(ORDER LIST: 572 U. S.)

TUESDAY, MAY 27, 2014

ORDERS IN PENDING CASES

13M121 SMADI, HOSAM V. UNITED STATES

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

13M122 DOE, JANE V. PHILADELPHIA HOUSING, ET AL.

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

13M123 IN RE MARTHA A. AKERS

13M124 IN RE MARTHA A. AKERS

13M125 IN RE MARTHA A. AKERS

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

13-896) COMMIL USA V. CISCO SYSTEMS, INC.
)
13-1044) CISCO SYSTEMS, INC. V. COMMIL USA

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

13-9196 SPANO, ROSE J. V. FLORIDA BAR

13-9263 McCUTHISON, GERRY L. V. TN DEPT. OF HUMAN SERV., ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until June 17, 2014, 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

13-485 COMPTROLLER OF THE TREASURY OF MARYLAND V. BRIAN WYNNE, ET UX.

CERTIORARI DENIED

13-127 TURNER, DANNY V. UNITED STATES

13-504 BREWINGTON, JOHN E. V. NORTH CAROLINA

13-632 JAMES, RICHARD, ET AL. V. UNITED STATES

13-633 ORTIZ-ZAPE, MARIO E. V. NORTH CAROLINA

13-739 KITTKA, JEFFREY V. FRANKS, JACKIE

13-761 GALLOWAY, LESLIE V. MISSISSIPPI

13-837 PARKS, ARNOLD J. V. SHINSEKI, SEC. OF VA

13-847 HOBART, WI V. ONEIDA TRIBE OF INDIANS, ET AL.

13-885 YOHE, GEORGE W. V. PENNSYLVANIA

13-940 NORTH DAKOTA V. EPA, ET AL.

13-1096 HOLMES, JAMES V. WINTER, JANA

13-1116 MAHMOODIAN, SAEED V. PIRNIA, MANSOUREH, ET AL.

13-1118 DEBORD, SARA C. V. MERCY HEALTH SYSTEM OF KANSAS

13-1134 LOTHIAN CASSIDY, L.L.C., ET AL. V. MARKOWITZ, SETH, ET AL.

13-1136 AITKEN, BRIAN D. V. NEW JERSEY

13-1139 BEZIO, DOUGLAS G. V. DRAEGER, SCOT E., ET AL.

13-1140 REYNOLDS, BILLY G. V. TEXAS

13-1144 RILEY, JAMES D. V. SOUTH DAKOTA

13-1150 SNIDER INT'L CORP., ET AL. V. FOREST HEIGHTS, MD, ET AL.

13-1157 CUNNINGHAM, SHIRLEY A., ET AL. V. ABBOTT, MILDRED, ET AL.

13-1164 COMMERCE & INDUSTRY INS., ET AL. V. MI DEPT. OF TREASURY

13-1179 IRVING, BRIAN V. FLORIDA

13-1195 BASZAK, EDWIN V. FBI, ET AL.

13-1243 CAIN, CHRISTOPHER V. PONTON, WARDEN

13-1248 TAVAKKOLI, AMIR V. TEXAS

13-1257 SCOTT, MATTHEW G. V. WISCONSIN

13-1259 DURAN, ANTHONY V. ARIZONA

13-1260 MITRANO, PETER P. V. TYLER, ROBERT O.

13-1267 FALGOUT, PIERRE E. V. UNITED STATES

13-1272 KOMOROSKI, MARK V. UNITED STATES

13-1277 WINDSTEAD, JAMES, ET AL. V. DISTRICT OF COLUMBIA, ET AL.

13-1278 NAKANO, RAYMOND T. V. UNITED STATES

13-1294 CAMPBELL, ROBERT T. V. UNITED STATES

13-1297 WARD, LAWRENCE S. V. UNITED STATES

13-7394 MAXWELL, MAURICE V. UNITED STATES

13-7768 MARSHALL, DINA V. COLORADO

13-8239 ASHMORE, BENJAMIN J. V. PRUS, ERIC I., ET AL.

13-8552 TRITZ, IRENE V. USPS, ET AL.

