Miscellaneous Orders

No. 08A416. GRAVES *v.* ATLANTIC EXPRESS ET AL. C. A. 9th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 08A515. YUE *v.* STORAGE TECHNOLOGY CORP. ET AL. C. A. 9th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 08M38. AL-GHIZZAWI *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. Motion of petitioner for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 08M39. UNDERWOOD *v.* UNITED STATES;
No. 08M40. ULRICH *v.* ULRICH;
No. 08M41. TRUONG *v.* KARTZMAN ET AL.;
No. 08M42. FIELDS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.;
No. 08M43. LEFTWICH *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION; and

No. 08M44. MEDINA-SALAS *v.* TYSON FRESH MEATS, INC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for interim fees and expenses granted, and the Special Master is awarded a total of $58,515.68 for the period January 1, 2008, through November 30, 2008, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 1029.]

No. 07–1601. BURLINGTON NORTHERN & SANTA FE RAILWAY CO. ET AL. *v.* UNITED STATES ET AL.; and

No. 07–1607. SHELL OIL CO. *v.* UNITED STATES ET AL. C. A. 9th Cir. [Certiorari granted, 554 U. S. 945.] Motion of petitioners for divided argument granted.

No. 08–192. ABUELHAWA *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1028.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 08–214. ATLANTIC SOUNDING CO., INC., ET AL. *v.* TOWNSEND. C. A. 11th Cir. [Certiorari granted, *ante*, p. 993.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 08–448. CABLE NEWS NETWORK, INC., ET AL. *v.* CSC HOLDINGS, INC., ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. THE CHIEF JUSTICE and JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 08–576. FIN-AG, INC. *v.* PIPESTONE LIVESTOCK AUCTION MARKET, INC., ET AL.; FIN-AG, INC. *v.* WATERTOWN LIVESTOCK AUCTION, INC., ET AL.; and FIN-AG, INC. *v.* CIMPL'S, INC., ET AL. Sup. Ct. S. D. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 08–5274. DEAN *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1028.] Motion of petitioner for appointment of counsel granted. Scott J. Forster, Esq., of Calhoun, Ga., is appointed to serve as counsel for petitioner in this case.

No. 08–6306. WINSETT *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for reconsidera-

tion of order denying leave to proceed *in forma pauperis* [*ante*, p. 992] denied.

No. 08–6904. DIAS ET AL. *v.* ELIQUE ET AL. C. A. 9th Cir.;
No. 08–6989. MIRANDA *v.* UNIVERSITY OF MARYLAND AT COLLEGE PARK. C. A. 4th Cir.;
No. 08–7123. GEORGES *v.* GEORGES. Super. Ct. Pa.; and
No. 08–7252. YOUNG *v.* UNITED STATES. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 2, 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.

No. 08–7545. IN RE CRAM;
No. 08–7547. IN RE DUNCAN;
No. 08–7555. IN RE DUNCAN;
No. 08–7563. IN RE NASTASIO;
No. 08–7598. IN RE DRYER;
No. 08–7673. IN RE ESHAN;
No. 08–7690. IN RE ANDERSON; and
No. 08–7771. IN RE ALPINE. Petitions for writs of habeas corpus denied.

No. 08–7748. IN RE GREEN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 08–6843. IN RE DIEHL;
No. 08–6857. IN RE MCLEOD;
No. 08–7002. IN RE SWAIN; and
No. 08–7068. IN RE ALLEN. Petitions for writs of mandamus denied.

No. 08–6823. IN RE DE LA CERDA, AKA LOPEZ. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 08–6884. IN RE MILLS. Petition for writ of mandamus and/or prohibition denied.

No. 08–6937. IN RE ENGLE. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

No. 08–7232. In re Punchard; and

No. 08–7649. In re Burnette. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 07–663. AK Steel Corporation Retirement Accumulation Pension Plan et al. *v.* West, Individually and on Behalf of All Others Similarly Situated. C. A. 6th Cir. Certiorari denied. Reported below: 484 F. 3d 395.

No. 07–952. Denton, as Executor of the Estate of Denton *v.* Hyman. C. A. 2d Cir. Certiorari denied. Reported below: 502 F. 3d 61.

No. 07–956. Biomedical Patent Management Corp. *v.* California Department of Health Services. C. A. Fed. Cir. Certiorari denied. Reported below: 505 F. 3d 1328.

No. 07–1152. Weldon et al. *v.* Norfolk Southern Railway Co. Sup. Ct. Ohio. Certiorari denied. Reported below: 115 Ohio St. 3d 455, 875 N. E. 2d 919.

No. 07–1327. Albertson's, Inc., et al. *v.* Kanter et al. Sup. Ct. Cal. Certiorari denied. Reported below: 42 Cal. 4th 1077, 175 P. 3d 1170.

No. 07–1524. Carlota Copper Co. *v.* Friends of Pinto Creek et al. C. A. 9th Cir. Certiorari denied. Reported below: 504 F. 3d 1007.

No. 07–1554. Columbia Gas Transmission Corp. *v.* Levin, Tax Commissioner of Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 117 Ohio St. 3d 122, 882 N. E. 2d 400.

No. 08–164. Vision Service Plan, Inc. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 650.

No. 08–169. Sociedad Espanola de Auxilio Mutuo y Beneficencia et al. *v.* Morales et al. C. A. 1st Cir. Certiorari denied. Reported below: 524 F. 3d 54.

No. 08–199. Georgia *v.* Florida et al. C. A. D. C. Cir. Certiorari denied. Reported below: 514 F. 3d 1316.

No. 08–221. Meadowlake Corp. et al. *v.* Ohio ex rel. Rogers, Attorney General of Ohio. Ct. App. Ohio, Stark County. Certiorari denied. Reported below: 118 Ohio St. 3d 1409, 886 N. E. 2d 872.

No. 08–231. South Fork Band et al. *v.* United States et al. C. A. Fed. Cir. Certiorari denied. Reported below: 279 Fed. Appx. 980.

No. 08–270. T H Investment, Inc. *v.* Kirby Inland Marine, LP, et al. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 218 S. W. 3d 173.

No. 08–349. General Motors Corp. *v.* Bryant, Individually and on Behalf of All Others Similarly Situated. Sup. Ct. Ark. Certiorari denied. Reported below: 374 Ark. 38, 285 S. W. 3d 634.

No. 08–359. Dempster *v.* Dempster et al. C. A. 2d Cir. Certiorari denied. Reported below: 273 Fed. Appx. 67.

No. 08–385. Victory Outreach Center et al. *v.* Melso et al. C. A. 3d Cir. Certiorari denied. Reported below: 281 Fed. Appx. 136.

No. 08–394. Rattler Tools, Inc. *v.* Bilco Tools, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 278 Fed. Appx. 1013.

No. 08–424. Los Angeles County Sheriff's Department et al. *v.* Center for Bioethical Reform et al.; and

No. 08–431. Roberts *v.* Center for Bioethical Reform et al. C. A. 9th Cir. Certiorari denied. Reported below: 533 F. 3d 780.

No. 08–430. Schriro, Director, Arizona Department of Corrections *v.* Correll. C. A. 9th Cir. Certiorari denied. Reported below: 539 F. 3d 938.

No. 08–435. Hall *v.* Back. C. A. 6th Cir. Certiorari denied. Reported below: 537 F. 3d 552.

No. 08–439. Windt et al. *v.* Qwest Communications International, Inc.; and

No. 08–614. QWEST COMMUNICATIONS INTERNATIONAL, INC., ET AL. *v.* WINDT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 529 F. 3d 183.

No. 08–444. CRUZADO-LAUREANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 527 F. 3d 231.

No. 08–447. BACA *v.* THOMAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 525 F. 3d 341.

No. 08–485. CITY OF SACRAMENTO, CALIFORNIA, ET AL. *v.* YOUNT. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 885, 183 P. 3d 471.

No. 08–498. DALTON *v.* TILLER ET AL. Sup. Ct. Va. Certiorari denied.

No. 08–499. CUBA SOIL & WATER CONSERVATION DISTRICT ET AL. *v.* LEWIS, TREASURER OF STATE OF NEW MEXICO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 527 F. 3d 1061.

No. 08–504. WILLIAMS *v.* SUNTRUST BANKS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 885.

No. 08–509. ROSS *v.* ROGERS, ATTORNEY GENERAL OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 515 F. 3d 653.

No. 08–518. TURNER *v.* CITY COUNCIL OF THE CITY OF FREDERICKSBURG, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 534 F. 3d 352.

No. 08–521. ABRAMS ET AL. *v.* JONES, ADMINISTRATRIX OF THE ESTATE OF JONES, DECEASED, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 521 F. 3d 555.

No. 08–526. YONG LI *v.* RAYTHEON CO. ET AL. C. A. 1st Cir. Certiorari denied.

No. 08–529. GRANT *v.* DE MONTEBELLO ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–531. MISSOURI PUBLIC SERVICE COMMISSION ET AL. *v.* SOUTHWESTERN BELL TELEPHONE, L. P., DBA SBC MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 530 F. 3d 676.

No. 08–532. CRANMER *v.* TUCSON POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 744.

No. 08–536. PANSE *v.* MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 08–540. TEXAS DEMOCRATIC PARTY ET AL. *v.* ANDRADE, SECRETARY OF STATE OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 194.

No. 08–547. WEBB-EDWARDS *v.* BEARY, SHERIFF, ORANGE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 525 F. 3d 1013.

No. 08–549. GRANADOS OLVERA *v.* MUKASEY, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 262 Fed. Appx. 69.

No. 08–556. PETERSON *v.* SAPERSTEIN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 751.

No. 08–561. ANIMAL PROTECTION AND RESCUE LEAGUE ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 637.

No. 08–562. MALIHA *v.* FALUOTICO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 286 Fed. Appx. 742.

No. 08–566. BOWLING ET AL. *v.* CARPENTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 423.

No. 08–568. ROTHHAUPT *v.* DICKOW, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DEPUTY SHERIFF, CARROLL COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–573. MICHIGAN ENVIRONMENTAL COUNCIL *v.* MICHIGAN PUBLIC SERVICE COMMISSION ET AL. Ct. App. Mich. Certiorari denied. Reported below: 276 Mich. App. 216, 740 N. W. 2d 685.

No. 08–580. CITY OF CINCINNATI, OHIO *v.* CLEVELAND CONSTRUCTION, INC.; and

No. 08–601. CLEVELAND CONSTRUCTION, INC. *v.* CITY OF CINCINNATI, OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 118 Ohio St. 3d 283, 888 N. E. 2d 1068.

No. 08–584. CareToLive *v.* von Eschenbach, Commissioner, Food and Drug Administration. C. A. 6th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 887.

No. 08–593. Kilgroe *v.* American Ship Management, LLC, et al. C. A. 9th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 33.

No. 08–594. Preis et ux. *v.* Lexington Insurance Co. et al. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 940.

No. 08–597. Dumorange *v.* City of Miami, Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 972 So. 2d 189.

No. 08–602. O'Neill et al. *v.* City of Philadelphia, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 289 Fed. Appx. 509.

No. 08–615. Bumgarner *v.* Oregon. Ct. App. Ore. Certiorari denied. Reported below: 219 Ore. App. 617, 184 P. 3d 1143.

No. 08–618. Ginger et al. *v.* District of Columbia et al. C. A. D. C. Cir. Certiorari denied. Reported below: 527 F. 3d 1340.

No. 08–619. Carlisle *v.* Ohio. Ct. App. Ohio, Lawrence County. Certiorari denied. Reported below: 2007-Ohio-744.

No. 08–620. de Oliveira *v.* Mukasey, Attorney General. C. A. 1st Cir. Certiorari denied.

No. 08–623. Stucky *v.* Hawaii Department of Education et al. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 503.

No. 08–629. Sabater *v.* Bias. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 158.

No. 08–631. Mansfield *v.* Peake, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 525 F. 3d 1312.

No. 08–632. Abner *v.* Mobile Infirmary Medical Center et al. Ct. Civ. App. Ala. Certiorari denied.

No. 08–634. CALIMLIM ET VIR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 538 F. 3d 706.

No. 08–639. MCAFEE, DBA MCAFEE MX *v.* FOSTER ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 08–641. FRANKLIN *v.* SIMS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 538 F. 3d 661.

No. 08–644. MINAGORRI *v.* ARCHDIOCESE OF MIAMI, INC. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 954 So. 2d 640.

No. 08–647. SILVAS *v.* REMINGTON OIL & GAS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 681.

No. 08–650. EVANS *v.* ELDRIDGE ET AL. Sup. Ct. Tex. Certiorari denied.

No. 08–654. KIMBROUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 536 F. 3d 463.

No. 08–663. GEISER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 527 F. 3d 288.

No. 08–670. HYLES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 521 F. 3d 946.

No. 08–675. KEYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 105.

No. 08–679. POWELL *v.* UNITED STATES; and
No. 08–7420. WALKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 262 Fed. Appx. 303.

No. 08–682. PUCHE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 795.

No. 08–684. COLUMBUS EXPLORATION, LLC, ET AL. *v.* WILLIAMSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 542 F. 3d 43.

No. 08–688. FUTCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 387.

No. 08–690. GOODIN *v.* GEREN, SECRETARY OF THE ARMY. C. A. 11th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 763.

No. 08–691. Fox *v.* Securities and Exchange Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 275 Fed. Appx. 1.

No. 08–692. Haley *v.* Michels et al. C. A. 9th Cir. Certiorari denied.

No. 08–695. Schafler *v.* Spear, Trustee. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 648.

No. 08–702. Wadhwa *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 296 Fed. Appx. 17.

No. 08–703. King *v.* Department of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 276 Fed. Appx. 993.

No. 08–707. Cull et ux. *v.* Perry Homes et al. Sup. Ct. Tex. Certiorari denied. Reported below: 258 S. W. 3d 580.

No. 08–711. Butler *v.* Kempthorne, Secretary of the Interior. C. A. 10th Cir. Certiorari denied. Reported below: 532 F. 3d 1108.

No. 08–713. Crytser *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 555.

No. 08–718. Braquet *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 08–735. Mark *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 284 Fed. Appx. 970.

No. 08–739. McVay *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 488.

No. 08–5122. Duncan *v.* United States;
No. 08–5150. Sawyer *v.* United States; and
No. 08–5151. Rogers *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 521 F. 3d 792.

No. 08–5407. Toney *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 637.

No. 08–5543. Jimenez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 433.

No. 08–5584. MEEKS *v.* FORTNER, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–5676. MCKINNEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–5683. WATSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 525 F. 3d 583.

No. 08–5733. JENNINGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–5787. REYNOLDS *v.* H&R BLOCK SERVICES, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–5861. MEEKS *v.* BELL, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–5984. EVANS *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 513 F. 3d 735.

No. 08–5999. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 Fed. Appx. 294.

No. 08–6083. MONTENEGRO CRUZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 218 Ariz. 149, 181 P. 3d 196.

No. 08–6101. JAGGER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 08–6122. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 388.

No. 08–6158. WEILAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–6249. LINDSEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 264 Fed. Appx. 710.

No. 08–6264. CALDWELL *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–6271. STANLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 370.

No. 08–6291. SIAU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 949.

No. 08–6300. Chavero *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 355.

No. 08–6362. Fahrenkrug *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–6437. Romm *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 669.

No. 08–6443. Hinton *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 524 F. 3d 1198.

No. 08–6463. Strickland *v.* Branker, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 57.

No. 08–6475. Badger *v.* Ricci, Associate Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 178.

No. 08–6486. Llanos-Agostadero *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 486 F. 3d 1194.

No. 08–6559. Dasisa *v.* University of the District of Columbia Board of Trustees. C. A. D. C. Cir. Certiorari denied. Reported below: 279 Fed. Appx. 5.

No. 08–6623. Wilson *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 1, 178 P. 3d 1113.

No. 08–6624. Fuller *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 253 S. W. 3d 220.

No. 08–6640. Wallace et ux. *v.* Tribbey et al. C. A. 10th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 657.

No. 08–6668. Bonilla *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 524 F. 3d 647.

No. 08–6670. Book *v.* Tobin et al. C. A. 2d Cir. Certiorari denied. Reported below: 263 Fed. Appx. 174.

No. 08–6673. Pacheco-Sanchez, aka Espinoza-Barron *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 625.

No. 08–6780. Schmidt *v.* Bodin et al. C. A. 8th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 570.

No. 08–6794. TAYLOR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–6798. CLARK *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 08–6800. SMITH *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–6813. BUTLER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6815. BROWN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–6820. BOLAR *v.* LUNA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–6825. ELDER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6827. SMITH *v.* GOMEZ. C. A. 9th Cir. Certiorari denied.

No. 08–6831. MALLEY *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 169.

No. 08–6832. CHAMBERLIN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 989 So. 2d 320.

No. 08–6835. CLARK ET UX. *v.* ZIPFEL. Ct. App. Wash. Certiorari denied. Reported below: 139 Wash. App. 1036.

No. 08–6837. FIELDS *v.* BOOKER. C. A. 7th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 400.

No. 08–6838. HUDSON *v.* BROWN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 08–6840. NORRIS *v.* BROWN, SHERIFF, DEKALB COUNTY, GEORGIA. Ct. App. Ga. Certiorari denied.

No. 08–6842. MCCARTHY *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–6849. SMITH *v.* VOORHIES, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 119 Ohio St. 3d 345, 894 N. E. 2d 44.

No. 08–6854. WALKER *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–6861. MILLER *v.* MILLS, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 525 F. 3d 890.

No. 08–6863. RANCE *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–6865. JOSEPH *v.* MICHIGAN. Cir. Ct. Kent County, Mich. Certiorari denied.

No. 08–6868. DELTORO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 991 So. 2d 863.

No. 08–6872. HAWKINS *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6878. NEALE *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6879. FULLER *v.* BASAL ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6880. LOPEZ GAMBOA *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 569.

No. 08–6883. MOSLEY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1163, 953 N. E. 2d 92.

No. 08–6885. WILLIS *v.* THOMAS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CHESTER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–6894. COPP *v.* TARRO ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–6895. BROWN *v.* SHERROD. C. A. 10th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 542.

No. 08–6900. SMITH *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–6903. CLARK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6905. PRATHER *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6907. GARRETT *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6908. HALL *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–6909. GORDON *v.* CAIN ET AL. C. A. 5th Cir. Certiorari denied.

No. 08–6914. DELESTON *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 981.

No. 08–6915. PHILLIPS *v.* WASHINGTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 885.

No. 08–6917. CHILDRESS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 08–6922. MARTIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6924. WOOD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–6926. FLORES *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 598.

No. 08–6929. CHAVEZ *v.* FAIRMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 234 Fed. Appx. 600.

No. 08–6934. DAIAK *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 983 So. 2d 587.

No. 08–6935. JONES *v.* OHIO STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–6938. LYNCH *v.* LORD. C. A. 2d Cir. Certiorari denied.

No. 08–6939. WATTS *v.* FLORIDA UNEMPLOYMENT APPEALS COMMISSION ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 988 So. 2d 623.

No. 08–6942. VANN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1124, 955 N. E. 2d 186.

No. 08–6947. GATTIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 955 A. 2d 1276.

No. 08–6948. JOHNSON *v.* HUDSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–6949. VERNON *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–6955. POE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 276 Neb. 258, 754 N. W. 2d 393.

No. 08–6956. LASHLEY *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied. Reported below: 118 Ohio St. 3d 1510, 889 N. E. 2d 1027.

No. 08–6957. JONES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 46 App. Div. 3d 1476, 847 N. Y. S. 2d 894.

No. 08–6963. PETERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 984 So. 2d 1227.

No. 08–6969. MARGARET Z. *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 158 Cal. App. 4th 1102, 70 Cal. Rptr. 3d 583.

No. 08–6972. CHEADLE *v.* DINWIDDIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 820.

No. 08–6979. REED *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 638.

No. 08–6982. Bell *v.* Culliver, Warden. C. A. 11th Cir. Certiorari denied.

No. 08–6986. Avent *v.* Doe et al. C. A. 2d Cir. Certiorari denied.

No. 08–6992. Allen *v.* Reilly. C. A. 9th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 268.

No. 08–6998. Dade *v.* DiGuglielmo, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 979.

No. 08–7001. Muckle et al. *v.* Freemont Investments & Loans et al. C. A. 1st Cir. Certiorari denied.

No. 08–7007. Rice *v.* Kentucky. Sup. Ct. Ky. Certiorari denied.

No. 08–7008. Wagner *v.* South Carolina Department of Corrections. C. A. 4th Cir. Certiorari denied.

No. 08–7011. Craig *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–7017. Gonzalez *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–7018. Freeman *v.* McCollum, Attorney General of Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 536 F. 3d 1225.

No. 08–7022. Lawton *v.* Perry Township Police Department et al. C. A. 6th Cir. Certiorari denied.

No. 08–7023. Cata *v.* Garcia, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–7024. Ceo *v.* Padula, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 106.

No. 08–7032. Wise, aka Hettich *v.* Hettich. Sup. Ct. Fla. Certiorari denied. Reported below: 996 So. 2d 215.

No. 08–7033. Chalif *v.* Cuomo, Attorney General of New York, et al. C. A. 2d Cir. Certiorari denied.

No. 08–7034. HARRIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 1269, 185 P. 3d 727.

No. 08–7037. GARCIA *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7039. PETERSON *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 08–7044. WASHINGTON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 529.

