

(ORDER LIST: 571 U.S.)

TUESDAY, NOVEMBER 12, 2013

ORDERS IN PENDING CASES

13M52 ROBINSON, EDDIE L. V. BANDY, AARON, ET AL.

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

12-10869 IN RE ANTHONY L. DAVIS

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

12-11004 TOWNSEND, CLAUDE V. NJ TRANSIT

13-5068 JONES, FELICIA N. V. LOUIS VOUITTON

13-5330 DYDZAK, DANIEL D. V. SCHWARZENEGGER, ARNOLD, ET AL.

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

13-6214 LUBLIN, ABRAHAM V. LUBLIN, APRIL

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until December 3, 2013, 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 DENIED

12-1170 PRUITT, ATT'Y GEN. OF OK, ET AL. V. NOVA HEALTH SYSTEMS, ET AL.

12-10741 GORDON, GEORGE D. V. UNITED STATES

13-5 BERNARD, MICHAEL D. V. UNITED STATES

13-173 RENDA, OSCAR V. UNITED STATES
13-179 KAPLAN, RISA, ET AL. V. CODE BLUE BILLING, ET AL.
13-182 GRIFFIN SPECIAL NEEDS, ET AL. V. ACS RECOVERY SERVICES, ET AL.
13-296 HYUNDAI MOTOR AMERICA, INC. V. CLEAR WITH COMPUTERS, LLC
13-311 DAUGHTERS OF ST. PAUL INC. V. PARISH OF JEFFERSON
13-391 BERGER, MORTON V. HORNE, ATT'Y GEN. OF AZ, ET AL.
13-5398 VARGAS, JOSE L. V. UNITED STATES
13-5856 HILL, MICHAEL D. V. WAL-MART STORES, INC.
13-6160 JACKSON, CLIFFORD A. V. CORCORAN, WARDEN, ET AL.
13-6162 MAITLAND, NIGEL A. V. PENNSYLVANIA
13-6164 BORKOWSKI, SCOTT L. V. MICHIGAN
13-6168 WIGHTMAN, BRUCE V. MORGAN, WARDEN
13-6179 LaCROIX, LORI R. V. USDC SD IN
13-6198 McDONOUGH, DAVID M. V. YATES, WARDEN
13-6205 ROBINSON, MICHAEL C. V. TEXAS
13-6207 ZIMMERMAN, RASCHID V. SMITH, WARDEN
13-6208 CLARK, SEAN A. V. DEPT. OF JUSTICE, ET AL.
13-6210 DUNGAN, ERIC K. V. GROUNDS, WARDEN
13-6211 PAGONIS, EVANGELOS V. STEPHENS, DIR., TX DCJ
13-6212 MARTINEZ, PHILLIP G. V. TEXAS
13-6220 McDONALD, CECIL R. V. TEXAS
13-6222 McELVEEN, MAURICE V. CALIBRE, NORBERTO, ET AL.
13-6223 POSITANO, ONOFRIO V. WETZEL, SEC., PA DOC, ET AL.
13-6227 DAVIS, MICHAEL A. V. CLARK, WARDEN
13-6233 CHESTANG, DANIEL K. V. SISTO, WARDEN
13-6234 CHESTANG, DANIEL K. V. YAHOO, INC.
13-6235 ENRIQUEZ, JUAN R. V. TEXAS
13-6239 CHAPPELL, MICHAEL D. V. JONES, DIR., OK DOC, ET AL.