13-8618 EDWARDS, ROBERT M. V. CALIFORNIA

13-8706 SMITH, RODERICK L. V. OKLAHOMA

13-8707 BUCK, DUANE E. V. TEXAS

13-8743 WALKER, JEFFREY J. V. WISCONSIN

13-8765 LARA-UNZUETA, MIGUEL V. UNITED STATES

13-8781 THOMPSON, EUGENE V. UNITED STATES

13-8915 TATE, DARRYL V. LOUISIANA

13-9002 GRAY, CAROL D. V. CIR

13-9003 GRAY, CAROL D. V. UNITED STATES

13-9118 ARAUZ, ROBERTO V. CALIFORNIA

13-9195 REYES, ROBERT V. CREWS, SEC., FL DOC, ET AL.

13-9199 GUIDRY, TIMOTHY V. CAIN, WARDEN

13-9202 EDWARDS, DAVID E. V. SWARTHOUT, WARDEN

13-9213 BUTTS, DARRYL M. V. CALIFORNIA

13-9222 RICE, EUGENE V. CALIFORNIA

13-9229 YOUNG, WESLEY V. INDIANA

13-9234 BURTON, ROBERT V. ARKANSAS

13-9239 MAGALLON, STEVEN V. HOLLAND, WARDEN

13-9248 HIRAMANEK, ADIL V. COURT OF APPEAL OF CA

13-9249 HAENDEL, MICHAEL V. PONT, MICHAEL, ET AL.

13-9250 SKLAR, LORI J. V. TOSHIBA AM. INFO. SYS., INC.

13-9252 SEIBERT, STEVEN V. TATUM, WARDEN

13-9257 MOSLEY, ODELL V. HARRINGTON, WARDEN

13-9260 JOHNSON, JOHN J. V. WAKEFIELD, MI

13-9261 GREENE, DEMETEILUS V. RENICO, WARDEN

13-9262 MILLER, WILLIAM C. V. ARIZONA

13-9264 REEVES, CAROL L. V. WELLS FARGO HOME, ET AL.

13-9267 REMY, MARC V. NEW YORK

13-9270 BROCK, MICHAEL V. CALIFORNIA

13-9272 BROWN, LEVAR V. BACA, SHERIFF

13-9273 SMITH, FREDERICK V. STEPHENS, DIR., TX DCJ

13-9276 JOHNSON, JESSIE L. V. MURRAY, OWEN J., ET AL.

13-9277 JOINER, JOHN H. V. DUFFEY, WARDEN

13-9278 FLANAGAN, JAMES V. CASH, WARDEN

13-9282 HOLLOWAY, CHARLES V. BAUMAN, WARDEN

13-9287 GRANT, JAMAL V. CATALDO, JOHN, ET AL.

13-9289 FAGNES, WILLIAM A. V. KELLER, WARDEN, ET AL.

13-9293 FRANCIS, DEBORAH A. V. SHORBA, JEFFERY, ET AL.

13-9305 COVARRUBIAS, JORGE A. V. GROUNDS, WARDEN

13-9306 JONES, CLIFTON-JEREL V. INDIANA, ET AL.

13-9310 VERA, ANTONIO F. V. STEPHENS, DIR., TX DCJ

13-9311 ZEPEDA, JAIME L. V. SULLIVAN, WARDEN, ET AL.

13-9316 ELLISON, ZONTA T. V. UNITED STATES

13-9322 AURICH, CRAIG V. CREWS, SEC., FL DOC, ET AL.

13-9324 WALDRIP, TOMMY L. V. HUMPHREY, WARDEN

13-9325 VOLK, TROY N. V. STEPHENS, DIR., TX DCJ

13-9330 WILLIAMS, RICKEY V. MASSACHUSETTS

13-9331 TOLEDO, SARAH N. V. CALIFORNIA

13-9332 WILLIAMS, ROBERT L. V. CALIFORNIA

13-9334 GREEN, FREEMAN V. THARP, SAM

13-9339 TONG, SHONG-CHING V. CA DMV

13-9341 ANDREWS, MICHAEL O. V. ROZUM, SUPT., SOMERSET, ET AL.

13-9345 WOODSON, KEITH V. ZATECKY, SUPT., PENDLETON

13-9346 TIJERINA, DAN H. V. PATTERSON, TOM, ET AL.

13-9357 JEFFERS, PATRICK T. V. VIRGINIA

13-9369 ANTHONY, JAMES L. V. CREWS, SEC., FL DOC, ET AL.

13-9416 FARROW, LANCE E. V. CURTIN, WARDEN

13-9438 GARCIA, JAMES V. URIBE, WARDEN

13-9483 SIMMONS, CRAIG L. V. FAA

13-9492 BIDWAI, MAKARAND V. PEREZ, SEC. OF LABOR, ET AL.