No. 08–7045. WILKENS *v.* NEWTON-EMBRY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 526.

No. 08–7049. ALTON *v.* MATHIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 76.

No. 08–7051. KING *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–7052. POWERS *v.* JOHANSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–7054. DANDAR *v.* KRYSEVIG ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7056. CABLE *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7057. DAVIS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied.

No. 08–7059. ROBINSON *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7062. SCHACHTER *v.* MARSHALL, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–7066. SMITH *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–7067. REISCHAUER *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7074. MATSON *v.* COURT OF BRUNSWICK COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 275.

No. 08–7076. JONES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 08–7077. TILCOCK *v.* DONAT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 538 F. 3d 1138.

No. 08–7079. PEOPLES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 08–7090. MCGINLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 951 A. 2d 1214.

No. 08–7091. MINTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 916.

No. 08–7092. WISEMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–7093. YODER *v.* BARTOS, WARDEN, ET AL. Ct. App. Ariz. Certiorari denied.

No. 08–7094. BAGGETT *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 08–7095. ASEMANI *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 248.

No. 08–7099. STERHAN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 481 Mich. 915, 750 N. W. 2d 217.

No. 08–7105. VEGA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–7107. YORK *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7111. ERLANDSON *v.* NORTHGLENN MUNICIPAL COURT. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 785.

No. 08–7112. CODINA *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 432.

No. 08–7114. CHRISTOPHE *v.* MORRIS ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7115. ELJACK *v.* JOHNSON REALTY CO., INC. Ct. Civ. App. Ala. Certiorari denied. Reported below: 19 So. 3d 924.

No. 08–7116. GREEN *v.* RBS NATIONAL BANK. C. A. 11th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 641.

No. 08–7125. SAMPSON *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7126. SCHLEMM *v.* HUIBREGTSE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–7131. TILLMAN *v.* MENDOZA-POWERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 275 Fed. Appx. 668.

No. 08–7135. NORMAN *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7140. CUTHBERTSON *v.* CUTHBERTSON. Ct. App. Ariz. Certiorari denied.

No. 08–7144. SMITH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7147. MILLS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 08–7148. FORD *v.* POWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7149. HEARING *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–7151. HILLARD *v.* WEBB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7153. FULLER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 08–7155. HALL *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–7156. GULLY, AKA CHAMBLAIN *v.* POWER, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7159. FORREST *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–7160. SALERNO *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7162. FICKEN *v.* LUNDEBYE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 08–7166. RAMOS *v.* SHEPHERD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7167. JUSTICE *v.* LIVINGSTON, SUPERINTENDENT, ERIE COUNTY HOLDING CENTER, ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 08–7169. EL BEY *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 1001.

No. 08–7170. TREADWAY *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 268 Fed. Appx. 672.

No. 08–7171. VILLANUEVA *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7177. DAGLEY *v.* RUSSO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 540 F. 3d 8.

No. 08–7191. TRAVIS *v.* PARK CITY MUNICIPAL CORPORATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 829.

No. 08–7194. Bartlette *v.* Kmart Corp. et al. C. A. 3d Cir. Certiorari denied. Reported below: 312 Fed. Appx. 441.

No. 08–7208. Butler *v.* City of Milwaukee, Wisconsin. C. A. 7th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 838.

No. 08–7223. Figura Torrefranca *v.* Schriro, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 607.

No. 08–7233. Sutton *v.* Farwell, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 529.

No. 08–7237. Brown *v.* Astrue, Commissioner of Social Security. C. A. 11th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 726.

No. 08–7250. Switzer et ux. *v.* Supreme Court of Virginia. Sup. Ct. Va. Certiorari denied.

No. 08–7257. Sitkovetskiy *v.* Department of Housing and Urban Development et al. C. A. 2d Cir. Certiorari denied.

No. 08–7269. Johnson *v.* A Touch of Class Painting, Inc., et al. Sup. Ct. Minn. Certiorari denied.

No. 08–7278. Paradis *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 66.

No. 08–7279. Reynoso *v.* Bayer AG et al. C. A. 8th Cir. Certiorari denied.

No. 08–7281. Carney *v.* Kelly, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied.

No. 08–7283. Hampton *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 08–7287. Alexander *v.* Forr et al. C. A. 3d Cir. Certiorari denied. Reported below: 297 Fed. Appx. 102.

No. 08–7295. Kikkert *v.* Schmidt. C. A. 7th Cir. Certiorari denied.

No. 08–7296. Patterson *v.* Vanderver et al. C. A. 9th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 912.

No. 08–7297. Osumah *v.* Mukasey, Attorney General. C. A. 2d Cir. Certiorari denied.

No. 08–7298. Tavares *v.* Meyers et al. C. A. 2d Cir. Certiorari denied. Reported below: 257 Fed. Appx. 466.

No. 08–7301. Wilkerson *v.* Beck, Secretary, North Carolina Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 708.

No. 08–7303. Robinson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 532 F. 3d 764.

No. 08–7304. Soto *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 539 F. 3d 191.

No. 08–7305. Sparkman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 12.

No. 08–7307. Slaughter *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 953.

No. 08–7311. Siriano-Ortiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 609.

No. 08–7312. Ramsey *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 921 So. 2d 779.

No. 08–7313. Sveum *v.* Smith, Warden. Ct. App. Wis. Certiorari denied. Reported below: 313 Wis. 2d 522, 756 N. W. 2d 478.

No. 08–7315. Wesley *v.* Janecka, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 521.

No. 08–7317. Thomas *v.* Donat, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 28.

No. 08–7318. Hinton, aka Smith *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–7320. Norris *v.* Florida (two judgments). Sup. Ct. Fla. Certiorari denied. Reported below: 992 So. 2d 820.

No. 08–7322. James *v.* Pollard. Sup. Ct. Wis. Certiorari denied.

No. 08–7324. PIERCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 886.

No. 08–7326. CODINA *v.* CHERTOFF, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–7327. BLAKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 449.

No. 08–7328. BRANHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 642.

No. 08–7336. REED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 539 F. 3d 595.

No. 08–7337. MEJIA *v.* GARCIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 534 F. 3d 1036.

No. 08–7340. JAEGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 538 F. 3d 1227.

No. 08–7342. POWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 920.

No. 08–7343. ANDREWS-WILLMANN *v.* PAULSON, SECRETARY OF THE TREASURY. C. A. 11th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 741.

No. 08–7344. ANGUIANO-ROSALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 994.

No. 08–7346. BRANCH *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 312 Wis. 2d 480, 751 N. W. 2d 902.

No. 08–7347. CARTER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–7348. CONTRERAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 536 F. 3d 1167.

No. 08–7349. ECKLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 535.

No. 08–7354. ESFANDIARY *v.* MUKASEY, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 816.

No. 08–7358. THOMPSON *v.* CHOINSKI, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 525 F. 3d 205.

No. 08–7359. TOLLIVER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 928 A. 2d 731.

No. 08–7360. BRANCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 537 F. 3d 328.

No. 08–7361. CARDENAS LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 692.

No. 08–7362. LICON *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 468.

No. 08–7364. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 63.

No. 08–7365. BENZEL *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 08–7366. MYLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–7367. MOSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 839.

No. 08–7371. RAHMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 527 F. 3d 266.

No. 08–7377. MCKENZIE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 283 Fed. Appx. 13.

No. 08–7378. NEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7379. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–7383. PHILLIPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 543 F. 3d 1197.

No. 08–7384. DAWSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 574.

No. 08–7386. MELENDEZ-MARRERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7390. MILLER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7393. QUOC THAI MINH THUY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7394. NEWSON, AKA JOHNSON *v.* BETT. C. A. 7th Cir. Certiorari denied.

No. 08–7397. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 541 F. 3d 1143.

No. 08–7398. JONES *v.* PARKER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–7400. VASQUEZ CARBAJAL, AKA CARVAJAL VAZQUEZ, AKA VASQUEZ-CARBAJAL, AKA CARVAJAL-VASQUEZ, AKA VAZQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 713.

No. 08–7401. DJOUMESSI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 538 F. 3d 547.

No. 08–7404. PENOYER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 988 So. 2d 1102.

No. 08–7406. PYNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 197.

No. 08–7407. ANTUNEZ JIMENEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 32.

No. 08–7411. BAER *v.* WINTER, SECRETARY OF THE NAVY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 08–7413. SOTO FERNANDEZ, AKA FERNANDEZ ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–7414. GUESS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 158 Cal. App. 4th 283, 69 Cal. Rptr. 3d 652.

No. 08–7415. FUNCHESS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 947.

No. 08–7417. GASKINS *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 08–7419. TRUJILLO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–7422. MALTESE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–7424. KIM *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 759.

No. 08–7426. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 532 F. 3d 1279.

No. 08–7427. RIPPETOE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 108.

No. 08–7428. BENKAHLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 530 F. 3d 300.

No. 08–7429. ADKINS *v.* FAIRFAX COUNTY SCHOOL BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 202.

No. 08–7430. TIPPINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 313.

No. 08–7431. VANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 3.

No. 08–7432. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 943.

No. 08–7434. WARREN *v.* GARTMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 767.

No. 08–7437. LUDWIG *v.* BERKS COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 313 Fed. Appx. 479.

No. 08–7438. MONZON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–7450. TURNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7451. BANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7452. Copeland *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 566.

No. 08–7454. Dembry, aka Keith, aka Wilson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 535 F. 3d 798.

No. 08–7455. Chavez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 534 F. 3d 1338.

No. 08–7456. Mendez-Echevarria *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 540 F. 3d 24.

No. 08–7459. Bailey *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 770.

No. 08–7463. Biggs *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 591.

No. 08–7464. Pryce *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 08–7467. King *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 540 F. 3d 702.

No. 08–7471. Mathis *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–7472. Clark-Aigner *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 185.

No. 08–7474. Virgil *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 405.

No. 08–7475. Sukup *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 08–7478. Becerril-Lopez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 541 F. 3d 881.

No. 08–7479. Burford *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 201.

No. 08–7481. McGowan *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 288.

No. 08–7482. Mercer *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 541 F. 3d 1070.

No. 08–7483. PIKE *v.* UNITED STATES; and
No. 08–7549. PATTISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 292 Fed. Appx. 108.

No. 08–7486. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 189.

No. 08–7487. SANTOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 541 F. 3d 63.

No. 08–7489. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7495. SPENCER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–7503. CAMPOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 541 F. 3d 735.

No. 08–7506. MCLAIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7508. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 214.

No. 08–7509. JAMES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 540 F. 3d 702.

No. 08–7510. GRIESBACH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 540 F. 3d 654.

No. 08–7511. GODWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 744.

No. 08–7514. RICHMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–7516. SMART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 579.

No. 08–7518. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7519. BRUNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–7520. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–7523. BERMUDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 529 F. 3d 158.

No. 08–7524. BLEVINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 241.

No. 08–7528. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 36.

No. 08–7534. HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 541 F. 3d 422.

No. 08–7535. GARY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 528 F. 3d 324.

No. 08–7537. GARCIA-QUINTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 537.

No. 08–7538. HEARNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 559.

No. 08–7542. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 237.

No. 08–7548. CASTELLON-FALCON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 798.

No. 08–7552. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 770.

No. 08–7553. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 277.

No. 08–7554. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 595.

No. 08–7558. BETCHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 534 F. 3d 820.

No. 08–7559. BAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 538 F. 3d 324.

No. 08–7564. KIRLEW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 536.

No. 08–7566. STOTERAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 524 F. 3d 988.

No. 08–7567. CLINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 229.

No. 08–7569. COPE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 272 Fed. Appx. 445.

No. 08–7571. LIPSCOMB *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 539 F. 3d 32.

No. 08–7573. PAGE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 521 F. 3d 101.

No. 08–7574. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 1.

No. 08–7575. VALLEJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 660.

No. 08–7576. BOLIVAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 532 F. 3d 599.

No. 08–7580. HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7582. LUCEI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 839.

No. 08–7584. MATEO, AKA FELICIANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–7590. BEAUDETTE *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 250 Fed. Appx. 980.

No. 08–7591. MIERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 539 F. 3d 1232.

No. 08–7594. CONLENZO-HUFFMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 361.

No. 08–7595. EDWARDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 540 F. 3d 1156.

No. 08–7601. TRUESDALE *v.* MUKASEY, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 08–7604. CRUSOE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 506.

No. 08–7606. MASON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–7607. SANCHEZ LUGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 224.

No. 08–7610. MCFADDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 541 F. 3d 1323.

No. 08–7611. MIRANDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7612. PRESSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 299 Fed. Appx. 118.

No. 08–7615. SANDOVAL-VASQUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–7616. LINDER *v.* FRIEDMAN. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 168.

No. 08–7619. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 59.

No. 08–7623. VASILOFF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7624. WARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7631. HENDRICKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 150.

No. 08–7636. HART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–7638. FARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 532 F. 3d 615.

No. 08–7653. CASTILLO-CUEVAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 960.

No. 08–7654. COMISAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 821.

No. 08–7655. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 761.

No. 08–7736. ARREDONDO *v.* HUIBREGTSE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 542 F. 3d 1155.

No. 08–212. EXXON MOBIL CORP. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition. Reported below: 268 Fed. Appx. 7.

No. 08–402. KANSAS *v.* MORTON. Sup. Ct. Kan. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 286 Kan. 632, 186 P. 3d 785.

No. 08–500. LAMBERT *v.* HARTMANN, CLERK OF COURTS, HAMILTON COUNTY, OHIO, ET AL. C. A. 6th Cir. Motion of Consumer Action and Privacy Rights Clearinghouse for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 517 F. 3d 433.

No. 08–510. IVALDY *v.* LORAL SPACE & COMMUNICATIONS LTD. ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 266 Fed. Appx. 52.

No. 08–519. ROBERTS *v.* HAGENER, DIRECTOR, MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS, ET AL. C. A. 9th Cir. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 287 Fed. Appx. 586.

No. 08–570. BERG *v.* OBAMA ET AL. C. A. 3d Cir. Motion of Bill Anderson for leave to file a brief as *amicus curiae* granted. Certiorari before judgment denied.

No. 08–585. OHIO *v.* WADE. Ct. App. Ohio, Franklin County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 2008-Ohio-1797.

No. 08–6817. BRANSCOMBE *v.* ROE, WARDEN. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 521 F. 3d 1222.

No. 08–7010. DEEP *v.* RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC., ET AL. C. A. 1st Cir. Certiorari denied. THE

CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 07–1430. McCLASKEY *v.* LA PLATA R–II SCHOOL DISTRICT ET AL., *ante*, p. 818;

No. 07–1471. YEE *v.* STATE COURT ADMINISTRATIVE OFFICE ET AL., *ante*, p. 820;

No. 07–1613. AL-MARBU *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 993;

No. 07–9931. BAKER *v.* UNITED STATES, *ante*, p. 829;

No. 07–10583. CHASE *v.* TEXAS, *ante*, p. 832;

No. 07–10688. PEEK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 835;

No. 07–10746. BAUBLITZ *v.* INGHAM CIRCUIT JUDGE, *ante*, p. 836;

No. 07–10828. SHUSTERMAN *v.* UNITED STATES, *ante*, p. 839;

No. 07–10936. HIDDENS *v.* LEIBOLD ET VIR, *ante*, p. 842;

No. 07–10983. ROHN *v.* WILSON ET AL., *ante*, p. 844;

No. 07–11016. MORRISON *v.* VAUGHN, SUPERINTENDENT, ODOM CORRECTIONAL INSTITUTION, *ante*, p. 846;

No. 07–11085. VINES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 848;

No. 07–11104. FRESQUEZ *v.* CALIFORNIA, *ante*, p. 849;

No. 07–11166. SEYMOUR *v.* UNITED STATES, *ante*, p. 852;

No. 07–11221. ROBINSON *v.* CAIN, WARDEN, *ante*, p. 855;

No. 07–11226. SOBITAN *v.* UNITED STATES, *ante*, p. 856;

No. 07–11385. JACKSON *v.* THOMPSON ET AL., *ante*, p. 865;

No. 07–11386. ABIDAOUD *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 1031;

No. 07–11504. MARK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 873;

No. 07–11521. GUEYE *v.* AIRBORNE EXPRESS ET AL., *ante*, p. 874;

No. 07–11522. GUEYE *v.* GUTIERREZ, SECRETARY OF COMMERCE, *ante*, p. 874;

No. 08–58. SHELBY *v.* UNITED STATES, *ante*, p. 1031;

No. 08–62. PERSIK *v.* TUCCI LEARNING SOLUTIONS, INC., ET AL., *ante*, p. 883;

No. 08–204. MARTIN *v.* HOWARD UNIVERSITY ET AL., *ante*, p. 1040;

No. 08–243. THOMAS *v.* EVANSVILLE VANDERBURGH SCHOOL CORPORATION ET AL., *ante*, p. 994;

No. 08–275. LEE *v.* HUNTLEIGH HEALTHCARE, LLC, ET AL., *ante*, p. 995;

No. 08–287. BELLO *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, *ante*, p. 995;

No. 08–292. DAHLQUIST *v.* CITY OF KENT, WASHINGTON, ET AL., *ante*, p. 1012;

No. 08–311. ALTHEIMER *v.* SETON CORP., DBA BAPTIST HOSPITAL, *ante*, p. 1012;

No. 08–315. CLARK *v.* NEW YORK CITY TRANSIT AUTHORITY ET AL., *ante*, p. 1012;

No. 08–316. UNITED STATES EX REL. BOTT ET AL. *v.* SILICON VALLEY COLLEGES ET AL., *ante*, p. 1012;

No. 08–335. DURAND *v.* CITY OF PHOENIX, ARIZONA, *ante*, p. 996;

No. 08–353. LOCKWOOD *v.* BEASLEY ET AL., *ante*, p. 996;

No. 08–454. CRUMP-DONAHUE *v.* UNITED STATES, *ante*, p. 1048;

No. 08–5116. LATTAKER *v.* RENDELL, GOVERNOR OF PENNSYLVANIA, ET AL., *ante*, p. 896;

No. 08–5117. IN RE LATTAKER, *ante*, p. 810;

No. 08–5137. MOORE *v.* FLORIDA, *ante*, p. 897;

No. 08–5308. YOUNG *v.* RUSHTON, WARDEN, ET AL., *ante*, p. 907;

No. 08–5340. SILVO *v.* CAIN, WARDEN, *ante*, p. 909;

No. 08–5399. RAY *v.* MINOR, WARDEN, *ante*, p. 912;

No. 08–5402. PETERSON *v.* UNITED STATES, *ante*, p. 913;

No. 08–5477. BUONSIGNORE *v.* UNITED STATES, *ante*, p. 917;

No. 08–5533. BOWMAN *v.* UNITED STATES, *ante*, p. 920;

No. 08–5571. HUTSON *v.* GIURBINO, WARDEN, *ante*, p. 922;

No. 08–5583. AKERS *v.* UNITED STATES, *ante*, p. 923;

No. 08–5597. WILLIAMS *v.* OHIO, *ante*, p. 947;

No. 08–5630. ALI *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES, *ante*, p. 924;

No. 08–5642. BAEZ *v.* UNITED STATES, *ante*, p. 925;

No. 08–5815. LYON *v.* VIRGINIA, *ante*, p. 952;

No. 08–5823. HARRIS *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL., *ante*, p. 931;

No. 08–5856. SHAW *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 972;

No. 08–5887. WARNER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 973;

No. 08–5924. CARRASCOSA *v.* MCGUIRE, SHERIFF, BERGEN COUNTY, NEW JERSEY, ET AL., *ante*, p. 998;

No. 08–5950. SIMMONS *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL., *ante*, p. 954;

No. 08–5951. SPURLOCK *v.* UTILITY SERVICE EXPRESS, LLC, ET AL., *ante*, p. 998;

No. 08–5952. SOWERS *v.* UNITED STATES, *ante*, p. 935;

No. 08–5967. LATHAM *v.* MUNICIPALITY OF ANCHORAGE, ALASKA, *ante*, p. 974;

No. 08–6003. DIXON *v.* THOMPSON, WARDEN, *ante*, p. 999;

No. 08–6014. BEARD *v.* JP MORGAN CHASE BANK NATIONAL ASSN., *ante*, p. 999;

No. 08–6056. CAPERS *v.* ROGERS, ADMINISTRATOR, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL., *ante*, p. 955;

No. 08–6084. CROOK *v.* EL PASO INDEPENDENT SCHOOL DISTRICT, *ante*, p. 956;

No. 08–6086. RANDOLPH *v.* TATAROW FAMILY PARTNERS, LTD., *ante*, p. 1000;

No. 08–6094. VERDI *v.* WILKINSON COUNTY, GEORGIA, ET AL., *ante*, p. 1001;

No. 08–6096. YOUNGBLOOD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1001;

No. 08–6105. LEONOR *v.* BRITTEN ET AL., *ante*, p. 974;

No. 08–6108. OLIVER *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, *ante*, p. 1001;

No. 08–6128. FLORES VERA *v.* TEXAS ET AL., *ante*, p. 1002;

No. 08–6145. GRAY *v.* UNITED STATES, *ante*, p. 958;

No. 08–6224. TORJAGBO *v.* UNITED STATES, *ante*, p. 1003;

No. 08–6234. HARPER *v.* CITY OF HOUSTON, TEXAS, ET AL., *ante*, p. 1003;

No. 08–6247. VINES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 1015;

No. 08–6257. HIDDENS *v.* LEIBOLD ET AL., *ante*, p. 1015;

No. 08–6282. SMITH *v.* CLARK, WARDEN, *ante*, p. 1016;

No. 08–6327. BRUVOLD *v.* NEW MEXICO, *ante*, p. 1016;

No. 08–6401. LAITY *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 1016;

No. 08–6431. COGGINS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA ET AL., *ante*, p. 1005;

No. 08–6488. AMBORT *v.* UNITED STATES, *ante*, p. 1017;

No. 08–6748. IN RE COX, *ante*, p. 1011;

No. 08–6821. BAXTER *v.* UNITED STATES, *ante*, p. 1020; and

No. 08–6913. IN RE CHERY, *ante*, p. 1030. Petitions for rehearing denied.

