(ORDER LIST: 578 U.S.)

TUESDAY, MAY 31, 2016

CERTIORARI -- SUMMARY DISPOSITION

15-7939 WIMBLEY, COREY A. V. ALABAMA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Criminal Appeals of Alabama for further consideration in light of *Hurst* v. *Florida*, 577 U. S. ___ (2016).

ORDERS IN PENDING CASES

15A1078 DAILEY, MITZI E. V. LEW, SEC. OF TREASURY, ET AL.

The application for injunctive relief addressed to Justice Sotomayor and referred to the Court is denied.

15A1108 MATTA, SANGEETA N. V. MATTA, NARESH V.

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

15M122 WILLIAMS, BERNARD V. BARKLEY, KIMBERLY A.

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

141, ORIG. TEXAS V. NEW MEXICO, ET AL.

The Second Interim Motion of the Special Master for Allowance of Fees and Disbursements, as amended by his letter dated May 20, 2016, is granted, and the Special Master is awarded a total of $200,000.00 for the period May 1, 2015, through October 31, 2015, to be paid as follows: 37.5% by Texas,

37.5% by New Mexico, 20% by the United States and 5% by Colorado.

15-827 ENDREW F. V. DOUGLAS CTY. SCH. DIST. RE-1

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

15-8889 KINDIG, MARION V. WHOLE FOODS MARKET GROUP, INC.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until June 21, 2016, 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

15-513 STATE FARM FIRE & CASUALTY CO. V. UNITED STATES, EX REL. RIGSBY, ET AL.

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

CERTIORARI DENIED

14-1268 ESPINAL-ANDRADES, SANDRA Y. V. LYNCH, ATT'Y GEN.

15-780 CITIZENS AGAINST CASINO GAMBLING V. CHAUDHURI, JONODEV O.

15-1027 WALKER, BILLY Y. V. UNITED STATES

15-1041 SPRINT NEXTEL CORP., ET AL. V. NEW YORK, ET AL.

15-1178 CHIKOSI, MORGAN V. GALLAGHER, MICHAEL T., ET AL.

15-1179 EMBASSY OF EGYPT, ET AL. V. LASHEEN, MOHAMED E.

15-1184 BURTON, DOMINIC V. PASH, WARDEN

15-1186 ROGERS, JAMES R. V. CHATMAN, WARDEN

15-1197 GLOVER, MARY E. V. WELLS FARGO HOME, ET AL.

15-1198 McDONOUGH, JOHANNA B., ET AL. V. ANOKA COUNTY, MN, ET AL.

15-1201 VEHICLE INTELLIGENCE AND SAFETY V. MERCEDES-BENZ USA, ET AL.

15-1206 CRANE, JILL V. MARY FREE BED REHAB. HOSP.

15-1207 WALLACE, DENNIS A., ET AL. V. HERNANDEZ, BARBARA W.

15-1235 FUNES, CRISTIAN V. LYNCH, ATT'Y GEN.

15-1246 CHENOWETH, JAMES K. V. INDIANA

15-1267 MEDINA, JUAN M. V. DEPT. OF HOMELAND SECURITY

15-1274 BROWN, BRYAN J. V. IN BD. OF LAW EXAMINERS

15-1286 UNITE HERE LOCAL 54 V. TRUMP ENTERTAINMENT RESORTS

15-1301 DUNDERDALE, MICHAEL V. UNITED AIRLINES, INC.

15-1313 GREEN, MARK A., ET UX. V. UNITED STATES

15-7563 HILL, ANTHONY V. TEXAS

15-8634 CANNON, MARVIN V. FLORIDA

15-8653 VILLASANA, GONZALO L. V. STEPHENS, DIR., TX DCJ

15-8660 LOFTIS, HENRY D. V. PASH, WARDEN

15-8665 SHAPLEY, SHAUN G. V. DUNN, COMM'R, AL DOC, ET AL.

15-8666 DOTSON, JACK W. V. STEPHENS, DIR., TX DCJ

15-8667 ROQUE, FRANK S. V. ARIZONA

15-8668 THOMAS, DERRY V. MICHIGAN

15-8674 WOOD, BRUCE V. GALEF-SURDO, LINDA, ET AL.

15-8675 WARE, EMERSON D. V. JONES, SEC., FL DOC, ET AL.

15-8687 JORDAN, DONALD V. ILLINOIS

15-8693 CHAPMAN, JAMAL V. MARYLAND

15-8694 CROSBY, MICHAEL S. V. CAIN, WARDEN

15-8695 BURKE, ELIJAH V. LAWRENCE, D., ET AL.