13-6248 BLANK, TRAVIS H. V. EAVENSON, HAROLD, ET AL.
13-6251 FATTA, SHANNON V. M & M PROPERTIES
13-6252 WERBER, GREGORY V. BUNTING, WARDEN
13-6269 ISASI, RICHARD V. HOLDER, ATT'Y GEN., ET AL.
13-6273 MUTSCHLER, TONY L. V. SCI ALBION CHCA HEALTH, ET AL.
13-6310 WEBBER, MICHAEL A. V. FRANKE, SUPT., TWO RIVERS
13-6314 WRIGHT, GEORGE V. ALLENBY, CLIFF, ET AL.
13-6327 BURT, PAUL L. V. PEARSON, WARDEN
13-6363 AYOBOLA, ABIOLA V. UNITED STATES, ET AL.
13-6395 VILLARREAL, MARCO A. V. PREMO, SUPT., OR
13-6402 TRUSS, LEARNARDO V. THOMAS, WILLIE, ET AL.
13-6450 ORTIZ-SALGADO, RAMON V. POLK, WARDEN, ET AL.
13-6453 CEBALLOS, PABLO V. WILLIAMS, WARDEN, ET AL.
13-6461 TRAXTLE, JEFF R. V. HOLMAN, SHERRI, ET AL.
13-6468 BERRIOZ, MARLON V. CLARKE, DIR., VA DOC
13-6487 GARDNER, CHESTER V. MICHIGAN
13-6534 JOHNSON, BRANDON K. V. FLORIDA
13-6549 SOBCZAK, KENNETH M. V. WISCONSIN
13-6555 CHEFFEN, ANDERSON V. KANSAS
13-6557 DIAZ, ANGEL V. CREWS, SEC., FL DOC
13-6562 KELLY, THOMAS V. SHEAHAN, SUPT., FIVE POINTS
13-6631 THEUS, WILLIAM J. V. CREWS, SEC., FL DOC
13-6635 BRADLEY, DAVID M. V. SAUERS, SUPT., FOREST, ET AL.
13-6647 FRANCES, JOHN D. V. CREWS, SEC., FL DOC
13-6675 SIDBURY, JAMES W. V. UNITED STATES
13-6678 WEI, SHI YONG V. UNITED STATES
13-6683 BARBA, ANTONIO V. CALIFORNIA
13-6695 WEAVER, LONNIE V. MISSISSIPPI

13-6709 GRAY, TERRY V. MASSACHUSETTS
13-6727 INGRAM, INGRID C. V. JUST ENERGY
13-6757 THOMPSON, ALFRED L. V. UNITED STATES
13-6764 GONZALES, RICARDO V. UNITED STATES
13-6766 GOMEZ-ORTIZ, JOSE I. V. UNITED STATES
13-6767 BOYD, TRAVIS S. V. UNITED STATES
13-6768 LOPEZ, GABINO V. UNITED STATES
13-6775 BROOKS, JERIEL M. V. UNITED STATES
13-6778 BROWN, MITCHELL V. UNITED STATES
13-6782 GUILLEN, ROBERTO C. V. UNITED STATES
13-6784 VANDERWAL, MICHAEL V. UNITED STATES
13-6789 SHELTON, JOSEPH K. V. UNITED STATES
13-6791 DARDEN, ROBERTO A. V. UNITED STATES
13-6806 DORMEUS, RUDY E. V. UNITED STATES

The petitions for writs of certiorari are denied.

12-968 URIBE, WARDEN V. JOHNSON, KENNARD G.

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

12-1460 McFADYEN, RYAN, ET AL. V. DURHAM, NC, ET AL.

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

13-261 CARIOU, PATRICK V. PRINCE, RICHARD, ET AL.

The motion of New York Intellectual Property Law Association for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

13-297 PLASSE, GERARD V. MAO, DUNG, ET UX.

The motion of Seattle Transit Riders Union, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

13-341 DOWNS, DWIGHT J. V. ARMY CORPS OF ENGINEERS

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

13-408 FARKAS, JANOS V. JPMORGAN CHASE BANK, ET AL.

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

13-6173 TRICOME, DOMENIC V. CHUNIAS, MARGARET A., ET AL.

13-6187 SWEENEY, CHARLES E. V. BROWN, SUPT., WABASH VALLEY

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.

13-6226 ZIED-CAMPBELL, MINDY J., ET VIR V. PENNSYLVANIA, ET AL.

The motion of petitioners for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As petitioner Mindy Jaye Zied-Campbell has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from Mindy Jaye Zied-Campbell 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*).

13-6255 KEELING, MICHAEL E. V. USDC ED PA

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 petitions are submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

13-6428 KLAT, SUSAN V. V. MITCHELL REPAIR INFO., 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.

13-6737 WILLIAMS, LLOYD A. 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.

