

(ORDER LIST: 558 U.S.)

MONDAY, JANUARY 11, 2010

ORDERS IN PENDING CASES

09M59 CLARK, JERVON R. V. BURTT, WARDEN

09M60 FILBRANDT, KIMBERLEE V. MI DEPT. OF HUMAN SERVICES

09M61 POLK, MANFRED V. DUNCKLE, TIM, ET AL.

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

09M62 P. S., ET AL. V. FRANKLIN CTY. CHILDREN SERVICES

The motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner is granted.

08-1301 CARR, THOMAS V. UNITED STATES

08-1457 NEW PROCESS STEEL, L.P. V. NLRB

The motions of petitioners to dispense with printing the joint appendixes are granted.

09-158 MAGWOOD, BILLY J. V. CULLIVER, WARDEN, ET AL.

The motion of petitioner to dispense with printing the joint appendix is granted. The motion of petitioner for leave to proceed *in forma pauperis* is granted. The motion of petitioner for appointment of counsel is granted. Jeffrey L. Fisher, Esquire, of Stanford, California, is appointed to serve as counsel for the petitioner in this case.

09-233 TRIPLE-S MANAGEMENT, ET AL. V. MUNICIPAL REVENUE COLLECTION

09-525 JANUS CAPITAL GROUP, ET AL. V. FIRST DERIVATIVE TRADERS

The Solicitor General is invited to file briefs in these

cases expressing the views of the United States.

09-6233 IN RE MARY L. CLUCK

09-6234 CLUCK, MARY L. V. WASHINGTON

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

09-6389 BERAS, ROBERTO V. CARVLIN, STEPHANIE M., ET AL.

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

09-6412 IN RE CHARLES W. ALPINE

09-6610 JOHNSON, JOHN C. V. SHINSEKI, SEC. OF VA

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

09-6682 HILL, RICHARD A. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until February 1, 2010, 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.

09-6692 STRUCK, JAMES T. V. COOK COUNTY PUBLIC GUARDIAN

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

09-7108 MUINO, CARLOS M. V. FL POWER & LIGHT CO., ET AL.

09-7275 JONES, DONALD G. V. SHAW GROUP, ET AL.

09-7294 SOLOMON, DONNA T. V. PIONEER ADULT REHAB.

09-7306 ASBURY, GEORGETTE R. V. ROANOKE, VA

The motions of petitioners for leave to proceed *in forma*

*pauperis* are denied. Petitioners are allowed until February 1, 2010, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI DENIED**

08-1462 YORK, MARGARET, ET AL. V. ROBINSON, RICHARD  
08-1571 COOLEY, STEVE, ET AL. V. ENG, DAVID  
08-10679 JOHNSON, DANIEL V. THALER, DIR., TX DCJ  
09-142 FIEGER, GEOFFREY N. V. SUPREME COURT OF MI, ET AL.  
09-194 GOMIS, FRANCOISE A. V. HOLDER, ATT'Y GEN.  
09-229 KHAN, ABDUL H., ET AL. V. HOLDER, ATT'Y GEN.  
09-239 ALLEN, JOSH A. V. MONTANA  
09-252 QUINN, JOHN G. V. ROACH, JOHN, ET AL.  
09-275 RODIS, RODEL E. V. SAN FRANCISCO, CA, ET AL.  
09-277 CT DEPT. OF PUBLIC UTILITY V. FERC  
09-306 ALLEN, CHRISTOPHER V. VIRGINIA  
09-346 MARTINEZ-MADERA, JUAN J. V. HOLDER, ATT'Y GEN.  
09-355 TREESH, MARK, ET AL. V. DIRECTTV, INC., ET AL.  
09-356 PAULSEN, THOMAS A., ET AL. V. CNF, INC., ET AL.  
09-358 LIU, MING WEI V. BD. OF TRUSTEES, ET AL.  
09-364 EDWARDS, DRALVES G. V. BLUE CROSS BLUE SHIELD OF TX  
09-370 LOVELY, WAYNE G. V. UNITED STATES  
09-384 OFFICE OF ALASKA GOVERNOR V. EEOC, ET AL.  
09-386 AMBRACO, INC., ET AL. V. M/V CLIPPER FAITH, ET AL.  
09-388 S & D TRADING ACADEMY, LLC V. AAFIS, INC.  
09-409 PALMER, PAUL T. V. WAXAHACHIE INDEP. SCH. DIST.  
09-417 MANIGAULT, CAROL, ET AL. V. KING, CHRISTOPHER, ET AL.  
09-453 CARTER, JOHN E. V. BURNS, JUDGE, ETC., ET AL.

09-457 O'BOYLE, CATHERINE, ET AL. V. BRAVERMAN, DAVID L., ET AL.  
09-459 MELFI, JOSEPH V. WMC MORTGAGE CORP., ET AL.  
09-460 MILWAUKEE DEPUTY SHERIFF'S ASS'N V. CLARKE, DAVID A., ET AL.  
09-468 BODENSTAB, PHILIP C. V. COOK COUNTY, IL, ET AL.  
09-469 COLONIAL LIFE & ACCIDENT INS. CO V. MEDLEY, MALCOLM S., ET AL.  
09-470 DANNER, DAVID E. V. BD. OF PROF'L RESPONSIBILITY  
09-472 SPANN, WANDA, ET VIR V. COBB COUNTY SUPERIOR COURT  
09-473 DYER, LIOUDMILA L. V. WAL-MART STORES, INC.  
09-474 DOROSHOW, JAY V. HARTFORD LIFE AND ACCIDENT INS.  
09-477 MARR, ELAINE S., ET AL. V. HUGHES, LARRY H., ET AL.  
09-482 HOLLADY, JASON V. MICHIGAN, ET AL.  
09-483 KONINKLIJKE BOSKALIS, ET AL. V. COMPANIA NAVIERA JOANNA, ET AL.  
09-485 GRISHAM, GEORGE V. BROOKS, SUPT., ALBION, ET AL.  
09-487 AR DAIRY COOPERATIVE, ET AL. V. DEPT. OF AGRICULTURE, ET AL.  
09-501 DANNER, DAVID E. V. COMM'N ON CONTINUING LEGAL ED.  
09-502 GIAMPA, VICTORIA V. GIAMPA, CHARLES  
09-503 HENSE, MICHAEL A. V. HENSE, YOKO  
09-505 480.00 ACRES OF LAND, ET AL. V. UNITED STATES  
09-506 CHILDREN'S FUND, ET AL. V. SPRINGFIELD HOLDING CO. LTD. LLC  
09-507 HARGIS INDUSTRIES INC. V. B&B HARDWARE, INC.  
09-509 JONES, JUDY V. BURDETTE, VIRGINIA A.  
09-511 SHEPHERD, HAROLD S. V. SHEPHERD, SUSAN H.  
09-515 WEISS, MICHAEL A. V. SPEER, STEVEN, ET AL.  
09-516 NW LA FISH & GAME PRESERVE V. UNITED STATES  
09-522 NOVAK, RICHARD, ET UX. V. JABLONSKI, TARA J.  
09-524 NITRO DISTRIBUTING, INC., ET AL. V. ALTICOR, INC., ET AL.  
09-528 BRIDGEPORT PORT AUTHORITY V. BRIDGEPORT & PORT JEFFERSON CO.  
09-535 PAPIERZ, GREGORY J. V. JACKSON, SCOTT, ET AL.

09-537 SMITH, CYNTHIA V. KENTUCKY  
09-540 EL-HEWIE, MOHAMED F. V. BERGEN COUNTY, NJ, ET AL.  
09-541 JAFARI, ROBERT B., ET AL. V. WYNN LAS VEGAS, LLC, ET AL.  
09-544 LOCK, VELMA V. GSA  
09-545 KEENAN, JAMES, ET UX. V. PYLE, ROSS, ET AL.  
09-546 JAMES, JULIAN, ET AL. V. HARRIS COUNTY, TX  
09-551 FRIEDLAND, ROBERT M. V. TIC, ET AL.  
09-554 ADAIR, NANCY M. V. McGUIREWOODS LLP, ET AL.  
09-562 SMITH, DAVID L. V. UNITED STATES, ET AL.  
09-566 BROWN, GERALD L. V. KONTEH, WARDEN  
09-572 DeOCAMPO, ALAN V. SUPERIOR COURT OF CA, ET AL.  
09-573 CUTTER, RALPH W. V. NORTHWEST ADMINISTRATORS, INC.  
09-576 CARTLEDGE, TOM V. OPM  
09-578 STARK, STEPHANIE V. MAINE  
09-591 PIZZONIA, DOMINICK V. UNITED STATES  
09-593 NORDBERG, PAUL C. V. OCEAN MEADOWS CONDO. ASS'N  
09-596 CARDIAC PACEMAKERS, INC., ET AL. V. ST. JUDE MEDICAL, ET AL.  
09-599 ALLEN, RE'LICKA D. V. TENNESSEE  
09-605 JOINT ADM. COMMITTEE, ET AL. V. WASHINGTON GROUP INT'L, INC.  
09-614 BABCOCK, CLAYTON L., ET AL. V. ARTHUR J. GALLAGHER & CO.  
09-616 RITCHIE, WAYNE V. UNITED STATES  
09-622 WILLAMAN, TERRANCE V. UNITED STATES  
09-624 O'DEA, MATT V. BNSF RAILWAY CO.  
09-634 SCHNEIDER, CHRISTIAN V. CIR  
09-645 ELLIS, DEBORAH, ET AL. V. MS DEPT. OF HEALTH, ET AL.  
09-648 MINCOFF, JAMES V. UNITED STATES  
09-5024 STEWART, CHARLES A. V. NEW YORK  
09-5123 LATCHIN, SAMI K. V. UNITED STATES

