

MONDAY, JUNE 24, 2013

CERTIORARI -- SUMMARY DISPOSITIONS

11-9873 DOTSON, CARLOS V. UNITED STATES

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 United States Court of Appeals for the Sixth Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-245) MERCK & CO., INC. V. LA WHOLESALE DRUG CO., ET AL.

12-265) UPSHER-SMITH LABORATORIES, INC. V. LA WHOLESALE DRUG CO., ET AL.

The petitions for writs of certiorari are granted. The judgment is vacated, and the cases are remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *FTC v. Actavis, Inc.*, 570 U.S. ____ (2013). Justice Alito took no part in the consideration or decision of these petitions.

12-6558 DeLEON, ROBERTO E. V. UNITED STATES

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 United States Court of Appeals for the Fourth Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-7274 GRAHAM, LARONE V. UNITED STATES

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 United States Court of Appeals for the Second Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-7398 MUBDI, MANTEL D. V. UNITED STATES

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 United States Court of Appeals for the Fourth Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-7525 SHAVER, GLORIOUS, ET AL. V. UNITED STATES

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 United States Court of Appeals for the Third Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-7568 ASTORGA, MATTHEW V. KANSAS

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 Supreme Court of Kansas for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-7769 BARNES, JEREMY V. UNITED STATES

12-8236 BARTON, LOUIS C. V. UNITED STATES

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

pauperis and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the First Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-8298 JORDAN, STEVEN B. V. UNITED STATES

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 United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-8317 DAVIS, MILO V. V. UNITED STATES

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 United States Court of Appeals for the Eighth Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-8411 SMARR, BENJAMIN D. V. UNITED STATES

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 United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ____ (2013).

12-8683 ABRAHAMSON, MICHAEL B. V. UNITED STATES

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 United States Court of Appeals for the Eighth Circuit for further consideration in light of *Alleyne v. United States*, 570 U.S. ___ (2013).

ORDERS IN PENDING CASES

12M135 LOYAL, AL-QUAN R. V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

12M136 THOMAS, WILLIAM H. V. OLSON, ROSS A.

12M137 MORALES, CATALINO V. DISTRICT ATT'Y, ET AL.

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

12M138 DRUAN, ELLEN V. NH DEPT. OF ENVTL. SERVICES

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

12M139 MITCHELL, MICHELLE L. V. FLANNERY, KEVIN T.

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

12M140 IN RE GRAND JURY PROCEEDINGS

The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is granted.

12-786) LIMELIGHT NETWORKS, INC. V. AKAMAI TECHNOLOGIES, ET AL.

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12-960) AKAMAI TECHNOLOGIES, INC., ET AL V. LIMELIGHT NETWORKS, INC.

The Solicitor General is invited to file a brief in these cases expressing the views of the United States. Justice Alito took no part in the consideration or decision of these

petitions.

12-872 MADIGAN, LISA, ET AL. V. LEVIN, HARVEY N.

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

12-1078 SAMANTAR, MOHAMED A. V. YOUSUF, BASHE A., ET AL.

The Solicitor General is invited to file a brief in this case expressing the views of the United States. Justice Kagan took no part in the consideration or decision of this petition.

12-8561 PAROLINE, DOYLE R. V. UNITED STATES, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is granted. The order entered June 10, 2013, is vacated.

12-9771 FENTON, PERCIVAL N. V. UNITED STATES

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

12-9994 ETTLIN, DENNIS V. USDC CD CA

12-10107 SARRESHTEDARI, MEHDI V. CALIFORNIA

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until July 15, 2013, 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

12-99 UNITE HERE LOCAL 355 V. MULHALL, MARTIN, ET AL.

12-515 MICHIGAN V. BAY MILLS INDIAN COMMUNITY

The petitions for writs of certiorari are granted.

12-820 LOZANO, MANUEL J. V. ALVAREZ, DIANA L.

The petition for a writ of certiorari is granted limited

to Question 1 presented by the petition.

12-930 MAYORKAS, ALEJANDRO, ET AL. V. DE OSORIO, ROSALINA C., ET AL.