13-6743 DAO, HIEN A. V. STATE BAR OF CA

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

13-487 IN RE JESSIE McDONALD

13-6902 IN RE KENNETH J. TAYLOR

13-6931 IN RE RODRIQUES JACKSON

13-7014 IN RE ROBERT C. JONES

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

13-6232 IN RE JAMES R. SCHULTZ

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

13-6238 IN RE THOMAS H. CLAY

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

REHEARINGS DENIED

12-10428 KIM, EUN S. V. SUSSAL, JOSHUA B., ET AL.

12-10575 SMITH, MARVIN B., ET UX. V. REGIONS BANK & REGIONS MORTGAGE

13-32 DE LOS SANTOS, RICARDO V. USDC ND TX

13-5166 JONES, DANIEL H. V. McCLARTY, JOHN W., ET AL.

13-5726 IN RE ANTONIO COLBERT

13-5898 DAVIS, KARRIECE Q. V. UNITED STATES

The petitions for rehearing are denied.

12-10953 KAPORDELIS, GREGORY C. V. UNITED STATES

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

12-10992 FEUER, EDWARD C. V. UNITED STATES

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

ATTORNEY DISCIPLINE

D-2743 IN THE MATTER OF DISCIPLINE OF RICHARD LAWRENCE JAMES MCGARRY

Richard Lawrence James McGarry, of Roanoke, Virginia, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this

Court.

D-2744 IN THE MATTER OF DISCIPLINE OF MARK L. LEZELL

Mark L. Lezell, of Rockville, Maryland, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2745 IN THE MATTER OF DISCIPLINE OF LESLIEANN HAACKE

LeslieAnn Haacke, of Scottsdale, Arizona, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

D-2746 IN THE MATTER OF DISCIPLINE OF DIANE SERAFIN BLANK

Diane Serafin Blank, of New York, New York, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

ALITO, J., dissenting

SUPREME COURT OF THE UNITED STATES

DAVID UNGER, SUPERINTENDENT, WYOMING
CORRECTIONAL FACILITY *v.*
RUDOLF YOUNG

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

No. 13-95. Decided November 12, 2013

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

JUSTICE ALITO, joined by JUSTICE SCALIA, dissenting from the denial of certiorari.

The United States Court of Appeals for the Second Circuit granted habeas relief in this case after concluding that New York’s highest court unreasonably applied our decision in *United States v. Wade*, 388 U. S. 218 (1967), when it determined that a witness’ prolonged observation of a burglar in a well-lighted area of her own home provided an independent source for her in-court identification of respondent. Because the Second Circuit’s decision contravenes the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, our decision in *Cullen v. Pinholster*, 563 U. S. ____ (2011), and *Wade* itself, I would grant the petition and reverse.

I

In 1991, a burglar invaded the home of William and Lisa Sykes. In a well-lighted area of the home, the burglar brandished an axe over the head of Mr. Sykes, who was confined to a wheelchair, and demanded money. Mrs. Sykes was standing only three or four feet away from the burglar. Although his body was covered with a blanket and the lower part of his face with a scarf, Mrs. Sykes was able to observe clearly the upper part of his face. At first Mrs. Sykes was unable to believe that a burglar had en-

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tered the house; she thought the incident might be a prank by someone she knew, and therefore stared at the burglar's eyes to see if she could detect his identity.

The burglar remained in the Sykeses' home for five to seven minutes. During the course of the burglary, he took cash from Mr. Sykes' wallet and Mrs. Sykes' purse, as well as three watches, and a pair of binoculars with the name "Sykes" written on them. Mrs. Sykes continued to stare at the burglar while he was in the house, at one point prompting the burglar to order her, "Don't look at my face." App. C to App. to Pet. for Cert. 101a. After ripping two telephones out of the wall to prevent Mr. or Mrs. Sykes from calling the police, the burglar left the house.

The police later arrested respondent. Mrs. Sykes identified him at a lineup on the basis of his appearance and voice, but a state court later concluded that the police lacked probable cause to arrest respondent, and that the lineup was tainted by the illegal arrest.