09-5195 JACQUEMAIN, PETER V. UNITED STATES  
09-5371 MCCARTHY, THOMAS M. V. VILSACK, SEC. OF AGRIC., ET AL.  
09-5426 SNELLENBERGER, MICHAEL L. V. UNITED STATES  
09-5556 WION, BARRY V. THALER, DIR., TX DCJ  
09-5659 MILLS, STEVIE A. V. CONNORS, MAJOR, ET AL.  
09-5994 LYONS, BRANDON A. V. UNITED STATES  
09-6043 SMITH, KELVIN L. V. UNITED STATES  
09-6083 PRYOR, HENDERSON R. V. WOLFE, ALAN M., ET AL.  
09-6085 THOMPSON, ANDERA V. UNITED STATES  
09-6213 KIRKLAND, KENNETH L. V. UNITED STATES  
09-6239 PATTERSON, PHILLIP E. V. GEORGIA  
09-6241 VADDE, SRINIVAS V. V. GEORGIA  
09-6394 HALE, ALONZO V. CALIFORNIA  
09-6465 BLALOCK, MARCUS V. WILSON, WARDEN  
09-6491 WILSON, DEVIN C. V. UNITED STATES  
09-6521 WHORLEY, DWIGHT E. V. UNITED STATES  
09-6549 THOMAS, HENRY L. V. McNEIL, SEC., FL DOC, ET AL.  
09-6659 SANCHEZ, ERIC V. UNITED STATES  
09-6673 BOWLING, RONNIE L. V. KENTUCKY  
09-6755 SKRZYPEK, JAMES, ET UX. V. UNITED STATES  
09-6834 THOMAS, KENNETH W. V. THALER, DIR., TX DCJ  
09-6925 POPE, TIMOTHY V. UNITED STATES  
09-7013 HUNT, ROBERT V. HOUSTON, DIR., NE DOC  
09-7031 LEMONS, IAN D. V. ATLANTIC CITY POLICE, ET AL.  
09-7033 SMITH, ZACHARY T. V. THALER, DIR., TX DCJ  
09-7047 STRONG, TERRELL V. DRAGOVICH, SUPT., CHESTER  
09-7048 RUSH, MICHAEL S. V. THALER, DIR., TX DCJ  
09-7051 GIBERSON, DONALD D. V. RYAN, DIR., AZ DOC, ET AL.

09-7054 HOWARD, ERNEST V. UPTON, WARDEN  
09-7056 GOOD, MICHAEL S. V. FLORIDA  
09-7057 TAYLOR, JIMMIE T. V. McNEIL, SEC., FL DOC  
09-7058 TULEY, MARY M. V. THALER, DIR., TX DCJ  
09-7063 TAYLOR, RICHMOND B. V. SAMPSON, BARBARA, ET AL.  
09-7082 WARE, CALVIN D. V. HARRY, WARDEN  
09-7086 CALDERON-LOPEZ, RICARDO J. V. PR CT. OF FIRST INSTANCE, ET AL.  
09-7087 BUNDRANT, CRAIG V. THALER, DIR., TX DCJ  
09-7088 SALERNO, DENNIS M. V. MICHIGAN  
09-7092 PINKSTON, SAMUEL L. V. INDIANA  
09-7096 LEMONS, SHANE D. V. CAIN, WARDEN  
09-7097 WILLIAMS, CHAUNCEY V. JABE, JOHN M., ET AL.  
09-7098 THOMAS, DANIELLE V. KNOWLES, WARDEN  
09-7102 DRAKE, JAMIASSEN E. V. CALIFORNIA  
09-7114 BOTTOMLEY, JAMES C. V. CATE, SEC., CA DOC  
09-7116 BYRD, KENYAWII J. V. THALER, DIR., TX DCJ  
09-7119 BUSSEY, KEVIN V. MARSHALL, SUPT., SING SING  
09-7121 ORSELLO, PAUL V. GAFFNEY, STEVEN, ET AL.  
09-7125 JACKSON, WILLIAM M. V. CALIFORNIA  
09-7130 COBBLE, DANIEL E. V. OWENS, COMM'R, GA DOC  
09-7134 MILLER, KENNETH D. V. RYAN, DIR., AZ DOC, ET AL.  
09-7136 DANIEL, JEFFRIE A. V. THALER, DIR., TX DCJ  
09-7140 ROBENSON, LOUIS V. McNEIL, SEC., FL DOC  
09-7141 REDD, REDELL V. LeBLANC, SEC., LA DOC, ET AL.  
09-7142 ROBINSON, SINCLAIR V. FLORIDA  
09-7144 SHARRIEFF, JIHAD A. V. RICCI, ASSOC. ADM'R, NJ, ET AL.  
09-7161 JONES, GREGORY V. ILLINOIS  
09-7165 ROJEM, RICHARD N. V. OKLAHOMA

09-7167 WALLS, WILLIAM V. CANNON, JUDGE, ETC.

09-7173 MONACELLI, KATHALINA V. TARGET STORES, ET AL.

09-7174 MONACELLI, KATHALINA V. ENTERPRISE LEASING CO., ET AL.

09-7175 MONACELLI, KATHALINA V. EDISON STATE COLLEGE, ET AL.

09-7191 HIGGINS, DAVID V. ILLINOIS

09-7197 MULVEY, PAT L. V. NAITO, RALPH K.

09-7199 BEAL, ROSEVELT V. LEVINE, VIRGINIA, ET AL.

09-7203 MILLER, ERNEST V. CALIFORNIA

09-7206 VIZCARRA, RUBEN V. CALIFORNIA

09-7218 AUSTIN, ALLAN V. McCANN, WARDEN

09-7219 MILLER, MARK W. V. PENNSYLVANIA

09-7225 CRUTCHFIELD, CARLTON V. FL DOC, ET AL.

09-7228 WOODS, DIMETRIOUS L. V. MISSOURI

09-7232 TIFFER, ROMAN V. WORKER'S COMPENSATION, ET AL.

09-7233 PAYNE, LOWELL N. V. TINSLEY, DEBBIE, ET AL.

09-7239 JEFFERS, DWIGHT W. V. MIZE, SUPT., PENDLETON

09-7244 WATKINS, JAMIL V. GEORGIA

09-7245 YENGLER, KERPER V. DiGUGLIELMO, SUPT., GRATERFORD

09-7247 WILLIAMS, GREGORY V. HOREL, WARDEN

09-7259 REDMAN, DEBORAH V. POTOMAC PLACE ASSOCIATES, LLC

09-7262 ROBERTS, ANTHONY V. JENKINS, WARDEN

09-7263 SANDERS, WILLIE J. V. FLORIDA

09-7264 STEPHENS, TROY D. V. CAIN, WARDEN

09-7265 SUTTON, DEMPSEY V. TEXAS

09-7267 TEAGLE, GERALD V. DiGUGLIELMO, SUPT., GRATERFORD

09-7268 PARKER, JOHN F. V. ALLEN, COMM'R, AL DOC

09-7270 RUST, FRANK V. SANDOR, WARDEN

09-7272 STEPHENS, DAVY G. V. BRANKER, WARDEN

09-7277 EPPS, HUGH R. V. WAGNER, ROBERT, ET AL.

09-7278 CAMILLO, EDWARD Z. V. SHINSEKI, SEC. OF VA

09-7279 CHRISTENSEN, DEREK B. V. NEVADA

09-7280 FARNSWORTH, PAUL V. McNEIL, LARRY, ET AL.

09-7283 MARTIN, ERIC V. LUOMA, WARDEN

09-7284 ST. AMANT, JESSIE V. LOUISIANA

09-7286 ROSSER, LARRY V. SCRIBNER, WARDEN

09-7287 STEWART, DEANTE D. V. CALIFORNIA

09-7291 WILLIAMS, CHAUNCEY V. VIRGINIA, ET AL.

09-7292 VALENZUELA, FERNANDO V. CALIFORNIA

09-7293 CREWS, THOMAS J. V. FLORIDA

09-7297 PRECIADO, THOMAS A. V. RUNNELS, WARDEN

09-7302 BRZOWSKI, WALTER J. V. TRISTANO, MICHAEL T., ET AL.

09-7305 JOHNS, RONNIE V. MI DOC, ET AL.

09-7308 YU, BING V. WASHINGTON

09-7309 WRIGHT, KAYLA R. V. GEORGIA

09-7311 DEL CASTELLO, EVE V. ALAMEDA CTY. TRANSIT PARKING

09-7313 GRONTKOWSKI, STANLEY V. McNEIL, SEC., FL DOC

09-7320 HAYGOOD, JOHNNY, ET UX. V. TILLEY, PHIL

09-7325 GADDY, GEBRONT M. V. UNITED STATES

09-7330 WELLS, LAMONT E. V. MICHIGAN

09-7333 JOHNSON, GEORGE I. V. SISTO, WARDEN

09-7338 WILLIAMS, MILTON C. V. JOHNSON, DIR., VA DOC

09-7347 ABBOTT, JOEL T. V. DeKALB, JACQUES A., ET AL.

09-7350 ENNIS, BRUCE M. V. McDANIEL, WARDEN, ET AL.