12-1168 McCULLEN, ELEANOR, ET AL. V. COAKLEY, ATT'Y GEN. OF MA

The petitions for writs of certiorari are granted.

12-1182) EPA, ET AL. V. EME HOMER CITY, ET AL.

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12-1183) AMERICAN LUNG ASSN., ET AL. V. EME HOMER CITY, ET AL.

The petitions for writs of certiorari are granted limited to the questions presented by the petition in No. 12-1182.

The cases are consolidated and a total of one hour is allotted for oral argument.

12-1200 EXEC. BENEFITS INSUR. AGENCY V. ARKISON, PETER H.

12-1208 UBS FINANCIAL SERVS., ET AL. V. UNION DE EMPLEADOS DE MUELLES

The petitions for writs of certiorari are granted.

12-1281 NLRB V. NOEL CANNING, ET AL.

The petition for a writ of certiorari is granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: Whether the President's recess-appointment power may be exercised when the Senate is convening every three days in *pro forma* sessions.

CERTIORARI DENIED

11-1485 YOUNG, CHRIS V. FITZPATRICK, JOSEPH S., ET AL.

11-1536 LUCAS, TREVOR V. UNITED STATES

12-300 PFIZER, INC. V. LAW OFFICES OF PETER G. ANGELOS

12-573 PALATINE, IL V. SENNE, JASON M.

12-865 WESTMORELAND COAL CO. V. SHARPE, MAE ANN, ET AL.

12-980 NEVADA, ET AL. V. RELIANT ENERGY, INC., ET AL.

12-986 WILSON, ERIC C. V. FLAHERTY, SUPT., VA DSP

12-1016 POLYPORE INT'L, INC. V. FEDERAL TRADE COMMISSION

12-1025 PLAINSCAPITAL CORP., ET AL. V. UNITED STATES

12-1033 MOMENTA PHARMACEUTICALS, ET AL. V. AMPHASTAR PHARMACEUTICALS

12-1044 DONALDSON, ROBERT D. V. DEPT. OF HOMELAND SECURITY

12-1055) GROCERY MANUFACTURERS, ET AL. V. EPA, ET AL.
)

12-1167) ALLIANCE OF AUTO MFRS., ET AL. V. EPA, ET AL.
)

12-1229) AM. FUEL & PETROCHEMICAL, ET AL. V. EPA, ET AL.
)

12-1073 LOS ANGELES, CA V. LAVAN, TONY, ET AL.

12-1118 APUZZO, JOSEPH F. V. SEC

12-1151 PITTS, ERNEST V. SHINSEKI, SEC. OF VA

12-1158 MIRROR WORLDS V. APPLE INC.

12-1175 JEFFERSON CTY. SCH. DIST. R-1 V. ELIZABETH E.

12-1250 BOOK, ETHAN V. PARKS, KIMBERLY, ET AL.

12-1258 HILL, ALBERT G. V. SCHILLING, WILLIAM, ET AL.

12-1262 CAMPBELL, PATSY L., ET AL. V. COMMERCIAL SERVICE OF PERRY

12-1263 HALL, MICHELLE G. V. SEABOLT, WARDEN

12-1264 GARCIA, FANNIE V. LAREDO, TX, ET AL.

12-1266 HOLKESVIG, RANDY V. MOORE, CHRISTINE R.

12-1277 VUYURU, LOKESH, ET AL. V. JADHAV, GOPINATH, ET AL.

12-1288 ADAMS, CHARLES, ET AL. V. RAINTREE VACATION EXCH., ET AL.

12-1289 INSTANT REPLAY SPORTS, ET AL. V. ALLSTATE INSURANCE CO.

12-1304 ROSELLINI, KENNETH, ET AL. V. JACK SILVERMAN REALTY, ET AL.

12-1333 McDONALD, JESSIE D. V. COOPER, ROBERT E.

12-1340 AUSTAL USA, LLC V. ADAMS, EARATON, ET AL.

12-1357 MARTINEZ, MICHELLE, ET AL. V. MAVERICK COUNTY, TX, ET AL.

