

(ORDER LIST: 562 U.S.)

MONDAY, JANUARY 24, 2011

**CERTIORARI -- SUMMARY DISPOSITION**

10-136 HOREL, WARDEN V. VALDOVINOS, FELIX S.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Harrington v. Richter*, 562 U.S. \_\_\_\_ (2011).

**ORDERS IN PENDING CASES**

10A609 ANDERSON, JESSE R. V. CLINE, WARDEN, ET AL.  
(10-7797)

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

10M65 JASSO, MARY A., ET AL. V. U.S. FOREST SERVICE, ET AL.

10M66 CLEMONS, LaJUAN V. KANSAS

10M67 MOTTON, EDWARD J. V. GRANNIS, N.

10M68 BOYER, ARTURO, ET UX. V. FRISCIA, DAVID, ET AL.

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

132, ORIG. ALABAMA, ET AL. V. NORTH CAROLINA

Bradford R. Clark, Esquire, of Washington, D.C., the Special Master in this case, is hereby discharged with the thanks of the Court.

09-1227 BOND, CAROL A. V. UNITED STATES

The motion of the Acting Solicitor General for divided argument is granted.

09-1343 J. McINTYRE MACHINERY, LTD. V. NICASTRO, ROBERT, ET UX.

The motion of respondent Robert Nicastro, the authorized representative of the Estate of Roseanne Nicastro, to be substituted as party for Roseanne Nicastro is granted.

10-313 ) TALK AMERICA, INC. V. MICHIGAN BELL TELEPHONE CO.

10-329 ) ISIOGU, ORJIAKOR, ET AL. V. MI BELL TELEPHONE CO.

The motion of petitioners to dispense with printing the joint appendix is granted. Justice Kagan took no part in the consideration or decision of this motion.

10-717 MICCOSUKEE TRIBE OF INDIANS V. KRAUS-ANDERSON CONSTR. CO.

The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

10-5967 HAMMANN, JERALD A. V. FALLS/PINNACLE, LLC, ET AL.

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

10-7889 JEWELL, BARRY J. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until February 14, 2011, 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.

**CERTIORARI GRANTED**

10-680 HOWES, WARDEN V. FIELDS, RANDALL L.

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

10-6549 REYNOLDS, BILLY J. V. UNITED STATES

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

*pauperis* is granted. The petition for a writ of certiorari is granted limited to Question I presented by the petition.

**CERTIORARI DENIED**

08-9917 BLANKENSHIP, ROY W. V. HALL, WARDEN  
09-1354 ASS'N OF AM. PHYSICIANS, ET AL. V. FDA, ET AL.  
09-8253 WILES, MARK W. V. BAGLEY, WARDEN  
09-9903 MARTINEZ, LUIS R. V. ADAMS, WARDEN  
10-339 BENOIT, KIRK, ET AL. V. DEPT. OF AGRICULTURE, ET AL.  
10-412 VANDERBILT UNIVERSITY V. ICOS CORPORATION  
10-434 SANTA ROSA, CA, ET AL. V. DeSANTIS, PATRICIA, ET AL.  
10-468 TRANSCOR AMERICA, LLC, ET AL. V. SCHILLING, KEVIN M., ET AL.  
10-522 BIANCHI, ANTHONY M. V. UNITED STATES  
10-542 TERRY, ALTON T. V. TYSON FARMS, INC.  
10-544 GANGI, FRANK V. VERIZON NEW ENGLAND, INC.  
10-578 WAGONER CTY. RURAL WATER, ET AL. V. GRAND RIVER DAM AUTHORITY  
10-591 ) HIGHLAND CAPITAL MANAGEMENT V. SCHNEIDER, LEONARD, ET AL.  
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10-682 ) RBC CAPITAL MARKETS, LLC V. SCHNEIDER, LEONARD, ET AL.  
10-616 SALZANO, THOMAS J. V. NORTH JERSEY MEDIA GROUP, ET AL.  
10-621 BROOKS, KEITH C. V. GAENZLE, STEVE  
10-656 MUSCARELLO, PATRICIA A. V. OGLE CTY. BD. OF COMM'RS, ET AL.  
10-657 MARTIN, PATRICIA V. MARTIN, MICHAEL  
10-659 COLEGIO DE ABOGADOS DE PR V. BROWN, HERBERT W., ET AL.  
10-662 ASWORTH, LLC, ET AL. V. KY DEPT. OF REVENUE  
10-664 JOYCE, JOSEPHINE V. J.C. PENNEY CORP., INC.  
10-676 HAWKS, STEPHEN L. V. MATTOX, JIM, ET AL.  
10-687 ALBRECHT, MARK, ET UX. V. TREON, BRIAN, ET AL.  
10-688 ESTATE OF SCHWING V. LILLY HEALTH PLAN, ET AL.  
10-705 BARCENAS-BARRERA, OLGA V. HOLDER, ATT'Y GEN.