At respondent's trial, the prosecution introduced a variety of evidence that respondent was the burglar. For instance, an acquaintance of respondent's testified that, at about the time of the burglary, respondent sold her a pair of binoculars bearing the name "Sykes" and three watches like those stolen from the Sykeses' home. Mrs. Sykes also testified and identified respondent as the burglar. She was permitted to identify respondent on the grounds that her observations of the burglar during the course of the crime provided an independent source of identification.

On direct appeal, the New York Court of Appeals correctly cited this Court's decision in *Wade, supra*, as providing the governing standard for respondent's independent source challenge, which it rejected. *People v. Young*, 7 N. Y. 3d 40, 44, 850 N. E. 2d 623, 626 (2006). Respondent then filed a petition for habeas relief, which the District Court granted. The Second Circuit affirmed, concluding that the New York Court of Appeals' application of *Wade* was unreasonable because all six *Wade* factors favored

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respondent. In particular, the Second Circuit cited two sources of authority for its determination that the first *Wade* factor, the witness’ “prior opportunity to observe the alleged criminal act,” *Wade, supra*, at 241, favored respondent: Second Circuit precedent and several social science studies that questioned an eyewitness’ ability to make an accurate identification in circumstances like those present here. *Young v. Conway*, 698 F. 3d 69, 80–83 (2012).

The State petitioned for rehearing en banc. The Second Circuit denied the petition, with Judges Cabranes, Raggi, and Livingston dissenting from denial.

II

There is no dispute that the New York Court of Appeals applied the correct legal standard in this case. Nor is it disputed that, because this Court has not given relevant guidance on how to weigh the various *Wade* factors, the Second Circuit’s decision is tenable only if that court correctly concluded that all the factors favor respondent.

That conclusion, however, is deeply flawed. In the first place, the Second Circuit relied on its own precedent to determine that the first *Wade* factor favored respondent—a choice that AEDPA clearly forecloses. See 28 U. S. C. §2254(d)(1) (limiting habeas relief to cases in which a state court rendered a decision “that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States”).

The only other basis for the Second Circuit’s conclusion on the first factor is its citation to several social science studies that were never presented to the state courts. We stated very clearly in *Pinholster* that “review under §2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits.” 563 U. S., at ____ (slip op., at 9). The lower court attempted to distinguish *Pinholster* by explaining that the social science

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studies “reinforced,” but did not “compe[1] or contro[1],” its conclusion that the New York Court of Appeals unreasonably applied *Wade*. 698 F. 3d, at 79, n. 8. But we drew no such distinction between “reinforcing” and “controlling” evidence in *Pinholster*, and the Second Circuit erred by doing so here. In any event, if it is true that the studies merely “reinforced” the Second Circuit’s conclusion, then that conclusion must have been “compelled” by the only other authority on which the court relied: its own precedent. And as noted, AEDPA flatly prohibits such reliance.*

More fundamentally, the Second Circuit’s disagreement is not with the New York Court of Appeals; it is with us. Mrs. Sykes unquestionably had a substantial opportunity to observe the burglar. We held in *Wade* that “the prior opportunity to observe the alleged criminal act” favors finding that an independent source exists. 388 U. S., at 241. The Second Circuit held, to the contrary, that such an opportunity does not suggest the existence of an independent source in the circumstances of this case. *Wade* simply does not leave that option on the table.

The Second Circuit’s decision creates loopholes in both *Pinholster* and *Wade*. In my view, the importance of this issue warrants review at this time. I respectfully dissent from the denial of certiorari.

*The analysis of the court below cannot be defended on the ground that *Pinholster* concerns only adjudicative facts and that the data in the social science studies constituted legislative facts. See Advisory Committee’s Note on subd. (a) of Fed. Rule Evid. 201, 28 U. S. C. App., p. 319. *Pinholster* does not mention any such distinction, but even if *Pinholster* is limited in this way, the Second Circuit’s analysis would still be flawed. By accepting and applying the factual conclusions drawn in the studies in question to conclude that, in the circumstances presented, Mrs. Sykes’ prior opportunity to observe the burglar did not suggest the existence of an independent source, the Second Circuit significantly altered the holding in *Wade*, as explained *infra* this page.