JANUARY 15, 2009

Certiorari Denied

No. 08–8186 (08A614). CALLAHAN *v.* ALABAMA. Sup. Ct. Ala. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

JANUARY 16, 2009

Certiorari Granted

No. 08–305. FOREST GROVE SCHOOL DISTRICT *v.* T. A. C. A. 9th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Wednesday, February 25, 2009. Respondent's brief is to be filed on or before Wednesday, March 25, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 523 F. 3d 1078.

No. 08–453. CUOMO, ATTORNEY GENERAL OF NEW YORK *v.* CLEARING HOUSE ASSN., L. L. C., ET AL. C. A. 2d Cir. Certiorari granted. Petitioner's brief is to be filed on or before Wednesday, February 25, 2009. Respondents' brief is to be filed on or before Wednesday, March 25, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 510 F. 3d 105.

No. 08–479. SAFFORD UNIFIED SCHOOL DISTRICT #1 ET AL. *v.* REDDING. C. A. 9th Cir. Certiorari granted. Petitioners' brief is to be filed on or before Wednesday, February 25, 2009. Respondent's brief is to be filed on or before Wednesday, March 25, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 531 F. 3d 1071.

No. 08–495. NIJHAWAN *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari granted limited to the following question: "Whether petitioner's conviction for conspiracy to commit bank fraud, mail fraud, and wire fraud qualifies as a conviction for conspiracy to commit an 'offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000,' 8 U. S. C. §§ 1101(a)(43)(M)(i) and (U), where petitioner stipulated for sentencing purposes that the victim loss associated with his fraud offense exceeded $100 million, and the judgment of conviction and restitution order calculated total victim loss as more than $680 million." Petitioner's brief is to be filed on or before Wednesday, February 25, 2009. Respondent's brief is to be filed on or before Wednesday, March 25, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 523 F. 3d 387.

No. 08–598. BOBBY, WARDEN *v.* BIES. C. A. 6th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Wednesday, February 25, 2009. Respondent's brief is to be filed on or before Wednesday, March 25, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 519 F. 3d 324.

No. 08–660. UNITED STATES EX REL. EISENSTEIN *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari granted. Petitioner's brief is to be filed on or before Wednesday, February 25, 2009. Respondents' brief is to be filed on or before Wednesday, March 25, 2009. A reply brief, if any, is to be filed in accordance with this Court's Rule 25.3. Reported below: 540 F. 3d 94.

JANUARY 21, 2009

Certiorari Granted—Reversed and Remanded. (See No. 08–5721, *ante*, p. 261.)

Certiorari Granted—Vacated and Remanded

No. 06–10751. GOLDEN *v.* UNITED STATES. C. A. 7th Cir. Reported below: 466 F. 3d 612;

No. 06–10972. PATTERSON *v.* UNITED STATES. C. A. 10th Cir. Reported below: 472 F. 3d 767;

No. 07–5354. MILLS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 223 Fed. Appx. 516;

No. 07–5978. HUNT *v.* UNITED STATES. C. A. 7th Cir. Reported below: 224 Fed. Appx. 531;

No. 07–6719. SUMMERS *v.* UNITED STATES. C. A. 11th Cir. Reported below: 238 Fed. Appx. 552;

No. 07–7987. LANCASTER *v.* UNITED STATES. C. A. 6th Cir. Reported below: 501 F. 3d 673;

No. 07–8093. INGRAM *v.* UNITED STATES. C. A. 8th Cir. Reported below: 501 F. 3d 963;

No. 07–8429. ADDO *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir.;

No. 07–8438. PRATT *v.* UNITED STATES. C. A. 1st Cir. Reported below: 496 F. 3d 124;

No. 07–9281. CRUZ *v.* UNITED STATES. C. A. 7th Cir. Reported below: 254 Fed. Appx. 550;

No. 07–10063. AVALOS *v.* UNITED STATES. C. A. 10th Cir. Reported below: 506 F. 3d 972;

No. 07–10474. PARKS *v.* UNITED STATES. C. A. 8th Cir. Reported below: 249 Fed. Appx. 484;

No. 07–11355. HOPKINS *v.* UNITED STATES. C. A. 3d Cir. Reported below: 264 Fed. Appx. 173;

No. 07–11559. OAKS *v.* UNITED STATES. C. A. 6th Cir.;

No. 07–11560. MORA *v.* UNITED STATES. C. A. 10th Cir.;

No. 08–5661. BRUNSON *v.* UNITED STATES. C. A. 11th Cir.; and

No. 08–6406. REYES-FIGUEROA *v.* UNITED STATES. C. A. 5th Cir. Reported below: 282 Fed. Appx. 330. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Chambers* v. *United States*, *ante*, p. 122.

No. 07–61. MATHIAS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 482 F. 3d 743; and

No. 07–668. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Reported below: 489 F. 3d 1112. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Chambers* v. *United States*, *ante*, p. 122.

No. 07–1474. PIETRZAK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir.; and

No. 07–1584. LEE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Jimenez* v. *Quarterman*, *ante*, p. 113.

No. 07–5209. THOMAS *v.* UNITED STATES. C. A. D. C. 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 *Chambers* v. *United States*, *ante*, p. 122. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 07–7789. MADLOCK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir.;

No. 07–9317. MUNSCH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir.; and

No. 07–9406. O'NEAL *v.* KENNY, WARDEN. C. A. 8th Cir. Reported below: 501 F. 3d 969. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Jimenez* v. *Quarterman*, *ante*, p. 113.

No. 07–9187. LACASSE *v.* UNITED STATES. C. A. 6th Cir. Reported below: 253 Fed. Appx. 553;

No. 07–9674. CASTILLO-LUCIO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 256 Fed. Appx. 720;

No. 07–9936. VANHOOK *v.* UNITED STATES. C. A. 6th Cir. Reported below: 510 F. 3d 569;

No. 07–10061. ARMENDARIZ-MORENO *v.* UNITED STATES. C. A. 5th Cir. Reported below: 258 Fed. Appx. 666;

No. 07–10756. CRAMPTON *v.* UNITED STATES. C. A. 9th Cir. Reported below: 519 F. 3d 893;

No. 07–10831. HOTT *v.* UNITED STATES. C. A. 8th Cir. Reported below: 262 Fed. Appx. 734; and

No. 08–5236. VINCENT *v.* UNITED STATES. C. A. 8th Cir. Reported below: 519 F. 3d 732. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Begay* v. *United States*, 553 U. S. 137 (2008), and *Chambers* v. *United States*, *ante*, p. 122.

No. 08–5878. MORELAND *v.* UNITED STATES. C. A. 9th 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 *United States* v. *Santos*, 553 U. S. 507 (2008). Reported below: 509 F. 3d 1201.

Certiorari Dismissed

No. 08–7190. BELL-BOSTON *v.* DORCEY ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 298 Fed. Appx. 12.

No. 08–7259. SENATOR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7321. STRUCK *v.* COOK COUNTY PUBLIC GUARDIAN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7677. D'AMARIO *v.* DAVIS, WARDEN. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 07A925. SIBLEY *v.* BAR COUNSEL FOR THE DISTRICT OF COLUMBIA. Ct. App. D. C. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. 08A505 (08–570). BERG *v.* OBAMA ET AL. C. A. 3d Cir. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 08A522. POLICASTRO *v.* KONTOGIANNIS ET AL. C. A. 3d Cir. Application for stay, addressed to JUSTICE ALITO and referred to the Court, denied.

No. 08M45. SAM *v.* PENNSYLVANIA. Motion of petitioner for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 08M46. PARRISH *v.* PARRISH;

No. 08M47. GHAZIBAYAT *v.* SBC ADVANCED SOLUTIONS, INC.;
No. 08M48. HAYES *v.* FIDEL ET AL.; and
No. 08M50. PITERNIAK ET UX. *v.* CINQUE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08M49. HAVEN *v.* WORTH. Motion for leave to proceed as a veteran denied.

No. 08–645. ABBOTT *v.* ABBOTT. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 08–6789. TUCKER *v.* MONROE ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1067] denied.

No. 08–802. IN RE PARTAIN;
No. 08–7813. IN RE CURTIS;
No. 08–7888. IN RE FLORENCE; and
No. 08–7889. IN RE INDUSTRIOUS. Petitions for writs of habeas corpus denied.

No. 08–7333. IN RE MILLER. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 08–7814. IN RE EMBREY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–8245 (08A633). IN RE MOORE. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

No. 08–633. IN RE AUSTIN;
No. 08–7236. IN RE BROWN; and

No. 08–7268. In re Mays. Petitions for writs of mandamus denied.

Certiorari Denied

No. 07–10321. Rogers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 260 Fed. Appx. 581.

No. 07–10773. Hawley *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 516 F. 3d 264.

No. 08–118. Masferrer *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 514 F. 3d 1158.

No. 08–207. Aspenwood Apartment Corp. et al. *v.* Link et al. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 08–362. Illinois *v.* Lopez. Sup. Ct. Ill. Certiorari denied. Reported below: 229 Ill. 2d 322, 892 N. E. 2d 1047.

No. 08–405. Cross Country Bank, Inc. *v.* New York et al. Ct. App. N. Y. Certiorari denied. Reported below: 11 N. Y. 3d 105, 894 N. E. 2d 1.

No. 08–462. Shimer *v.* Commodity Futures Trading Commission. C. A. 3d Cir. Certiorari denied.

No. 08–467. Doe *v.* Department of Veterans Affairs et al. C. A. 8th Cir. Certiorari denied. Reported below: 519 F. 3d 456.

No. 08–469. Toepfer *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 317 F. 3d 857.

No. 08–478. Craig Outdoor Advertising, Inc., et al. *v.* Viacom Outdoor, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 1001.

No. 08–480. Sicilia *v.* United Parcel Service, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 936.

No. 08–489. Barnhill et al. *v.* Schafer, Secretary of Agriculture, et al. C. A. 4th Cir. Certiorari denied. Reported below: 524 F. 3d 458.

No. 08–506. Shriner *v.* Minnesota. Sup. Ct. Minn. Certiorari denied. Reported below: 751 N. W. 2d 538.

No. 08–511. United States ex rel. Feingold *v.* Palmetto Government Benefits Administrators et al. C. A. 11th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 923.

No. 08–528. Florida *v.* Young. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 974 So. 2d 601.

No. 08–534. Richlin et al. *v.* Metro-Goldwyn-Mayer Pictures, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 531 F. 3d 962.

No. 08–554. Michigan Gambling Opposition *v.* Salazar, Secretary of Interior, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 525 F. 3d 23.

No. 08–565. Mukasey, Attorney General *v.* American Civil Liberties Union et al. C. A. 3d Cir. Certiorari denied. Reported below: 534 F. 3d 181.

No. 08–592. Schubert *v.* Pleasant Glade Assembly of God et al. Sup. Ct. Tex. Certiorari denied. Reported below: 264 S. W. 3d 1.

No. 08–606. Hervey *v.* Koochiching County, Minnesota, et al. C. A. 8th Cir. Certiorari denied. Reported below: 527 F. 3d 711.

No. 08–610. City of Las Cruces, New Mexico, et al. *v.* Vondrak. C. A. 10th Cir. Certiorari denied. Reported below: 535 F. 3d 1198.

No. 08–616. Slmbey *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 288 Ga. App. 717, 657 S. E. 2d 223.

No. 08–621. Gant *v.* Grand Prairie Ford, L. P. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 08–625. Stalley *v.* Methodist Healthcare et al. C. A. 6th Cir. Certiorari denied. Reported below: 517 F. 3d 911.

No. 08–635. Collard *v.* Texas (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 08–637. Williams *v.* Georgia Department of Defense National Guard Headquarters et al. C. A. 11th Cir. Certiorari denied.

No. 08–638. Meshwerks, Inc. *v.* Toyota Motor Sales, U. S. A., Inc., et al. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 1258.

No. 08–642. Dollar General Corp. *v.* Bryant. C. A. 6th Cir. Certiorari denied. Reported below: 538 F. 3d 394.

No. 08–646. Dukes et al. *v.* Philip Johnson/Alan Ritchie Architects, P. C., et al. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 252 S. W. 3d 586.

No. 08–657. Marvin *v.* Fraternal Order of Eagles Aerie #200. Ct. App. Neb. Certiorari denied.

No. 08–658. Young *v.* Repine. C. A. 5th Cir. Certiorari denied. Reported below: 536 F. 3d 512.

No. 08–659. Coy *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–662. Gallant *v.* Gallant. Ct. App. Mich. Certiorari denied.

No. 08–664. Combs et al. *v.* Homer-Center School District et al. C. A. 3d Cir. Certiorari denied. Reported below: 540 F. 3d 231.

No. 08–667. Johnston *v.* Tampa Sports Authority et al. C. A. 11th Cir. Certiorari denied. Reported below: 530 F. 3d 1320.

No. 08–669. Sunseri et al. *v.* Proctor et al. C. A. 6th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 930.

No. 08–689. Guetzloe *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 980 So. 2d 1145.

No. 08–700. Mackerley *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 736.

No. 08–706. Eastern Union, Inc., et al. *v.* Western Union Holdings, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 850.

No. 08–709. Weiss *v.* Estate of Courshon et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 990 So. 2d 611.

No. 08–727. Patrick *v.* Department of Veterans Affairs. C. A. 9th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 667.

No. 08–729. Dilworth *v.* Gregoire, Governor of Washington, et al.; and Dilworth *v.* McKenna, Attorney General of Washington. Sup. Ct. Wash. Certiorari denied.

No. 08–738. Ortiz *v.* Ortiz. C. A. 9th Cir. Certiorari denied. Reported below: 535 F. 3d 990.

No. 08–761. Chein *v.* Drug Enforcement Administration et al. C. A. D. C. Cir. Certiorari denied. Reported below: 533 F. 3d 828.

No. 08–783. Man-Seok Choe *v.* Torres. C. A. 9th Cir. Certiorari denied. Reported below: 525 F. 3d 733.

No. 08–788. Roberts *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 534 F. 3d 560.

No. 08–5793. Tyndall *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 521 F. 3d 877.

No. 08–5983. Canfield *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 565.

No. 08–5993. Lipscomb *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 877.

No. 08–6058. Smith *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–6064. Vaughn *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 519 F. 3d 802.

No. 08–6081. EVERMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 528 F. 3d 570.

No. 08–6259. O'GARRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 280 Fed. Appx. 220.

No. 08–6295. GONZALEZ-PERALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 677.

No. 08–6496. SETTLES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 530 F. 3d 920.

No. 08–6560. CEASAR *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–6641. PHILLIPS *v.* PRAIRIE EYE CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 530 F. 3d 22.

No. 08–6664. CRUZ-PEREIRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 534 F. 3d 1.

No. 08–6701. CORLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 519 F. 3d 716.

No. 08–6752. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 584, 181 P. 3d 1035.

No. 08–6767. CHACON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 533 F. 3d 250.

No. 08–6770. MEDLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 284 Fed. Appx. 985.

No. 08–6776. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 29.

No. 08–6777. RODRIGUES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 289 Fed. Appx. 422.

No. 08–6828. VENCES-CASTENEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 230.

No. 08–6906. GROSECLOSE *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 277 Fed. Appx. 1019.

No. 08–7053. DOE *v.* AMERICAN AIRLINES. C. A. 5th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 289.

No. 08–7108. Taylor et ux. *v.* Sosin, Judge, Circuit Court of Marion County, Indiana, et al. Ct. App. Ind. Certiorari denied.

No. 08–7180. Bailey *v.* Culliver, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 08–7189. Owens *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 378 S. C. 636, 664 S. E. 2d 80.

No. 08–7197. Wynn *v.* County Board of Education of Richmond County et al. C. A. 11th Cir. Certiorari denied.

No. 08–7198. Yoder *v.* Napolitano. C. A. 9th Cir. Certiorari denied. Reported below: 274 Fed. Appx. 576.

No. 08–7204. Brown *v.* Sinclair, Superintendent, Washington State Penitentiary. C. A. 9th Cir. Certiorari denied. Reported below: 530 F. 3d 1031.

No. 08–7219. Richards *v.* Thompson, Warden. C. A. 11th Cir. Certiorari denied.

No. 08–7222. Wardlaw *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 541 F. 3d 275.

No. 08–7224. James *v.* City of Springfield, Massachusetts, et al. C. A. 1st Cir. Certiorari denied.

No. 08–7225. Marsh *v.* Granholm, Governor of Michigan, et al. C. A. 6th Cir. Certiorari denied.

No. 08–7229. Cook *v.* Schriro, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied. Reported below: 538 F. 3d 1000.

No. 08–7239. Burns *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–7245. Creech *v.* Smithfield Housing Authority. Ct. App. N. C. Certiorari denied. Reported below: 188 N. C. App. 848, 646 S. E. 2d 735.

No. 08–7247. Gonzales *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–7258. ROBINSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 991 So. 2d 874.

No. 08–7260. RAMIREZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7264. ENCARNACION *v.* NAPOLI, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–7265. TAYLOR *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 891 N. E. 2d 155.

No. 08–7272. MUSTELIER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 993 So. 2d 513.

No. 08–7273. ELLER *v.* BOCK. C. A. 6th Cir. Certiorari denied.

No. 08–7274. DOWNS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7276. DORA *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 986 So. 2d 917.

No. 08–7277. LENIX *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 602, 187 P. 3d 946.

No. 08–7280. ROMERO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 386, 187 P. 3d 56.

No. 08–7284. HANKINS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 952.

No. 08–7285. BROWN *v.* BURKE, CLERK, CIRCUIT COURT OF FLORIDA, PINELLAS COUNTY. C. A. 11th Cir. Certiorari denied.

No. 08–7288. QUINN *v.* BATHEJA ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 08–7290. KATT *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 479.

No. 08–7292. PETTY *v.* MERCK & CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 182.

No. 08–7293. KYLES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 612.

No. 08–7299. VOTH *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 344.

No. 08–7300. WILKERSON *v.* HARRIS. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 118.

No. 08–7309. JENSEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 08–7314. RICHARDSON *v.* RHODE ISLAND DEPARTMENT OF EDUCATION ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 947 A. 2d 253.

No. 08–7316. VARGHESE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 162 Cal. App. 4th 1084, 76 Cal. Rptr. 3d 449.

No. 08–7319. FRIERSON *v.* PARKE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 257.

No. 08–7323. JOHNSON *v.* THURMER, WARDEN. Ct. App. Wis. Certiorari denied.

No. 08–7325. MILLER *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7329. COGGINS *v.* ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 08–7338. OHIRI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 32.

No. 08–7351. BOJORQUEZ SALCIDO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 93, 186 P. 3d 437.

No. 08–7380. MARTINEZ *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7388. ESCARENO *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7418. STRICKLAND *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 989 So. 2d 1200.

No. 08–7458. BRADLEY *v.* GENERAL COUNSEL OF CENTRAL OFFICE, BUREAU OF PRISONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 251.

No. 08–7488. SARMIENTO *v.* MONTCLAIR STATE UNIVERSITY. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 905.

No. 08–7493. MADDEN *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2008-Ohio-2653.

No. 08–7504. EISENMAN *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 08–7505. PITCHFORD *v.* TURBITT, ADMINISTRATIVE JUDGE, MERIT SYSTEMS PROTECTION BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 930.

No. 08–7526. VOIGT *v.* FRANK ET AL. Ct. App. Wis. Certiorari denied. Reported below: 312 Wis. 2d 814, 754 N. W. 2d 256.

No. 08–7581. GONZALEZ *v.* WOLFE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 799.

No. 08–7589. DEPALMA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 284 Fed. Appx. 824.

No. 08–7628. GAREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 540 F. 3d 1253.

No. 08–7656. CRUZ-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 541 F. 3d 19.

No. 08–7662. FOXWORTH, AKA NEWMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 308.

No. 08–7663. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–7665. FUTCH *v.* WHEELER. C. A. 7th Cir. Certiorari denied.

No. 08–7668. GEORGACARAKOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–7676. CAMACHO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–7679. SWOPE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 542 F. 3d 609.

No. 08–7682. DE LA ROSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 726.

No. 08–7685. PULLEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 535.

No. 08–7688. ASEMANI *v.* MUKASEY, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 08–7689. BERNARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 652.

No. 08–7693. WATLINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 257.

No. 08–7694. MIKULEWICZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 502.

No. 08–7697. COURVILLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 754.

No. 08–7708. SANTIAGO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–7713. CERVANTES-QUINTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 851.