15-8696 BARNETT, ROBERT V. PENNSYLVANIA

15-8697 BENJAMIN, LEON A. V. STEPHENS, DIR., TX DCJ

15-8698 SUMPTER, JIMMIE W. V. McINTOSH CTY. DISTRICT CT.

15-8702 MAHLER, EDWARD L. V. BALES, JANICE P.

15-8706 CUTTS, BOBBY V. SMITH, WARDEN

15-8710 ALEXANDER, WILLIAM V. ROSEN, GERALD E., ET AL.

15-8712 NEWSOME, EDWARD R. V. STEPHENS, DIR., TX DCJ

15-8716 STENSON, CHARLES V. CAPRA, SUPT., SING SING

15-8717 SINICO, TIMOTHY V. ILLINOIS

15-8722 BROWN, PATRICK M. V. TEXAS

15-8727 STEAH, KEE N. V. BRNOVICH. ATT'Y GEN. OF AZ

15-8733 WASHINGTON, IBUKUN O. V. STEPHENS, DIR., TX DCJ

15-8737 McDOWELL, GABRIEL V. MISSISSIPPI, ET AL.

15-8749 WRIGHT, ANTONIO V. KELLEY, DIR., AR DOC

15-8756 DISNEY, CLIFFORD V. BREWER, WARDEN

15-8759 ARMIJO, FELICIANO V. CAIN, WARDEN

15-8772 WILLIAMS, JACK E. V. CALIFORNIA

15-8791 HENRY, GRAHAM S. V. ARIZONA

15-8854 VIEIRA, RICHARD J. V. CALIFORNIA

15-8892 VILLAMAN, JASON, ET AL. V. UNITED STATES

15-8935 WATSON, TERRY G. V. LOMBARDI, GEORGE, ET AL.

15-8983 TAYLOR, ROBERT V. COLEMAN, SUPT., FAYETTE, ET AL.

15-8988 MARTINEZ-MORALES, MISAEL A. V. UNITED STATES

15-9016 PETE, NORMAN V. McCAIN, WARDEN

15-9027 JOHNSON, KIRBY V. UNITED STATES

15-9032 BROWN, MICHAEL A. V. FLORIDA

15-9037 COLLINS, GARRY V. UNITED STATES

15-9038 SAEED-WATARA, ADAM V. UNITED STATES

15-9039 THOMPSON, LARRY W. V. UNITED STATES

15-9041 ALQUZA, NASSER K. V. UNITED STATES

15-9043 BUCCI, ANTHONY V. UNITED STATES

15-9045 DAVIS, CHUKI P. V. FLORIDA

15-9052 LANZA-VAZQUEZ, RAMON V. UNITED STATES

15-9053 JAUREGUI, JAIME V. UNITED STATES

15-9055 ROQUE, JOSE V. UNITED STATES

15-9056 COOLEY, CHARLES E. V. DAVENPORT, WARDEN, ET AL.

15-9059 KARAYAN, HAYK V. UNITED STATES

15-9061 SHIVERS, SHANE V. KERESTES, SUPT., MAHANOY, ET AL.

15-9064 JEAN, JOHNNY V. UNITED STATES

15-9065 BAKER, JULIUS W. V. UNITED STATES

15-9066 COOKE, JAMES C. V. UNITED STATES

15-9067 MUNOZ, CARLOS V. UNITED STATES

15-9068 PEDRIN, ALEX J. V. UNITED STATES

15-9069 PHILLIPS, TRACEY B. V. UNITED STATES

15-9070 RAMIREZ-ALANIZ, PABLO V. UNITED STATES

15-9071 BOWERS, DEMETRIUS R. V. UNITED STATES

15-9072 ALLEN, KATHRYN C. V. UNITED STATES

15-9079 HERRING, DERRICK L. V. UNITED STATES

15-9086 WELCH, CASSLYN M. V. UNITED STATES

15-9093 WILLIAMS, ALVIS D. V. UNITED STATES

15-9094 GIBSON, CHRISTOPHER B. V. UNITED STATES

15-9096 GARRISON, BILLY B. V. UNITED STATES

15-9097 HARRIS, TYRONE V. UNITED STATES

15-9101 DOBBIN, TORREY V. UNITED STATES

15-9103 MOLINA-SANCHEZ, JORGE V. UNITED STATES

15-9105 BUZZARD, RONALD V. GILBERT, SUPT., STAFFORD CREEK

15-9116 AUSTIN, ROGER A. V. UNITED STATES

15-9120 JAMES, CORDELL V. KRUEGER, WARDEN

15-9122 RARICK, CHRISTOPHER D. V. UNITED STATES

15-9137 TAMEZ, FLAVIO V. UNITED STATES

The petitions for writs of certiorari are denied.

