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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2000

BEGINNING OF TERM

OCTOBER 2, 2000, THROUGH MARCH 1, 2001

FRANK D. WAGNER

REPORTER OF DECISIONS

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Erratum

527 U. S. 711, lines 3–6 should be replaced with: "*Peter J. Brann*, State Solicitor of Maine, argued the cause for respondent. With him on the brief were *Andrew Ketterer*, Attorney General, and *Paul Stern*, Deputy Attorney General."

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

RETIRED

BYRON R. WHITE, Associate Justice.

OFFICERS OF THE COURT

JANET RENO, Attorney General.[1]
ERIC H. HOLDER, Jr., Acting Attorney General.[2]
JOHN D. ASHCROFT, Attorney General.[3]
SETH P. WAXMAN, Solicitor General.[4]
BARBARA D. UNDERWOOD, Acting Solicitor General.[5]
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
DALE E. BOSLEY, Marshal.
SHELLEY L. DOWLING, Librarian.

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*For notes, see p. IV.

NOTES

[1] Attorney General Reno resigned effective January 20, 2001.

[2] Mr. Holder became Acting Attorney General effective January 20, 2001; he resigned effective February 1, 2001.

[3] The Honorable John D. Ashcroft, of Missouri, was nominated by President Bush on January 29, 2001, to be Attorney General; the nomination was confirmed by the Senate on February 1, 2001; he was commissioned and took the oath of office on the same date.

[4] Solicitor General Waxman resigned effective January 20, 2001.

[5] Ms. Underwood became Acting Solicitor General effective January 20, 2001.

SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, William H. Rehnquist, Chief Justice.

For the First Circuit, David H. Souter, Associate Justice.

For the Second Circuit, Ruth Bader Ginsburg, Associate Justice.

For the Third Circuit, David H. Souter, Associate Justice.

For the Fourth Circuit, William H. Rehnquist, Chief Justice.

For the Fifth Circuit, Antonin Scalia, Associate Justice.

For the Sixth Circuit, John Paul Stevens, Associate Justice.

For the Seventh Circuit, John Paul Stevens, Associate Justice.

For the Eighth Circuit, Clarence Thomas, Associate Justice.

For the Ninth Circuit, Sandra Day O'Connor, Associate Justice.

For the Tenth Circuit, Stephen Breyer, Associate Justice.

For the Eleventh Circuit, Anthony M. Kennedy, Associate Justice.

For the Federal Circuit, William H. Rehnquist, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. vi, 509 U. S., p. v, and 512 U. S., p. v.)

TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the United States Code are to the 1994 edition.

Cases reported before page 801 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 801 *et seq.* are those in which orders were entered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2000

ARIZONA *v.* CALIFORNIA ET AL.

ON BILL OF COMPLAINT

No. 8, Orig. Decided June 3, 1963—Decree entered March 9, 1964—Amended decree entered February 28, 1966—Decided and supplemental decree entered January 9, 1979—Decided March 30, 1983—Second supplemental decree entered April 16, 1984—Decided June 19, 2000—Supplemental decree entered October 10, 2000

Supplemental decree entered.

Opinion reported: 373 U. S. 546; decree reported: 376 U. S. 340; amended decree reported: 383 U. S. 268; opinion and supplemental decree reported: 439 U. S. 419; opinion reported: 460 U. S. 605, second supplemental decree reported: 466 U. S. 144; opinion reported: 530 U. S. 392.

The Special Master has submitted a proposed supplemental decree in this case to carry the parties' accords into effect. The proposed decree was reproduced as an appendix to the Court's opinion dated June 19, 2000 (530 U. S. 392, 420), and any objections were called for. No objections were filed with the Clerk. Accordingly, the proposed supplemental decree with respect to the Fort Mojave and Colorado River Reservations is approved and entered.

SUPPLEMENTAL DECREE

It is ORDERED, ADJUDGED, AND DECREED:

A. Paragraph (4) of Article II(D) of the Decree in this case entered on March 9, 1964 (376 U. S. 340, 344–345) is hereby amended to read as follows:

> (4) The Colorado River Indian Reservation in annual quantities not to exceed (i) 719,248 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,903 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1865 (13 Stat. 541, 559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16, 1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date.

B. Paragraph (5) of Article II(D) of the Decree in this case entered on March 9, 1964 (376 U. S. 340, 345) and supplemented on April 16, 1984 (466 U. S. 144, 145) is hereby amended to read as follows:

> (5) The Fort Mojave Indian Reservation in annual quantities not to exceed (i) 132,789 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 20,544 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of September 19, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date.

C. Paragraph (5) of the introductory conditions to the Supplemental Decree in this case entered on January 9, 1979 (439 U. S. 419, 421–423), is hereby amended by adding the following exception at the end of the concluding proviso in the first sentence of that paragraph: "except for the western boundaries of the Fort Mojave and Colorado River Indian Reservations in California."

D. Paragraph II(A)(24) of the Decree of January 9, 1979 (439 U. S. 419, 428), is hereby amended to read as follows:

(24)			
Colorado River Indian Reservation	10,745	1,612	Nov. 22, 1873
	40,241	6,037	Nov. 16, 1874
	5,860	879	May 15, 1876

E. Paragraph II(A)(25) of the Decree of January 9, 1979 (439 U. S. 419, 428), is hereby amended to read as follows:

(25)			
Fort Mojave Indian Reservation	16,720	2,587	Sept. 18, 1890

F. Except as otherwise provided herein, the Decree entered on March 9, 1964, and the Supplemental Decrees entered on January 9, 1979, and April 16, 1984, shall remain in full force and effect.

G. The Court shall retain jurisdiction herein to order such further proceedings and enter such supplemental decree as may be deemed appropriate.

Syllabus

ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY *v.* BENNETT

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 99–1238. Argued October 10, 2000—Decided November 7, 2000

A New York trial court orally denied respondent's 1995 motion to vacate his state conviction. Subsequently, the Federal District Court dismissed respondent's federal habeas petition as untimely, noting that it was filed more than one year after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In reversing and remanding, the Second Circuit concluded that 28 U. S. C. § 2244(d)(2), which tolls AEDPA's limitations period during the time that a "properly filed" application for state postconviction relief is pending, also tolls the 1-year grace period which the Circuit has allowed for the filing of applications challenging pre-AEDPA convictions; that, in the absence of a written order, respondent's 1995 motion was still pending under § 2244(d)(2); and that the 1995 motion was properly filed because it complied with rules governing whether an application for state postconviction relief is "recognized as such" under state law. It thus rejected petitioner's contention that the 1995 application was not properly filed because the claims it contained were procedurally barred under New York law.

Held: That respondent's application for state postconviction relief contained procedurally barred claims does not render it improperly filed under § 2244(d)(2). An application is "filed," as that term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record; and it is "properly filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings, *e. g.*, requirements concerning the form of the document, applicable time limits upon its delivery, the court and office in which it must be lodged, and payment of a filing fee. By construing "properly filed application" to mean application "raising claims that are not mandatorily procedurally barred," petitioner elides the difference between an "application" and a "claim." The state procedural bars at issue set forth conditions to obtaining relief, rather than conditions to filing. Pp. 8–11.

199 F. 3d 116, affirmed.

SCALIA, J., delivered the opinion for a unanimous Court.

John M. Castellano argued the cause for petitioner. With him on the briefs were *Richard A. Brown* and *Gary S. Fidel.*

Dan Schweitzer argued the cause for the State of Florida et al. as *amici curiae* urging reversal. With him on the brief were *Robert A. Butterworth,* Attorney General of Florida, *Carolyn M. Snurkowski,* Assistant Deputy Attorney General, *Denise O. Simpson,* Assistant Attorney General, and *John M. Bailey,* Chief State's Attorney of Connecticut, joined by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Mark Pryor* of Arkansas, *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware, *Thurbert E. Baker* of Georgia, *James E. Ryan* of Illinois, *Richard P. Ieyoub* of Louisiana, *Michael C. Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Heidi Heitkamp* of North Dakota, *Betty Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Charles M. Condon* of South Carolina, *Mark Barnett* of South Dakota, *Jan Graham* of Utah, and *Mark L. Earley* of Virginia.

Alan S. Futerfas argued the cause for respondent. With him on the brief were *John H. Blume* and *Keir M. Weyble.*

JUSTICE SCALIA delivered the opinion of the Court.

Section 2244(d)(2) of Title 28 U. S. C. (1994 ed., Supp. IV) provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." This case presents the question whether an application for state postconviction relief containing claims that are procedurally barred is "properly filed" within the meaning of this provision.

I

After a 1984 jury trial in the Supreme Court of New York, Queens County, respondent was convicted of attempted mur-

der, criminal possession of a weapon, reckless endangerment, criminal possession of stolen property, and unauthorized use of a motor vehicle. The Appellate Division affirmed, and the New York Court of Appeals denied leave to appeal. After unsuccessfully pursuing state postconviction relief in 1991, respondent in 1995 moved *pro se* to vacate his judgment of conviction. On November 30, 1995, the state trial court denied the motion in an oral decision on the record; no reasons were given. Respondent claims never to have received a copy of a written order reflecting the denial, despite several written requests.

In February 1998, respondent filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of New York, alleging, *inter alia*, that the state trial court's refusal to allow a defense witness to testify deprived him of his right to a fair trial and his right to present witnesses in his own defense, that his absence from a pretrial hearing violated due process, and that his trial counsel was constitutionally ineffective in failing to object to allegedly improper remarks made by the prosecutor in summation. The District Court summarily dismissed the petition as untimely, noting that it had been filed more than one year and nine months after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214.

The United States Court of Appeals for the Second Circuit reversed and remanded. 199 F. 3d 116 (1999). The panel first concluded that 28 U. S. C. § 2244(d)(2) (1994 ed., Supp. IV), which tolls AEDPA's 1-year period of limitation on habeas corpus applications by state prisoners, should also toll the 1-year grace period (commencing on AEDPA's effective date of April 24, 1996), which the Second Circuit has allowed for the filing of habeas corpus applications challenging pre-AEDPA convictions. See *Ross* v. *Artuz*, 150 F. 3d 97, 98 (CA2 1998). The panel assumed, for purposes of the appeal,

that respondent had not yet received a written order denying his 1995 motion to vacate the conviction. Since respondent could not appeal the denial absent such written order; and since, in the panel's view, "a state-court petition is 'pending' from the time it is first filed until finally disposed of and further appellate review is unavailable under the particular state's procedures," 199 F. 3d, at 120; the panel concluded that respondent's 1995 motion was still "pending" for purposes of § 2244(d)(2). Finally (and this is the sole point on which we granted certiorari), the panel held that respondent's 1995 motion was "properly filed" within the meaning of § 2244(d)(2) because it complied with those rules "governing" whether "an application for state post-conviction relief [is] recognized as such" under state law. *Id.*, at 123. It rejected petitioner's contention that the application was not properly filed because the claims it contained were subject to two procedural bars under New York law: a bar against raising an issue that had been "previously determined on the merits upon an appeal from the judgment," N. Y. Crim. Proc. Law § 440.10(2)(a) (McKinney 1994), and a bar against raising a claim that was available on direct appeal but was not raised because of the defendant's "unjustifiable failure," § 440.10(2)(c).[1] 199 F. 3d, at 123. We granted certiorari. 529 U. S. 1065 (2000).

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[1] The cited provisions read in full as follows:

"Notwithstanding the provisions of subdivision one [which sets forth various grounds upon which a court may vacate its earlier judgment], the court must deny a motion to vacate a judgment when:

"(a) The ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue; or

. . . . . .

"(c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no

II

Petitioner contends here, as he did below, that an application for state postconviction or other collateral review is not "properly filed" for purposes of § 2244(d)(2) unless it complies with all mandatory state-law procedural requirements that would bar review of the merits of the application. We disagree.

An application is "filed," as that term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record. See, *e. g.*, *United States* v. *Lombardo*, 241 U. S. 73, 76 (1916) ("A paper is filed when it is delivered to the proper official and by him received and filed"); Black's Law Dictionary 642 (7th ed. 1999) (defining "file" as "[t]o deliver a legal document to the court clerk or record custodian for placement into the official record"). And an application is "*properly* filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery,[2] the court and office in which it must be lodged, and the requisite filing fee. See, *e. g.*, *Habteselassie* v. *Novak*, 209 F. 3d 1208, 1210–1211 (CA10 2000); 199 F. 3d, at 121 (case below); *Villegas* v. *Johnson*, 184 F. 3d 467, 469–470 (CA5 1999); *Lovasz* v. *Vaughn*, 134 F. 3d 146, 148 (CA3 1998). In some jurisdictions the filing requirements also include, for example, preconditions imposed on particular abusive filers, cf. *Martin* v. *District of Columbia Court of*

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such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him; . . . ." N. Y. Crim. Proc. Law §§ 440.10(2)(a) and (c) (McKinney 1994).

[2] We express no view on the question whether the existence of certain exceptions to a timely filing requirement can prevent a late application from being considered improperly filed. See, *e. g.*, *Smith* v. *Ward*, 209 F. 3d 383, 385 (CA5 2000).

Appeals, 506 U. S. 1 (1992) *(per curiam)*, or on all filers generally, cf. 28 U. S. C. § 2253(c) (1994 ed., Supp. IV) (conditioning the taking of an appeal on the issuance of a "certificate of appealability"). But in common usage, the question whether an application has been "properly filed" is quite separate from the question whether the claims *contained in the application* are meritorious and free of procedural bar.

Petitioner contends that such an interpretation of the statutory phrase renders the word "properly," and possibly both words ("properly filed"), surplusage, since if the provision omitted those words, and tolled simply for "[t]he time during which a[n] . . . application for State post-conviction [relief] is pending," it would necessarily condition tolling on compliance with filing requirements of the sort described above. That is not so. If, for example, an application is erroneously accepted by the clerk of a court lacking jurisdiction, or is erroneously accepted without the requisite filing fee, it will be *pending*, but not *properly filed*.

Petitioner's interpretation is flawed for a more fundamental reason. By construing "properly filed application" to mean "application raising claims that are not mandatorily procedurally barred," petitioner elides the difference between an "application" and a "claim." Only individual *claims*, and not the application containing those claims, can be procedurally defaulted under state law pursuant to our holdings in *Coleman* v. *Thompson*, 501 U. S. 722 (1991), and *Wainwright* v. *Sykes*, 433 U. S. 72 (1977), which establish the sort of procedural bar on which petitioner relies. Compare § 2244(b)(1) ("A *claim presented* in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed") with § 2244(b)(3)(A) ("Before a second or successive *application* permitted by this section is *filed* in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application" (emphases added)). See also *O'Sullivan* v. *Boerckel*,

526 U. S. 838, 839–840 (1999) ("In this case, we are asked to decide whether a state prisoner must *present* his *claims* to a state supreme court in a petition for discretionary review in order to satisfy the exhaustion requirement" (emphases added)). Ignoring this distinction would require judges to engage in verbal gymnastics when an application contains some claims that are procedurally barred and some that are not. Presumably a court would have to say that the application is "properly filed" *as to* the nonbarred claims, and not "properly filed" *as to* the rest. The statute, however, refers only to "properly filed" applications and does not contain the peculiar suggestion that a single application can be both "properly filed" and not "properly filed." Ordinary English would refer to certain *claims* as having been properly *presented* or *raised*, irrespective of whether the application containing those claims was properly filed.

Petitioner's remaining arguments are beside the point. He argues, for example, that tolling for applications that raise procedurally barred claims does nothing to enable the exhaustion of available state remedies—which is the object of § 2244(d)(2). Respondent counters that petitioner's view would trigger a flood of protective filings in federal courts, absorbing their resources in threshold interpretations of state procedural rules. Whatever merits these and other policy arguments may have, it is not the province of this Court to rewrite the statute to accommodate them. We hold as we do because respondent's view seems to us the only permissible interpretation of the text—which may, for all we know, have slighted policy concerns on one or the other side of the issue as part of the legislative compromise that enabled the law to be enacted.

III

The state procedural bars at issue in this case—N. Y. Crim. Proc. Law §§ 440.10(2)(a) and (c) (McKinney 1994)—simply prescribe a rule of decision for a court confronted

with claims that were "previously determined on the merits upon an appeal from the judgment" of conviction or that could have been raised on direct appeal but were not: "[T]he court must deny" such claims for relief. Neither provision purports to set forth a condition to filing, as opposed to a condition to obtaining relief. Motions to vacate that violate these provisions will not be successful, but they have been properly delivered and accepted so long as the filing conditions have been met. Consequently, the alleged failure of respondent's application to comply with §§ 440.10(2)(a) and (c) does not render it "[im]properly filed" for purposes of § 2244(d)(2). The judgment of the Court of Appeals must therefore be affirmed.

It is so ordered.

Syllabus

CLEVELAND *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99–804. Argued October 10, 2000—Decided November 7, 2000

Louisiana law authorizes the State to award nontransferable, annually renewable licenses to operate video poker machines. License applicants must meet suitability requirements designed to ensure that they have good character and fiscal integrity. The State itself does not run any video poker machinery. In 1992, Fred Goodson and his family formed a limited partnership, Truck Stop Gaming, Ltd. (TSG), to participate in the video poker business in Louisiana. Petitioner Carl W. Cleveland, a lawyer, assisted Goodson in preparing TSG's initial and subsequent video poker license applications, each of which identified Goodson's children as the sole beneficial owners of the partnership. The State approved the initial application, and TSG successfully renewed its license in 1993, 1994, and 1995. In 1996, Cleveland and Goodson were charged with money laundering under 18 U. S. C. § 1957 and racketeering and conspiracy under § 1962 in connection with a scheme to bribe state legislators to vote in a manner favorable to the video poker industry. Among the predicate acts supporting these charges were four counts of violating the mail fraud statute, § 1341, which proscribes use of the mails in furtherance of "any scheme or artifice to defraud, or for obtaining . . . property by means of . . . fraudulent . . . representations." The indictment alleged that, because Cleveland and Goodson had tax and financial problems that could have undermined their suitability to receive a video poker license, they fraudulently concealed that they were the true owners of TSG in the license applications they had mailed to the State. Before trial, Cleveland moved to dismiss the mail fraud counts on the ground that the alleged fraud did not deprive the State of "property" under § 1341. The District Court denied the motion, concluding that licenses constitute property even before they are issued. A jury found Cleveland guilty on two mail fraud counts and on other counts predicated on the mail fraud. The Fifth Circuit affirmed the conviction, considering itself bound by an earlier decision holding that Louisiana video poker licenses constitute "property" in the State's hands.

Held: State and municipal licenses in general, and Louisiana's video poker licenses in particular, do not rank as "property," for purposes of § 1341, in the hands of the official licensor. Pp. 18–27.

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(a) Section 1341 is largely limited to the protection of money and property. *McNally* v. *United States*, 483 U. S. 350, 360; *Carpenter* v. *United States*, 484 U. S. 19, 25. The only nonproperty right protected by § 1341 is "the intangible right of honest services," § 1346, a right not implicated by this case. Pp. 18–20.

(b) Section 1341 does not reach fraud in obtaining a state or municipal license of the kind here involved, for such a license is not "property" in the government regulator's hands. Whatever interests Louisiana might be said to have in its video poker licenses, the statute itself shows that the State's core concern is *regulatory:* It licenses, subject to certain conditions, engagement in pursuits that private actors may not undertake without official authorization. The Government offers two reasons why the State also has a property interest in its video poker licenses. The Court rejects both because they stray from traditional concepts of property. First, the Government stresses that the State receives a substantial sum of money in exchange for each license and continues to receive payments from the licensee as long as the license remains in effect. However, Louisiana receives the lion's share of its expected revenue not while the licenses remain in its own hands, but only *after* they have been issued to licensees. Licenses pre-issuance merely entitle the State to collect a processing fee from applicants. Were such an entitlement sufficient to establish a state property right, then States would have property rights in drivers' licenses, medical licenses, and other licenses requiring an upfront fee—licenses that the Government concedes are purely regulatory. Tellingly, the Government does not allege that Cleveland defrauded Louisiana of any money to which it was entitled by law. If Cleveland defrauded the State of "property," the nature of that property cannot be economic. The Government's second assertion—that the State has significant control over the issuance, renewal, suspension, and revocation of licenses—is also unavailing. Far from composing an interest that "has long been recognized as property," *Carpenter*, 484 U. S., at 26, these intangible rights of allocation, exclusion, and control amount to no more and no less than paradigmatic exercises of the State's traditional police powers. Pp. 20–23.

(c) Comparison of the State's interest in video poker licenses to a patent holder's interest in an unlicensed patent does not aid the Government. Although both involve the right to exclude others, Louisiana does not conduct gaming operations itself and does not hold video poker licenses to reserve that prerogative. And while a patent holder may sell her patent, the State may not sell its licensing authority. Comparison of the State's licensing power to a franchisor's right to select its franchisees fares no better. While the latter right typically derives from a franchisor's ownership of some product that it may trade or sell

Syllabus

in the open market, Louisiana's authority to select video poker licensees rests on no similar asset. It rests upon the State's sovereign right to exclude applicants deemed unsuitable to run video poker operations. Pp. 23–24.

(d) The Government's reading of § 1341 invites the Court to approve a sweeping expansion of federal criminal jurisdiction in the absence of a clear statement by Congress. Equating issuance of licenses or permits with deprivation of property would subject to federal mail fraud prosecution a wide range of conduct traditionally regulated by state and local authorities. Unless Congress conveys its purpose clearly, the Court will not read a statute to have significantly changed the federal-state balance in the prosecution of crimes. *E. g.*, *Jones* v. *United States*, 529 U. S. 848, 858. Pp. 24–25.

(e) Finally, the Government argues that § 1341 defines two independent offenses: (1) "any scheme or artifice to defraud" and (2) "any scheme or artifice . . . for obtaining . . . property by means of false . . . representations." Proceeding from that argument, the Government asserts that a video poker license is property in the hands of the licensee, hence Cleveland "obtain[ed] . . . property" and thereby committed the second offense even if the license is not property in the State's hands. But *McNally* refused to construe the two phrases identifying the proscribed schemes independently. 483 U. S., at 358. Indeed, *McNally* explained that § 1341 had its origin in the desire to protect individual property rights and that any benefit the Government derives from the statute must be limited to the Government's interests as property holder. *Id.*, at 359, n. 8. Pp. 25–26.

182 F. 3d 296, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Paul Mogin argued the cause for petitioner. With him on the briefs were *Robert B. Barnett* and *Joseph G. Petrosinelli.*

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *Barbara McDowell*, and *Joel M. Gershowitz.**

**Lisa Kemler* and *Ellen S. Podgor* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

Briefs of *amici curiae* were filed for the Chamber of Commerce of the United States by *Robin S. Conrad*, *Carter G. Phillips*, *Richard D. Bernstein*, and *Joseph S. Miller;* and for Samsung Electronics Co. by *Richard L. Stanley*, *Cecilia H. Gonzalez*, *David J. Healey*, and *Lisa S. McCalmont.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case presents the question whether the federal mail fraud statute, 18 U. S. C. § 1341, reaches false statements made in an application for a state license. Section 1341 proscribes use of the mails in furtherance of "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." Petitioner Carl W. Cleveland and others were prosecuted under this federal measure for making false statements in applying to the Louisiana State Police for permission to operate video poker machines. We conclude that permits or licenses of this order do not qualify as "property" within § 1341's compass. It does not suffice, we clarify, that the object of the fraud may become property in the recipient's hands; for purposes of the mail fraud statute, the thing obtained must be property in the hands of the victim. State and municipal licenses in general, and Louisiana's video poker licenses in particular, we hold, do not rank as "property," for purposes of § 1341, in the hands of the official licensor.

I

Louisiana law allows certain businesses to operate video poker machines. La. Rev. Stat. Ann. §§ 27:301 to 27:324 (West Supp. 2000). The State itself, however, does not run such machinery. The law requires prospective owners of video poker machines to apply for a license from the State. § 27:306. The licenses are not transferable, § 27:311(G), and must be renewed annually, La. Admin. Code, tit. 42, § 2405(B)(3) (2000). To qualify for a license, an applicant must meet suitability requirements designed to ensure that licensees have good character and fiscal integrity. La. Rev. Stat. Ann. § 27:310 (West Supp. 2000).

In 1992, Fred Goodson and his family formed a limited partnership, Truck Stop Gaming, Ltd. (TSG), in order to participate in the video poker business at their truck stop in Slidell, Louisiana. Cleveland, a New Orleans lawyer, as-

sisted Goodson in preparing TSG's application for a video poker license. The application required TSG to identify its partners and to submit personal financial statements for all partners. It also required TSG to affirm that the listed partners were the sole beneficial owners of the business and that no partner held an interest in the partnership merely as an agent or nominee, or intended to transfer the interest in the future.

TSG's application identified Goodson's adult children, Alex and Maria, as the sole beneficial owners of the partnership. It also showed that Goodson and Cleveland's law firm had loaned Alex and Maria all initial capital for the partnership and that Goodson was TSG's general manager. In May 1992, the State approved the application and issued a license. TSG successfully renewed the license in 1993, 1994, and 1995 pursuant to La. Admin. Code, tit. 42, § 2405(B)(3) (2000). Each renewal application identified no ownership interests other than those of Alex and Maria.

In 1996, the Federal Bureau of Investigation (FBI) discovered evidence that Cleveland and Goodson had participated in a scheme to bribe state legislators to vote in a manner favorable to the video poker industry. The Government charged Cleveland and Goodson with multiple counts of money laundering under 18 U. S. C. § 1957, as well as racketeering and conspiracy under § 1962. Among the predicate acts supporting these charges were four counts of mail fraud under § 1341.[1] The indictment alleged that Cleveland and

[1] Title 18 U. S. C. § 1341 provides in relevant part: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, [uses the mails or causes them to be used], shall be fined under this title or imprisoned not more than five years, or both." The Racketeer Influenced and Corrupt Organizations Act (RICO) prohibits participation and conspiracy to participate in a pattern of "racketeering activity," 18 U. S. C. §§ 1962(c), (d), and defines "racketeering activity" to include "any act which is indictable under . . . section

Goodson had violated § 1341 by fraudulently concealing that they were the true owners of TSG in the initial license application and three renewal applications mailed to the State. They concealed their ownership interests, according to the Government, because they had tax and financial problems that could have undermined their suitability to receive a video poker license. See La. Rev. Stat. Ann. § 27:310(B)(1) (West Supp. 2000) (suitability requirements).

Before trial, Cleveland moved to dismiss the mail fraud counts on the ground that the alleged fraud did not deprive the State of "property" under § 1341. The District Court denied the motion, concluding that "licenses constitute property even before they are issued." 951 F. Supp. 1249, 1261 (ED La. 1997). A jury found Cleveland guilty on two counts of mail fraud (based on the 1994 and 1995 license renewals) and on money laundering, racketeering, and conspiracy counts predicated on the mail fraud. The District Court sentenced Cleveland to 121 months in prison.

On appeal, Cleveland again argued that Louisiana had no property interest in video poker licenses, relying on several Court of Appeals decisions holding that the government does not relinquish "property" for purposes of § 1341 when it issues a permit or license. See *United States* v. *Shotts*, 145 F. 3d 1289, 1296 (CA11 1998) (license to operate a bail bonds business); *United States* v. *Schwartz*, 924 F. 2d 410, 418 (CA2 1991) (arms export license); *United States* v. *Granberry*, 908 F. 2d 278, 280 (CA8 1990) (school bus operator's permit); *Toulabi* v. *United States*, 875 F. 2d 122, 125 (CA7 1989) (chauffeur's license); *United States* v. *Dadanian*, 856 F. 2d 1391, 1392 (CA9 1988) (gambling license); *United States* v.

1341," § 1961(1). The money laundering statute prohibits various activities designed to conceal or promote "specified unlawful activity," § 1956, and defines "specified unlawful activity" to include (with an exception not relevant here) "any act or activity constituting an offense listed in section 1961(1) of this title," § 1956(c)(7)(A).

Murphy, 836 F. 2d 248, 254 (CA6 1988) (license to conduct charitable bingo games).

The Court of Appeals for the Fifth Circuit nevertheless affirmed Cleveland's conviction and sentence, *United States* v. *Bankston*, 182 F. 3d 296, 309 (1999), considering itself bound by its holding in *United States* v. *Salvatore*, 110 F. 3d 1131, 1138 (1997), that Louisiana video poker licenses constitute "property" in the hands of the State. Two other Circuits have concluded that the issuing authority has a property interest in unissued licenses under § 1341. *United States* v. *Bucuvalas*, 970 F. 2d 937, 945 (CA1 1992) (entertainment and liquor license); *United States* v. *Martinez*, 905 F. 2d 709, 715 (CA3 1990) (medical license).

We granted certiorari to resolve the conflict among the Courts of Appeals, 529 U. S. 1017 (2000), and now reverse the Fifth Circuit's judgment.

II

In *McNally* v. *United States*, 483 U. S. 350, 360 (1987), this Court held that the federal mail fraud statute is "limited in scope to the protection of property rights." *McNally* reversed the mail fraud convictions of two individuals charged with participating in "a self-dealing patronage scheme" that defrauded Kentucky citizens of "the right to have the Commonwealth's affairs conducted honestly." *Id.*, at 352. At the time *McNally* was decided, federal prosecutors had been using § 1341 to attack various forms of corruption that deprived victims of "intangible rights" unrelated to money or property.[2] Reviewing the history of § 1341, we concluded that "the original impetus behind the mail fraud statute was

[2] *E. g.*, *United States* v. *Clapps*, 732 F. 2d 1148, 1153 (CA3 1984) (electoral body's right to fair elections); *United States* v. *Bronston*, 658 F. 2d 920, 927 (CA2 1981) (client's right to attorney's loyalty); *United States* v. *Bohonus*, 628 F. 2d 1167, 1172 (CA9 1980) (right to honest services of an agent or employee); *United States* v. *Isaacs*, 493 F. 2d 1124, 1150 (CA7 1974) (right to honest services of public official).

to protect the people from schemes to deprive them of their money or property." *Id.*, at 356.

As first enacted in 1872, § 1341 proscribed use of the mails to further "'any scheme or artifice to defraud.'" *Ibid.* In 1896, this Court held in *Durland* v. *United States*, 161 U. S. 306, 313, that the statute covered fraud not only by "representations as to the past or present," but also by "suggestions and promises as to the future." In 1909, Congress amended § 1341 to add after "any scheme or artifice to defraud" the phrase "or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." *McNally*, 483 U. S., at 357. We explained in *McNally* that the 1909 amendment "codified the holding of *Durland*," *ibid.*, and "simply made it unmistakable that the statute reached false promises and misrepresentations as to the future as well as other frauds involving money or property," *ibid.* Rejecting the argument that "the money-or-property requirement of the latter phrase does not limit schemes to defraud to those aimed at causing deprivation of money or property," *id.*, at 358, we concluded that the 1909 amendment signaled no intent by Congress to "depar[t] from [the] common understanding" that "the words 'to defraud' commonly refer 'to wronging one in his property rights,'" *id.*, at 358–359 (quoting *Hammerschmidt* v. *United States*, 265 U. S. 182, 188 (1924)).