12-1360 BOWERS, STEPHEN M. V. BD. OF REGENTS UNIV. SYS. OF GA

12-1365 CLEARPLAY, INC. V. NISSIM CORP., ET AL.

12-1373 MITAN, KENNETH V. UNITED STATES

12-1379 HUNTER, HORACE F. V. VIRGINIA STATE BAR

12-6571 DORSEY, DEVAUGHN V. UNITED STATES
12-6807 SANTACRUZ, PIOQUINTO L. V. UNITED STATES
12-7971 SKINNER, MELVIN V. UNITED STATES
12-8414 RIZK, HASSAN V. PRELESNIK, WARDEN
12-8731 CAGE, JOSEPHINE L. V. COLVIN, ACTING COMM'R, SSA
12-8807 MITCHELL, RAYMOND V. UNITED STATES
12-8823 CAMPBELL, MARCUS V. UNITED STATES
12-8866 TAYLOR, AARON V. UNITED STATES
12-9340 MARTINEZ, KENNETH L. V. DISTRICT ATT'Y OF SAN JOAQUIN
12-9341 JENKINS, ROBERT V. MISSISSIPPI
12-9354 GRIM, FREDERICK D. V. MISSISSIPPI
12-9386 PONTICELLI, ANTHONY J. V. CREWS, SEC., FL DOC, ET AL.
12-9391 BOYD, ANTHONY V. THOMAS, COMM'R, AL DOC
12-9524 SINGLETARY, ESTELLE V. DEPT. OF H&HS
12-9790 DILBERT, CLIFFORD V. DAVIS, WARDEN
12-9793 TREVINO, RENE G. V. BEARD, SEC., CA DOC, ET AL.
12-9799 SARTORI, ROBERT V. NORTH CAROLINA
12-9809 RUSHING, BRANDON G. V. TEXAS
12-9810 BRATTON, RONALD V. PEREZ, MARGARITA, ET AL.
12-9814 DeSUE, MICHAEL C. V. FL DOC
12-9817 TORRES, DANIEL V. HARTLEY, WARDEN
12-9821 SANTOS, JOSE V. NEW JERSEY
12-9830 BROWN, STEVEN G. V. FLORIDA
12-9839 LESURE, SHANARD V. ATCHISON, WARDEN
12-9840 JONES, FELICIA N. V. TOLL BROTHERS
12-9845 CARTER, LARRY V. ILLINOIS
12-9851 JEMISON, BERNARD V. CULLIVER, GRANTT, ET AL.
12-9852 LOVATO LUCERO, KATHRYN V. NM DEPT. OF WORKFORCE SOLUTIONS

12-9868 ESTRIN, LEO V. CALIFORNIA
12-9869 MACK, EVYN V. BITER, WARDEN
12-9870 LEWIS, LINDA V. WAXAHACHIE, TX, ET AL.
12-9872 ROBINSON, JOHN V. NEW JERSEY
12-9878 KANODE, MICHAEL V. SWOPE, JUDGE, ETC., ET AL.
12-9883 ROBLES, GABRIEL M. V. STATE FARM INSURANCE, ET AL.
12-9884 SCOTT, THOMAS D. V. MULE CREEK STATE PRISON, ET AL.
12-9889 MOORE, GARY B. V. ZAPPA, S., ET AL.
12-9893 BUSH, DEBORAH V. STEVENSON COMMONS ASSOC., ET AL.
12-9926 PHILLIPS, CORELANIUS T. V. HOBBS, DIR., AR DOC
12-9973 HOARD, ROBERT V. KLEE, PAUL
12-10000 JOHNSON, KEITH V. CHAPPIUS, SUPT., ELMIRA
12-10009 ODOM, CURTIS V. DOAR, ROBERT, ET AL.
12-10059 JENNINGS, LAURA A. V. HAGEL, SEC. OF DEFENSE
12-10117 EDWARDS, DeJUAN M. V. SCUTT, WARDEN, ET AL.
12-10127 WASHINGTON, LESTER L. V. EAST BATON ROUGE PARISH SCHOOL
12-10131 WADDELL-EL, ALTON V. YOUNG, WARDEN
12-10137 MOFFAT, CLIFTON P. V. SMITH, WARDEN
12-10174 THOMAS, FORREST V. MISSISSIPPI
12-10177 ADAMS, BARRY W. V. SMITH, WARDEN
12-10200 WILLIAMS, SPENCER V. WOLFENBARGER, WARDEN
12-10210 BALLINGER, DWAYNE V. PRELESNIK, WARDEN
12-10256 JOHNSON, DAVID L. V. NEW JERSEY
12-10259 BAKER, JOHN P. V. RYAN, DIR., AZ DOC, ET AL.
12-10269 BHAMBRA, HARJIT V. UNITED STATES
12-10302 GARCIA, MARTIN V. UNITED STATES
12-10312 SHELTON, NORMAN N. V. ROHRS, R., ET AL.
12-10318 COOPER, LOVE T. V. UNITED STATES