15-1210 CUBIST PHARMACEUTICALS, INC. V. HOSPIRA, INC.

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

15-1243 WAGNER, WALTER L. V. CRUZ, RAFAEL E.

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

15-8673 WITHEROW, JOHN V. SKOLNIK, HOWARD, ET AL.

15-8720 LEWIS, JAMES D. V. PFISTER, WARDEN, 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.

15-8734 CARPENTER, TRINA L. V. PNC BANK

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

15-8741 TAYLOR, ERIC E. V. VIRGINIA, ET AL.

15-8742 MAGWOOD, BOBBY L. V. JONES, SEC., FL 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.

15-9047 HAMMER, DAVID P. V. UNITED STATES

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

15-9077 BURGESS, ALBERT C. 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.

15-9130 WHEELER, JAMES L. V. UNITED STATES

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

HABEAS CORPUS DENIED

15-9184 IN RE DANIEL J. PETERKA

15-9229 IN RE JOSH THOMAS

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

15-8709 IN RE VICENTE A. ALVAREZ

The petition for a writ of mandamus is denied.

15-1130 IN RE ELIJAH W. RATCLIFF

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

15-7283 KING, VERNON V. LIVINGSTON, BRAD, ET AL.

15-7570 HOLBROOK, DIANE V. RONNIES LLC

15-7677 JAMES, RAY V. JONES, SEC., FL DOC, ET AL.

15-8086 LaBRANCH, GARY W. V. CALIFORNIA

15-8156 GLAGOLA, STEPHEN H. V. MICHIGAN, ET AL.

15-8193 IN RE CHARLES R. GETZ

The petitions for rehearing are denied.

Per Curiam

SUPREME COURT OF THE UNITED STATES

DEBORAH K. JOHNSON, WARDEN *v.* DONNA KAY LEE

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

No. 15–789. Decided May 31, 2016

PER CURIAM.

Federal habeas courts generally refuse to hear claims "defaulted . . . in state court pursuant to an independent and adequate state procedural rule." *Coleman* v. *Thompson*, 501 U. S. 722, 750 (1991). State rules count as "adequate" if they are "firmly established and regularly followed." *Walker* v. *Martin*, 562 U. S. 307, 316 (2011) (internal quotation marks omitted). Like all States, California requires criminal defendants to raise available claims on direct appeal. Under the so-called "*Dixon* bar," a defendant procedurally defaults a claim raised for the first time on state collateral review if he could have raised it earlier on direct appeal. See *In re Dixon*, 41 Cal. 2d 756, 759, 264 P. 2d 513, 514 (1953). Yet, in this case, the Ninth Circuit held that the *Dixon* bar is inadequate to bar federal habeas review. Because California's procedural bar is longstanding, oft-cited, and shared by habeas courts across the Nation, this Court now summarily reverses the Ninth Circuit's judgment.

I

Respondent Donna Kay Lee and her boyfriend Paul Carasi stabbed to death Carasi's mother and his ex-girlfriend. A California jury convicted the pair of two counts each of first-degree murder. Carasi received a death sentence, and Lee received a sentence of life without the possibility of parole. In June 1999, Lee unsuccessfully raised four claims on direct appeal. After the California

appellate courts affirmed, Lee skipped state postconviction review and filed the federal habeas petition at issue. See 28 U. S. C. §2254(a). The petition raised mostly new claims that Lee failed to raise on direct appeal. Because Lee had not exhausted available state-court remedies, however, the District Court temporarily stayed federal proceedings to allow Lee to pursue her new claims in a state habeas petition. The California Supreme Court denied Lee's petition in a summary order citing *Dixon*.

Having exhausted state remedies, Lee returned to federal court to litigate her federal habeas petition. The District Court dismissed her new claims as procedurally defaulted. Then, for the first time on appeal, Lee challenged the *Dixon* bar's adequacy. In her brief, Lee presented a small sample of the California Supreme Court's state habeas denials on a single day about six months after her default. Lee claimed that out of the 210 summary denials on December 21, 1999, the court failed to cite *Dixon* in 9 cases where it should have been applied. The court instead denied the nine petitions without any citation at all. In Lee's view, these missing citations proved that the California courts inconsistently applied the *Dixon* bar. Without evaluating this evidence, the Ninth Circuit reversed and remanded "to permit the Warden to submit evidence to the contrary, and for consideration by the district court in the first instance." *Lee* v. *Jacquez*, 406 Fed. Appx. 148, 150 (2010).