Soon after *McNally*, in *Carpenter* v. *United States*, 484 U. S. 19, 25 (1987), we again stated that § 1341 protects property rights only. *Carpenter* upheld convictions under § 1341 and the federal wire fraud statute, 18 U. S. C. § 1343, of defendants who had defrauded the Wall Street Journal of confidential business information. Citing decisions of this Court as well as a corporate law treatise, we observed that "[c]onfidential business information has long been recognized as property." 484 U. S., at 26.

The following year, Congress amended the law specifically to cover one of the "intangible rights" that lower courts had

protected under § 1341 prior to *McNally:* "the intangible right of honest services." Anti-Drug Abuse Act of 1988, § 7603(a), 18 U. S. C. § 1346. Significantly, Congress covered only the intangible right of honest services even though federal courts, relying on *McNally*, had dismissed, for want of monetary loss to any victim, prosecutions under § 1341 for diverse forms of public corruption, including licensing fraud.[3]

III

In this case, there is no assertion that Louisiana's video poker licensing scheme implicates the intangible right of honest services. The question presented is whether, for purposes of the federal mail fraud statute, a government regulator parts with "property" when it issues a license. For the reasons we now set out, we hold that § 1341 does not reach fraud in obtaining a state or municipal license of the kind here involved, for such a license is not "property" in the government regulator's hands. Again, as we said in *McNally*, "[i]f Congress desires to go further, it must speak more clearly than it has." 483 U. S., at 360.

To begin with, we think it beyond genuine dispute that whatever interests Louisiana might be said to have in its video poker licenses, the State's core concern is *regulatory.* Louisiana recognizes the importance of "public confidence and trust that gaming activities . . . are conducted honestly

[3] For example, in *United States* v. *Murphy*, 836 F. 2d 248, 254 (CA6 1988), the court overturned the mail fraud conviction of a state official charged with using false information to help a charitable organization obtain a state bingo license. Acknowledging "the *McNally* limitations" on § 1341, the court said that the issue "distills to a consideration of whether Tennessee's 'right to control or object' with respect to the issuance of a bingo permit to a charitable organization constitutes 'property.'" *Id.*, at 253. It then held that "the certificate of registration or the bingo license may well be 'property' once issued, insofar as the charitable organization is concerned, but certainly an unissued certificate of registration is not property of the State of Tennessee and once issued, it is not the property of the State of Tennessee." *Id.*, at 253–254.

and are free from criminal and corruptive elements." La. Rev. Stat. Ann. § 27:306(A)(1) (West Supp. 2000). The video poker licensing statute accordingly asserts the State's "legitimate interest in providing strict regulation of all persons, practices, associations, and activities related to the operation of . . . establishments licensed to offer video draw poker devices." *Ibid.* The statute assigns the Office of State Police, a part of the Department of Public Safety and Corrections, the responsibility to promulgate rules and regulations concerning the licensing process. § 27:308(A). It also authorizes the State Police to deny, condition, suspend, or revoke licenses, to levy fines of up to $1,000 per violation of any rule, and to inspect all premises where video poker devices are offered for play. §§ 27:308(B), (E)(1). In addition, the statute defines criminal penalties for unauthorized use of video poker devices, § 27:309, and prescribes detailed suitability requirements for licensees, § 27:310.

In short, the statute establishes a typical regulatory program. It licenses, subject to certain conditions, engagement in pursuits that private actors may not undertake without official authorization. In this regard, it resembles other licensing schemes long characterized by this Court as exercises of state police powers. *E. g.*, *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132, 138 (1939) (license to transport alcoholic beverages); *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 558 (1917) (license to sell corporate stock); *Fanning* v. *Gregoire*, 16 How. 524, 534 (1854) (ferry license); *License Cases*, 5 How. 504, 589 (1847) (license to sell liquor) (opinion of McLean, J.), overruled on other grounds, *Leisy* v. *Hardin*, 135 U. S. 100 (1890).

Acknowledging Louisiana's regulatory interests, the Government offers two reasons why the State also has a property interest in its video poker licenses. First, the State receives a substantial sum of money in exchange for each license and continues to receive payments from the licensee as long as the license remains in effect. Second, the State

has significant control over the issuance, renewal, suspension, and revocation of licenses.

Without doubt, Louisiana has a substantial economic stake in the video poker industry. The State collects an upfront "processing fee" for each new license application, La. Rev. Stat. Ann. § 27:311(H)(2) (West Supp. 2000) ($10,000 for truck stops), a separate "processing fee" for each renewal application, § 27:311(H)(4) ($1,000 for truck stops), an "annual fee" from each device owner, § 27:311(A)(4) ($2,000), an additional "device operation" fee, § 27:311(A)(5)(c) ($1,000 for truck stops), and, most importantly, a fixed percentage of net revenue from each video poker device, § 27:311(D)(1)(b) (32.5% for truck stops). It is hardly evident, however, why these tolls should make video poker licenses "property" in the hands of the State. The State receives the lion's share of its expected revenue not while the licenses remain in its own hands, but only *after* they have been issued to licensees. Licenses pre-issuance do not generate an ongoing stream of revenue. At most, they entitle the State to collect a processing fee from applicants for new licenses. Were an entitlement of this order sufficient to establish a state property right, one could scarcely avoid the conclusion that States have property rights in any license or permit requiring an upfront fee, including drivers' licenses, medical licenses, and fishing and hunting licenses. Such licenses, as the Government itself concedes, are "purely regulatory." Tr. of Oral Arg. 24–25.

Tellingly, as to the character of Louisiana's stake in its video poker licenses, the Government nowhere alleges that Cleveland defrauded the State of any money to which the State was entitled by law. Indeed, there is no dispute that TSG paid the State of Louisiana its proper share of revenue, which totaled more than $1.2 million, between 1993 and 1995. If Cleveland defrauded the State of "property," the nature of that property cannot be economic.

Addressing this concern, the Government argues that Cleveland frustrated the State's right to control the issuance, renewal, and revocation of video poker licenses under La. Rev. Stat. Ann. §§ 27:306, 27:308 (West Supp. 2000). The Fifth Circuit has characterized the protected interest as "Louisiana's right to choose the persons to whom it issues video poker licenses." *Salvatore,* 110 F. 3d, at 1140. But far from composing an interest that "has long been recognized as property," *Carpenter,* 484 U. S., at 26, these intangible rights of allocation, exclusion, and control amount to no more and no less than Louisiana's sovereign power to regulate. Notably, the Government overlooks the fact that these rights include the distinctively sovereign authority to impose criminal penalties for violations of the licensing scheme, La. Rev. Stat. Ann. § 27:309 (West Supp. 2000), including making false statements in a license application, § 27:309(A). Even when tied to an expected stream of revenue, the State's right of control does not create a property interest any more than a law licensing liquor sales in a State that levies a sales tax on liquor. Such regulations are paradigmatic exercises of the States' traditional police powers.

The Government compares the State's interest in video poker licenses to a patent holder's interest in a patent that she has not yet licensed. Although it is true that both involve the right to exclude, we think the congruence ends there. Louisiana does not conduct gaming operations itself, it does not hold video poker licenses to reserve that prerogative, and it does not "sell" video poker licenses in the ordinary commercial sense. Furthermore, while a patent holder may sell her patent, see 35 U. S. C. § 261 ("patents shall have the attributes of personal property"), the State may not sell its licensing authority. Instead of a patent holder's interest in an unlicensed patent, the better analogy is to the Federal Government's interest in an unissued patent. That interest, like the State's interest in licensing video poker operations,

surely implicates the Government's role as sovereign, not as property holder. See U. S. Const., Art. I, § 8, cl. 8.

The Government also compares the State's licensing power to a franchisor's right to select its franchisees. On this view, Louisiana's video poker licensing scheme represents the State's venture into the video poker business. Although the State could have chosen to run the business itself, the Government says, it decided to franchise private entities to carry out the operations instead. However, a franchisor's right to select its franchisees typically derives from its ownership of a trademark, brand name, business strategy, or other product that it may trade or sell in the open market. Louisiana's authority to select video poker licensees rests on no similar asset. It rests instead upon the State's sovereign right to exclude applicants deemed unsuitable to run video poker operations. A right to exclude in that governing capacity is not one appropriately labeled "property." See Tr. of Oral Arg. 25. Moreover, unlike an entrepreneur or business partner who shares both losses and gains arising from a business venture, Louisiana cannot be said to have put its labor or capital at risk through its fee-laden licensing scheme. In short, the State did not decide to venture into the video poker business; it decided typically to permit, regulate, and tax private operators of the games.

We reject the Government's theories of property rights not simply because they stray from traditional concepts of property. We resist the Government's reading of § 1341 as well because it invites us to approve a sweeping expansion of federal criminal jurisdiction in the absence of a clear statement by Congress. Equating issuance of licenses or permits with deprivation of property would subject to federal mail fraud prosecution a wide range of conduct traditionally regulated by state and local authorities. We note in this regard that Louisiana's video poker statute typically and unambiguously imposes criminal penalties for making false statements on license applications. La. Rev. Stat. Ann. § 27:309(A)

(West Supp. 2000). As we reiterated last Term, "'unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance' in the prosecution of crimes." *Jones* v. *United States*, 529 U. S. 848, 858 (2000) (quoting *United States* v. *Bass*, 404 U. S. 336, 349 (1971)).

Moreover, to the extent that the word "property" is ambiguous as placed in § 1341, we have instructed that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis* v. *United States*, 401 U. S. 808, 812 (1971). This interpretive guide is especially appropriate in construing § 1341 because, as this case demonstrates, mail fraud is a predicate offense under RICO, 18 U. S. C. § 1961(1) (1994 ed., Supp. IV), and the money laundering statute, § 1956(c)(7)(A). In deciding what is "property" under § 1341, we think "it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States* v. *Universal C. I. T. Credit Corp.*, 344 U. S. 218, 222 (1952).

Finally, in an argument not raised below but urged as an alternate ground for affirmance, the Government contends that § 1341, as amended in 1909, defines two independent offenses: (1) "any scheme or artifice to defraud" and (2) "any scheme or artifice . . . for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." Because a video poker license is property in the hands of the licensee, the Government says, Cleveland "obtain[ed] . . . property" and thereby committed the second offense even if the license is not property in the hands of the State.

Although we do not here question that video poker licensees may have property interests in their licenses,[4] we never-

[4] Notwithstanding the State's declaration that "[a]ny license issued or renewed . . . is not property or a protected interest under the constitutions of either the United States or the state of Louisiana," La. Rev. Stat. Ann. § 27:301(D) (West Supp. 2000), "[t]he question whether a state-law right

theless disagree with the Government's reading of § 1341. In *McNally,* we recognized that "[b]ecause the two phrases identifying the proscribed schemes appear in the disjunctive, it is arguable that they are to be construed independently." 483 U. S., at 358. But we rejected that construction of the statute, instead concluding that the second phrase simply modifies the first by "ma[king] it unmistakable that the statute reached false promises and misrepresentations as to the future as well as other frauds involving money or property." *Id.*, at 359. Indeed, directly contradicting the Government's view, we said that "the mail fraud statute . . . had its origin in the desire to protect individual property rights, and any benefit which the Government derives from the statute must be limited to *the Government's interests as property holder.*" *Id.*, at 359, n. 8 (emphasis added). We reaffirm our reading of § 1341 in *McNally.* See *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 205 (1991) ("*stare decisis* is most compelling" where "a pure question of statutory construction" is involved). Were the Government correct that the second phrase of § 1341 defines a separate offense, the statute would appear to arm federal prosecutors with power to police false statements in an enormous range of submissions to state and local authorities. For reasons already stated, see *supra,* at 24–25, we decline to attribute to § 1341 a purpose so encompassing where Congress has not made such a design clear.

IV

We conclude that § 1341 requires the object of the fraud to be "property" in the victim's hands and that a Louisiana

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constitutes 'property' or 'rights to property' is a matter of federal law," *Drye* v. *United States*, 528 U. S. 49, 58 (1999) (citing *United States* v. *National Bank of Commerce*, 472 U. S. 713, 727 (1985)). In some contexts, we have held that individuals have constitutionally protected property interests in state-issued licenses essential to pursuing an occupation or livelihood. See, *e. g., Bell* v. *Burson,* 402 U. S. 535, 539 (1971) (driver's license).

video poker license in the State's hands is not "property" under § 1341. Absent clear statement by Congress, we will not read the mail fraud statute to place under federal superintendence a vast array of conduct traditionally policed by the States. Our holding means that Cleveland's § 1341 conviction must be vacated. Accordingly, the judgment of the United States Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

SINKFIELD ET AL. *v.* KELLEY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 00–132. Decided November 27, 2000*

Appellees are white Alabama voters residing in majority-white districts adjacent to majority-minority districts. All of the districts were created under a state redistricting plan whose purpose was maximizing the number of majority-minority districts. Appellants are a group of African-American voters, whose initial state lawsuit resulted in the adoption of the plan at issue, and state officials. Appellees brought suit in Federal District Court challenging their own districts as the products of unconstitutional racial gerrymandering. The court agreed as to seven of the challenged majority-white districts and enjoined their use in any election. On direct appeal to this Court, appellants contend, among other things, that appellees lack standing under *United States* v. *Hays*, 515 U. S. 737.

Held: Appellees lack standing under *Hays* because they have neither alleged nor produced any evidence that any of them was assigned to his or her district as a direct result of having personally been subjected to a racial classification, see *id.*, at 745. They essentially claim that an unconstitutional use of race in drawing the boundaries of majority-minority districts necessarily involves an unconstitutional use of race in drawing the boundaries of neighboring majority-white districts. This Court rejected that argument in *Hays*, explaining that evidence sufficient to support an equal protection claim under *Shaw* v. *Reno*, 509 U. S. 630, with respect to a majority-minority district did not prove anything with respect to a neighboring majority-white district in which the appellees resided. Accordingly, an allegation to that effect does not allege a cognizable injury under the Fourteenth Amendment. 515 U. S., at 746.

96 F. Supp. 2d 1301, vacated and remanded.

PER CURIAM.

These cases involve a challenge to Alabama state legislative districts under the equal protection principles an-

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*Together with No. 00–133, *Bennett, Secretary of State of Alabama, et al.* v. *Kelley et al.*, also on appeal from the same court.

nounced by this Court in *Shaw* v. *Reno*, 509 U. S. 630 (1993). Appellees, the plaintiffs below, are white Alabama voters who are residents of various majority-white districts. The districts in which appellees reside are adjacent to majority-minority districts. All of the districts were created under a state redistricting plan whose acknowledged purpose was the maximization of the number of majority-minority districts in Alabama. Appellants in No. 00–132 are a group of African-American voters whose initial state lawsuit resulted in the adoption of the redistricting plan at issue. Appellants in No. 00–133 are Alabama state officials.

Appellees brought suit in the United States District Court for the Middle District of Alabama challenging their own districts as the products of unconstitutional racial gerrymandering. A three-judge court convened to hear the case pursuant to 28 U. S. C. § 2284. The District Court ultimately held that seven of the challenged majority-white districts were the product of unconstitutional racial gerrymandering and enjoined their use in any election. 96 F. Supp. 2d 1301 (MD Ala. 2000). On direct appeal to this Court pursuant to 28 U. S. C. § 1253, appellants in both cases contend, among other things, that appellees lack standing to maintain this suit under our decision in *United States* v. *Hays*, 515 U. S. 737 (1995). We agree.

Hays involved a challenge to Louisiana's districting plan for its Board of Elementary and Secondary Education. The plan contained two majority-minority districts. The appellees lived in a majority-white district that bordered on one of the majority-minority districts. The appellees challenged the entire plan, including their own district, as an unconstitutional racial gerrymander under our decision in *Shaw* v. *Reno*, *supra*. *United States* v. *Hays*, 515 U. S., at 739–742.

We concluded that the appellees lacked standing to maintain their challenge. We assumed for the sake of argument that the evidence was sufficient to state a *Shaw* claim with respect to the neighboring majority-minority district. *Id.*,

at 746. But we concluded that the appellees had not shown a cognizable injury under the Fourteenth Amendment because they did not reside in the majority-minority district and had not otherwise shown that they had "*personally* been denied equal treatment." *Id.*, at 744–746 (internal quotation marks omitted). The appellees' failure to show the requisite injury, we noted, was not changed by the fact that the racial composition of their own district might have been different had the legislature drawn the adjacent majority-minority district another way. *Id.*, at 746.

Appellees' position here is essentially indistinguishable from that of the appellees in *Hays*. Appellees are challenging their own majority-white districts as the product of unconstitutional racial gerrymandering under a redistricting plan whose purpose was the creation of majority-minority districts, some of which border appellees' districts. Like the appellees in *Hays*, they have neither alleged nor produced any evidence that any of them was assigned to his or her district as a direct result of having "personally been subjected to a racial classification." *Id.*, at 745; see also *Shaw* v. *Hunt*, 517 U. S. 899, 904 (1996). Rather, appellees suggest that they are entitled to a presumption of injury-in-fact because the bizarre shapes of their districts reveal that the districts were the product of an unconstitutional racial gerrymander. See App. to Pet. for Cert. 120a, 148a, 153a.

The shapes of appellees' districts, however, were necessarily influenced by the shapes of the majority-minority districts upon which they border, and appellees have produced no evidence that anything other than the deliberate creation of those majority-minority districts is responsible for the districting lines of which they complain. Appellees' suggestion thus boils down to the claim that an unconstitutional use of race in drawing the boundaries of majority-minority districts necessarily involves an unconstitutional use of race in drawing the boundaries of neighboring majority-white

districts. We rejected that argument in *Hays*, explaining that evidence sufficient to support a *Shaw* claim with respect to a majority-minority district did "not prove anything" with respect to a neighboring majority-white district in which the appellees resided. 515 U. S., at 746. Accordingly, "an allegation to that effect does not allege a cognizable injury under the Fourteenth Amendment." *Ibid.*

The judgment of the District Court is vacated, and the cases are remanded with instructions to dismiss the complaint.

It is so ordered.

Syllabus

CITY OF INDIANAPOLIS ET AL. *v.* EDMOND ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 99–1030. Argued October 3, 2000—Decided November 28, 2000

Petitioner city operates vehicle checkpoints on its roads in an effort to interdict unlawful drugs. Respondents, who were each stopped at such a checkpoint, filed suit, claiming that the roadblocks violated the Fourth Amendment. The District Court denied respondents a preliminary injunction, but the Seventh Circuit reversed, holding that the checkpoints contravened the Fourth Amendment.

Held: Because the checkpoint program's primary purpose is indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment. Pp. 37–48.

(a) The rule that a search or seizure is unreasonable under the Fourth Amendment absent individualized suspicion of wrongdoing has limited exceptions. For example, this Court has upheld brief, suspicionless seizures at a fixed checkpoint designed to intercept illegal aliens, *United States* v. *Martinez-Fuerte*, 428 U. S. 543, and at a sobriety checkpoint aimed at removing drunk drivers from the road, *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444. The Court has also suggested that a similar roadblock to verify drivers' licenses and registrations would be permissible to serve a highway safety interest. *Delaware* v. *Prouse*, 440 U. S. 648, 663. However, the Court has never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Pp. 37–40.

(b) The latter purpose is what principally distinguishes the checkpoints at issue from those the Court has previously approved, which were designed to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety. Petitioners state that the *Sitz* and *Martinez-Fuerte* checkpoints had the same ultimate purpose of arresting those suspected of committing crimes. Securing the border and apprehending drunken drivers are law enforcement activities, and authorities employ arrests and criminal prosecutions to pursue these goals. But if this case were to rest at such a high level of generality, there would be little check on the authorities' ability to construct roadblocks for almost any conceivable law enforcement purpose. The checkpoint program is also not justified by the severe and intractable nature of the drug problem. The gravity of the threat alone

cannot be dispositive of questions concerning what means law enforcement may employ to pursue a given purpose. Rather, in determining whether individualized suspicion is required, the Court must consider the nature of the interests threatened and their connection to the particular law enforcement practices at issue. Nor can the checkpoints' purpose be rationalized in terms of a highway safety concern similar to that in *Sitz*, or merely likened to the antismuggling purpose in *Martinez-Fuerte*. Neither *Whren* v. *United States*, 517 U. S. 806, nor *Bond* v. *United States*, 529 U. S. 334, precludes an inquiry into the checkpoint program's purposes. And if the program could be justified by its lawful secondary purposes of keeping impaired motorists off the road and verifying licenses and registrations, authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check. That is why the Court must determine the primary purpose of the checkpoint program. This holding does not alter the constitutional status of the checkpoints approved in *Sitz* and *Martinez-Fuerte*, or the type of checkpoint suggested in *Prouse*. It also does not affect the validity of border searches or searches in airports and government buildings, where the need for such measures to ensure public safety can be particularly acute. Nor does it impair police officers' ability to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful primary purpose. Finally, the purpose inquiry is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene. Pp. 40–48.

183 F. 3d 659, affirmed.

O'Connor, J., delivered the opinion of the Court, in which Stevens, Kennedy, Souter, Ginsburg, and Breyer, JJ., joined. Rehnquist, C. J., filed a dissenting opinion, in which Thomas, J., joined, and in which Scalia, J., joined as to Part I, *post*, p. 48. Thomas, J., filed a dissenting opinion, *post*, p. 56.

A. Scott Chinn argued the cause for petitioners. With him on the briefs were *Anthony W. Overholt*, *Matthew R. Gutwein*, and *Thomas M. Fisher*.

Patricia A. Millett argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, and *Deputy Solicitor General Dreeben*.

Kenneth J. Falk argued the cause for respondents. With him on the brief were *Jacquelyn E. Bowie*, *Sean C. Lemieux*, and *Steven R. Shapiro*.*

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990), and *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976), we held that brief, suspicionless seizures at highway checkpoints for the purposes of combating drunk driving and intercepting illegal immigrants were constitutional. We now consider the constitutionality of a highway checkpoint program whose primary purpose is the discovery and interdiction of illegal narcotics.

I

In August 1998, the city of Indianapolis began to operate vehicle checkpoints on Indianapolis roads in an effort to interdict unlawful drugs. The city conducted six such roadblocks between August and November that year, stopping

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*Briefs of *amici curiae* urging reversal were filed for the State of Kansas et al. by *Carla J. Stovall*, Attorney General of Kansas, *Stephen R. McAllister*, State Solicitor, *Jared S. Maag*, Assistant Attorney General, and *John M. Bailey*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Janet Napolitano* of Arizona, *Mark Pryor* of Arkansas, *Bill Lockyer* of California, *Robert A. Butterworth* of Florida, *James E. Ryan* of Illinois, *Karen M. Freeman-Wilson* of Indiana, *Thomas J. Miller* of Iowa, *Michael C. Moore* of Mississippi, *Don Stenberg* of Nebraska, *W. A. Drew Edmondson* of Oklahoma, *Jan Graham* of Utah, and *Mark L. Earley* of Virginia; for the National League of Cities et al. by *Richard Ruda* and *James I. Crowley;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo*.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers et al. by *Wesley MacNeil Oliver* and *Barbara Bergman;* and for the Rutherford Institute by *John W. Whitehead* and *Steven H. Aden*.

Wayne W. Schmidt, *James P. Manak*, *Richard Weintraub*, and *Bernard J. Farber* filed a brief for Americans for Effective Law Enforcement, Inc., et al. as *amici curiae*.

1,161 vehicles and arresting 104 motorists. Fifty-five arrests were for drug-related crimes, while 49 were for offenses unrelated to drugs. *Edmond* v. *Goldsmith*, 183 F. 3d 659, 661 (CA7 1999). The overall "hit rate" of the program was thus approximately nine percent.

The parties stipulated to the facts concerning the operation of the checkpoints by the Indianapolis Police Department (IPD) for purposes of the preliminary injunction proceedings instituted below. At each checkpoint location, the police stop a predetermined number of vehicles. Approximately 30 officers are stationed at the checkpoint. Pursuant to written directives issued by the chief of police, at least one officer approaches the vehicle, advises the driver that he or she is being stopped briefly at a drug checkpoint, and asks the driver to produce a license and registration. The officer also looks for signs of impairment and conducts an open-view examination of the vehicle from the outside. A narcotics-detection dog walks around the outside of each stopped vehicle.

The directives instruct the officers that they may conduct a search only by consent or based on the appropriate quantum of particularized suspicion. The officers must conduct each stop in the same manner until particularized suspicion develops, and the officers have no discretion to stop any vehicle out of sequence. The city agreed in the stipulation to operate the checkpoints in such a way as to ensure that the total duration of each stop, absent reasonable suspicion or probable cause, would be five minutes or less.

The affidavit of Indianapolis Police Sergeant Marshall DePew, although it is technically outside the parties' stipulation, provides further insight concerning the operation of the checkpoints. According to Sergeant DePew, checkpoint locations are selected weeks in advance based on such considerations as area crime statistics and traffic flow. The checkpoints are generally operated during daylight hours and are identified with lighted signs reading, "'NARCOTICS

CHECKPOINT ____ MILE AHEAD, NARCOTICS K–9 IN USE, BE PREPARED TO STOP.'" App. to Pet. for Cert. 57a. Once a group of cars has been stopped, other traffic proceeds without interruption until all the stopped cars have been processed or diverted for further processing. Sergeant DePew also stated that the average stop for a vehicle not subject to further processing lasts two to three minutes or less.

Respondents James Edmond and Joell Palmer were each stopped at a narcotics checkpoint in late September 1998. Respondents then filed a lawsuit on behalf of themselves and the class of all motorists who had been stopped or were subject to being stopped in the future at the Indianapolis drug checkpoints. Respondents claimed that the roadblocks violated the Fourth Amendment of the United States Constitution and the search and seizure provision of the Indiana Constitution. Respondents requested declaratory and injunctive relief for the class, as well as damages and attorney's fees for themselves.

Respondents then moved for a preliminary injunction. Although respondents alleged that the officers who stopped them did not follow the written directives, they agreed to the stipulation concerning the operation of the checkpoints for purposes of the preliminary injunction proceedings. The parties also stipulated to certification of the plaintiff class. The United States District Court for the Southern District of Indiana agreed to class certification and denied the motion for a preliminary injunction, holding that the checkpoint program did not violate the Fourth Amendment. *Edmond* v. *Goldsmith*, 38 F. Supp. 2d 1016 (1998). A divided panel of the United States Court of Appeals for the Seventh Circuit reversed, holding that the checkpoints contravened the Fourth Amendment. 183 F. 3d 659 (1999). The panel denied rehearing. We granted certiorari, 528 U. S. 1153 (2000), and now affirm.

II

The Fourth Amendment requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. *Chandler* v. *Miller*, 520 U. S. 305, 308 (1997). While such suspicion is not an "irreducible" component of reasonableness, *Martinez-Fuerte*, 428 U. S., at 561, we have recognized only limited circumstances in which the usual rule does not apply. For example, we have upheld certain regimes of suspicionless searches where the program was designed to serve "special needs, beyond the normal need for law enforcement." See, *e. g.*, *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646 (1995) (random drug testing of student-athletes); *Treasury Employees* v. *Von Raab*, 489 U. S. 656 (1989) (drug tests for United States Customs Service employees seeking transfer or promotion to certain positions); *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602 (1989) (drug and alcohol tests for railway employees involved in train accidents or found to be in violation of particular safety regulations). We have also allowed searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited. See, *e. g.*, *New York* v. *Burger*, 482 U. S. 691, 702–704 (1987) (warrantless administrative inspection of premises of "closely regulated" business); *Michigan* v. *Tyler*, 436 U. S. 499, 507–509, 511–512 (1978) (administrative inspection of fire-damaged premises to determine cause of blaze); *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 534–539 (1967) (administrative inspection to ensure compliance with city housing code).

We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, *Martinez-Fuerte*, *supra*, and at a sobriety checkpoint aimed at removing drunk drivers from the road, *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990). In addition, in *Delaware* v. *Prouse*, 440 U. S. 648, 663 (1979),

we suggested that a similar type of roadblock with the purpose of verifying drivers' licenses and vehicle registrations would be permissible. In none of these cases, however, did we indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.

In *Martinez-Fuerte*, we entertained Fourth Amendment challenges to stops at two permanent immigration checkpoints located on major United States highways less than 100 miles from the Mexican border. We noted at the outset the particular context in which the constitutional question arose, describing in some detail the "formidable law enforcement problems" posed by the northbound tide of illegal entrants into the United States. 428 U. S., at 551–554. These problems had also been the focus of several earlier cases addressing the constitutionality of other Border Patrol traffic-checking operations. See *United States* v. *Ortiz*, 422 U. S. 891 (1975); *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975); *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973). In *Martinez-Fuerte*, we found that the balance tipped in favor of the Government's interests in policing the Nation's borders. 428 U. S., at 561–564. In so finding, we emphasized the difficulty of effectively containing illegal immigration at the border itself. *Id.*, at 556. We also stressed the impracticality of the particularized study of a given car to discern whether it was transporting illegal aliens, as well as the relatively modest degree of intrusion entailed by the stops. *Id.*, at 556–564.

Our subsequent cases have confirmed that considerations specifically related to the need to police the border were a significant factor in our *Martinez-Fuerte* decision. For example, in *United States* v. *Montoya de Hernandez*, 473 U. S. 531, 538 (1985), we counted *Martinez-Fuerte* as one of a number of Fourth Amendment cases that "reflect longstanding concern for the protection of the integrity of the border." Although the stops in *Martinez-Fuerte* did not occur at the

border itself, the checkpoints were located near the border and served a border control function made necessary by the difficulty of guarding the border's entire length. See *Martinez-Fuerte*, *supra*, at 556.

In *Sitz*, we evaluated the constitutionality of a Michigan highway sobriety checkpoint program. The *Sitz* checkpoint involved brief, suspicionless stops of motorists so that police officers could detect signs of intoxication and remove impaired drivers from the road. 496 U. S., at 447–448. Motorists who exhibited signs of intoxication were diverted for a license and registration check and, if warranted, further sobriety tests. *Id.*, at 447. This checkpoint program was clearly aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways, and there was an obvious connection between the imperative of highway safety and the law enforcement practice at issue. The gravity of the drunk driving problem and the magnitude of the State's interest in getting drunk drivers off the road weighed heavily in our determination that the program was constitutional. See *id.*, at 451.

In *Prouse*, we invalidated a discretionary, suspicionless stop for a spot check of a motorist's driver's license and vehicle registration. The officer's conduct in that case was unconstitutional primarily on account of his exercise of "standardless and unconstrained discretion." 440 U. S., at 661. We nonetheless acknowledged the States' "vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed." *Id.*, at 658. Accordingly, we suggested that "[q]uestioning of all oncoming traffic at roadblock-type stops" would be a lawful means of serving this interest in highway safety. *Id.*, at 663.