No. 08–7714. CAMPBELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 544 F. 3d 577.

No. 08–7723. MCDANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 265.

No. 08–7724. PORTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 700.

No. 08–7725. VELLEFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 918.

No. 08–7727. ROSALES-ROBLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 154.

No. 08–7728. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–7731. BENALLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 541 F. 3d 990.

No. 08–7733. BELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 955 A. 2d 200.

No. 08–7734. AMAYA-CAPETILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 419.

No. 08–7737. RASHAD, AKA COLEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7739. HARRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 534 F. 3d 1371.

No. 08–7750. LEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 292 Fed. Appx. 159.

No. 08–7752. LOPEZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 543 F. 3d 509.

No. 08–7753. JAHMALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 309.

No. 08–7759. MURRAY *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 5th Cir. Certiorari denied.

No. 08–7762. COLLIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–7763. CARDONA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–7768. OLACIREQUI SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7773. Cope *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–7775. Parker *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 94.

No. 08–7776. Fletcher *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 528 F. 3d 888.

No. 08–7783. Guedea-Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 319.

No. 08–7784. French *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 716.

No. 08–7790. Ellis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 271.

No. 08–7793. Mooney *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 534 F. 3d 944.

No. 08–7794. Montes-Garay, aka Madera *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 341.

No. 08–7797. McClain *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 425.

No. 08–7798. Landrum *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 997.

No. 08–7800. Twiggs *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–7803. Blevins *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 542 F. 3d 1200.

No. 08–7807. Silva-Colon *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 503.

No. 08–7811. Red Eagle *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 506.

No. 08–7812. Wiggins *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–7816. Cobb *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 313 Fed. Appx. 338.

No. 08–7817. LORENZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 189.

No. 08–7822. DETWEILER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7824. MARION *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7827. THOMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 63.

No. 08–7828. OCAMPO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 680.

No. 08–7830. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 991.

No. 08–7835. GIBNEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 519 F. 3d 301.

No. 08–7836. FAJARDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 695.

No. 08–7839. REYES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 542 F. 3d 588.

No. 08–7840. DILLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7841. EPPOLITO *v.* UNITED STATES; and
No. 08–7842. CARACAPPA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 543 F. 3d 25.

No. 08–7843. CIELTO *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7845. LAW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–7846. LEIST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 448.

No. 08–7847. LEROY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 711.

No. 08–7850. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–7852. Worrells *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 313 Fed. Appx. 504.

No. 08–7857. Morgan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 852.

No. 08–7861. Emojevwe *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–7873. Garza *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–7879. Arneth *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 448.

No. 08–7880. Barnett *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–7882. McCoy *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 195.

No. 08–7883. Zambrana *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 540 F. 3d 623.

No. 07–1008. McNeil, Secretary, Florida Department of Corrections, et al. *v.* Ferreira. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 494 F. 3d 1286.

No. 08–525. Haas *v.* Peake, Secretary of Veterans Affairs. Certiorari denied. Justice Stevens took no part in the consideration or decision of this petition. C. A. Fed. Cir. Reported below: 525 F. 3d 1168.

No. 08–543. Poliner *v.* Texas Health Systems, dba Presbyterian Hospital of Dallas, et al. C. A. 5th Cir. Motion of Semmelweis Society International, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 537 F. 3d 368.

No. 08–7294. Mavity *v.* Fraas et al. C. A. D. C. Cir. Certiorari denied. The Chief Justice took no part in the consideration or decision of this petition.

No. 08–8210 (08A624). Moore *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.

Rehearing Denied

No. 07–1587. IN RE RICHARDS, *ante*, p. 809;

No. 07–11115. JEEP *v.* JONES ET AL., *ante*, p. 849;

No. 08–383. THOMPSON *v.* HOWARD BROTHERS INC., *ante*, p. 1013;

No. 08–443. SMITH *v.* FRIEDMAN ET AL., *ante*, p. 1048;

No. 08–5322. JACKSON *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER, *ante*, p. 908;

No. 08–5940. JACKSON *v.* CALIFORNIA, *ante*, p. 998;

No. 08–6256. GARZA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1033;

No. 08–6269. ANDERSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS, *ante*, p. 1033;

No. 08–6283. TAYLOR *v.* CITY OF LAKE WORTH, FLORIDA, ET AL., *ante*, p. 1033;

No. 08–6289. LAMON *v.* HUIBREGTSE, WARDEN, *ante*, p. 1034;

No. 08–6314. EDWARDS *v.* OKLAHOMA, *ante*, p. 1034;

No. 08–6336. PERRY *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1034;

No. 08–6365. HARRISON *v.* UNITED STATES, *ante*, p. 971;

No. 08–6706. DELOR *v.* INTERCOSMOS MEDIA GROUP, INC., DBA DIRECTNIC.COM, *ante*, p. 1055; and

No. 08–6774. YUZARY *v.* UNITED STATES, *ante*, p. 1037. Petitions for rehearing denied.

JANUARY 26, 2009

Certiorari Granted—Reversed and Remanded. (See No. 08–5657, *ante*, p. 350.)

Certiorari Granted—Vacated and Remanded

No. 07–897. HUST *v.* PHILLIPS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pearson* v. *Callahan*, *ante*, p. 223. Reported below: 477 F. 3d 1070.

No. 07–1376. City and County of San Francisco, California, et al. *v.* Rodis. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pearson* v. *Callahan*, *ante*, p. 223. Reported below: 499 F. 3d 1094.

Certiorari Dismissed

No. 08–7339. Plummer *v.* Caden. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7425. Jacobs *v.* Huibregtse. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7447. Rolle *v.* Sherrill et al. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7585. Coggins *v.* Abbett. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7709. Nghiem *v.* Fujitsu Microelectronics, Inc., et al. Ct. App. Cal., 6th App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 08A460. Maye *v.* United States. C. A. 11th Cir. Application for certificate of appealability, addressed to Justice Kennedy and referred to the Court, denied.

No. 08A510. Fischer *v.* Suffolk County Board of Elections et al. C. A. 2d Cir. Application for stay, addressed to Justice Stevens and referred to the Court, denied.

No. 08A524. Lightfoot et al. *v.* Bowen, Secretary of State of California. Sup. Ct. Cal. Application for stay, addressed to The Chief Justice and referred to the Court, denied.

No. 08A538. Sibley *v.* Florida Bar. Sup. Ct. Fla. Application for stay, addressed to Justice Stevens and referred to the Court, denied.

No. 08M51. THOMAS *v.* CITY OF NEW YORK, NEW YORK; and
No. 08M53. BRITT *v.* UNITED STEELWORKERS OF AMERICA, LOCAL 2367, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08M52. MOTLEY *v.* DEPARTMENT OF THE NAVY. Motion for leave to proceed as a veteran granted.

No. 08–6. DISTRICT ATTORNEY'S OFFICE FOR THE THIRD JUDICIAL DISTRICT ET AL. *v.* OSBORNE. C. A. 9th Cir. [Certiorari granted, *ante*, p. 992.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–368. AL-MARRI *v.* SPAGONE, UNITED STATES NAVY COMMANDER, CONSOLIDATED NAVAL BRIG. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1066.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 08–6602. BRUNO *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1066] denied.

No. 08–8000. IN RE WHITMILL. Petition for writ of habeas corpus denied.

No. 08–7352. IN RE RIVERA; and
No. 08–7433. IN RE ROLLE. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 08–559. MCDANIEL, WARDEN, ET AL. *v.* BROWN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 525 F. 3d 787.

No. 08–678. MOHAWK INDUSTRIES, INC. *v.* CARPENTER. C. A. 11th Cir. Certiorari granted. Reported below: 541 F. 3d 1048.

No. 08–680. MARYLAND *v.* SHATZER. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 405 Md. 585, 954 A. 2d 1118.

Certiorari Denied

No. 08–365. Ozcelik *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 527 F. 3d 88.

No. 08–546. Blueport Co., LLC *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 533 F. 3d 1374.

No. 08–655. Harrah's Operating Co., Inc. *v.* NGV Gaming, Ltd. C. A. 9th Cir. Certiorari denied. Reported below: 531 F. 3d 767.

No. 08–665. Treadway *v.* California. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 163 Cal. App. 4th 689, 77 Cal. Rptr. 3d 786.

No. 08–666. Quinn *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–671. Thampi *v.* Collier County Board of Commissioners et al. C. A. 11th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 836.

No. 08–676. Shahin *v.* Del-One Delaware Federal Credit Union. Sup. Ct. Del. Certiorari denied. Reported below: 950 A. 2d 659.

No. 08–677. Dahlgren et al. *v.* First National Bank of Holdrege. C. A. 8th Cir. Certiorari denied. Reported below: 533 F. 3d 681.

No. 08–699. E. I. du Pont de Nemours & Co. *v.* Ampthill Rayon Workers, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 607.

No. 08–705. Apotex, Inc., et al. *v.* Roche Palo Alto LLC et al. C. A. Fed. Cir. Certiorari denied. Reported below: 531 F. 3d 1372.

No. 08–708. D. V. K. *v.* Pennsylvania State Police. Sup. Ct. Pa. Certiorari denied. Reported below: 598 Pa. 767, 956 A. 2d 435.

No. 08–714. Edwards *v.* Climate Conditioning Corp., t/a Climate Heating and Cooling. Ct. App. D. C. Certiorari denied. Reported below: 942 A. 2d 1148.

No. 08–717. Veizaj et ux. *v.* Filip, Acting Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 291 Fed. Appx. 405.

No. 08–722. Haigh *v.* Indiana Supreme Court Disciplinary Commission. Sup. Ct. Ind. Certiorari denied. Reported below: 894 N. E. 2d 550.

No. 08–737. DHL Express (USA), Inc. *v.* Ontiveros. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 164 Cal. App. 4th 494, 79 Cal. Rptr. 3d 471.

No. 08–747. Burandt *v.* Dudas, Director, Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 528 F. 3d 1329.

No. 08–767. Bond *v.* Rosenstein, United States Attorney, District of Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 222.

No. 08–768. Bashas' Inc. *v.* Parra et al. C. A. 9th Cir. Certiorari denied. Reported below: 536 F. 3d 975.

No. 08–778. Turner et ux. *v.* Commissioner of Internal Revenue. C. A. 6th Cir. Certiorari denied.

No. 08–787. Gould *v.* United States et al. C. A. 4th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 299.

No. 08–6032. Olsen *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 624.

No. 08–6099. Nicholson *v.* Runnels, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–6358. Childers *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 08–6413. Neal *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 256 S. W. 3d 264.

No. 08–6467. Rodriguez-Martinez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 531 F. 3d 987.

No. 08–6515. Taylor *v.* Missouri. Sup. Ct. Mo. Certiorari denied. Reported below: 254 S. W. 3d 856.

No. 08–6635. LEWIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 415, 181 P. 3d 947.

No. 08–6768. CASSELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 530 F. 3d 1009.

No. 08–6958. JONES *v.* ST. LUCIE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7089. NORDLUND *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 08–7306. SNEED *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 1 So. 3d 104.

No. 08–7310. HARRIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 2 So. 3d 880.

No. 08–7332. MONROE *v.* JACKSON, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 119 Ohio St. 3d 344, 894 N. E. 2d 43.

No. 08–7335. PETERKA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 532 F. 3d 1199.

No. 08–7345. ALFORD *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7350. MILLS *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–7353. PERRY *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7355. DUNBAR *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7356. COLEMAN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 151.

No. 08–7357. VALENTINE *v.* RICHARDSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 93.

No. 08–7363. JACKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 379 Ill. App. 3d 1074, 957 N. E. 2d 588.

No. 08–7368. TATE *v.* BOCK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 520.

No. 08–7370. STROUD *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7375. SIMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–7376. SHABAZZ, AKA HINES *v.* NEWSOM ET AL. C. A. 5th Cir. Certiorari denied.

No. 08–7381. JAE *v.* BLAINE ET AL. Commw. Ct. Pa. Certiorari denied.

No. 08–7382. JAE *v.* GOOD ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 946 A. 2d 802.

No. 08–7385. MITCHELL *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7387. DAVIES *v.* KANE. C. A. 9th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 473.

No. 08–7389. CORONEL-PEREZ *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 08–7391. SMOOT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–7392. K. A. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–7396. LEBEUF *v.* COOPER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–7403. ANH VU NGUYEN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 141 Wash. App. 1026.

No. 08–7408. DAVIDSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 159 Cal. App. 4th 205, 70 Cal. Rptr. 3d 913.

No. 08–7409. CUTSHAW *v.* LEWIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7416. FORSYTH *v.* BURT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 537 F. 3d 887.

No. 08–7421. BRALEY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7435. STEDMAN *v.* HURLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7436. MARRUFO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–7439. KING *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–7442. AHDOM *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 458.

No. 08–7443. BLACKBURN *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–7444. AZAM *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–7446. BACA *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 958.

No. 08–7448. WOFSY *v.* PALM SHORES RETIREMENT COMMUNITY. C. A. 11th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 631.

No. 08–7469. KEENE *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 525 F. 3d 461.

No. 08–7484. PROFFIT *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 191 P. 3d 163.

No. 08–7513. SAVAGE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 08–7532. WARD *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7536. HYDE *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 822.

No. 08–7541. MOORE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 08–7593. PROFFIT *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 191 P. 3d 974.

No. 08–7603. SAKAY *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7639. HICKS *v.* MCBRIDE, WARDEN. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 08–7641. FLORES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 991 So. 2d 863.

No. 08–7674. DUPREE *v.* FINN ET AL. Sup. Ct. Ill. Certiorari denied.

No. 08–7675. CLEMMONS *v.* MATHY, ACTING WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–7681. SHARP *v.* DISTRICT COURT OF MINNESOTA, HENNEPIN COUNTY. Ct. App. Minn. Certiorari denied.

No. 08–7698. GRAY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 379 Ill. App. 3d 1090, 957 N. E. 2d 595.

No. 08–7779. GAITAN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 257 S. W. 3d 1.

No. 08–7853. WHARTON *v.* VAUGHN. C. A. 3d Cir. Certiorari denied.

No. 08–7855. THOMPSON *v.* DEPARTMENT OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 289 Fed. Appx. 406.

No. 08–7886. ROSSETTI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–7891. HUTCHINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–7895. SHULTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 21.

No. 08–7896. KERLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 544 F. 3d 172.

No. 08–7901. STEVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–7908. ALONZO *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied.

No. 08–7916. GARLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 609.

No. 08–7917. GAINES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7928. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 294 Fed. Appx. 624.

No. 08–7931. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 761.

No. 08–7932. BELMARES-DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 628.

No. 08–7933. ROMERO-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 343.

No. 08–473. NEW JERSEY *v.* MATTHEWS. Super. Ct. N. J., App. Div. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 398 N. J. Super. 551, 942 A. 2d 797.

No. 08–7445. BANSAL *v.* SERVER BEACH ET AL. C. A. 3d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 285 Fed. Appx. 890.

Rehearing Denied

No. 07–11192. KING *v.* MARRIOTT INTERNATIONAL, INC., *ante*, p. 1044;

No. 08–397. BENISTAR LTD. ET AL. *v.* CAHALY ET AL., *ante*, p. 1047;

No. 08–426. HARBUCK *v.* HOUSTON COUNTY, GEORGIA, ET AL., *ante*, p. 1047;

No. 08–5382. TATUM *v.* CURTIS ET AL., *ante*, p. 1072;

No. 08–5756. BOUDREAUX *v.* CAIN, WARDEN, *ante,* p. 1014;
No. 08–5765. IN RE HARRIS, *ante,* p. 809;
No. 08–6408. RHODES ET AL. *v.* ESTATE OF ROMERO ET AL., *ante,* p. 1051;
No. 08–6751. COGGINS *v.* TOWN OF JACKSON'S GAP, ALABAMA, *ante,* p. 1086; and
No. 08–6856. PULETASI *v.* WILLS ET AL., *ante,* p. 1056. Petitions for rehearing denied.

No. 08–5557. CHU YOUNG YI *v.* TOMPKINS, WARDEN, *ante,* p. 946. Motion for leave to file petition for rehearing denied.

JANUARY 29, 2009

Certiorari Denied

No. 08–8389 (08A564). ORTIZ *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 3, 2009

Miscellaneous Order

No. 08A667. HENLEY *v.* LITTLE, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

Certiorari Denied

No. 08–8464 (08A674). HENLEY *v.* BELL, WARDEN. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 308 Fed. Appx. 989.

FEBRUARY 10, 2009

Miscellaneous Order

No. 08A693. SCHEANETTE *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the

Court, denied. JUSTICE GINSBURG took no part in the consideration or decision of this application.

FEBRUARY 11, 2009

Miscellaneous Order

No. 08A704. TOMPKINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. JUSTICE GINSBURG took no part in the consideration or decision of this application.

Certiorari Denied

No. 08–8614 (08A700). TOMPKINS *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this application and this petition. Reported below: 994 So. 2d 1072.

No. 08–8626 (08A701). TOMPKINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this application and this petition. Reported below: 557 F. 3d 1257.

No. 08–8628 (08A703). TOMPKINS *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this application and this petition. Reported below: 4 So. 3d 677.

FEBRUARY 12, 2009

Certiorari Denied

No. 08–8553 (08A687). BRADLEY *v.* KING, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision

of this application and this petition. Reported below: 556 F. 3d 1225.

No. 08–8653 (08A705). JOHNSON *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 GINSBURG took no part in the consideration or decision of this application and this petition.

FEBRUARY 20, 2009

Miscellaneous Orders

No. 08A724. WILLIAMS *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 07–1372. HAWAII ET AL. *v.* OFFICE OF HAWAIIAN AFFAIRS ET AL. Sup. Ct. Haw. [Certiorari granted, 554 U. S. 944.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 07–9995. RIVERA *v.* ILLINOIS. Sup. Ct. Ill. [Certiorari granted, 554 U. S. 945.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–22. CAPERTON ET AL. *v.* A. T. MASSEY COAL CO., INC., ET AL. Sup. Ct. App. W. Va. [Certiorari granted, *ante*, p. 1028.] Motion of Alabama et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. Motion of the Supreme Court of Louisiana for leave to file a brief as *amicus curiae* out of time granted.

No. 08–108. FLORES-FIGUEROA *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 969.] Motion of Professors of Linguistics for leave to participate in oral argument as *amici curiae* and for divided argument denied.

FEBRUARY 23, 2009

Dismissal Under Rule 46

No. 08–512. ENVIRONMENTAL PROTECTION AGENCY *v.* NEW JERSEY ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 517 F. 3d 574.

Certiorari Granted—Vacated and Remanded

No. 08–263. JACKSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed January 16, 2009. Reported below: 524 F. 3d 532.

No. 08–6773. WESTERFIELD *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Chambers* v. *United States*, *ante*, p. 122. Reported below: 284 Fed. Appx. 315.

Certiorari Dismissed

No. 08–7449. ROLLE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7546. CARLTON *v.* SMITH ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7556. BELL *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7561. SENATOR *v.* VALADEZ, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7562. SABEDRA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7570. LEAPHART *v.* STEPHENS. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7608. LAU *v.* SUAREZ ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 44 App. Div. 3d 312, 844 N. Y. S. 2d 162.

No. 08–7640. GRETHEN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 268 Fed. Appx. 256.

No. 08–7642. HICKMON *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7643. HALL *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 992 So. 2d 819.

No. 08–7658. MCGOWAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7700. GLASS *v.* FIRST NATIONWIDE MORTGAGE CORP. ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7718. HANSEN *v.* MATAR. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner

has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7744. HANSEN *v.* CROY ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7747. HUMPHREY *v.* ONONDAGA COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7788. SZAREWICZ *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, ALLEGHENY COUNTY. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7802. BASKETT *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7837. ROLLE *v.* WEST ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7848. PEABODY *v.* ALLSTATE INSURANCE CO. Ct. App. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–7868. HURST *v.* CITY OF REHOBOTH BEACH, DELAWARE, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 288 Fed. Appx. 20.

No. 08–7878. ATWELL *v.* PENNSYLVANIA. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 945 A. 2d 777.

No. 08–7907. BROWN *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 08–8046. CREVELING *v.* WASHINGTON DEPARTMENT OF FISH AND WILDLIFE. Ct. App. Wash. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 142 Wash. App. 827, 177 P. 3d 136.

No. 08–8128. POZO *v.* SCHNEITER. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–8217. RICE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 274 Fed. Appx. 283.

Miscellaneous Orders

No. 08A601. GIANNONE *v.* UNITED STATES. Application for bail pending appeal, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 08M54. BRANDON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER;
No. 08M55. DE LA GARZA *v.* FABIAN ET AL.;
No. 08M56. COOPER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS;
No. 08M58. ANDERSON *v.* GELLERY ET AL.;
No. 08M59. COTTON *v.* FIELDING;
No. 08M60. JOHNSON *v.* MICHAEL, WARDEN; and
No. 08M63. TAVAREZ *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08M57. COBB *v.* MASSACHUSETTS. Motion to direct the Clerk to file a bill of complaint denied.

No. 08M61. GOLDEN BRIDGE TECHNOLOGY INC. *v.* MOTOROLA INC. ET AL. Motion for leave to file a petition for writ of certiorari under seal with redacted copies for the public record granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 08M62. WATSON *v.* PENNSYLVANIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 07–9712. PUCKETT *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 554 U. S. 945.] Motion of parties for leave to file volume II of the joint appendix under seal granted.