12-10320 CRUZ, HECTOR V. UNITED STATES
12-10323 SCHNEIDER, STEPHEN J., ET UX. V. UNITED STATES
12-10324 SLAUGHTER, CHESTER R. V. UNITED STATES
12-10335 ARRIAGA-MORALES, JOSE V. UNITED STATES
12-10337 CARRERA-DIAZ, JOSE L. V. UNITED STATES
12-10341 RODRIGUEZ, JUAN O. V. UNITED STATES
12-10342 SNEAD, EDDIE W. V. UNITED STATES
12-10343 THREATT, JAMES W. V. UNITED STATES
12-10345 WADE, JULIAN V. UNITED STATES
12-10360 CONNER, STEVEN W. V. CIR
12-10363 KENNEDY, JOSEPH V. UNITED STATES
12-10373 ASAR, DIFANKH V. UNITED STATES
12-10374 JOHNSON, DAMARCUS V. UNITED STATES
12-10383 LLOYD, SAMUEL V. UNITED STATES
12-10385 LONDONO, RUBEN D. V. UNITED STATES
12-10387 LOWERY, QUALO M. V. UNITED STATES
12-10389 AKITI, ANTHONY V. UNITED STATES
12-10391 CAUDILL, JOHNATHON D. V. UNITED STATES
12-10392 DARDEN, CLIFFORD V. UNITED STATES
12-10393 CORDOVA, DERICK E. V. UNITED STATES
12-10394 CARTER, QUITMAN V. UNITED STATES
12-10401 RAMIREZ, EDGAR A. V. UNITED STATES
12-10404 REID, KENNETH R. V. UNITED STATES
12-10406 ARMENDARIS-RAMOS, EDUARDO V. UNITED STATES
12-10407 DOWD, MATTHEW E. V. UNITED STATES
12-10409 VAUGHAN, BEAU C. V. UNITED STATES
12-10410 WITHERSPOON, SHONTONIO L. V. UNITED STATES
12-10415 SPRAGLING, MICHAEL L. V. UNITED STATES

12-10419 EVANS, ROBERT E. V. UNITED STATES
12-10422 TURNER, MICHAEL V. PASTRANA, WARDEN
12-10431 MARTE, JOSE M. V. UNITED STATES
12-10432 LAM, TANH H. V. UNITED STATES
12-10438 LEGRANO, JOSEPH V. UNITED STATES
12-10439 RAMIREZ-PEREZ, RAFAEL V. UNITED STATES
12-10450 ERHABOR, EKUNDAYO A. V. UNITED STATES
12-10452 CONZELMANN, SCOTT A. V. UNITED STATES
12-10453 MELENDEZ, JONATHAN V. UNITED STATES
12-10455 GARCIA-ROQUE, DAVID V. UNITED STATES
12-10456 GARCIA, ROBERT V. UNITED STATES
12-10460 DAVIS, DARRYL L. V. UNITED STATES
12-10461 CARAWAY, ROMILUS V. UNITED STATES
12-10462 CAVOUNIS, CHRISTOPHER V. UNITED STATES
12-10467 BLOUNT, WENDELL G. V. UNITED STATES
12-10471 WILLIAMS, JOSEPH E. V. UNITED STATES
12-10472 WILSON, ISABEL V. UNITED STATES
12-10473 ROWAN, CHRISTOPHER V. UNITED STATES
12-10480 JOHNSON, LEON S. V. UNITED STATES

The petitions for writs of certiorari are denied.

