

(ORDER LIST: 559 U.S.)

MONDAY, FEBRUARY 22, 2010

ORDERS IN PENDING CASES

09M67 NEELY, ROBERT V. MARSHALL, SUPT., SING SING

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

09M68 MURRELL, ROGERS V. SHINSEKI, SEC. OF VA

09M69 THOMPSON, JAMES B. V. SHENSEKI, SEC. OF VA

The motions for leave to proceed as a veteran are denied.

09M70 WILLIAMS, TERRY V. USDC CD CA, ET AL.

The motion for leave to proceed *in forma pauperis* with the declaration of indigency under seal is denied.

08-998 HAMILTON, JAN V. LANNING, STEPHANIE K.

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

08-1394 SKILLING, JEFFREY K. V. UNITED STATES

The motion of petitioner for leave to file a supplemental volume of the joint appendix under seal is granted.

09-338 RENICO, WARDEN V. LETT, REGINALD

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

09-520 CSX TRANSPORTATION, INC. V. AL DEPT. OF REVENUE, ET AL.

09-654 ORTHO BIOTECH PRODUCTS, L.P. V. UNITED STATES, EX REL. DUXBURY

The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

09-7260 REYNOSO, IGNACIO V. ROCK, SUPT., GREAT MEADOW

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

09-8074 PARKER, JONATHAN J. V. ASRC OMEGA NATCHIQ

09-8472 STEPHENS, LLOYD T. V. FOURTH JUDICIAL DISTRICT CT.

09-8583 WALKER, DARCY V. POTTER, POSTMASTER GEN.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until March 15, 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 GRANTED

09-350 LOS ANGELES COUNTY, CA V. HUMPHRIES, CRAIG A., ET UX.

The petition for a writ of certiorari is granted limited to Question 1 presented by the petition.

09-587 HARRINGTON, WARDEN V. RICHTER, JOSHUA

The petition for a writ of certiorari is granted. In addition to the question presented, the parties are directed to brief and argue the following question: Does AEDPA deference apply to a state court's summary disposition of a claim, including a claim under *Strickland v. Washington*, 466 U.S. 668 (1984)?

CERTIORARI DENIED

08-1520) DALLAS, TX V. GOULD, DIR., FISH AND WILDLIFE

)

08-1524) TEXAS WATER DEVELOPMENT BOARD V. DEPT. OF INTERIOR, ET AL.

08-10932 BATEKREZE, FIDELE B. V. ARIZONA

09-287 WESTON, DARREL A. V. UNITED STATES

09-342 ROSE ACRE FARMS, INC. V. UNITED STATES

09-357 SMITH, BRENT V. JONES, WARDEN

09-394 SAUDI AMERICAN BANK V. SWE&C LIQUIDATING TRUST

09-420 LEWIS, LINDA V. PALM BEACH, FL, ET AL.

09-426 EKLUND, DONALD S. V. WHEATLAND COUNTY, MT, ET AL.

09-435) NEW WEST, L.P., ET AL. V. JOLIET, IL, ET AL.

09-445) DAVIS, TERESA, ET AL. V. JOLIET, IL, ET AL.

09-491 LONG BEACH, CA V. LONG BEACH AREA PEACE, ET AL.

09-532 FRY, THOMAS V. EXELON CORPORATION PLAN

09-533) CROPLIFE AMERICA, ET AL. V. BAYKEEPER, ET AL.

09-547) AM. FARM BUREAU FED., ET AL. V. BAYKEEPER, ET AL.

09-542 KAY, MITCHELL N., ET AL. V. GONZALEZ, JOSE

09-564 CITY COUNCIL OF ALBUQUERQUE V. ALBUQUERQUE COMMONS PARTNERSHIP

09-569 BYLIN, ROBERT, ET UX. V. BILLINGS, JOHN R., ET AL.

09-621 MINNEAPOLIS TAXI OWNERS COAL. V. MINNEAPOLIS, MN, ET AL.

09-623 MOODY, SALLY L., ET AL. V. ALLEGHENY VALLEY LAND, ET AL.

09-630 BENSON, ROYAL, ET AL. V. ST. JOSEPH REGIONAL, ET AL.

09-632 DOMINGUEZ, ERLINDA V. PRICE OKAMOTO HIMENO & LUM

09-637 SCHOOL BOARD OF BEAUREGARD V. HONEYWELL INT'L, INC., ET AL.

09-639 EILENDER, DAVID V. MI DEPT OF HUMAN SERVICES

09-641 VINING, FRED D. V. APPLIED POWER TECHNOLOGY, ET AL.

09-642 YOUNG, RANDALL S., ET UX. V. MEMORIAL HERMANN HOSP., ET AL.

09-643 BROWN, CARL H. V. MARRIOTT INTERNATIONAL, INC.

09-657 BIRMINGHAM BOARD OF EDUCATION V. McCORD-BAUGH, CATHY

09-659 SPEIGHTS, MATTHEW V. OCEANSIDE, CA, ET AL.

09-660 NAIR, JAYRAJ V. SUPERIOR COURT OF CA, ET AL.

09-661 KASHARIAN, JOHN C. V. NJ DEPT. OF ENVTL. PROTECTION

09-662 ENG, CHHUN V. HOLDER, ATT'Y GEN.

09-670 LOCAL #46 METALLIC LATHERS UNION V. UNITED STATES, ET AL.

09-673 SEA HAWK SEAFOODS, ET AL. V. LOCKE, SEC. OF COMMERCE, ET AL.
09-675 BUTTE COUNTY, CA, ET AL. V. SUPERIOR COURT OF CA, ET AL.
09-677 KRISTINA S. V. CHARISMA R.
09-679 PARKERSON, GAIL V. McMURTREY, RICHARD, ET AL.
09-680 ARKANSAS V. OSBURN, KENNETH R.
09-682 BOSACK, LEONARD, ET AL. V. SOWARD, DAVID C., ET AL.
09-688 POPE, TIMOTHY D. V. ALABAMA, ET AL.
09-689 HUNSBERGER, MARK J., ET UX. V. WOOD, DEPUTY SHERIFF
09-690 CHAUDHARY, BELAL A. V. HOLDER, ATT'Y GEN.
09-693 KYLE, WILLIAM, ET AL. V. LEOVITS, GERALD, ET AL.
09-695 U.S. MOTORS, ET AL. V. GENERAL MOTORS EUROPE
09-696 JOHN J. KANE REGIONAL CENTERS V. GRAMMER, SARAH
09-698 McKINNEY, GARY V. CO BD. OF MEDICAL EXAMINERS
09-701 ALLRITE SHEETMETAL, INC. V. BANK OF COMMERCE, ET AL.
09-702 ACUSHNET CO. V. CALLAWAY GOLF CO.
09-706 TUSINI, THOMAS V. POTTER, POSTMASTER GEN., ET AL.
09-710 HALL, MICHAEL P. V. TENNISON, CARINA N.
09-716 TERUYA BROTHERS, LTD. V. CIR
09-718 MATTISON, LAWRENCE V. VIRGINIA
09-719 KONAR, DANIEL V. ILLINOIS
09-730 HOLTZER, KEVIN C. V. DAVIS, WARDEN
09-731 MOUNT, JEANNE V. UNITED STATES, ET AL.
09-732 PELKEY, BRUCE A. V. SUPREME COURT OF AZ
09-734 AMES, GEOFFREY S. V. WA HEALTH DEPT.
09-743 JONES, VERNON, ET AL. V. BRYANT, MICHAEL, ET AL.
09-748 RADMORE, JAMES V. AEGIS COMMUNICATIONS
09-752 PENNEY, TERRY E. V. UNITED STATES
09-757 ASHBY, RICHARD J. V. UNITED STATES