09-7352 DAVIS, RICHARD A. V. CALIFORNIA

09-7353 POWELL, CHRISTIANA M. V. CHICAGO HUMAN RIGHTS COMM'N

09-7354 ALEXANDER, TYRONE V. ILLINOIS

09-7357        SCHRADER, JANICE L. V. TURNER, ROBERT F., ET AL.  
09-7360        BUNCHE, GARY E. V. NORTH CAROLINA  
09-7363        STEPPE, BERNARD V. CALIFORNIA INSURANCE COMM'R  
09-7365        SMITH, ADRIAN V. BRIDGESTONE FIRESTONE, ET AL.  
09-7366        SMITH, LAWRENCE R. V. STRENGTH, SHERIFF, ET AL.  
09-7367        RICHARDSON, DONALD C. V. MICHIGAN STATE TREASURER  
09-7377        CRISOSTOMOS, PEDRO V. LAWLER, SUPT., HUNTINGDON  
09-7381        MILLER, JOHN A. V. ROCK HILL POLICE DEPT.  
09-7383        CHATMAN, LARRY V. ILLINOIS  
09-7388        GAW, TERRELL C. V. MISSOURI  
09-7390        HOUSTON, DON C. V. TEXAS  
09-7391        GUTZMORE, FITZROY G. V. UNITED STATES  
09-7392        HAMILTON, CONNIE W. V. FLORIDA, ET AL.  
09-7394        DIGGS, BRIAN V. STEVENSON, WARDEN  
09-7399        SUGGS, JOSEPH V. LINDAMOOD, WARDEN  
09-7400        MOORE, JAVAN V. JOHN DOE, ET AL.  
09-7402        KAZOUN, JAMIL V. KAZOUN, CHRISTINE  
09-7410        HYNES, DANIEL P. V. NEW HAMPSHIRE  
09-7412        McGRATH, ALVA Z. V. THALER, DIR., TX DCJ  
09-7413        LEWIS, NANCY V. BURGER KING  
09-7415        STRONG, JAMES L. V. PENNSYLVANIA  
09-7426        DAVIS, BRYAN V. CA WESTERN SCHOOL OF LAW, ET AL.  
09-7448        PENA, FERNANDO V. UNITED STATES  
09-7456        HAMMOND, JAMES W. V. KELLER, SEC., NC DOC, ET AL.  
09-7458        GARNTO, TERRY L. V. MEKUSKER, PATRICIA, ET AL.  
09-7468        DeNOMA, ANTHONY J. V. OHIO  
09-7469        COOK, ROBERT L. V. BEARD, SEC., PA DOC, ET AL.  
09-7483        NOWLIN, DARNELL V. HAMRICK, WARDEN

09-7484 VASQUEZ, DANIEL V. KIRKLAND, WARDEN  
09-7487 MENDOZA, CARLOS V. STEELE, WARDEN  
09-7488 AVILA, JOSEPH V. CALIFORNIA  
09-7490 WARFIELD, ANDREW W. V. GRAMS, WARDEN  
09-7504 H. R. V. ALAMEDA COUNTY SOCIAL SERVICES  
09-7507 ALLISON, ROBERT C. V. RYAN, DIR., AZ DOC, ET AL.  
09-7508 BACKUS, MICHAEL V. HARTLEY, WARDEN, ET AL.  
09-7513 BROWN, JAMES E. V. FLORIDA  
09-7520 BARBER, RICKY D. V. WALKER, WARDEN  
09-7523 WATSON, DOUGLAS B. V. UNITED STATES  
09-7539 BOCTOR, ANDY V. DEPT. OF VA  
09-7548 EMBRY, CARLTON V. UNITED STATES  
09-7556 MYRIECKES, ERIC L. V. UNITED STATES  
09-7563 DYKES, ERNEST E. V. CALIFORNIA  
09-7582 KARR, SHAWN P. V. ARIZONA  
09-7583 LINDSEY, JOEL G. V. GEORGIA  
09-7586 WATSON, JERRY V. MILYARD, WARDEN, ET AL.  
09-7601 SAYBOLT, JOHN V. UNITED STATES  
09-7605 ROBBINS, GERALD V. SMITH, WARDEN  
09-7613 QUENGA, JOSEPH V. LANIER, WARDEN, ET AL.  
09-7622 SPEARS, GREGORY V. McNEIL, SEC., FL DOC, ET AL.  
09-7626 SMITH, GIONE V. UNITED STATES  
09-7627 ROSS, JERMAINE K. V. UNITED STATES  
09-7630 CEDENO-PEREZ, JUAN V. UNITED STATES  
09-7632 CLINTON, DAMON V. DiGUGLIELMO, SUPT., GRATERFORD  
09-7635 PENA-HERNANDEZ, DAVID V. UNITED STATES  
09-7641 VILLAFRANCA-MENDEZ, JOSE A. V. UNITED STATES  
09-7642 WITHERSPOON, KAREN DENISE V. UNITED STATES

09-7645 LOPEZ-FRAUSTO, ROGELIO V. UNITED STATES  
09-7648 SOSA-GARCIA, JAVIER V. UNITED STATES  
09-7650 JOHNSON, COREY V. UNITED STATES  
09-7652 SMITH, MICHAEL J. V. UNITED STATES  
09-7656 CARMICHAEL, LEON V. UNITED STATES  
09-7662 WORKS, BARRY J. V. UNITED STATES  
09-7663 TRENKLER, ALFRED W. V. UNITED STATES  
09-7664 TILLERY, FREDERICK V. UNITED STATES  
09-7668 CHAPPELL, DUALA V. UNITED STATES  
09-7669 OSLEY, DEMOND L. V. UNITED STATES  
09-7671 PONCE-ALDONA, HECTOR M. V. UNITED STATES  
09-7675 SMALLS, FREDERICK V. UNITED STATES  
09-7676 STERNBERG, GERALD H. V. MICHIGAN STATE UNIV., ET AL.  
09-7679 ARMBRISTER, BARRY L. V. UNITED STATES  
09-7680 BROWN, QUENTIN L. V. USDC ND GA  
09-7681 BRIDGES, JASON F. V. UNITED STATES  
09-7682 ALDRIDGE, JAMES E., ET UX. V. UNITED STATES  
09-7684 DAVIS, ANTHONY L. V. UNITED STATES, ET AL.  
09-7687 WILK, KENNETH P. V. UNITED STATES  
09-7689 NELSON, BRIAN V. UNITED STATES  
09-7691 LEASURE, BILLY F. V. UNITED STATES  
09-7695 BANDA, ISSAC J. V. UNITED STATES  
09-7700 GOMEZ-GARCIA, EFRAIN V. UNITED STATES  
09-7703 GATLING, DONALD M. V. UNITED STATES  
09-7704 FLORES, MAX M. V. UNITED STATES  
09-7705 HEALD, BRUCE V. UNITED STATES  
09-7708 JIMENEZ, JUAN J. V. UNITED STATES  
09-7709 MATHEWS, RICHARD G. V. UNITED STATES

09-7710 KEITH, LAMONT E. V. UNITED STATES  
09-7712 MARTIN, THERESA L. V. UNITED STATES  
09-7713 MAXWELL, CHARLES P. V. IRS, ET AL.  
09-7715 PLATTE, JONATHAN V. UNITED STATES  
09-7716 PERKINS, HERBERT I. V. UNITED STATES  
09-7717 PURSLEY, CARL W. V. UNITED STATES  
09-7718 PAIGE, ERIC V. UNITED STATES  
09-7719 BAKER, ADAM T. V. UNITED STATES  
09-7720 BREault, JOHN V. UNITED STATES  
09-7721 BOWIE, HARDILL V. THURMER, WARDEN  
09-7723 PURYEAR, TONY L. V. UNITED STATES  
09-7726 TRUETTE, GREGORY V. UNITED STATES  
09-7727 TRULY, CLARK V. ROBERT, WARDEN  
09-7738 MUHAMMAD, SAEED A. V. UNITED STATES  
09-7739 SMITH, CORDELL L. V. UNITED STATES  
09-7743 HARRELL, ROBERT D. V. UNITED STATES  
09-7744 MONDRAGON, JOSE C. V. UNITED STATES  
09-7745 FLORES-SOTELO, TRINIDAD V. UNITED STATES  
09-7746 GARCIA-AGUILAR, GUILLERMO V. UNITED STATES  
09-7747 GARIBAY, LUIS E. V. UNITED STATES  
09-7748 HILL, WILLIE V. UNITED STATES  
09-7750 MURPHY, JOSEPH B. V. UNITED STATES  
09-7751 PADILLA, MARTIN V. UNITED STATES  
09-7752 LUGO, DANIEL V. UNITED STATES  
09-7755 SMITH, MARVIN V. UNITED STATES  
09-7756 ALCALA, JOSE M. V. UNITED STATES  
09-7762 MARTINEZ-TORRES, HECTOR R. V. UNITED STATES  
09-7765 JAMES, CLARENCE K. V. UNITED STATES