12-1057 ALLISON ENGINE CO., ET AL. V. UNITED STATES, EX REL. SANDERS
12-1092 LATTIMORE, KENT, ET AL. V. UNITED STATES, ET AL.

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

12-1294 NADER, RALPH V. SERODY, LINDA S., ET AL.

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

petition.

12-1302 GARCIA, MICHAEL V. LOUISIANA

The motion of Ethics Bureau at Yale for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

12-8932 OBAYDULLAH V. OBAMA, PRESIDENT OF U.S., ET AL.

The motion of respondents for leave to file a brief in opposition under seal is granted. The motion of petitioner for leave to file a reply brief under seal is granted. The petition for a writ of certiorari is denied.

12-9940 GRANDISON, ANTHONY V. SAAR, MARY ANN, ET AL.

12-9975 FRANZA, DOMINIC M. V. SHEAHAN, MICHAEL

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.

12-10110 STAFFNEY, HAROLD V. MACLAREN, 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. 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*).

12-10222 HEREDIA SANTA CRUZ, ARMANDO V. CALIFORNIA

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

petition.

12-10319 DOWNS, JOHN W. 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.

12-10400 JONES, MARCUS D. 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. Justice Kagan took no part in the consideration or decision of this motion and this petition.

12-10421 THOMAS, CORBIN V. UNITED STATES

12-10448 SCHOTZ, BARRY R. V. APKER, WARDEN

12-10457 BILLUPS, HERMAN L. V. UNITED STATES

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

HABEAS CORPUS DENIED

12-10479 IN RE JIMMY R. DAVIDSON

12-10533 IN RE ALBERTO CONCEPCION

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

MANDAMUS DENIED

12-9811 IN RE HAROLD J. BLACK

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

REHEARINGS DENIED

12-1021 PIERCE, SAMUEL V. WOLDENBERG, RONA

12-8707 BLANTON, PAUL A. V. CARUSO, PATRICIA L., ET AL.
12-8792 HOTCHKISS, JUDY V. CLAY TOWNSHIP BOARD, ET AL.
12-8856 EDWARDS, PHILLIP J. V. FLORIDA
12-8933 MCKENZIE, LEROY A. V. RAINES, LIEUTENANT, ET AL.
12-9009 FRANCIS, JAMES V. KY RIVER COAL CORP.
12-9069 JENNINGS, LAURA A. V. INDIANAPOLIS, IN, ET AL.
12-9103 MCVILVOY, TERRY L. V. NORMAN, SUPT., JEFFERSON CITY
12-9165 STENSON, CHARLES V. HEATH, SUPT., SING SING
12-9263 DITTO, FRANK R. V. PATENT AND TRADEMARK OFFICE
12-9481 MOHAMMED, FARID V. UNITED STATES
12-9623 TILLERY, CARTER V. UNITED STATES
12-9707 CONDREY, TERRY L. V. UNITED STATES

The petitions for rehearing are denied.

12-112 ROE, RICHARD, ET AL. V. UNITED STATES, ET AL.

The motion of petitioners for leave to file a petition for rehearing under seal with redacted copies for the public record is granted. The petition for rehearing is denied.

12-8352 ERCOLE, JOSEPH R. V. LAHOOD, SEC. OF TRANSPORTATION

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

Per Curiam

SUPREME COURT OF THE UNITED STATES

CHARLES L. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, PETITIONER *v.*
EDWARD HAROLD SCHAD

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

No. 12–1084. Decided June 24, 2013

PER CURIAM.