09-762 CLAVILLE, VERNON V. UNITED STATES
09-764 MOWER, LESLIE D. V. UNITED STATES
09-773 LERMAN, STEVEN, ET AL. V. FORT LAUDERDALE, FL
09-780 PEDELEOSE, KENNETH M. V. DEPT. OF DEFENSE
09-789 UNISYS CORPORATION V. ADAIR, HARLEY J., ET AL.
09-801 WESCOTT, DAVID L. V. UNITED STATES
09-802 NITSCHKE, MARTIN V. CIR
09-811 HYATT, KENNETH R. V. UNITED STATES
09-832 THOMAS, OSCAR L. V. SHINSEKI, SEC. OF VA, ET AL.
09-844 WOOD, BRENT E. V. UNITED STATES
09-5887 SCOTT, WILLIAM G. V. MISSISSIPPI
09-6097 ROLLINS, SAHARRIS V. BEARD, SEC., PA DOC, ET AL.
09-6103 AUGUSTIN, PIERRE R. V. CHASE HOME FINANCE LLC
09-6255 TIEWLOH, WREH V. UNITED STATES
09-6384 MARTE, NOEL V. NEW YORK
09-6492 JACKSON, CHRISTOPHER R. V. UNITED STATES
09-6598 HERNANDEZ, ALEX J. V. UNITED STATES
09-6627 CONROY, PAMELIA J. V. UNITED STATES
09-6664 RESTREPO-MEJIA, LILIAM A. V. HOLDER, ATT'Y GEN.
09-6732 ROGERS, NORIS G. V. KBR TECHNICAL SERVICES INC.
09-6832 JONGEWAARD, LARRY V. UNITED STATES
09-6915 FALLS, DUPRE V. UNITED STATES
09-6928 ANDERSON, BARRY L. V. CALIFORNIA
09-7019 GRANT, JANICE V. UNITED STATES
09-7066 GONZALES, RAMIRO F. V. TEXAS
09-7257 IRICK, BILLY R. V. BELL, WARDEN
09-7370 AGUIRE-JARQUIN, CLEMENTE J. V. FLORIDA
09-7446 WOODS, NATHANIEL V. ALABAMA

09-7450 STEWART, TERRELL D. V. UNITED STATES
09-7486 SIGALA, MICHAEL A. V. THALER, DIR., TX DCJ
09-7547 AHMED, FAYAD V. GATES, SEC. OF DEFENSE
09-7564 EGGLESTON, ANTOINE C. V. UNITED STATES
09-7780 KENNEDY, RICHARD D. V. LOCKETT, JOHN R., ET AL.
09-7789 YARBOROUGH, OWEN J. V. THALER, DIR., TX DCJ
09-7791 TANI, KESS V. CEDAR, BRIAN, ET AL.
09-7794 RAMEY, LONNIE V. FLORIDA
09-7795 SELF, TERRY V. DEVON ENERGY PRODUCTION
09-7796 SMITH, FREDERICK W. V. DELAWARE, ET AL.
09-7798 RUSSELL, KEITH K. V. CALIFORNIA
09-7801 RATTIS, CHRIS V. JACKSON, SUPT., BROWN CREEK
09-7802 HANSEN, GEIR V. INDUSTRIAL CLAIM APPEALS OFFICE
09-7809 MOORE, GREGG V. CURRIE MOTORS, ET AL.
09-7813 PHILLIPS, CHERIE V. MIKE MURDOCK EVANGELISTIC ASS'N
09-7815 PALMER, MIGUEL F. V. TALLAHASSEE, FL, ET AL.
09-7817 LEWIS, CALVIN V. LEWIS, WARDEN
09-7820 JONES, RAFAEL A. V. MILLIGAN, ERIN, ET AL.
09-7821 LEAKE, PIERRE V. MINNESOTA
09-7822 JORDAN, BEN V. FLORIDA
09-7823 TARSHIK, YEFIM V. KANSAS, ET AL.
09-7824 OZENNE, GARY L. V. CHASE MANHATTAN BANK, ET AL.
09-7835 JAMES, DEVON R. V. WARREN, WARDEN
09-7837 BECK, DAVE V. WALKER, WARDEN
09-7840 WASHINGTON, ISAIAH V. BOWERSOX, SUPT., SOUTH CENTRAL
09-7842 WILLIAMS, TERRENCE V. McQUIGGIN, WARDEN
09-7844 LEE, EDDIE J. V. WOUGHTER, SUPT., MOHAWK, ET AL.
09-7856 ANDERSON, TERRY, ET UX. V. INDIAN SPRINGS LLC, ET AL.

09-7858 POWERS, COLEEN L. V. MESABA AVIATION, INC., ET AL.
09-7860 ANDRUS, CHARLES R. V. THALER, DIR., TX DCJ
09-7862 SORLIEN, MARTIN C. V. MICHIGAN
09-7863 WARREN, JAMES A. V. THALER, DIR., TX DCJ
09-7867 GARRAWAY, ANTHONY M. V. FISCHER, COMM'R, NY DOC, ET AL.
09-7874 GOFF, JOSEPH B. V. MISSISSIPPI
09-7878 DENNIS, SHEILA V. KELLER MEYER BLDG. SERVICES
09-7883 BLACKSHEAR, MICHAEL V. McNEIL, SEC., FL DOC, ET AL.
09-7887 McDUFFIE, TAVARES A. V. FLORIDA
09-7890 ROCHA, BRUNO V. FLORIDA
09-7892 KINNARD, SAMMIE D. V. METRO. POLICE DEPT., ET AL.
09-7894 LIGGON-REDDING, ELIZABETH V. WILLINGBORO TOWNSHIP, NJ, ET AL.
09-7896 WEATHERSPOON, MICHAEL V. FAYRAM, WARDEN
09-7897 SCHOOR, DAVID G. V. TEXAS
09-7900 McNEELY, DOCK V. SACRAMENTO COUNTY, CA, ET AL.
09-7902 D'ARY, CHARLES V. UNITED STATES
09-7905 COOPER, JOHN V. THALER, DIR., TX DCJ
09-7915 MORALES, MARLO U. V. BOATWRIGHT, WARDEN
09-7916 A. H. V. PENNSYLVANIA
09-7917 C. G. V. PENNSYLVANIA
09-7918 LEWIS, MICHAEL B. V. CALIFORNIA
09-7920 BOWMAN, FRANK V. CATE, SEC., CA DOC
09-7922 PALMER, DEXTER R. V. SMITH, WARDEN
09-7924 K. E. H. V. PENNSYLVANIA
09-7928 HENSLEY, SHANNON A. V. COLVILLE SCHOOL DISTRICT
09-7931 PYE, DOUGLAS K. V. TEXAS
09-7933 JAMES, MICHAEL E. V. CALIFORNIA
09-7934 LINAREZ, RAUL R. V. CALIFORNIA