13-9494 BYNUM, WADDELL V. DOMINO'S PIZZA, INC.

13-9515 FERNANDEZ, FRANK J. V. LEWIS, G. D.

13-9551 SMALL, SHELLEY L. V. SOTO, WARDEN

13-9552 SCHWARTZMILLER, DEAN A. V. SHERMAN, ACTING WARDEN

13-9577 LAWRENCE, PAMELLA V. SONY ENTERTAINMENT, INC., ET AL.

13-9579 HERRON, LENWOOD V. ALABAMA

13-9585 VERONICA, ANTONIA G. V. HOLDER, ATT'Y GEN.

13-9593 ALMARAZ, DANIEL W. V. ARIZONA

13-9594 JORDAN, EDWARD V. SOTO, WARDEN

13-9610 WARD, CHARLES V. NORMAN, WARDEN

13-9614 JACKSON, PATRICK V. HILL, WARDEN

13-9646 LeFLEUR, PATRICK A. V. MICHIGAN

13-9660 BETHEA, JACQUES V. CREWS, SEC., FL DOC, ET AL.

13-9661 APPUKKUTTA, NARAYANAN V. NEW YORK SUPREME COURT, ET AL.

13-9665 DANIEL, MICHAEL V. OHIO

13-9668 RODRIGUEZ, DAVID V. ROZUM, SUPT., SOMERSET, ET AL.

13-9675 APARICIO, HUGO V. BAKER, WARDEN, ET AL.

13-9683 LINDSEY, GERRON V. DELAWARE

13-9684 FRANKLIN, KEVIN W. V. WASHINGTON

13-9704 ALLEN, ERIC V. CALIFORNIA

13-9711 REDMAN, EARLA G. V. NY DOC, ET AL.

13-9721 FRADIUE, MICHAEL M. V. MACOMBER, ACTING WARDEN, ET AL.

13-9731 COX, CRYSTAL V. OBSIDIAN FINANCE GROUP, ET AL.

13-9781 PAYNE, FRANCIS W. V. FLORIDA

13-9797 HANNER, SHELDON W. V. UNITED STATES

13-9803 HILL, RUSSELL K. V. HOLDER, ATT'Y GEN.

13-9804 RAGLAND, DEXTER L. V. ILLINOIS

13-9819 WHITE, KENNETH A. V. UNITED STATES

13-9820 THOMPSON, JUSTIN V. UNITED STATES

13-9821 VENTA, GUSTAVO V. UNITED STATES

13-9827 ALLEN, MARCUS V. UNITED STATES

13-9832 NELSON, THOMAS A. V. UNITED STATES

13-9836 STERLING, RONN D. V. UNITED STATES

13-9837 CRAWFORD, DONAVON D. V. UNITED STATES

13-9839 GALLON, NARCO L. V. UNITED STATES

13-9840 RIQUENE, ALFREDO M. V. UNITED STATES

13-9841 DELOSSANTOS, ALEXIS V. UNITED STATES

13-9842 THOMAS, TOMMIE R. V. UNITED STATES

13-9846 THORNTON, HAROLD J. V. O'BRIEN, WARDEN, ET AL.