No. 08–295. TRAVELERS INDEMNITY CO. ET AL. *v.* BAILEY ET AL.; and

No. 08–307. Common Law Settlement Counsel *v.* Bailey et al. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1083.] Motion of petitioners to dispense with printing the joint appendix denied.

No. 08–640. Federal Insurance Co. et al. *v.* Kingdom of Saudi Arabia et al. C. A. 2d Cir.; and

No. 08–661. American Needle, Inc. *v.* National Football League et al. C. A. 7th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 08–5274. Dean *v.* United States. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1028.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 08–7060. Senator *v.* United States Court of Appeals for the Ninth Circuit. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1067] denied.

No. 08–7614. Taylor *v.* Smith, dba Platinum Property Management. Ct. App. Ohio, Hamilton County;

No. 08–7634. Mitchell *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir.; and

No. 08–7881. Bush *v.* Wyoming. Sup. Ct. Wyo. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 16, 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.

No. 08–8079. In re Castillo;

No. 08–8188. In re Stafford;

No. 08–8201. In re Ross;

No. 08–8285. In re Woltz;

No. 08–8321. In re Singleton;

No. 08–8408. In re Delaney; and

No. 08–8420. In re Williams. Petitions for writs of habeas corpus denied.

No. 08–7530. In re Weston;

No. 08–7819. In re Campbell; and

No. 08–7915. In re Aladekoba. Petitions for writs of mandamus denied.

No. 08–772. In re Vey;

No. 08–925. In re Odeh; and

No. 08–7746. In re Hernandez. Petitions for writs of mandamus and/or prohibition denied.

No. 08–7586. In re Staffney. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 08–472. Salazar, Secretary of the Interior, et al. *v.* Buono. C. A. 9th Cir. Certiorari granted. Reported below: 502 F. 3d 1069 and 527 F. 3d 758.

No. 08–651. Padilla *v.* Kentucky. Sup. Ct. Ky. Certiorari granted. Reported below: 253 S. W. 3d 482.

No. 08–351. Alvarez, Cook County State's Attorney *v.* Smith et al. C. A. 7th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 524 F. 3d 834.

No. 08–604. Union Pacific Railroad Co. *v.* Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment, Central Region. C. A. 7th Cir. Motion of National Railway Labor Conference et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 522 F. 3d 746.

No. 08–724. Smith, Warden *v.* Spisak. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 512 F. 3d 852.

No. 08–6925. Johnson *v.* United States. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 528 F. 3d 1318.

Certiorari Denied

No. 08–159. Lee *v.* New Orleans Police Department. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 967 So. 2d 606.

No. 08–352. Utility Air Regulatory Group *v.* New Jersey et al. C. A. D. C. Cir. Certiorari denied. Reported below: 517 F. 3d 574.

No. 08–357. HOGSETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 522 F. 3d 731.

No. 08–403. BRUNO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 518 F. 3d 1159.

No. 08–457. INTERNATIONAL SHIPPING AGENCY, INC. *v.* PUERTO RICO PORTS AUTHORITY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 531 F. 3d 868.

No. 08–464. ALI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 528 F. 3d 210.

No. 08–477. LEROSE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 93.

No. 08–505. CCA ASSOCIATES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 284 Fed. Appx. 810.

No. 08–515. NORTH TEXAS SPECIALTY PHYSICIANS *v.* FEDERAL TRADE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 528 F. 3d 346.

No. 08–516. CITY OF SARALAND, ALABAMA, ET AL. *v.* PARDUE. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 789.

No. 08–541. ZULUAGA-MARTINEZ *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 523 F. 3d 365.

No. 08–595. MANN *v.* ABEL ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 10 N. Y. 3d 271, 885 N. E. 2d 884.

No. 08–599. BROWNING *v.* SOUTHWEST RESEARCH INSTITUTE. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 170.

No. 08–600. ATAMIRZAYEVA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 524 F. 3d 1320.

No. 08–608. FLIPPING ET AL. *v.* REILLY. C. A. 3d Cir. Certiorari denied. Reported below: 532 F. 3d 216.

No. 08–624. FOREST LABORATORIES, INC., ET AL. *v.* CARACO PHARMACEUTICAL LABORATORIES, LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 527 F. 3d 1278.

No. 08–649. Baker *v.* Canadian National/Illinois Central Railroad. C. A. 5th Cir. Certiorari denied. Reported below: 536 F. 3d 357.

No. 08–668. Charles A. Pratt Construction Co., Inc. *v.* California Coastal Commission. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 162 Cal. App. 4th 1068, 76 Cal. Rptr. 3d 466.

No. 08–685. Baba *v.* Evans et al. Ct. App. N. Y. Certiorari denied. Reported below: 9 N. Y. 3d 970, 878 N. E. 2d 591.

No. 08–686. Boschetto *v.* Hansing et al. C. A. 9th Cir. Certiorari denied. Reported below: 539 F. 3d 1011.

No. 08–694. Federal Trade Commission *v.* Rambus Inc. C. A. D. C. Cir. Certiorari denied. Reported below: 522 F. 3d 456.

No. 08–698. Howell et al. *v.* Fulmore, Administrator of the Estate of Maultsby, et al. Ct. App. N. C. Certiorari denied. Reported below: 189 N. C. App. 93, 657 S. E. 2d 437.

No. 08–701. Morrison *v.* Board of Education of Boyd County. C. A. 6th Cir. Certiorari denied. Reported below: 521 F. 3d 607.

No. 08–715. Davis *v.* Siemens Medical Solutions USA, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 378.

No. 08–725. Nance *v.* Goodyear Tire & Rubber Co. C. A. 6th Cir. Certiorari denied. Reported below: 527 F. 3d 539.

No. 08–726. Mowry *v.* United Parcel Service, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 702.

No. 08–732. Cooper *v.* Skanchy, Judge, District Court of Utah, Third District. Ct. App. Utah. Certiorari denied.

No. 08–733. Saha *v.* Lehman et al. C. A. D. C. Cir. Certiorari denied.

No. 08–736. Fonteneaux *v.* Shell Oil Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 695.

No. 08–740. Curras-Ortiz *v.* Supreme Court of Puerto Rico. Sup. Ct. P. R. Certiorari denied.

No. 08–741. Pellegrini *v.* Analog Devices, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 312 Fed. Appx. 304.

No. 08–745. Dumontier et al. *v.* Schlumberger Technology Corp. C. A. 9th Cir. Certiorari denied. Reported below: 543 F. 3d 567.

No. 08–748. Hausch *v.* Grievance Committee for the Ninth Judicial District. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 08–749. Galvan *v.* Ayers, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 643.

No. 08–753. Ocean Harbor House Homeowners Assn. *v.* California Coastal Commission. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 163 Cal. App. 4th 215, 77 Cal. Rptr. 3d 432.

No. 08–754. Singleton et al. *v.* Volkswagen of America, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 545 F. 3d 304.

No. 08–758. United States Fire Insurance Co. *v.* General Electric Capital Corp. C. A. 5th Cir. Certiorari denied. Reported below: 528 F. 3d 372.

No. 08–760. Stahl *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 972 So. 2d 1013.

No. 08–766. Bond *v.* Blum et al. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 70.

No. 08–776. Marro *v.* Earnheart et al. Sup. Ct. Va. Certiorari denied.

No. 08–780. Rubin et al. *v.* Assicurazioni Generali, S. p. A., et al. C. A. 2d Cir. Certiorari denied. Reported below: 290 Fed. Appx. 376.

No. 08–781. Elephant Butte Irrigation District of New Mexico *v.* Department of the Interior et al. C. A. 10th Cir. Certiorari denied. Reported below: 538 F. 3d 1299.

No. 08–784. Harney et al. *v.* Speedway Superamerica, LLC. C. A. 7th Cir. Certiorari denied. Reported below: 526 F. 3d 1099.

No. 08–786. Cody et al. *v.* Gold Kist, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 276 Fed. Appx. 906.

No. 08–789. Stewart *v.* Walker. App. Ct. Mass. Certiorari denied. Reported below: 72 Mass. App. 1108, 891 N. E. 2d 268.

No. 08–791. H & N Planning & Control, Inc. *v.* City of St. Peters, Missouri, et al. C. A. 8th Cir. Certiorari denied. Reported below: 535 F. 3d 899.

No. 08–793. Sanai *v.* Alexander et al. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 551.

No. 08–794. Gasparik *v.* Stony Brook University. C. A. 2d Cir. Certiorari denied. Reported below: 296 Fed. Appx. 151.

No. 08–795. Bistawros *v.* Licea. Sup. Ct. Va. Certiorari denied.

No. 08–796. City of Evansville, Wisconsin, et al. *v.* Deicher et al. C. A. 7th Cir. Certiorari denied. Reported below: 545 F. 3d 537.

No. 08–797. Richardson *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 537 F. 3d 466.

No. 08–798. Florance *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 08–799. Florance *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–800. Luke P., a Minor, By and Through His Parents and Next Friends, Jeff P. et ux. *v.* Thompson R2–J School District. C. A. 10th Cir. Certiorari denied. Reported below: 540 F. 3d 1143.

No. 08–804. Perkins *v.* DCC Litigation Facility, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 313.

No. 08–806. Sieverding et ux. *v.* Faegre & Benson, LLP. C. A. 8th Cir. Certiorari denied.

No. 08–809. Webb *v.* Rivera, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 159.

No. 08–821. Bardoff *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 08–823. Neilson *v.* City of California City, California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–827. Just New Homes, Inc., et al. *v.* Beazer Homes et al. C. A. 3d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 931.

No. 08–828. Thornton *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 34.

No. 08–829. McCalla *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 545 F. 3d 750.

No. 08–830. Cabrera-Frattini *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 167.

No. 08–840. Fincher *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 538 F. 3d 868.

No. 08–843. Howard *v.* Sony BMG Music Entertainment Inc. et al. C. A. 5th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 350.

No. 08–844. Garcia et al. *v.* Vanguard Car Rental USA, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 540 F. 3d 1242.

No. 08–848. MacEwan *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 08–850. Whisnant *v.* Teachers' and State Employees' Retirement System of North Carolina et al. Ct. App. N. C. Certiorari denied. Reported below: 191 N. C. App. 233, 662 S. E. 2d 573.

No. 08–856. Rodi *v.* Southern New England School of Law et al. C. A. 1st Cir. Certiorari denied. Reported below: 532 F. 3d 11.

No. 08–859. 800 Adept, Inc. *v.* Murex Securities, Ltd., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 539 F. 3d 1354.

No. 08–868. Pizzuti *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 274 Fed. Appx. 53.

No. 08–870. Extra Equipamentos e Exportacao Ltda. *v.* Case Corp. C. A. 7th Cir. Certiorari denied. Reported below: 541 F. 3d 719.

No. 08–874. Tang *v.* Jianguang Wang et al. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 260 S. W. 3d 149.

No. 08–875. Tate *v.* Executive Management Services, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 546 F. 3d 528.

No. 08–880. McKnight *v.* Gates, Secretary of Defense. C. A. 6th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 394.

No. 08–891. Burr *v.* Pollard, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 546 F. 3d 828.

No. 08–893. Murray *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–902. Faller *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–907. Baylor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 360.

No. 08–908. Matthews *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 460.

No. 08–941. Boskic *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 545 F. 3d 69.

No. 08–946. Gianelli *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 543 F. 3d 1178.

No. 08–5698. BUNTION *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 524 F. 3d 664.

No. 08–5827. COSENZA *v.* ST. AMAND, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT CEDAR JUNCTION. C. A. 1st Cir. Certiorari denied.

No. 08–6055. DELEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 348.

No. 08–6165. DIMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 294.

No. 08–6175. BISHOP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 317.

No. 08–6251. PRIBLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–6495. DAHLER *v.* MARTINEZ ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–6541. JEROSS *v.* UNITED STATES; and
No. 08–6870. DOCHERTY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 521 F. 3d 562.

No. 08–6547. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–6571. ROSS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–6581. GROVES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 530 F. 3d 506.

No. 08–6591. DAVIS *v.* GRANT, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 532 F. 3d 132.

No. 08–6651. FRIDAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 525 F. 3d 938.

No. 08–6708. ARNOLD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 533 F. 3d 1003.

No. 08–6892. HILLIARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 239.

No. 08–6953. MUNOZ-TELLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 531 F. 3d 1174.

No. 08–6989. MIRANDA *v.* UNIVERSITY OF MARYLAND AT COLLEGE PARK. C. A. 4th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 276.

No. 08–7134. LYNCH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 518 F. 3d 164.

No. 08–7202. RICHARDSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 4th 959, 183 P. 3d 1146.

No. 08–7203. SHELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 776.

No. 08–7207. BASCIANO *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 542 F. 3d 950.

No. 08–7235. BROOKS *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 513 F. 3d 618.

No. 08–7253. BALLARD *v.* PHILADELPHIA SCHOOL DISTRICT. C. A. 3d Cir. Certiorari denied. Reported below: 273 Fed. Appx. 184.

No. 08–7341. ROSALES *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 558.

No. 08–7410. BLAKENEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 596 Pa. 510, 946 A. 2d 645.

No. 08–7457. LOMAX *v.* WRIGLEY, SUPERINTENDENT, NEW CASTLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 08–7461. SPENCE *v.* EDUCATIONAL CREDIT MANAGEMENT CORP. C. A. 4th Cir. Certiorari denied. Reported below: 541 F. 3d 538.

No. 08–7462. NOEL *v.* FARNEY. C. A. 9th Cir. Certiorari denied.

No. 08–7470. KRATZ *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 08–7473. D. C. *v.* D. C. Sup. Ct. Miss. Certiorari denied. Reported below: 988 So. 2d 359.

No. 08–7476. ELLIS-SMITH *v.* BROWN. Ct. App. N. C. Certiorari denied. Reported below: 189 N. C. App. 404, 659 S. E. 2d 98.

No. 08–7477. BAILEY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 374 Ill. App. 3d 1008, 872 N. E. 2d 1018.

No. 08–7480. ALBERT *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 273 Fed. Appx. 270.

No. 08–7485. PULS *v.* ESTATE OF BRODERICK, DECEASED. Sup. Ct. Kan. Certiorari denied. Reported below: 286 Kan. 1071, 191 P. 3d 284.

No. 08–7490. RADCLIFF *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 381 Ill. App. 3d 1139, 966 N. E. 2d 605.

No. 08–7491. KNIGHT *v.* KELCHNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7492. LEGGETT *v.* WILLIAMS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 498.

No. 08–7494. STROMAN *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 15.

No. 08–7496. REGINALD *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7497. WILLIAMS *v.* COURT OF APPEALS OF MISSOURI, EASTERN DISTRICT. Sup. Ct. Mo. Certiorari denied.

No. 08–7498. THOMPSON *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7499. TURNER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 252 S. W. 3d 571.

No. 08–7500. THOMPSON *v.* GARCIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7501. THOMAS *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7502. WARREN *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 08–7507. PERRY *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 996 So. 2d 213.

No. 08–7515. ROMANSKY *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7517. SLAUGHTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7521. BLAN *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7522. BIGGS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 52 App. Div. 3d 620, 859 N. Y. S. 2d 724.

No. 08–7525. BRADLEY *v.* WISCONSIN. C. A. 7th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 659.

No. 08–7527. VOIGT *v.* CIRCUIT COURT OF WISCONSIN, DANE COUNTY, ET AL. Ct. App. Wis. Certiorari denied.

No. 08–7529. YBARRA *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7531. WILLICH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7533. TINSLEY *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–7539. GILSON *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 520 F. 3d 1196.

No. 08–7540. PERRY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 08–7543. PRATT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 367 Ill. App. 3d 1093, 929 N. E. 2d 169.

No. 08–7550. MACIAS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–7551. LAMISON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 08–7557. BACA *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 142 Wash. App. 1002.

No. 08–7560. REYES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7565. POST *v.* RIVAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 559.

No. 08–7568. DOBBEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 379 Ill. App. 3d 1073, 957 N. E. 2d 588.

No. 08–7572. SANCHEZ-FIGUEROA *v.* BANCO POPULAR DE PUERTO RICO. C. A. 1st Cir. Certiorari denied. Reported below: 527 F. 3d 209.

No. 08–7577. BINGHAM *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7578. MEANS *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7579. ANNABEL *v.* MICHIGAN. Cir. Ct. Jackson County, Mich. Certiorari denied.

No. 08–7583. Wolfson *v.* Broadbent et al. C. A. 10th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 637.

No. 08–7587. Breckenridge *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 08–7588. Clemente et al. *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 452 Mass. 295, 893 N. E. 2d 19.

No. 08–7592. Price *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–7596. Dinsio *v.* Kirkpatrick, Superintendent, Wende Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 08–7597. Cahill *v.* Spooner. App. Ct. Mass. Certiorari denied. Reported below: 72 Mass. App. 1112, 891 N. E. 2d 717.

No. 08–7599. Thompson *v.* Sosa, Sheriff, Imperial County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 544.

No. 08–7600. Wesley *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 382 Ill. App. 3d 588, 888 N. E. 2d 681.

No. 08–7602. Ruffin *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 284 Ga. 52, 663 S. E. 2d 189.

No. 08–7605. Finn *v.* Thompson et al. C. A. 1st Cir. Certiorari denied.

No. 08–7617. Kirkland *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 49 App. Div. 3d 1260, 856 N. Y. S. 2d 339.

No. 08–7618. Long *v.* Peterson, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 209.

No. 08–7622. Blocker *v.* Kelley et al. Ct. App. Tenn. Certiorari denied.

No. 08–7625. Simmons *v.* McWilliams, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–7626. HOFFMAN *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7627. HARRIS *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7629. FOSTER *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7630. HOPKINS *v.* WHITE, SECRETARY OF STATE OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 497.

No. 08–7632. GRAY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 51 App. Div. 3d 63, 851 N. Y. S. 2d 558.

No. 08–7633. PUGH *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 753 N. W. 2d 308.

No. 08–7635. CRISSUP *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7637. HUDSPETH *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7644. RAIKAR *v.* TOWNSHIP OF OLD BRIDGE, NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–7645. SPURLOCK *v.* DEFENSE FINANCE AND ACCOUNTING SERVICE. C. A. 6th Cir. Certiorari denied.

No. 08–7646. WILSON *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7647. BRANHAM *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 08–7648. BROTHERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–7652. JOHNSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 537 F. 3d 840.

No. 08–7657. Coulombe *v.* City of Oxnard, California, et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–7659. Baker *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 311 Wis. 2d 489, 750 N. W. 2d 518.

No. 08–7660. Bell *v.* Mississippi Department of Corrections et al. C. A. 5th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 649.

No. 08–7661. Ragen *v.* Oregon. C. A. 9th Cir. Certiorari denied.

No. 08–7664. Gunn *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–7666. Holt *v.* Keo. Ct. App. Ga. Certiorari denied.

No. 08–7667. Herrera *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–7669. Green *v.* Thomas et al. C. A. 11th Cir. Certiorari denied.

No. 08–7670. Howard *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–7671. Harmon *v.* Webster, Judge, District Court of Appeal of Florida, First District, et al. C. A. 11th Cir. Certiorari denied. Reported below: 263 Fed. Appx. 844.

No. 08–7672. Newland *v.* Hall, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 527 F. 3d 1162.

No. 08–7678. Smith *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 314 Wis. 2d 507, 758 N. W. 2d 224.

No. 08–7680. Simpson *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 08–7684. Porter *v.* Cancelmi. C. A. 3d Cir. Certiorari denied. Reported below: 318 Fed. Appx. 48.

No. 08–7686. Threatt *v.* Security Classification Committee. C. A. 6th Cir. Certiorari denied.

No. 08–7687. Bowyer *v.* Wisler et ux. Ct. App. Ind. Certiorari denied.

No. 08–7691. Santiago *v.* Clark, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–7692. Stokely *v.* McGrath, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 08–7695. Ayres *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 08–7696. Davis *v.* Vincent, Superintendent, State Correctional Institution at Somerset, et al. C. A. 3d Cir. Certiorari denied.

No. 08–7699. Hudson *v.* Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–7701. Flemming *v.* Woods, Superintendent, Upstate Correctional Facility. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 08–7702. Howard *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1475, 238 P. 3d 820.

No. 08–7703. Foreman *v.* Weinstein et al. C. A. 4th Cir. Certiorari denied. Reported below: 258 Fed. Appx. 584.

No. 08–7704. Goins *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 08–7705. Higgins *v.* Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 08–7706. Hernandez *v.* Florida Department of Corrections et al. C. A. 11th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 862.

No. 08–7707. Hawthone *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 08–7710. Cajuste *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–7711. Doe *v.* Office and Professional Employees International Union, Local 23. C. A. 9th Cir. Certiorari denied.

No. 08–7712. Christopher *v.* Iowa. Sup. Ct. Iowa. Certiorari denied. Reported below: 757 N. W. 2d 247.

No. 08–7715. Holmes *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 141 Wash. App. 1040.

No. 08–7716. Howard *v.* Kemna, Superintendent, Crossroads Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 08–7717. Gonzalez *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 971 So. 2d 891.

No. 08–7719. Andino Figueroa, aka Andino *v.* Texas. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 250 S. W. 3d 490.