09-7766 LAUDERDALE, RONNIE V. UNITED STATES  
09-7771 UPSHAW, CLAYTON V. UNITED STATES  
09-7772 WARMAN, STEVEN E. V. UNITED STATES  
09-7775 CHATMAN, JERMAINE L. V. UNITED STATES  
09-7776 CIRILO-MUNOZ, ERNESTO V. UNITED STATES  
09-7779 LOPEZ-LOPEZ, BENJAMIN V. UNITED STATES  
09-7781 LOPEZ, ERIC V. UNITED STATES  
09-7782 WILKINS, ANTHONY M. V. UNITED STATES  
09-7783 RANDLE, GEORGE I. V. UNITED STATES  
09-7787 BURLEY, BENJAMIN V. UNITED STATES  
09-7788 BLAKE, LEEANDER J. V. UNITED STATES  
09-7792 ) TORRES, LEONARDO R. V. UNITED STATES  
 )  
09-7834 ) CALDERON, JOSE R. V. UNITED STATES  
09-7799 SWAIN, SEAN V. BARTLESON, BILL  
09-7803 FRANK, DARREN V. UNITED STATES  
09-7805 PAKALA, JOHN V. UNITED STATES  
09-7806 MILES, ROBYN V. UNITED STATES  
09-7807 ORR, RICHARD A. V. UNITED STATES  
09-7810 WILSON, DONALD V. UNITED STATES  
09-7812 PLUMMER, SHARNEL, ET AL. V. UNITED STATES  
09-7814 McCLELLON, ROBERT L. V. UNITED STATES  
09-7827 BROWN, DAVID V. UNITED STATES  
09-7828 BRANTLEY, MARK V. UNITED STATES  
09-7831 CARON, JESSE V. UNITED STATES  
09-7832 EVANS, DERRICK V. MITCHELL, WARDEN  
09-7841 WELCH, KENNETH V. UNITED STATES  
09-7847 SALDANA, FRANCISCO V. UNITED STATES  
09-7848 RODRIGUEZ-LAGUNA, LUIS V. UNITED STATES

09-7849 SANDOVAL, ROBERTO V. UNITED STATES  
09-7850 SALCIDO, LORENZO S. V. UNITED STATES  
09-7851 SMITH, RONALD L. V. UNITED STATES  
09-7852 RENE E. V. UNITED STATES  
09-7854 THIELEMANN, PAUL R. V. UNITED STATES  
09-7857 PLIEGO, REFUGIO G. V. UNITED STATES  
09-7859 CULLISON, JAMES V. UNITED STATES  
09-7861 ROBINSON, CHARLES R. V. UNITED STATES  
09-7864 PIRTLE, RONALD V. UNITED STATES  
09-7869 FOUNTAIN, LAVELLE V. UNITED STATES  
09-7871 GARCIA, PHILLIP A. V. UNITED STATES  
09-7872 HUTTINGER, BRICE V. UNITED STATES  
09-7875 FLUCKER, TANYA R. V. UNITED STATES  
09-7876 HOLMAN, MAURICE V. SHINSEKI, SEC. OF VA  
09-7881 McRAE, ANDRE V. UNITED STATES  
09-7886 WILSON, LEVI A. V. UNITED STATES  
09-7888 LE, THUY A. V. UNITED STATES  
09-7889 JUVENILE FEMALE V. UNITED STATES  
09-7898 STEVENS, DONALD L. V. UNITED STATES  
09-7899 QUINTANILLA, ETELVINA V. UNITED STATES  
09-7901 JOHNSON, HARVEY R. V. UNITED STATES  
09-7904 DAVIS, JARVIS A. V. UNITED STATES  
09-7906 OJEDA-ESTRADA, JUAN M. V. UNITED STATES  
09-7907 ESTES, JAMES E. V. UNITED STATES  
09-7911 CHISTENSEN, JAY C. V. UNITED STATES  
09-7913 WATFORD, MARLON L. V. UNITED STATES  
09-7919 BACA-QUIROZ, HECTOR V. UNITED STATES  
09-7926 ISOM, DERRICK V. UNITED STATES

09-7930 OLANDER, DAVID L. V. UNITED STATES  
09-7936 LEA, TRACEY V. UNITED STATES  
09-7942 BOYCE, BARRY A. V. UNITED STATES  
09-7943 BERRO, JAMAL S. V. UNITED STATES  
09-7944 AUGUSTINE-NERI, ANTONIO V. UNITED STATES  
09-7954 MEZA, ALFREDO V. UNITED STATES  
09-7957 MATTHEWS, BARRY L. V. UNITED STATES  
09-7958 GONZALEZ, LUIS A. V. UNITED STATES  
09-7962 WHEELER, AUDIE V. UNITED STATES  
09-7965 JOHNSON, DURICCO R. V. UNITED STATES  
09-7971 SHAW, JOBARD V. UNITED STATES  
09-7972 STONE, ADAM V. UNITED STATES  
09-7973 BELL, LEVON V. UNITED STATES  
09-7974 ALLEN, DEMORRIS T. V. UNITED STATES  
09-7975 ROSENBAUM, RICHARD M. V. UNITED STATES  
09-7980 TAYLOR, LEE V. UNITED STATES  
09-7983 TROGDON, CHARLES V. UNITED STATES

The petitions for writs of certiorari are denied.

09-264 CENTAURI SHIPPING LTD. V. WESTERN BULK CARRIERS KS, ET AL.

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

09-272 ATHENS DISPOSAL CO., INC. V. FRANCO, EDIXON

The motion of Pacific Legal Foundation, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

09-288 PUGET SOUND ENERGY, INC., ET AL. V. CALIFORNIA, ET AL.

The motion of Law Professors for leave to file a brief as

*amici curiae* is granted. The petition for a writ of certiorari is denied. The Chief Justice took no part in the consideration or decision of this motion and this petition.

09-335           ASTELLAS PHARMA, INC. V. LUPIN LIMITED, ET AL.

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

09-458           WEINSTOCK, AUDREY V. WALKER, JACK

09-471           FALCHENBERG, MARSHA V. NY DEPT. OF EDUCATION, ET AL.

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

09-481           SHEEHAN, MARTIN P. V. JACKSON, SCOTT L., ET AL.

The motion of Roger Schlossberg, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

09-494           CRAWFORD, JERRY, ET AL. V. TRW AUTOMOTIVE U.S. LLC

The motion of Maurice & Jane Sugar Law Center for Economic & Social Justice, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

09-500           DE GEORGE, YANET D. R. V. AMERICAN AIRLINES, INC., ET AL.

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

09-519           ALAMEIDA, WARDEN V. PHELPS, KEVIN

09-560           CARLSON, WARDEN V. BOBADILLA, ORLANDO M.

The motions of respondents for leave to proceed *in forma pauperis* are granted. The petitions for writs of certiorari

are denied.

09-589 NGHIEM, HOA T. V. DEPT. OF VA, ET AL.  
09-609 PITCHER, DOUGLAS V. UNITED STATES  
09-5852 NICHOLAS, KIRT V. MARSHALL, SUPT., SING SING  
09-6231 EL-HAGE, WADIH V. UNITED STATES

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

09-7023 KINNEL, ROLLY O. V. MCKUNE, WARDEN, ET AL.

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

09-7035 SANDERS, LAUNEIL V. McMASTER, HENRY, ET AL.

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

09-7043 ALMEYDA, RAFAEL V. TRAVIS, BRION D.

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

09-7060 ELINE, RICHARD V. LARA, T., ET AL.

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

09-7089 MABRY, TONY V. SCRIBNER, WARDEN, ET AL.

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

09-7112 JACKSON, TONY D. V. MINNESOTA

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

09-7143 SWEED, JAMES L. V. LNU, RANDELL, ET AL.

09-7147 MUNIZ, FRANK M. V. MARSHALL, WARDEN

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

09-7153 SMITH, JEFF V. TAYLOR, JUSTIN A., ET AL.

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

09-7186 LAU, HON C. V. SHUMSKY, RICHARD

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

09-7188 AGRON, BATYAH L. V. COLUMBIA UNIVERSITY

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

09-7220 PLUMMER, WILLIAM P. V. SULLIVAN, WARDEN

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

09-7266 PARKER, CHARLES H. V. LOUISIANA

09-7282 KARNOFEL, DELORES V. BECK, MARSHALL D., ET AL.

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

09-7307 ZANI, ROBERT J. V. SSA

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

09-7384 CLARK, RAYMOND V. CALIFORNIA

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

09-7418 LAU, HON V. HERNANDEZ, WARDEN, ET AL.

09-7419 LAU, HON V. EVANS, WARDEN

09-7423 WHITE, RICKEY V. WORKMAN, WARDEN

09-7436 SMITH, ROBERT P. V. CA DOC

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

09-7535 SILVA, EVERTS O. V. HOLDER, ATT'Y GEN.

09-7591 BLAKE, BARBARA V. POTTER, POSTMASTER GEN.

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

09-7667 MANTILLA, EDUARDO V. UNITED STATES

09-7673 MILLHOUSE, MATTHEW T. V. GRONDOLSKY, WARDEN

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

09-7702 GIORDANO, PHILIP A. V. UNITED STATES  
09-7732 OKUPE, ADEYINKA G. V. UNITED STATES  
09-7804 MEJIA-ZAPATA, ANTONIO V. UNITED STATES  
09-7816 MAIN, CHRISTOPHER V. UNITED STATES

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

#### HABEAS CORPUS DENIED

09-644 IN RE C. LYNN MOSES  
09-7836 IN RE RONALD N. TOTARO  
09-7960 IN RE DERRICK WILLIAMS  
09-8019 IN RE VINCENT M. SINGLETON

The petitions for writs of habeas corpus are denied.

09-7659 IN RE YOUNUS CHEKKOURI

The motion of petitioner to unseal pleadings before this Court is denied. The petition for a writ of habeas corpus is denied.