10-707 ROOS, LORNA V. ROOS, MICHAEL  
10-712 MORRIS, WILLIAM, ET AL. V. SWOFFORD, ROBERT G.  
10-733 SCHULZ, DONALD M., ET AL. V. KING, JASON  
10-739 ABOU-HUSSEIN, HAMDY A. V. GATES, SEC. OF DEFENSE, ET AL.  
10-743 SULLIVAN, DONALD V. NORTH CAROLINA  
10-777 ROMALA STONE, INC. V. HOME DEPOT U.S.A., INC.  
10-818 WALBAUM, RICHARD E. V. CIR  
10-5764 EAGLE, LESLIE D. V. YERINGTON PAIUTE TRIBE  
10-6017 SCOTT, LYNN E. V. URLICH, MR., ET AL.  
10-6695 MARTINEZ-MENDOZA, MARIA M. V. UNITED STATES  
10-6753 EVANS, ALFRED V. UNITED STATES  
10-6756 FIELDS, DeAARON V. WEST VIRGINIA  
10-7193 CROSS, TRAVIS V. V. WISCONSIN  
10-7528 GOFF, JAMES R. V. BAGLEY, WARDEN  
10-7599 HAY, BRETT C. V. J. L. D.  
10-7600 HALL, ROGER D. V. KORESKI, JOHN G.  
10-7605 FOX, EDWARD V. McNEIL, SEC., FL DOC  
10-7611 DeVAUGHN, MICHAEL O. V. SNIFF, SHERIFF  
10-7615 JACKSON, DAVID V. JACKSON, VERA, ET AL.  
10-7616 MARTINEZ, KENNETH L. V. CAMPBELL, WARDEN, ET AL.  
10-7617 LUH, TODD J. V. MISSOURI, ET AL.  
10-7619 THOMPSON, DEMONTRAY V. CATE, SEC., CA DOC  
10-7629 FAUROT, MARK C. V. TERHUNE, C. A., ET AL.  
10-7631 FORD, LEVI V. SISTO, WARDEN  
10-7632 HUDSON, ARCHER B. V. CA DOC, ET AL.  
10-7634 GALE, MATTHEW V. ANDERSON, RICKY  
10-7637 SPENCER, DUSTY V. McNEIL, SEC., FL DOC  
10-7641 EMMETT, BARRY V. THALER, DIR., TX DCJ