09-7935 JENNINGS, CHARLTON V. ROZUM, SUPT., SOMERSET
09-7937 MAYER, JAMES P. V. SOCIAL SECURITY ADMINISTRATION
09-7938 MANNING, COREY L. V. PALMER, WARDEN
09-7945 WIMBERLY, MARCIA E. V. ROYAL, ELBERT, ET AL.
09-7947 BAKARICH, GERALD C. V. NEW JERSEY
09-7951 HENRY, LISA J. V. OHIO
09-7953 VILLASANA, JAVIER C. V. HOLDER, ATT'Y GEN.
09-7955 MUHAMMAD, SHAKA S. V. SUPERIOR COURT OF CA, ET AL.
09-7956 BRADFORD, CHRISTOPHER P. V. SUBIA, WARDEN
09-7966 JAMES, HENRY V. RICHARDSON, SERGEANT, ET AL.
09-7967 JONES, PERCY L. V. LOUISIANA
09-7968 KING, WILLIAM V. MAYBERG, STEPHEN, ET AL.
09-7969 McFARLAND, UZELL V. CHANDLER, WARDEN
09-7970 MURPHY, BERNARD V. HAGAN, WARDEN
09-7977 SPEER, PAUL B. V. ARIZONA
09-7978 BLAXTON, OTIS V. McNEIL, SEC., FL DOC, ET AL.
09-7979 BRANTLEY, TONY E. V. SIRMONS, WARDEN
09-7986 GRIFFIN, JOHN R. V. WHITEFIELD, NH, ET AL.
09-7991 NGUYEN, HY T. V. CHRISTIANSON, BRITTA W.
09-7993 LANCE, GREGORY P. V. MORROW, WARDEN
09-7995 JACKSON, STEVEN V. ILLINOIS
09-7998 TAMEZ, RAUL G. V. THALER, DIR., TX DCJ
09-8000 THOMPSON, TRAVIS R. V. GONZALEZ, ACTING WARDEN, ET AL.
09-8001 TAYLOR, ERIC, ET UX. V. JACOBS, SAMUEL L., ET AL.
09-8005 RIDENER, KENNETH E. V. WISCONSIN
09-8006 SANTOS, MANUEL V. MASSACHUSETTS
09-8012 BATES, ALLEN D. V. DAVIS, JEFF, ET AL.
09-8015 AGUADO-GUEL, LEOPOLDO V. LARKIN, DEPUTY, ET AL.

09-8023 BAEZ, ROBERTO V. JAMES, JUDGE, ETC.
09-8024 CAILLOT, HERBY V. MASSACHUSETTS
09-8034 GRIGGS, ARTHUR L. V. CULLIVER, WARDEN
09-8037 FENTON, CASWELL V. McNEIL, SEC., FL DOC
09-8039 GALVAN, KIM J. V. CALIFORNIA
09-8041 GONZALES, JOHN V. RYAN, DIR., AZ DOC, ET AL.
09-8042 HOELSCHER, LOREN J. V. CALIFORNIA
09-8043 SMITH, ALEXIS D. V. LAFLER, WARDEN
09-8044 SORROW, LOYD L. V. THALER, DIR., TX DCJ
09-8046 HETT, H. PAUL V. WADE, JERRY C., ET AL.
09-8049 DAVIS, ROBERT J. V. FLORIDA
09-8050 DEDRICK, JERRY L. V. TEXAS
09-8053 BOWERSOCK, MARK V. SUPERIOR COURT OF CA, ET AL.
09-8061 SODERSTROM, RANDY L. V. NICHOLAS, HENRY T., ET AL.
09-8065 DAVIS, EDDIE W. V. McNEIL, SEC., FL DOC
09-8068 GARY, TONY L. V. FLORIDA
09-8069 GREEN, CLAUDELL V. SULLIVAN, WARDEN, ET AL.
09-8072 HUYNH, DUNG N. V. BAZE, JEREMY, ET AL.
09-8078 FELGAR, JOHN E. V. BURKETT, JEFFREY D., ET AL.
09-8079 GRANT, KRYSTLE Y. V. WHEELER, WARDEN
09-8080 McDOWELL, BRUCE V. UNITED STATES
09-8089 KLAT, SUSAN V. V. MITCHELL REPAIR INFORMATION CO.
09-8091 KOCH, JACK R. V. BROWN, ATTY. GEN. OF CA, ET AL.
09-8093 LEE, WILLIAM A. V. UNITED STATES
09-8095 VENTRY, MONTRELL D. V. ARKANSAS
09-8099 WOOLRIDGE, JOSHUA T. V. ANWAR, PARWANA
09-8100 UKAWABUTU, RA'ZULU V. RICCI, ASSOC. ADM'R, NJ, ET AL.
09-8103 LEE, RONNIE V. CALIFORNIA

09-8104 LASKEY, LAURIE M. V. PLATT ELECTRIC SUPPLY, INC.
09-8107 PATTERSON, MICAH A. V. CALIFORNIA
09-8108 PARMER, JAMES V. IDAHO CORRECTIONAL CORP., ET AL.
09-8110 SHAW, HERMAN V. McNEIL, SEC., FL DOC, ET AL.
09-8114 WILLIAMS, FRANK V. ILLINOIS
09-8119 BROWN, SHERWOOD V. UNITED STATES
09-8122 PARMELEE, GARY A. V. McCOLLUM, ATT'Y GEN. OF FL
09-8123 PHILLIPS, JAMES V. UNITED STATES
09-8133 HANNAH, DONALD E. V. FLORIDA
09-8134 GRAY, ROSS A. V. WEST VIRGINIA
09-8137 LEGGETT, TIMOTHY V. UNITED STATES
09-8144 FIGUEROA, JOSUE V. DiGUGLIELMO, SUPT., GRATERFORD
09-8157 COLEMAN, ARTHUR V. BAZZLE, WARDEN
09-8165 HALL, ALONZA V. UNITED STATES
09-8166 GRAY, DARRYL V. LEE, SUPT., GREEN HAVEN
09-8175 SMITH, ALBERT K. V. NORRIS., DIR., AR DOC
09-8187 RHETT, ANDREW V. POWER, T. MICHAEL
09-8191 HESTER, WARREN V. WEST VIRGINIA
09-8197 TILLIS, SHERROD V. ILLINOIS
09-8199 BOLLS, JONATHAN V. STREET, SEC., VA BD. EXAMINERS
09-8208 PADGETT, LYNN A. V. BRAMBLETT, KAREN
09-8212 REESE, BARRY V. UNITED STATES
09-8218 PERDUE, IVORY D. V. UNITED STATES
09-8222 GENEVIER, PIERRE V. DeMORE, BRIAN
09-8228 MONTAGUE, CHAUNCEY L. V. VIRGINIA
09-8248 NESTOR, BRIAN L. V. UNITED STATES
09-8251 GILLESPIE, JONAS E. V. UNITED STATES
09-8255 DRUMMOND, FRANK V. UNITED STATES

09-8258 RICHARDSON, DORIAN W. V. UNITED STATES
09-8260 SOTOLONGO, ROBERTO V. UNITED STATES
09-8265 COOK, GLENN D. V. UNITED STATES
09-8269 SHMELEV, PYOTR V. MINNESOTA
09-8272 RIVERA, LAUREANO C. V. UNITED STATES
09-8273 ROBINSON, JOSEPH E. V. UNITED STATES
09-8274 SELLERS, FREDERICK L. V. UNITED STATES
09-8279 BELTRAN, HERNALDO V. UNITED STATES
09-8280 BROWN, JAMES V. PHELPS, WARDEN, ET AL.
09-8282 ACKER, JAMES V. McNEIL, SEC., FL DOC
09-8286 BLIGE, FRANKLIN L. V. UNITED STATES
09-8287 ARGUETA-FERNANDEZ, GILMAN V. UNITED STATES
09-8288 DALE, PHILIP L. V. UNITED STATES
09-8289 DE LEON-MARTINEZ, ROBERTO V. UNITED STATES
09-8290 ELLIS, FRANKIE C. V. UNITED STATES
09-8292 CREDELL, COREY T. V. SOUTH CAROLINA
09-8295 BRYANT, COYT V. UNITED STATES
09-8298 POPE, EMMANUEL V. UNITED STATES
09-8299 KRETZER, KARL D. V. UNITED STATES
09-8300 McCRAY, RICHARD O. V. UNITED STATES
09-8302 WEST, GARY W. V. UNITED STATES
09-8309 VEGA-FIGUEROA, JOSE A. V. UNITED STATES
09-8310 WREN, FREDDIE M. V. UNITED STATES
09-8313 SANDERS, CORNELL L. V. UNITED STATES
09-8314 RUFFIN, JOHNNY L. V. DiGUGLIELMO, SUPT., GRATERFORD
09-8315 SHAFER, ROBERT G. V. UNITED STATES
09-8319 WHITE, DERRICK V. UNITED STATES
09-8322 WILLIAMS, DERRICK V. UNITED STATES