No. 08–7720. Ingram *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 08–7722. Osijo *v.* Housing Resources Management, Inc., et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–7729. Revis *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 26 So. 3d 506.

No. 08–7730. Sunarno *v.* Holder, Attorney General. C. A. 1st Cir. Certiorari denied. Reported below: 293 Fed. Appx. 8.

No. 08–7732. Nadra *v.* Mbah et al. Sup. Ct. Ohio. Certiorari denied. Reported below: 119 Ohio St. 3d 305, 893 N. E. 2d 829.

No. 08–7735. Burton *v.* Inspector General et al. C. A. 11th Cir. Certiorari denied.

No. 08–7738. Cox *v.* Cortez Masto, Attorney General of Nevada. C. A. 9th Cir. Certiorari denied. Reported below: 542 F. 3d 669.

No. 08–7740. Hendricks *v.* South Carolina Department of Corrections. Sup. Ct. S. C. Certiorari denied. Reported below: 374 S. C. 616, 649 S. E. 2d 151.

No. 08–7742. Fayne *v.* Konteh, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–7743. Green *v.* DiGuglielmo, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied.

No. 08–7745. Howard *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1162, 953 N. E. 2d 91.

No. 08–7749. Jones *v.* New Hope Housing, Inc. Sup. Ct. Va. Certiorari denied.

No. 08–7751. Karnofel *v.* Kmart Corp. et al. Ct. App. Ohio, Trumbull County. Certiorari denied. Reported below: 2007-Ohio-6939.

No. 08–7754. Maner *v.* Padula, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 151.

No. 08–7755. King *v.* Rogers, Attorney General of Ohio, et al. C. A. 6th Cir. Certiorari denied.

No. 08–7756. Gordon *v.* Davis, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–7758. Lee *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 08–7761. McCann *v.* Ludwick, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–7765. Chanowitz *v.* Brown, Superintendent, Eastern New York Correctional Facility and Annex. C. A. 2d Cir. Certiorari denied.

No. 08–7766. Brooks *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 993 So. 2d 967.

No. 08–7767. Williams *v.* Larkins, Warden. C. A. 8th Cir. Certiorari denied.

No. 08–7769. Shaw *v.* Quinn, Superintendent, Monroe Correctional Complex. C. A. 9th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 748.

No. 08–7770. SCHMITT *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 08–7772. DAVIDSON *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 249 S. W. 3d 709.

No. 08–7774. COHEN *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 280 Fed. Appx. 611.

No. 08–7777. HOUSE *v.* HATCH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 527 F. 3d 1010.

No. 08–7780. HOLDEN *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 80.

No. 08–7781. HUDSON *v.* CITY OF LAUREL, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 748.

No. 08–7782. HAWKINS *v.* DOYLE, SHERIFF, MARIN COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7786. HOUSTON *v.* SCHOMIG. C. A. 9th Cir. Certiorari denied. Reported below: 533 F. 3d 1076.

No. 08–7787. EATON *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 192 P. 3d 36.

No. 08–7789. SCOTT *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 08–7791. RODRIGUEZ *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7792. REEDERS *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7796. MCDONALD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 989 So. 2d 641.

No. 08–7799. MARSHALL *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7801. SALAZAR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 991 So. 2d 364.

No. 08–7804. SIMPSON *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 993 So. 2d 400.

No. 08–7805. SELF *v.* RIMMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 605.

No. 08–7806. BURRIOLA *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–7808. SCHWAB *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 141 Wash. App. 85, 167 P. 3d 1225.

No. 08–7809. SIBLEY *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 995 So. 2d 346.

No. 08–7810. SIMON *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7815. COOMER *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 533 F. 3d 477.

No. 08–7818. MILLER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7820. CARUTHERS *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–7821. DUBOSE *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7823. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 993 So. 2d 529.

No. 08–7825. LOVE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7826. KHALIL *v.* STEVENS INSTITUTE OF TECHNOLOGY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–7831. RAI *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–7833. TAYLOR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–7834. PHOX *v.* LEE'S SUMMIT SCHOOL DISTRICT. C. A. 8th Cir. Certiorari denied. Reported below: 278 Fed. Appx. 707.

No. 08–7838. STOCKMEIER *v.* NEVADA ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1511, 238 P. 3d 858.

No. 08–7844. EDMOND *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 08–7849. PETERS *v.* KEYSTONE AVIATION SERVICES INC. ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–7851. SHARIKAS *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 20.

No. 08–7854. UCAK *v.* TILLMAN, WARDEN. Super. Ct. Ware County, Ga. Certiorari denied.

No. 08–7858. ORTIZ *v.* WARD, WARDEN. Super. Ct. Gwinnet County, Ga. Certiorari denied.

No. 08–7859. DOLBERRY *v.* NAPA ET AL. C. A. 2d Cir. Certiorari denied.

No. 08–7860. EDMUND *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–7862. CROCKETT *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 542 F. 3d 1183.

No. 08–7863. EVERETT *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–7864. WILLIS *v.* DISTRICT OF COLUMBIA HOUSING AUTHORITY (two judgments). Ct. App. D. C. Certiorari denied.

No. 08–7866. HOLLINSHEAD *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1138, 955 N. E. 2d 192.

No. 08–7867. GARCIA *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 283 Fed. Appx. 524.

No. 08–7869. FORT *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 71 Mass. App. 1124, 887 N. E. 2d 312.

No. 08–7870. Turner, aka Greene *v.* Civil Service Employees Association Local Union. C. A. 2d Cir. Certiorari denied.

No. 08–7871. Gore *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 996 So. 2d 212.

No. 08–7872. Hytower *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 119 Ohio St. 3d 1472, 894 N. E. 2d 332.

No. 08–7874. Gray *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–7876. Brown *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 119 Ohio St. 3d 447, 895 N. E. 2d 149.

No. 08–7877. Buggs *v.* Tennis, Superintendent, State Correctional Institution at Rockview, et al. C. A. 3d Cir. Certiorari denied.

No. 08–7884. Winston *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 383 Ill. App. 3d 1156, 968 N. E. 2d 223.

No. 08–7885. McDowell *v.* Florida et al. C. A. 11th Cir. Certiorari denied.

No. 08–7887. Hogan *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 984 So. 2d 546.

No. 08–7890. Fox *v.* Lempke, Superintendent, Five Points Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 08–7892. Fuentes *v.* Board of Education of the City of New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 540 F. 3d 145.

No. 08–7893. Howard *v.* Perdue et al. C. A. 11th Cir. Certiorari denied.

No. 08–7894. Rosa *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–7898. Jones *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–7900. Skelton *v.* Nooth, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 08–7902. Reyna *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 378.

No. 08–7903. Sanchez-Leocadio *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 319 Fed. Appx. 99.

No. 08–7904. Mills *v.* Watson. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 65.

No. 08–7905. Blaxton *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 994 So. 2d 308.

No. 08–7906. Bradd *v.* Leinenweber, Judge, United States District Court for the Northern District of Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 530.

No. 08–7909. Bethel *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 313 Wis. 2d 523, 756 N. W. 2d 478.

No. 08–7910. Bedford *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 536 F. 3d 1148.

No. 08–7911. Rodriguez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 528 F. 3d 110.

No. 08–7912. Enwonwu *v.* Holder, Attorney General. C. A. 1st Cir. Certiorari denied.

No. 08–7913. Simon *v.* City of Atlanta, Georgia, et al. C. A. 11th Cir. Certiorari denied. Reported below: 259 Fed. Appx. 180.

No. 08–7914. Paladino *v.* King, Commissioner, Philadelphia Prison System, et al. C. A. 3d Cir. Certiorari denied.

No. 08–7918. Hudson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 992 So. 2d 96.

No. 08–7919. Holly *v.* Montes. Sup. Ct. Ill. Certiorari denied. Reported below: 231 Ill. 2d 153, 896 N. E. 2d 267.

No. 08–7921. FORBES *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 931 A. 2d 88.

No. 08–7922. ARREDONDO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–7923. BOONE *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 180 Md. App. 762.

No. 08–7924. HODGES *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 08–7925. RATHBONE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–7926. RILEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–7927. ROLLE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–7929. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 340.

No. 08–7930. LEGER *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–7934. KING *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–7935. JORDAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 08–7937. VAIL *v.* RAYBESTOS PRODUCTS CO. C. A. 7th Cir. Certiorari denied. Reported below: 533 F. 3d 904.

No. 08–7941. WATSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 887.

No. 08–7942. THREATT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–7943. CARDENAS-CARDENAS *v.* UNITED STATES (Reported below: 543 F. 3d 731); GONZALEZ-CORDOVA *v.* UNITED

States (295 Fed. Appx. 682); and Osorto-Guevarra *v.* United States (293 Fed. Appx. 352). C. A. 5th Cir. Certiorari denied.

No. 08–7944. Castaneda-Velez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 109.

No. 08–7945. White *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 483.

No. 08–7947. Trenkler *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 536 F. 3d 85.

No. 08–7948. Russell *v.* Texas. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 08–7949. Santana-De Leon *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–7950. Brown *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 437.

No. 08–7951. Bronakowski *v.* Boulder Valley School District. C. A. 10th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 408.

No. 08–7952. Avelar-Ceja *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 16.

No. 08–7953. Beatty *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 538 F. 3d 8.

No. 08–7955. Clay *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–7956. Cody *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 483.

No. 08–7957. Rubio-Guerrero, aka Rubio *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 534 F. 3d 970.

No. 08–7959. Copley *v.* Voorhies, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–7960. Duque *v.* Hudson, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–7962. CHAMBERLAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 163.

No. 08–7963. COFFMAN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 08–7964. CEBALLOS-SALIGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 218.

No. 08–7965. CARNAGIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 533 F. 3d 1231.

No. 08–7967. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 784.

No. 08–7968. ABUARQUOB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 294 Fed. Appx. 722.

No. 08–7971. LOUISUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 573.

No. 08–7975. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 124.

No. 08–7976. THURMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 149.

No. 08–7978. WIGGINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 907.

No. 08–7979. RAMIREZ-ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 22.

No. 08–7982. RODRIGUEZ *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. D. C. Cir. Certiorari denied.

No. 08–7984. SIMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 533.

No. 08–7986. BASURTO *v.* LUNA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 41.

No. 08–7988. TAYLOR *v.* BATTLES, WARDEN. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 381 Ill. App. 3d 1156, 966 N. E. 2d 613.

No. 08–7991. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 561.

No. 08–7999. VILLA *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 835.

No. 08–8001. MARACALIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–8004. SELJAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 547 F. 3d 993.

No. 08–8008. MILLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 248 Fed. Appx. 426.

No. 08–8009. PINSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 542 F. 3d 822.

No. 08–8013. WALKER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 994 So. 2d 973.

No. 08–8016. ARMS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–8017. AUBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 972.

No. 08–8018. DAVIDSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 295 Fed. Appx. 389.

No. 08–8024. MCINTOSH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–8028. JASMIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 545.

No. 08–8029. MAHONE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–8030. KIRKHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 910.

No. 08–8035. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 544 F. 3d 565.

No. 08–8038. RIVAS-MACIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 537 F. 3d 1271.

No. 08–8041. NIELSEN *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 552.

No. 08–8042. PAIGE *v.* UNITED STATES. Ct. App. Ga. Certiorari denied.

No. 08–8043. COPELAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 94.

No. 08–8045. DIMITROV *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 546 F. 3d 409.

No. 08–8049. AKI-KHUAM *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 883 N. E. 2d 228.

No. 08–8051. BLACKWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 683.

No. 08–8052. MCKOY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–8054. MUNGIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–8059. GRIFFIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 393.

No. 08–8061. HERRINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 310.

No. 08–8062. LOMAX, AKA HASAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–8063. LONG *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied.

No. 08–8070. BROCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 792.

No. 08–8076. SIGLEY *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 578.

No. 08–8081. IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 611.

No. 08–8084. GARDNER *v.* PEREZ. Sup. Ct. N. M. Certiorari denied.

No. 08–8085. FRANCIS, AKA DIMEPIECE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 518.

No. 08–8086. GADSDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 300 Fed. Appx. 108.

No. 08–8087. OLIVO *v.* GREGOIRE, GOVERNOR OF WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 628.

No. 08–8089. NIBLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 575.

No. 08–8090. GUZMAN-NIEVES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–8091. HOLLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 271 Fed. Appx. 625.

No. 08–8095. ROBERTSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 14.

No. 08–8097. SHORT *v.* SCHULTZ, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 246.

No. 08–8099. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–8102. BERRY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1119, 955 N. E. 2d 183.

No. 08–8103. BOZZELLI *v.* KLEM, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–8112. PARISI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 529 F. 3d 134.

No. 08–8115. MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 702.

No. 08–8117. RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 641.

No. 08–8119. S. B. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 381 Ill. App. 3d 1143, 966 N. E. 2d 607.

No. 08–8120. ST. CLAIR *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 289 Fed. Appx. 395.

No. 08–8121. HICKMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 279.

No. 08–8122. ILARAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 320.

No. 08–8123. FARLEY *v.* BISSONNETTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT FRAMINGHAM. C. A. 1st Cir. Certiorari denied. Reported below: 544 F. 3d 344.

No. 08–8124. GUZMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 685.

No. 08–8125. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 139.

No. 08–8126. MELCHOR-ZARAGOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 269 Fed. Appx. 636.

No. 08–8130. PAGAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 597 Pa. 69, 950 A. 2d 270.

No. 08–8132. LNU, AKA OSHUNKEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 544 F. 3d 361.

No. 08–8140. THIAN TEH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 535 F. 3d 511.

No. 08–8147. KHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 458.

No. 08–8149. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–8152. BARELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 857.

No. 08–8154. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–8160. DEMONTBREUN *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 296 Fed. Appx. 933.

No. 08–8162. PADILLA-VELA, AKA PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 681.

No. 08–8168. Kohl *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 277 Fed. Appx. 724.

No. 08–8169. Lopez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 678.

No. 08–8170. Rodriguez-Diaz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 680.

No. 08–8172. Ramirez-Perez, aka Garcia-Garcia *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 08–8176. Potts *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 887.

No. 08–8177. O'Neill *v.* Lawler, Superintendent, State Correctional Institution at Huntingdon, et al. C. A. 3d Cir. Certiorari denied.

No. 08–8180. Boatswain *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 125.

No. 08–8189. Jordan *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 544 F. 3d 656.

No. 08–8191. Martinez *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 08–8192. Quang Van Nguyen *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 779.

No. 08–8193. Mota-Campos *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 774.

No. 08–8196. West *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 317.

No. 08–8200. Moore *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–8202. Swearingen *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 08–8205. Dodd *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 08–8206. DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 545 F. 3d 1195.

No. 08–8207. KLEIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 543 F. 3d 206.

No. 08–8208. ROSE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 528 F. 3d 110.

No. 08–8211. SIRAJ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 533 F. 3d 99.

No. 08–8214. WEBSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 777.

No. 08–8215. KINCHEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–8216. SCHIPKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 107.

No. 08–8222. BROOKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–8229. HILAIRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 533 F. 3d 1231.

No. 08–8230. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 337.

No. 08–8231. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 294 Fed. Appx. 624.

No. 08–8233. HINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 541 F. 3d 833.

No. 08–8234. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 423.

No. 08–8236. GIBSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 530 F. 3d 606.

No. 08–8237. HARDWICK, AKA FU QUAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 544 F. 3d 565.

No. 08–8240. ESTRADA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 799.

No. 08–8241. CHORIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–8244. ELLERBEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 233.

No. 08–8248. CARDONA-ROSARIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 20.

No. 08–8251. DOUGLAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–8254. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 408.

No. 08–8256. AYALA *v.* UNITED STATES (Reported below: 542 F. 3d 494); and VALDEZ-BARRIENTOS *v.* UNITED STATES (291 Fed. Appx. 642). C. A. 5th Cir. Certiorari denied.

No. 08–8257. NELSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 475.

No. 08–8261. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 826.

No. 08–8265. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 811.

No. 08–8267. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 534 F. 3d 903.

No. 08–8270. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 357.

No. 08–8272. MADRID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–8273. CASAREZ-ACEVEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 370.

No. 08–8274. DURAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 406.

No. 08–8275. NIEVES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–8277. NUNEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–8282. TRIGG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 721.

No. 08–8287. NODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–8292. SCHALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 546 F. 3d 965.

No. 08–8293. BARROCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 69.

No. 08–8296. ANDERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 960.

No. 08–8305. PHELPS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 536 F. 3d 862.

No. 08–8306. PHIPPS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 38.

No. 08–8308. ATKINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 316 Fed. Appx. 93.

No. 08–8309. CARTIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 543 F. 3d 442.

No. 08–8310. DOUGLAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–8312. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 350.

No. 08–8314. HOWARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 540 F. 3d 905.

No. 08–8315. GAONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 367.

No. 08–8316. SWANN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 371.

No. 08–8317. RITTWEGER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 524 F. 3d 171 and 274 Fed. Appx. 78.

No. 08–8319. SELLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 541 F. 3d 1227.

No. 08–8328. KELLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 535 F. 3d 1229.

No. 08–8331. MUNIZ-QUINTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 295.

No. 08–8332. OUTLAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 761.

No. 08–8333. WEST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 342.

No. 08–8341. OSEQUERA-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–8351. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–8357. GARZA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–8361. PERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 299 Fed. Appx. 283.

No. 08–8362. OCHOA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 265.

No. 08–8364. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 214.

No. 08–8365. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–8366. BEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 954.

No. 08–8369. LAUREANO-VELEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–8371. ZUNIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 759.

No. 08–8372. DEES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 916.

No. 08–8373. DAVILA-ROMERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 386.

No. 08–8376. WEAVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 287 Fed. Appx. 547.

No. 08–8384. PETERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 153.

No. 08–8391. PADILLA-SALAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 509.

No. 08–8395. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 546 F. 3d 245.

No. 08–8396. SINGLETARY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 188.

No. 08–8397. MARTINEZ-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 348.

No. 08–8398. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 285 Fed. Appx. 243.

No. 08–8399. ECHAVARRIA-ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 396.

No. 08–8400. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–8405. BRODIE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 524 F. 3d 259.

No. 08–8406. AKINROSOTU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–410. SORICH ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 523 F. 3d 702.

JUSTICE SCALIA, dissenting.

In *McNally* v. *United States*, 483 U. S. 350 (1987), this Court held that while "[t]he mail fraud statute clearly protects property rights, . . . [it] does not refer to the intangible right of the citizenry to good government." *Id.*, at 356. That holding invalidated the theory that official corruption and misconduct, by depriving citizens of their "intangible right" to the honest and impartial services of government, constituted fraud. Although all of the Federal Courts of Appeals had accepted the theory, see

id., at 364 (STEVENS, J., dissenting), we declined to "construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards of disclosure and good government for local and state officials," *id.*, at 360 (majority opinion). "If Congress desires to go further," we said, "it must speak more clearly than it has." *Ibid.*

Congress spoke shortly thereafter. "For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." 18 U. S. C. § 1346. Whether that terse amendment qualifies as speaking "more clearly" or in any way lessens the vagueness and federalism concerns that produced this Court's decision in *McNally* is another matter.

Though it consists of only 28 words, the statute has been invoked to impose criminal penalties upon a staggeringly broad swath of behavior, including misconduct not only by public officials and employees but also by private employees and corporate fiduciaries. Courts have upheld convictions of a local housing official who failed to disclose a conflict of interest, *United States* v. *Hasner*, 340 F. 3d 1261, 1271 (CA11 2003) *(per curiam);* a businessman who attempted to pay a state legislator to exercise "informal and behind-the-scenes influence on legislation," *United States* v. *Potter*, 463 F. 3d 9, 18 (CA1 2006); students who schemed with their professors to turn in plagiarized work, *United States* v. *Frost*, 125 F. 3d 346, 369 (CA6 1997); lawyers who made side payments to insurance adjusters in exchange for the expedited processing of their clients' pending claims, *United States* v. *Rybicki*, 354 F. 3d 124, 142 (CA2 2003) (en banc); and, in the decision we are asked to review here, city employees who engaged in political-patronage hiring for local civil-service jobs, 523 F. 3d 702, 705 (CA7 2008).

If the "honest services" theory—broadly stated, that officeholders and employees owe a duty to act only in the best interests of their constituents and employers—is taken seriously and carried to its logical conclusion, presumably the statute also renders criminal a state legislator's decision to vote for a bill because he expects it will curry favor with a small minority essential to his reelection; a mayor's attempt to use the prestige of his office to obtain a restaurant table without a reservation; a public employee's recommendation of his incompetent friend for a public contract; and any self-dealing by a corporate officer. Indeed, it

would seemingly cover a salaried employee's phoning in sick to go to a ball game. In many cases, moreover, the maximum penalty for violating this statute will be added to the maximum penalty for violating 18 U. S. C. § 666, a federal bribery statute, since violation of the latter requires the additional factor of the employer's receipt of federal funds, while violation of the "honest services" provision requires use of mail or wire services, §§ 1341, 1343. Quite a potent federal prosecutorial tool.