On remand, the warden submitted a study analyzing more than 4,700 summary habeas denials during a nearly 2-year period around the time of Lee's procedural default. From August 1998 to June 2000, the study showed, the California Supreme Court cited *Dixon* in approximately 12% of all denials—more than 500 times. In light of this evidence, the District Court held that the *Dixon* bar is adequate.

The Ninth Circuit again reversed. *Lee* v. *Jacquez*, 788

F. 3d 1124 (2015). Lee's 1-day sample proved the *Dixon* bar's inadequacy, the court held, because the "failure to cite *Dixon* where *Dixon* applies . . . reflects [its] irregular application." 788 F. 3d, at 1130. The general 12% citation rate proved nothing, the court reasoned, because the warden "d[id] not purport to show to how many cases the *Dixon* bar *should* have been applied." *Id.,* at 1133. In the Ninth Circuit's view, without this "baseline number" the warden's 2-year study was "entirely insufficient" to prove *Dixon*'s adequacy. 788 F. 3d, at 1133.

II

The Ninth Circuit's decision profoundly misapprehends what makes a state procedural bar "adequate." That question is a matter of federal law. *Lee* v. *Kemna*, 534 U. S. 362, 375 (2002). "To qualify as an 'adequate' procedural ground," capable of barring federal habeas review, "a state rule must be 'firmly established and regularly followed.'" *Martin*, *supra*, at 316 (quoting *Beard* v. *Kindler*, 558 U. S. 53, 60 (2009)).

California's *Dixon* bar satisfies both adequacy criteria. It is "firmly established" because, decades before Lee's June 1999 procedural default, the California Supreme Court warned defendants in plain terms that, absent "special circumstances," habeas "will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction." *Dixon*, *supra*, at 759, 264 P. 2d, at 514. And the California Supreme Court eliminated any arguable ambiguity surrounding this bar by reaffirming *Dixon* in two cases decided before Lee's default. See *In re Harris*, 5 Cal. 4th 813, 825, n. 3, 829–841, 855 P. 2d 391, 395, n. 3, 398–407 (1993); *In re Robbins*, 18 Cal. 4th 770, 814–815, and n. 34, 959 P. 2d 311, 340–341, and n. 34 (1998).

The California Supreme Court's repeated *Dixon* citations also prove that the bar is "regularly followed." *Mar-*

tin recently held that another California procedural bar—a rule requiring prisoners to file state habeas petitions promptly—met that requirement because "[e]ach year, the California Supreme Court summarily denies hundreds of habeas petitions by citing" the timeliness rule. 562 U. S., at 318. The same goes for *Dixon*. Nine purportedly missing *Dixon* citations from Lee's 1-day sample of summary orders hardly support an inference of inconsistency. See *Dugger* v. *Adams*, 489 U. S. 401, 410, n. 6 (1989) (holding that the Florida Supreme Court applied its similar procedural bar "consistently and regularly" despite "address[ing] the merits in several cases raising [new] claims on postconviction review"). Indeed, all nine orders in that sample were denials. None ignored the *Dixon* bar to *grant* relief, so there is no sign of inconsistency.

Nor is California's rule unique. Federal and state habeas courts across the country follow the same rule as *Dixon*. "The general rule in federal habeas cases is that a defendant who fails to raise a claim on direct appeal is barred from raising the claim on collateral review." *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331, 350–351 (2006). Likewise, state postconviction remedies generally "may not be used to litigate claims which were or could have been raised at trial or on direct appeal." 1 D. Wilkes, State Postconviction Remedies and Relief Handbook §1:2, p. 3 (2015–2016 ed.). It appears that every State shares this procedural bar in some form. See Brief for State of Alabama et al. as *Amici Curiae* 1, n. 2 (collecting citations). For such well-established and ubiquitous rules, it takes more than a few outliers to show inadequacy. Federal habeas courts must not lightly "disregard state procedural rules that are substantially similar to those to which we give full force in our own courts." *Kindler*, 558 U. S., at 62. And it would be "[e]ven stranger to do so with respect to rules in place in nearly every State." *Ibid.* Nothing suggests, moreover, that California courts apply the *Dixon*

bar in a way that disfavors federal claims. The Court therefore holds that it qualifies as adequate to bar federal habeas review.