13-9847 THORNTON, HAROLD J. V. DANIELS, WARDEN

13-9848 SANDERS, WILLIE J. V. UNITED STATES

13-9850 DE LA TORRE-VENTURA, JOSE M. V. UNITED STATES

13-9852 SLANAKER, BART D. V. UNITED STATES

13-9858 PINTO, OSCAR R. V. UNITED STATES

13-9859 LEE, KU V. UNITED STATES

13-9860 CLARK, GEORGE V. UNITED STATES

13-9861 CRAWFORD, CASWELL A. V. MEEKS, WARDEN

13-9866 QUINTANA, NORBERTO V. UNITED STATES

13-9872 NORIEGA-ALANIS, JUAN F. V. UNITED STATES

13-9877 CARROLL, DAVID V. HOLLAND, WARDEN

13-9878 ROBINSON, LUCAS V. UNITED STATES

13-9883 RONQUILLO, SAUL V. UNITED STATES

13-9886 SHELTON, TERAH J. V. UNITED STATES

13-9888 GAMEZ, LINO V. UNITED STATES

13-9889 GRAY, ARTRELL T., ET AL. V. UNITED STATES

13-9892 SUTTLES, ROBBIE V. UNITED STATES

13-9899 BROWN, DAMIAN V. UNITED STATES

13-9905 DANIELS, WILLIE L. V. UNITED STATES

13-9911 MAGANA, MANUEL V. UNITED STATES

13-9914 ORTEGA, RENALDA B. V. UNITED STATES

13-9915 BARNETT, GABRIEL V. UNITED STATES

13-9916 HAMILTON, ADRIAN V. UNITED STATES

13-9918 ADESOYE, KOLEOWO A. V. BATTS, WARDEN

13-9919 CALVIN, OSCAR V. UNITED STATES

13-9920 TAYLOR, RALPH V. OLIVER, WARDEN

13-9921 WINSOR, DAVID V. UNITED STATES

13-9922 TISDALE, DONALD L. V. UNITED STATES

13-9926 MEZA, CARLOS A. V. HOLDER, ATT'Y GEN., ET AL.

13-9929 STATEN, CHARLES H. V. UNITED STATES

13-9932 TAYLOR, ANTHONY M. V. UNITED STATES

13-9935 STRAYHORN, JANSON L. V. UNITED STATES

13-9936 ALLEN, HOSEA M. V. UNITED STATES

13-9940 DIAZ-SOSA, PONCIANO V. UNITED STATES

13-9941 QUINTERO-MENDOZA, VIRGINIA V. UNITED STATES

13-9942 CRUZ-ALICEA, LUIS V. UNITED STATES

The petitions for writs of certiorari are denied.

13-868 RYAN, DIR., AZ DOC V. DETRICH, DAVID S.

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

13-921 OKLAHOMA, ET AL. V. EPA, ET AL.

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

13-1123 LYNCH, PATRICK J. V. NEW YORK, ET AL.

13-1296 VILAR, ALBERTO, ET AL. V. UNITED STATES

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

13-9266 RAISER, AARON V. LOIS, YEVETTE, 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. 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*).

13-9284 FLINT, LORENZO V. GEORGIA, ET AL.

13-9297 SANDLES, JOHN E. V. GEHT, JAN M., 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.

13-9302 CHENG, TONY H. V. SCHLUMBERGER

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

13-9370 ANTHONY, MARK T. V. ETUE, KRISTIE K., ET AL.

13-9392 ARIEGWE, KINGSLEY V. KIRKEGARD, WARDEN, ET AL.

13-9653 K'NAPP, ERIC C. V. CLAY, IVAN D., 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.

13-9824 MILLIS, MICHAEL L. V. CROSS, WARDEN

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

13-9864 ROLLNESS, RODNEY 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.

13-9894 JOHNSON, LAWRENCE 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.

HABEAS CORPUS DENIED

13-9930 IN RE DONALD VIOLETT

13-9937 IN RE BILL BUNN

The petitions for writs of habeas corpus are denied.

13-9983 IN RE CHARLES SWEENEY

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus 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*).

MANDAMUS DENIED

13-9236 IN RE LINDA LEWIS

The petition for a writ of mandamus is denied.

13-9817 IN RE BARRY R. SCHOTZ

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. Justice Kagan took no part in the consideration or decision of this motion and this petition.

13-9854 IN RE CHRIS A. ANDERSON

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

REHEARINGS DENIED

13-961 IN RE ARTHUR N. WOOD

13-1017 NAGLY, ANDREW V. MA DEPT. OF CHILDREN & FAMILIES

13-7577 ADAMS, KENJUAN D. V. GROUNDS, WARDEN

13-7969 FRANKLIN, RUTHIE V. WORKERS' COMP., ET AL.

13-8278 WASHINGTON, WILLIAM N. V. CALIFORNIA

13-8496 CURRIE, GLORIA V. WARREN, WARDEN

13-8501 ROBERTSON, MICHAEL V. SMITH, WARDEN

13-8588 EADDY, PATRICIA A. V. COLVIN, ACTING COMM'R, SOCIAL

13-8771 RODGER, ALEX V. UNITED STATES

13-8839 KERR, NORMAN A. V. UNITED STATES

13-8917 SANDERS, RICHARD B. V. UNITED STATES

13-8969 CABRERA, ORESTES V. UNITED STATES

The petitions for rehearing are denied.