We further indicated in *Prouse* that we considered the purposes of such a hypothetical roadblock to be distinct from a general purpose of investigating crime. The State prof-

fered the additional interests of "the apprehension of stolen motor vehicles and of drivers under the influence of alcohol or narcotics" in its effort to justify the discretionary spot check. *Id.*, at 659, n. 18. We attributed the entirety of the latter interest to the State's interest in roadway safety. *Ibid.* We also noted that the interest in apprehending stolen vehicles may be partly subsumed by the interest in roadway safety. *Ibid.* We observed, however, that "[t]he remaining governmental interest in controlling automobile thefts is not distinguishable from the general interest in crime control." *Ibid.* Not only does the common thread of highway safety thus run through *Sitz* and *Prouse*, but *Prouse* itself reveals a difference in the Fourth Amendment significance of highway safety interests and the general interest in crime control.

III

It is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment. See, *e. g.*, *Sitz*, *supra*, at 450. The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints does not transform the seizure into a search. See *United States* v. *Place*, 462 U. S. 696, 707 (1983). Just as in *Place*, an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics. See *ibid.* Like the dog sniff in *Place*, a sniff by a dog that simply walks around a car is "much less intrusive than a typical search." *Ibid.* Cf. *United States* v. *Turpin*, 920 F. 2d 1377, 1385 (CA8 1990). Rather, what principally distinguishes these checkpoints from those we have previously approved is their primary purpose.

As petitioners concede, the Indianapolis checkpoint program unquestionably has the primary purpose of interdicting illegal narcotics. In their stipulation of facts, the parties repeatedly refer to the checkpoints as "drug checkpoints" and

describe them as "being operated by the City of Indianapolis in an effort to interdict unlawful drugs in Indianapolis." App. to Pet. for Cert. 51a–52a. In addition, the first document attached to the parties' stipulation is entitled "DRUG CHECKPOINT CONTACT OFFICER DIRECTIVES BY ORDER OF THE CHIEF OF POLICE." *Id.*, at 53a. These directives instruct officers to "[a]dvise the citizen that they are being stopped briefly at a drug checkpoint." *Ibid.* The second document attached to the stipulation is entitled "1998 Drug Road Blocks" and contains a statistical breakdown of information relating to the checkpoints conducted. *Id.*, at 55a. Further, according to Sergeant DePew, the checkpoints are identified with lighted signs reading, "'NARCOTICS CHECKPOINT ____ MILE AHEAD, NARCOTICS K–9 IN USE, BE PREPARED TO STOP.'" *Id.*, at 57a. Finally, both the District Court and the Court of Appeals recognized that the primary purpose of the roadblocks is the interdiction of narcotics. 38 F. Supp. 2d, at 1026 (noting that both parties "stress the primary purpose of the roadblocks as the interdiction of narcotics" and that "[t]he IPD has made it clear that the purpose for its checkpoints is to interdict narcotics traffic"); 183 F. 3d, at 665 (observing that "the City concedes that its proximate goal is to catch drug offenders").

We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested in *Prouse* that we would not credit the "general interest in crime control" as justification for a regime of suspicionless stops. 440 U. S., at 659, n. 18. Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety. Because the

primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment.

Petitioners propose several ways in which the narcotics-detection purpose of the instant checkpoint program may instead resemble the primary purposes of the checkpoints in *Sitz* and *Martinez-Fuerte*. Petitioners state that the checkpoints in those cases had the same ultimate purpose of arresting those suspected of committing crimes. Brief for Petitioners 22. Securing the border and apprehending drunk drivers are, of course, law enforcement activities, and law enforcement officers employ arrests and criminal prosecutions in pursuit of these goals. See *Sitz*, 496 U. S., at 447, 450; *Martinez-Fuerte*, 428 U. S., at 545–550. If we were to rest the case at this high level of generality, there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.

Petitioners also emphasize the severe and intractable nature of the drug problem as justification for the checkpoint program. Brief for Petitioners 14–17, 31. There is no doubt that traffic in illegal narcotics creates social harms of the first magnitude. Cf. *Von Raab*, 489 U. S., at 668. The law enforcement problems that the drug trade creates likewise remain daunting and complex, particularly in light of the myriad forms of spin-off crime that it spawns. Cf. *Montoya de Hernandez*, 473 U. S., at 538. The same can be said of various other illegal activities, if only to a lesser degree. But the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose. Rather, in determining whether individualized suspicion is required, we must consider the nature of the interests threatened and their con-

nection to the particular law enforcement practices at issue. We are particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends.

Nor can the narcotics-interdiction purpose of the checkpoints be rationalized in terms of a highway safety concern similar to that present in *Sitz.* The detection and punishment of almost any criminal offense serves broadly the safety of the community, and our streets would no doubt be safer but for the scourge of illegal drugs. Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate.

Petitioners also liken the anticontraband agenda of the Indianapolis checkpoints to the antismuggling purpose of the checkpoints in *Martinez-Fuerte.* Brief for Petitioners 15–16. Petitioners cite this Court's conclusion in *Martinez-Fuerte* that the flow of traffic was too heavy to permit "particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens," 428 U. S., at 557, and claim that this logic has even more force here. The problem with this argument is that the same logic prevails any time a vehicle is employed to conceal contraband or other evidence of a crime. This type of connection to the roadway is very different from the close connection to roadway safety that was present in *Sitz* and *Prouse.* Further, the Indianapolis checkpoints are far removed from the border context that was crucial in *Martinez-Fuerte.* While the difficulty of examining each passing car was an important factor in validating the law enforcement technique employed in *Martinez-Fuerte,* this factor alone cannot justify a regime of suspicionless searches or seizures. Rather, we must look more closely at the nature of the public interests that such a regime is designed principally to serve.

The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance "the general interest in crime control," *Prouse*, 440 U. S., at 659, n. 18. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.

Of course, there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control. For example, as the Court of Appeals noted, the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route. See 183 F. 3d, at 662–663. The exigencies created by these scenarios are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. While we do not limit the purposes that may justify a checkpoint program to any rigid set of categories, we decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control.[1]

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[1] THE CHIEF JUSTICE's dissent erroneously characterizes our opinion as resting on the application of a "non-law-enforcement primary purpose test." *Post*, at 53. Our opinion nowhere describes the purposes of the *Sitz* and *Martinez-Fuerte* checkpoints as being "not primarily related to criminal law enforcement." *Post*, at 50. Rather, our judgment turns on the fact that the primary purpose of the Indianapolis checkpoints is to advance the general interest in crime control.

THE CHIEF JUSTICE's dissent also erroneously characterizes our opinion as holding that the "use of a drug-sniffing dog . . . annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence." *Post*, at 48. Again, the constitutional defect of the program is that its primary purpose is to advance the general interest in crime control.

Petitioners argue that our prior cases preclude an inquiry into the purposes of the checkpoint program. For example, they cite *Whren* v. *United States*, 517 U. S. 806 (1996), and *Bond* v. *United States*, 529 U. S. 334 (2000), to support the proposition that "where the government articulates and pursues a legitimate interest for a suspicionless stop, courts should not look behind that interest to determine whether the government's 'primary purpose' is valid." Brief for Petitioners 34; see also *id.*, at 9. These cases, however, do not control the instant situation.

In *Whren*, we held that an individual officer's subjective intentions are irrelevant to the Fourth Amendment validity of a traffic stop that is justified objectively by probable cause to believe that a traffic violation has occurred. 517 U. S., at 810–813. We observed that our prior cases "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." *Id.*, at 813. In so holding, we expressly distinguished cases where we had addressed the validity of searches conducted in the absence of probable cause. See *id.*, at 811–812 (distinguishing *Florida* v. *Wells*, 495 U. S. 1, 4 (1990) (stating that "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence"), *Colorado* v. *Bertine*, 479 U. S. 367, 372 (1987) (suggesting that the absence of bad faith and the lack of a purely investigative purpose were relevant to the validity of an inventory search), and *Burger*, 482 U. S., at 716–717, n. 27 (observing that a valid administrative inspection conducted with neither a warrant nor probable cause did not appear to be a pretext for gathering evidence of violations of the penal laws)).

Whren therefore reinforces the principle that, while "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis," 517 U. S., at 813, programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a

general scheme without individualized suspicion. Accordingly, *Whren* does not preclude an inquiry into programmatic purpose in such contexts. Cf. *Chandler* v. *Miller*, 520 U. S. 305 (1997); *Treasury Employees* v. *Von Raab*, 489 U. S. 656 (1989); *Burger*, *supra; Michigan* v. *Tyler*, 436 U. S. 499 (1978); *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523 (1967). It likewise does not preclude an inquiry into programmatic purpose here.

Last Term in *Bond*, we addressed the question whether a law enforcement officer violated a reasonable expectation of privacy in conducting a tactile examination of carry-on luggage in the overhead compartment of a bus. In doing so, we simply noted that the principle of *Whren* rendered the subjective intent of an officer irrelevant to this analysis. 529 U. S., at 338, n. 2. While, as petitioners correctly observe, the analytical rubric of *Bond* was not "ordinary, probable-cause Fourth Amendment analysis," *Whren*, *supra*, at 813, nothing in *Bond* suggests that we would extend the principle of *Whren* to all situations where individualized suspicion was lacking. Rather, subjective intent was irrelevant in *Bond* because the inquiry that our precedents required focused on the objective effects of the actions of an individual officer. By contrast, our cases dealing with intrusions that occur pursuant to a general scheme absent individualized suspicion have often required an inquiry into purpose at the programmatic level.

Petitioners argue that the Indianapolis checkpoint program is justified by its lawful secondary purposes of keeping impaired motorists off the road and verifying licenses and registrations. Brief for Petitioners 31–34. If this were the case, however, law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check. For this reason, we examine the available evidence to determine the primary purpose of the checkpoint program. While we recognize the challenges inherent in a purpose inquiry, courts

routinely engage in this enterprise in many areas of constitutional jurisprudence as a means of sifting abusive governmental conduct from that which is lawful. Cf. 183 F. 3d, at 665. As a result, a program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged conduct may be outwardly similar. While reasonableness under the Fourth Amendment is predominantly an objective inquiry, our special needs and administrative search cases demonstrate that purpose is often relevant when suspicionless intrusions pursuant to a general scheme are at issue.[2]

It goes without saying that our holding today does nothing to alter the constitutional status of the sobriety and border checkpoints that we approved in *Sitz* and *Martinez-Fuerte*, or of the type of traffic checkpoint that we suggested would be lawful in *Prouse*. The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program. See *Sitz*, 496 U. S., at 450–455; *Martinez-Fuerte*, 428 U. S., at 556–564. When law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, however, stops can only be justified by some quantum of individualized suspicion.

Our holding also does not affect the validity of border searches or searches at places like airports and government

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[2] Because petitioners concede that the primary purpose of the Indianapolis checkpoints is narcotics detection, we need not decide whether the State may establish a checkpoint program with the primary purpose of checking licenses or driver sobriety and a secondary purpose of interdicting narcotics. Specifically, we express no view on the question whether police may expand the scope of a license or sobriety checkpoint seizure in order to detect the presence of drugs in a stopped car. Cf. *New Jersey* v. *T. L. O.*, 469 U. S. 325, 341 (1985) (search must be "'reasonably related in scope to the circumstances which justified the interference in the first place'" (quoting *Terry* v. *Ohio*, 392 U. S. 1, 20 (1968))); *Michigan* v. *Clifford*, 464 U. S. 287, 294–295 (1984) (plurality opinion).

buildings, where the need for such measures to ensure public safety can be particularly acute. Nor does our opinion speak to other intrusions aimed primarily at purposes beyond the general interest in crime control. Our holding also does not impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful primary purpose, even where such action may result in the arrest of a motorist for an offense unrelated to that purpose. Finally, we caution that the purpose inquiry in this context is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene. Cf. *Whren, supra.*

Because the primary purpose of the Indianapolis checkpoint program is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment. The judgment of the Court of Appeals is, accordingly, affirmed.

It is so ordered.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE THOMAS joins, and with whom JUSTICE SCALIA joins as to Part I, dissenting.

The State's use of a drug-sniffing dog, according to the Court's holding, annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence: brief, standardized, discretionless, roadblock seizures of automobiles, seizures which effectively serve a weighty state interest with only minimal intrusion on the privacy of their occupants. Because these seizures serve the State's accepted and significant interests of preventing drunken driving and checking for driver's licenses and vehicle registrations, and because there is nothing in the record to indicate that the addition of the dog sniff lengthens these otherwise legitimate seizures, I dissent.

I

As it is nowhere to be found in the Court's opinion, I begin with blackletter roadblock seizure law. "The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop." *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 566–567 (1976). Roadblock seizures are consistent with the Fourth Amendment if they are "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown* v. *Texas*, 443 U. S. 47, 51 (1979). Specifically, the constitutionality of a seizure turns upon "a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Id.*, at 50–51.

We first applied these principles in *Martinez-Fuerte*, *supra*, which approved highway checkpoints for detecting illegal aliens. In *Martinez-Fuerte*, we balanced the United States' formidable interest in checking the flow of illegal immigrants against the limited "objective" and "subjective" intrusion on the motorists. The objective intrusion—the stop itself,[1] the brief questioning of the occupants, and the visual inspection of the car—was considered "limited" because "[n]either the vehicle nor its occupants [were] searched." *Id.*, at 558. Likewise, the subjective intrusion, or the fear and surprise engendered in law-abiding motorists by the nature of the stop, was found to be minimal because the "regularized manner in which [the] established checkpoints [were] operated [was] visible evidence, reassuring to law-abiding motorists, that the stops [were] duly authorized and believed to serve the public interest." *Id.*, at 559. Indeed, the standardized operation of the roadblocks was viewed as

[1] The record from one of the consolidated cases indicated that the stops lasted between three and five minutes. See *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 546–547 (1976).

markedly different from roving patrols, where the unbridled discretion of officers in the field could result in unlimited interference with motorists' use of the highways. Cf. *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975). And although the decision in *Martinez-Fuerte* did not turn on the checkpoints' effectiveness, the record in one of the consolidated cases demonstrated that illegal aliens were found in 0.12 percent of the stopped vehicles. See 428 U. S., at 554.

In *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990), we upheld the State's use of a highway sobriety checkpoint after applying the framework set out in *Martinez-Fuerte*, *supra*, and *Brown* v. *Texas*, *supra*. There, we recognized the gravity of the State's interest in curbing drunken driving and found the objective intrusion of the approximately 25-second seizure to be "slight." 496 U. S., at 451. Turning to the subjective intrusion, we noted that the checkpoint was selected pursuant to guidelines and was operated by uniformed officers. See *id.*, at 453. Finally, we concluded that the program effectively furthered the State's interest because the checkpoint resulted in the arrest of two drunk drivers, or 1.6 percent of the 126 drivers stopped. See *id.*, at 455–456.

This case follows naturally from *Martinez-Fuerte* and *Sitz*. Petitioners acknowledge that the "primary purpose" of these roadblocks is to interdict illegal drugs, but this fact should not be controlling. Even accepting the Court's conclusion that the checkpoints at issue in *Martinez-Fuerte* and *Sitz* were not primarily related to criminal law enforcement,[2] the

[2] This gloss, see *ante*, at 38–40, 41–43, is not at all obvious. The respondents in *Martinez-Fuerte* were criminally prosecuted for illegally transporting aliens, and the Court expressly noted that "[i]nterdicting the flow of illegal entrants from Mexico poses formidable law enforcement problems." 428 U. S., at 552. And the *Sitz* Court recognized that if an "officer's observations suggest that the driver was intoxicated, an arrest would be made." 496 U. S., at 447. But however persuasive the distinction, the Court's opinion does not impugn the continuing validity of *Martinez-Fuerte* and *Sitz*. See *ante*, at 47.

question whether a law enforcement purpose could support a roadblock seizure is not presented in this case. The District Court found that another "purpose of the checkpoints is to check driver's licenses and vehicle registrations," App. to Pet. for Cert. 44a, and the written directives state that the police officers are to "[l]ook for signs of impairment," *id.*, at 53a. The use of roadblocks to look for signs of impairment was validated by *Sitz*, and the use of roadblocks to check for driver's licenses and vehicle registrations was expressly recognized in *Delaware* v. *Prouse*, 440 U. S. 648, 663 (1979).[3] That the roadblocks serve these legitimate state interests cannot be seriously disputed, as the 49 people arrested for offenses unrelated to drugs can attest. *Edmond* v. *Goldsmith*, 183 F. 3d 659, 661 (CA7 1999). And it would be speculative to conclude—given the District Court's findings, the written directives, and the actual arrests—that petitioners would not have operated these roadblocks but for the State's interest in interdicting drugs.

Because of the valid reasons for conducting these roadblock seizures, it is constitutionally irrelevant that petitioners also hoped to interdict drugs. In *Whren* v. *United States*, 517 U. S. 806 (1996), we held that an officer's subjective intent would not invalidate an otherwise objectively justifiable stop of an automobile. The reasonableness of an officer's discretionary decision to stop an automobile, at issue in *Whren*, turns on whether there is probable cause to believe that a traffic violation has occurred. The reasonableness of highway checkpoints, at issue here, turns on whether they effectively serve a significant state interest with minimal intrusion on motorists. The stop in *Whren* was objectively reasonable because the police officers had witnessed traffic violations; so too the roadblocks here are objectively

[3] Several Courts of Appeals have upheld roadblocks that check for driver's licenses and vehicle registrations. See, *e. g., United States* v. *Galindo-Gonzales*, 142 F. 3d 1217 (CA10 1998); *United States* v. *McFayden*, 865 F. 2d 1306 (CADC 1989).

reasonable because they serve the substantial interests of preventing drunken driving and checking for driver's licenses and vehicle registrations with minimal intrusion on motorists.

Once the constitutional requirements for a particular seizure are satisfied, the subjective expectations of those responsible for it, be it police officers or members of a city council, are irrelevant. Cf. *Scott* v. *United States*, 436 U. S. 128, 136 (1978) ("Subjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional"). It is the objective effect of the State's actions on the privacy of the individual that animates the Fourth Amendment. See *Bond* v. *United States*, 529 U. S. 334, 338, n. 2 (2000) (applying *Whren* to determine if an officer's conduct amounted to a "search" under the Fourth Amendment because "the issue is not his state of mind, but the objective effect of his actions"). Because the objective intrusion of a valid seizure does not turn upon anyone's subjective thoughts, neither should our constitutional analysis.[4]

With these checkpoints serving two important state interests, the remaining prongs of the *Brown* v. *Texas* balancing test are easily met. The seizure is objectively reasonable as it lasts, on average, two to three minutes and does not involve a search. App. to Pet. for Cert. 57a. The subjective intrusion is likewise limited as the checkpoints are clearly marked and operated by uniformed officers who are directed to stop every vehicle in the same manner. *Ibid.* The only difference between this case and *Sitz* is the presence of the dog. We have already held, however, that a "sniff test" by a trained narcotics dog is not a "search" within the meaning of the Fourth Amendment because it does not require physical intrusion of the object being sniffed and it does not ex-

[4] Of course we have looked to the purpose of the program in analyzing the constitutionality of certain suspicionless searches. As discussed in Part II, *infra*, that doctrine has never been applied to seizures of automobiles.

pose anything other than the contraband items. *United States* v. *Place*, 462 U. S. 696, 706–707 (1983). And there is nothing in the record to indicate that the dog sniff lengthens the stop. Finally, the checkpoints' success rate—49 arrests for offenses unrelated to drugs—only confirms the State's legitimate interests in preventing drunken driving and ensuring the proper licensing of drivers and registration of their vehicles. 183 F. 3d, at 661.[5]

These stops effectively serve the State's legitimate interests; they are executed in a regularized and neutral manner; and they only minimally intrude upon the privacy of the motorists. They should therefore be constitutional.

II

The Court, unwilling to adopt the straightforward analysis that these precedents dictate, adds a new non-law-enforcement primary purpose test lifted from a distinct area of Fourth Amendment jurisprudence relating to the *searches* of homes and businesses. As discussed above, the question that the Court answers is not even posed in this case given the accepted reasons for the seizures. But more fundamentally, whatever sense a non-law-enforcement primary purpose test may make in the search setting, it is ill suited to brief roadblock seizures, where we have consistently looked at "the scope of the stop" in assessing a program's constitutionality. *Martinez-Fuerte*, 428 U. S., at 567.

We have already rejected an invitation to apply the non-law-enforcement primary purpose test that the Court now finds so indispensable. The respondents in *Sitz* argued that the *Brown* v. *Texas* balancing test was not the "proper method of analysis" with regards to roadblock seizures:

> "Respondents argue that there must be a showing of some special governmental need 'beyond the normal

[5] Put in statistical terms, 4.2 percent of the 1,161 motorists stopped were arrested for offenses unrelated to drugs.

> need' for criminal law enforcement before a balancing analysis is appropriate, and that [the State] ha[s] demonstrated no such special need.
>
> "But it is perfectly plain from a reading of [*Treasury Employees* v.] *Von Raab*[, 489 U. S. 656 (1989)], which cited and discussed with approval our earlier decision in *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976), that it was in no way designed to repudiate our prior cases dealing with police stops of motorists on public highways. *Martinez-Fuerte*, *supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown* v. *Texas*, *supra*, are the relevant authorities here." 496 U. S., at 449, 450.

Considerations of *stare decisis* aside, the "perfectly plain" reason for not incorporating the "special needs" test in our roadblock seizure cases is that seizures of automobiles "deal neither with searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection." *Martinez-Fuerte*, *supra*, at 561.

The "special needs" doctrine, which has been used to uphold certain suspicionless searches performed for reasons unrelated to law enforcement, is an exception to the general rule that a search must be based on individualized suspicion of wrongdoing. See, *e. g.*, *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602 (1989) (drug test search); *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523 (1967) (home administrative search). The doctrine permits intrusions into a person's body and home, areas afforded the greatest Fourth Amendment protection. But there were no such intrusions here.

"[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." *Martinez-Fuerte*, *supra*, at 561. This is because "[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls." *South*

Dakota v. *Opperman*, 428 U. S. 364, 368 (1976); see also *New York* v. *Class*, 475 U. S. 106, 113 (1986) ("[A]utomobiles are justifiably the subject of pervasive regulation by the State"); *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) ("One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects"). The lowered expectation of privacy in one's automobile is coupled with the limited nature of the intrusion: a brief, standardized, nonintrusive seizure.[6] The brief seizure of an automobile can hardly be compared to the intrusive search of the body or the home. Thus, just as the "special needs" inquiry serves to both define and limit the permissible scope of those searches, the *Brown* v. *Texas* balancing test serves to define and limit the permissible scope of automobile seizures.

Because of these extrinsic limitations upon roadblock seizures, the Court's newfound non-law-enforcement primary purpose test is both unnecessary to secure Fourth Amendment rights and bound to produce wide-ranging litigation over the "purpose" of any given seizure. Police designing highway roadblocks can never be sure of their validity, since a jury might later determine that a forbidden purpose exists. Roadblock stops identical to the one that we upheld in *Sitz* 10 years ago, or to the one that we upheld 24 years ago in *Martinez-Fuerte*, may now be challenged on the grounds that they have some concealed forbidden purpose.

Efforts to enforce the law on public highways used by millions of motorists are obviously necessary to our society. The Court's opinion today casts a shadow over what had been assumed, on the basis of *stare decisis*, to be a perfectly lawful activity. Conversely, if the Indianapolis police had assigned a different purpose to their activity here, but in no way changed what was done on the ground to individual

[6] This fact distinguishes the roadblock seizure of an automobile from an inventory search of an automobile. Cf. *Colorado* v. *Bertine*, 479 U. S. 367 (1987) (automobile inventory search).

motorists, it might well be valid. See *ante*, at 47, n. 2. The Court's non-law-enforcement primary purpose test simply does not serve as a proxy for anything that the Fourth Amendment is, or should be, concerned about in the automobile seizure context.

Petitioners' program complies with our decisions regarding roadblock seizures of automobiles, and the addition of a dog sniff does not add to the length or the intrusion of the stop. Because such stops are consistent with the Fourth Amendment, I would reverse the decision of the Court of Appeals.

JUSTICE THOMAS, dissenting.

Taken together, our decisions in *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990), and *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976), stand for the proposition that suspicionless roadblock seizures are constitutionally permissible if conducted according to a plan that limits the discretion of the officers conducting the stops. I am not convinced that *Sitz* and *Martinez-Fuerte* were correctly decided. Indeed, I rather doubt that the Framers of the Fourth Amendment would have considered "reasonable" a program of indiscriminate stops of individuals not suspected of wrongdoing.

Respondents did not, however, advocate the overruling of *Sitz* and *Martinez-Fuerte*, and I am reluctant to consider such a step without the benefit of briefing and argument. For the reasons given by THE CHIEF JUSTICE, I believe that those cases compel upholding the program at issue here. I, therefore, join his opinion.

Syllabus

EASTERN ASSOCIATED COAL CORP. *v.* UNITED MINE WORKERS OF AMERICA, DISTRICT 17, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 99–1038. Argued October 2, 2000—Decided November 28, 2000

The arbitration provisions in petitioner Eastern Associated Coal Corp.'s collective-bargaining agreement with respondent union specify, *inter alia*, that Eastern must prove in binding arbitration that it has "just cause" to discharge an employee, or else the arbitrator will order the employee reinstated. James Smith worked for Eastern as a truck driver subject to Department of Transportation (DOT) regulations requiring random drug testing of workers engaged in "safety-sensitive" tasks. After each of two occasions on which Smith tested positive for marijuana, Eastern sought to discharge him. Each time, the union went to arbitration, and the arbitrator concluded that the drug use did not amount to "just cause" and ordered Smith's reinstatement on certain conditions. On the second occasion, Eastern filed suit to vacate the arbitrator's award. The District Court ordered the award's enforcement, holding that Smith's conditional reinstatement did not violate the strong regulation-based public policy against drug use by workers who perform safety-sensitive functions. The Fourth Circuit affirmed.

Held: Public policy considerations do not require courts to refuse to enforce an arbitration award ordering an employer to reinstate an employee truck driver who twice tested positive for marijuana. Pp. 61–67.

(a) The Court assumes that the collective-bargaining agreement itself calls for Smith's reinstatement, as the parties have granted the arbitrator authority to interpret the meaning of their contract's language, including such words as "just cause," see *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, 599, and Eastern does not claim here that the arbitrator acted outside the scope of his contractually delegated authority, see, *e. g.*, *Paperworkers* v. *Misco, Inc.*, 484 U. S. 29, 38. Since the award is not distinguishable from the contractual agreement, the Court must decide whether a contractual reinstatement requirement would fall within the legal exception that makes unenforceable "a collective bargaining agreement that is contrary to public policy." *W. R. Grace & Co.* v. *Rubber Workers*, 461 U. S. 757, 766. Any such policy must be "explicit," "well defined," and "dominant," and it must be "as-

certained by reference to the laws and legal precedents, not from general considerations of supposed public interests." *Ibid.* The question is not whether Smith's drug use itself violates public policy, but whether the agreement to reinstate him does so. Pp. 61–63.

(b) A contractual agreement to reinstate Smith with specified conditions does not run contrary to public policy. The District Court correctly articulated the standard set out in *W. R. Grace* and *Misco* and applied that standard to reach the right result. The public policy exception is narrow and must satisfy the principles set forth in those cases. Moreover, where two political branches have created a detailed regulatory regime in a specific field, courts should approach with particular caution pleas to divine further public policy in that area. Eastern asserts that a public policy against reinstatement of workers who use drugs can be discerned from an examination of the Omnibus Transportation Employee Testing Act of 1991 and DOT's implementing regulations. However, these expressions of positive law embody not just policies against drug use by employees in safety-sensitive transportation positions and in favor of drug testing, but also include a Testing Act policy favoring rehabilitation of employees who use drugs. And the relevant statutory and regulatory provisions must be read in light of background labor law policy that favors determination of disciplinary questions through arbitration when chosen as a result of labor-management negotiation. See, *e. g.*, *California Brewers Assn.* v. *Bryant*, 444 U. S. 598, 608. The award here is not contrary to these several policies, taken together, as it does not condone Smith's conduct or ignore the risk to public safety that drug use by truck drivers may pose, but punishes Smith by placing conditions on his reinstatement. It violates no specific provision of any law or regulation, but is consistent with DOT rules requiring completion of substance-abuse treatment before returning to work and with the Act's driving license suspension requirements and its rehabilitative concerns. Moreover, the fact that Smith is a recidivist is not sufficient to tip the balance in Eastern's favor. Eastern's argument that DOT's withdrawal of a proposed "recidivist" rule leaves open the possibility that discharge is the appropriate penalty for repeat offenders fails because DOT based the withdrawal, not upon a determination that a more severe penalty was needed, but upon a determination to leave in place other remedies. The Court cannot find in the Act, the regulations, or any other law or legal precedent an explicit, well defined, dominant public policy to which the arbitrator's decision runs contrary. Pp. 63–67.

188 F. 3d 501, affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 67.

John G. Roberts, Jr., argued the cause for petitioner. With him on the briefs were *David G. Leitch*, *H. Christopher Bartolomucci*, *Ronald E. Meisburg*, *Anna M. Dailey*, and *Donna C. Kelly*.

John R. Mooney argued the cause for respondents. With him on the brief were *Jonathan P. Hiatt*, *James B. Coppess*, *Judith Rivlin*, *Charles F. Donnelly*, and *Laurence Gold*.

Malcolm L. Stewart argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Ogden*, *Deputy Solicitor General Wallace*, *William Kanter*, *Mark W. Pennak*, *Nancy E. McFadden*, *Paul M. Geier*, and *Peter J. Plocki*.*

JUSTICE BREYER delivered the opinion of the Court.

A labor arbitrator ordered an employer to reinstate an employee truck driver who had twice tested positive for marijuana. The question before us is whether considerations of public policy require courts to refuse to enforce that arbitration award. We conclude that they do not. The courts may enforce the award. And the employer must reinstate, rather than discharge, the employee.

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*Briefs of *amici curiae* urging reversal were filed for the Air Transport Association of America et al. by *John J. Gallagher* and *Neal D. Mollen;* for the Equal Employment Advisory Council by *Robert E. Williams* and *Ann Elizabeth Reesman;* for Exxon Mobile Corp. by *Walter E. Dellinger* and *John F. Daum;* and for the Institute for a Drug-Free Workplace by *Peter A. Susser*.

Theodore J. St. Antoine, *John Kagel*, and *David E. Feller* filed a brief for the National Academy of Arbitrators as *amicus curiae* urging affirmance.