III

The Ninth Circuit's contrary reasoning is unpersuasive and inconsistent with this Court's precedents. Applying the *Dixon* bar may be a "straightforward" or "mechanica[l]" task for state courts. 788 F. 3d, at 1130. But simplicity does not imply that missing citations reflect state-court inconsistency. To begin with, since the *Dixon* bar has several exceptions, see *Robbins*, *supra*, at 814–815, and n. 34, 959 P. 2d, at 340–341, and n. 34, the California Supreme Court can hardly be faulted for failing to cite *Dixon* whenever a petitioner raises a claim that he could have raised on direct appeal.

More importantly, California courts need not address procedural default before reaching the merits, so the purportedly missing citations show nothing. Cf. *Bell* v. *Cone*, 543 U. S. 447, 451, n. 3 (2005) (*per curiam*) (declining to address the warden's procedural-default argument); *Lambrix* v. *Singletary*, 520 U. S. 518, 525 (1997) (explaining that "[j]udicial economy might counsel" bypassing a procedural-default question if the merits "were easily resolvable against the habeas petitioner"). Ordinarily, "procedural default . . . is not a jurisdictional matter." *Trest* v. *Cain*, 522 U. S. 87, 89 (1997). As a result, the appropriate order of analysis for each case remains within the state courts' discretion. Such discretion will often lead to "seeming inconsistencies." *Martin*, 562 U. S., at 320, and n. 7. But that superficial tension does not make a procedural bar inadequate. "[A] state procedural bar may count as an adequate and independent ground for denying a federal habeas petition even if the state court had discretion to reach the merits despite the default." *Id.*, at 311; see *Kindler*, *supra*, at 60–61.

The Ninth Circuit's attempt to get around *Martin* and *Kindler* fails. The Court of Appeals distinguished those cases on the ground that California's *Dixon* bar is "mandatory" rather than discretionary because it involves a discretion-free general rule, notwithstanding exceptions that might involve discretion. 788 F. 3d, at 1130. The Court assumes, without deciding, that this description is accurate and the *Dixon* bar's exceptions leave some room for discretion. Even so, there is little difference between discretion exercised through an otherwise adequate procedural bar's exceptions and discretion that is a part of the bar itself. In any event, the Ninth Circuit's reasoning ignores the state courts' discretion to assume, without deciding, that a claim is not procedurally defaulted and instead hold that the claim lacks merit.

The Ninth Circuit was accordingly wrong to dismiss the 500-plus summary denials citing *Dixon* simply because they do not reveal which cases potentially implicate the bar. 788 F. 3d, at 1133. *Martin* already rejected this precise reasoning. There, the habeas petitioner unsuccessfully argued that "[u]se of summary denials makes it impossible to tell why the California Supreme Court decides some delayed petitions on the merits and rejects others as untimely." 562 U. S., at 319 (internal quotation marks omitted). So too here, "[w]e see no reason to reject California's [procedural] bar simply because a court may opt to bypass the [*Dixon*] assessment and summarily dismiss a petition on the merits, if that is the easier path." *Ibid.*

By treating every missing citation as a sign of inconsistency, the Court of Appeals "pose[d] an unnecessary dilemma" for California. *Kindler*, 558 U. S., at 61. The court forced the State to choose between the "finality of [its] judgments" and a burdensome opinion-writing requirement. *Ibid.*; see *Martin*, *supra*, at 312–313 (noting that the California Supreme Court "rules on a staggering

number of habeas petitions each year"); *Harrington* v. *Richter*, 562 U. S. 86, 99 (2011) (discussing the advantages of summary dispositions). "[F]ederal courts have no authority," however, "to impose mandatory opinion-writing standards on state courts" as the price of federal respect for their procedural rules. *Johnson* v. *Williams*, 568 U. S. ___, ___ (2013) (slip op., at 9). The Ninth Circuit's decision is thus fundamentally at odds with the "federalism and comity concerns that motivate the adequate state ground doctrine in the habeas context." *Kindler*, *supra*, at 62.

* * *

"A State's procedural rules are of vital importance to the orderly administration of its criminal courts; when a federal court permits them to be readily evaded, it undermines the criminal justice system." *Lambrix*, *supra*, at 525. Here, the Ninth Circuit permitted California prisoners to evade a well-established procedural bar that is adequate to bar federal habeas review. The petition for a writ of certiorari and respondent's motion to proceed *in forma pauperis* are granted. The judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

SUPREME COURT OF THE UNITED STATES

SHAWN PATRICK LYNCH *v.* ARIZONA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

No. 15–8366. Decided May 31, 2016

PER CURIAM.