09-7961 IN RE THEODORE WAGNER

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

**MANDAMUS DENIED**

09-7561 IN RE SAINT TORRANCE  
09-7884 IN RE JACOB WASHINGTON

The petitions for writs of mandamus and/or prohibition are denied.

**REHEARINGS DENIED**

08-1263 WONG, WARDEN V. BELMONTES, FERNANDO  
08-10337 BISBY, JERRY L. V. CRITES, ASST. WARDEN, ET AL.  
08-10438 GONZALEZ, ANGELO V. SMITH, BLANDON, ET AL.  
08-10487 WIDNER, JAMES V. McNEIL, SEC., FL DOC  
08-10510 HARPER, DARRELL J. V. SOUTHERN STAR CONCRETE  
08-10625 KIM, GWANJUN V. DEPT. OF LABOR, ET AL.  
08-10693 CANDIA, DELIO J. V. UNITED STATES  
08-10833 BENHAM, DANIEL D. V. UNITED STATES  
08-11142 BURKE, ROBERT V. UNITED STATES  
09-120 T. G. V. KY CABINET FOR HEALTH & FAMILY  
09-202 WARD, JOSEPH M. V. TRANS UNION, LLC  
09-283 REEVES, ROGER V. DSI SECURITY SERVICES, ET AL.  
09-334 HEIMERMANN, SCOTT A. V. McCAUGHTRY, GARY R., ET AL.  
09-407 ABREU-VELEZ, ANA M. V. BD. OF REGENTS, ET AL.  
09-413 HUSBAND, JIMMY R. V. UNITED STATES  
09-433 WILLS, KENNETH B. V. POTTER, POSTMASTER GEN.  
09-5023 MAXWELL, ROBERT T. V. ARKANSAS  
09-5043 HOVIND, KENT E. V. UNITED STATES  
09-5053 GRUFF, JOHN A. V. WILSON, WARDEN, ET AL.  
09-5068 HALLFORD, GARY V. CALIFORNIA  
09-5089 GATEWOOD, KENNARD V. OUTLAW, WARDEN  
09-5187 HOFFMAN, HEATHER V. LINCOLN GENERAL INS., ET AL.

09-5293 LETIZIA, SALVATORE V. NEW YORK  
09-5306 LACHIRA, MINERVA V. SUTTON, STANFORD  
09-5308 IN RE STEVIE W. JOHNSON  
09-5346 POTTER, JOSEPH V. SOUTH COAST PLUMBING, ET AL.  
09-5368 SCOTT, CURTIS V. HICKMAN, WARDEN  
09-5475 CORDELL, ROGER D. V. SABOL, WARDEN, ET AL.  
09-5493 ROGERS, DARRICK C. V. THALER, DIR., TX DCJ  
09-5545 GHARB, SAMY V. UNITRONICS, ET AL.  
09-5594 MYERS, JESSE V. V. ENNIS INDEP. SCH. DIST.  
09-5647 HUGHES, JOHN E. V. UNITED STATES  
09-5693 MOORE, CARLOS V. McNEIL, SEC., FL DOC, ET AL.  
09-5701 McFARLAND, KELLEY A. V. THALER, DIR., TX DCJ  
09-5719 IN RE FLORENTINO C. BOJONQUEZ  
09-5746 BARBOUR, OTTO V. UNITED STATES  
09-5756 PHILLIPS, JACQUELINE A. M. V. DISTRICT OF COLUMBIA, ET AL.  
09-5825 TORRENCE, THOMAS J. V. OZMINT, DIR., SC DOC  
09-5831 JORDAN, MICHAEL B. V. UNITED STATES  
09-5843 LYLES, RONNIE M. V. LEMMON, MARY ANN V., ET AL.  
09-5872 PEOPLES, TIMOTHY V. WILLIAMS, BARBARA J., ET AL.  
09-5880 IN RE WALTER H. COPPAGE  
09-5925 LINTON, IVAN E. V. HOLDER, ATT'Y GEN.  
09-5960 LONG, GEORGE A, ET AL. V. WOOD MIZER PRODUCTS INC.  
09-5988 WARMAN, STEVEN E. V. MARBERRY, WARDEN, ET AL.  
09-6010 GURNSEY, JOSEPH L. V. CALIFORNIA, ET AL.  
09-6064 FAN, ANGELA V. ROE, CHARLES R.  
09-6068 CUTAIA, THOMAS J. V. FLORIDA  
09-6124 HOFFMAN, JESSE V. UNITED STATES  
09-6135 CAIN, STANFORD V. JOHNSON, DIR., VA DOC

09-6166 JUDD, KEITH R. V. NEW MEXICO  
09-6270 DAVIS, BRYAN V. KNOWLES, M., ET AL.  
09-6282 DERRICKSON, RODNEY V. DIST. ATT'Y OF DELAWARE CTY.  
09-6328 YEAGER, F. JOE V. SAN DIEGO, CA, ET AL.  
09-6414 IN RE ARMANDO RAMIREZ  
09-6437 YODER, GARY V. BREWER, GOV. OF AZ, ET AL.  
09-6469 DANIEL, CHARLES V. SCOTT, STEVEN, ET AL.  
09-6487 JONES, WILLIE H. V. UNITED STATES  
09-6512 SMITH, JAMES E. V. WEBER, WARDEN  
09-6542 MONACELLI, KATHALINA V. LEE CTY. EDU. ASSN., ET AL.  
09-6543 MONACELLI, KATHALINA V. HEARTLAND ED. CONSORTIUM, ET AL.  
09-6562 ELIZARES, CALVIN V. THOMAS, WARDEN, ET AL.  
09-6563 MONACELLI, KATHALINA V. HEARTLAND ED. CONSORTIUM, ET AL.  
09-6572 WHEELER, THERESA V. MILLER, COURTNEY  
09-6584 BOWMAN, MELVIN V. COLORADO  
09-6601 TROTTER, ADAM V. GATES, SEC. OF DEFENSE  
09-6677 IN RE JOHN F. WARREN, JR.  
09-6804 HAMANI, WALI V. UNITED STATES  
09-7005 WISE, GARY V. FLOYD, JUDGE, USDC SC, ET AL.  
09-7036 KARIM-PANAHI, PARVIZ V. UNITED STATES  
09-7137 NELSON, MILTON A. V. UNITED STATES

The petitions for rehearing are denied.

08-11058 SAMAS, ROCKY V. UNITED STATES  
09-312 GREENE, CLIFF V. HANOVER DIRECT, INC., ET AL.  
09-424 PANNELL, DERREK V. UNITED STATES  
09-5726 PEACE, JAMES V. ASTRUE, COMM'R, SOCIAL SEC.

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

petitions.

08-10112 CURTIS, ROBERT V. OREGON

09-5922 CURTIS, ROBERT V. UNITED STATES

The motions for leave to file petitions for rehearing are denied.

**ATTORNEY DISCIPLINE**

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

Leo P. DeMarco, II, of Malden, Massachusetts, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys permitted to the practice of law before this Court. The Rule to Show Cause, issued on November 30, 2009, is discharged.

Per Curiam

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

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No. 08–559

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E. K. MCDANIEL, WARDEN, ET AL., PETITIONERS *v.*  
TROY BROWN

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

[January 11, 2010]

PER CURIAM.

In *Jackson v. Virginia*, 443 U. S. 307 (1979), we held that a state prisoner is entitled to habeas corpus relief if a federal judge finds that “upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.” *Id.*, at 324. A Nevada jury convicted respondent of rape; the evidence presented included DNA evidence matching respondent’s DNA profile. Nevertheless, relying upon a report prepared by a DNA expert over 11 years after the trial, the Federal District Court applied the *Jackson* standard and granted the writ. A divided Court of Appeals affirmed. *Brown v. Farwell*, 525 F. 3d 787 (CA9 2008). We granted certiorari to consider whether those courts misapplied *Jackson*. Because the trial record includes both the DNA evidence and other convincing evidence of guilt, we conclude that they clearly did.

I

Around 1 a.m. on January 29, 1994, 9-year-old Jane Doe was brutally raped in the bedroom of her trailer. Respondent Troy Brown was convicted of the crime. During and

Per Curiam

since his trial, respondent has steadfastly maintained his innocence.<sup>1</sup> He was, however, admittedly intoxicated when the crime occurred, and after he awoke on the following morning he told a friend “he wished that he could remember what did go on or what went on.” App. 309.

Troy and his brother Travis resided near Jane Doe in the same trailer park. Their brother Trent and his wife Raquel lived in the park as well, in a trailer across the street from Jane Doe’s. Both Troy and Trent were acquainted with Jane Doe’s family; Troy had visited Jane Doe’s trailer several times. Jane did not know Travis. The evening of the attack, Jane’s mother, Pam, took Jane to Raquel and Trent’s trailer to babysit while the three adults went out for about an hour. Raquel and Trent returned at about 7:30 p.m. and took Jane home at about 9:30 p.m. Pam stayed out and ended up drinking and playing pool with Troy at a nearby bar called the Peacock Lounge. Troy knew that Jane and her 4-year-old sister were home alone because he answered the phone at the bar when Jane called for her mother earlier that evening.