I

Petitioner, Eastern Associated Coal Corp., and respondent, United Mine Workers of America, are parties to a collective-bargaining agreement with arbitration provisions. The agreement specifies that, in arbitration, in order to discharge an employee, Eastern must prove it has "just cause." Otherwise the arbitrator will order the employee reinstated. The arbitrator's decision is final. App. 28–31.

James Smith worked for Eastern as a member of a road crew, a job that required him to drive heavy trucklike vehicles on public highways. As a truck driver, Smith was subject to Department of Transportation (DOT) regulations requiring random drug testing of workers engaged in "safety-sensitive" tasks. 49 CFR §§382.301, 382.305 (1999).

In March 1996, Smith tested positive for marijuana. Eastern sought to discharge Smith. The union went to arbitration, and the arbitrator concluded that Smith's positive drug test did not amount to "just cause" for discharge. Instead the arbitrator ordered Smith's reinstatement, provided that Smith (1) accept a suspension of 30 days without pay, (2) participate in a substance-abuse program, and (3) undergo drug tests at the discretion of Eastern (or an approved substance-abuse professional) for the next five years.

Between April 1996 and January 1997, Smith passed four random drug tests. But in July 1997 he again tested positive for marijuana. Eastern again sought to discharge Smith. The union again went to arbitration, and the arbitrator again concluded that Smith's use of marijuana did not amount to "just cause" for discharge, in light of two mitigating circumstances. First, Smith had been a good employee for 17 years. App. to Pet. for Cert. 26a–27a. And, second, Smith had made a credible and "very personal appeal under oath . . . concerning a personal/family problem which caused this one time lapse in drug usage." *Id.*, at 28a.

The arbitrator ordered Smith's reinstatement provided that Smith (1) accept a new suspension without pay, this time

for slightly more than three months; (2) reimburse Eastern and the union for the costs of both arbitration proceedings; (3) continue to participate in a substance-abuse program; (4) continue to undergo random drug testing; and (5) provide Eastern with a signed, undated letter of resignation, to take effect if Smith again tested positive within the next five years. *Id.*, at 29a.

Eastern brought suit in federal court seeking to have the arbitrator's award vacated, arguing that the award contravened a public policy against the operation of dangerous machinery by workers who test positive for drugs. 66 F. Supp. 2d 796 (SDWV 1998). The District Court, while recognizing a strong regulation-based public policy against drug use by workers who perform safety-sensitive functions, held that Smith's conditional reinstatement did not violate that policy. *Id.*, at 804–805. And it ordered the award's enforcement. *Id.*, at 805.

The Court of Appeals for the Fourth Circuit affirmed on the reasoning of the District Court. 188 F. 3d 501, 1999 WL 635632 (1999) (unpublished). We granted certiorari in light of disagreement among the Circuits. Compare *id.*, at **1 (holding that public policy does not prohibit "reinstatement of employees who have used illegal drugs in the past"), with, *e. g.*, *Exxon Corp.* v. *Esso Workers' Union, Inc.*, 118 F. 3d 841, 852 (CA1 1997) (holding that public policy prohibits enforcement of a similar arbitration award). We now affirm the Fourth Circuit's determination.

II

Eastern claims that considerations of public policy make the arbitration award unenforceable. In considering this claim, we must assume that the collective-bargaining agreement itself calls for Smith's reinstatement. That is because both employer and union have granted to the arbitrator the authority to interpret the meaning of their contract's language, including such words as "just cause." See *Steelwork-*

ers v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, 599 (1960). They have "bargained for" the "arbitrator's construction" of their agreement. *Ibid.* And courts will set aside the arbitrator's interpretation of what their agreement means only in rare instances. *Id.*, at 596. Of course, an arbitrator's award "must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice." *Paperworkers* v. *Misco, Inc.*, 484 U. S. 29, 38 (1987). "But as long as [an honest] arbitrator is even arguably construing or applying the contract and acting within the scope of his authority," the fact that "a court is convinced he committed serious error does not suffice to overturn his decision." *Ibid.;* see also *Enterprise Wheel*, *supra*, at 596 (the "proper" judicial approach to a labor arbitration award is to "refus[e] . . . to review the merits"). Eastern does not claim here that the arbitrator acted outside the scope of his contractually delegated authority. Hence we must treat the arbitrator's award as if it represented an agreement between Eastern and the union as to the proper meaning of the contract's words "just cause." See St. Antoine, Judicial Review of Labor Arbitration Awards: A Second Look at *Enterprise Wheel* and Its Progeny, 75 Mich. L. Rev. 1137, 1155 (1977). For present purposes, the award is not distinguishable from the contractual agreement.

We must then decide whether a contractual reinstatement requirement would fall within the legal exception that makes unenforceable "a collective-bargaining agreement that is contrary to public policy." *W. R. Grace & Co.* v. *Rubber Workers*, 461 U. S. 757, 766 (1983). The Court has made clear that any such public policy must be "explicit," "well defined," and "dominant." *Ibid.* It must be "ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" *Ibid.* (quoting *Muschany* v. *United States*, 324 U. S. 49, 66 (1945)); accord, *Misco, supra*, at 43. And, of course, the question to be answered is not whether Smith's drug use itself violates public

policy, but whether the agreement to reinstate him does so. To put the question more specifically, does a contractual agreement to reinstate Smith with specified conditions, see App. to Pet. for Cert. 29a, run contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests? See *Misco*, *supra*, at 43.

III

Eastern initially argues that the District Court erred by asking, not whether the award is "contrary to" public policy "as ascertained by reference" to positive law, but whether the award "violates" positive law, a standard Eastern says is too narrow. We believe, however, that the District Court correctly articulated the standard set out in *W. R. Grace* and *Misco*, see 66 F. Supp. 2d, at 803 (quoting *Misco*, *supra*, at 43), and applied that standard to reach the right result.

We agree, in principle, that courts' authority to invoke the public policy exception is not limited solely to instances where the arbitration award itself violates positive law. Nevertheless, the public policy exception is narrow and must satisfy the principles set forth in *W. R. Grace* and *Misco*. Moreover, in a case like the one before us, where two political branches have created a detailed regulatory regime in a specific field, courts should approach with particular caution pleas to divine further public policy in that area.

Eastern asserts that a public policy against reinstatement of workers who use drugs can be discerned from an examination of that regulatory regime, which consists of the Omnibus Transportation Employee Testing Act of 1991 and DOT's implementing regulations. The Testing Act embodies a congressional finding that "the greatest efforts must be expended to eliminate the . . . use of illegal drugs, whether on or off duty, by those individuals who are involved in [certain safety-sensitive positions, including] the operation of . . . trucks." Pub. L. 102–143, § 2(3), 105 Stat. 953. The Act

adds that "increased testing" is the "most effective deterrent" to "use of illegal drugs." § 2(5). It requires the Secretary of Transportation to promulgate regulations requiring "testing of operators of commercial motor vehicles for the use of a controlled substance." 49 U. S. C. § 31306(b)(1)(A) (1994 ed., Supp. III). It mandates suspension of those operators who have driven a commercial motor vehicle while under the influence of drugs. 49 U. S. C. § 31310(b)(1)(A) (requiring suspension of at least one year for a first offense); § 31310(c)(2) (requiring suspension of at least 10 years for a second offense). And DOT's implementing regulations set forth sanctions applicable to those who test positive for illegal drugs. 49 CFR § 382.605 (1999).

In Eastern's view, these provisions embody a strong public policy against drug use by transportation workers in safety-sensitive positions and in favor of random drug testing in order to detect that use. Eastern argues that reinstatement of a driver who has twice failed random drug tests would undermine that policy—to the point where a judge must set aside an employer-union agreement requiring reinstatement.

Eastern's argument, however, loses much of its force when one considers further provisions of the Act that make clear that the Act's remedial aims are complex. The Act says that "rehabilitation is a critical component of any testing program," § 2(7), 105 Stat. 953, that rehabilitation "should be made available to individuals, as appropriate," *ibid.*, and that DOT must promulgate regulations for "rehabilitation programs," 49 U. S. C. § 31306(e). The DOT regulations specifically state that a driver who has tested positive for drugs cannot return to a safety-sensitive position until (1) the driver has been evaluated by a "substance abuse professional" to determine if treatment is needed, 49 CFR § 382.605(b) (1999); (2) the substance-abuse professional has certified that the driver has followed any rehabilitation program prescribed, § 382.605(c)(2)(i); and (3) the driver has passed a return-to-duty drug test, § 382.605(c)(1). In addi-

tion, (4) the driver must be subject to at least six random drug tests during the first year after returning to the job. § 382.605(c)(2)(ii). Neither the Act nor the regulations forbid an employer to reinstate in a safety-sensitive position an employee who fails a random drug test once or twice. The congressional and regulatory directives require only that the above-stated prerequisites to reinstatement be met.

Moreover, when promulgating these regulations, DOT decided not to require employers either to provide rehabilitation or to "hold a job open for a driver" who has tested positive, on the basis that such decisions "should be left to management/driver negotiation." 59 Fed. Reg. 7502 (1994). That determination reflects basic background labor law principles, which caution against interference with labor-management agreements about appropriate employee discipline. See, *e. g.*, *California Brewers Assn.* v. *Bryant*, 444 U. S. 598, 608 (1980) (noting that it is "this Nation's long-standing labor policy" to give "employers and employees the freedom through collective bargaining to establish conditions of employment").

We believe that these expressions of positive law embody several relevant policies. As Eastern points out, these policies include Testing Act policies against drug use by employees in safety-sensitive transportation positions and in favor of drug testing. They also include a Testing Act policy favoring rehabilitation of employees who use drugs. And the relevant statutory and regulatory provisions must be read in light of background labor law policy that favors determination of disciplinary questions through arbitration when chosen as a result of labor-management negotiation.

The award before us is not contrary to these several policies, taken together. The award does not condone Smith's conduct or ignore the risk to public safety that drug use by truck drivers may pose. Rather, the award punishes Smith by suspending him for three months, thereby depriving him of nearly $9,000 in lost wages, Record Doc. 29, App. A, p. 2;

it requires him to pay the arbitration costs of both sides; it insists upon further substance-abuse treatment and testing; and it makes clear (by requiring Smith to provide a signed letter of resignation) that one more failed test means discharge.

The award violates no specific provision of any law or regulation. It is consistent with DOT rules requiring completion of substance-abuse treatment before returning to work, see 49 CFR § 382.605(c)(2)(i) (1999), for it does not preclude Eastern from assigning Smith to a non-safety-sensitive position until Smith completes the prescribed treatment program. It is consistent with the Testing Act's 1-year and 10-year driving license suspension requirements, for those requirements apply only to drivers who, unlike Smith, actually operated vehicles under the influence of drugs. See 49 U. S. C. §§ 31310(b), (c). The award is also consistent with the Act's rehabilitative concerns, for it requires substance-abuse treatment and testing before Smith can return to work.

The fact that Smith is a recidivist—that he has failed drug tests twice—is not sufficient to tip the balance in Eastern's favor. The award punishes Smith more severely for his second lapse. And that more severe punishment, which included a 90-day suspension, would have satisfied even a "recidivist" rule that DOT once proposed but did not adopt—a rule that would have punished two failed drug tests, not with discharge, but with a driving suspension of 60 days. 57 Fed. Reg. 59585 (1992). Eastern argues that DOT's withdrawal of its proposed rule leaves open the possibility that discharge is the appropriate penalty for repeat offenders. That argument fails, however, because DOT based its withdrawal, not upon a determination that a more severe penalty was needed, but upon a determination to leave in place, as the "only driving prohibition period for a controlled substances violation," the "completion of rehabilitation requirements

and a return-to-duty test with a negative result." 59 Fed. Reg. 7493 (1994).

Regarding drug use by persons in safety-sensitive positions, then, Congress has enacted a detailed statute. And Congress has delegated to the Secretary of Transportation authority to issue further detailed regulations on that subject. Upon careful consideration, including public notice and comment, the Secretary has done so. Neither Congress nor the Secretary has seen fit to mandate the discharge of a worker who twice tests positive for drugs. We hesitate to infer a public policy in this area that goes beyond the careful and detailed scheme Congress and the Secretary have created.

We recognize that reasonable people can differ as to whether reinstatement or discharge is the more appropriate remedy here. But both employer and union have agreed to entrust this remedial decision to an arbitrator. We cannot find in the Act, the regulations, or any other law or legal precedent an "explicit," "well defined," "dominant" public policy to which the arbitrator's decision "runs contrary." *Misco*, 484 U. S., at 43; *W. R. Grace*, 461 U. S., at 766. We conclude that the lower courts correctly rejected Eastern's public policy claim. The judgment of the Court of Appeals is

Affirmed.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in the judgment.

I concur in the Court's judgment, because I agree that no public policy prevents the reinstatement of James Smith to his position as a truck driver, so long as he complies with the arbitrator's decision, and with those requirements set out in the Department of Transportation's regulations. I do not endorse, however, the Court's statement that "[w]e agree, in principle, that courts' authority to invoke the public policy exception is not limited solely to instances where the arbitra-

tion award itself violates positive law." *Ante*, at 63. No case is cited to support that proposition, and none could be. There is not a single decision, since this Court washed its hands of general common-lawmaking authority, see *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), in which we have refused to enforce on "public policy" grounds an agreement that did not violate, or provide for the violation of, some positive law. See, *e. g.*, *Hurd* v. *Hodge*, 334 U. S. 24 (1948) (refusing to enforce under the public policy doctrine a restrictive covenant that violated Rev. Stat. § 1978, 42 U. S. C. § 1982).

After its dictum opening the door to flaccid public policy arguments of the sort presented by petitioner here, the Court immediately posts a giant "Do Not Enter" sign. "[T]he public policy exception," it says, "is narrow and must satisfy the principles set forth in *W. R. Grace*," *ante*, at 63, which require that the applicable public policy be "explicit," "well defined," "dominant," and "ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests,'" *W. R. Grace & Co.* v. *Rubber Workers*, 461 U. S. 757, 766 (1983) (quoting *Muschany* v. *United States*, 324 U. S. 49, 66 (1945)). It is hard to imagine how an arbitration award could violate a public policy, identified in this fashion, without actually conflicting with positive law. If such an award could ever exist, it would surely be so rare that the benefit of preserving the courts' ability to deal with it is far outweighed by the confusion and uncertainty, and hence the obstructive litigation, that the Court's Delphic "agree[ment] in principle" will engender.

The problem with judicial intuition of a public policy that goes beyond the actual prohibitions of the law is that there is no way of knowing whether the apparent gaps in the law are intentional or inadvertent. The final form of a statute or regulation, especially in the regulated fields where the public policy doctrine is likely to rear its head, is often the

result of compromise among various interest groups, resulting in a decision to go so far and no farther. One can, of course, summon up a parade of horribles, such as an arbitration award ordering an airline to reinstate an alcoholic pilot who somehow escapes being grounded by force of law. But it seems to me we set our face against judicial correction of the omissions of the political branches when we declined the power to define common-law offenses. See *United States* v. *Hudson*, 7 Cranch 32 (1812). Surely the power to invalidate a contract providing for actions that are not contrary to law (but "ought" to be) is less important to the public welfare than the power to prohibit harmful acts that are not contrary to law (but "ought" to be). And it is also less efficacious, since it depends upon the willingness of one of the parties to the contract to *assert* the public policy interest. (If the airline is not terribly concerned about reinstating an alcoholic pilot, the courts will have no opportunity to prevent the reinstatement.) The horribles that can be imagined—if they are really so horrible and ever come to pass—can readily be corrected by Congress or the agency, with no problem of retroactivity. Supervening law is always grounds for the dissolution of a contractual obligation. See Restatement (Second) of Contracts § 264 (1979).

In sum, it seems to me that the game set in play by the Court's dictum endorsing "in principle" the power of federal courts to enunciate public policy is not worth the candle. Agreeing with the reasoning of the Court except insofar as this principle is concerned, I concur only in the judgment.

Syllabus

BUSH *v.* PALM BEACH COUNTY CANVASSING BOARD ET AL.

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 00–836. Argued December 1, 2000—Decided December 4, 2000

The day after the November 7, 2000, Presidential election, the Florida Division of Elections reported that petitioner, Governor George W. Bush, had received 1,784 more votes than respondent Vice President Albert Gore, Jr. Under the Florida Election Code, an automatic machine recount occurred, resulting in a much smaller margin of victory for Bush. Gore then exercised his statutory right to submit written requests for manual recounts to the canvassing boards of four Florida counties, see Fla. Stat. § 102.166, and subsequently joined in this suit to require manual recounts and the certification of the recount results. Among other things, the Florida Circuit Court held that § 102.111's 7-day recount deadline was mandatory, but that the Volusia County board could amend its returns at a later date, and ruled that the Secretary of State (Secretary), after considering all attendant facts and circumstances, could exercise her discretion in deciding whether to include the late amended returns in the statewide certification. After the Secretary rejected the four counties' requests to make late filings, the Circuit Court denied an emergency motion by the Florida Democratic Party and Gore, ruling that the Secretary had not acted arbitrarily and had exercised her discretion in a reasonable manner consistent with the court's earlier ruling. The First District Court of Appeal certified the matter to the Florida Supreme Court, which, *inter alia*, enjoined the Secretary and the Elections Canvassing Commission from certifying the election results and declaring a winner until further order; held that a discrepancy between the machine returns and a sample manual recount was sufficient to trigger the statutory provisions for a full manual recount; and ruled that § 102.112, which provides that the Secretary "may . . . ignor[e]" late election returns, controlled over the conflicting provision in § 102.111, which specifies that the Secretary "shall . . . ignor[e]" such returns. Relying in part on the right to vote set forth in the State Constitution, the court concluded that the Secretary may reject late manual recounts only under limited circumstances. Invoking its equitable powers, the court imposed a November 26 deadline for a return of ballot counts, thereby effectively extending by 12 days § 102.111's 7-day deadline, and directed the Secretary to accept manual counts submitted prior to that deadline.

Syllabus

Held: In light of considerable uncertainty as to the precise grounds for decision, the judgment of the Florida Supreme Court is vacated, and the case is remanded. This Court generally defers to a state court's interpretation of a state statute. But in the case of a state law applicable not only to elections to state offices, but also to the selection of Presidential electors, the state legislature is not acting solely under the authority given it by the State, but by virtue of a direct grant of authority under Art. II, § 1, cl. 2, of the United States Constitution, which requires each State to appoint its electors "in such Manner as the Legislature thereof may direct." Insertion of those words into that Clause, while operating as a limitation upon the State in respect of any attempt to circumscribe the legislative power, cannot be held to operate as a limitation on that power itself. *McPherson* v. *Blacker*, 146 U. S. 1, 25. Review of the opinion below reveals considerable uncertainty as to the precise grounds for the decision. See *Minnesota* v. *National Tea Co.*, 309 U. S. 551, 555. Specifically, this Court is unclear both as to the extent to which the Florida Supreme Court saw the Florida Constitution as circumscribing the legislature's authority under Art. II, § 1, cl. 2, and as to the consideration the Florida court accorded to 3 U. S. C. § 5, which contains a federal-law principle that would assure finality of the State's determination if made pursuant to a state law in effect before the election. That is sufficient reason for this Court to decline at this time to review the federal questions asserted to be present. See 309 U. S., at 555. While state courts must be free to interpret their state constitutions, it is equally important that ambiguous or obscure state-court adjudications not stand as barriers to a determination by this Court of the validity of state action under the Federal Constitution. Intelligent exercise of the Court's appellate powers compels it to ask for the elimination of the obscurities and ambiguities from the opinions in such cases. *Id.*, at 557.

772 So. 2d 1220, vacated and remanded.

Theodore B. Olson argued the cause for petitioner. With him on the briefs were *Terence P. Ross*, *Douglas R. Cox*, *Thomas G. Hungar*, *Mark A. Perry*, *Benjamin L. Ginsberg*, *Michael A. Carvin*, *Barry Richard*, *John F. Manning*, *William K. Kelley*, *Bradford R. Clark*, *George J. Terwilliger III*, *Timothy E. Flanigan*, and *Marcos D. Jiménez*. *Joseph P. Klock, Jr.*, argued the cause for Katherine Harris et al., respondents under this Court's Rule 12.6, in support of peti-

tioner. With him on the briefs were *John W. Little III*, *Ricardo M. Martinez-Cid*, and *Bill L. Bryant, Jr.*

Paul F. Hancock, Deputy Attorney General of Florida, argued the cause for respondent Butterworth, Attorney General of Florida. With him on the brief were *Mr. Butterworth*, *pro se*, and *Jason Vail* and *Kimberly J. Tucker*, Assistant Attorneys General. *Laurence H. Tribe* argued the cause for respondents Gore et al. With him on the briefs were *David Boies*, *Kathleen M. Sullivan*, *Thomas C. Goldstein*, *Teresa Wynn Roseborough*, *James A. Orr*, *Andrew J. Pincus*, *Kendall Coffey*, *Jonathan S. Massey*, and *Peter J. Rubin*. *Samuel S. Goren*, *Edward A. Dion*, and *Tamara M. Scrudders* filed a brief for respondents Broward County Canvassing Board et al. *Bruce S. Rogow*, *Beverly A. Pohl*, and *Denise D. Dytrych* filed a brief for respondent Palm Beach County Canvassing Board.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Bill Pryor*, Attorney General of Alabama, and *Margaret L. Fleming*, *John J. Park, Jr.*, *Charles B. Campbell*, *Scott L. Rouse*, *A. Vernon Barnett IV*, and *Richard E. Trewhella, Jr.*, Assistant Attorneys General; for the Commonwealth of Virginia et al. by *Mark L. Earley*, Attorney General of Virginia, *Randolph A. Beales*, Chief Deputy Attorney General, *William Henry Hurd*, Solicitor General, *Judith Williams Jagdmann*, Deputy Attorney General, *Siran S. Faulders* and *Maureen Riley Matsen*, Senior Assistant Attorneys General, *Eleanor Anne Chesney*, *Anthony P. Meredith*, and *Valerie L. Myers*, Assistant Attorneys General, *Charlie Condon*, Attorney General of South Carolina, and *Don Stenberg*, Attorney General of Nebraska; and for William H. Haynes et al. by *Jay Alan Sekulow*, *Thomas P. Monaghan*, *Stuart J. Roth*, *Colby M. May*, *James M. Henderson, Sr.*, *David A. Cortman*, *Griffin B. Bell*, *Paul D. Clement*, and *Jeffrey S. Bucholtz*.

Steven R. Shapiro, *Laughlin McDonald*, and *James K. Green* filed a brief for the American Civil Liberties Union as *amicus curiae* urging affirmance.

Briefs of *amici curiae* were filed for the Florida Senate et al. by *Charles Fried*, *Einer Elhauge*, and *Roger J. Magnuson;* for the State of Iowa et al. by *Thomas J. Miller*, Attorney General of Iowa, *Dennis W. Johnson*, Solicitor General, and *Tam B. Ormiston*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Bill Lockyer* of

PER CURIAM.

The Supreme Court of the State of Florida interpreted its elections statutes in proceedings brought to require manual recounts of ballots, and the certification of the recount results, for votes cast in the quadrennial Presidential election held on November 7, 2000. Governor George W. Bush, Republican candidate for the Presidency, filed a petition for certiorari to review the Florida Supreme Court decision. We granted certiorari on two of the questions presented by petitioner: whether the decision of the Florida Supreme Court, by effectively changing the State's elector appointment procedures after election day, violated the Due Process Clause or 3 U. S. C. § 5, and whether the decision of that court changed the manner in which the State's electors are to be selected, in violation of the legislature's power to designate the manner for selection under Art. II, § 1, cl. 2, of the United States Constitution. *Post*, p. 1004.

On November 8, 2000, the day following the Presidential election, the Florida Division of Elections reported that Governor Bush had received 2,909,135 votes, and respondent Democrat Vice President Albert Gore, Jr., had received 2,907,351, a margin of 1,784 in Governor Bush's favor. Under Fla. Stat. § 102.141(4) (2000), because the margin of victory was equal to or less than one-half of one percent of the votes cast, an automatic machine recount occurred. The recount resulted in a much smaller margin of victory for Governor Bush. Vice President Gore then exercised his

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California, *Richard Blumenthal* of Connecticut, *Earl I. Anzai* of Hawaii, *Karen M. Freeman-Wilson* of Indiana, *Andrew Ketterer* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Patricia A. Madrid* of New Mexico, *Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, and *Sheldon Whitehouse* of Rhode Island; for the American Civil Rights Union by *John C. Armor* and *Peter Ferrara;* for the Coalition for Local Sovereignty by *Kenneth B. Clark;* and for the Disenfranchised Voters in the USA et al. by *Ilise Levy Feitshans.*

statutory right to submit written requests for manual recounts to the canvassing board of any county. See § 102.166. He requested recounts in four counties: Volusia, Palm Beach, Broward, and Miami-Dade.

The parties urged conflicting interpretations of the Florida Election Code respecting the authority of the canvassing boards, the Secretary of State (hereinafter Secretary), and the Elections Canvassing Commission. On November 14, in an action brought by Volusia County, and joined by the Palm Beach County Canvassing Board, Vice President Gore, and the Florida Democratic Party, the Florida Circuit Court ruled that the statutory 7-day deadline was mandatory, but that the Volusia board could amend its returns at a later date. The court further ruled that the Secretary, after "considering all attendant facts and circumstances," App. to Pet. for Cert. 49a, could exercise her discretion in deciding whether to include the late amended returns in the statewide certification.

The Secretary responded by issuing a set of criteria by which she would decide whether to allow a late filing. The Secretary ordered that, by 2 p.m. the following day, November 15, any county desiring to forward late returns submit a written statement of the facts and circumstances justifying a later filing. Four counties submitted statements, and, after reviewing the submissions, the Secretary determined that none justified an extension of the filing deadline. On November 16, the Florida Democratic Party and Vice President Gore filed an emergency motion in the state court, arguing that the Secretary had acted arbitrarily and in contempt of the court's earlier ruling. The following day, the court denied the motion, ruling that the Secretary had not acted arbitrarily and had exercised her discretion in a reasonable manner consistent with the court's earlier ruling. The Democratic Party and Vice President Gore appealed to the First District Court of Appeal, which certified the matter to the Florida Supreme Court. That court accepted

jurisdiction and *sua sponte* entered an order enjoining the Secretary and the Elections Canvassing Commission from finally certifying the results of the election and declaring a winner until further order of that court.

The Supreme Court, with the expedition requisite for the controversy, issued its decision on November 21. *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1220 (2000). As the court saw the matter, there were two principal questions: whether a discrepancy between an original machine return and a sample manual recount resulting from the way a ballot has been marked or punched is an "error in vote tabulation" justifying a full manual recount; and how to reconcile what it spoke of as two conflicts in Florida's election laws: (a) between the timeframe for conducting a manual recount under Fla. Stat. § 102.166 (2000) and the timeframe for submitting county returns under §§ 102.111 and 102.112, and (b) between § 102.111, which provides that the Secretary "shall . . . ignor[e]" late election returns, and § 102.112, which provides that she "may . . . ignor[e]" such returns.

With regard to the first issue, the court held that, under the plain text of the statute, a discrepancy between a sample manual recount and machine returns due to the way in which a ballot was punched or marked did constitute an "error in vote tabulation" sufficient to trigger the statutory provisions for a full manual recount.

With regard to the second issue, the court held that the "shall . . . ignor[e]" provision of § 102.111 conflicts with the "may . . . ignor[e]" provision of § 102.112, and that the "may . . . ignor[e]" provision controlled. The court turned to the questions whether and when the Secretary may ignore late manual recounts. The court relied in part upon the right to vote set forth in the Declaration of Rights of the Florida Constitution in concluding that late manual recounts could be rejected only under limited circumstances. The court then stated: "[B]ecause of our reluctance to rewrite the Florida

Election Code, we conclude that we must invoke the equitable powers of this Court to fashion a remedy . . . ." 772 So. 2d, at 1240. The court thus imposed a deadline of November 26, at 5 p.m., for a return of ballot counts. The 7-day deadline of § 102.111, assuming it would have applied, was effectively extended by 12 days. The court further directed the Secretary to accept manual counts submitted prior to that deadline.

As a general rule, this Court defers to a state court's interpretation of a state statute. But in the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the selection of Presidential electors, the legislature is not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution. That provision reads:

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . . ."

Although we did not address the same question petitioner raises here, in *McPherson* v. *Blacker*, 146 U. S. 1, 25 (1892), we said:

> "[Art. II, § 1, cl. 2,] does not read that the people or the citizens shall appoint, but that 'each State shall'; and if the words 'in such manner as the legislature thereof may direct,' had been omitted, it would seem that the legislative power of appointment could not have been successfully questioned in the absence of any provision in the state constitution in that regard. Hence the insertion of those words, while operating as a limitation upon the State in respect of any attempt to circumscribe the legislative power, cannot be held to operate as a limitation on that power itself."

There are expressions in the opinion of the Supreme Court of Florida that may be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with Art. II, § 1, cl. 2, "circumscribe the legislative power." The opinion states, for example, that "[t]o the extent that the Legislature may enact laws regulating the electoral process, those laws are valid only if they impose no 'unreasonable or unnecessary' restraints on the right of suffrage" guaranteed by the State Constitution. 772 So. 2d, at 1236. The opinion also states that "[b]ecause election laws are intended to facilitate the right of suffrage, such laws must be liberally construed in favor of the citizens' right to vote . . . ." *Id.*, at 1237.

In addition, 3 U. S. C. § 5 provides in pertinent part:

> "If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned."

The parties before us agree that whatever else may be the effect of this section, it creates a "safe harbor" for a State insofar as congressional consideration of its electoral votes is concerned. If the state legislature has provided for final determination of contests or controversies by a law made prior to election day, that determination shall be conclusive if made at least six days prior to said time of meeting

of the electors. The Florida Supreme Court cited 3 U. S. C. §§ 1–10 in a footnote of its opinion, 772 So. 2d, at 1238, n. 55, but did not discuss § 5. Since § 5 contains a principle of federal law that would assure finality of the State's determination if made pursuant to a state law in effect before the election, a legislative wish to take advantage of the "safe harbor" would counsel against any construction of the Election Code that Congress might deem to be a change in the law.

After reviewing the opinion of the Florida Supreme Court, we find "that there is considerable uncertainty as to the precise grounds for the decision." *Minnesota* v. *National Tea Co.*, 309 U. S. 551, 555 (1940). This is sufficient reason for us to decline at this time to review the federal questions asserted to be present. See *ibid.*

> "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action. Intelligent exercise of our appellate powers compels us to ask for the elimination of the obscurities and ambiguities from the opinions in such cases." *Id.*, at 557.