Under *Simmons* v. *South Carolina*, 512 U. S. 154 (1994), and its progeny, "where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without possibility of parole," the Due Process Clause "entitles the defendant 'to inform the jury of [his] parole ineligibility, either by a jury instruction or in arguments by counsel.'" *Shafer* v. *South Carolina*, 532 U. S. 36, 39 (2001) (quoting *Ramdass* v. *Angelone*, 530 U. S. 156, 165 (2000) (plurality opinion)). In the decision below, the Arizona Supreme Court found that the State had put petitioner Shawn Patrick Lynch's future dangerousness at issue during his capital sentencing proceeding and acknowledged that Lynch's only alternative sentence to death was life imprisonment without parole. 238 Ariz. 84, 103, 357 P. 3d 119, 138 (2015). But the court nonetheless concluded that Lynch had no right to inform the jury of his parole ineligibility. *Ibid.* The judgment is reversed.

A jury convicted Lynch of first-degree murder, kidnapping, armed robbery, and burglary for the 2001 killing of James Panzarella. The State sought the death penalty. Before Lynch's penalty phase trial began, Arizona moved to prevent his counsel from informing the jury that the only alternative sentence to death was life without the possibility of parole. App. K to Pet. for Cert. The court granted the motion.

Lynch's first penalty phase jury failed to reach a unanimous verdict. A second jury was convened and sentenced

Lynch to death. On appeal, the Arizona Supreme Court vacated the sentence because the jury instructions improperly described Arizona law. The court did not address Lynch's alternative argument that the trial court had violated *Simmons*. On remand, a third penalty phase jury sentenced Lynch to death.

The Arizona Supreme Court affirmed, this time considering and rejecting Lynch's *Simmons* claim. The court agreed that, during the third penalty phase, "[t]he State suggested . . . that Lynch could be dangerous." 238 Ariz., at 103, 357 P. 3d, at 138. The court also recognized that Lynch was parole ineligible: Under Arizona law, "parole is available only to individuals who committed a felony before January 1, 1994," and Lynch committed his crimes in 2001. *Ibid.* (citing Ariz. Rev. Stat. Ann. §41–1604.09(I)). Nevertheless, while "[a]n instruction that parole is not currently available would be correct," the court held that "the failure to give the *Simmons* instruction was not error." 238 Ariz., at 103, 357 P. 3d, at 138.

That conclusion conflicts with this Court's precedents. In *Simmons*, as here, a capital defendant was ineligible for parole under state law. 512 U. S., at 156 (plurality opinion). During the penalty phase, the State argued that the jurors should consider the defendant's future dangerousness when determining the proper punishment. *Id.*, at 157. But the trial court refused to permit defense counsel to tell the jury that the only alternative sentence to death was life without parole. *Id.,* at 157, 160. The Court reversed, reasoning that due process entitled the defendant to rebut the prosecution's argument that he posed a future danger by informing his sentencing jury that he is parole ineligible. *Id.*, at 161–162; *id.*, at 178 (O'Connor, J., concurring in judgment). The Court's opinions reiterated that holding in *Ramdass*, *Shafer*, and *Kelly* v. *South Carolina*, 534 U. S. 246 (2002).

The Arizona Supreme Court thought Arizona's sentenc-

ing law sufficiently different from the others this Court had considered that *Simmons* did not apply. It relied on the fact that, under state law, Lynch could have received a life sentence that would have made him eligible for "release" after 25 years. 238 Ariz., at 103–104, 357 P. 3d, at 138–139; §13–751(A). But under state law, the only kind of release for which Lynch would have been eligible—as the State does not contest—is executive clemency. See Pet. for Cert. 22; 238 Ariz., at 103–104, 357 P. 3d, at 138–139. And *Simmons* expressly rejected the argument that the possibility of clemency diminishes a capital defendant's right to inform a jury of his parole ineligibility. There, South Carolina had argued that the defendant need not be allowed to present this information to the jury "because future exigencies," including "commutation [and] clemency," could one day "allow [him] to be released into society." 512 U. S., at 166 (plurality opinion). The Court disagreed: "To the extent that the State opposes even a simple parole-ineligibility instruction because of hypothetical future developments, the argument has little force." *Ibid.*; *id.,* at 177 (opinion of O'Connor, J.) (explaining that the defendant had a right "to bring his parole ineligibility to the jury's attention" and that the State could respond with "truthful information regarding the availability of commutation, pardon, and the like").