Troy consumed at least 10 shots of vodka followed by beer chasers, and was so drunk that he vomited on himself while he was walking home after leaving the Peacock at about 12:15 a.m. Jane called her mother to report the rape at approximately 1 a.m. Although it would have taken a sober man less than 15 minutes to walk home, Troy did not arrive at his trailer until about 1:30 a.m. He was wearing dark jeans, a cowboy hat, a black satin jacket, and boots. Two witnesses saw a man dressed in dark jeans, a cowboy hat, and a black satin jacket stum-

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<sup>1</sup>He denied involvement when a police officer claimed (wrongly) that the police had found his fingerprints in Jane’s bedroom, and he even denied involvement when the sentencing judge told him that acceptance of responsibility would garner him leniency.

## Per Curiam

bling in the road between the two trailers shortly after 1 a.m.

The bedroom where the rape occurred was dark, and Jane was unable to conclusively identify her assailant. When asked whom he reminded her of, she mentioned both Troy and his brother Trent. Several days after the rape, she identified a man she saw on television (Troy) as her assailant but then stated that the man who had sent flowers attacked her. It was Trent and Raquel who had sent her flowers, not Troy. She was unable to identify Troy as her assailant out of a photo lineup, and she could not identify her assailant at trial. The night of the rape, however, she said her attacker was wearing dark jeans, a black jacket with a zipper, boots, and a watch. She also vividly remembered that the man “stunk real, real bad” of “cologne, or some beer or puke or something.” *Id.*, at 172–173.

Some evidence besides Jane’s inconsistent identification did not inculcate Troy. Jane testified that she thought she had bitten her assailant, but Troy did not have any bite marks on his hands when examined by a police officer approximately four hours after the attack. Jane stated that her assailant’s jacket had a zipper (Troy’s did not) and that he wore a watch (Troy claimed he did not). Additionally, there was conflicting testimony as to when Troy left the Peacock and when Pam received Jane’s call reporting the rape. The witnesses who saw a man stumbling between the two trailers reported a bright green logo on the back of the jacket, but Troy’s jacket had a yellow and orange logo. Finally, because Jane thought she had left a night light on when she went to bed, the police suspected the assailant had turned off the light. The only usable fingerprint taken from the light did not match Troy’s and the police did not find Troy’s fingerprints in the trailer.

Other physical evidence, however, pointed to Troy. The police recovered semen from Jane’s underwear and from

## Per Curiam

the rape kit. The State's expert, Renee Romero, tested the former and determined that the DNA matched Troy's and that the probability another person from the general population would share the same DNA (the "random match probability") was only 1 in 3,000,000. Troy's counsel did not call his own DNA expert at trial, although he consulted with an expert in advance who found no problems with Romero's test procedures. At some time before sentencing, Troy's family had additional DNA testing done. That testing showed semen taken from the rape kit matched Troy's DNA, with a random match probability of 1 in 10,000.

The jury found Troy guilty of sexual assault and sentenced him to life with the possibility of parole after 10 years.<sup>2</sup> On direct appeal, the Nevada Supreme Court considered Troy's claim that his conviction was not supported by sufficient evidence, analyzing "whether the jury, acting reasonably, could have been convinced of [Troy's] guilt beyond a reasonable doubt." *Brown v. Nevada*, 113 Nev. 275, 285, 934 P. 2d 235, 241 (1997) (*per curiam*). The court rejected the claim, summarizing the evidence of guilt as follows:

"Testimony indicated that Troy left the bar around

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<sup>2</sup>Under Nevada law at the time of the trial, the jury, rather than the judge, imposed the sentence for a sexual assault crime if it found the assault resulted in substantial bodily harm. Nev. Rev. Stat. Ann. §200.366(3) (Michie 1992). For an assault resulting in substantial bodily harm, the jury had the option of sentencing Troy to life without the possibility of parole or to life with eligibility for parole after 10 years. §200.366(2)(a). The jury elected the more lenient sentence. The judge sentenced Troy to life with the possibility of parole after 10 years on a second count of sexual assault, to run consecutively. The Nevada Supreme Court reversed Troy's conviction for one count of child abuse on double jeopardy grounds, and ordered resentencing on the second sexual assault count. *Brown v. Nevada*, 113 Nev. 275, 934 P. 2d 235 (1997) (*per curiam*). On resentencing, the judge imposed the same sentence as before.

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12:15 a.m., that Troy lived relatively close to the bar, and that Troy lived very close to Jane Doe. Troy had enough time to get from the bar to Jane Doe's house and to assault Jane Doe before she made the telephone call to her mother at approximately 1:00 a.m. While Jane Doe could not identify her assailant, her description of his clothing was similar to what Troy was wearing; she also said that her assailant smelled like beer or vomit and testimony indicated that Troy had been drinking beer and had vomited several times that night. Furthermore, testimony indicated that Troy got home at approximately 1:30 a.m., which gave him enough time to assault Jane Doe. Additionally, [witnesses] testified that they saw someone resembling Troy in a black jacket and black hat stumbling in the road near Jane Doe's house at 1:05 a.m. Troy also washed his pants and shirt when he got home, arguably to remove the blood evidence from his clothes. Finally, the DNA evidence indicated that semen collected from Jane Doe's underwear matched Troy's and that only 1 in 3,000,000 other people had matching DNA (the second DNA test indicated that 1 in 10,000 people had matching DNA)." *Ibid.*, 934 P. 2d, at 241–242.

Respondent also argued on appeal that the trial court erred in failing to conduct a pretrial hearing to determine whether the DNA evidence was reliable. The court found respondent had not raised this issue in the trial court and concluded there was no plain error in the trial court's failure to conduct a hearing. *Id.*, at 284, 934 P. 2d, at 241.

In 2001, respondent sought state postconviction relief, claiming, *inter alia*, that his trial counsel was constitutionally ineffective for failing to object to the admission of the DNA evidence. He argued that there were a number of foundational problems with the DNA evidence, and that

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if trial counsel had objected, the evidence would have been excluded or at least its importance diminished. He noted that because trial counsel “totally failed to challenge the DNA evidence in the case,” counsel “failed to preserve valid issues for appeal.” App. 1101. The state postconviction court denied relief, *id.*, at 1489–1499, and the Nevada Supreme Court affirmed, *id.*, at 1500–1506.

Respondent thereafter filed this federal habeas petition, claiming there was insufficient evidence to convict him on the sexual assault charges and that the Nevada Supreme Court’s rejection of his claim was both contrary to, and an unreasonable application of, *Jackson*. He did not bring a typical *Jackson* claim, however. Rather than argue that the totality of the evidence admitted against him at trial was constitutionally insufficient, he argued that some of the evidence should be excluded from the *Jackson* analysis. In particular, he argued that Romero’s testimony related to the DNA evidence was inaccurate and unreliable in two primary respects: Romero mischaracterized the random match probability and misstated the probability of a DNA match among his brothers. Absent that testimony, he contended, there was insufficient evidence to convict him.

In support of his claim regarding the accuracy of Romero’s testimony, respondent submitted a report prepared by Laurence Mueller, a professor in ecology and evolutionary biology (Mueller Report). The District Court supplemented the record with the Mueller Report, even though it was not presented to any state court, because “the thesis of the report was argued during post-conviction.” *Brown v. Farwell*, No. 3:03-cv-00712-PMP-VPC, 2006 WL 6181129, \*5, n. 2 (Nev., Dec. 14, 2006).

Relying upon the Mueller Report, the District Court set aside the “unreliable DNA testimony” and held that without the DNA evidence “a reasonable doubt would exist in the mind of any rational trier of fact.” *Id.*, at \*7. The

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court granted respondent habeas relief on his *Jackson* claim.<sup>3</sup>

The Ninth Circuit affirmed. 525 F. 3d 787. The court held the Nevada Supreme Court had unreasonably applied *Jackson*. 525 F. 3d, at 798; see 28 U. S. C. §2254(d)(1). The Court of Appeals first reasoned “the admission of Romero’s unreliable and misleading testimony violated Troy’s due process rights,” so the District Court was correct to exclude it. 525 F. 3d, at 797. It then “weighed the sufficiency of the remaining evidence,” including the District Court’s “catalogu[e] [of] the numerous inconsistencies that would raise a reasonable doubt as to Troy’s guilt in the mind of any rational juror.” *Ibid.* In light of the “stark” conflicts in the evidence and the State’s concession that there was insufficient evidence absent the DNA evidence, the court held it was objectively unreasonable for the Nevada Supreme Court to reject respondent’s insufficiency-of-the-evidence claim. *Id.*, at 798.

We granted certiorari, 555 U. S. \_\_\_\_ (2009), to consider two questions: the proper standard of review for a *Jackson* claim on federal habeas, and whether such a claim may rely upon evidence outside the trial record that goes to the reliability of trial evidence.

## II

Respondent’s claim has now crystallized into a claim about the import of two specific inaccuracies in the testimony related to the DNA evidence, as indicated by the Mueller Report. The Mueller Report does not challenge

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<sup>3</sup>The District Court also granted habeas relief on respondent’s claim that he was denied effective assistance of counsel with respect to his attorney’s handling of the DNA evidence and failure to adequately investigate the victim’s stepfather as an alternative suspect. *Brown v. Farwell*, No. 3:03-cv-00712-PMP-VPC, 2006 WL 6181129, \*9-\*10 (Nev., Dec. 14, 2006). The Court of Appeals did not consider those claims on appeal and they are not now before us.

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Romero’s qualifications as an expert or the validity of any of the tests that she performed. Mueller instead contends that Romero committed the so-called “prosecutor’s fallacy” and that she underestimated the probability of a DNA match between respondent and one of his brothers.