09-8323 GAINES, WILLIAM E. V. UNITED STATES
09-8325 BELL, MICHAEL D. V. SAMUELS, DOUGLAS, ET AL.
09-8328 DAVIS, CHARLES V. PENNSYLVANIA
09-8332 TERRY, GARY I. V. UNITED STATES
09-8336 RODRIGUEZ-PARRA, OSCAR V. UNITED STATES
09-8337 SALAZAR-BASALDUA, ROGELIO V. UNITED STATES
09-8339 MANN, DONNELL V. UNITED STATES
09-8340 LADOU CER, TODD R. V. UNITED STATES
09-8341 MACK, LARRY V. UNITED STATES
09-8343 JARAMILLO-AVELINO, JORGE V. UNITED STATES
09-8344 OPARAJI, MAURICE V. NY MORTGAGE COMPANY, LLC
09-8346 ORLANDO-MENA, MIGUEL V. UNITED STATES
09-8347 MEDINA-VILLA, COSME V. UNITED STATES
09-8348 MILLER, RODNEY R. V. UNITED STATES
09-8359 JOHNSON, JAMES T. V. UNITED STATES
09-8365 VERDUGO-MUNOZ, JOSE A. V. UNITED STATES
09-8369 JUDD, KEITH R. V. UNITED STATES
09-8370 LEONARD, FINIS V. ILLINOIS
09-8371 LEDEZMA, JOSEPHINE V. UNITED STATES
09-8372 VENTRUELLA, MARJORIE, ET AL. V. UNITED STATES
09-8374 SAAVEDRA-VELAZQUEZ, JOSE M. V. UNITED STATES
09-8376 PERRY, JAMES F. V. UNITED STATES
09-8380 BAKER, MARIO N. V. UNITED STATES
09-8382 CABRERA-ALEJANDRE, MANUEL V. UNITED STATES
09-8383 MOHSEN, AMR V. U.S. TRUSTEE
09-8384 PINSON, JEREMY V. V. UNITED STATES
09-8386 PENNANT, PAUL V. UNITED STATES
09-8387 MILLER, MARSHALL R. V. HOLDER, ATT'Y GEN., ET AL.

09-8392 SMITH, TYREE T. V. UNITED STATES
09-8395 JAMES, IVANDER V. STANSBERRY, WARDEN
09-8397 LATHAM, KENDRICK V. UNITED STATES
09-8398 LAZO, REYMUNDO R. V. ARIZONA
09-8399 EDWARDS, BORIS M. V. UNITED STATES
09-8401 ATCHISON, ADONNIS V. UNITED STATES
09-8405 PUCHALSKI, ADAM V. ILLINOIS
09-8406 PATTON, JON V. UNITED STATES
09-8407 MILLER, RODNEY V. UNITED STATES
09-8408 PRICE, FOSTER J. V. UNITED STATES
09-8409 JENKINS, WILLIAM R. V. UNITED STATES
09-8411 BANKS, DONALD T. V. UNITED STATES
09-8413 ROGEL-TORRES, JOSUE V. UNITED STATES
09-8425 MOORE, WAYNE V. UNITED STATES
09-8431 PASSARO, DAVID A. V. UNITED STATES
09-8433 BANKS, ERIC J. V. OUTLAW, WARDEN, ET AL.
09-8435 VENEGAS-ZAMORA, RAFAEL V. UNITED STATES
09-8436 WALKER, MICHAEL V. UNITED STATES
09-8438 VASQUEZ-ROSALES, JUAN V. UNITED STATES
09-8439 PROCTOR, JOHN R. V. UNITED STATES
09-8440 JONES, MICHAEL C. V. UNITED STATES
09-8446 DAWKINS, TERRY L. V. UNITED STATES
09-8447 CARVER, TIMOTHY W. V. UNITED STATES
09-8449 McCOY, CHESTER V. UNITED STATES
09-8450 MILLS, ROBERT V. UNITED STATES
09-8452 POWELL, TONY E. V. UNITED STATES
09-8456 BEIRUTI, ISSA S. V. UNITED STATES
09-8457 DELVILLAR, OCTAVIO V. UNITED STATES

09-8458 ELIAS, ALLAN V. UNITED STATES
09-8459 DECKER, DUSTIN V. UNITED STATES
09-8460 COOPER, ANDRE V. UNITED STATES
09-8467 YOUNG, CONNIE J. V. UNITED STATES
09-8468 ORDUNO, GUILLERMO V. UNITED STATES
09-8469 STOTTS, NATHANIEL R. V. UNITED STATES
09-8471 SLADE, ARTIS E. V. UNITED STATES
09-8477 CHEN, QIAN V. MARTINEZ, JUDGE, USDC WD WA
09-8480 DAVIS, MACK A. V. UNITED STATES
09-8483 BYERS, EVERETT M. V. UNITED STATES
09-8484 CLEAVER, JAMES F. V. UNITED STATES
09-8485 DERROW, MICHAEL J. V. UNITED STATES
09-8490 HARRISON, REX T. V. UNITED STATES
09-8491 FLORES-MERAZ, ROBERTO V. UNITED STATES
09-8492 FAGAN, MAURICE J. V. UNITED STATES
09-8494 FULBRIGHT, SHANNON R. V. UNITED STATES
09-8495 HERNANDEZ-ORTIZ, HECTOR V. UNITED STATES
09-8498 REYES, JORGE V. UNITED STATES
09-8499 FIGUEROA-TREJO, RODRIGO V. UNITED STATES
09-8500 GARCIA-ALCANTAR, ADRIAN V. UNITED STATES
09-8501 GARCIA-APARICIO, SERGIO V. UNITED STATES
09-8503 TODD, MARCO V. UNITED STATES
09-8505 ADAMS, CHARLES J. V. UNITED STATES
09-8508 CHANEY, VINCENT V. UNITED STATES
09-8509 GARCIA-GARCIA, SANDRY V. UNITED STATES
09-8516 LONDONO-CARDONA, LEONEL V. UNITED STATES
09-8518 JACKSON, QUINCY F. V. UNITED STATES
09-8519 MARTINEZ-BLANCO, OLIVAR V. UNITED STATES

09-8520 AUSTON, RICHARD V. UNITED STATES
 09-8523 VILLA, ESMERELDA V. UNITED STATES
 09-8524 MYERS, EDWARD V. UNITED STATES
 09-8531 TINDAL, ALPHONSO M. V. UNITED STATES
 09-8532 STOVALL, CALVIN V. UNITED STATES
 09-8534 JACKSON, EDWARD V. UNITED STATES
 09-8535 WINTERS, DAVID V. U.S. PAROLE COMM'R, ET AL.
 09-8537 RAMIREZ, PENNINA V. UNITED STATES
 09-8538) RODRIGUEZ, DIUVEL V. UNITED STATES
)
 09-8612) HERNANDEZ GARI, GEORMANI V. UNITED STATES
 09-8539 PERTIL, ORATIN V. UNITED STATES
 09-8540 DIAZ-GUTIERREZ, ALEJANDRO V. UNITED STATES
 09-8542 ARCHULETA, TOBIAS V. UNITED STATES
 09-8544 BERGARA, MARJIL L. V. UNITED STATES
 09-8545 ALEXANDER, LAZZERICK V. UNITED STATES
 09-8547 BOCHICCHIO, DAVID V. UNITED STATES
 09-8549 MILLER, JOHN J. V. UNITED STATES
 09-8553 PALADINO, ROBERT V. UNITED STATES
 09-8554 YODER, JOHN M. V. UNITED STATES
 09-8556 KIM, STANLEY V. UNITED STATES
 09-8559 DALLUM, CHRISTOPHER W. V. UNITED STATES
 09-8562 ADAMS, ROLAND V. UNITED STATES
 09-8565 DRAKE, JOSHUA L. V. UNITED STATES
 09-8611 GARCIA-BERCOVICH, ANGEL V. UNITED STATES
 09-8614 HAMPTON, WILLIE A. V. UNITED STATES
 09-8615 HAMMOND, EDWIN L. V. UNITED STATES
 09-8617 GITARTS, BARRY E. V. UNITED STATES
 09-8618 FRESHOUR, RUSSELL F. V. UNITED STATES