The State responds that *Simmons* "'applies only to instances where, as a legal matter, there is *no possibility* of parole.'" Brief in Opposition 11 (quoting *Ramdass*, 530 U. S., at 169 (plurality opinion)). Notwithstanding the fact that Arizona law currently prevents all felons who committed their offenses after 1993 from obtaining parole, 238 Ariz., at 103, 357 P. 3d, at 138, Arizona reasons that "nothing prevents the legislature from creating a parole system in the future for which [Lynch] would have been eligible had the court sentenced him to life with the possibility of release after 25 years." Brief in Opposition 12.

Per Curiam

This Court's precedents also foreclose that argument. *Simmons* said that the potential for future "legislative reform" could not justify refusing a parole-ineligibility instruction. 512 U. S., at 166 (plurality opinion). If it were otherwise, a State could always argue that its legislature might pass a law rendering the defendant parole eligible. Accordingly, as this Court later explained, "the dispositive fact in *Simmons* was that the defendant conclusively established his parole ineligibility under state law at the time of his trial." *Ramdass*, *supra*, at 171 (plurality opinion). In this case, the Arizona Supreme Court confirmed that parole was unavailable to Lynch under its law. *Simmons* and its progeny establish Lynch's right to inform his jury of that fact.

The petition for writ of certiorari and the motion for leave to proceed *in forma pauperis* are granted. The judgment of the Arizona Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

SHAWN PATRICK LYNCH *v.* ARIZONA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

No. 15–8366. Decided May 31, 2016

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Petitioner Shawn Patrick Lynch and his co-conspirator, Michael Sehwani, met their victim, James Panzarella, at a Scottsdale bar on March 24, 2001. The three went back to Panzarella's house early the next morning. Around 5 a.m., Sehwani called an escort service. The escort and her bodyguard arrived soon after. Sehwani paid her $300 with two checks from Panzarella's checkbook after spending an hour with her in the bedroom. Lynch and Sehwani then left the house with Panzarella's credit and debit cards and embarked on a spending spree.

The afternoon of March 25, someone found Panzarella's body bound to a metal chair in his kitchen. His throat was slit. Blood surrounded him on the tile floor. The house was in disarray. Police discovered a hunting knife in the bedroom. A knife was also missing from the kitchen's knifeblock. And there were some receipts from Lynch and Sehwani's spending spree.

Police found Lynch and Sehwani at a motel two days after the killing. They had spent the days with Panzarella's credit and debit cards buying cigarettes, matches, gas, clothing, and Everlast shoes, renting movies at one of the motels where they spent an afternoon, and making cash withdrawals. When police found the pair, Sehwani wore the Everlast shoes, and Lynch's shoes were stained with Panzarella's blood. A sweater, also stained with his blood, was in the back seat of their truck, as were Panzarella's car keys.

A jury convicted Lynch of first-degree murder, kidnaping, armed robbery, and burglary, and ultimately sentenced him to death.* But today, the Court decides that sentence is no good because the state trial court prohibited the parties from telling the jury that Arizona had abolished parole. *Ante,* at 1; see Ariz. Rev. Stat. Ann. §41–1604.09(I) (1999). The Court holds that this limitation on Lynch's sentencing proceeding violated *Simmons* v. *South Carolina*, 512 U. S. 154 (1994). Under *Simmons*, "[w]here the State puts the defendant's future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the capital sentencing jury—by either argument or instruction—that he is parole ineligible." *Id.,* at 178 (O'Connor, J., concurring in judgment).

Today's summary reversal perpetuates the Court's error in *Simmons*. See *Kelly* v. *South Carolina*, 534 U. S. 246, 262 (2002) (THOMAS, J., dissenting); *Shafer* v. *South Carolina*, 532 U. S. 36, 58 (2001) (THOMAS, J., dissenting). As in *Simmons*, it is the "sheer depravity of [the defendant's] crimes, rather than any specific fear for the future, which induced the . . . jury to conclude that the death penalty was justice." 512 U. S., at 181 (Scalia, J., dissenting). In *Simmons*, for example, the defendant beat and raped three elderly women—one of them his own grandmother—before brutally killing a fourth. See *ibid.* The notion that a jury's decision to impose a death sentence "would have been altered by information on the *current state of the law* concerning parole (which could of course be amended) is . . . farfetched," to say the least. *Id.,* at 184.

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*Sehwani ultimately pleaded guilty to first-degree murder and theft and received a sentence of natural life without the possibility of early release plus one year. See 225 Ariz. 27, 33, n. 4, 234 P. 3d 595, 601, n. 4 (2010).