Specifically, we are unclear as to the extent to which the Florida Supreme Court saw the Florida Constitution as circumscribing the legislature's authority under Art. II, § 1, cl. 2. We are also unclear as to the consideration the Florida Supreme Court accorded to 3 U. S. C. § 5. The judgment of the Supreme Court of Florida is therefore vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

GREEN TREE FINANCIAL CORP.-ALABAMA ET AL. *v.* RANDOLPH

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 99–1235. Argued October 3, 2000—Decided December 11, 2000

Respondent Randolph's mobile home financing agreement with petitioners, financial institutions, required that Randolph buy insurance protecting petitioners from the costs of her default and also provided that all disputes under the contract would be resolved by binding arbitration. Randolph later sued petitioners, alleging that they violated the Truth in Lending Act (TILA) by failing to disclose the insurance requirement as a finance charge and that they violated the Equal Credit Opportunity Act by requiring her to arbitrate her statutory causes of action. Among its rulings, the District Court granted petitioners' motion to compel arbitration, dismissed Randolph's claims with prejudice, and denied her request for reconsideration, which asserted that she lacked the resources to arbitrate, and as a result, would have to forgo her claims against petitioners. The Eleventh Circuit held that it had jurisdiction to review the District Court's order under § 16(a)(3) of the Federal Arbitration Act (FAA), which allows appeals from "a final decision with respect to an arbitration that is subject to this title." The court determined that a final, appealable order within this provision is one that disposes of all the issues framed by the litigation, leaving nothing to be done but execute the order, and found the District Court's order within that definition. Determining also that the arbitration agreement failed to provide the minimum guarantees that Randolph could vindicate her statutory rights under the TILA, the court observed that the agreement was silent with respect to payment of arbitration expenses, and therefore held the agreement unenforceable because it posed a risk that Randolph's ability to vindicate her statutory rights would be undone by "steep" arbitration costs.

Held:

1. Where, as here, the District Court has ordered the parties to proceed to arbitration, and dismissed all the claims before it, the decision is "final" under § 16(a)(3), and therefore appealable. The term "final decision" has a well-developed and longstanding meaning: It is a decision that ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment. *E. g.*, *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 867. Because the FAA does not

define "a final decision with respect to an arbitration" or otherwise suggest that the ordinary meaning of "final decision" should not apply, this Court accords the term its well-established meaning. See *Evans* v. *United States*, 504 U. S. 255, 259–260. The District Court's order plainly falls within that meaning because it disposed of the entire case on the merits and left no part of it pending before the court. The fact that the FAA permits parties to arbitration agreements to bring a separate proceeding to enter judgment on an arbitration award once it is made (or to vacate or modify it) does not vitiate the finality of the District Court's resolution of the claims below. Moreover, this Court disagrees with petitioners' contention that the phrase "final decision" does not include an order compelling arbitration and dismissing the other claims in the action when that order occurs in an "embedded" proceeding, such as this one, involving both an arbitration request and other claims for relief, as distinguished from an "independent" proceeding in which a request to order arbitration is the sole issue before the court. It does not appear that, at the time of § 16(a)(3)'s enactment, Court of Appeals decisions attaching significance to this independent/embedded distinction, and its consequences for finality, were so firmly established that this Court should assume Congress meant to incorporate them into § 16(a)(3). Certainly the statute's plain language does not suggest such an intent. Pp. 84–89.

2. Randolph's agreement to arbitrate is not rendered unenforceable simply because it says nothing about arbitration costs, and thus fails to provide her protection from potentially substantial costs of pursuing her federal statutory claims in the arbitral forum. In light of the FAA's purpose to reverse longstanding judicial hostility to arbitration agreements and to place them on the same footing as other contracts, *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 24, this Court has recognized that federal statutory claims can be appropriately resolved through arbitration and has enforced agreements involving such claims, see, *e. g.*, *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477. In determining whether such claims may be arbitrated, the Court asks whether the parties agreed to submit the claims to arbitration and whether Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue. See, *e. g.*, *Gilmer*, *supra*, at 26. Here, it is undisputed that the parties agreed to arbitrate all claims relating to their contract, including claims involving statutory rights, and Randolph does not contend that the TILA evinces an intention to preclude a waiver of judicial remedies. She contends instead that the arbitration agreement's silence with respect to costs creates a "risk" that she will be required to bear prohibitive arbitration

costs, and thereby be unable to vindicate her statutory rights in arbitration. Although the existence of large arbitration costs may well preclude a litigant like Randolph from effectively vindicating such rights, the record does not show that Randolph will bear such costs if she goes to arbitration. Indeed, it contains hardly any information on the matter, revealing only the agreement's silence on the subject. That fact alone is plainly insufficient to render it unenforceable. To invalidate the agreement would undermine the liberal federal policy favoring arbitration agreements, *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24, and would conflict with this Court's holdings that the party resisting arbitration bears the burden of proving that Congress intended to preclude arbitration of the statutory claims at issue, see, *e. g.*, *Gilmer*, *supra*, at 26. Thus, a party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs. Randolph did not meet that burden. The Court need not discuss how detailed such a showing would have to be, for in this case, there was no timely showing at all on the point. Pp. 89–92.

178 F. 3d 1149, affirmed in part and reversed in part.

REHNQUIST, C. J., delivered the opinion of the Court, Part II of which was unanimous and Parts I and III of which were joined by O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ. GINSBURG, J., filed an opinion concurring in part and dissenting in part, in which STEVENS and SOUTER, JJ., joined, and in which BREYER, J., joined as to Parts I and III, *post*, p. 92.

Carter G. Phillips argued the cause for petitioners. With him on the briefs were *Paul J. Zidlicky*, *Robert A. Huffaker*, and *William H. Webster*.

Joseph M. Sellers argued the cause for respondent. With him on the brief were *Suzette M. Malveaux*, *Deborah J. Vagins*, *C. Knox McLaney III*, and *Lynn W. Jinks III*.*

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*Briefs of *amici curiae* urging reversal were filed for the Alabama Manufactured Housing Institute by *Robert E. Sasser;* for the American Arbitration Association by *Florence Peterson*, *John M. Townsend*, *Daniel Wolf*, and *James H. Carter;* for the American Bankers Association et al. by *Christopher R. Lipsett*, *Eric J. Mogilnicki*, and *Todd Zubler;* and for the Equal Employment Advisory Council by *Ann Elizabeth Reesman*.

Briefs of *amici curiae* urging affirmance were filed for the Consumers Union of the United States by *Sally J. Greenberg;* for Public Citizen by *Alan B. Morrison* and *Paul Levy;* for Trial Lawyers for Public Justice

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we first address whether an order compelling arbitration and dismissing a party's underlying claims is a "final decision with respect to an arbitration" within the meaning of § 16(a)(3) of the Federal Arbitration Act, 9 U. S. C. § 16(a)(3), and thus is immediately appealable pursuant to that Act. Because we decide that question in the affirmative, we also address the question whether an arbitration agreement that does not mention arbitration costs and fees is unenforceable because it fails to affirmatively protect a party from potentially steep arbitration costs. We conclude that an arbitration agreement's silence with respect to such matters does not render the agreement unenforceable.

I

Respondent Larketta Randolph purchased a mobile home from Better Cents Home Builders, Inc., in Opelika, Alabama. She financed this purchase through petitioners Green Tree Financial Corporation and its wholly owned subsidiary, Green Tree Financial Corp.-Alabama. Petitioners' Manufactured Home Retail Installment Contract and Security Agreement required that Randolph buy Vendor's Single Interest insurance, which protects the vendor or lienholder against the costs of repossession in the event of default. The agreement also provided that all disputes arising from,

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et al. by *F. Paul Bland, Jr.*, *Arthur H. Bryant*, and *Jeffrey White;* and for Terry Johnson et al. by *Daniel A. Edelman* and *James O. Latturner.*

Briefs of *amici curiae* were filed for the Chamber of Commerce of the United States of America by *Alan S. Kaplinsky*, *David H. Pittinsky*, *Thomas B. Roberts*, and *Robin S. Conrad;* for the National Arbitration Forum by *Edward C. Anderson*, *David F. Herr*, and *Michael C. McCarthy;* for the National Association of Consumer Advocates by *Patricia Sturdevant* and *Michael D. Donovan;* and for AARP et al. by *Stacy Canan*, *Jean Constantine-Davis*, *Nina F. Simon*, *Deborah Zuckerman*, *Michael R. Schuster*, and *Elizabeth Renuart.*

or relating to, the contract, whether arising under case law or statutory law, would be resolved by binding arbitration.[1]

Randolph later sued petitioners, alleging that they violated the Truth in Lending Act (TILA), 15 U. S. C. § 1601 *et seq.*, by failing to disclose as a finance charge the Vendor's Single Interest insurance requirement. She later amended her complaint to add a claim that petitioners violated the Equal Credit Opportunity Act, 15 U. S. C. §§ 1691–1691f, by requiring her to arbitrate her statutory causes of action. She brought this action on behalf of a similarly situated class. In lieu of an answer, petitioners filed a motion to compel arbitration, to stay the action, or, in the alternative, to dismiss. The District Court granted petitioners' motion to compel arbitration, denied the motion to stay, and dismissed Randolph's claims with prejudice. The District Court also denied her request to certify a class. 991 F. Supp. 1410 (MD Ala. 1997). She requested reconsideration, asserting that

[1] The arbitration provision states in pertinent part: "All disputes, claims, or controversies arising from or relating to this Contract or the relationships which result from this Contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator selected by Assignee with consent of Buyer(s). This arbitration Contract is made pursuant to a transaction in interstate commerce, and shall be governed by the Federal Arbitration Act at 9 U. S. C. Section 1. Judgment upon the award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right or opportunity to litigate disputes through a court, but that they prefer to resolve their disputes through arbitration, except as provided herein. THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY ASSIGNEE (AS PROVIDED HEREIN). The parties agree and understand that all disputes arising under case law, statutory law, and all other laws, including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this Contract. The parties agree and understand that the arbitrator shall have all powers provided by the law and the Contract." Joint Lodging 37.

she lacked the resources to arbitrate and, as a result, would have to forgo her claims against petitioners. See Plaintiff's Motion for Reconsideration, Record Doc. No. 53, p. 9. The District Court denied reconsideration. 991 F. Supp., at 1425–1426. Randolph appealed.

The Court of Appeals for the Eleventh Circuit first held that it had jurisdiction to review the District Court's order because that order was a final decision. 178 F. 3d 1149 (1999). The Court of Appeals looked to § 16 of the Federal Arbitration Act (FAA), 9 U. S. C. § 16, which governs appeal from a district court's arbitration order, and specifically § 16(a)(3), which allows appeal from "a final decision with respect to an arbitration that is subject to this title." The court determined that a final, appealable order within the meaning of the FAA is one that disposes of all the issues framed by the litigation, leaving nothing to be done but execute the order. The Court of Appeals found the District Court's order within that definition.

The court then determined that the arbitration agreement failed to provide the minimum guarantees that respondent could vindicate her statutory rights under the TILA. Critical to this determination was the court's observation that the arbitration agreement was silent with respect to payment of filing fees, arbitrators' costs, and other arbitration expenses. On that basis, the court held that the agreement to arbitrate posed a risk that respondent's ability to vindicate her statutory rights would be undone by "steep" arbitration costs, and therefore was unenforceable. We granted certiorari, 529 U. S. 1052 (2000), and we now affirm the Court of Appeals with respect to the first conclusion, and reverse it with respect to the second.

II

Section 16 of the Federal Arbitration Act, enacted in 1988, governs appellate review of arbitration orders. 9 U. S. C. § 16. It provides:

"(a) An appeal may be taken from—

"(1) an order—

"(A) refusing a stay of any action under section 3 of this title,

"(B) denying a petition under section 4 of this title to order arbitration to proceed,

"(C) denying an application under section 206 of this title to compel arbitration,

"(D) confirming or denying confirmation of an award or partial award, or

"(E) modifying, correcting, or vacating an award;

"(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

"(3) a final decision with respect to an arbitration that is subject to this title.

"(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

"(1) granting a stay of any action under section 3 of this title;

"(2) directing arbitration to proceed under section 4 of this title;

"(3) compelling arbitration under section 206 of this title; or

"(4) refusing to enjoin an arbitration that is subject to this title."

The District Court's order directed that arbitration proceed and dismissed respondent's claims for relief. The question before us, then, is whether that order can be appealed as "a final decision with respect to an arbitration" within the meaning of § 16(a)(3). Petitioners urge us to hold that it cannot. They rely, in part, on the FAA's policy favoring arbitration agreements and its goal of "mov[ing] the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Memorial*

Hospital v. *Mercury Constr. Corp.*, 460 U. S. 1, 22 (1983); *id.*, at 24. In accordance with that purpose, petitioners point out, § 16 generally permits immediate appeal of orders hostile to arbitration, whether the orders are final or interlocutory, but bars appeal of interlocutory orders favorable to arbitration.

Section 16(a)(3), however, preserves immediate appeal of any "final decision with respect to an arbitration," regardless of whether the decision is favorable or hostile to arbitration. And as petitioners and respondent agree, the term "final decision" has a well-developed and longstanding meaning. It is a decision that "'ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.'" *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 867 (1994), and *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 467 (1978) (both quoting *Catlin* v. *United States*, 324 U. S. 229, 233 (1945)). See also *St. Louis, I. M. & S. R. Co.* v. *Southern Express Co.*, 108 U. S. 24, 28–29 (1883). Because the FAA does not define "a final decision with respect to an arbitration" or otherwise suggest that the ordinary meaning of "final decision" should not apply, we accord the term its well-established meaning. See *Evans* v. *United States*, 504 U. S. 255, 259–260 (1992).

The District Court's order directed that the dispute be resolved by arbitration and dismissed respondent's claims with prejudice, leaving the court nothing to do but execute the judgment. That order plainly disposed of the entire case on the merits and left no part of it pending before the court. The FAA does permit parties to arbitration agreements to bring a separate proceeding in a district court to enter judgment on an arbitration award once it is made (or to vacate or modify it), but the existence of that remedy does not vitiate the finality of the District Court's resolution of the claims in the instant proceeding. 9 U. S. C. §§ 9, 10, 11. The District Court's order was therefore "a final decision with respect to an arbitration" within the meaning of § 16(a)(3), and

an appeal may be taken.[2] See *Sears, Roebuck & Co.* v. *Mackey*, 351 U. S. 427, 431 (1956) (explaining that had the District Court dismissed all the claims in an action, its decision would be final and appealable); *Catlin*, *supra*, at 236 (noting that had petitioners' motion to dismiss been granted and a judgment of dismissal entered, "clearly there would have been an end of the litigation and appeal would lie . . .").

Petitioners contend that the phrase "final decision" does not include an order compelling arbitration and dismissing the other claims in the action, when that order occurs in an "embedded" proceeding, such as this one. Brief for Petitioners 26. "Embedded" proceedings are simply those actions involving both a request for arbitration and other claims for relief. "Independent" proceedings, by contrast, are actions in which a request to order arbitration is the sole issue before the court. Those Courts of Appeals attaching significance to this distinction hold that an order compelling arbitration in an "independent" proceeding is final within the meaning of § 16(a)(3), but that such an order in an "embedded" proceeding is not, even if the district court dismisses the remaining claims.[3] Petitioners contend that the distinc-

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[2] Had the District Court entered a stay instead of a dismissal in this case, that order would not be appealable. 9 U. S. C. § 16(b)(1). The question whether the District Court should have taken that course is not before us, and we do not address it.

[3] The majority of Courts of Appeals have so opined, contrary to the instant decision of the Court of Appeals for the Eleventh Circuit. See, *e. g.*, *Seacoast Motors of Salisbury, Inc.* v. *Chrysler Corp.*, 143 F. 3d 626, 628–629 (CA1 1998); *Altman Nursing, Inc.* v. *Clay Capital Corp.*, 84 F. 3d 769, 771 (CA5 1996); *Napleton* v. *General Motors Corp.*, 138 F. 3d 1209, 1212 (CA7 1998); *Gammaro* v. *Thorp Consumer Discount Co.*, 15 F. 3d 93, 95 (CA8 1994); *McCarthy* v. *Providential Corp.*, 122 F. 3d 1242, 1244 (CA9 1997). But see *Arnold* v. *Arnold Corp.—Printed Communications for Business*, 920 F. 2d 1269, 1276 (CA6 1990) (order compelling arbitration in an "embedded" proceeding treated as a final judgment when the District Court dismissed the action in deference to arbitration and had nothing left to do but execute the judgment); *Armijo* v. *Prudential Insurance Co. of America*, 72 F. 3d 793, 797 (CA10 1995) (same).

tion between independent and embedded proceedings and its consequences for finality were so firmly established at the time of § 16's enactment that we should assume Congress meant to incorporate them into § 16(a)(3). See Brief for Petitioners 23–26.

We disagree. It does not appear that, at the time of § 16(a)(3)'s enactment, the rules of finality were firmly established in cases like this one, where the District Court both ordered arbitration and dismissed the remaining claims.[4] We also note that at that time, Courts of Appeals did not have a uniform approach to finality with respect to orders directing arbitration in "embedded" proceedings.[5] The term "final decision," by contrast, enjoys a consistent and longstanding interpretation. Certainly the plain language of the statutory text does not suggest that Congress intended to incorporate the rather complex independent/

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[4] *Seacoast Motors of Salisbury, Inc.*, *supra*, at 628 (noting in 1998 that the Court had not before addressed the question whether a district court order directing arbitration and dismissing the proceedings was a "final decision" within the meaning of § 16(a)(3)); *Napleton*, *supra*, at 1212 (noting in 1998 that the appeal at issue adds an "unfamiliar ingredient" because the District Court ordered arbitration and dismissed the proceedings).

[5] *Cincinnati Gas & Elec. Co.* v. *Benjamin F. Shaw Co.*, 706 F. 2d 155, 158 (CA6 1983) (rejecting the argument that because a declaratory judgment and other relief was sought in suit where arbitration was ordered, order to arbitrate should not be appealable); *Howard Elec. & Mechanical Co.* v. *Frank Briscoe Co.*, 754 F. 2d 847, 849 (CA9 1985) (plaintiff brought suit for work performed under contract and then sought arbitration; order compelling arbitration held appealable). Cf. *In re Hops Antitrust Litigation*, 832 F. 2d 470, 472–473 (CA8 1987) (District Court order requiring arbitration of some claims before it is not a final appealable order because other matters remained pending before the court); *County of Durham* v. *Richards & Assocs., Inc.*, 742 F. 2d 811, 813, n. 3 (CA4 1984) (noting that a number of Courts of Appeals have held that an order compelling arbitration may be appealed even when it is entered in the course of a dispute over the underlying claim). See generally 15B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3914.17, pp. 19–25 (1992).

embedded distinction, and its consequences for finality, into § 16(a)(3). We therefore conclude that where, as here, the District Court has ordered the parties to proceed to arbitration, and dismissed all the claims before it, that decision is "final" within the meaning of § 16(a)(3), and therefore appealable.

III

We now turn to the question whether Randolph's agreement to arbitrate is unenforceable because it says nothing about the costs of arbitration, and thus fails to provide her protection from potentially substantial costs of pursuing her federal statutory claims in the arbitral forum. Section 2 of the FAA provides that "[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. § 2. In considering whether respondent's agreement to arbitrate is unenforceable, we are mindful of the FAA's purpose "to reverse the longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements upon the same footing as other contracts." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 24 (1991).

In light of that purpose, we have recognized that federal statutory claims can be appropriately resolved through arbitration, and we have enforced agreements to arbitrate that involve such claims. See, *e. g.*, *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477 (1989) (Securities Act of 1933); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220 (1987) (Securities Exchange Act of 1934 and Racketeer Influenced and Corrupt Organizations Act); *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614 (1985) (Sherman Act). We have likewise rejected generalized attacks on arbitration that rest on "suspicion of arbitration as a method of weakening the protec-

tions afforded in the substantive law to would-be complainants." *Rodriguez de Quijas*, *supra*, at 481. These cases demonstrate that even claims arising under a statute designed to further important social policies may be arbitrated because "'so long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum,'" the statute serves its functions. See *Gilmer*, *supra*, at 28 (quoting *Mitsubishi*, *supra*, at 637).

In determining whether statutory claims may be arbitrated, we first ask whether the parties agreed to submit their claims to arbitration, and then ask whether Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue. See *Gilmer*, *supra*, at 26; *Mitsubishi*, *supra*, at 628. In this case, it is undisputed that the parties agreed to arbitrate all claims relating to their contract, including claims involving statutory rights. Nor does Randolph contend that the TILA evinces an intention to preclude a waiver of judicial remedies. She contends instead that the arbitration agreement's silence with respect to costs and fees creates a "risk" that she will be required to bear prohibitive arbitration costs if she pursues her claims in an arbitral forum, and thereby forces her to forgo any claims she may have against petitioners. Therefore, she argues, she is unable to vindicate her statutory rights in arbitration. See Brief for Respondent 29–30.

It may well be that the existence of large arbitration costs could preclude a litigant such as Randolph from effectively vindicating her federal statutory rights in the arbitral forum. But the record does not show that Randolph will bear such costs if she goes to arbitration. Indeed, it contains hardly any information on the matter.[6] As the Court of Appeals

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[6] In Randolph's motion for reconsideration in the District Court, she asserted that "[a]rbitration costs are high" and that she did not have the resources to arbitrate. But she failed to support this assertion. She first acknowledged that petitioners had not designated a particular arbitration association or arbitrator to resolve their dispute. Her subsequent discus-

recognized, "we lack . . . information about how claimants fare under Green Tree's arbitration clause." 178 F. 3d, at 1158. The record reveals only the arbitration agreement's silence on the subject, and that fact alone is plainly insufficient to render it unenforceable. The "risk" that Randolph will be saddled with prohibitive costs is too speculative to justify the invalidation of an arbitration agreement.

To invalidate the agreement on that basis would undermine the "liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hospital*, 460 U. S., at 24. It would also conflict with our prior holdings that the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration. See *Gilmer*, *supra*, at 26; *McMahon*, *supra*, at 227. We have

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sion of costs relied entirely on unfounded assumptions. She stated that "[f]or the purposes of this discussion, we will assume filing with the [American Arbitration Association], the filing fee is $500 for claims under $10,000 and this does not include the cost of the arbitrator or administrative fees." Randolph relied on, and attached as an exhibit, what appears to be informational material from the American Arbitration Association that does not discuss the amount of filing fees. She then noted: "[The American Arbitration Association] further cites $700 per day as the average arbitrator's fee." For this proposition she cited an article in the Daily Labor Report, February 15, 1996, published by the Bureau of National Affairs, entitled Labor Lawyers at ABA Session Debate Role of American Arbitration Association. Plaintiff's Motion for Reconsideration, Record Doc. No. 53, pp. 8–9. The article contains a stray statement by an association executive that the average arbitral fee is $700 per day. Randolph plainly failed to make any factual showing that the American Arbitration Association would conduct the arbitration, or that, if it did, she would be charged the filing fee or arbitrator's fee that she identified. These unsupported statements provide no basis on which to ascertain the actual costs and fees to which she would be subject in arbitration.

In this Court, Randolph's brief lists fees incurred in cases involving other arbitrations as reflected in opinions of other Courts of Appeals, while petitioners' counsel states that arbitration fees are frequently waived by petitioners. None of this information affords a sufficient basis for concluding that Randolph would in fact have incurred substantial costs in the event her claim went to arbitration.

held that the party seeking to avoid arbitration bears the burden of establishing that Congress intended to preclude arbitration of the statutory claims at issue. See *Gilmer*, *supra; McMahon*, *supra.* Similarly, we believe that where, as here, a party seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive, that party bears the burden of showing the likelihood of incurring such costs. Randolph did not meet that burden. How detailed the showing of prohibitive expense must be before the party seeking arbitration must come forward with contrary evidence is a matter we need not discuss; for in this case neither during discovery nor when the case was presented on the merits was there any timely showing at all on the point. The Court of Appeals therefore erred in deciding that the arbitration agreement's silence with respect to costs and fees rendered it unenforceable.[7]

The judgment of the Court of Appeals is affirmed in part and reversed in part.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE STEVENS and JUSTICE SOUTER join, and with whom JUSTICE BREYER joins as to Parts I and III, concurring in part and dissenting in part.

I

I join Part II of the Court's opinion, which holds that the District Court's order, dismissing all the claims before it, was a "final," and therefore immediately appealable, decision. *Ante*, at 84–89. On the matter the Court airs in Part III,

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[7] We decline to reach respondent's argument that we may affirm the Court of Appeals' conclusion that the arbitration agreement is unenforceable on the alternative ground that the agreement precludes respondent from bringing her claims under the TILA as a class action. See Brief for Respondent 39–48. The Court of Appeals did not pass on this question, and we need not decide here issues not decided below. *Roberts* v. *Galen of Va., Inc.*, 525 U. S. 249 (1999) *(per curiam).*

ante, at 89–92—allocation of the costs of arbitration—I would not rule definitively. Instead, I would vacate the Eleventh Circuit's decision, which dispositively declared the arbitration clause unenforceable, and remand the case for closer consideration of the arbitral forum's accessibility.

II

The Court today deals with a "who pays" question, specifically, who pays for the arbitral forum. The Court holds that Larketta Randolph bears the burden of demonstrating that the arbitral forum is financially inaccessible to her. Essentially, the Court requires a party, situated as Randolph is, either to submit to arbitration without knowing who will pay for the forum or to demonstrate up front that the costs, if imposed on her, will be prohibitive. *Ante*, at 91–92. As I see it, the case in its current posture is not ripe for such a disposition.

The Court recognizes that "the existence of large arbitration costs could preclude a litigant such as Randolph from effectively vindicating her federal statutory rights in the arbitral forum." *Ante*, at 90. But, the Court next determines, "the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration" and "Randolph did not meet that burden." *Ante*, at 91, 92. In so ruling, the Court blends two discrete inquiries: First, is the arbitral forum *adequate* to adjudicate the claims at issue; second, is that forum *accessible* to the party resisting arbitration.

Our past decisions deal with the first question, the *adequacy* of the arbitral forum to adjudicate various statutory claims. See, *e. g.*, *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 (1991) (Age Discrimination in Employment Act claims are amenable to arbitration); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220 (1987) (Claims under Racketeer Influenced and Corrupt Organizations Act and Securities Exchange Act are amenable to arbitration).

These decisions hold that the party resisting arbitration bears the burden of establishing the inadequacy of the arbitral forum for adjudication of claims of a particular genre. See *Gilmer*, 500 U. S., at 26; *McMahon*, 482 U. S., at 227. It does not follow like the night the day, however, that the party resisting arbitration should also bear the burden of showing that the arbitral forum would be financially inaccessible to her.

The arbitration agreement at issue is contained in a form contract drawn by a commercial party and presented to an individual consumer on a take-it-or-leave-it basis. The case on which the Court dominantly relies, *Gilmer*, also involved a nonnegotiated arbitration clause. But the "who pays" question presented in this case did not arise in *Gilmer*. Under the rules that governed in *Gilmer*—those of the New York Stock Exchange—it was the standard practice for securities industry parties, arbitrating employment disputes, to pay all of the arbitrators' fees. See *Cole* v. *Burns Int'l Security Servs.*, 105 F. 3d 1465, 1483 (CADC 1997). Regarding that practice, the Court of Appeals for the District of Columbia Circuit recently commented:

> "[I]n *Gilmer*, the Supreme Court endorsed a system of arbitration in which employees are not required to pay for the arbitrator assigned to hear their statutory claims. There is no reason to think that the Court would have approved arbitration in the absence of this arrangement. Indeed, we are unaware of any situation in American jurisprudence in which a beneficiary of a federal statute has been required to pay for the services of the judge assigned to hear her or his case." *Id.*, at 1484.

III

The form contract in this case provides no indication of the rules under which arbitration will proceed or the costs a

consumer is likely to incur in arbitration.[1] Green Tree, drafter of the contract, could have filled the void by specifying, for instance, that arbitration would be governed by the rules of the American Arbitration Association (AAA). Under the AAA's Consumer Arbitration Rules, consumers in small-claims arbitration incur no filing fee and pay only $125 of the total fees charged by the arbitrator. All other fees and costs are to be paid by the business party. Brief for American Arbitration Association as *Amicus Curiae* 15–16. Other national arbitration organizations have developed similar models for fair cost and fee allocation.[2] It may be that in this case, as in *Gilmer*, there is a standard practice on arbitrators' fees and expenses, one that fills the blank space in the arbitration agreement. Counsel for Green Tree offered a hint in that direction. See Tr. of Oral Arg. 26 ("Green Tree does pay [arbitration] costs in a lot of instances . . . ."). But there is no reliable indication in this record that Randolph's claim will be arbitrated under any consumer-protective fee arrangement.

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[1] In Alabama, as in most States, courts interpret a contract's silence (about arbitration fees and costs) according to "usage or custom." *Green Tree Financial Corp. of Ala.* v. *Wampler*, 749 So. 2d 409, 415 (Ala. 1999); see also Restatement (Second) of Contracts § 204, Comment *d* (1979) (where an essential term is missing, "the court should supply a term which comports with community standards of fairness and policy"). Cf. *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938, 944 (1995) (courts should generally apply state contract law principles when deciding whether parties agreed to arbitrate a certain matter); *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 62–64, and n. 9 (1995) (interpreting arbitration clause according to New York and Illinois law).

[2] They include National Arbitration Forum provisions that limit small-claims consumer costs to between $49 and $175 and a National Consumer Disputes Advisory Committee protocol recommending that consumer costs be limited to a reasonable amount. National Arbitration Forum, Code of Procedure, App. C, Fee Schedule (July 1, 2000); National Consumer Disputes Advisory Committee, Consumer Due Process Protocol, Principle 6, Comment (Apr. 17, 1998), http://www.adr.org/education/education/consumer_protocol.html.

As a repeat player in the arbitration required by its form contract, Green Tree has superior information about the cost to consumers of pursuing arbitration. Cf. *Raleigh* v. *Illinois Dept. of Revenue*, 530 U. S. 15, 21 (2000) ("the very fact that the burden of proof has often been placed on the taxpayer [to disprove tax liability] . . . reflects several compelling rationales . . . [including] the taxpayer's readier access to the relevant information"); 9 J. Wigmore, Evidence § 2486 (J. Chadbourn rev. ed. 1981) (where fairness so requires, burden of proof of a particular fact may be assigned to "party who presumably has peculiar means of knowledge" of the fact); Restatement (Second) of Contracts § 206 (1979) ("In choosing among the reasonable meanings of . . . [an] agreement or a term thereof, that meaning is generally preferred which operates against the [drafting] party . . . ."). In these circumstances, it is hardly clear that Randolph should bear the burden of demonstrating up front the arbitral forum's inaccessibility, or that she should be required to submit to arbitration without knowing how much it will cost her.