10-7646 DAVIS, JOE L. V. THALER, DIR., TX DCJ  
10-7648 NIGRO, PASQUALE V. EVANS, WARDEN  
10-7650 PAREDES, MIGUEL A. V. THALER, DIR., TX DCJ  
10-7654 SHAW, DAVID M. V. CAMPBELL, WARDEN  
10-7656 LOCKHART, STEPHEN B. V. BARNHART, WARDEN  
10-7662 JARVIS, DEREK N. V. MARYLAND  
10-7663 JARVIS, DEREK N. V. MONTGOMERY COUNTY, MD  
10-7666 HOUSTON, CLAUDIA V. SAN DIEGO COUNTY, CA, ET AL.  
10-7667 GRIMES, WILBUR K. V. THALER, DIR., TX DCJ  
10-7671 GARY, CATHLEEN V. DeKALB COUNTY, GA, ET AL.  
10-7673 DUNN, ROBERT D. V. PARKER, WARDEN  
10-7674 BARNETT, CALVIN E. V. KEITH, WARDEN, ET AL.  
10-7675 REDDELL, BOBBY L. V. MICHIGAN  
10-7676 SUBH, MAJED V. WAL-MART STORES, ET AL.  
10-7681 KNOWLES, CHRISTOPHER V. FLORIDA  
10-7683 ROE, JEFFREY D. V. YATES, WARDEN  
10-7684 STAUFFER, PAUL C. V. VAZQUEZ, WARDEN  
10-7688 KEITH, THOMAS L. V. WASHINGTON, ANTHONY  
10-7696 WILBURN, HARI V. TATE, CATHY A.  
10-7717 BYERS, FREDDIE L. V. BASINGER, SUPT., WABASH VALLEY  
10-7718 CONKLIN, STEPHEN G. V. EMC MORTGAGE CORPORATION  
10-7763 BROWN, PAUL A. V. McNEIL, SEC., FL DOC  
10-7832 BURTON, JOHN V. SPOKANE POLICE DEPT., ET AL.  
10-7861 JAMES, JON V. SPOKANE COMMUNITY COLLEGE  
10-7877 NICHOLS, LORENZO J. V. COLEMAN, SUPT., FAYETTE, ET AL.  
10-7878 NICHOLLS, TIMOTHY V. COLORADO  
10-7907 ASBURY, WILLIE J. V. SC DOC  
10-7911 ADLER, BRENT V. GONZALEZ, ACTING WARDEN

10-7927 BROWN, KENNETH V. GAETZ, WARDEN  
10-7937 McLAUGHLIN, BILLY R. V. WEST VIRGINIA  
10-7977 SLATER, JAMES R. V. PENNSYLVANIA  
10-7981 HARRIS, JERRY L. V. FRAKES, SUPT., MONROE  
10-8042 CASTRO-DAVIS, FELIX A. V. UNITED STATES  
10-8044 LEE, XU JUN V. UNITED STATES  
10-8047 MONTGOMERY, NATHANIEL V. UNITED STATES  
10-8048 RICH, ROBERT V. TAMEZ, WARDEN  
10-8051 OSORIO-NORENA, DARIO V. UNITED STATES  
10-8052 BANKS, AHMAD L. V. UNITED STATES  
10-8053 COX, NEHGUI N. V. UNITED STATES  
10-8056 SIMS, MARCUS V. UNITED STATES  
10-8057 GRIFFIN, DONALD V. UNITED STATES  
10-8062 CARLSON, DEREK J. V. UNITED STATES  
10-8063 VOICE, HEROLD G. V. UNITED STATES  
10-8069 SALEH, CHRISTOPHER R. V. DUNBAR, WARDEN, ET AL.  
10-8070 SMITH, DEDRICK G. V. UNITED STATES  
10-8072 BRAZIL, STANLEY T. V. UNITED STATES  
10-8073 TINKER, JOSEPH V. UNITED STATES  
10-8074 CASAS-HERRERA, DAVID V. UNITED STATES  
10-8075 ESPINOZA, JOSE V. V. UNITED STATES  
10-8078 MOORE, JAMES E. V. UNITED STATES  
10-8079 WALKER, LeROY V. SMEAL, ACTING SEC., PA DOC  
10-8081 TRAUTMAN, ROBERT V. V. UNITED STATES

The petitions for writs of certiorari are denied.