09-8620 GOODWIN-BEY, SCOTT V. UNITED STATES
09-8621 GIESWEIN, SHAWN J. V. UNITED STATES
09-8627 ZAMORA-LAINES, SANTOS V. UNITED STATES
09-8629 CHEN, HUI V. UNITED STATES
09-8631 ALLEN, VERONICA M. V. UNITED STATES
09-8633 EVANS, ELLIS E. V. RIVERA, WARDEN
09-8635 PHILLIPS, MARK E. V. UNITED STATES
09-8636 MEDINA-MARTINEZ, NATIVIDAD V. UNITED STATES
09-8639 JONES, RAMONE S. V. UNITED STATES
09-8647 WASHINGTON, WILLIAM V. UNITED STATES
09-8649 WIMBLEY, BARRON V. UNITED STATES
09-8652 RICHARDSON, DANA S. V. UNITED STATES
09-8654 RICKS, ANDRE V. UNITED STATES
09-8655 SMITH, LEONARD V. V. UNITED STATES
09-8658 SALEAN, SALADEAN W. V. UNITED STATES
09-8661 ALEXANDER, CLARENCE E. V. UNITED STATES
09-8666 HUNN, RICHARD E. V. UNITED STATES
09-8668 HARRIS, THOMAS J. V. UNITED STATES
09-8670 GOPIE, WAYNE A. V. UNITED STATES
09-8672 ACIERNO, STEPHANIE V. UNITED STATES
09-8684 TORRES-MENCHACA, GUILLERMO V. UNITED STATES
09-8688 HOLGUIN, MARIO A. G. V. UNITED STATES

The petitions for writs of certiorari are denied.

09-375 AMATO, BALDASSARE V. UNITED STATES

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

09-517 PACIFIC INVESTMENT MGMT., ET AL. V. HERSHEY, RICHARD, ET AL.
The motion of DRI - The Voice of the Defense Bar for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

09-570 DELAWARE V. COOKE, JAMES
The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

09-652 FRIERSON-HARRIS, MICHAEL W. V. HOUGH, JOSEPH C., ET AL.

09-726 AMES DEPT. STORES, INC., ET AL. V. ASM CAPITAL, L.P.

09-6937 LAMAY, CRYSTAL V. ASTRUE, COMM'R, SOCIAL SEC.
The petitions for writs of certiorari are denied. Justice Sotomayor took no part in the consideration or decision of these petitions.

09-7785 ALBERT, IKECHI K. V. DAKOTA COMMUNITIES, INC., 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.

09-7800 RIZZO, AUGUSTINE V. ROCK, SUPT., GREAT MEADOW
The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. The petition for a writ of certiorari is denied.

09-7853 WENDELL, DENNIS H. V. USDC ND NY
The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

09-7925 HILL, THOMAS W. V. HILLIER, DAVID R.
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.

09-7990 FORTE, ANTHONY V. ROCK, SUPT., GREAT MEADOW

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

09-8048 ELINE, RICHARD C. V. HAWAII DEPT. OF PUBLIC SAFETY

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.

09-8124 PEEK, SHANE V. CUMMINGS, JUDGE, ETC., ET AL.

09-8294 AGOSTINI, ADRIAN V. UNITED STATES

09-8335 JACKSON, VANCE V. UNITED STATES

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

09-8453 MCCARTHY, JOHN J. V. UNITED STATES

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.

09-8476 KARRON, DANIEL B. V. UNITED STATES

09-8482 ALONSO, DANIEL P. V. UNITED STATES

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

09-8646 JEFFUS, EDWARD D. V. DREW, 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.

HABEAS CORPUS DENIED

09-8455 IN RE WILLIE R. BUSH

09-8464 IN RE MITCHELL L. WALCK

09-8632 IN RE FREDDIE E. CASEY

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

09-7885 IN RE BARRY N. WADDELL

09-7982 IN RE LORENZO TOWNSEND

09-8198 IN RE ALFREDO M. SANCHO

The petitions for writs of mandamus are denied.

09-8014 IN RE CHARLES W. ALPINE

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. 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.

REHEARINGS DENIED

08-1472 USA MOBILITY WIRELESS, INC. V. QUON, JERILYN, ET AL.
08-10404 FULTZ, JAMES R. V. STATE FARM INSURANCE
08-10506 GARRETT, REGINA D. V. MISSISSIPPI
09-325 ARONOV, ALEXANDRE V. NAPOLITANO, SEC. OF HOMELAND
09-405 UNITED STATES, EX REL. DARIAN V. ACCENT BUILDERS, INC., ET AL.
09-406 UNITED STATES, EX REL. DARIAN V. PASTERNAK, DAVID J., ET AL.
09-5027 McNEILL, MICHAEL V. STAMPER, FRANK, ET AL.
09-5694 BOLDEN, ROBERT L. V. UNITED STATES
09-5728 HOLLIS, DARREN V. UNITED STATES
09-5973 TORAIN, BILLY J. V. AMERITECH ADVANCED DATA SERVICES
09-6078 KIM, GWANJUN V. PROGRESSIVE EXPRESS INS. CO.
09-6127 HAWTHORNE, RICKEY V. CARUSO, DIR., MI DOC, ET AL.
09-6136 NESBITT, RAYMOND V. CIRCUIT COURT OF IL
09-6203 MEREDITH, LYNNE V. ERATH, ANDREW, ET AL.
09-6382 ODOM, CHRISTOPHER A. V. OZMINT, DIR., SC DOC, ET AL.
09-6453 ROACH, WARREN T. V. ROCKINGHAM CTY. BD. OF ED.
09-6570 ADAMS, BRIAN V. HONDA ENGINEERING NORTH AMERICA
09-6864 LEWIS, KENNETH M. V. BURTT, WARDEN
09-6946 HANSLEY, JOHNNY L. V. UNITED STATES
09-6998 MACHADO, JESUS V. McNEIL, SEC., FL DOC
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.
09-7176 KING, WILLIE F. V. UNITED STATES
09-7372 WELCH, LARRY C. V. UNITED STATES

09-7425 McGRIGGS, JONATHAN V. MISSISSIPPI

09-7688 IN RE DONALD J. TRUAX

The petitions for rehearing are denied.

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SUPREME COURT OF THE UNITED STATES

JAMEY L. WILKINS *v.* OFFICER GADDY

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

No. 08–10914. Decided February 22, 2010

PER CURIAM.

In *Hudson v. McMillian*, 503 U. S. 1, 4 (1992), this Court held that “the use of excessive physical force against a prisoner may constitute cruel and unusual punishment [even] when the inmate does not suffer serious injury.” In this case, the District Court dismissed a prisoner’s excessive force claim based entirely on its determination that his injuries were “*de minimis*.” Because the District Court’s approach, affirmed on appeal, is at odds with *Hudson*’s direction to decide excessive force claims based on the nature of the force rather than the extent of the injury, the petition for certiorari is granted, and the judgment is reversed.

I

In March 2008, petitioner Jamey Wilkins, a North Carolina state prisoner, filed suit in the United States District Court for the Western District of North Carolina pursuant to 42 U. S. C. §1983. Wilkins’ *pro se* complaint alleged that, on June 13, 2007, he was “maliciously and sadistically” assaulted “[w]ithout any provocation” by a corrections officer, respondent Gaddy.¹ App. to Pet. for Cert. C–4. According to the complaint, Gaddy, apparently angered by Wilkins’ request for a grievance form, “snatched [Wilkins] off the ground and slammed him onto the concrete floor.” *Ibid.* Gaddy “then proceeded to punch, kick, knee and choke [Wilkins] until another officer had to

¹The materials in the record do not disclose Gaddy’s full name.