As I see it, the Court has reached out prematurely to resolve the matter in the lender's favor. If Green Tree's practice under the form contract with retail installment sales purchasers resembles that of the employer in *Gilmer*, Randolph would be insulated from prohibitive costs. And if the arbitral forum were in this case financially accessible to Randolph, there would be no occasion to reach the decision today rendered by the Court. Before writing a term into the form contract, as the District of Columbia Circuit did, see *Cole*, 105 F. 3d, at 1485,[3] or leaving cost allocation initially to each arbitrator, as the Court does, I would remand for clarification of Green Tree's practice.

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[3] The court interpreted a form contract to arbitrate employment disputes, silent as to costs, to require the employer "to pay all of the arbitrator's fees necessary for a full and fair resolution of [the discharged employee's] statutory claims." 105 F. 3d, at 1485.

The Court's opinion, if I comprehend it correctly, does not prevent Randolph from returning to court, postarbitration, if she then has a complaint about cost allocation. If that is so, the issue reduces to when, not whether, she can be spared from payment of excessive costs. Neither certainty nor judicial economy is served by leaving that issue unsettled until the end of the line.

For the reasons stated, I dissent from the Court's reversal of the Eleventh Circuit's decision on the cost question. I would instead vacate and remand for further consideration of the accessibility of the arbitral forum to Randolph.[4]

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[4] Randolph alternatively urges affirmance on the ground that the arbitration agreement is unenforceable because it precludes pursuit of her statutory claim as a class action. But cf. *Johnson* v. *West Suburban Bank*, 225 F. 3d 366 (CA3 2000) (holding arbitration clause in short-term loan agreement enforceable even though it may render class action to pursue statutory claims unavailable). The class-action issue was properly raised in the District Court and the Court of Appeals. I do not read the Court's opinion to preclude resolution of that question now by the Eleventh Circuit. Nothing Randolph has so far done in seeking protection against prohibitive costs forfeits her right to a judicial determination whether her claim may proceed either in court or in arbitration as a class action.

Syllabus

BUSH ET AL. *v.* GORE ET AL.

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 00–949. Argued December 11, 2000—Decided December 12, 2000

On December 8, 2000, the Florida Supreme Court ordered, *inter alia*, that manual recounts of ballots for the recent Presidential election were required in all Florida counties where so-called "undervotes" had not been subject to manual tabulation, and that the manual recounts should begin at once. Noting the closeness of the election, the court explained that, on the record before it, there could be no question that there were uncounted "legal votes"—*i. e.*, those in which there was a clear indication of the voter's intent—sufficient to place the results of the election in doubt. Petitioners, the Republican candidates for President and Vice President who had been certified as the winners in Florida, filed an emergency application for a stay of this mandate. On December 9, this Court granted the stay application, treated it as a petition for a writ of certiorari, and granted certiorari.

Held: Because it is evident that any recount seeking to meet 3 U. S. C. § 5's December 12 "safe-harbor" date would be unconstitutional under the Equal Protection Clause, the Florida Supreme Court's judgment ordering manual recounts is reversed. The Clause's requirements apply to the manner in which the voting franchise is exercised. Having once granted the right to vote on equal terms, Florida may not, by later arbitrary and disparate treatment, value one person's vote over that of another. See, *e. g., Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 665. The recount mechanisms implemented in response to the state court's decision do not satisfy the minimum requirement for nonarbitrary treatment of voters. The record shows that the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another. In addition, the recounts in three counties were not limited to so-called undervotes but extended to all of the ballots. Furthermore, the actual process by which the votes were to be counted raises further concerns because the court's order did not specify who would recount the ballots. Where, as here, a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied. The State has not shown that its procedures include the necessary safeguards. Upon due consideration of the difficulties identified to this point, it is obvious that the recount cannot be conducted in compliance

with the requirements of equal protection and due process without substantial additional work. The court below has said that the legislature intended the State's electors to participate fully in the federal electoral process, as provided in 3 U. S. C. § 5, which requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is here, but there is no recount procedure in place under the state court's order that comports with minimal constitutional standards.

772 So. 2d 1243, reversed and remanded.

Theodore B. Olson argued the cause for petitioners. With him on the brief were *Douglas R. Cox*, *Thomas G. Hungar*, *Benjamin L. Ginsberg*, *Michael A. Carvin*, *Barry Richard*, *Miguel A. Estrada*, *George J. Terwilliger III*, *Timothy E. Flanigan*, *William K. Kelley*, *John F. Manning*, and *Bradford R. Clark*. *Joseph P. Klock, Jr.*, argued the cause for Katherine Harris et al., respondents under this Court's Rule 12.6 in support of petitioners. With him on the brief were *John W. Little III*, *Alvin F. Lindsay III*, *Ricardo M. Martinez-Cid*, and *Bill L. Bryant, Jr.* Briefs in support of petitioners were filed by *William Kemper Jennings* for Glenda Carr et al.; by *Robert A. Destro* for Stephen Cruce et al.; and by *George S. LeMieux* and *Frederick J. Springer* for John E. Thrasher, all respondents under this Court's Rule 12.6.

David Boies argued the cause for respondents Gore et al. With him on the brief were *Laurence H. Tribe*, *Andrew J. Pincus*, *Thomas C. Goldstein*, *Jonathan S. Massey*, *Kendall Coffey*, and *Peter J. Rubin*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama by *Bill Pryor*, Attorney General, and *Charles B. Campbell*, *Scott L. Rouse*, and *A. Vernon Barnett IV*, Assistant Attorneys General; for the Florida House of Representatives et al. by *Charles Fried*, *Einer Elhauge*, and *Roger J. Magnuson;* for William H. Haynes et al. by *Jay Alan Sekulow*, *Thomas P. Monaghan*, *Stuart J. Roth*, *Colby M. May*, *James M. Henderson, Sr.*, *David A. Cortman*, *Griffin B. Bell*, *Paul D. Clement*, and *Jeffrey S. Bucholtz*.

Briefs of *amici curiae* urging affirmance were filed for the Brennan Center for Justice at New York University School of Law by *Burt Neuborne;* and for Robert A. Butterworth, Attorney General of Florida, by

PER CURIAM.

I

On December 8, 2000, the Supreme Court of Florida ordered that the Circuit Court of Leon County tabulate by hand 9,000 ballots in Miami-Dade County. It also ordered the inclusion in the certified vote totals of 215 votes identified in Palm Beach County and 168 votes identified in Miami-Dade County for Vice President Albert Gore, Jr., and Senator Joseph Lieberman, Democratic candidates for President and Vice President. The State Supreme Court noted that petitioner George W. Bush asserted that the net gain for Vice President Gore in Palm Beach County was 176 votes, and directed the Circuit Court to resolve that dispute on remand. *Gore* v. *Harris*, 772 So. 2d 1243, 1248, n. 6. The court further held that relief would require manual recounts in all Florida counties where so-called "undervotes" had not been subject to manual tabulation. The court ordered all manual recounts to begin at once. Governor Bush and Richard Cheney, Republican candidates for President and Vice President, filed an emergency application for a stay of this mandate. On December 9, we granted the application, treated the application as a petition for a writ of certiorari, and granted certiorari. *Post*, p. 1046.

The proceedings leading to the present controversy are discussed in some detail in our opinion in *Bush* v. *Palm Beach County Canvassing Bd.*, *ante*, p. 70 *(per curiam) (Bush I)*. On November 8, 2000, the day following the Presidential election, the Florida Division of Elections reported that petitioner Bush had received 2,909,135 votes, and respondent Gore had received 2,907,351 votes, a margin of

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Mr. Butterworth, pro se, Paul F. Hancock, Deputy Attorney General, *Jason Vail*, Assistant Attorney General, and *Kimberly J. Tucker.*

Briefs of *amici curiae* were filed for the National Bar Association by *David Earl Honig;* for Robert Harris et al. by *Bruce J. Terris, Carolyn Smith Pravlik, Kathleen L. Millian, Sarah A. Adams,* and *Roger J. Bernstein;* and for *Michael F. Wasserman, pro se.*

1,784 for Governor Bush. Because Governor Bush's margin of victory was less than "one-half of a percent . . . of the votes cast," an automatic machine recount was conducted under § 102.141(4) of the Florida Election Code, the results of which showed Governor Bush still winning the race but by a diminished margin. Vice President Gore then sought manual recounts in Volusia, Palm Beach, Broward, and Miami-Dade Counties, pursuant to Florida's election protest provisions. Fla. Stat. Ann. § 102.166 (Supp. 2001). A dispute arose concerning the deadline for local county canvassing boards to submit their returns to the Secretary of State (Secretary). The Secretary declined to waive the November 14 deadline imposed by statute. §§ 102.111, 102.112. The Florida Supreme Court, however, set the deadline at November 26. We granted certiorari and vacated the Florida Supreme Court's decision, finding considerable uncertainty as to the grounds on which it was based. *Bush I*, *ante*, at 78. On December 11, the Florida Supreme Court issued a decision on remand reinstating that date. *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1273, 1290.

On November 26, the Florida Elections Canvassing Commission certified the results of the election and declared Governor Bush the winner of Florida's 25 electoral votes. On November 27, Vice President Gore, pursuant to Florida's contest provisions, filed a complaint in Leon County Circuit Court contesting the certification. Fla. Stat. Ann. § 102.168 (Supp. 2001). He sought relief pursuant to § 102.168(3)(c), which provides that "[r]eceipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election" shall be grounds for a contest. The Circuit Court denied relief, stating that Vice President Gore failed to meet his burden of proof. He appealed to the First District Court of Appeal, which certified the matter to the Florida Supreme Court.

Accepting jurisdiction, the Florida Supreme Court affirmed in part and reversed in part. *Gore* v. *Harris*, 772

So. 2d 1243 (2000). The court held that the Circuit Court had been correct to reject Vice President Gore's challenge to the results certified in Nassau County and his challenge to the Palm Beach County Canvassing Board's determination that 3,300 ballots cast in that county were not, in the statutory phrase, "legal votes."

The Supreme Court held that Vice President Gore had satisfied his burden of proof under § 102.168(3)(c) with respect to his challenge to Miami-Dade County's failure to tabulate, by manual count, 9,000 ballots on which the machines had failed to detect a vote for President ("undervotes"). *Id.*, at 1256. Noting the closeness of the election, the court explained that "[o]n this record, there can be no question that there are legal votes within the 9,000 uncounted votes sufficient to place the results of this election in doubt." *Id.*, at 1261. A "legal vote," as determined by the Supreme Court, is "one in which there is a 'clear indication of the intent of the voter.' " *Id.*, at 1257. The court therefore ordered a hand recount of the 9,000 ballots in Miami-Dade County. Observing that the contest provisions vest broad discretion in the circuit judge to "provide any relief appropriate under such circumstances," § 102.168(8), the Supreme Court further held that the Circuit Court could order "the Supervisor of Elections and the Canvassing Boards, as well as the necessary public officials, in all counties that have not conducted a manual recount or tabulation of the undervotes . . . to do so forthwith, said tabulation to take place in the individual counties where the ballots are located." *Id.*, at 1262.

The Supreme Court also determined that Palm Beach County and Miami-Dade County, in their earlier manual recounts, had identified a net gain of 215 and 168 legal votes, respectively, for Vice President Gore. *Id.*, at 1260. Rejecting the Circuit Court's conclusion that Palm Beach County lacked the authority to include the 215 net votes sub-

mitted past the November 26 deadline, the Supreme Court explained that the deadline was not intended to exclude votes identified after that date through ongoing manual recounts. As to Miami-Dade County, the court concluded that although the 168 votes identified were the result of a partial recount, they were "legal votes [that] could change the outcome of the election." *Ibid.* The Supreme Court therefore directed the Circuit Court to include those totals in the certified results, subject to resolution of the actual vote total from the Miami-Dade partial recount.

The petition presents the following questions: whether the Florida Supreme Court established new standards for resolving Presidential election contests, thereby violating Art. II, § 1, cl. 2, of the United States Constitution and failing to comply with 3 U. S. C. § 5, and whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses. With respect to the equal protection question, we find a violation of the Equal Protection Clause.

II

A

The closeness of this election, and the multitude of legal challenges which have followed in its wake, have brought into sharp focus a common, if heretofore unnoticed, phenomenon. Nationwide statistics reveal that an estimated 2% of ballots cast do not register a vote for President for whatever reason, including deliberately choosing no candidate at all or some voter error, such as voting for two candidates or insufficiently marking a ballot. See Ho, More Than 2M Ballots Uncounted, AP Online (Nov. 28, 2000); Kelley, Balloting Problems Not Rare But Only in a Very Close Election Do Mistakes and Mismarking Make a Difference, Omaha World-Herald (Nov. 15, 2000). In certifying election results, the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements.

This case has shown that punchcard balloting machines can produce an unfortunate number of ballots which are not punched in a clean, complete way by the voter. After the current counting, it is likely legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting.

B

The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college. U. S. Const., Art. II, § 1. This is the source for the statement in *McPherson* v. *Blacker*, 146 U. S. 1, 35 (1892), that the state legislature's power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself, which indeed was the manner used by state legislatures in several States for many years after the framing of our Constitution. *Id.*, at 28–33. History has now favored the voter, and in each of the several States the citizens themselves vote for Presidential electors. When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter. The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. See *id.*, at 35 ("'[T]here is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated'") (quoting S. Rep. No. 395, 43d Cong., 1st Sess., 9 (1874)).

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that

of another. See, *e. g.*, *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 665 (1966) ("[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment"). It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds* v. *Sims*, 377 U. S. 533, 555 (1964).

There is no difference between the two sides of the present controversy on these basic propositions. Respondents say that the very purpose of vindicating the right to vote justifies the recount procedures now at issue. The question before us, however, is whether the recount procedures the Florida Supreme Court has adopted are consistent with its obligation to avoid arbitrary and disparate treatment of the members of its electorate.

Much of the controversy seems to revolve around ballot cards designed to be perforated by a stylus but which, either through error or deliberate omission, have not been perforated with sufficient precision for a machine to register the perforations. In some cases a piece of the card—a chad—is hanging, say, by two corners. In other cases there is no separation at all, just an indentation.

The Florida Supreme Court has ordered that the intent of the voter be discerned from such ballots. For purposes of resolving the equal protection challenge, it is not necessary to decide whether the Florida Supreme Court had the authority under the legislative scheme for resolving election disputes to define what a legal vote is and to mandate a manual recount implementing that definition. The recount mechanisms implemented in response to the decisions of the Florida Supreme Court do not satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right. Florida's basic command for the count of legally cast votes is to consider the "intent of

the voter." 772 So. 2d, at 1262. This is unobjectionable as an abstract proposition and a starting principle. The problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary.

The law does not refrain from searching for the intent of the actor in a multitude of circumstances; and in some cases the general command to ascertain intent is not susceptible to much further refinement. In this instance, however, the question is not whether to believe a witness but how to interpret the marks or holes or scratches on an inanimate object, a piece of cardboard or paper which, it is said, might not have registered as a vote during the machine count. The factfinder confronts a thing, not a person. The search for intent can be confined by specific rules designed to ensure uniform treatment.

The want of those rules here has led to unequal evaluation of ballots in various respects. See *id.*, at 1267 (Wells, C. J., dissenting) ("Should a county canvassing board count or not count a 'dimpled chad' where the voter is able to successfully dislodge the chad in every other contest on that ballot? Here, the county canvassing boards disagree"). As seems to have been acknowledged at oral argument, the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.

The record provides some examples. A monitor in Miami-Dade County testified at trial that he observed that three members of the county canvassing board applied different standards in defining a legal vote. 3 Tr. 497, 499 (Dec. 3, 2000). And testimony at trial also revealed that at least one county changed its evaluative standards during the counting process. Palm Beach County, for example, began the process with a 1990 guideline which precluded counting completely attached chads, switched to a rule that consid-

ered a vote to be legal if any light could be seen through a chad, changed back to the 1990 rule, and then abandoned any pretense of a *per se* rule, only to have a court order that the county consider dimpled chads legal. This is not a process with sufficient guarantees of equal treatment.

An early case in our one-person, one-vote jurisprudence arose when a State accorded arbitrary and disparate treatment to voters in its different counties. *Gray* v. *Sanders*, 372 U. S. 368 (1963). The Court found a constitutional violation. We relied on these principles in the context of the Presidential selection process in *Moore* v. *Ogilvie*, 394 U. S. 814 (1969), where we invalidated a county-based procedure that diluted the influence of citizens in larger counties in the nominating process. There we observed that "[t]he idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government." *Id.*, at 819.

The State Supreme Court ratified this uneven treatment. It mandated that the recount totals from two counties, Miami-Dade and Palm Beach, be included in the certified total. The court also appeared to hold *sub silentio* that the recount totals from Broward County, which were not completed until after the original November 14 certification by the Secretary, were to be considered part of the new certified vote totals even though the county certification was not contested by Vice President Gore. Yet each of the counties used varying standards to determine what was a legal vote. Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties.

In addition, the recounts in these three counties were not limited to so-called undervotes but extended to all of the ballots. The distinction has real consequences. A manual recount of all ballots identifies not only those ballots which show no vote but also those which contain more than one,

the so-called overvotes. Neither category will be counted by the machine. This is not a trivial concern. At oral argument, respondents estimated there are as many as 110,000 overvotes statewide. As a result, the citizen whose ballot was not read by a machine because he failed to vote for a candidate in a way readable by a machine may still have his vote counted in a manual recount; on the other hand, the citizen who marks two candidates in a way discernible by the machine will not have the same opportunity to have his vote count, even if a manual examination of the ballot would reveal the requisite indicia of intent. Furthermore, the citizen who marks two candidates, only one of which is discernible by the machine, will have his vote counted even though it should have been read as an invalid ballot. The State Supreme Court's inclusion of vote counts based on these variant standards exemplifies concerns with the remedial processes that were under way.

That brings the analysis to yet a further equal protection problem. The votes certified by the court included a partial total from one county, Miami-Dade. The Florida Supreme Court's decision thus gives no assurance that the recounts included in a final certification must be complete. Indeed, it is respondents' submission that it would be consistent with the rules of the recount procedures to include whatever partial counts are done by the time of final certification, and we interpret the Florida Supreme Court's decision to permit this. See 772 So. 2d, at 1261–1262, n. 21 (noting "practical difficulties" may control outcome of election, but certifying partial Miami-Dade total nonetheless). This accommodation no doubt results from the truncated contest period established by the Florida Supreme Court in *Palm Beach County Canvassing Bd.* v. *Harris*, at respondents' own urging. The press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees.

In addition to these difficulties the actual process by which the votes were to be counted under the Florida Supreme Court's decision raises further concerns. That order did not specify who would recount the ballots. The county canvassing boards were forced to pull together ad hoc teams of judges from various Circuits who had no previous training in handling and interpreting ballots. Furthermore, while others were permitted to observe, they were prohibited from objecting during the recount.

The recount process, in its features here described, is inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer. Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities.

The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections. Instead, we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards. When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.

Given the Court's assessment that the recount process underway was probably being conducted in an unconstitutional manner, the Court stayed the order directing the recount so it could hear this case and render an expedited decision. The contest provision, as it was mandated by the State Supreme Court, is not well calculated to sustain the confidence that all citizens must have in the outcome of elections. The State has not shown that its procedures include the necessary safeguards. The problem, for instance, of the estimated 110,000 overvotes has not been

addressed, although Chief Justice Wells called attention to the concern in his dissenting opinion. See 772 So. 2d, at 1264, n. 26.

Upon due consideration of the difficulties identified to this point, it is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work. It would require not only the adoption (after opportunity for argument) of adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them, but also orderly judicial review of any disputed matters that might arise. In addition, the Secretary has advised that the recount of only a portion of the ballots requires that the vote tabulation equipment be used to screen out undervotes, a function for which the machines were not designed. If a recount of overvotes were also required, perhaps even a second screening would be necessary. Use of the equipment for this purpose, and any new software developed for it, would have to be evaluated for accuracy by the Secretary, as required by Fla. Stat. Ann. § 101.015 (Supp. 2001).

The Supreme Court of Florida has said that the legislature intended the State's electors to "participat[e] fully in the federal electoral process," as provided in 3 U. S. C. § 5. 772 So. 2d, at 1289; see also *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1220, 1237 (Fla. 2000). That statute, in turn, requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed.

Seven Justices of the Court agree that there are constitutional problems with the recount ordered by the Florida Supreme Court that demand a remedy. See *post*, at 134 (SOUTER, J., dissenting); *post*, at 145–146 (BREYER, J., dissenting). The only disagreement is as to the remedy. Because the Florida Supreme Court has said that the Florida Legislature intended to obtain the safe-harbor benefits of 3 U. S. C. § 5, JUSTICE BREYER's proposed remedy—remanding to the Florida Supreme Court for its ordering of a constitutionally proper contest until December 18—contemplates action in violation of the Florida Election Code, and hence could not be part of an "appropriate" order authorized by Fla. Stat. Ann. § 102.168(8) (Supp. 2001).

* * *

None are more conscious of the vital limits on judicial authority than are the Members of this Court, and none stand more in admiration of the Constitution's design to leave the selection of the President to the people, through their legislatures, and to the political sphere. When contending parties invoke the process of the courts, however, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.

The judgment of the Supreme Court of Florida is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Pursuant to this Court's Rule 45.2, the Clerk is directed to issue the mandate in this case forthwith.

It is so ordered.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE SCALIA and JUSTICE THOMAS join, concurring.

We join the *per curiam* opinion. We write separately because we believe there are additional grounds that require us to reverse the Florida Supreme Court's decision.

I

We deal here not with an ordinary election, but with an election for the President of the United States. In *Burroughs* v. *United States*, 290 U. S. 534, 545 (1934), we said:

> "While presidential electors are not officers or agents of the federal government (*In re Green*, 134 U. S. 377, 379 [(1890)]), they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States. The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated."

Likewise, in *Anderson* v. *Celebrezze*, 460 U. S. 780, 794–795 (1983) (footnote omitted), we said: "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation."

In most cases, comity and respect for federalism compel us to defer to the decisions of state courts on issues of state law. That practice reflects our understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns. Cf. *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). Of course, in ordinary cases, the distribution of powers among the branches of a State's government raises no questions of federal constitutional law, subject to the requirement that the government be republican in character. See U. S. Const., Art. IV, § 4. But there are a few exceptional cases in which the Constitution imposes a duty or confers a power on a particular branch of a State's government. This is one of them. Article II, § 1, cl. 2, provides that "[e]ach State shall appoint, in such Manner as the *Legislature* thereof may direct," electors for President and Vice President. (Emphasis added.) Thus,

the text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance.

In *McPherson* v. *Blacker*, 146 U. S. 1 (1892), we explained that Art. II, § 1, cl. 2, "convey[s] the broadest power of determination" and "leaves it to the legislature exclusively to define the method" of appointment. 146 U. S., at 27. A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.

Title 3 U. S. C. § 5 informs our application of Art. II, § 1, cl. 2, to the Florida statutory scheme, which, as the Florida Supreme Court acknowledged, took that statute into account. Section 5 provides that the State's selection of electors "shall be conclusive, and shall govern in the counting of the electoral votes" if the electors are chosen under laws enacted prior to election day, and if the selection process is completed six days prior to the meeting of the electoral college. As we noted in *Bush* v. *Palm Beach County Canvassing Bd.*, *ante*, at 78:

> "Since § 5 contains a principle of federal law that would assure finality of the State's determination if made pursuant to a state law in effect before the election, a legislative wish to take advantage of the 'safe harbor' would counsel against any construction of the Election Code that Congress might deem to be a change in the law."

If we are to respect the legislature's Article II powers, therefore, we must ensure that postelection state-court actions do not frustrate the legislative desire to attain the "safe harbor" provided by § 5.

In Florida, the legislature has chosen to hold statewide elections to appoint the State's 25 electors. Importantly, the legislature has delegated the authority to run the elections and to oversee election disputes to the Secretary of

State (Secretary), Fla. Stat. Ann. § 97.012(1) (Supp. 2001), and to state circuit courts, §§ 102.168(1), 102.168(8). Isolated sections of the code may well admit of more than one interpretation, but the general coherence of the legislative scheme may not be altered by judicial interpretation so as to wholly change the statutorily provided apportionment of responsibility among these various bodies. In any election but a Presidential election, the Florida Supreme Court can give as little or as much deference to Florida's executives as it chooses, so far as Article II is concerned, and this Court will have no cause to question the court's actions. But, with respect to a Presidential election, the court must be both mindful of the legislature's role under Article II in choosing the manner of appointing electors and deferential to those bodies expressly empowered by the legislature to carry out its constitutional mandate.

In order to determine whether a state court has infringed upon the legislature's authority, we necessarily must examine the law of the State as it existed prior to the action of the court. Though we generally defer to state courts on the interpretation of state law—see, *e. g.*, *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975)—there are of course areas in which the Constitution requires this Court to undertake an independent, if still deferential, analysis of state law.

For example, in *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958), it was argued that we were without jurisdiction because the petitioner had not pursued the correct appellate remedy in Alabama's state courts. Petitioner had sought a state-law writ of certiorari in the Alabama Supreme Court when a writ of mandamus, according to that court, was proper. We found this state-law ground inadequate to defeat our jurisdiction because we were "unable to reconcile the procedural holding of the Alabama Supreme Court" with prior Alabama precedent. *Id.*, at 456. The purported state-law ground was so novel, in our independent

estimation, that "petitioner could not fairly be deemed to have been apprised of its existence." *Id.*, at 457.

Six years later we decided *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964), in which the state court had held, contrary to precedent, that the state trespass law applied to black sit-in demonstrators who had consent to enter private property but were then asked to leave. Relying upon *NAACP*, we concluded that the South Carolina Supreme Court's interpretation of a state penal statute had impermissibly broadened the scope of that statute beyond what a fair reading provided, in violation of due process. See 378 U. S., at 361–362. What we would do in the present case is precisely parallel: hold that the Florida Supreme Court's interpretation of the Florida election laws impermissibly distorted them beyond what a fair reading required, in violation of Article II.[1]

This inquiry does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*. To attach definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate our responsibility to enforce the explicit requirements of Article II.

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[1] Similarly, our jurisprudence requires us to analyze the "background principles" of state property law to determine whether there has been a taking of property in violation of the Takings Clause. That constitutional guarantee would, of course, afford no protection against state power if our inquiry could be concluded by a state supreme court holding that state property law accorded the plaintiff no rights. See *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003 (1992). In one of our oldest cases, we similarly made an independent evaluation of state law in order to protect federal treaty guarantees. In *Fairfax's Devisee* v. *Hunter's Lessee*, 7 Cranch 603 (1813), we disagreed with the Supreme Court of Appeals of Virginia that a 1782 state law had extinguished the property interests of one Denny Fairfax, so that a 1789 ejectment order against Fairfax supported by a 1785 state law did not constitute a future confiscation under the 1783 peace treaty with Great Britain. See *id.*, at 623; *Hunter* v. *Fairfax's Devisee*, 1 Munf. 218 (Va. 1809).

II

Acting pursuant to its constitutional grant of authority, the Florida Legislature has created a detailed, if not perfectly crafted, statutory scheme that provides for appointment of Presidential electors by direct election. Fla. Stat. Ann. § 103.011 (1992). Under the statute, "[v]otes cast for the actual candidates for President and Vice President shall be counted as votes cast for the presidential electors supporting such candidates." *Ibid.* The legislature has designated the Secretary as the "chief election officer," with the responsibility to "[o]btain and maintain uniformity in the application, operation, and interpretation of the election laws." Fla. Stat. Ann. § 97.012 (Supp. 2001). The state legislature has delegated to county canvassing boards the duties of administering elections. § 102.141. Those boards are responsible for providing results to the state Elections Canvassing Commission, comprising the Governor, the Secretary of State, and the Director of the Division of Elections. § 102.111. Cf. *Boardman* v. *Esteva*, 323 So. 2d 259, 268, n. 5 (1975) ("The election process . . . is committed to the executive branch of government through duly designated officials all charged with specific duties . . . . [The] judgments [of these officials] are entitled to be regarded by the courts as presumptively correct . . .").

After the election has taken place, the canvassing boards receive returns from precincts, count the votes, and in the event that a candidate was defeated by 0.5% or less, conduct a mandatory recount. Fla. Stat. Ann. § 102.141(4) (Supp. 2001). The county canvassing boards must file certified election returns with the Department of State by 5 p.m. on the seventh day following the election. § 102.112(1). The Elections Canvassing Commission must then certify the results of the election. § 102.111(1).

The state legislature has also provided mechanisms both for protesting election returns and for contesting certified

election results. Section 102.166 governs protests. Any protest must be filed prior to the certification of election results by the county canvassing board. § 102.166(4)(b). Once a protest has been filed, "[t]he county canvassing board may authorize a manual recount." § 102.166(4)(c). If a sample recount conducted pursuant to § 102.166(5) "indicates an error in the vote tabulation which could affect the outcome of the election," the county canvassing board is instructed to: "(a) Correct the error and recount the remaining precincts with the vote tabulation system; (b) Request the Department of State to verify the tabulation software; or (c) Manually recount all ballots," § 102.166(5). In the event a canvassing board chooses to conduct a manual recount of all ballots, § 102.166(7) prescribes procedures for such a recount.

Contests to the certification of an election, on the other hand, are controlled by § 102.168. The grounds for contesting an election include "[r]eceipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election." § 102.168(3)(c). Any contest must be filed in the appropriate Florida circuit court, § 102.168(1), and the canvassing board or election board is the proper party defendant, § 102.168(4). Section 102.168(8) provides that "[t]he circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances." In Presidential elections, the contest period necessarily terminates on the date set by 3 U. S. C. § 5 for concluding the State's "final determination" of election controversies.

In its first decision, *Palm Beach Canvassing Bd.* v. *Harris*, 772 So. 2d 1220 (2000) *(Harris I)*, the Florida Supreme Court extended the 7-day statutory certification deadline estab-

lished by the legislature.[2] This modification of the code, by lengthening the protest period, necessarily shortened the contest period for Presidential elections. Underlying the extension of the certification deadline and the short-changing of the contest period was, presumably, the clear implication that certification was a matter of significance: The certified winner would enjoy presumptive validity, making a contest proceeding by the losing candidate an uphill battle. In its latest opinion, however, the court empties certification of virtually all legal consequence during the contest, and in doing so departs from the provisions enacted by the Florida Legislature.

The court determined that canvassing boards' decisions regarding whether to recount ballots past the certification deadline (even the certification deadline established by *Harris I*) are to be reviewed *de novo*, although the Election Code clearly vests discretion whether to recount in the boards, and sets strict deadlines subject to the Secretary's rejection of late tallies and monetary fines for tardiness. See Fla. Stat. Ann. § 102.112 (Supp. 2001). Moreover, the Florida court held that all late vote tallies arriving during the contest period should be automatically included in the certification regardless of the certification deadline (even the certification deadline established by *Harris I*), thus virtually eliminating both the deadline and the Secretary's discretion to disregard recounts that violate it.[3]

Moreover, the court's interpretation of "legal vote," and hence its decision to order a contest-period recount, plainly departed from the legislative scheme. Florida statutory law cannot reasonably be thought to *require* the counting of im-

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[2] We vacated that decision and remanded that case; the Florida Supreme Court reissued the same judgment with a new opinion on December 11, 2000, *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1273.