10-747 HARRINGTON, FREDERICK J. V. ATLANTIC SOUNDING CO., ET AL.

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

petition.

10-7875 JONES, MARLIN E. V. MIDSTATES DEVELOPMENT, INC.

10-7900 BREEST, ROBERT V. NEW HAMPSHIRE

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.

10-8061 WILLIAMS, CAZZIE L. V. USDC NJ

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

#### **HABEAS CORPUS DENIED**

10-8101 IN RE EDWARD HARVEY

10-8188 IN RE THOMAS DAVIS

10-8190 IN RE PRINCE ESHAN

10-8231 IN RE OLIVER MACKLIN

The petitions for writs of habeas corpus are denied.

#### **MANDAMUS DENIED**

10-7904 IN RE DAVID W. CREVELING

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

#### **REHEARINGS DENIED**

10-455 WALSH, RORY M. V. KRANTZ, ROBERT, ET AL.

10-464 TEXAS DISPOSAL SYSTEMS LANDFILL V. EPA, ET AL.

10-6060 DUNBAR, JOHN P. V. HAWAII

10-6075 THOMPSON, GARY R. V. WORKMAN, WARDEN

10-6125 EUBANKS, TIMOTHY T. V. THALER, DIR., TX DCJ

10-6233 RILEY, MALCOLM T. V. SUPREME COURT OF PA

10-6421 BROWN, TONEY I. V. MILYARD, WARDEN, ET AL.  
10-6558 WHITLOW, CHARLES V. ROANOKE, VA  
10-6559 WHITE, EUGENIA B. V. FAIRFAX COUNTY, VA  
10-6583 MEDINA, FRANCISCO J. V. SCRIBNER, WARDEN  
10-6590 MEEKS, DANNY R. V. TN DOC, ET AL.  
10-6655 THOMAS, MARCELLUS V. UNITED STATES  
10-6736 LANDRY, TERRY E. V. THALER, DIR., TX DCJ  
10-7070 LITTRELL, ANTHONY C. V. UNITED STATES  
10-7227 BARKLEY, RASHAUN V. GLOVER, ADM'R, NORTHERN, ET AL.

The petitions for rehearing are denied.

10-5328 TILLMAN, CHITUNDA V. NEW LINE CINEMA, ET AL.

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

10-6396 DAVID, TALAKKOTTUR R. V. FIDELITY INVESTMENTS, ET AL.

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

10-7175 BANKOFF, MICHAEL V. UNITED STATES

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

09-8695 CORYELL, SHANNON P. V. CA DOC, ET AL.

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

#### **ATTORNEY DISCIPLINE**

D-2478 IN THE MATTER OF DISBARMENT OF LA QUETTA MARIA GOLDEN

La Quetta Maria Golden, of Long Beach, Mississippi, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued and served upon her requiring her to show cause why she should not be disbarred;



and the time to file a response having expired;

It is ordered that La Quetta Maria Golden is disbarred from the practice of law in this Court.

D-2479 IN THE MATTER OF DISBARMENT OF IRWIN B. SELIGSOHN

Irwin B. Seligsohn, of West Orange, New Jersey, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Irwin B. Seligsohn is disbarred from the practice of law in this Court.

D-2480 IN THE MATTER OF DISBARMENT OF JOSEPH NATHANIEL BARON

Joseph Nathaniel Baron, of Lakeland, Florida, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Joseph Nathaniel Baron is disbarred from the practice of law in this Court.

D-2484 IN THE MATTER OF DISBARMENT OF WILLIAM A. SCHAIKER

William A. Schainker, of Washington, District of Columbia, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that William A. Schainker is disbarred from the practice of law in this Court.

D-2486

IN THE MATTER OF DISBARMENT OF GARRETT L. LEE

Garrett L. Lee, of Washington, District of Columbia, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Garrett L. Lee is disbarred from the practice of law in this Court.