Respondent Edward Schad was convicted of first-degree murder and sentenced to death. After an extensive series of state- and federal-court proceedings concluded with this Court’s denial of respondent’s petitions for certiorari and for rehearing, the Ninth Circuit declined to issue its mandate as normally required by Federal Rule of Appellate Procedure 41(d)(2)(D). The Ninth Circuit instead, *sua sponte*, construed respondent’s motion to stay the mandate pending the Ninth Circuit’s decision in a separate en banc case as a motion to reconsider a motion that it had denied six months earlier. Based on its review of that previously rejected motion, the court issued a stay a few days before respondent’s scheduled execution. Even assuming, as we did in *Bell v. Thompson*, 545 U. S. 794 (2005), that Rule 41(d)(2)(D) admits of any exceptions, the Ninth Circuit did not demonstrate that exceptional circumstances justified withholding its mandate. As a result, we conclude that the Ninth Circuit’s failure to issue its mandate constituted an abuse of discretion.

I

In 1985, an Arizona jury found respondent guilty of first-degree murder for the 1978 strangling of 74-year-old Lorimer Grove.¹ The court sentenced respondent to death.

¹A state habeas court vacated an earlier guilty verdict and death

Per Curiam

After respondent's conviction and sentence were affirmed on direct review, see *State v. Schad*, 163 Ariz. 411, 788 P. 2d 1162 (1989), and *Schad v. Arizona*, 501 U. S. 624 (1991), respondent again sought state habeas relief, alleging that his trial counsel rendered ineffective assistance at sentencing by failing to discover and present sufficient mitigating evidence. The state courts denied relief.

In August 1998, respondent sought federal habeas relief. He again raised a claim of ineffective assistance at sentencing for failure to present sufficient mitigating evidence. The District Court denied respondent's request for an evidentiary hearing to present new mitigating evidence, concluding that respondent was not diligent in developing the evidence during his state habeas proceedings. *Schad v. Schriro*, 454 F. Supp. 2d 897 (Ariz. 2006). The District Court alternatively held that the proffered new evidence did not demonstrate that trial counsel's performance was deficient. *Id.*, at 940–947. The Ninth Circuit affirmed in part, reversed in part, and remanded to the District Court for a hearing to determine whether respondent's state habeas counsel was diligent in developing the state evidentiary record. *Schad v. Ryan*, 606 F. 3d 1022 (2010). Arizona petitioned for certiorari. This Court granted the petition, vacated the Ninth Circuit's opinion, and remanded for further proceedings in light of *Cullen v. Pinholster*, 563 U. S. ___ (2011). See *Ryan v. Schad*, 563 U. S. ___ (2011). On remand, the Ninth Circuit affirmed the District Court's denial of habeas relief. *Schad v. Ryan*, 671 F. 3d 708, 726 (2011). The Ninth Circuit subsequently denied a motion for rehearing and rehearing en banc on February 28, 2012.

On July 10, 2012, respondent filed in the Ninth Circuit the first motion directly at issue in this case. This motion

sentence due to an error in jury instructions. See *State v. Schad*, 142 Ariz. 619, 691 P. 2d 710 (1984).

Per Curiam

asked the court to vacate its judgment and remand to the District Court for additional proceedings in light of this Court’s decision in *Martinez v. Ryan*, 566 U. S. 1 (2012).² The Ninth Circuit denied respondent’s motion on July 27, 2012. Respondent then filed a petition for certiorari. This Court denied the petition on October 9, 2012, 568 U. S. ____, and denied a petition for rehearing on January 7, 2013. 568 U. S. ____.

Respondent returned to the Ninth Circuit that day and filed a motion requesting a stay of the mandate in light of a pending Ninth Circuit en banc case addressing the interaction between *Pinholster* and *Martinez*. The Ninth Circuit denied the motion on February 1, 2013, “declin[ing] to issue an indefinite stay of the mandate that would unduly interfere with Arizona’s execution process.” Order in No. 07–99005, Doc. 102, p. 1. But instead of issuing the mandate, the court decided *sua sponte* to construe respondent’s motion “as a motion to reconsider our prior denial of his Motion to Vacate Judgment and Remand in light of *Martinez*,” which the court had denied on July 27, 2012. *Id.*, at 2. The court ordered briefing and, in a divided opinion, remanded the case to the District Court to determine whether respondent could establish that he received ineffective assistance of postconviction counsel under *Martinez*, whether he could demonstrate prejudice as a result, and whether his underlying claim of ineffective assistance of trial counsel had merit. No. 07–99005 (Feb. 26, 2013), App. to Pet. for Cert. A–13 to A–15, 2013 WL 791610, *6. Judge Graber dissented based on her conclusion that respondent could not show prejudice. *Id.*, at A–16 to A–17, 2013 WL 791610, *7. Arizona set an execution date of March 6, 2013, which prompted respondent to file