The prosecutor’s fallacy is the assumption that the random match probability is the same as the probability that the defendant was not the source of the DNA sample. See Nat. Research Council, Comm. on DNA Forensic Science, *The Evaluation of Forensic DNA Evidence* 133 (1996) (“Let P equal the probability of a match, given the evidence genotype. The fallacy is to say that P is also the probability that the DNA at the crime scene came from someone other than the defendant”). In other words, if a juror is told the probability a member of the general population would share the same DNA is 1 in 10,000 (random match probability), and he takes that to mean there is only a 1 in 10,000 chance that someone other than the defendant is the source of the DNA found at the crime scene (source probability), then he has succumbed to the prosecutor’s fallacy. It is further error to equate source probability with probability of guilt, unless there is no explanation other than guilt for a person to be the source of crime-scene DNA. This faulty reasoning may result in an erroneous statement that, based on a random match probability of 1 in 10,000, there is a .01% chance the defendant is innocent or a 99.99% chance the defendant is guilty.

The Mueller Report does not dispute Romero’s opinion that only 1 in 3,000,000 people would have the same DNA profile as the rapist. Mueller correctly points out, however, that some of Romero’s testimony—as well as the prosecutor’s argument—suggested that the evidence also established that there was only a .000033% chance that respondent was innocent. The State concedes as much. Brief for Petitioners 54. For example, the prosecutor

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argued at closing the jury could be “99.999967 percent sure” in this case. App. 730. And when the prosecutor asked Romero, in a classic example of erroneously equating source probability with random match probability, whether “it [would] be fair to say . . . that the chances that the DNA found in the panties—the semen in the panties—and the blood sample, the likelihood that it is not Troy Brown would be .000033,” *id.*, at 460, Romero ultimately agreed that it was “not inaccurate” to state it that way, *id.*, at 461–462.

Looking at Romero’s testimony as a whole, though, she also indicated that she was merely accepting the mathematical equivalence between 1 in 3,000,000 and the percentage figure. At the end of the colloquy about percentages, she answered affirmatively the court’s question whether the percentage was “the same math just expressed differently.” *Id.*, at 462. She pointed out that the probability a brother would match was greater than the random match probability, which also indicated to the jury that the random match probability is not the same as the likelihood that someone other than Troy was the source of the DNA.

The Mueller Report identifies a second error in Romero’s testimony: her estimate of the probability that one or more of Troy’s brothers’ DNA would match. Romero testified there was a 1 in 6,500 (or .02%) probability that one brother would share the same DNA with another. *Id.*, at 469, 472. When asked whether “that change[s] at all with two brothers,” she answered no. *Id.*, at 472. According to Mueller, Romero’s analysis was misleading in two respects. First, she used an assumption regarding the parents under which siblings have the lowest chance of matching that is biologically possible, but even under this stingy assumption she reported the chance of two brothers matching (1 in 6,500) as much lower than it is (1 in 1,024 under her assumption). Second, using the assumptions

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Mueller finds more appropriate, the probability of a single sibling matching respondent is 1 in 263, the probability that among two brothers one or more would match is 1 in 132, and among four brothers it is 1 in 66. *Id.*, at 1583.

In sum, the two inaccuracies upon which this case turns are testimony equating random match probability with source probability, and an underestimate of the likelihood that one of Troy's brothers would also match the DNA left at the scene.

### III

Although we granted certiorari to review respondent's *Jackson* claim, the parties now agree that the Court of Appeals' resolution of his claim under *Jackson* was in error. See Brief for Respondent 2–3; Reply Brief for Petitioners 1. Indeed, respondent argues the Court of Appeals did not decide his case under *Jackson* at all, but instead resolved the question whether admission of Romero's inaccurate testimony rendered his trial fundamentally unfair and then applied *Jackson* to determine whether that error was harmless.

Although both petitioners and respondent are now aligned on the same side of the questions presented for our review, the case is not moot because “the parties continue to seek different relief” from this Court. *Pacific Bell Telephone Co. v. linkLine Communications, Inc.*, 555 U. S. \_\_\_, \_\_\_ (2009) (slip op., at 6). Respondent primarily argues that we affirm on his proposed alternative ground or remand to the Ninth Circuit for analysis of his due process claim under the standard for harmless error of *Brecht v. Abrahamson*, 507 U. S. 619 (1993). The State, on the other hand, asks us to reverse. Respondent and one *amicus* have also suggested that we dismiss the case as improvidently granted, Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 27–28, but we think prudential concerns favor our review of the Court

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of Appeals' application of *Jackson*. Cf. *Pacific Bell, supra*, at \_\_\_\_ (slip op., at 7).

Respondent no longer argues it was proper for the District Court to admit the Mueller Report for the purpose of evaluating his *Jackson* claim, Brief for Respondent 35, and concedes the “purpose of a *Jackson* analysis is to determine whether the jury acted in a rational manner in returning a guilty verdict based on the evidence before it, not whether improper evidence violated due process,” *id.*, at 2. There has been no suggestion that the evidence adduced at trial was insufficient to convict unless some of it was excluded. Respondent's concession thus disposes of his *Jackson* claim. The concession is also clearly correct. An “appellate court's reversal for insufficiency of the evidence is in effect a determination that the government's case against the defendant was so lacking that the trial court should have entered a judgment of acquittal.” *Lockhart v. Nelson*, 488 U. S. 33, 39 (1988). Because reversal for insufficiency of the evidence is equivalent to a judgment of acquittal, such a reversal bars a retrial. See *Burks v. United States*, 437 U. S. 1, 18 (1978). To “make the analogy complete” between a reversal for insufficiency of the evidence and the trial court's granting a judgment of acquittal, *Lockhart*, 488 U. S., at 42, “a reviewing court must consider all of the evidence admitted by the trial court,” regardless whether that evidence was admitted erroneously, *id.*, at 41.

Respondent therefore correctly concedes that a reviewing court must consider all of the evidence admitted at trial when considering a *Jackson* claim. Even if we set that concession aside, however, and assume that the Court of Appeals could have considered the Mueller Report in the context of a *Jackson* claim, the court made an egregious error in concluding the Nevada Supreme Court's rejection of respondent's insufficiency-of-the-evidence claim “involved an unreasonable application of . . . clearly

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established Federal law,” 28 U. S. C. §2254(d)(1).<sup>4</sup>

Even if the Court of Appeals could have considered it, the Mueller Report provided no warrant for entirely excluding the DNA evidence or Romero’s testimony from that court’s consideration. The Report did not contest that the DNA evidence matched Troy. That DNA evidence remains powerful inculpatory evidence even though the State concedes Romero overstated its probative value by failing to dispel the prosecutor’s fallacy. And Mueller’s claim that Romero used faulty assumptions and underestimated the probability of a DNA match between brothers indicates that two experts do not agree with one another, not that Romero’s estimates were unreliable.<sup>5</sup>

Mueller’s opinion that “the chance that among four brothers one or more would match is 1 in 66,” App. 1583, is substantially different from Romero’s estimate of a 1 in 6,500 chance that one brother would match. But even if Romero’s estimate is wrong, our confidence in the jury verdict is not undermined. First, the estimate that is more pertinent to this case is 1 in 132—the probability of a

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<sup>4</sup>The Court of Appeals also clearly erred in concluding the Nevada Supreme Court’s decision was “contrary to” *Jackson*. The Court of Appeals held the Nevada Supreme Court’s decision was “contrary to” *Jackson* because the Nevada court stated a standard that turns on a “reasonable” jury, not a “rational” one, and that assesses whether the jury could have been convinced of a defendant’s guilt, rather than whether it could have been convinced of each element of the crime. *Brown v. Farwell*, 525 F. 3d 787, 794–795 (CA9 2008). It is of little moment that the Nevada Supreme Court analyzed whether a “reasonable” jury could be convinced of guilt beyond a reasonable doubt, rather than asking whether a “rational” one could be convinced of each element of guilt; a *reasonable* jury could hardly be convinced of guilt unless it found each element satisfied beyond a reasonable doubt.

<sup>5</sup>The State has called our attention to cases in which courts have criticized opinions rendered by Professor Mueller in the past. See Brief for Petitioners 53–54. We need not pass on the relative credibility of the two experts because even assuming that Mueller’s estimate is correct, respondent’s claim fails.

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match among two brothers—because two of Troy’s four brothers lived in Utah. Second, although Jane Doe mentioned Trent as her assailant, and Travis lived in a nearby trailer, the evidence indicates that both (unlike Troy) were sober and went to bed early on the night of the crime. Even under Mueller’s odds, a rational jury could consider the DNA evidence to be powerful evidence of guilt.

Furthermore, the Court of Appeals’ discussion of the non-DNA evidence departed from the deferential review that *Jackson* and §2254(d)(1) demand. A federal habeas court can only set aside a state-court decision as “an unreasonable application of . . . clearly established Federal law,” §2254(d)(1), if the state court’s application of that law is “objectively unreasonable,” *Williams v. Taylor*, 529 U. S. 362, 409 (2000). And *Jackson* requires a reviewing court to review the evidence “in the light most favorable to the prosecution.” 443 U. S., at 319. Expressed more fully, this means a reviewing court “faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.” *Id.*, at 326; see also *Schlup v. Delo*, 513 U. S. 298, 330 (1995) (“The *Jackson* standard . . . looks to whether there is sufficient evidence which, if credited, could support the conviction”). The Court of Appeals acknowledged that it must review the evidence in the light most favorable to the prosecution, but the court’s recitation of inconsistencies in the testimony shows it failed to do that.