To avoid some of these extreme results, the Courts of Appeals have spent two decades attempting to cabin the breadth of § 1346 through a variety of limiting principles. No consensus has emerged. The Fifth Circuit has held that the statute criminalizes only a deprivation of services that is unlawful under state law, *United States* v. *Brumley*, 116 F. 3d 728, 735 (1997) (en banc), but other courts have not agreed, see *United States* v. *Martin*, 195 F. 3d 961, 966 (CA7 1999) (*Brumley* "is contrary to the law in this circuit . . . and in the other circuits to have addressed the question"). The Seventh Circuit has construed the statute to prohibit only the abuse of position "for private gain," *United States* v. *Bloom*, 149 F. 3d 649, 655 (1998), but other Circuits maintain that gain is not an element of the crime at all, *e. g.*, *United States* v. *Panarella*, 277 F. 3d 678, 692 (CA3 2002). Courts have expressed frustration at the lack of any "simple formula specific enough to give clear cut answers to borderline problems." *United States* v. *Urciuoli*, 513 F. 3d 290, 300 (CA1 2008).

It is practically gospel in the lower courts that the statute "does not encompass every instance of official misconduct," *United States* v. *Sawyer*, 85 F. 3d 713, 725 (CA1 1996). The Tenth Circuit has confidently proclaimed that the statute is "not violated by every breach of contract, breach of duty, conflict of interest, or misstatement made in the course of dealing," *United States* v. *Welch*, 327 F. 3d 1081, 1107 (2003). But why that is so, and what principle it is that separates the criminal breaches, conflicts, and misstatements from the obnoxious but lawful ones, remains entirely unspecified. Without some coherent limiting principle to define what "the intangible right of honest services" is, whence it derives, and how it is violated, this expansive phrase invites abuse by headline-grabbing prosecutors in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct.

In the background of the interpretive venture remain the two concerns voiced by this Court in *McNally*. First, the prospect of federal prosecutors' (or federal courts') creating ethics codes and setting disclosure requirements for local and state officials. Is it the role of the Federal Government to define the fiduciary duties that a town alderman or school board trustee owes to his constituents? It is one thing to enact and enforce clear rules against certain types of corrupt behavior, *e. g.*, 18 U. S. C. § 666(a) (bribes and gratuities to public officials), but quite another to mandate a freestanding, open-ended duty to provide "honest services"—with the details to be worked out case by case. See generally Brown, Should Federalism Shield Corruption?—Mail Fraud, State Law and Post-*Lopez* Analysis, 82 Cornell L. Rev. 225 (1997).

Second and relatedly, this Court has long recognized the "basic principle that a criminal statute must give fair warning of the conduct that it makes a crime." *Bouie* v. *City of Columbia*, 378 U. S. 347, 350 (1964). There is a serious argument that § 1346 is nothing more than an invitation for federal courts to develop a common-law crime of unethical conduct. But "the notion of a common-law crime is utterly anathema today," *Rogers* v. *Tennessee*, 532 U. S. 451, 476 (2001) (SCALIA, J., dissenting), and for good reason. It is simply not fair to prosecute someone for a crime that has not been defined until the judicial decision that sends him to jail. "How can the public be expected to know what the statute means when the judges and prosecutors themselves do not know, or must make it up as they go along?" *Rybicki*, *supra*, at 160 (Jacobs, J., dissenting).

The present case in which certiorari is sought implicates two of the limiting principles that the Courts of Appeals have debated—whether the crime of deprivation of "honest services" requires a predicate violation of state law, and whether it requires the defendant's acquisition of some sort of private gain. The jury was instructed that petitioners, who were employed by the city of Chicago, were obliged, "[a]s part of the honest services they owed the City and the people of the City of Chicago," to abide by a laundry list of "laws, decrees, and policies," including a 1983 civil consent decree entered into by the city which barred patronage hiring for some city jobs. App. to Pet. for Cert. 137–140. The Seventh Circuit approved the instruction, again rejecting the Fifth Circuit's violation-of-state-law principle. "It may well be," the court said, "that merely by virtue of being public officials the

defendants inherently owed the public a fiduciary duty to discharge their offices in the public's best interest." 523 F. 3d, at 712. And though petitioners received no direct personal benefit from the patronage they doled out on behalf of their political masters, the Seventh Circuit found it sufficient that the patronage *appointees*—who were not charged in the scheme—accrued private gain. *Id.*, at 709.

Finally, in addition to presenting two of the principal devices the Courts of Appeals have used in an effort to limit § 1346, the case also squarely presents the issue of its constitutionality. The Court of Appeals rebuffed petitioners' argument that if § 1346 really criminalizes all conduct that is not "in the public's best interest" and that benefits *someone*, it is void for vagueness. The court cited two prior Circuit decisions which, it said, "provided sufficient notice." *Id.*, at 711.

It may be true that petitioners here, like the defendants in other "honest services" cases, have acted improperly. But "[b]ad men, like good men, are entitled to be tried and sentenced in accordance with law." *Green* v. *United States*, 365 U. S. 301, 309 (1961) (Black, J., dissenting). In light of the conflicts among the Circuits; the longstanding confusion over the scope of the statute; and the serious due process and federalism interests affected by the expansion of criminal liability that this case exemplifies, I would grant the petition for certiorari and squarely confront both the meaning and the constitutionality of § 1346. Indeed, it seems to me quite irresponsible to let the current chaos prevail.

No. 08–782. California Speedway Corp. *v.* Miller. C. A. 9th Cir. Motion of Speedway Sonoma, LLC, for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 536 F. 3d 1020.

Rehearing Denied

No. 08–422. Ryan *v.* United States, *ante*, p. 997;

No. 08–491. Gay et al. *v.* Hunt et al., *ante*, p. 1048;

No. 08–535. Panse *v.* Norman et al., *ante*, p. 1071;

No. 08–609. Kanofsky *v.* Commissioner of Internal Revenue, *ante*, p. 1071;

No. 08–5003. Lacy *v.* National Railroad Passenger Corporation, *ante*, p. 1050;

No. 08–5161. Dade *v.* United States, *ante*, p. 898;

No. 08–6068. Avalos *v.* Nielsen et al., *ante*, p. 1000;

No. 08–6154. CRAMER *v.* DUNCAN, WARDEN, *ante*, p. 1002;

No. 08–6276. ROBINSON *v.* JONES ET AL., *ante*, p. 1033;

No. 08–6355. DODD *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1035;

No. 08–6357. CAIN *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1035;

No. 08–6384. HUGHES *v.* MINNESOTA, *ante*, p. 1036;

No. 08–6398. CAREY *v.* FREE, WARDEN, ET AL., *ante*, p. 1036;

No. 08–6492. SCHREIBER *v.* IOWA, *ante*, p. 1036;

No. 08–6519. MELENDEZ *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, *ante*, p. 1053;

No. 08–6536. SIFUENTES *v.* PRELESNIK, WARDEN, *ante*, p. 1054;

No. 08–6539. ROY *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante*, p. 1054;

No. 08–6585. LISENKO *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 1054;

No. 08–6627. SALERNO *v.* MICHIGAN, *ante*, p. 1073;

No. 08–6645. BALDWIN *v.* OFFICE OF PERSONNEL MANAGEMENT, *ante*, p. 1055;

No. 08–6647. SMITH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1074;

No. 08–6690. LETHERBLAIRE *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 1055;

No. 08–6723. HAFED *v.* UNITED STATES, *ante*, p. 1018;

No. 08–6757. HANEY *v.* ADDISON, WARDEN, *ante*, p. 1086;

No. 08–6758. FINLEY *v.* UNITED STATES, *ante*, p. 1019;

No. 08–6793. BADRUDDOZA *v.* UNITED STATES ET AL., *ante*, p. 1076;

No. 08–6811. BROWN *v.* PEAKE, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 1056;

No. 08–6812. BARNEY *v.* INGERSOLL-RAND CO. ET AL. (two judgments), *ante*, p. 1056;

No. 08–7008. WAGNER *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, *ante*, p. 1110;

No. 08–7083. BUSTAMANTE *v.* MUKASEY, ATTORNEY GENERAL, *ante*, p. 1077;

No. 08–7110. DODSON *v.* UNITED STATES, *ante*, p. 1077;

No. 08–7115. ELJACK *v.* JOHNSON REALTY CO., INC., *ante*, p. 1113;

No. 08–7194. BARTLETTE *v.* KMART CORP. ET AL., *ante*, p. 1115;

No. 08–7218. RODRIGUEZ *v.* UNITED STATES, *ante*, p. 1080;

No. 08–7271. AHMED *v.* UNITED STATES, *ante*, p. 1089; and

No. 08–7429. ADKINS *v.* FAIRFAX COUNTY SCHOOL BOARD ET AL., *ante*, p. 1120. Petitions for rehearing denied.

No. 08–5482. GRIFFIN *v.* VETERANS ADMINISTRATION REGIONAL OFFICE ET AL., *ante*, p. 917. Motion for leave to file petition for rehearing denied.

MARCH 2, 2009

Certiorari Granted—Vacated and Remanded

No. 07–690. DUCHESNE CITY, UTAH, ET AL. *v.* SUMMUM. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pleasant Grove City* v. *Summum*, *ante*, p. 460. Reported below: 482 F. 3d 1263.

No. 08–7102. BENSON *v.* UNITED STATES. C. A. 7th 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 *Begay* v. *United States*, 553 U. S. 137 (2008). Reported below: 285 Fed. Appx. 298.

Certiorari Dismissed

No. 08–7983. WHITE *v.* WAYNE COUNTY CIRCUIT COURT CLERKS. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–7985. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 08M64. WILLIAMS *v.* PARKER ABEX NWL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 07–543. AT&T CORP. *v.* HULTEEN ET AL. C. A. 9th Cir. [Certiorari granted, 554 U. S. 916.] Motion of respondents for

leave to file a supplemental brief after argument granted. Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 08–603. Vos, Director, Mille Lacs County, Minnesota, Family Services and Welfare Department, et al. *v.* Barg. Sup. Ct. Minn. Motion of Minnesota for leave to intervene granted. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 08–803. Frommert et al. *v.* Conkright et al.;
No. 08–810. Conkright et al. *v.* Frommert et al.; and
No. 08–826. Pietrowski et al. *v.* Conkright et al. C. A. 2d Cir. The Acting Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 08–8421. Cossette *v.* Department of Agriculture. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 23, 2009, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 08–8515. In re Dodson;
No. 08–8543. In re Guzman Robles;
No. 08–8585. In re Sanders; and
No. 08–8611. In re Piskanin. Petitions for writs of habeas corpus denied.

No. 08–8560. In re Price. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 08–8374. In re Simon. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 08–103. Reed Elsevier, Inc., et al. *v.* Muchnick et al. C. A. 2d Cir. Certiorari granted limited to the following question: "Does 17 U. S. C. § 411(a) restrict the subject-matter jurisdiction of the federal courts over copyright infringement actions?" Reported below: 509 F. 3d 116.

Certiorari Denied

No. 08–409. MABRY ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 518 F. 3d 442.

No. 08–482. BORDEN *v.* SCHOOL DISTRICT OF THE TOWNSHIP OF EAST BRUNSWICK, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 523 F. 3d 153.

No. 08–514. MITCHELL *v.* REES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 261 Fed. Appx. 825.

No. 08–558. BOURSEAU ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 531 F. 3d 1159.

No. 08–564. COOKEVILLE REGIONAL MEDICAL CENTER ET AL. *v.* JOHNSON, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 531 F. 3d 844.

No. 08–569. KNOX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 540 F. 3d 708.

No. 08–710. THEUSCH ET UX. *v.* BERG ET AL. Ct. App. Minn. Certiorari denied.

No. 08–716. WATSON CHAPEL SCHOOL DISTRICT ET AL. *v.* LOWRY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 540 F. 3d 752.

No. 08–746. SEMINOLE TRIBE OF FLORIDA *v.* FLORIDA HOUSE OF REPRESENTATIVES ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 999 So. 2d 601.

No. 08–762. DEREYES ET AL. *v.* WILKINS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 528 F. 3d 790.

No. 08–808. TEXAS *v.* HALEY. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–811. ADEDIJI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 381 Ill. App. 3d 1133, 966 N. E. 2d 602.

No. 08–813. ANTONELLIS *v.* CUMBERLAND COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 237.

No. 08–815. DEUPREE *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–817. ASHCRAFT, PERSONAL REPRESENTATIVE OF THE ESTATE OF MCGLOTHIN, DECEASED *v.* VILLAS WEST II OF WILLOWRIDGE HOMEOWNERS ASSN., INC. Sup. Ct. Ind. Certiorari denied. Reported below: 885 N. E. 2d 1274.

No. 08–819. VAUGHN *v.* VILLA. C. A. 10th Cir. Certiorari denied. Reported below: 537 F. 3d 1147.

No. 08–837. BEUCKE *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 10.

No. 08–854. HASSEY *v.* CITY OF OAKLAND, CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 163 Cal. App. 4th 1477, 78 Cal. Rptr. 3d 621.

No. 08–864. CABRAL *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 08–885. BETANCUR *v.* FLORIDA DEPARTMENT OF HEALTH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 761.

No. 08–924. MOTLEY *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 317 Fed. Appx. 975.

No. 08–933. CHARTSCHLAA ET AL. *v.* NATIONWIDE MUTUAL INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 538 F. 3d 116.

No. 08–972. HOLLOWAY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 421.

No. 08–980. WHITNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–6727. LUGO IBARRA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–7123. GEORGES *v.* GEORGES. Super. Ct. Pa. Certiorari denied. Reported below: 931 A. 2d 56.

No. 08–7252. Young *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 529 F. 3d 1380.

No. 08–7372. Northern *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 262 S. W. 3d 741.

No. 08–7936. Ulrich *v.* Bell. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 08–7938. Robinson *v.* Adams, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–7939. Trevino *v.* Gomez et al. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 467.

No. 08–7946. Yancey *v.* Johnson, Director, Virginia Department of Corrections. Sup. Ct. Va. Certiorari denied.

No. 08–7954. Banks *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 08–7958. Lopez Rosier *v.* Hunter et al. C. A. 11th Cir. Certiorari denied.

No. 08–7961. Eklof *v.* Hoefel. C. A. 9th Cir. Certiorari denied.

No. 08–7966. Burke *v.* Blumenthal, Attorney General of Connecticut, et al. C. A. 2d Cir. Certiorari denied.

No. 08–7973. Williams *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 188 P. 3d 208.

No. 08–7974. Wright *v.* Skolnik, Director, Nevada Department of Corrections. C. A. 9th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 274.

No. 08–7977. Tuvalu *v.* Ayers, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 08–7981. Shabazz, aka Hines *v.* White et al. C. A. 5th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 316.

No. 08–7987. Walls *v.* Illinois Department of Correctional Clinical Psychologists et al. C. A. 7th Cir. Certiorari denied.

No. 08–7992. Janossy *v.* Washington Mutual Bank. C. A. 9th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 439.

No. 08–7993. Roberts, aka Torres *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 996 So. 2d 213.

No. 08–7994. Rodriguez *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied.

No. 08–8010. Mungia *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 1101, 189 P. 3d 880.

No. 08–8040. Vigliotti *v.* Artus, Superintendent, Clinton Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 08–8044. Cruz *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 44 Cal. 4th 636, 187 P. 3d 970.

No. 08–8050. Baptiste *v.* Runnell. C. A. 9th Cir. Certiorari denied.

No. 08–8058. Ozier *v.* Missouri. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 261 S. W. 3d 621.

No. 08–8068. Budro *v.* BAE Systems Information & Electronic Systems Integration, Inc. C. A. 1st Cir. Certiorari denied.

No. 08–8072. Portugal, aka Trujillo *v.* Colorado Division of Insurance. Ct. App. Colo. Certiorari denied.

No. 08–8078. Asemani *v.* Holder, Attorney General, et al. C. A. 4th Cir. Certiorari denied. Reported below: 299 Fed. Appx. 294.

No. 08–8096. Ricchio *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 08–8174. Webber *v.* Bobby, Warden. Sup. Ct. Ohio. Certiorari denied. Reported below: 120 Ohio St. 3d 440, 900 N. E. 2d 175.

No. 08–8178. Kimmie *v.* Wilkerson et al. C. A. 6th Cir. Certiorari denied.

No. 08–8190. Jackson *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 189 N. C. App. 747, 659 S. E. 2d 73.

No. 08–8199. ENCARNACION-RIVERA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 953 A. 2d 597.

No. 08–8228. MILLER *v.* SMITH, WARDEN. Ct. App. Wis. Certiorari denied.

No. 08–8263. ZUBROWSKI *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 289 Conn. 55, 956 A. 2d 578.

No. 08–8266. HILL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 954 A. 2d 37.

No. 08–8311. WYNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 544.

No. 08–8325. HOSACK *v.* INTERNAL REVENUE SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 282 Fed. Appx. 309.

No. 08–8407. QUINONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 323.

No. 08–8417. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 320.

No. 08–8423. COATS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–8424. DIAZ-BOYZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 558.

No. 08–8428. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 299 Fed. Appx. 273.

No. 08–8433. VELASQUEZ-CORONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 349.

No. 08–8436. NUNLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 296 Fed. Appx. 179.

No. 08–8439. ROMAN-SALGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 250.

No. 08–8441. BULLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 224.

No. 08–8443. Baker *v.* Patton, Warden. C. A. 6th Cir. Certiorari denied.

No. 08–8444. Moreno-Navarro *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–8448. Ferrer *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 289 Fed. Appx. 497.

No. 08–8450. Texiera Goncalves *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 08–8451. Hernandez-Mendez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 680.

No. 08–8454. Dulaney *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 299 Fed. Appx. 622.

No. 08–8458. Perez-Vasquez *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 08–8467. Living *v.* United States (Reported below: 299 Fed. Appx. 306); Victoria *v.* United States (299 Fed. Appx. 305); and Salvador-Figueroa *v.* United States (301 Fed. Appx. 326). C. A. 5th Cir. Certiorari denied.

No. 08–8468. Juvenile Male *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 571.

No. 08–8469. Jackson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 547 F. 3d 786.

No. 08–8472. Veloz *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 306 Fed. Appx. 768.

No. 08–8474. Walker *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 305 Fed. Appx. 48.

No. 08–8476. Fontenot *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 370.

No. 08–8480. Palermo *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 291 Fed. Appx. 418.

No. 08–8485. Gagliardi *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 285 Fed. Appx. 11.

No. 08–8486. FOSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 310.

No. 08–8488. FELIZ-RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–8489. CROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 603.

No. 08–8494. MAYS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 581.

No. 08–460. ISAACSON ET AL. *v.* DOW CHEMICAL CO. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 517 F. 3d 76 and 129.

No. 08–461. STEPHENSON ET AL. *v.* DOW CHEMICAL CO. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 517 F. 3d 76 and 129.

No. 08–470. VIETNAM ASSOCIATION FOR VICTIMS OF AGENT ORANGE ET AL. *v.* DOW CHEMICAL CO. ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 517 F. 3d 104.

No. 08–954. NISSIM CORP. *v.* TIME WARNER, INC., ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 08–650. EVANS *v.* ELDRIDGE ET AL., *ante*, p. 1102;

No. 08–691. FOX *v.* SECURITIES AND EXCHANGE COMMISSION, *ante*, p. 1103;

No. 08–695. SCHAFLER *v.* SPEAR, TRUSTEE, *ante*, p. 1103;

No. 08–5811. KASKE *v.* JONES, WARDEN, *ante*, p. 952;

No. 08–6474. BROCK *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1052;

No. 08–6813. BUTLER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1106;

No. 08–6867. KELLY *v.* SISTO, WARDEN, *ante*, p. 1081;

No. 08–6939. WATTS *v.* FLORIDA UNEMPLOYMENT APPEALS COMMISSION ET AL., *ante*, p. 1109;

No. 08–6971. AKINRO *v.* MAHER ET AL., *ante*, p. 1087;

No. 08–6975. POLITE *v.* UNITED STATES, *ante*, p. 1059;

No. 08–7000. BRIDGES *v.* BASSETT, WARDEN, *ante*, p. 1087;

No. 08–7054. DANDAR *v.* KRYSEVIG ET AL., *ante*, p. 1111;

No. 08–7162. FICKEN *v.* LUNDEBYE ET AL., *ante*, p. 1114;

No. 08–7257. SITKOVETSKIY *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL., *ante*, p. 1115;

No. 08–7302. WIIG *v.* UNITED STATES, *ante*, p. 1089;

No. 08–7364. BROWN *v.* UNITED STATES, *ante*, p. 1118;

No. 08–7390. MILLER *v.* MCDANIEL, WARDEN, ET AL., *ante*, p. 1119;

No. 08–7411. BAER *v.* WINTER, SECRETARY OF THE NAVY, ET AL., *ante*, p. 1119; and

No. 08–7771. IN RE ALPINE, *ante*, p. 1096. Petitions for rehearing denied.

MARCH 3, 2009

Dismissal Under Rule 46

No. 08–743. MOUNTAIN WEST BANK, N. A. *v.* FENNO. Sup. Ct. Mont. Certiorari dismissed under this Court's Rule 46.1. Reported below: 345 Mont. 161, 192 P. 3d 224.

Miscellaneous Orders

No. 08A762. PONDEXTER *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.

No. 08–8975 (08A758). IN RE PONDEXTER. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of mandamus denied.

Certiorari Denied

No. 08–7795 (08A756). PONDEXTER *v.* QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUS-

TICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 537 F. 3d 511.

No. 08–8974 (08A757). PONDEXTER *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. 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.

MARCH 4, 2009

Certiorari Denied

No. 08–9025 (08A772). MORRIS *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.