ATTORNEY DISCIPLINE

D-2750 IN THE MATTER OF DISBARMENT OF DONALD A. BAILEY

Donald A. Bailey, of Harrisburg, Pennsylvania, having been suspended from the practice of law in this Court by order of December 9, 2013; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

It is ordered that Donald A. Bailey is disbarred from the practice of law in this Court. Justice Alito took no part in the consideration or decision of this matter.

SUPREME COURT OF THE UNITED STATES

ESTEBAN MARTINEZ, PETITIONER *v.* ILLINOIS

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

No. 13–5967. Decided May 27, 2014

PER CURIAM.

The trial of Esteban Martinez was set to begin on May 17, 2010. His counsel was ready; the State was not. When the court swore in the jury and invited the State to present its first witness, the State declined to present any evidence. So Martinez moved for a directed not-guilty verdict, and the court granted it. The State appealed, arguing that the trial court should have granted its motion for a continuance. The question is whether the Double Jeopardy Clause bars the State's attempt to appeal in the hope of subjecting Martinez to a new trial.

The Illinois Supreme Court manifestly erred in allowing the State's appeal, on the theory that jeopardy never attached because Martinez "was never at risk of conviction." 2013 IL 113475, ¶39, 990 N. E. 2d 215, 224. Our cases have repeatedly stated the bright-line rule that "jeopardy attaches when the jury is empaneled and sworn." *Crist* v. *Bretz*, 437 U. S. 28, 35 (1978); see *infra*, at 6. There is simply no doubt that Martinez was subjected to jeopardy. And because the trial court found the State's evidence insufficient to sustain a conviction, there is equally no doubt that Martinez may not be retried.

We therefore grant Martinez's petition for certiorari and reverse the judgment of the Illinois Supreme Court.

I

A

The State of Illinois indicted Martinez in August 2006 on charges of aggravated battery and mob action against

Avery Binion and Demarco Scott. But Martinez's trial date did not arrive for nearly four years.[1]

The story picks up for present purposes on July 20, 2009, when the State moved to continue an August 3 trial date because it had not located the complaining witnesses, Binion and Scott. The State subpoenaed both men four days later, and the court rescheduled Martinez's trial to September 28. But the State sought another continuance, shortly before that date, because it still had not found Binion and Scott. The court rescheduled the trial to November 9, and the State reissued subpoenas. But November 9 came and went (the court continued the case when Martinez showed up late) and the trial was eventually delayed to the following March 29. In early February, the State yet again subpoenaed Binion and Scott. When March 29 arrived, the trial court granted the State another continuance. It reset the trial date for May 17 and ordered Binion and Scott to appear in court on May 10. And the State once more issued subpoenas.[2]

On the morning of May 17, however, Binion and Scott were again nowhere to be found. At 8:30, when the trial was set to begin, the State asked for a brief continuance. The court offered to delay swearing the jurors until a complete jury had been empaneled and told the State that it could at that point either have the jury sworn or move to dismiss its case. When Binion and Scott still had not shown up after the jury was chosen, the court offered to call the other cases on its docket so as to delay swearing the jury a bit longer. But when all these delays had run out, Binion and Scott were still nowhere in sight. The State filed a written motion for a continuance, arguing

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[1] Much of that delay was due to Martinez and his counsel. See 2013 IL 113475, ¶4, n. 1, 990 N. E. 2d 215, 216, n. 1 (summarizing the lengthy procedural history).

[2] These facts are set forth in the opinion of the Illinois Appellate Court. 2011 IL App (2d) 100498, ¶¶5–7, 969 N. E. 2d 840, 842–843.

that it was "unable to proceed" without Binion and Scott. Tr. 7. The court denied that motion:

> "The case before the Court began on July 7, 2006. In two months we will then be embarking upon half a decade of pending a Class 3 felony. Avery Binion, Jr., and Demarco [Scott] are well known in Elgin, both are convicted felons. One would believe that the Elgin Police Department would know their whereabouts. They were ordered to be in court today. The Court will issue body writs for both of these gentlemen.
>
> "In addition, the State's list of witnesses indicates twelve witnesses. Excluding Mr. Scott and Mr. Binion, that's ten witnesses. The Court would anticipate it would take every bit of today and most of tomorrow to get through ten witnesses. By then the People may have had a chance to execute the arrest warrant body writs for these two gentlemen.
>
> "The Court will deny the motion for continuance. I will swear the jury in in 15, 20 minutes. Perhaps you might want to send the police out to find these two gentlemen." *Id.,* at 8–9.