²*Martinez*, 566 U. S. 1, was decided on March 20, 2012. We are unaware of any explanation for respondent’s delay in bringing his *Martinez*-based argument to the Ninth Circuit’s attention.

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a motion for stay of execution on February 26, 2013. The Ninth Circuit panel granted the motion on March 1, 2013, with Judge Graber again noting her dissent.

On March 4, 2013, Arizona filed a petition for rehearing and rehearing en banc with the Ninth Circuit. The court denied the petition the same day, with eight judges dissenting in two separate opinions. 709 F. 3d 855 (2013).

On March 4, Arizona filed an application to vacate the stay of execution in this Court, along with a petition for certiorari. This Court denied the application, with JUSTICES SCALIA and ALITO noting that they would grant it. 568 U. S. ___ (2013). We now consider the petition.

II

Federal Rule of Appellate Procedure 41(d)(2)(D) sets forth the default rule that “[t]he court of appeals *must issue the mandate immediately* when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.” (Emphasis added.) The reason for this Rule is straightforward: “[T]he stay of mandate is entered solely to allow this Court time to consider a petition for certiorari.” *Bell*, 545 U. S., at 806. Hence, once this Court has denied a petition, there is generally no need for further action from the lower courts. See *ibid.* (“[A] decision by this Court denying discretionary review usually signals the end of litigation”). In *Bell*, Tennessee argued that Rule 41(d)(2)(D) “admits of no exceptions, so the mandate should have issued on the date” the Court of Appeals received notice of the Supreme Court’s denial of certiorari. *Id.*, at 803. There was no need to resolve this issue in *Bell* because we concluded that the Sixth Circuit had abused its discretion even if Rule 41(d)(2)(D) authorized a stay of the mandate after denial of certiorari. *Id.*, at 803–804. As in *Bell*, we need not resolve this issue to determine that the Ninth Circuit abused its discretion here.

Bell recognized that when state-court judgments are

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reviewed in federal habeas proceedings, “finality and comity concerns,” based in principles of federalism, demand that federal courts “accord the appropriate level of respect to” state judgments by allowing them to be enforced when federal proceedings conclude. *Id.*, at 812–813. As we noted, States have an ““interest in the finality of convictions that have survived direct review within the state court system.”” *Id.*, at 813 (quoting *Calderon v. Thompson*, 523 U. S. 538, 555 (1998), in turn quoting *Brecht v. Abrahamson*, 507 U. S. 619, 635 (1993)). Elsewhere, we explained that “‘the profound interests in repose’ attaching to the mandate of a court of appeals” dictate that “the power [to withdraw the mandate] can be exercised only in extraordinary circumstances.” *Calderon, supra*, at 550 (quoting 16 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* §3938, p. 712 (2d ed. 1996)). Deviation from normal mandate procedures is a power “of last resort, to be held in reserve against grave, unforeseen contingencies.” *Calderon, supra*, at 550. Even assuming a court of appeals has authority to do so, it abuses its discretion when it refuses to issue the mandate once the Supreme Court has acted on the petition, unless extraordinary circumstances justify that action.