[3] Specifically, the Florida Supreme Court ordered the Circuit Court to include in the certified vote totals those votes identified for Vice President Gore in Palm Beach County and Miami-Dade County.

properly marked ballots. Each Florida precinct before election day provides instructions on how properly to cast a vote, Fla. Stat. Ann. § 101.46 (1992); each polling place on election day contains a working model of the voting machine it uses, Fla. Stat. Ann. § 101.5611 (Supp. 2001); and each voting booth contains a sample ballot, § 101.46. In precincts using punchcard ballots, voters are instructed to punch out the ballot cleanly:

> "AFTER VOTING, CHECK YOUR BALLOT CARD TO BE SURE YOUR VOTING SELECTIONS ARE CLEARLY AND CLEANLY PUNCHED AND THERE ARE NO CHIPS LEFT HANGING ON THE BACK OF THE CARD." Instructions to Voters, quoted in Brief for Respondent Harris et al. 13, n. 5.

No reasonable person would call it "an error in the vote tabulation," Fla. Stat. Ann. § 102.166(5) (Supp. 2001), or a "rejection of . . . legal votes," § 102.168(3)(c),[4] when electronic or electromechanical equipment performs precisely in the manner designed, and fails to count those ballots that are not marked in the manner that these voting instructions explicitly and prominently specify. The scheme that the Florida Supreme Court's opinion attributes to the legislature is one in which machines are *required* to be "capable of correctly counting votes," § 101.5606(4), but which nonetheless regularly produces elections in which legal votes are predictably *not* tabulated, so that in close elections manual recounts are regularly required. This is of course absurd. The Secretary, who is authorized by law to issue binding interpretations of the Election Code, §§ 97.012, 106.23, rejected this peculiar reading of the statutes. See DE 00–13 (opinion of the Division of Elections). The Florida Supreme Court,

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[4] It is inconceivable that what constitutes a vote that must be counted under the "error in the vote tabulation" language of the protest phase is different from what constitutes a vote that must be counted under the "legal votes" language of the contest phase.

although it must defer to the Secretary's interpretations, see *Krivanek* v. *Take Back Tampa Political Committee*, 625 So. 2d 840, 844 (Fla. 1993), rejected her reasonable interpretation and embraced the peculiar one. See *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1273 (2000) *(Harris III)*.

But as we indicated in our remand of the earlier case, in a Presidential election the clearly expressed intent of the legislature must prevail. And there is no basis for reading the Florida statutes as requiring the counting of improperly marked ballots, as an examination of the Florida Supreme Court's textual analysis shows. We will not parse that analysis here, except to note that the principal provision of the Election Code on which it relied, § 101.5614(5), was, as Chief Justice Wells pointed out in his dissent in *Gore* v. *Harris*, 772 So. 2d 1243, 1267 (2000) *(Harris II)*, entirely irrelevant. The State's Attorney General (who was supporting the Gore challenge) confirmed in oral argument here that never before the present election had a manual recount been conducted on the basis of the contention that "undervotes" should have been examined to determine voter intent. Tr. of Oral Arg. in *Bush* v. *Palm Beach County Canvassing Bd.*, O. T. 2000, No. 00–836, pp. 39–40; cf. *Broward County Canvassing Board* v. *Hogan*, 607 So. 2d 508, 509 (Fla. Ct. App. 1992) (denial of recount for failure to count ballots with "hanging paper chads"). For the court to step away from this established practice, prescribed by the Secretary, the state official charged by the legislature with "responsibility to . . . [o]btain and maintain uniformity in the application, operation, and interpretation of the election laws," § 97.012(1), was to depart from the legislative scheme.

III

The scope and nature of the remedy ordered by the Florida Supreme Court jeopardizes the "legislative wish" to take

advantage of the safe harbor provided by 3 U. S. C. § 5. *Bush* v. *Palm Beach County Canvassing Bd.*, *ante*, at 78 *(per curiam)*. December 12, 2000, is the last date for a final determination of the Florida electors that will satisfy § 5. Yet in the late afternoon of December 8th—four days before this deadline—the Supreme Court of Florida ordered recounts of tens of thousands of so-called "undervotes" spread through 64 of the State's 67 counties. This was done in a search for elusive—perhaps delusive—certainty as to the exact count of 6 million votes. But no one claims that these ballots have not previously been tabulated; they were initially read by voting machines at the time of the election, and thereafter reread by virtue of Florida's automatic recount provision. No one claims there was any fraud in the election. The Supreme Court of Florida ordered this additional recount under the provision of the Election Code giving the circuit judge the authority to provide relief that is "appropriate under such circumstances." Fla. Stat. Ann. § 102.168(8) (Supp. 2001).

Surely when the Florida Legislature empowered the courts of the State to grant "appropriate" relief, it must have meant relief that would have become final by the cutoff date of 3 U. S. C. § 5. In light of the inevitable legal challenges and ensuing appeals to the Supreme Court of Florida and petitions for certiorari to this Court, the entire recounting process could not possibly be completed by that date. Whereas the majority in the Supreme Court of Florida stated its confidence that "the remaining undervotes in these counties can be [counted] within the required time frame," 772 So. 2d, at 1262, n. 22, it made no assertion that the seemingly inevitable appeals could be disposed of in that time. Although the Florida Supreme Court has on occasion taken over a year to resolve disputes over local elections, see, *e. g.*, *Beckstrom* v. *Volusia County Canvassing Bd.*, 707 So. 2d 720 (1998) (resolving contest of sheriff's race 16 months after the

election), it has heard and decided the appeals in the present case with great promptness. But the federal deadlines for the Presidential election simply do not permit even such a shortened process.

As the dissent noted:

> "In [the four days remaining], all questionable ballots must be reviewed by the judicial officer appointed to discern the intent of the voter in a process open to the public. Fairness dictates that a provision be made for either party to object to how a particular ballot is counted. Additionally, this short time period must allow for judicial review. I respectfully submit this cannot be completed without taking Florida's presidential electors outside the safe harbor provision, creating the very real possibility of disenfranchising those nearly six million voters who are able to correctly cast their ballots on election day." 772 So. 2d, at 1269 (opinion of Wells, C. J.) (footnote omitted).

The other dissenters echoed this concern: "[T]he majority is departing from the essential requirements of the law by providing a remedy which is impossible to achieve and which will ultimately lead to chaos." *Id.*, at 1273 (Harding, J., dissenting, joined by Shaw, J.).

Given all these factors, and in light of the legislative intent identified by the Florida Supreme Court to bring Florida within the "safe harbor" provision of 3 U. S. C. § 5, the remedy prescribed by the Supreme Court of Florida cannot be deemed an "appropriate" one as of December 8. It significantly departed from the statutory framework in place on November 7, and authorized open-ended further proceedings which could not be completed by December 12, thereby preventing a final determination by that date.

For these reasons, in addition to those given in the *per curiam* opinion, we would reverse.

JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE BREYER join, dissenting.

The Constitution assigns to the States the primary responsibility for determining the manner of selecting the Presidential electors. See Art. II, § 1, cl. 2. When questions arise about the meaning of state laws, including election laws, it is our settled practice to accept the opinions of the highest courts of the States as providing the final answers. On rare occasions, however, either federal statutes or the Federal Constitution may require federal judicial intervention in state elections. This is not such an occasion.

The federal questions that ultimately emerged in this case are not substantial. Article II provides that "[e]ach *State* shall appoint, in such Manner as the Legislature *thereof* may direct, a Number of Electors." *Ibid.* (emphasis added). It does not create state legislatures out of whole cloth, but rather takes them as they come—as creatures born of, and constrained by, their state constitutions. Lest there be any doubt, we stated over 100 years ago in *McPherson* v. *Blacker*, 146 U. S. 1, 25 (1892), that "[w]hat is forbidden or required to be done by a State" in the Article II context "is forbidden or required of the legislative power under state constitutions as they exist." In the same vein, we also observed that "[t]he [State's] legislative power is the supreme authority except as limited by the constitution of the State." *Ibid.;* cf. *Smiley* v. *Holm*, 285 U. S. 355, 367 (1932).[1] The legislative power in Florida is subject to judicial review pur-

[1] "Wherever the term 'legislature' is used in the Constitution it is necessary to consider the nature of the particular action in view." 285 U. S., at 366. It is perfectly clear that the meaning of the words "Manner" and "Legislature" as used in Article II, § 1, parallels the usage in Article I, § 4, rather than the language in Article V. *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 805 (1995). Article I, § 4, and Article II, § 1, both call upon legislatures to act in a lawmaking capacity whereas Article V simply calls on the legislative body to deliberate upon a binary decision. As a result, petitioners' reliance on *Leser* v. *Garnett*, 258 U. S. 130 (1922), and *Hawke* v. *Smith (No. 1)*, 253 U. S. 221 (1920), is misplaced.

suant to Article V of the Florida Constitution, and nothing in Article II of the Federal Constitution frees the state legislature from the constraints in the State Constitution that created it. Moreover, the Florida Legislature's own decision to employ a unitary code for all elections indicates that it intended the Florida Supreme Court to play the same role in Presidential elections that it has historically played in resolving electoral disputes. The Florida Supreme Court's exercise of appellate jurisdiction therefore was wholly consistent with, and indeed contemplated by, the grant of authority in Article II.

It hardly needs stating that Congress, pursuant to 3 U. S. C. § 5, did not impose any affirmative duties upon the States that their governmental branches could "violate." Rather, § 5 provides a safe harbor for States to select electors in contested elections "by judicial or other methods" established by laws prior to the election day. Section 5, like Article II, assumes the involvement of the state judiciary in interpreting state election laws and resolving election disputes under those laws. Neither § 5 nor Article II grants federal judges any special authority to substitute their views for those of the state judiciary on matters of state law.

Nor are petitioners correct in asserting that the failure of the Florida Supreme Court to specify in detail the precise manner in which the "intent of the voter," Fla. Stat. Ann. § 101.5614(5) (Supp. 2001), is to be determined rises to the level of a constitutional violation.[2] We found such a viola-

[2] The Florida statutory standard is consistent with the practice of the majority of States, which apply either an "intent of the voter" standard or an "impossible to determine the elector's choice" standard in ballot recounts. The following States use an "intent of the voter" standard: Ariz. Rev. Stat. Ann. § 16–645(A) (Supp. 2000) (standard for canvassing write-in votes); Conn. Gen. Stat. § 9–150a(j) (1999) (standard for absentee ballots, including three conclusive presumptions); Ind. Code § 3–12–1–1 (1992); Me. Rev. Stat. Ann., Tit. 21–A, § 1(13) (1993); Md. Ann. Code, Art. 33, § 11–302(d) (2000 Supp.) (standard for absentee ballots); Mass. Gen. Laws § 70E (1991) (applying standard to Presidential primaries); Mich.

tion when individual votes within the same State were weighted unequally, see, *e. g.*, *Reynolds* v. *Sims*, 377 U. S. 533, 568 (1964), but we have never before called into question the substantive standard by which a State determines that a vote has been legally cast. And there is no reason to think that the guidance provided to the factfinders, specifically the various canvassing boards, by the "intent of the voter" standard is any less sufficient—or will lead to results any less uniform—than, for example, the "beyond a reasonable doubt" standard employed every day by ordinary citizens in courtrooms across this country.[3]

Comp. Laws § 168.799a(3) (Supp. 2000); Mo. Rev. Stat. § 115.453(3) (Cum. Supp. 1998) (looking to voter's intent where there is substantial compliance with statutory requirements); Tex. Elec. Code Ann. § 65.009(c) (1986); Utah Code Ann. § 20A–4–104(5)(b) (Supp. 2000) (standard for write-in votes), § 20A–4–105(6)(a) (standard for mechanical ballots); Vt. Stat. Ann., Tit. 17, § 2587(a) (1982); Va. Code Ann. § 24.2–644(A) (2000); Wash. Rev. Code § 29.62.180(1) (Supp. 2001) (standard for write-in votes); Wyo. Stat. Ann. § 22–14–104 (1999). The following States employ a standard in which a vote is counted unless it is "impossible to determine the elector's [or voter's] choice": Ala. Code § 11–46–44(c) (1992), Ala. Code § 17–13–2 (1995); Ariz. Rev. Stat. Ann. § 16–610 (1996) (standard for rejecting ballot); Cal. Elec. Code Ann. § 15154(c) (West Supp. 2000); Colo. Rev. Stat. § 1–7–309(1) (1999) (standard for paper ballots), § 1–7–508(2) (standard for electronic ballots); Del. Code Ann., Tit. 15, § 4972(4) (1999); Idaho Code § 34–1203 (1981); Ill. Comp. Stat., ch. 10, § 5/7–51 (1993) (standard for primaries), § 5/17–16 (standard for general elections); Iowa Code § 49.98 (1999); Me. Rev. Stat. Ann., Tit. 21–A §§ 696(2)(B), (4) (Supp. 2000); Minn. Stat. § 204C.22(1) (1992); Mont. Code Ann. § 13–15–202 (1997) (not counting votes if "elector's choice cannot be determined"); Nev. Rev. Stat. § 293.367(d) (1995); N. Y. Elec. Law § 9–112(6) (McKinney 1998); N. C. Gen. Stat. §§ 163–169(b), 163–170 (1999); N. D. Cent. Code § 16.1–15–01(1) (Supp. 1999); Ohio Rev. Code Ann. § 3505.28 (1994); Okla. Stat., Tit. 26, § 7–127(6) (1997); Ore. Rev. Stat. § 254.505(1) (1991); S. C. Code Ann. § 7–13–1120 (1977); S. D. Codified Laws § 12–20–7 (1995); Tenn. Code Ann. § 2–7–133(b) (1994); W. Va. Code § 3–6–5(g) (1999).

[3] Cf. *Victor* v. *Nebraska*, 511 U. S. 1, 5 (1994) ("The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so").

Admittedly, the use of differing substandards for determining voter intent in different counties employing similar voting systems may raise serious concerns. Those concerns are alleviated—if not eliminated—by the fact that a single impartial magistrate will ultimately adjudicate all objections arising from the recount process. Of course, as a general matter, "[t]he interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints." *Bain Peanut Co. of Tex.* v. *Pinson*, 282 U. S. 499, 501 (1931) (Holmes, J.). If it were otherwise, Florida's decision to leave to each county the determination of what balloting system to employ—despite enormous differences in accuracy[4]—might run afoul of equal protection. So, too, might the similar decisions of the vast majority of state legislatures to delegate to local authorities certain decisions with respect to voting systems and ballot design.

Even assuming that aspects of the remedial scheme might ultimately be found to violate the Equal Protection Clause, I could not subscribe to the majority's disposition of the case. As the majority explicitly holds, once a state legislature determines to select electors through a popular vote, the right to have one's vote counted is of constitutional stature. As the majority further acknowledges, Florida law holds that all ballots that reveal the intent of the voter constitute valid votes. Recognizing these principles, the majority nonetheless orders the termination of the contest proceeding before all such votes have been tabulated. Under their own rea-

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[4] The percentage of nonvotes in this election in counties using a punchcard system was 3.92%; in contrast, the rate of error under the more modern optical-scan systems was only 1.43%. *Siegel* v. *LePore*, 234 F. 3d 1163, 1202, 1213 (charts C and F) (CA11 2000). Put in other terms, for every 10,000 votes cast, punchcard systems result in 250 more nonvotes than optical-scan systems. A total of 3,718,305 votes were cast under punchcard systems, and 2,353,811 votes were cast under optical-scan systems. *Ibid.*

soning, the appropriate course of action would be to remand to allow more specific procedures for implementing the legislature's uniform general standard to be established.

In the interest of finality, however, the majority effectively orders the disenfranchisement of an unknown number of voters whose ballots reveal their intent—and are therefore legal votes under state law—but were for some reason rejected by ballot-counting machines. It does so on the basis of the deadlines set forth in Title 3 of the United States Code. *Ante*, at 110. But, as I have already noted, those provisions merely provide rules of decision for Congress to follow when selecting among conflicting slates of electors. *Supra*, at 124. They do not prohibit a State from counting what the majority concedes to be legal votes until a bona fide winner is determined. Indeed, in 1960, Hawaii appointed two slates of electors and Congress chose to count the one appointed on January 4, 1961, well after the Title 3 deadlines. See Josephson & Ross, Repairing the Electoral College, 22 J. Legis. 145, 166, n. 154 (1996).[5] Thus, nothing prevents the majority, even if it properly found an equal protection violation, from ordering relief appropriate to remedy that violation without depriving Florida voters of their right to have their votes counted. As the majority notes, "[a] desire for speed is not a general excuse for ignoring equal protection guarantees." *Ante*, at 108.

Finally, neither in this case, nor in its earlier opinion in *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1220 (2000), did the Florida Supreme Court make any sub-

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[5] Republican electors were certified by the Acting Governor on November 28, 1960. A recount was ordered to begin on December 13, 1960. Both Democratic and Republican electors met on the appointed day to cast their votes. On January 4, 1961, the newly elected Governor certified the Democratic electors. The certification was received by Congress on January 6, the day the electoral votes were counted. Josephson & Ross, 22 J. Legis., at 166, n. 154.

stantive change in Florida electoral law.[6] Its decisions were rooted in long-established precedent and were consistent with the relevant statutory provisions, taken as a whole. It did what courts do[7]—it decided the case before it in light of the legislature's intent to leave no legally cast vote uncounted. In so doing, it relied on the sufficiency of the general "intent of the voter" standard articulated by the state legislature, coupled with a procedure for ultimate review by an impartial judge, to resolve the concern about disparate evaluations of contested ballots. If we assume—as I do—that the members of that court and the judges who would have carried out its mandate are impartial, its decision does not even raise a colorable federal question.

What must underlie petitioners' entire federal assault on the Florida election procedures is an unstated lack of confidence in the impartiality and capacity of the state judges who would make the critical decisions if the vote count were to proceed. Otherwise, their position is wholly without merit. The endorsement of that position by the majority of this Court can only lend credence to the most cynical appraisal of the work of judges throughout the land. It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year's Presidential election,

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[6] When, for example, it resolved the previously unanswered question whether the word "shall" in Fla. Stat. Ann. § 102.111 (Supp. 2001) or the word "may" in § 102.112 governs the scope of the Secretary of State's authority to ignore untimely election returns, it did not "change the law." Like any other judicial interpretation of a statute, its opinion was an authoritative interpretation of what the statute's relevant provisions have meant since they were enacted. *Rivers* v. *Roadway Express, Inc.*, 511 U. S. 298, 312–313 (1994).

[7] "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803).

the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law.

I respectfully dissent.

JUSTICE SOUTER, with whom JUSTICE BREYER joins, and with whom JUSTICE STEVENS and JUSTICE GINSBURG join as to all but Part III, dissenting.

The Court should not have reviewed either *Bush* v. *Palm Beach County Canvassing Bd.*, *ante*, p. 70 *(per curiam)*, or this case, and should not have stopped Florida's attempt to recount all undervote ballots, see *ante*, at 102, by issuing a stay of the Florida Supreme Court's orders during the period of this review, see *Bush* v. *Gore*, *post*, at 1046. If this Court had allowed the State to follow the course indicated by the opinions of its own Supreme Court, it is entirely possible that there would ultimately have been no issue requiring our review, and political tension could have worked itself out in the Congress following the procedure provided in 3 U. S. C. § 15. The case being before us, however, its resolution by the majority is another erroneous decision.

As will be clear, I am in substantial agreement with the dissenting opinions of JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER. I write separately only to say how straightforward the issues before us really are.

There are three issues: whether the State Supreme Court's interpretation of the statute providing for a contest of the state election results somehow violates 3 U. S. C. § 5; whether that court's construction of the state statutory provisions governing contests impermissibly changes a state law from what the State's legislature has provided, in violation of Article II, § 1, cl. 2, of the National Constitution; and whether the manner of interpreting markings on disputed ballots failing to cause machines to register votes for President (the undervote ballots) violates the equal protection or

due process guaranteed by the Fourteenth Amendment. None of these issues is difficult to describe or to resolve.

I

The 3 U. S. C. § 5 issue is not serious. That provision sets certain conditions for treating a State's certification of Presidential electors as conclusive in the event that a dispute over recognizing those electors must be resolved in the Congress under 3 U. S. C. § 15. Conclusiveness requires selection under a legal scheme in place before the election, with results determined at least six days before the date set for casting electoral votes. But no State is required to conform to § 5 if it cannot do that (for whatever reason); the sanction for failing to satisfy the conditions of § 5 is simply loss of what has been called its "safe harbor." And even that determination is to be made, if made anywhere, in the Congress.

II

The second matter here goes to the State Supreme Court's interpretation of certain terms in the state statute governing election "contests," Fla. Stat. Ann. § 102.168 (Supp. 2001); there is no question here about the state court's interpretation of the related provisions dealing with the antecedent process of "protesting" particular vote counts, § 102.166, which was involved in the previous case, *Bush* v. *Palm Beach County Canvassing Bd.* The issue is whether the judgment of the State Supreme Court has displaced the state legislature's provisions for election contests: is the law as declared by the court different from the provisions made by the legislature, to which the National Constitution commits responsibility for determining how each State's Presidential electors are chosen? See U. S. Const., Art. II, § 1, cl. 2. Bush does not, of course, claim that any judicial act interpreting a statute of uncertain meaning is enough to displace the legislative provision and violate Article II; statutes require interpretation, which does not without more affect the legislative char-

acter of a statute within the meaning of the Constitution. Brief for Petitioner in *Bush* v. *Palm Beach County Canvassing Bd.*, O. T. 2000, No. 00–836, p. 48, n. 22. What Bush does argue, as I understand the contention, is that the interpretation of § 102.168 was so unreasonable as to transcend the accepted bounds of statutory interpretation, to the point of being a nonjudicial act and producing new law untethered to the legislative Act in question.

The starting point for evaluating the claim that the Florida Supreme Court's interpretation effectively rewrote § 102.168 must be the language of the provision on which Gore relies to show his right to raise this contest: that the previously certified result in Bush's favor was produced by "rejection of a number of legal votes sufficient to change or place in doubt the result of the election." Fla. Stat. Ann. § 102.168(3)(c) (Supp. 2001). None of the state court's interpretations is unreasonable to the point of displacing the legislative enactment quoted. As I will note below, other interpretations were of course possible, and some might have been better than those adopted by the Florida court's majority; the two dissents from the majority opinion of that court and various briefs submitted to us set out alternatives. But the majority view is in each instance within the bounds of reasonable interpretation, and the law as declared is consistent with Article II.

1. The statute does not define a "legal vote," the rejection of which may affect the election. The State Supreme Court was therefore required to define it, and in doing that the court looked to another election statute, § 101.5614(5), dealing with damaged or defective ballots, which contains a provision that no vote shall be disregarded "if there is a clear indication of the intent of the voter as determined by the canvassing board." The court read that objective of looking to the voter's intent as indicating that the legislature probably meant "legal vote" to mean a vote recorded on a ballot indicating what the voter intended. *Gore* v. *Harris*, 772

So. 2d 1243, 1256–1257 (2000). It is perfectly true that the majority might have chosen a different reading. See, *e. g.*, Brief for Respondent Harris et al. 10 (defining "legal votes" as "votes properly executed in accordance with the instructions provided to all registered voters in advance of the election and in the polling places"). But even so, there is no constitutional violation in following the majority view; Article II is unconcerned with mere disagreements about interpretive merits.

2. The Florida court next interpreted "rejection" to determine what act in the counting process may be attacked in a contest. Again, the statute does not define the term. The court majority read the word to mean simply a failure to count. 772 So. 2d, at 1257. That reading is certainly within the bounds of common sense, given the objective to give effect to a voter's intent if that can be determined. A different reading, of course, is possible. The majority might have concluded that "rejection" should refer to machine malfunction, or that a ballot should not be treated as "reject[ed]" in the absence of wrongdoing by election officials, lest contests be so easy to claim that every election will end up in one. Cf. *id.*, at 1266 (Wells, C. J., dissenting). There is, however, nothing nonjudicial in the Florida majority's more hospitable reading.

3. The same is true about the court majority's understanding of the phrase "votes sufficient to change or place in doubt" the result of the election in Florida. The court held that if the uncounted ballots were so numerous that it was reasonably possible that they contained enough "legal" votes to swing the election, this contest would be authorized by the statute.* While the majority might have thought (as

*When the Florida court ruled, the totals for Bush and Gore were then less than 1,000 votes apart. One dissent pegged the number of uncounted votes in question at 170,000. *Gore* v. *Harris*, 772 So. 2d 1243, 1272–1273 (2000) (Harding, J., dissenting). Gore's counsel represented to us that the

the trial judge did) that a probability, not a possibility, should be necessary to justify a contest, that reading is not required by the statute's text, which says nothing about probability. Whatever people of good will and good sense may argue about the merits of the Florida court's reading, there is no warrant for saying that it transcends the limits of reasonable statutory interpretation to the point of supplanting the statute enacted by the "legislature" within the meaning of Article II.

In sum, the interpretations by the Florida court raise no substantial question under Article II. That court engaged in permissible construction in determining that Gore had instituted a contest authorized by the state statute, and it proceeded to direct the trial judge to deal with that contest in the exercise of the discretionary powers generously conferred by Fla. Stat. Ann. § 102.168(8) (Supp. 2001), to "fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances." As JUSTICE GINSBURG has persuasively explained in her own dissenting opinion, our customary respect for state interpretations of state law counsels against rejection of the Florida court's determinations in this case.

III

It is only on the third issue before us that there is a meritorious argument for relief, as this Court's *per curiam* opinion recognizes. It is an issue that might well have been dealt with adequately by the Florida courts if the state proceedings had not been interrupted, and if not disposed of at the state level it could have been considered by the Congress in any electoral vote dispute. But because the course of

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relevant figure is approximately 60,000, Tr. of Oral Arg. 62, the number of ballots in which no vote for President was recorded by the machines.

state proceedings has been interrupted, time is short, and the issue is before us, I think it sensible for the Court to address it.

Petitioners have raised an equal protection claim (or, alternatively, a due process claim, see generally *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422 (1982)), in the charge that unjustifiably disparate standards are applied in different electoral jurisdictions to otherwise identical facts. It is true that the Equal Protection Clause does not forbid the use of a variety of voting mechanisms within a jurisdiction, even though different mechanisms will have different levels of effectiveness in recording voters' intentions; local variety can be justified by concerns about cost, the potential value of innovation, and so on. But evidence in the record here suggests that a different order of disparity obtains under rules for determining a voter's intent that have been applied (and could continue to be applied) to identical types of ballots used in identical brands of machines and exhibiting identical physical characteristics (such as "hanging" or "dimpled" chads). See, *e. g.*, Tr. 238–242 (Dec. 2–3, 2000) (testimony of Palm Beach County Canvassing Board Chairman Judge Charles Burton describing varying standards applied to imperfectly punched ballots in Palm Beach County during precertification manual recount); *id.*, at 497–500 (similarly describing varying standards applied in Miami-Dade County); Tr. of Hearing 8–10 (Dec. 8, 2000) (soliciting from county canvassing boards proposed protocols for determining voters' intent but declining to provide a precise, uniform standard). I can conceive of no legitimate state interest served by these differing treatments of the expressions of voters' fundamental rights. The differences appear wholly arbitrary.

In deciding what to do about this, we should take account of the fact that electoral votes are due to be cast in six days. I would therefore remand the case to the courts of Florida with instructions to establish uniform standards for evaluating the several types of ballots that have prompted differing

treatments, to be applied within and among counties when passing on such identical ballots in any further recounting (or successive recounting) that the courts might order.

Unlike the majority, I see no warrant for this Court to assume that Florida could not possibly comply with this requirement before the date set for the meeting of electors, December 18. Although one of the dissenting justices of the State Supreme Court estimated that disparate standards potentially affected 170,000 votes, *Gore* v. *Harris*, 772 So. 2d, at 1272–1273, the number at issue is significantly smaller. The 170,000 figure apparently represents all uncounted votes, both undervotes (those for which no Presidential choice was recorded by a machine) and overvotes (those rejected because of votes for more than one candidate). Tr. of Oral Arg. 61–62. But as JUSTICE BREYER has pointed out, no showing has been made of legal overvotes uncounted, and counsel for Gore made an uncontradicted representation to the Court that the statewide total of undervotes is about 60,000. *Id.*, at 62. To recount these manually would be a tall order, but before this Court stayed the effort to do that the courts of Florida were ready to do their best to get that job done. There is no justification for denying the State the opportunity to try to count all disputed ballots now.

I respectfully dissent.

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins, and with whom JUSTICE SOUTER and JUSTICE BREYER join as to Part I, dissenting.

I

THE CHIEF JUSTICE acknowledges that provisions of Florida's Election Code "may well admit of more than one interpretation." *Ante*, at 114 (concurring opinion). But instead of respecting the state high court's province to say what the State's Election Code means, THE CHIEF JUSTICE maintains that Florida's Supreme Court has veered so far from the ordinary practice of judicial review that what it did cannot

properly be called judging. My colleagues have offered a reasonable construction of Florida's law. Their construction coincides with the view of one of Florida's seven Supreme Court justices. *Gore* v. *Harris*, 772 So. 2d 1243, 1264–1270 (Fla. 2000) (Wells, C. J., dissenting); *Palm Beach County Canvassing Bd.* v. *Harris*, 772 So. 2d 1273, 1291–1292 (Fla. 2000) (on remand) (confirming, 6 to 1, the construction of Florida law advanced in *Gore*). I might join THE CHIEF JUSTICE were it my commission to interpret Florida law. But disagreement with the Florida court's interpretation of its own State's law does not warrant the conclusion that the justices of that court have legislated. There is no cause here to believe that the members of Florida's high court have done less than "their mortal best to discharge their oath of office," *Sumner* v. *Mata*, 449 U. S. 539, 549 (1981), and no cause to upset their reasoned interpretation of Florida law.