After a brief recess, the court offered to delay the start of the trial for several more hours if the continuance would "be of any help" to the State. *Id.,* at 9. But when the State made clear that Binion and Scott's "whereabouts" remained "unknown," the court concluded that the delay "would be a further waste of time." *Id.,* at 10. The following colloquy ensued:

> "THE COURT: . . . . It's a quarter to eleven and [Binion and Scott] have not appeared on their own will, so I'm going to bring the jury in now then to swear them.
>
> "[The Prosecutor]: Okay. Your Honor, may I approach briefly?
>
> "THE COURT: Yes.

> "[The Prosecutor]: Your Honor, just so your Honor is aware, I know that it's the process to bring them in and swear them in; however, the State will not be participating in the trial. I wanted to let you know that.
>
> "THE COURT: Very well. We'll see how that works." *Id.,* at 10–11.

The jury was then sworn. After instructing the jury, the court directed the State to proceed with its opening statement. The prosecutor demurred: "Your Honor, respectfully, the State is not participating in this case." *Id.,* at 20. After the defense waived its opening statement, the court directed the State to call its first witness. Again, the prosecutor demurred: "Respectfully, your Honor, the State is not participating in this matter." *Ibid.* The defense then moved for a judgment of acquittal:

> "[Defense Counsel]: Judge, the jury has been sworn. The State has not presented any evidence. I believe they've indicated their intention not to present any evidence or witnesses.
>
> "Based on that, Judge, I would ask the Court to enter directed findings of not guilty to both counts, aggravated battery and mob action.
>
> "THE COURT: Do the People wish to reply?
>
> "[The Prosecutor]: No, your Honor. Respectfully, the State is not participating.
>
> "THE COURT: The Court will grant the motion for a directed finding and dismiss the charges." *Id.,* at 21.

B

The State appealed, arguing that the trial court should have granted a continuance. Martinez responded that the State's appeal was improper because he had been acquitted. The Illinois Appellate Court sided with the State, holding that jeopardy had never attached and that the trial court had erred in failing to grant a continuance.

2011 IL App (2d) 100498, ¶¶46, 53–56, 969 N. E. 2d 840, 854, 856–858.

The Illinois Supreme Court granted review on the jeopardy issue and affirmed. 2013 IL 113475, 990 N. E. 2d 215. It began by recognizing that "[g]enerally, in cases of a jury trial, jeopardy attaches when a jury is empaneled and sworn, as that is the point when the defendant is '"put to trial before the trier of the facts."'" *Id.,* ¶23, 990 N. E. 2d, at 222 (quoting *Serfass* v. *United States*, 420 U. S. 377, 394 (1975)). But it reasoned that under this Court's precedents, "'"rigid, mechanical" rules'" should not govern the inquiry into whether jeopardy has attached. 2013 IL 113475, ¶24, 990 N. E. 2d, at 222 (quoting *Serfass*, *supra*, at 390). Rather, it opined, the relevant question is whether a defendant "was '"subjected to the hazards of trial and possible conviction."'" 2013 IL 113475, ¶24, 990 N. E. 2d, at 222 (quoting *Serfass*, *supra*, at 391).

Here, the court concluded, Martinez "was never at risk of conviction"—and jeopardy therefore did not attach—because "[t]he State indicated it would not participate prior to the jury being sworn." 2013 IL 113475, ¶39, 990 N. E. 2d, at 224. And because Martinez "was not placed in jeopardy," the court held, the trial "court's entry of directed verdicts of not guilty did not constitute true acquittals." *Id.,* ¶40, 990 N. E. 2d, at 225. Indeed, the court remarked, the trial court "repeatedly referred to its action as a 'dismissal' rather than an acquittal." *Ibid.*

Justice Burke dissented, writing that the majority's conclusion "that impaneling and swearing the jury had no legal significance" ran "contrary to well-established principles regarding double jeopardy." *Id.,* ¶57, 990 N. E. 2d, at 227. Moreover, she argued, its assertion that Martinez was not in danger of conviction was "belied by the actions of the court and the prosecutor." *Id.,* ¶63, 990 N. E. 2d, at 229. She explained that under the majority's holding, the State could "unilaterally render a trial a 'sham' simply by

refusing to call witnesses after a jury has been selected." *Id.,* ¶64, 990 N. E. 2d, at 229.