Worse, today's decision imposes a magic-words requirement. Unlike *Simmons*, in which there was "no instruction at all" about the meaning of life imprisonment except that the term should be construed according to its "'[plain] and ordinary meaning,'" *id.,* at 160, 166 (plurality opinion), here there was an instruction about the nature of the alternative life sentences that the trial court could impose:

> "If your verdict is that the Defendant should be sentenced to death, he will be sentenced to death. If your verdict is that the Defendant should be sentenced to life, he will not be sentenced to death, and the court will sentence him to either life without the possibility of release until at least 25 calendar years in prison are served, or 'natural life,' which means the Defendant would never be released from prison." App. S to Pet. for Cert. 18.

That instruction parallels the Arizona statute governing Lynch's sentencing proceedings. That statute prescribed that defendants not sentenced to death could receive either a life sentence with the possibility of early release or a "natural life" sentence: "If the court does not sentence the defendant to natural life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years," but a defendant sentenced to "natural life" will "not be released on any basis for the remainder of the defendant's natural life." Ariz. Rev. Stat. Ann. §13–703(A) (2001).

Even though the trial court's instruction was a correct recitation of Arizona law, the Court holds that *Simmons* requires more. The Court laments that (at least for now) Arizona's only form of early release in Arizona is executive clemency. *Ante,* at 3. So the Court demands that the Arizona instruction specify that "the possibility of release" does not (at least for now) include parole. Due process, the Court holds, requires the court to tell the jury that if a

defendant sentenced to life with the possibility of early release *in 25 years* were to seek early release *today*, he would be ineligible for parole under Arizona law. *Ante,* at 3–4. Nonsense. The Due Process Clause does not compel such "micromanage[ment of] state sentencing proceedings." *Shafer*, *supra,* at 58 (THOMAS, J., dissenting).

Today's decision—issued without full briefing and argument and based on *Simmons,* a fractured decision of this Court that did not produce a majority opinion—is a remarkably aggressive use of our power to review the States' highest courts. The trial court accurately told the jury that Lynch could receive a life sentence with or without the possibility of early release, and that should suffice.

I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

LAMONDRE TUCKER *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 15–946. Decided May 31, 2016

The motion of Former Prosecutors for leave to file a brief as *amici curiae* is granted. The motion of Law and Political Science Scholars for leave to file a brief as *amici curiae* is granted. The motion of Charles Hamilton Houston Institute for Race and Justice at Harvard Law School to file a brief as *amicus curiae* is granted. The motion of Former Appellate Court Jurists for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting from the denial of certiorari.

Lamondre Tucker shot and killed his pregnant girlfriend in 2008. At the time of the murder, Tucker was 18 years, 5 months, and 6 days old, cf. *Roper* v. *Simmons*, 543 U. S. 551, 578 (2005) ("The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed"), and he had an IQ of 74, cf. *Atkins* v. *Virginia*, 536 U. S. 304, 321 (2002) (execution of the intellectually disabled violates the Eighth Amendment). Tucker was sentenced to death in a Louisiana county (Caddo Parish) that imposes almost half the death sentences in Louisiana, even though it accounts for only 5% of that State's population and 5% of its homicides. See Pet. for Cert. 18.

Given these facts, Tucker may well have received the death penalty not because of the comparative egregiousness of his crime, but because of an arbitrary feature of his

case, namely, geography. See *Glossip* v. *Gross*, 576 U. S. ___, ___–___ (2015) (BREYER, J., dissenting) (slip op., at 12–14). One could reasonably believe that if Tucker had committed the same crime but been tried and sentenced just across the Red River in, say, Bossier Parish, he would not now be on death row. See, *e.g.,* Smith, The Geography of the Death Penalty and Its Ramifications, 92 B. U. L. Rev. 227, 233–235, 278, 281 (2012); Robertson, The Man Who Says Louisiana Should "Kill More," N. Y. Times, July 8, 2015, p. A1 ("From 2010 to 2014, more people were sentenced to death per capita [in Caddo Parish] than in any other county in the United States, among counties with four or more death sentences in that time period"); see also *Glossip*, *supra*, at ___ (BREYER, J., dissenting) (slip op., at 12) ("[I]n 2012, just 59 counties (fewer than 2% of counties in the country) accounted for *all* death sentences imposed nationwide").

For this reason, and for the additional reasons set out in my opinion in *Glossip*, I would grant certiorari in this case to confront the first question presented, *i.e.,* whether imposition of the death penalty constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.