D-2488

IN THE MATTER OF DISBARMENT OF DAVID P. WEAVER

David P. Weaver, of San Francisco, California, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that David P. Weaver is disbarred from the practice of law in this Court.

D-2494

IN THE MATTER OF DISBARMENT OF ROBERT HUNTER FORD

Robert Hunter Ford, of Birmingham, Alabama, having been suspended from the practice of law in this Court by order of September 3, 2010; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Robert Hunter Ford is disbarred from the practice of law in this Court.

Per Curiam

**SUPREME COURT OF THE UNITED STATES**

GARY SWARTHOUT, WARDEN *v.* DAMON COOKE

MATTHEW CATE, SECRETARY, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION *v.* ELIJAH CLAY

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

No. 10–333. Decided January 24, 2011

PER CURIAM.

I

California’s parole statute provides that the Board of Prison Terms “shall set a release date unless it determines that . . . consideration of the public safety requires a more lengthy period of incarceration.” Cal. Penal Code Ann. §3041(b) (West Supp. 2010). If the Board denies parole, the prisoner can seek judicial review in a state habeas petition. The California Supreme Court has explained that “the standard of review properly is characterized as whether ‘some evidence’ supports the conclusion that the inmate is unsuitable for parole because he or she currently is dangerous.” *In re Lawrence*, 44 Cal. 4th 1181, 1191, 190 P. 3d 535, 539 (2008). See also *In re Shaputis*, 44 Cal. 4th 1241, 1253–1254, 190 P. 3d 573, 580 (2008); *In re Rosenkrantz*, 29 Cal. 4th 616, 625–626, 59 P. 3d 174, 183 (2002).

A

Respondent Damon Cooke was convicted of attempted first-degree murder in 1991, and a California court sentenced him to an indeterminate term of seven years to life in prison with the possibility of parole. In November 2002, the board determined that Cooke was not yet suitable for parole, basing its decision on the “especially cruel and callous manner” of his commitment offense, App. to Pet.

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for Cert. 50a; his failure to participate fully in rehabilitative programs; his failure to develop marketable skills; and three incidents of misconduct while in prison. The board admitted that Cooke had received a favorable psychological report, but it dismissed the report as not credible because it included several inconsistent and erroneous statements.

Cooke filed a petition for a writ of habeas corpus in State Superior Court. The court denied his petition. “The record indicates,” it said, “that there was some evidence, including but certainly not limited to the life offense, to support the board’s denial.” *Id.*, at 42a. Cooke subsequently filed a habeas petition with the California Court of Appeal and a petition for direct review by the California Supreme Court. Both were denied.

In October 2004, Cooke filed a federal habeas petition pursuant to 28 U. S. C. §2254 challenging the parole board’s determination. The District Court denied his petition. The Ninth Circuit reversed, holding that California’s parole statute created a liberty interest protected by the Due Process Clause, and that “California’s ‘some evidence’ requirement” was a “component” of that federally protected liberty interest. *Cooke v. Solis*, 606 F.3d 1206, 1213 (2010). It then concluded that the state court had made an “unreasonable determination of the facts in light of the evidence” under §2254(d)(2) by finding any evidence at all that Cooke would pose a threat to public safety if released. *Id.*, at 1215.

## B

Respondent Elijah Clay was convicted of first-degree murder in 1978, and a California court sentenced him to imprisonment for seven years to life with the possibility of parole. In 2003, the board found Clay suitable for parole, but the Governor exercised his authority to review the case and found Clay unsuitable for parole. See Cal.

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Const., Art. 5, §8(b); Cal. Penal Code Ann. §3041.2 (West 2000). The Governor cited the gravity of Clay’s crime; his extensive criminal history, which reflected “the culmination of a life of crime,” App. to Pet. for Cert. 116a; his failure to participate fully in self-help programs; and his unrealistic plans for employment and housing after being paroled. Regarding the last factor, the Governor concluded that Clay would be likely to return to crime, given his propensity for substance abuse and lack of a viable means of employment.