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physically remove him from [Wilkins].” *Ibid.* Wilkins further alleged that, “[a]s a result of the excessive force used by [Gaddy], [he] sustained multiple physical injuries including a bruised heel, lower back pain, increased blood pressure, as well as migraine headaches and dizziness” and “psychological trauma and mental anguish including depression, panic attacks and nightmares of the assault.” *Ibid.*

The District Court, on its own motion and without a response from Gaddy, dismissed Wilkins’ complaint for failure to state a claim. Citing Circuit precedent, the court stated that, “[i]n order to state an excessive force claim under the Eighth Amendment, a plaintiff must establish that he received more than a *de minimus [sic]* injury.” No. 3:08-cv-00138 (WD NC, Apr. 16, 2008), pp. 1, 2 (citing *Taylor v. McDuffie*, 155 F. 3d 479, 483 (CA4 1998); *Riley v. Dorton*, 115 F. 3d 1159, 1166 (CA4 1997) (en banc); footnote omitted). According to the court, Wilkins’ alleged injuries were no more severe than those deemed *de minimis* in the Circuit’s *Taylor* and *Riley* decisions. Indeed, the court noted, Wilkins nowhere asserted that his injuries had required medical attention.

In a motion for reconsideration, Wilkins stated that he was unaware that the failure to allege medical treatment might prejudice his claim. He asserted that he had been prescribed, and continued to take, medication for his headaches and back pain, as well as for depression. And he attached medical records purporting to corroborate his injuries and course of treatment.

Describing reconsideration as “an extraordinary remedy,” the court declined to revisit its previous ruling. No. 3:08-cv-00138 (WD NC, Aug. 25, 2008), p. 1. The medical records, the court observed, indicated that some of Wilkins’ alleged injuries “were pre-existing conditions.” *Id.*, at 3. Wilkins had sought treatment for high blood pressure and mental health issues even before the assault.

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The court acknowledged that Wilkins received an X ray after the incident “to examine his ‘bruised heel,’ ” but it “note[d] that bruising is generally considered a *de minimus [sic]* injury.” *Id.*, at 4. The court similarly characterized as *de minimis* Wilkins’ complaints of back pain and headaches. The court denied Wilkins leave to amend his complaint. In a summary disposition, the Court of Appeals affirmed “for the reasons stated by the district court.” No. 08–7881 (CA4, Jan. 23, 2009).

II

In requiring what amounts to a showing of significant injury in order to state an excessive force claim, the Fourth Circuit has strayed from the clear holding of this Court in *Hudson*. Like Wilkins, the prisoner in *Hudson* filed suit under §1983 alleging that corrections officers had used excessive force in violation of the Eighth Amendment. Evidence indicated that the officers had punched Hudson in the mouth, eyes, chest, and stomach without justification, resulting in “minor bruises and swelling of his face, mouth, and lip” as well as loosened teeth and a cracked partial dental plate. 503 U. S., at 4. A Magistrate Judge entered judgment in Hudson’s favor, but the Court of Appeals for the Fifth Circuit reversed, holding that an inmate must prove “a significant injury” in order to state an excessive force claim. *Hudson v. McMillian*, 929 F. 2d 1014, 1015 (1990) (*per curiam*). According to the Court of Appeals, Hudson’s injuries, which had not required medical attention, were too “minor” to warrant relief. *Ibid.*

Reversing the Court of Appeals, this Court rejected the notion that “significant injury” is a threshold requirement for stating an excessive force claim. The “core judicial inquiry,” we held, was not whether a certain quantum of injury was sustained, but rather “whether force was applied in a good-faith effort to maintain or restore disci-

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pline, or maliciously and sadistically to cause harm.” 503 U. S., at 7; see also *Whitley v. Albers*, 475 U. S. 312, 319–321 (1986). “When prison officials maliciously and sadistically use force to cause harm,” the Court recognized, “contemporary standards of decency always are violated . . . whether or not significant injury is evident. Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury.” *Hudson*, 503 U. S., at 9; see also *id.*, at 13–14 (Blackmun, J., concurring in judgment) (“The Court today appropriately puts to rest a seriously misguided view that pain inflicted by an excessive use of force is actionable under the Eighth Amendment only when coupled with ‘significant injury,’ *e.g.*, injury that requires medical attention or leaves permanent marks”).

This is not to say that the “absence of serious injury” is irrelevant to the Eighth Amendment inquiry. *Id.*, at 7. “[T]he extent of injury suffered by an inmate is one factor that may suggest ‘whether the use of force could plausibly have been thought necessary’ in a particular situation.” *Ibid.* (quoting *Whitley*, 475 U. S., at 321). The extent of injury may also provide some indication of the amount of force applied. As we stated in *Hudson*, not “every malevolent touch by a prison guard gives rise to a federal cause of action.” 503 U. S., at 9. “The Eighth Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind.” *Ibid.* (some internal quotation marks omitted). An inmate who complains of a “push or shove” that causes no discernible injury almost certainly fails to state a valid excessive force claim. *Ibid.* (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (CA2 1973)).

Injury and force, however, are only imperfectly corre-

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lated, and it is the latter that ultimately counts. An inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury. Accordingly, the Court concluded in *Hudson* that the supposedly “minor” nature of the injuries “provide[d] no basis for dismissal of [Hudson’s] §1983 claim” because “the blows directed at Hudson, which caused bruises, swelling, loosened teeth, and a cracked dental plate, are not *de minimis* for Eighth Amendment purposes.” 503 U. S., at 10.

The allegations made by Wilkins in this case are quite similar to the facts in *Hudson*, and the District Court’s analysis closely resembles the approach *Hudson* disavowed. Wilkins alleged that he was punched, kicked, kneed, choked, and body slammed “maliciously and sadistically” and “[w]ithout any provocation.” Dismissing Wilkins’ action *sua sponte*, the District Court did not hold that this purported assault, which allegedly left Wilkins with a bruised heel, back pain, and other injuries requiring medical treatment, involved *de minimis* force. Instead, the court concluded that Wilkins had failed to state a claim because “he simply has not alleged that he suffered anything more than *de minimus* [*sic*] injury.” No. 3:08–cv–00138 (WD NC, Apr. 16, 2008), at 2.

In giving decisive weight to the purportedly *de minimis* nature of Wilkins’ injuries, the District Court relied on two Fourth Circuit cases. See *Riley*, 115 F. 3d, at 1166–1168; *Taylor*, 155 F. 3d, at 483–485. Those cases, in turn, were based upon the Fourth Circuit’s earlier decision in *Norman v. Taylor*, 25 F. 3d 1259 (1994) (en banc), which approved the practice of using injury as a proxy for force. According to the Fourth Circuit, *Hudson* “does not foreclose and indeed is consistent with [the] view . . . that, absent the most extraordinary circumstances, a plaintiff cannot prevail on an Eighth Amendment excessive force

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claim if his injuries are *de minimis*.” 25 F. 3d, at 1263.