II

This case presents two issues. First, did jeopardy attach to Martinez? Second, if so, did the proceeding end in such a manner that the Double Jeopardy Clause bars his retrial? Our precedents clearly dictate an affirmative answer to each question.

A

There are few if any rules of criminal procedure clearer than the rule that "jeopardy attaches when the jury is empaneled and sworn." *Crist*, 437 U. S., at 35; see also *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 569 (1977); *Serfass*, *supra*, at 388; 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure §25.1(d) (3d ed. 2007).

Our clearest exposition of this rule came in *Crist*, which addressed the constitutionality of a Montana statute providing that jeopardy did not attach until the swearing of the first witness. As *Crist* explains, "the precise point at which jeopardy [attaches] in a jury trial might have been open to argument before this Court's decision in *Downum* v. *United States*, 372 U. S. 734 [(1963)]," in which "the Court held that the Double Jeopardy Clause prevented a second prosecution of a defendant whose first trial had ended just after the jury had been sworn and before any testimony had been taken." 437 U. S., at 35. But *Downum* put any such argument to rest: Its holding "necessarily pinpointed the stage in a jury trial when jeopardy attaches, and [it] has since been understood as explicit authority for the proposition that jeopardy attaches when the jury is empaneled and sworn." *Crist*, *supra*, at 35.

The Illinois Supreme Court misread our precedents in suggesting that the swearing of the jury is anything other

than a bright line at which jeopardy attaches. It relied on *Serfass*, understanding that case to mean "that in assessing whether and when jeopardy attaches, '"rigid, mechanical" rules' should not be applied." 2013 IL 113475, ¶24, 990 N. E. 2d, at 222. Under *Serfass*, the court reasoned, the relevant question is whether a defendant was as a functional matter "'"subjected to the hazards of trial and possible conviction."'" 2013 IL 113475, ¶24, 990 N. E. 2d, at 222.

But *Serfass* does not apply a functional approach to the determination of when jeopardy has attached. As to that question, it states the same bright-line rule as every other case: Jeopardy attaches when "a defendant is 'put to trial,'" and in a jury trial, that is "when a jury is empaneled and sworn." 420 U. S., at 388. Indeed, *Serfass* explicitly rejects a functional approach to the question whether jeopardy has attached. See *id.,* at 390 (refuting the defendant's argument that "'constructiv[e] jeopardy had attached'" upon the pretrial grant of a motion to dismiss the indictment, which the defendant characterized as "the 'functional equivalent of an acquittal on the merits'"). The *Serfass* Court acknowledged "that we have disparaged 'rigid, mechanical' rules in the interpretation of the Double Jeopardy Clause." *Ibid.* But it was referring to the case of *Illinois* v. *Somerville*, 410 U. S. 458 (1973), in which we declined to apply "rigid, mechanical" reasoning in answering a very different question: not whether jeopardy had attached, but whether the manner in which it terminated (by mistrial) barred the defendant's retrial. *Id.,* at 467. By contrast, *Serfass* explains, the rule that jeopardy attaches at the start of a trial is "by no means a mere technicality, nor is it a 'rigid, mechanical' rule." 420 U. S., at 391. And contrary to the Illinois Supreme Court's interpretation, *Serfass* creates not the slightest doubt about when a "trial" begins.

The Illinois Supreme Court's error was consequential,

for it introduced confusion into what we have consistently treated as a bright-line rule: A jury trial begins, and jeopardy attaches, when the jury is sworn. We have never suggested the exception perceived by the Illinois Supreme Court—that jeopardy may not have attached where, under the circumstances of a particular case, the defendant was not genuinely at risk of conviction.[3] Martinez was subjected to jeopardy because the jury in his case was sworn.

B

"'[T]he conclusion that jeopardy has attached,'" however, "'begins, rather than ends, the inquiry as to whether the Double Jeopardy Clause bars retrial.'" *Id.,* at 390. The remaining question is whether the jeopardy ended in such a manner that the defendant may not be retried. See 6 LaFave §25.1(g) (surveying circumstances in which retrial is and is not allowed). Here, there is no doubt that Martinez's jeopardy ended in a manner that bars his retrial: The trial court acquitted him of the charged offenses. "Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that '[a] verdict of acquittal . . . could not be reviewed . . . without putting [a defendant] twice in jeopardy, and thereby violating the Constitution.'" *Martin Linen*, *supra*, at 571.