Clay filed a petition for a writ of habeas corpus in State Superior Court. That court denied Clay’s petition, as did the California Court of Appeal. The California Supreme Court denied review.

Clay subsequently filed a federal petition for a writ of habeas corpus, which the District Court granted. The District Court concluded that the Governor’s reliance on the nature of Clay’s long-past commitment offense violated Clay’s right to due process, and dismissed each of the other factors the Governor cited as unsupported by the record. The Ninth Circuit affirmed, agreeing with the District Court’s conclusion that “the Governor’s decision was an unreasonable application of California’s ‘some evidence’ rule and was an unreasonable determination of the facts in light of the evidence presented.” *Clay v. Kane*, 384 Fed. Appx. 544, 546 (2010).

## II

In granting habeas relief based on its conclusion that the state courts had misapplied California’s “some evidence” rule, the Ninth Circuit must have assumed either that federal habeas relief is available for an error of state law, or that correct application of the State’s “some evidence” standard is required by the federal Due Process Clause. Neither assumption is correct.

As to the first: The habeas statute “unambiguously

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provides that a federal court may issue a writ of habeas corpus to a state prisoner ‘only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.’” *Wilson v. Corcoran*, 562 U. S. \_\_\_, \_\_\_ (2010) (*per curiam*) (slip op., at 4) (quoting 28 U. S. C. §2254(a)). “We have stated many times that ‘federal habeas corpus relief does not lie for errors of state law.’” *Estelle v. McGuire*, 502 U. S. 62, 67 (1991) (quoting *Lewis v. Jeffers*, 497 U. S. 764, 780 (1990)).

As for the Due Process Clause, standard analysis under that provision proceeds in two steps: We first ask whether there exists a liberty or property interest of which a person has been deprived, and if so we ask whether the procedures followed by the State were constitutionally sufficient. *Kentucky Dept. of Corrections v. Thompson*, 490 U. S. 454, 460 (1989). Here, the Ninth Circuit held that California law creates a liberty interest in parole, see 606 F. 3d, at 1213. While we have no need to review that holding here, it is a reasonable application of our cases. See *Board of Pardons v. Allen*, 482 U. S. 369, 373–381 (1987); *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1, 12 (1979).

Whatever liberty interest exists is, of course, a *state* interest created by California law. There is no right under the Federal Constitution to be conditionally released before the expiration of a valid sentence, and the States are under no duty to offer parole to their prisoners. *Id.*, at 7. When, however, a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication—and federal courts will review the application of those constitutionally required procedures. In the context of parole, we have held that the procedures required are minimal. In *Greenholtz*, we found that a prisoner subject to a parole statute similar to California’s received adequate process when he was allowed an opportunity to be heard and was provided a statement of the reasons why

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parole was denied. 442 U. S., at 16. “The Constitution,” we held, “does not require more.” *Ibid.* Cooke and Clay received at least this amount of process: They were allowed to speak at their parole hearings and to contest the evidence against them, were afforded access to their records in advance, and were notified as to the reasons why parole was denied. 606 F. 3d, at 1208–1212; App. to Pet. for Cert. 69a–80a; Cal. Penal Code Ann. §§3041, 3041.5 (West Supp. 2010).

That should have been the beginning and the end of the federal habeas courts’ inquiry into whether Cooke and Clay received due process. Instead, however, the Court of Appeals reviewed the state courts’ decisions on the merits and concluded that they had unreasonably determined the facts in light of the evidence. See 606 F. 3d, at 1213–1216; 384 Fed. Appx., at 545–546. Other Ninth Circuit cases have done the same. See, e.g., *Pearson v. Muntz*, 606 F. 3d 606, 611 (2010). No opinion of ours supports converting California’s “some evidence” rule into a substantive federal requirement. The liberty interest at issue here is the interest in receiving parole when the California standards for parole have been met, and the minimum procedures adequate for due-process protection of that interest are those set forth in *Greenholtz*.\* See *Hayward v. Marshall*,