The Fourth Circuit’s strained reading of *Hudson* is not defensible. This Court’s decision did not, as the Fourth Circuit would have it, merely serve to lower the injury threshold for excessive force claims from “significant” to “non-*de minimis*”—whatever those ill-defined terms might mean. Instead, the Court aimed to shift the “core judicial inquiry” from the extent of the injury to the nature of the force—specifically, whether it was nontrivial and “was applied . . . maliciously and sadistically to cause harm.” 503 U. S., at 7. To conclude, as the District Court did here, that the absence of “some arbitrary quantity of injury” requires automatic dismissal of an excessive force claim improperly bypasses this core inquiry. *Id.*, at 9.²

²Most Circuits to consider the issue have rejected the Fourth Circuit’s *de minimis* injury requirement. See, e.g., *Wright v. Goord*, 554 F. 3d 255, 269–270 (CA2 2009) (“[O]ur Court has reversed summary dismissals of Eighth Amendment claims of excessive force even where the plaintiff’s evidence of injury was slight [T]he absence of any significant injury to [the plaintiff] does not end the Eighth Amendment inquiry, for our standards of decency are violated even in the absence of such injury if the defendant’s use of force was malicious or sadistic”); *Smith v. Mensinger*, 293 F. 3d 641, 648–649 (CA3 2002) (“[T]he Eighth Amendment analysis must be driven by the extent of the force and the circumstances in which it is applied; not by the resulting injuries. . . . [D]e minimis injuries do not necessarily establish *de minimis force*”); *Oliver v. Keller*, 289 F. 3d 623, 628 (CA9 2002) (rejecting the view “that to support an Eighth Amendment excessive force claim a prisoner must have suffered from the excessive force a more than *de minimis* physical injury” (internal quotation marks omitted)); *United States v. LaVallee*, 439 F. 3d 670, 687 (CA10 2006) (same).

The Fifth Circuit has sometimes used language indicating agreement with the Fourth Circuit’s approach. See, e.g., *Gomez v. Chandler*, 163 F. 3d 921, 924 (1999) (“[T]o support an Eighth Amendment excessive force claim a prisoner must have suffered from the excessive force a more than *de minimis* injury”). But see *Brown v. Lippard*, 472 F. 3d 384, 386 (2006) (“This Court has never directly held that injuries must reach beyond some arbitrary threshold to satisfy an excessive force claim”). Even in the Fifth Circuit, however, Wilkins likely would have

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In holding that the District Court erred in dismissing Wilkins' complaint based on the supposedly *de minimis* nature of his injuries, we express no view on the underlying merits of his excessive force claim. In order to prevail, Wilkins will ultimately have to prove not only that the assault actually occurred but also that it was carried out "maliciously and sadistically" rather than as part of "a good-faith effort to maintain or restore discipline." *Ibid.* Moreover, even if Wilkins succeeds, the relatively modest nature of his alleged injuries will no doubt limit the damages he may recover.

* * *

The petition for certiorari and the motion for leave to proceed *in forma pauperis* are granted. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

survived dismissal for failure to state a claim because that court's precedents have classified the sort of injuries alleged here as non-*de minimis*. See, e.g., *ibid.* (permitting a prisoner's Eighth Amendment excessive force claim to proceed to trial where evidence indicated that the prisoner suffered "one-centimeter abrasions on both his left knee and left shoulder, pain in his right knee, and tenderness around his left thumb," as well as "back problems"); *Gomez*, 163 F. 3d, at 922 (refusing to grant summary judgment on *de minimis* injury grounds where the prisoner alleged "physical pain [and] bodily injuries in the form of cuts, scrapes, [and] contusions to the face, head, and body").

THOMAS, J., concurring

SUPREME COURT OF THE UNITED STATESJAMEY L. WILKINS *v.* OFFICER GADDYON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 08–10914. Decided February 22, 2010

JUSTICE THOMAS, with whom Justice Scalia joins, concurring in the judgment.

I agree with the Court that the Fourth Circuit’s Eighth Amendment analysis is inconsistent with *Hudson v. McMillian*, 503 U. S. 1 (1992). But I continue to believe that *Hudson* was wrongly decided. *Erickson v. Pardus*, 551 U. S. 89, 95 (2007) (dissenting opinion); *Farmer v. Brennan*, 511 U. S. 825, 858 (1994) (opinion concurring in judgment); *Helling v. McKinney*, 509 U. S. 25, 37 (1993) (dissenting opinion); *Hudson, supra*, at 17 (dissenting opinion).

“At the time the Eighth Amendment was ratified, the word ‘punishment’ referred to the penalty imposed for the commission of a crime.” *Helling, supra*, at 38 (THOMAS, J., dissenting). The Court adhered to this understanding until 1976, when it declared in *Estelle v. Gamble*, 429 U. S. 97, that the Cruel and Unusual Punishments Clause also extends to prison conditions not imposed as part of a criminal sentence. See generally *Hudson, supra*, at 18–20 (THOMAS, J., dissenting); *Farmer, supra*, at 861 (THOMAS, J., concurring in judgment). To limit this abrupt expansion of the Clause, the Court specified that its new interpretation of the Eighth Amendment should not extend to every deprivation a prisoner suffers, but instead should apply “*only* [to] that narrow class of deprivations involving ‘serious’ injury inflicted by prison officials acting with a culpable state of mind.” *Hudson, supra*, at 20 (THOMAS, J., dissenting) (citing *Estelle, supra*, at 106); see generally *Wilson v. Seiter*, 501 U. S. 294, 298 (1991).

THOMAS, J., concurring in judgment

Hudson, however, discarded the requirement of serious injury. Building upon *Estelle*'s mislaid foundation, the Court concluded that force, rather than injury, is the relevant inquiry, and that a prisoner who alleges excessive force at the hands of prison officials and suffers nothing more than *de minimis* injury can state a claim under the Eighth Amendment. *Hudson* thus turned the Eighth Amendment into "a National Code of Prison Regulation," 503 U. S., at 28 (THOMAS, J., dissenting); *Farmer*, 511 U. S., at 859 (THOMAS, J., concurring in judgment), with "federal judges [acting as] superintendents of prison conditions nationwide," *id.*, at 860. Although neither the Constitution nor our precedents require this result, no party to this case asks us to overrule *Hudson*. Accordingly, I concur in the Court's judgment.

Per Curiam

SUPREME COURT OF THE UNITED STATES

RICK THALER, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, CORRECTIONAL INSTI-
TUTIONS DIVISION *v.* ANTHONY CARDELL
HAYNES

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

No. 09–273. Decided February 22, 2010

PER CURIAM.

This case presents the question whether any decision of this Court “clearly establishes” that a judge, in ruling on an objection to a peremptory challenge under *Batson v. Kentucky*, 476 U. S. 79 (1986), must reject a demeanor-based explanation for the challenge unless the judge personally observed and recalls the aspect of the prospective juror’s demeanor on which the explanation is based. The Court of Appeals appears to have concluded that either *Batson* itself or *Snyder v. Louisiana*, 552 U. S. 472 (2008), clearly established such a rule, but the Court of Appeals read far too much into those decisions, and its holding, if allowed to stand, would have important implications. We therefore grant the petition for certiorari, grant respondent’s motion to proceed *in forma pauperis*, and reverse the judgment of the Court of Appeals.

I

Respondent was tried in a Texas state court for the murder of a police officer, and the State sought the death penalty. During *voir dire*, two judges presided at different stages. Judge Harper presided when the attorneys questioned the prospective jurors individually, but Judge Wallace took over when peremptory challenges were exercised. When the prosecutor struck an African-American juror named Owens, respondent’s attorney raised a *Batson*

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objection. Judge Wallace determined that respondent had made out a prima facie case under *Batson*, and the prosecutor then offered a race-neutral explanation that was based on Owens' demeanor during individual questioning. Specifically, the prosecutor asserted that Owens' demeanor had been "somewhat humorous" and not "serious" and that her "body language" had belied her "true feeling." App. to Pet. for Cert. 187. Based on his observations of Owens during questioning by respondent's attorney, the prosecutor stated, he believed that she "had a predisposition" and would not look at the possibility of imposing a death sentence "in a neutral fashion." *Id.*, at 188. Respondent's attorney did not dispute the prosecutor's characterization of Owens' demeanor, but he asserted that her answers on the jury questionnaire "show[ed] that she was a juror who [was] leaning towards the State's case." *Ibid.* After considering the prosecutor's explanation and the arguments of defense counsel, Judge Wallace stated that the prosecutor's reason for the strike was "race-neutral" and denied the *Batson* objection without further explanation. *Id.*, at 189.