For example, the court highlights conflicting testimony regarding when Troy left the Peacock. 525 F. 3d, at 797. It is true that if a juror were to accept the testimony of one bartender that Troy left the bar at 1:30 a.m., then Troy would have left the bar after the attack occurred. Yet the jury could have credited a different bartender’s testimony that Troy left the Peacock at around 12:15 a.m. Resolving

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the conflict in favor of the prosecution, the jury must have found that Troy left the bar in time to be the assailant. It is undisputed that Troy washed his clothes immediately upon returning home. The court notes this is “plausibly consistent with him being the assailant” but also that he provided an alternative reason for washing his clothes. *Ibid.* Viewed in the light most favorable to the prosecution, the evidence supports an inference that Troy washed the clothes immediately to clean blood from them.

To be sure, the court’s *Jackson* analysis relied substantially upon a concession made by the State in state post-conviction proceedings that “absent the DNA findings, there was insufficient evidence to convict [Troy] of the crime.” App. 1180. But that concession posited a situation in which there was no DNA evidence at all,<sup>6</sup> not a situation in which some pieces of testimony regarding the DNA evidence were called into question. In sum, the Court of Appeals’ analysis failed to preserve “the factfinder’s role as weigher of the evidence” by reviewing “*all of the evidence . . . in the light most favorable to the prosecution,*” *Jackson, supra*, at 319, and it further erred in finding that the Nevada Supreme Court’s resolution of the *Jackson* claim was objectively unreasonable.

#### IV

Resolution of the *Jackson* claim does not end our consideration of this case because respondent asks us to affirm on an alternative ground. He contends the two errors “in describing the statistical meaning” of the DNA evidence rendered his trial fundamentally unfair and denied him

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<sup>6</sup>The concession was made in the context of proceedings in which respondent argued that competent counsel would have objected to the admissibility of the DNA evidence on a number of grounds—including Romero’s qualifications, chain-of-custody problems, and failure to follow the proper testing protocol—and might have successfully excluded the DNA evidence altogether. See App. 1099–1100.

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due process of law. Brief for Respondent 4. Because the Ninth Circuit held that “the admission of Romero’s unreliable and misleading testimony violated [respondent’s] due process rights,” 525 F. 3d, at 797, and in respondent’s view merely applied *Jackson* (erroneously) to determine whether that error was harmless, he asks us to affirm the judgment below on the basis of what he calls his “DNA due process” claim, Brief for Respondent 35.

As respondent acknowledges, in order to prevail on this claim, he would have to show that the state court’s adjudication of the claim was “contrary to, or involved an unreasonable application of, clearly established Federal law.” 28 U. S. C. §2254(d)(1). The clearly established law he points us to is *Manson v. Brathwaite*, 432 U. S. 98, 114 (1977), in which we held that when the police have used a suggestive eyewitness identification procedure, “reliability is the linchpin in determining” whether an eyewitness identification may be admissible, with reliability determined according to factors set out in *Neil v. Biggers*, 409 U. S. 188 (1972). Respondent argues that the admission of the inaccurate DNA testimony violated *Brathwaite* because the testimony was “identification testimony,” 432 U. S., at 114, was “unnecessarily suggestive,” *id.*, at 113, and was unreliable.

Respondent has forfeited this claim, which he makes for the very first time in his brief on the merits in this Court. Respondent did not present his new “DNA due process” claim in his federal habeas petition, but instead consistently argued that Romero’s testimony should be excluded from the *Jackson* analysis simply because it was “unreliable” and that the due process violation occurred because the remaining evidence was insufficient to convict. See App. to Pet. for Cert. 157a (“[Respondent] asserts . . . that the DNA evidence was unreliable and should not have been admitted at his trial. If so, then, . . . the state presented insufficient evidence at trial to prove [respondent]

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guilty”). In the Ninth Circuit, too, respondent presented only his *Jackson* claim,<sup>7</sup> and it is, at the least, unclear whether respondent presented his newly minted due process claim in the state courts.<sup>8</sup> Recognizing that his *Jackson* claim cannot prevail, respondent tries to rewrite his federal habeas petition. His attempt comes too late, however, and he cannot now start over.

\* \* \*

We have stated before that “DNA testing can provide powerful new evidence unlike anything known before.” *District Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U. S. \_\_\_, \_\_\_ (2009) (slip op., at 8). Given the persuasiveness of such evidence in the eyes of the jury, it is important that it be presented in a fair and reliable manner. The State acknowledges that Romero committed the prosecutor’s fallacy, Brief for Petitioners 54, and the Mueller Report suggests that Romero’s testimony may have been inaccurate regarding the likelihood of a match with one of respondent’s brothers. Regardless, ample

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<sup>7</sup>The Court of Appeals did reason that Romero’s testimony must be excluded from the *Jackson* analysis on due process grounds. 525 F. 3d, at 797. But that decision was inextricably intertwined with the claim respondent did make in his federal habeas petition under *Jackson*. It is clear the Ninth Circuit was never asked to consider—and did not pass upon—the question whether the Nevada Supreme Court entered a decision on direct appeal that was contrary to or an unreasonable application of *Manson v. Brathwaite*, 432 U. S. 98 (1977), or any other clearly established law regarding due process other than *Jackson*.

<sup>8</sup>The State contends the claim is either not exhausted or procedurally defaulted. The State has objected from the beginning that respondent did not raise a due process claim regarding the reliability of the DNA evidence in state court. See App. to Pet. for Cert. 182a–183a. Respondent consistently answered the State’s exhaustion objection by arguing he presented his *Jackson* claim in the Nevada Supreme Court. See App. 1521–1526. The Ninth Circuit held respondent exhausted his *insufficiency* claim. 525 F. 3d, at 793. The court had no occasion to consider whether respondent exhausted any due process claim other than his *Jackson* claim.

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DNA and non-DNA evidence in the record adduced at trial supported the jury's guilty verdict under *Jackson*, and we reject respondent's last minute attempt to recast his claim under *Brathwaite*. The Court of Appeals did not consider, however, the ineffective-assistance claims on which the District Court also granted respondent habeas relief. 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.*

THOMAS, J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 08–559

E. K. MCDANIEL, WARDEN, ET AL., PETITIONERS *v.*  
TROY BROWN

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

[January 11, 2010]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins,  
concurring.

I join the *per curiam* because it correctly holds that the Ninth Circuit erred in departing from *Jackson*'s mandate that a federal habeas court confine its sufficiency-of-the-evidence analysis to “the evidence adduced at trial” and, specifically, to “all of the evidence admitted by the trial court.” *Ante*, at 11 (quoting *Lockhart v. Nelson*, 488 U. S. 33, 41 (1988)); see *Jackson v. Virginia*, 443 U. S. 307 (1979). I write separately because I disagree with the Court's decision to complicate its analysis with an extensive discussion of the Mueller Report. See *ante*, at 7–13. Defense counsel commissioned that report 11 years after respondent's trial. See *ante*, at 1. Accordingly, the report's attacks on the State's DNA testimony were not part of the trial evidence and have no place in the *Jackson* inquiry. See *Jackson, supra*, at 318; *Lockhart, supra*, at 40–42. That is all we need or should say about the report in deciding this case.

The Court's opinion demonstrates as much. The Court's lengthy discussion of the Mueller Report, see *ante*, at 7–10, is merely a predicate to asserting that “even if” the Court of Appeals could have considered the report in its *Jackson* analysis, the report “provided no warrant for entirely excluding the DNA evidence or Romero's testi-

THOMAS, J., concurring

mony from that court’s consideration” because the report “did not contest that the DNA evidence matched Troy” or otherwise show that the State’s DNA estimates were “unreliable,” *ante*, at 12. Based on these observations, the Court concludes that the Mueller Report did not undermine the State’s DNA tests as “powerful inculpatory evidence.” *Ibid.* That is true, but even if the report had completely undermined the DNA evidence—which the Ninth Circuit may have mistakenly believed it did, see *Brown v. Farwell*, 525 F.3d 787, 795–796 (2008)—the panel still would have erred in considering the report to resolve respondent’s *Jackson* claim. The reason, as the Court reaffirms, is that *Jackson* claims must be decided solely on the evidence adduced at trial. See *ante*, at 11. Accordingly, the Court need not correct any erroneous impressions the Ninth Circuit may have had concerning the report’s impact on the State’s DNA evidence to resolve respondent’s *Jackson* claim.\* Because that is the only claim properly before us, I do not join the Court’s dicta about how the Mueller Report’s findings could affect a constitutional analysis to which we have long held such post-trial evidence does not apply. See *Jackson, supra*, at 318.

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\* Correcting the Ninth Circuit’s apparent misconception of the effects of the Mueller Report is the only plausible reason for the Court’s decision to explain that the report would not have undermined the State’s DNA results “even if” the Court of Appeals could have considered it in resolving respondent’s *Jackson* claim. *Ante*, at 11–12. That discussion cannot properly be read to suggest either that there are circumstances in which post-trial evidence would “warrant” excluding DNA trial evidence from a *Jackson* analysis, *ante*, at 12, or that courts applying *Jackson* may consider post-trial evidence for any other purpose. Both points are squarely foreclosed by the precedents on which the Court relies in reversing the Ninth Circuit’s judgment. See *ante*, at 1 (citing *Jackson, v. Virginia*, 443 U. S. 307, 324 (1979)); *ante*, at 11 (citing *Lockhart, v. Nelson*, 488 U. S. 33, 39 (1988)), respectively.