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\*Cooke and Clay argue that the greater protections afforded to the revocation of good-time credits should apply, citing *In re Rosenkrantz*, 29 Cal. 4th 616, 657–658, 59 P. 3d 174, 205 (2002), a California Supreme Court case that refers to our good-time-credits decision in *Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U. S. 445 (1985). But *Rosenkrantz* did not purport to equate California’s parole system with good-time credits. It cites *Hill* twice. The first citation merely observes that the court relied upon *Hill* in an earlier opinion adopting the “some evidence” test for decisions to *revoke* parole that had previously been granted. 29 Cal. 4th, at 656, 59 P. 3d, at 204. The second citation, which does occur in the part of the opinion discussing the need for “some evidence” review in parole decisions, simply borrows language from *Hill* to support the proposition that “[r]equiring

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603 F. 3d 546, 559 (CA9 2010) (en banc). *Greenholtz* did not inquire into whether the constitutionally requisite procedures provided by Nebraska produced the result that the evidence required; *a fortiori* it is no federal concern here whether California’s “some evidence” rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied.

It will not do to pronounce California’s “some evidence” rule to be “a component” of the liberty interest, 606 F. 3d, at 1213. Such reasoning would subject to federal-court merits review the application of all state-prescribed procedures in cases involving liberty or property interests, including (of course) those in criminal prosecutions. That has never been the law. To the contrary, we have long recognized that “a ‘mere error of state law’ is not a denial of due process.” *Engle v. Isaac*, 456 U. S. 107, 121, n. 21 (1982); see also *Estelle*, 502 U. S., at 67–68. Because the only federal right at issue is procedural, the relevant inquiry is what process Cooke and Clay received, not whether the state court decided the case correctly.

The Ninth Circuit’s questionable finding that there was *no* evidence in the record supporting the parole denials is irrelevant unless there is a federal right at stake, as §2254(a) requires. See *id.*, at 67. The short of the matter is that the responsibility for assuring that the constitutionally adequate procedures governing California’s parole system are properly applied rests with California courts, and is no part of the Ninth Circuit’s business.

The petition for a writ of certiorari and respondents’

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a modicum of evidence” can “help to prevent arbitrary deprivations.” 29 Cal. 4th, at 658, 59 P. 3d, at 205 (quoting *Hill*, 472 U. S., at 455). In any event, the question of which due process requirements apply is one of federal law, not California law; and neither of these citations comes close to addressing that question. Any doubt on that score is resolved by a subsequent footnote stating that the court’s decision is premised only on state law. 29 Cal. 4th, at 658, n. 12, 59 P. 3d, at 205, n. 12.



Per Curiam

motions for leave to proceed *in forma pauperis* are granted.

The judgments below are

*Reversed.*

GINSBURG, J., concurring

**SUPREME COURT OF THE UNITED STATES**

GARY SWARTHOUT, WARDEN *v.* DAMON COOKE

MATTHEW CATE, SECRETARY, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION *v.* ELIJAH CLAY

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

No. 10–333. Decided January 24, 2011

JUSTICE GINSBURG, concurring.

In *Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U. S. 445, 455 (1985), this Court held that, to comply with due process, revocation of a prisoner’s good time credits must be supported by “some evidence.” If California law entitled prisoners to parole upon satisfaction of specified criteria, then *Hill* would be closely in point. See *In re Rosenkrantz*, 29 Cal. 4th 616, 657–658, 59 P. 3d 174, 205 (2002). The Ninth Circuit, however, has determined that for California’s parole system, as for Nebraska’s, *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1 (1979), is the controlling precedent. *Hayward v. Marshall*, 603 F. 3d 546, 559–561 (2010) (en banc). Given that determination, I agree that today’s summary disposition is in order.