Applying this standard in *Bell*, we found no extraordinary circumstances that could constitute a miscarriage of justice. There, a capital defendant unsuccessfully alleged in state postconviction proceedings that his trial counsel had been ineffective by failing to introduce sufficient mitigating evidence in the penalty phase of trial. 545 U. S., at 797. On federal habeas review, he made the same argument. *Id.*, at 798. After the Sixth Circuit affirmed, the defendant filed a petition for rehearing that “placed substantial emphasis” on his argument that the Sixth Circuit had overlooked new psychiatrist evidence. *Id.*, at 800. While the Sixth Circuit denied the petition, it stayed the issuance of its mandate while the defendant

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sought certiorari and, later, rehearing from the denial of the writ. *Ibid.*

When this Court denied the petition for rehearing, the Sixth Circuit did not issue its mandate. Instead, the Sixth Circuit waited five months (and until two days before the scheduled execution) to issue an amended opinion that vacated the District Court’s denial of habeas and remanded for an evidentiary hearing on the ineffective-assistance-of-counsel claim. *Id.*, at 800–801. This Court reversed that decision, holding that the Sixth Circuit had abused its discretion due to its delay in issuing the mandate without notifying the parties, its reliance on a previously rejected argument, and its disregard of comity and federalism principles.

In this case, the Ninth Circuit similarly abused its discretion when it did not issue the mandate. As in *Bell*, the Ninth Circuit here declined to issue the mandate based on an argument it had considered and rejected months earlier. And, by the time of the Ninth Circuit’s February 1, 2013, decision not to issue its mandate, it had been over 10 months since we decided *Martinez* and nearly 7 months since respondent unsuccessfully asked the Ninth Circuit to reconsider its decision in light of *Martinez*.³

Further, there is no doubt that the arguments presented in the rejected July 10, 2012, motion were identical to those accepted by the Ninth Circuit the following February. Respondent styled his July 10 motion a “Motion to Vacate Judgment and Remand to the District Court for Additional Proceedings in Light of *Martinez v. Ryan*.” No. 07–99005 (CA9), Doc. 88, p. 1. As its title suggests, the only claim presented in that motion was that respondent’s

³Respondent did not even present the motion that the Ninth Circuit ultimately reinstated until more than 4 months after the Ninth Circuit denied respondent’s request for panel rehearing and rehearing en banc and more than 3½ months after *Martinez* was decided.

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postconviction counsel should have developed more evidence to support his ineffective-assistance-of-trial-counsel claim. Here, as in *Bell*, respondent’s July 10 motion “pressed the same arguments that eventually were adopted by the Court of Appeals.” 545 U. S., at 806. These arguments were pressed so strongly in the July 10 motion that “[i]t is difficult to see how . . . counsel could have been clearer.” *Id.*, at 808. The Ninth Circuit had a full “opportunity to consider these arguments” but declined to do so, *id.*, at 806, which “support[s] our determination that the decision to withhold the mandate was in error.” *Id.*, at 806–807. We presume that the Ninth Circuit carefully considers each motion a capital defendant presents on habeas review. See *id.*, at 808 (rejecting the notion that “judges cannot be relied upon to read past the first page of a petition for rehearing”). As a result, there is no indication that there were any extraordinary circumstances here that called for the court to revisit an argument *sua sponte* that it already explicitly rejected.

Finally, this case presents an additional issue not present in *Bell*. In refusing to issue the mandate, the Ninth Circuit panel relied heavily upon *Beardslee v. Brown*, 393 F. 3d 899, 901 (CA9 2004) (*per curiam*), *Beardslee*, which precedes our *Bell* decision by more than six months, asserts the Ninth Circuit’s inherent authority to withhold a mandate. See App. to Pet. for Cert. A–3 to A–4, 2013 WL 791610, *1. But *Beardslee* was based on the Sixth Circuit’s decision in *Bell*, which we reversed. See *Beardslee*, *supra*, at 901 (citing *Thompson v. Bell*, 373 F. 3d 688, 691–692 (2004)). That opinion, thus, provides no support for the Ninth Circuit’s decision.

In light of the foregoing, we hold that the Ninth Circuit abused its discretion when it neglected to issue its mandate. The petition for a writ of certiorari and respondent’s motion to proceed *in forma pauperis* are granted. The Ninth Circuit’s judgment is reversed, the stay of execution

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is vacated, and the case is remanded with instructions to issue the mandate immediately and without any further proceedings.

It is so ordered.