The case proceeded to trial, respondent was convicted and sentenced to death, and the Texas Court of Criminal Appeals affirmed the conviction. Rejecting respondent's argument that "a trial judge who did not witness the actual voir dire cannot, as a matter of law, fairly evaluate a *Batson* challenge," *id.*, at 173, the Court of Criminal Appeals wrote:

"There are many factors which a trial judge—even one who did not preside over the voir dire examinations—can consider in determining whether the opponent of the peremptory strikes has met his burden. These include the nature and strength of the parties' arguments during the *Batson* hearing and the attorneys' demeanor and credibility. And, when necessary, a

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trial judge who has not witnessed the voir dire may refer to the record,” *id.*, at 173–174 (footnote omitted).

With respect to the strike of juror Owens, the court held that Judge Wallace’s acceptance of the prosecutor’s explanation was not clearly erroneous and noted that “[t]he record does reflect that Owens was congenial and easygoing during voir dire and that her attitude was less formal than that of other veniremembers.” *Id.*, at 172. This Court denied respondent’s petition for a writ of certiorari. *Haynes v. Texas*, 535 U. S. 999 (2002).

After the Texas courts denied his application for state habeas relief, respondent filed a federal habeas petition. The District Court denied the petition and observed that this Court had never held that the deference to state-court factual determinations that is mandated by the federal habeas statute is inapplicable when the judge ruling on a *Batson* objection did not observe the jury selection. App. to Pet. for Cert. 80, n. 10.

A panel of the Court of Appeals granted a certificate of appealability with respect to respondent’s *Batson* objections concerning Owens and one other prospective juror. *Haynes v. Quarterman*, 526 F. 3d 189, 202 (CA5 2008). In its opinion granting the certificate, the panel discussed our opinion in *Snyder* at length and then concluded:

“Under *Snyder*’s application of *Batson*, . . . an appellate court applying *Batson* arguably should find clear error when the record reflects that the trial court was not able to verify the aspect of the juror’s demeanor upon which the prosecutor based his or her peremptory challenge.” 526 F. 3d, at 199.

When the same panel later ruled on the merits of respondent’s *Batson* claim regarding juror Owens,¹ the court

¹ Because the panel held that the strike of Owens violated *Batson*, the panel did not rule on the legitimacy of the other strike as to which a

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adopted the rule that it had previously termed “arguabl[e].” See 526 F. 3d, at 199; *Haynes v. Quarterman*, 561 F. 3d 535, 541 (CA5 2009). The court concluded that the decisions of the state courts were not owed “AEDPA deference” in this case “because the state courts engaged in pure appellate fact-finding for an issue that turns entirely on demeanor.” *Ibid.* The court then held that

“no court, including ours, can now engage in a proper adjudication of the defendant’s demeanor-based *Batson* challenge as to prospective juror Owens because we will be relying solely on a paper record and would thereby contravene *Batson* and its clearly-established ‘factual inquiry’ requirement. See, e.g., *Snyder*, [552 U. S., at 477]; *Batson*, [476 U. S., at 95].” *Ibid.* (footnote omitted).

II

Respondent cannot obtain federal habeas relief under 28 U. S. C. §2254(d)(1) unless he can show that the decision of the Texas Court of Criminal Appeals “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court.” A legal principle is “clearly established” within the meaning of this provision only when it is embodied in a holding of this Court. See *Carey v. Musladin*, 549 U. S. 70, 74 (2006); *Williams v. Taylor*, 529 U. S. 362, 412 (2000). Under §2254(d)(1), a habeas petitioner may obtain relief (1) “if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts”; or (2) “if the state court identifies the correct governing legal principle from this Court’s decisions but unreasonably applies that

certificate of appealability had been issued. *Haynes v. Quarterman*, 561 F. 3d 535, 541, n. 2 (CA5 2009).

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principle to the facts of the prisoner’s case.” *Id.*, at 413.

III

In holding that respondent is entitled to a new trial, the Court of Appeals cited two decisions of this Court, *Batson* and *Snyder*, but neither of these cases held that a demeanor-based explanation for a peremptory challenge must be rejected unless the judge personally observed and recalls the relevant aspect of the prospective juror’s demeanor.

The Court of Appeals appears to have concluded that *Batson* supports its decision because *Batson* requires a judge ruling on an objection to a peremptory challenge to “undertake ‘a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.’” 561 F. 3d, at 540 (quoting *Batson*, 476 U. S., at 93, in turn quoting *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U. S. 252, 266 (1977)). This general requirement, however, did not clearly establish the rule on which the Court of Appeals’ decision rests. *Batson* noted the need for a judge ruling on an objection to a peremptory challenge to “tak[e] into account all possible explanatory factors in the particular case,” 476 U. S., at 95 (internal quotation marks omitted). See also *Miller-El v. Dretke*, 545 U. S. 231, 239 (2005); *Johnson v. California*, 545 U. S. 162, 170 (2005). Thus, where the explanation for a peremptory challenge is based on a prospective juror’s demeanor, the judge should take into account, among other things, any observations of the juror that the judge was able to make during the *voir dire*. But *Batson* plainly did not go further and hold that a demeanor-based explanation must be rejected if the judge did not observe or cannot recall the juror’s demeanor.

Nor did we establish such a rule in *Snyder*.² In that

²Even if *Snyder* did alter or add to *Batson*’s rule (as the Court of

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case, the judge who presided over the *voir dire* also ruled on the *Batson* objections, and thus we had no occasion to consider how *Batson* applies when different judges preside over these two stages of the jury selection process. *Snyder*, 552 U. S., at 475–478. The part of *Snyder* on which the Court of Appeals relied concerned a very different problem. The prosecutor in that case asserted that he had exercised a peremptory challenge for two reasons, one of which was based on demeanor (*i.e.*, that the juror had appeared to be nervous), and the trial judge overruled the *Batson* objection without explanation. 552 U. S., at 478–479. We concluded that the record refuted the explanation that was not based on demeanor and, in light of the particular circumstances of the case, we held that the peremptory challenge could not be sustained on the demeanor-based ground, which might not have figured in the trial judge’s unexplained ruling. *Id.*, at 479–486. Nothing in this analysis supports the blanket rule on which the decision below appears to rest.

The opinion in *Snyder* did note that when the explanation for a peremptory challenge “invoke[s] a juror’s demeanor,” the trial judge’s “first hand observations” are of great importance. *Id.*, at 477. And in explaining why we could not assume that the trial judge had credited the claim that the juror was nervous, we noted that, because the peremptory challenge was not exercised until some time after the juror was questioned, the trial judge might not have recalled the juror’s demeanor. *Id.*, at 479. These observations do not suggest that, in the absence of a per-

Appeals seems to have concluded), *Snyder* could not have constituted “clearly established Federal law as determined by” this Court for purposes of respondent’s habeas petition because we decided *Snyder* nearly six years after his conviction became final and more than six years after the relevant state-court decision. See *Williams v. Taylor*, 529 U. S. 362, 390 (2000) (opinion for the Court by STEVENS, J.); *id.*, at 412 (opinion for the Court by O’Connor, J.).

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sonal recollection of the juror's demeanor, the judge could not have accepted the prosecutor's explanation. Indeed, *Snyder* quoted the observation in *Hernandez v. New York*, 500 U. S. 352, 365 (1991) (plurality opinion), that the best evidence of the intent of the attorney exercising a strike is often that attorney's demeanor. See 552 U. S., at 477.

Accordingly, we hold that no decision of this Court clearly establishes the categorical rule on which the Court of Appeals appears to have relied, and we therefore reverse the judgment and remand the case for proceedings consistent with this opinion. Our decision does not mandate the rejection of respondent's *Batson* claim regarding juror Owens. On remand, the Court of Appeals may consider whether the Texas Court of Criminal Appeals' determination may be overcome under the federal habeas statute's standard for reviewing a state court's resolution of questions of fact.

It is so ordered.