MARCH 6, 2009

Dismissal Under Rule 46

No. 08–376. LEADIS TECHNOLOGY, INC., ET AL. *v.* SAFRON CAPITAL CORP. ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 274 Fed. Appx. 540.

Vacated and Remanded After Certiorari Granted

No. 08–368 (08A755). AL-MARRI *v.* SPAGONE, UNITED STATES NAVY COMMANDER, CONSOLIDATED NAVAL BRIG. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1066.] Application of the Acting Solicitor General respecting the custody and transfer of petitioner, seeking to release petitioner from military custody and transfer him to the custody of the Attorney General, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. Judgment vacated, and case remanded with instructions to dismiss the appeal as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

INDEX

ABSOLUTE IMMUNITY FROM SUIT. See **Civil Rights Act of 1871,** 2.

ACCOMPLICE-LIABILITY JURY INSTRUCTIONS. See **Habeas Corpus,** 2.

ALIENS. See **Immigration and Nationality Act.**

ANTIDUMPING DUTIES ON FOREIGN MERCHANDISE. See **Tariff Act of 1930.**

ANTIRETALIATION PROTECTION. See **Civil Rights Act of 1964.**

ANTITRUST LAW.

Sherman Act—Price squeeze—"DSL" service.—A price-squeeze claim—here, that petitioners squeezed respondents' profit margin by setting a high wholesale price for transport of DSL, high-speed Internet connection over telephone lines, and a low retail price for petitioners' own DSL service—may not be brought under Sherman Act § 2 when petitioners have no antitrust duty to deal with respondents at wholesale. Pacific Bell Telephone Co. v. linkLine Communications, Inc., p. 438.

ARMED CAREER CRIMINAL ACT. See **Criminal Law,** 1.

ARTICLE III. See **Constitutional Law,** I

ASYLUM FOR ALIENS. See **Immigration and Nationality Act.**

CASE OR CONTROVERSY. See **Constitutional Law,** I.

CIGARETTE ADVERTISEMENTS. See **Federal Cigarette Labeling and Advertising Act.**

CIVIL RIGHTS ACT OF 1871.

1. *Equal Protection Clause action—Gender discrimination—Impact of Title IX of Education Amendments of 1972.*—Title IX does not preclude a 42 U. S. C. § 1983 action alleging gender discrimination in schools in violation of Equal Protection Clause. Fitzgerald v. Barnstable School Comm., p. 246.

2. *Section 1983—Supervisory prosecutors—Absolute immunity.*—Petitioners, supervisory prosecutors, are entitled to absolute immunity from

CIVIL RIGHTS ACT OF 1871—Continued.

42 U. S. C. § 1983 liability with respect to respondent's claims that impeachment material was not disclosed to defense because petitioners' supervision, training, or information-system management was constitutionally inadequate. Van de Kamp v. Goldstein, p. 335.

CIVIL RIGHTS ACT OF 1964.

Title VII—Sex discrimination—Antiretaliation provision's scope.—Title VII's antiretaliation provision, 42 U. S. C. § 2000e–3(a), extends to an employee who speaks out about discrimination not on her own initiative, but in answering questions during an employer's internal investigation. Crawford v. Metropolitan Government of Nashville and Davidson Cty., p. 271.

COCAINE GUIDELINES. See **Criminal Law,** 4, 5.

COLLATERAL REVIEW. See **Habeas Corpus,** 1.

CONSECUTIVE SENTENCES. See **Constitutional Law,** IV.

CONSTITUTIONAL LAW. See also **Civil Rights Act of 1871,** 1; **Habeas Corpus,** 3.

I. Case or Controversy.

Standing to sue—Forest Service regulations.—Respondent environmentalist groups lack standing to challenge Forest Service regulations that exempt small fire-rehabilitation and timber-salvage projects from notice, comment, and appeal process used for more significant land management decisions, absent a live dispute over a concrete application of those regulations. Summers v. Earth Island Institute, p. 488.

II. Freedom of Association.

Public employee labor unions—Service fees.—First Amendment permits a local union to charge nonmembers for litigation expenses of its national organization as long as (1) subject matter of (extra-local) litigation is of a kind that would be chargeable if litigation were local, *e. g.*, litigation appropriately related to collective bargaining rather than political activities, and (2) litigation charge is reciprocal in nature, *i. e.*, contributing local reasonably expects other locals to contribute similarly to national's resources used for costs of similar litigation on behalf of contributing local if and when it takes place. Locke v. Karass, p. 207.

III. Freedom of Speech.

1. *Public employee unions—Ban on payroll deductions for political activities.*—Idaho Right to Work Act's ban on payroll deductions for union political activities, as applied to local governmental units, did not infringe unions' First Amendment rights. Ysursa v. Pocatello Ed. Assn., p. 353.

CONSTITUTIONAL LAW—Continued.

2. *Public park—Monuments—Government speech.*—Placement of a permanent monument in a public park is a form of government speech and, thus, is not subject to scrutiny under First Amendment's Free Speech Clause. Pleasant Grove City v. Summum, p. 460.

IV. Right to Jury Trial.

Consecutive sentence determination—Judges as factfinders.—In light of historical practice and States' authority over administration of their criminal justice systems, Sixth Amendment's jury-trial guarantee, as construed in *Apprendi* v. *New Jersey*, 530 U. S. 466, and *Blakely* v. *Washington*, 542 U. S. 296, does not inhibit States from assigning to judges, rather than to juries, finding of facts necessary to imposition of consecutive, rather than concurrent, sentences for multiple offenses. Oregon v. Ice, p. 160.

V. Searches and Seizures.

1. *Exclusionary rule—Unlawful search—Isolated negligence.*—Exclusionary rule does not require suppression of evidence seized in violation of Fourth Amendment where police mistakes leading to an unlawful search are result of isolated negligence attenuated from search rather than systemic error or disregard of constitutional requirements. Herring v. United States, p. 135.

2. *Traffic stop—Validity of frisk.*—Frisking a passenger during a traffic stop does not violate Fourth Amendment's prohibition on unreasonable searches and seizures, provided that the police harbor reasonable suspicion that the passenger is armed and dangerous. Arizona v. Johnson, p. 323.

CRACK COCAINE. See **Criminal Law,** 4, 5.

CRIMINAL LAW. See also **Constitutional Law,** IV; V; **Habeas Corpus.**

1. *Armed Career Criminal Act—"Violent felony"—Failure to report for penal confinement.*—Illinois' crime of failure to report for penal confinement is not a "violent felony" for purposes of ACCA, which provides a 15-year mandatory minimum prison term for a defendant, convicted of possessing a firearm, who has three prior convictions "for a violent felony," 18 U. S. C. § 924(e)(1), *i. e.*, a crime that, *inter alia*, "involves conduct that presents a serious potential risk of physical injury to another," § 924(e)(2)(b)(ii). Chambers v. United States, p. 122.

2. *Federal Sentencing Guidelines—Presumption of reasonableness.*—Fourth Circuit erred in upholding petitioner's federal sentence where District Court impermissibly applied a presumption of reasonableness to applicable Sentencing Guidelines range. Nelson v. United States, p. 350.

CRIMINAL LAW—Continued.

3. *Gun Control Act of 1968—Firearm possession by convicted felons—Predicate offense of misdemeanor domestic violence.*—A domestic relationship—although it must be established beyond a reasonable doubt in a prosecution for possession of a firearm by a person convicted of "a misdemeanor crime of domestic violence," 18 U. S. C. § 922(g)(9)—need not be a defining element of predicate misdemeanor offense. United States v. Hayes, p. 415.

4. *Sentencing—Cocaine Guidelines.*—Because District Court indicated that it lacked discretion to impose a sentence below that suggested by United States Sentencing Guidelines for Moore's conviction of possessing crack cocaine with intent to distribute, Eighth Circuit should have remanded case for resentencing under *Kimbrough* v. *United States*, 552 U. S. 85, 91, which recognized that a sentencing judge may consider disparity between Guidelines' treatment of similar amounts of crack and powder cocaine. Moore v. United States, p. 1.

5. *Sentencing—Cocaine Guidelines.*—Eighth Circuit order requiring petitioner's resentencing based on District Court's categorical rejection of United States Sentencing Guidelines' crack-to-powder cocaine ratio and substitution of its own ratio conflicts with *Kimbrough* v. *United States*, 552 U. S. 85, which recognized district courts' authority to vary from crack Guidelines based solely on a policy disagreement with them, and not simply on an individualized determination that they yield an excessive sentence in a particular case. Spears v. United States, p. 261.

DISCRIMINATION BASED ON SEX. See **Civil Rights Act of 1871,** 1; **Civil Rights Act of 1964.**

DISCRIMINATION IN EDUCATION. See **Civil Rights Act of 1871,** 1.

DISCRIMINATION IN EMPLOYMENT. See **Civil Rights Act of 1964.**

DOMESTIC VIOLENCE. See **Criminal Law,** 3.

DRUG LABELING.

Food and Drug Administration approval—Pre-emption of state-law tort claim.—Federal law does not pre-empt Levine's state-law tort claim that drug Phenergan's label did not contain an adequate warning about dangers of using "IV-push" method of administering that drug. Wyeth v. Levine, p. 555.

DRUG TRAFFICKING. See **Criminal Law,** 4, 5.

DSL SERVICE. See **Antitrust Law.**

DUTIES ON FOREIGN MERCHANDISE. See **Tariff Act of 1930.**

EDUCATION AMENDMENTS OF 1972. See **Civil Rights Act of 1871,** 1.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Pension plan—Divorced spouse's waiver of interest.—Although ex-wife's waiver of her interest in decedent's pension plan was not an assignment or alienation barred by 29 U. S. C. § 1056(d)(1), plan did its duty under ERISA by paying benefits to her in conformity with plan documents. Kennedy v. Plan Administrator for DuPont Sav. and Investment Plan, p. 285.

EMPLOYER AND EMPLOYEES. See **Civil Rights Act of 1964; Constitutional Law,** III, 1.

EMPLOYMENT DISCRIMINATION. See **Civil Rights Act of 1964.**

ENEMY SUBMARINE THREAT. See **Injunctions.**

ENVIRONMENTAL LAW. See **Constitutional Law,** I.

EQUAL PROTECTION OF THE LAWS. See **Civil Rights Act of 1871,** 1.

EVIDENCE SUPPRESSION. See **Constitutional Law,** V, 1.

EXCLUSIONARY RULE. See **Constitutional Law,** V, 1.

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT.

Pre-emption of state-law fraud claim.—Neither Act's pre-emption provision nor Federal Trade Commission's actions in this field pre-empt respondents' state-law fraud claim, which alleges that petitioners fraudulently advertised their "light" cigarettes as less harmful than regular cigarettes. Altria Group, Inc. v. Good, p. 70.

FEDERAL SENTENCING GUIDELINES. See **Criminal Law,** 2, 4, 5.

FEDERAL-STATE RELATIONS. See **Drug Labeling; Federal Cigarette Labeling and Advertising Act.**

FIELD PRE-EMPTION. See **Federal Cigarette Labeling and Advertising Act.**

FINAL JUDGMENTS. See **Habeas Corpus,** 1.

FIREARM POSSESSION. See **Criminal Law,** 1, 3.

FIRE REHABILITATION. See **Constitutional Law,** I.

FIRST AMENDMENT. See **Constitutional Law,** II; III.

FOREIGN MERCHANDISE. See **Tariff Act of 1930.**

FOREST SERVICE REGULATIONS. See **Constitutional Law,** I.

FOURTEENTH AMENDMENT. See **Civil Rights Act of 1871,** 1.

FOURTH AMENDMENT. See **Constitutional Law,** V.

FREEDOM OF ASSOCIATION. See **Constitutional Law,** II.

FREEDOM OF SPEECH. See **Constitutional Law,** III.

GENDER DISCRIMINATION. See **Civil Rights Act of 1871,** 1.

GOVERNMENT SPEECH. See **Constitutional Law,** III, 2.

GUN CONTROL ACT OF 1968. See **Criminal Law,** 3.

HABEAS CORPUS.

1. *Limitations period—Finality of state-court decision.*—Where a state court grants a criminal defendant right to file an out-of-time direct appeal during state collateral review, but before defendant has first sought federal habeas relief, his judgment is not "final" for purposes of 38 U. S. C. § 2244(d)(1)(A)—which sets a 1-year time limitation for a state prisoner to file a federal habeas petition—until conclusion of out-of-time direct appeal, or expiration of time for seeking certiorari review of that appeal in this Court. Jimenez v. Quarterman, p. 113.

2. *Murder trial—Accomplice-liability jury instructions.*—Because Washington state court's decision rejecting Sarausad's argument that accomplice-liability instructions at his murder trial were ambiguous and likely misinterpreted by jury did not result in an "unreasonable application of . . . clearly established Federal law," 28 U. S. C. § 2254(d)(1), Ninth Circuit erred in granting Sarausad habeas relief. Waddington v. Sarausad, p. 179.

3. *Unconstitutional jury instruction—Standard of review.*—This habeas case is remanded for a determination whether a flaw in jury instructions at respondent's criminal trial "had substantial and injurious effect or influence in determining . . . jury's verdict," *Brecht* v. *Abrahamson*, 507 U. S. 619, 623. Hedgpeth v. Pulido, p. 57.

HARMLESS ERROR. See **Habeas Corpus,** 3.

HELP AMERICA TO VOTE ACT OF 2002. See **Supreme Court,** 2.

IDAHO. See **Constitutional Law,** III, 1.

ILLINOIS. See **Criminal Law,** 1.

IMMIGRATION AND NATIONALITY ACT.

Refugee status—Persecutor bar.—Board of Immigration Appeals and Fifth Circuit misapplied *Fedorenko* v. *United States*, 449 U. S. 490, as mandating that whether an alien is compelled to assist in persecution is immaterial for purposes of "persecutor bar" set forth in INA, which prohibits an alien from obtaining refugee status in this country if he "assisted, or

IMMIGRATION AND NATIONALITY ACT—Continued.

otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion," 8 U. S. C. § 1101(a)(42). Negusie v. Holder, p. 511.

IMMUNITY FROM SUIT. See also **Civil Rights Act of 1871,** 2.

Qualified immunity—Flexibility of procedure for evaluating claims.—Two-step procedure for resolving government officials' qualified immunity claims that was mandated by *Saucier* v. *Katz*, 533 U. S. 194, should no longer be regarded as an inflexible requirement; lower federal courts should have discretion to decide whether that procedure is worthwhile in particular cases. Pearson v. Callahan, p. 223.

INDIAN REORGANIZATION ACT.

Tribal land—Trusts.—Because term "now under federal jurisdiction" in 25 U. S. C. § 479 unambiguously refers to those tribes that were under federal jurisdiction when Act was enacted in 1934, and because Narragansett Tribe was not then under such jurisdiction, Secretary of Interior lacked authority to take a 31-acre parcel of tribal land into trust "for the purpose of providing land for Indians," § 465. Carcieri v. Salazar, p. 379.

INJUNCTIONS.

Preliminary injunction—Restriction of mid-frequency active sonar use—Balance of parties' interests.—Preliminary injunction restricting Navy's use of MFA sonar during training exercises is vacated to extent challenged by Navy, whose need to conduct realistic training with active sonar to respond to threat posed by enemy submarines plainly outweighs plaintiff environmentalists' ecological, scientific, and recreational interests in marine mammals. Winter v. Natural Resources Defense Council, Inc., p. 7.

INTERNATIONAL SALES. See **Tariff Act of 1930.**

IV-PUSH METHOD OF DRUG ADMINISTRATION. See **Drug Labeling.**

JURY INSTRUCTIONS. See **Habeas Corpus,** 2, 3.

JURY TRIALS. See **Constitutional Law,** IV.

LABELING OF DRUGS. See **Drug Labeling.**

LABOR UNIONS. See **Constitutional Law,** II; III, 1.

LAND MANAGEMENT. See **Constitutional Law,** I.

LIMITATIONS PERIODS. See **Habeas Corpus,** 1.

MARINE MAMMALS AND SONAR. See **Injunctions.**

MID-FREQUENCY ACTIVE SONAR. See **Injunctions.**

MINIMUM PRISON TERM. See **Criminal Law,** 1.

MONUMENTS IN PUBLIC PARKS. See **Constitutional Law,** III, 2.

MURDER. See **Habeas Corpus,** 2.

NAVAL TRAINING EXERCISES. See **Injunctions.**

OHIO. See **Supreme Court,** 2.

PAYROLL DEDUCTIONS. See **Constitutional Law,** III, 1.

PENSION PLANS. See **Employee Retirement Income Security Act of 1974.**

PERSECUTOR BAR. See **Immigration and Nationality Act.**

PHENERGAN. See **Drug Labeling.**

PRE-EMPTION OF STATE LAW. See **Drug Labeling; Federal Cigarette Labeling and Advertising Act.**

PRELIMINARY INJUNCTIONS. See **Injunctions.**

PRICE-SQUEEZE CLAIMS. See **Antitrust Law.**

PUBLIC EMPLOYEE LABOR UNIONS. See **Constitutional Law,** II.

PUBLIC EMPLOYER AND EMPLOYEES. See **Constitutional Law,** III, 1.

PUBLIC PARKS. See **Constitutional Law,** III, 2.

QUALIFIED IMMUNITY. See **Immunity from Suit.**

REFUGEE STATUS. See **Immigration and Nationality Act.**

REMOVAL. See **Immigration and Nationality Act.**

RETAIL PRICE SETTING. See **Antitrust Law.**

RETALIATORY DISCRIMINATION. See **Civil Rights Act of 1964.**

RETIREMENT BENEFIT PLANS. See **Employee Retirement Income Security Act of 1974.**

RIGHT TO JURY TRIAL. See **Constitutional Law,** IV.

RIGHT TO WORK LAWS. See **Constitutional Law,** III, 1.

SEARCHES AND SEIZURES. See **Constitutional Law,** V.

SECTION 1983. See **Civil Rights Act of 1871.**

SENTENCING. See **Constitutional Law,** IV; **Criminal Law,** 4, 5.

SERVICE FEES. See **Constitutional Law,** II.

SEX DISCRIMINATION. See **Civil Rights Act of 1871,** 1; **Civil Rights Act of 1964.**

SHERMAN ACT. See **Antitrust Law.**

SIXTH AMENDMENT. See **Constitutional Law,** IV.

SONAR AND MARINE MAMMALS. See **Injunctions.**

STANDING TO SUE. See **Constitutional Law,** I.

STATUTES OF LIMITATIONS. See **Habeas Corpus,** 1.

STOP AND FRISK. See **Constitutional Law,** V, 2.

SUBMARINE THREAT. See **Injunctions.**

SUPREME COURT.

1. Presentation of Solicitor General, p. VII.

2. *Stay application—Temporary restraining order—Enforcement of Help America to Vote Act of 2002.*—Because respondent Ohio Republicans are not sufficiently likely to prevail on question whether private litigants may bring an action to enforce § 303 of Act to justify District Court's TRO directing petitioner Ohio secretary of state to update Ohio's Statewide Voter Registration Database to comply with § 303, state secretary of state's application for a stay is granted and TRO is vacated. Brunner v. Ohio Republican Party, p. 5.

TARIFF ACT OF 1930.

Foreign merchandise—Antidumping duties.—Where a domestic buyer's cash and an untracked, fungible commodity are exchanged with a foreign contractor for a substantially transformed version of same commodity, Commerce Department may reasonably treat transaction as sale of a good rather than a service under Act, which calls for "antidumping" duties on "foreign merchandise" sold in this country at "less than its fair value," 19 U. S. C. § 1673, but does not touch international sales of services. United States v. Eurodif S. A., p. 305.

TEMPORARY RESTRAINING ORDER. See **Supreme Court,** 2.

TIMBER SALVAGE. See **Constitutional Law,** I.

TITLE VII. See **Civil Rights Act of 1964.**

TITLE IX. See **Civil Rights Act of 1871,** 1.

TRAFFIC STOPS. See **Constitutional Law,** V, 2.

TRIAL BY JURY. See **Constitutional Law,** IV.

TRIBAL LAND. See **Indian Reorganization Act.**

UNIONS. See **Constitutional Law,** II; III, 1.

UNITED STATES SENTENCING GUIDELINES. See **Criminal Law,** 2, 4, 5.

UNLAWFUL SEARCHES. See **Constitutional Law,** V, 1.

VIOLENT FELONY. See **Criminal Law,** 1.

VOTER REGISTRATION. See **Supreme Court,** 2.

WASHINGTON. See **Habeas Corpus,** 2.

WHOLESALE PRICE SETTING. See **Antitrust Law.**

WORDS AND PHRASES.

1. "*A misdemeanor crime of domestic violence.*" Gun Control Act of 1968, 18 U. S. C. § 922(g)(9). United States v. Hayes, p. 415.

2. "*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.*" § 101, Immigration and Nationality Act, 8 U. S. C. § 1101(a)(42). Negusie v. Holder, p. 511.

3. "*Now under federal jurisdiction.*" Indian Reorganization Act, 25 U. S. C. § 479. Carcieri v. Salazar, p. 379.

4. "*Violent felony*"; "*[a] crime [that] involves conduct that presents a serious potential risk of physical injury to another.*" Armed Career Criminal Act, 18 U. S. C. §§ 924(e)(1), (e)(2)(b)(ii). Chambers v. United States, p. 122.