"[O]ur cases have defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." *Evans* v. *Michigan*, 568 U. S. ___, ___ (2013) (slip op., at 4–5). And the trial

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[3] Some commentators have suggested that there may be limited exceptions to this rule—*e.g.,* where the trial court lacks jurisdiction or where a defendant obtains an acquittal by fraud or corruption. See 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure §25.1(d) (3d ed. 2007). The scope of any such exceptions is not presented here. Nor need we reach a situation where the prosecutor had no opportunity to dismiss the charges to avoid the consequences of empaneling the jury. Cf. *People* v. *Deems*, 81 Ill. 2d 384, 387–389, 410 N. E. 2d 8, 10–11 (1980).

court clearly made such a ruling here. After the State declined to present evidence against Martinez, his counsel moved for "directed findings of not guilty to both counts," and the court "grant[ed] the motion for a directed finding." Tr. 21. That is a textbook acquittal: a finding that the State's evidence cannot support a conviction.

The Illinois Supreme Court thought otherwise. It first opined that "[b]ecause [Martinez] was not placed in jeopardy, the [trial] court's entry of directed verdicts of not guilty did not constitute true acquittals." 2013 IL 113475, ¶40, 990 N. E. 2d, at 225. But the premise of that argument is incorrect: Martinez was in jeopardy, for the reasons given above. The court went on to "note that, in directing findings of not guilty," the trial court "referred to its action as a 'dismissal' rather than an acquittal." *Ibid.* Under our precedents, however, that is immaterial: "[W]e have emphasized that what constitutes an 'acquittal' is not to be controlled by the form of the judge's action"; it turns on "whether the ruling of the judge, whatever its label, actually represents a resolution . . . of some or all of the factual elements of the offense charged." *Martin Linen*, 430 U. S., at 571; see also *Evans*, *supra*, at ___ (slip op., at 11) ("Our decision turns not on the form of the trial court's action, but rather whether it 'serve[s]' substantive 'purposes' or procedural ones"); *United States* v. *Scott*, 437 U. S. 82, 96 (1978) ("We have previously noted that 'the trial judge's characterization of his own action cannot control the classification of the action'").

Here, as in *Evans* and *Martin Linen*, the trial court's action was an acquittal because the court "acted on its view that the prosecution had failed to prove its case." *Evans*, *supra*, at ___ (slip op., at 11); see *Martin Linen*, *supra*, at 572 ("[T]he District Court in this case evaluated the Government's evidence and determined that it was legally insufficient to sustain a conviction"). And because

Martinez was acquitted, the State cannot retry him.[4]

III

The functional rule adopted by the Illinois Supreme Court is not necessary to avoid unfairness to prosecutors or to the public. On the day of trial, the court was acutely aware of the significance of swearing a jury. It repeatedly delayed that act to give the State additional time to find its witnesses. It had previously granted the State a number of continuances for the same purpose. See *supra,* at 2. And, critically, the court told the State on the day of trial that it could "move to dismiss [its] case" before the jury was sworn. Tr. 3. Had the State accepted that invitation, the Double Jeopardy Clause would not have barred it from recharging Martinez. Instead, the State participated in the selection of jurors and did not ask for dismissal before the jury was sworn. When the State declined to dismiss its case, it "'took a chance[,] . . . enter[ing] upon the trial of the case without sufficient evidence to convict.'" *Downum* v. *United States*, 372 U. S. 734, 737 (1963). Here, the State knew, or should have known, that an acquittal forever bars the retrial of the defendant when it occurs after jeopardy has attached. The Illinois Supreme Court's holding is understandable, given the significant consequence of the State's mistake, but it runs directly counter to our precedents and to the protection conferred by the Double Jeopardy Clause.

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[4] Indeed, even if the trial court had chosen to dismiss the case or declare a mistrial rather than granting Martinez's motion for a directed verdict, the Double Jeopardy Clause probably would still bar his retrial. We confronted precisely this scenario in *Downum* v. *United States*, 372 U. S. 734 (1963), holding that once jeopardy has attached, the absence of witnesses generally does not constitute the kind of "'extraordinary and striking circumstanc[e]'" in which a trial court may exercise "discretion to discharge the jury before it has reached a verdict." *Id.*, at 736; see also *Arizona* v. *Washington*, 434 U. S. 497, 508, n. 24 (1978).

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

It is so ordered.