This Court more than occasionally affirms statutory, and even constitutional, interpretations with which it disagrees. For example, when reviewing challenges to administrative agencies' interpretations of laws they implement, we defer to the agencies unless their interpretation violates "the unambiguously expressed intent of Congress." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984). We do so in the face of the declaration in Article I of the United States Constitution that "All legislative Powers herein granted shall be vested in a Congress of the United States." Surely the Constitution does not call upon us to pay more respect to a federal administrative agency's construction of federal law than to a state high court's interpretation of its own State's law. And not uncommonly, we let stand state-court interpretations of *federal* law with which we might disagree. Notably, in the habeas context, the Court adheres to the view that "there is 'no intrinsic reason why the fact that a man is a federal judge

should make him more competent, or conscientious, or learned with respect to [federal law] than his neighbor in the state courthouse.'" *Stone* v. *Powell*, 428 U. S. 465, 494, n. 35 (1976) (quoting Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 509 (1963)); see *O'Dell* v. *Netherland*, 521 U. S. 151, 156 (1997) ("[T]he *Teague* doctrine validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions.") (citing *Butler* v. *McKellar*, 494 U. S. 407, 414 (1990)); O'Connor, Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge, 22 Wm. & Mary L. Rev. 801, 813 (1981) ("There is no reason to assume that state court judges cannot and will not provide a 'hospitable forum' in litigating federal constitutional questions.").

No doubt there are cases in which the proper application of federal law may hinge on interpretations of state law. Unavoidably, this Court must sometimes examine state law in order to protect federal rights. But we have dealt with such cases ever mindful of the full measure of respect we owe to interpretations of state law by a State's highest court. In the Contract Clause case, *General Motors Corp.* v. *Romein*, 503 U. S. 181 (1992), for example, we said that although "ultimately we are bound to decide for ourselves whether a contract was made," the Court "accord[s] respectful consideration and great weight to the views of the State's highest court." *Id.*, at 187 (citing *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 100 (1938)). And in *Central Union Telephone Co.* v. *Edwardsville*, 269 U. S. 190 (1925), we upheld the Illinois Supreme Court's interpretation of a state waiver rule, even though that interpretation resulted in the forfeiture of federal constitutional rights. Refusing to supplant Illinois law with a federal definition of waiver,

we explained that the state court's declaration "should bind us unless so unfair or unreasonable in its application to those asserting a federal right as to obstruct it." *Id.*, at 195.[1]

In deferring to state courts on matters of state law, we appropriately recognize that this Court acts as an "'outside[r]' lacking the common exposure to local law which comes from sitting in the jurisdiction." *Lehman Brothers* v. *Schein*, 416 U. S. 386, 391 (1974). That recognition has sometimes prompted us to resolve doubts about the meaning of state law by certifying issues to a State's highest court, even when federal rights are at stake. Cf. *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 79 (1997) ("Warnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State's law, for the federal tribunal risks friction-generating error when it endeavors to construe a novel state Act not yet reviewed by the State's highest

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[1] See also *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003, 1032, n. 18 (1992) (South Carolina could defend a regulatory taking "if an *objectively reasonable application* of relevant precedents [by its courts] would exclude . . . beneficial uses in the circumstances in which the land is presently found"); *Bishop* v. *Wood*, 426 U. S. 341, 344–345 (1976) (deciding whether North Carolina had created a property interest cognizable under the Due Process Clause by reference to state law as interpreted by the North Carolina Supreme Court). Similarly, in *Gurley* v. *Rhoden*, 421 U. S. 200 (1975), a gasoline retailer claimed that due process entitled him to deduct a state gasoline excise tax in computing the amount of his sales subject to a state sales tax, on the grounds that the legal incidence of the excise tax fell on his customers and that he acted merely as a collector of the tax. The Mississippi Supreme Court held that the legal incidence of the excise tax fell on petitioner. Observing that "a State's highest court is the final judicial arbiter of the meaning of state statutes," we said that "[w]hen a state court has made its own definitive determination as to the operating incidence, . . . [w]e give this finding great weight in determining the natural effect of a statute, and if it is consistent with the statute's reasonable interpretation it will be deemed conclusive." *Id.*, at 208 (citing *American Oil Co.* v. *Neill*, 380 U. S. 451, 455–456 (1965)).

court."). Notwithstanding our authority to decide issues of state law underlying federal claims, we have used the certification device to afford state high courts an opportunity to inform us on matters of their own State's law because such restraint "helps build a cooperative judicial federalism." *Lehman Brothers*, 416 U. S., at 391.

Just last Term, in *Fiore* v. *White*, 528 U. S. 23 (1999), we took advantage of Pennsylvania's certification procedure. In that case, a state prisoner brought a federal habeas action claiming that the State had failed to prove an essential element of his charged offense in violation of the Due Process Clause. *Id.*, at 25–26. Instead of resolving the state-law question on which the federal claim depended, we certified the question to the Pennsylvania Supreme Court for that court to "help determine the proper state-law predicate for our determination of the federal constitutional questions raised." *Id.*, at 29; *id.*, at 28 (asking the Pennsylvania Supreme Court whether its recent interpretation of the statute under which Fiore was convicted "was always the statute's meaning, even at the time of Fiore's trial"). THE CHIEF JUSTICE's willingness to *reverse* the Florida Supreme Court's interpretation of Florida law in this case is at least in tension with our reluctance in *Fiore* even to interpret Pennsylvania law before seeking instruction from the Pennsylvania Supreme Court. I would have thought the "cautious approach" we counsel when federal courts address matters of state law, *Arizonans*, 520 U. S., at 77, and our commitment to "build[ing] cooperative judicial federalism," *Lehman Brothers*, 416 U. S., at 391, demanded greater restraint.

Rarely has this Court rejected outright an interpretation of state law by a state high court. *Fairfax's Devisee* v. *Hunter's Lessee*, 7 Cranch 603 (1813), *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958), and *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964), cited by THE CHIEF JUSTICE,

are three such rare instances. See *ante*, at 114–115, and n. 1. But those cases are embedded in historical contexts hardly comparable to the situation here. *Fairfax's Devisee*, which held that the Virginia Court of Appeals had misconstrued its own forfeiture laws to deprive a British subject of lands secured to him by federal treaties, occurred amidst vociferous States' rights attacks on the Marshall Court. G. Gunther & K. Sullivan, Constitutional Law 61–62 (13th ed. 1997). The Virginia court refused to obey this Court's *Fairfax's Devisee* mandate to enter judgment for the British subject's successor in interest. That refusal led to the Court's pathmarking decision in *Martin* v. *Hunter's Lessee*, 1 Wheat. 304 (1816). *Patterson*, a case decided three months after *Cooper* v. *Aaron*, 358 U. S. 1 (1958), in the face of Southern resistance to the civil rights movement, held that the Alabama Supreme Court had irregularly applied its own procedural rules to deny review of a contempt order against the NAACP arising from its refusal to disclose membership lists. We said that "our jurisdiction is not defeated if the nonfederal ground relied on by the state court is 'without any fair or substantial support.'" 357 U. S., at 455 (quoting *Ward* v. *Board of Commr's of Love Cty.*, 253 U. S. 17, 22 (1920)). *Bouie*, stemming from a lunch counter "sit-in" at the height of the civil rights movement, held that the South Carolina Supreme Court's construction of its trespass laws—criminalizing conduct not covered by the text of an otherwise clear statute—was "unforeseeable" and thus violated due process when applied retroactively to the petitioners. 378 U. S., at 350, 354.

THE CHIEF JUSTICE's casual citation of these cases might lead one to believe they are part of a larger collection of cases in which we said that the Constitution impelled us to train a skeptical eye on a state court's portrayal of state law. But one would be hard pressed, I think, to find additional cases that fit the mold. As JUSTICE BREYER convincingly explains, see *post*, at 149–152 (dissenting opinion), this case

involves nothing close to the kind of recalcitrance by a state high court that warrants extraordinary action by this Court. The Florida Supreme Court concluded that counting every legal vote was the overriding concern of the Florida Legislature when it enacted the State's Election Code. The court surely should not be bracketed with state high courts of the Jim Crow South.

THE CHIEF JUSTICE says that Article II, by providing that state legislatures shall direct the manner of appointing electors, authorizes federal superintendence over the relationship between state courts and state legislatures, and licenses a departure from the usual deference we give to state-court interpretations of state law. *Ante,* at 115 (concurring opinion) ("To attach definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate our responsibility to enforce the explicit requirements of Article II."). The Framers of our Constitution, however, understood that in a republican government, the judiciary would construe the legislature's enactments. See U. S. Const., Art. III; The Federalist No. 78 (A. Hamilton). In light of the constitutional guarantee to States of a "Republican Form of Government," U. S. Const., Art. IV, § 4, Article II can hardly be read to invite this Court to disrupt a State's republican regime. Yet THE CHIEF JUSTICE today would reach out to do just that. By holding that Article II requires our revision of a state court's construction of state laws in order to protect one organ of the State from another, THE CHIEF JUSTICE contradicts the basic principle that a State may organize itself as it sees fit. See, *e. g., Gregory* v. *Ashcroft,* 501 U. S. 452, 460 (1991) ("Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign."); *Highland Farms Dairy, Inc.* v. *Agnew,* 300 U. S. 608, 612 (1937) ("How power shall be distributed by a state among its governmental organs is commonly, if not always, a question

for the state itself.").[2] Article II does not call for the scrutiny undertaken by this Court.

The extraordinary setting of this case has obscured the ordinary principle that dictates its proper resolution: Federal courts defer to a state high court's interpretations of the State's own law. This principle reflects the core of federalism, on which all agree. "The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *Saenz* v. *Roe*, 526 U. S. 489, 504, n. 17 (1999) (citing *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 838 (1995) (KENNEDY, J., concurring)). THE CHIEF JUSTICE's solicitude for the Florida Legislature comes at the expense of the more fundamental solicitude we owe to the legislature's sovereign. U. S. Const., Art. II, § 1, cl. 2 ("Each *State* shall appoint, in such Manner as the Legislature *thereof* may direct," the electors for President and Vice President (emphasis added)); *ante*, at 123–124 (STEVENS, J., dissenting).[3] Were the other Members of this Court as mindful as they generally are of our system of dual

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[2] Even in the rare case in which a State's "manner" of making and construing laws might implicate a structural constraint, Congress, not this Court, is likely the proper governmental entity to enforce that constraint. See U. S. Const., Amdt. 12; 3 U. S. C. §§ 1–15; cf. *Ohio ex rel. Davis* v. *Hildebrant*, 241 U. S. 565, 569 (1916) (treating as a nonjusticiable political question whether use of a referendum to override a congressional districting plan enacted by the state legislature violates Art. I, § 4); *Luther* v. *Borden*, 7 How. 1, 42 (1849).

[3] "[B]ecause the Framers recognized that state power and identity were essential parts of the federal balance, see The Federalist No. 39, the Constitution is solicitous of the prerogatives of the States, even in an otherwise sovereign federal province. The Constitution . . . grants States certain powers over the times, places, and manner of federal elections (subject to congressional revision), Art. I, § 4, cl. 1 . . . , and allows States to appoint electors for the President, Art. II, § 1, cl. 2." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 841–842 (1995) (KENNEDY, J., concurring).

sovereignty, they would affirm the judgment of the Florida Supreme Court.

II

I agree with JUSTICE STEVENS that petitioners have not presented a substantial equal protection claim. Ideally, perfection would be the appropriate standard for judging the recount. But we live in an imperfect world, one in which thousands of votes have not been counted. I cannot agree that the recount adopted by the Florida court, flawed as it may be, would yield a result any less fair or precise than the certification that preceded that recount. See, *e. g.*, *McDonald* v. *Board of Election Comm'rs of Chicago*, 394 U. S. 802, 809 (1969) (even in the context of the right to vote, the State is permitted to reform "one step at a time") (citing *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483, 489 (1955)).

Even if there were an equal protection violation, I would agree with JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER that the Court's concern about the December 12 date, *ante*, at 110–111, is misplaced. Time is short in part because of the Court's entry of a stay on December 9, several hours after an able circuit judge in Leon County had begun to superintend the recount process. More fundamentally, the Court's reluctance to let the recount go forward—despite its suggestion that "[t]he search for intent can be confined by specific rules designed to ensure uniform treatment," *ante*, at 106—ultimately turns on its own judgment about the practical realities of implementing a recount, not the judgment of those much closer to the process.

Equally important, as JUSTICE BREYER explains, *post*, at 155 (dissenting opinion), the December 12 date for bringing Florida's electoral votes into 3 U. S. C. § 5's safe harbor lacks the significance the Court assigns it. Were that date to pass, Florida would still be entitled to deliver electoral votes Congress *must* count unless both Houses find that the votes "ha[d] not been . . . regularly given." 3 U. S. C. § 15. The statute identifies other significant dates. See, *e. g.*, § 7 (spec-

ifying December 18 as the date electors "shall meet and give their votes"); § 12 (specifying "the fourth Wednesday in December"—this year, December 27—as the date on which Congress, if it has not received a State's electoral votes, shall request the state secretary of state to send a certified return immediately). But none of these dates has ultimate significance in light of Congress' detailed provisions for determining, on "the sixth day of January," the validity of electoral votes. § 15.

The Court assumes that time will not permit "orderly judicial review of any disputed matters that might arise." *Ante*, at 110. But no one has doubted the good faith and diligence with which Florida election officials, attorneys for all sides of this controversy, and the courts of law have performed their duties. Notably, the Florida Supreme Court has produced two substantial opinions within 29 hours of oral argument. In sum, the Court's conclusion that a constitutionally adequate recount is impractical is a prophecy the Court's own judgment will not allow to be tested. Such an untested prophecy should not decide the Presidency of the United States.

I dissent.

JUSTICE BREYER, with whom JUSTICE STEVENS and JUSTICE GINSBURG join except as to Part I–A–1, and with whom JUSTICE SOUTER joins as to Part I, dissenting.

The Court was wrong to take this case. It was wrong to grant a stay. It should now vacate that stay and permit the Florida Supreme Court to decide whether the recount should resume.

I

The political implications of this case for the country are momentous. But the federal legal questions presented, with one exception, are insubstantial.

A

1

The majority raises three equal protection problems with the Florida Supreme Court's recount order: first, the failure to include overvotes in the manual recount; second, the fact that *all* ballots, rather than simply the undervotes, were recounted in some, but not all, counties; and third, the absence of a uniform, specific standard to guide the recounts. As far as the first issue is concerned, petitioners presented no evidence, to this Court or to any Florida court, that a manual recount of overvotes would identify additional legal votes. The same is true of the second, and, in addition, the majority's reasoning would seem to invalidate any state provision for a manual recount of individual counties in a statewide election.

The majority's third concern does implicate principles of fundamental fairness. The majority concludes that the Equal Protection Clause requires that a manual recount be governed not only by the uniform general standard of the "clear intent of the voter," but also by uniform subsidiary standards (for example, a uniform determination whether indented, but not perforated, "undervotes" should count). The opinion points out that the Florida Supreme Court ordered the inclusion of Broward County's undercounted "legal votes" even though those votes included ballots that were not perforated but simply "dimpled," while newly recounted ballots from other counties will likely include only votes determined to be "legal" on the basis of a stricter standard. In light of our previous remand, the Florida Supreme Court may have been reluctant to adopt a more specific standard than that provided for by the legislature for fear of exceeding its authority under Article II. However, since the use of different standards could favor one or the other of the candidates, since time was, and is, too short to permit the lower courts to iron out significant differences through ordi-

nary judicial review, and since the relevant distinction was embodied in the order of the State's highest court, I agree that, in these very special circumstances, basic principles of fairness should have counseled the adoption of a uniform standard to address the problem. In light of the majority's disposition, I need not decide whether, or the extent to which, as a remedial matter, the Constitution would place limits upon the content of the uniform standard.

2

Nonetheless, there is no justification for the majority's remedy, which is simply to reverse the lower court and halt the recount entirely. An appropriate remedy would be, instead, to remand this case with instructions that, even at this late date, would permit the Florida Supreme Court to require recounting *all* undercounted votes in Florida, including those from Broward, Volusia, Palm Beach, and Miami-Dade Counties, whether or not previously recounted prior to the end of the protest period, and to do so in accordance with a single uniform standard.

The majority justifies stopping the recount entirely on the ground that there is no more time. In particular, the majority relies on the lack of time for the Secretary of State (Secretary) to review and approve equipment needed to separate undervotes. But the majority reaches this conclusion in the absence of *any* record evidence that the recount could not have been completed in the time allowed by the Florida Supreme Court. The majority finds facts outside of the record on matters that state courts are in a far better position to address. Of course, it is too late for any such recount to take place by December 12, the date by which election disputes must be decided if a State is to take advantage of the safe harbor provisions of 3 U. S. C. § 5. Whether there is time to conduct a recount prior to December 18, when the electors are scheduled to meet, is a matter for the state courts to determine. And whether, under Florida law, Flor-

ida could or could not take further action is obviously a matter for Florida courts, not this Court, to decide. See *ante*, at 111 *(per curiam)*.

By halting the manual recount, and thus ensuring that the uncounted legal votes will not be counted under any standard, this Court crafts a remedy out of proportion to the asserted harm. And that remedy harms the very fairness interests the Court is attempting to protect. The manual recount would itself redress a problem of unequal treatment of ballots. As JUSTICE STEVENS points out, see *ante*, at 126, and n. 4 (dissenting opinion), the ballots of voters in counties that use punchcard systems are more likely to be disqualified than those in counties using optical-scanning systems. According to recent news reports, variations in the undervote rate are even more pronounced. See Fessenden, No-Vote Rates Higher in Punch Card Count, N. Y. Times, Dec. 1, 2000, p. A29 (reporting that 0.3% of ballots cast in 30 Florida counties using optical-scanning systems registered no Presidential vote, in comparison to 1.53% in the 15 counties using Votomatic punchcard ballots). Thus, in a system that allows counties to use different types of voting systems, voters already arrive at the polls with an unequal chance that their votes will be counted. I do not see how the fact that this results from counties' selection of different voting machines rather than a court order makes the outcome any more fair. Nor do I understand why the Florida Supreme Court's recount order, which helps to redress this inequity, must be entirely prohibited based on a deficiency that could easily be remedied.

B

The remainder of petitioners' claims, which are the focus of THE CHIEF JUSTICE's concurrence, raise no significant federal questions. I cannot agree that THE CHIEF JUSTICE's unusual review of state law in this case, see *ante*, at 135–143 (GINSBURG, J., dissenting), is justified by reference either to Art. II, § 1, or to 3 U. S. C. § 5. Moreover, even were such

review proper, the conclusion that the Florida Supreme Court's decision contravenes federal law is untenable.

While conceding that, in most cases, "comity and respect for federalism compel us to defer to the decisions of state courts on issues of state law," the concurrence relies on some combination of Art. II, § 1, and 3 U. S. C. § 5 to justify its conclusion that this case is one of the few in which we may lay that fundamental principle aside. *Ante*, at 112 (opinion of REHNQUIST, C. J.). The concurrence's primary foundation for this conclusion rests on an appeal to plain text: Art. II, § 1's grant of the power to appoint Presidential electors to the state "Legislature." *Ibid.* But neither the text of Article II itself nor the only case the concurrence cites that interprets Article II, *McPherson* v. *Blacker*, 146 U. S. 1 (1892), leads to the conclusion that Article II grants unlimited power to the legislature, devoid of any state constitutional limitations, to select the manner of appointing electors. See *id.*, at 41 (specifically referring to state constitutional provision in upholding state law regarding selection of electors). Nor, as JUSTICE STEVENS points out, have we interpreted the federal constitutional provision most analogous to Art. II, § 1—Art. I, § 4—in the strained manner put forth in the concurrence. *Ante*, at 123, and n. 1 (dissenting opinion).

The concurrence's treatment of § 5 as "inform[ing]" its interpretation of Article II, § 1, cl. 2, *ante*, at 113 (opinion of REHNQUIST, C. J.), is no more convincing. THE CHIEF JUSTICE contends that our opinion in *Bush* v. *Palm Beach County Canvassing Bd.*, *ante*, p. 70 *(per curiam) (Bush I)*, in which we stated that "a legislative wish to take advantage of [§ 5] would counsel against" a construction of Florida law that Congress might deem to be a change in law, *ante*, at 78, now means that *this* Court "must ensure that postelection state-court actions do not frustrate the legislative desire to attain the 'safe harbor' provided by § 5." *Ante*, at 113. However, § 5 is part of the rules that govern Congress' recognition of slates of electors. Nowhere in *Bush I* did we

establish that *this* Court had the authority to enforce § 5. Nor did we suggest that the permissive "counsel against" could be transformed into the mandatory "must ensure." And nowhere did we intimate, as the concurrence does here, that a state-court decision that threatens the safe harbor provision of § 5 does so in violation of Article II. The concurrence's logic turns the presumption that legislatures would wish to take advantage of § 5's "safe harbor" provision into a mandate that trumps other statutory provisions and overrides the intent that the legislature *did* express.

But, in any event, the concurrence, having conducted its review, now reaches the wrong conclusion. It says that "the Florida Supreme Court's interpretation of the Florida election laws impermissibly distorted them beyond what a fair reading required, in violation of Article II." *Ante*, at 115 (opinion of REHNQUIST, C. J.). But what precisely is the distortion? Apparently, it has three elements. First, the Florida court, in its earlier opinion, changed the election certification date from November 14 to November 26. Second, the Florida court ordered a manual recount of "undercounted" ballots that could not have been fully completed by the December 12 "safe harbor" deadline. Third, the Florida court, in the opinion now under review, failed to give adequate deference to the determinations of canvassing boards and the Secretary.

To characterize the first element as a "distortion," however, requires the concurrence to second-guess the way in which the state court resolved a plain conflict in the language of different statutes. Compare Fla. Stat. Ann. § 102.166 (Supp. 2001) (foreseeing manual recounts during the protest period) with § 102.111 (setting what is arguably too short a deadline for manual recounts to be conducted); compare § 102.112(1) (stating that the Secretary "may" ignore late returns) with § 102.111(1) (stating that the Secretary "shall" ignore late returns). In any event, that issue no longer has

any practical importance and cannot justify the reversal of the different Florida court decision before us now.

To characterize the second element as a "distortion" requires the concurrence to overlook the fact that the inability of the Florida courts to conduct the recount on time is, in significant part, a problem of the Court's own making. The Florida Supreme Court thought that the recount could be completed on time, and, within hours, the Florida Circuit Court was moving in an orderly fashion to meet the deadline. This Court improvidently entered a stay. As a result, we will never know whether the recount could have been completed.

Nor can one characterize the third element as "impermissibl[e] distort[ion]" once one understands that there are two sides to the opinion's argument that the Florida Supreme Court "virtually eliminat[ed] the Secretary's discretion." *Ante*, at 115, 118 (REHNQUIST, C. J., concurring). The Florida statute in question was amended in 1999 to provide that the "grounds for contesting an election" include the "rejection of a number of legal votes sufficient to . . . place in doubt the result of the election." Fla. Stat. Ann. §§ 102.168(3), (3)(c) (Supp. 2001). And the parties have argued about the proper meaning of the statute's term "legal vote." The Secretary has claimed that a "legal vote" is a vote "properly executed in accordance with the instructions provided to all registered voters." Brief for Respondent Harris et al. 10. On that interpretation, punchcard ballots for which the machines cannot register a vote are not "legal" votes. *Id.*, at 14. The Florida Supreme Court did not accept her definition. But it had a reason. Its reason was that a different provision of Florida election laws (a provision that addresses damaged or defective ballots) says that no vote shall be disregarded "if there is a clear indication of the intent of the voter as determined by the canvassing board" (adding that ballots should not be counted "if it is impossible to determine the elector's choice"). Fla. Stat. Ann. § 101.5614(5) (Supp. 2001). Given

this statutory language, certain roughly analogous judicial precedent, *e. g.*, *Darby* v. *State ex rel. McCollough*, 75 So. 411 (Fla. 1917) *(per curiam)*, and somewhat similar determinations by courts throughout the Nation, see cases cited *infra*, at 152, the Florida Supreme Court concluded that the term "legal vote" means a vote recorded on a ballot that clearly reflects what the voter intended. *Gore* v. *Harris*, 772 So. 2d 1243, 1254 (2000). That conclusion differs from the conclusion of the Secretary. But nothing in Florida law requires the Florida Supreme Court to accept as determinative the Secretary's view on such a matter. Nor can one say that the court's ultimate determination is so unreasonable as to amount to a constitutionally "impermissible distort[ion]" of Florida law.

The Florida Supreme Court, applying this definition, decided, on the basis of the record, that respondents had shown that the ballots undercounted by the voting machines contained enough "legal votes" to place "the result[s]" of the election "in doubt." Since only a few hundred votes separated the candidates, and since the "undercounted" ballots numbered tens of thousands, it is difficult to see how anyone could find this conclusion unreasonable—however strict the standard used to measure the voter's "clear intent." Nor did this conclusion "strip" canvassing boards of their discretion. The boards retain their traditional discretionary authority during the protest period. And during the contest period, as the court stated, "the Canvassing Board's actions [during the protest period] may constitute evidence that a ballot does or does not qualify as a legal vote." *Id.*, at 1260. Whether a local county canvassing board's discretionary judgment during the protest period not to conduct a manual recount will be set aside during a contest period depends upon whether a candidate provides additional evidence that the rejected votes contain enough "legal votes" to place the outcome of the race in doubt. To limit the local canvassing

board's discretion in this way is not to eliminate that discretion. At the least, one could reasonably so believe.

The statute goes on to provide the Florida circuit judge with authority to "fashion such orders as he or she deems necessary to ensure that each allegation . . . is *investigated, examined, or checked*, . . . and to provide any relief appropriate." Fla. Stat. Ann. § 102.168(8) (Supp. 2001) (emphasis added). The Florida Supreme Court did just that. One might reasonably disagree with the Florida Supreme Court's interpretation of these, or other, words in the statute. But I do not see how one could call its plain language interpretation of a 1999 statutory change so misguided as no longer to qualify as judicial interpretation or as a usurpation of the authority of the state legislature. Indeed, other state courts have interpreted roughly similar state statutes in similar ways. See, *e. g.*, *In re Election of U. S. Representative for Second Congressional Dist.*, 231 Conn. 602, 621, 653 A. 2d 79, 90–91 (1994) ("Whatever the process used to vote and to count votes, differences in technology should not furnish a basis for disregarding the bedrock principle that the purpose of the voting process is to ascertain the intent of the voters"); *Brown* v. *Carr*, 130 W. Va. 455, 460, 43 S. E. 2d 401, 404–405 (1947) ("[W]hether a ballot shall be counted . . . depends on the intent of the voter . . . . Courts decry any resort to technical rules in reaching a conclusion as to the intent of the voter").

I repeat, where is the "impermissible" distortion?

II

Despite the reminder that this case involves "an election for the President of the United States," *ante*, at 112 (REHNQUIST, C. J., concurring), no preeminent legal concern, or practical concern related to legal questions, required this Court to hear this case, let alone to issue a stay that stopped Florida's recount process in its tracks. With one exception, petitioners' claims do not ask us to vindicate a constitutional

provision designed to protect a basic human right. See, *e. g.*, *Brown* v. *Board of Education*, 347 U. S. 483 (1954). Petitioners invoke fundamental fairness, namely, the need for procedural fairness, including finality. But with the one "equal protection" exception, they rely upon law that focuses, not upon that basic need, but upon the constitutional allocation of power. Respondents invoke a competing fundamental consideration—the need to determine the voter's true intent. But they look to state law, not to federal constitutional law, to protect that interest. Neither side claims electoral fraud, dishonesty, or the like. And the more fundamental equal protection claim might have been left to the state court to resolve if and when it was discovered to have mattered. It could still be resolved through a remand conditioned upon issuance of a uniform standard; it does not require reversing the Florida Supreme Court.

Of course, the selection of the President is of fundamental national importance. But that importance is political, not legal. And this Court should resist the temptation unnecessarily to resolve tangential legal disputes, where doing so threatens to determine the outcome of the election.

The Constitution and federal statutes themselves make clear that restraint is appropriate. They set forth a roadmap of how to resolve disputes about electors, even after an election as close as this one. That roadmap foresees resolution of electoral disputes by *state* courts. See 3 U. S. C. § 5 (providing that, where a "State shall have provided, by laws enacted prior to [election day], for its final determination of any controversy or contest concerning the appointment of . . . electors . . . by *judicial* or other methods," the subsequently chosen electors enter a safe harbor free from congressional challenge). But it nowhere provides for involvement by the United States Supreme Court.

To the contrary, the Twelfth Amendment commits to Congress the authority and responsibility to count electoral votes. A federal statute, the Electoral Count Act, enacted

after the close 1876 Hayes-Tilden Presidential election, specifies that, after States have tried to resolve disputes (through "judicial" or other means), Congress is the body primarily authorized to resolve remaining disputes. See Electoral Count Act of 1887, 24 Stat. 373, 3 U. S. C. §§ 5, 6, and 15.

The legislative history of the Act makes clear its intent to commit the power to resolve such disputes to Congress, rather than the courts:

> "The two Houses are, by the Constitution, authorized to make the count of electoral votes. They can only count legal votes, and in doing so must determine, from the best evidence to be had, what are legal votes . . . .
>
> . . . . . .
>
> "The power to determine rests with the two houses, and there is no other constitutional tribunal." H. R. Rep. No. 1638, 49th Cong., 1st Sess., 2 (1886) (report submitted by Rep. Caldwell, Select Committee on the Election of President and Vice-President).

The Member of Congress who introduced the Act added:

> "The power to judge of the legality of the votes is a necessary consequent of the power to count. The existence of this power is of absolute necessity to the preservation of the Government. The interests of all the States in their relations to each other in the Federal Union demand that the ultimate tribunal to decide upon the election of President should be a constituent body, in which the States in their federal relationships and the people in their sovereign capacity should be represented." 18 Cong. Rec. 30 (1886) (remarks of Rep. Caldwell).
>
> "Under the Constitution who else could decide? Who is nearer to the State in determining a question of vital importance to the whole union of States than the constituent body upon whom the Constitution has devolved the duty to count the vote?" *Id.*, at 31.

The Act goes on to set out rules for the congressional determination of disputes about those votes. If, for example, a State submits a single slate of electors, Congress must count those votes unless both Houses agree that the votes "have not been . . . regularly given." 3 U. S. C. § 15. If, as occurred in 1876, a State submits two slates of electors, then Congress must determine whether a slate has entered the safe harbor of § 5, in which case its votes will have "conclusive" effect. *Ibid.* If, as also occurred in 1876, there is controversy about "which of two or more of such State authorities . . . is the lawful tribunal" authorized to appoint electors, then each House shall determine separately which votes are "supported by the decision of such State so authorized by its law." *Ibid.* If the two Houses of Congress agree, the votes they have approved will be counted. If they disagree, then "the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted." *Ibid.*

Given this detailed, comprehensive scheme for counting electoral votes, there is no reason to believe that federal law either foresees or requires resolution of such a political issue by this Court. Nor, for that matter, is there any reason to think that the Constitution's Framers would have reached a different conclusion. Madison, at least, believed that allowing the judiciary to choose the Presidential electors "was out of the question." Madison, July 25, 1787 (reprinted in 5 Elliot's Debates on the Federal Constitution 363 (2d ed. 1876)).

The decision by both the Constitution's Framers and the 1886 Congress to minimize this Court's role in resolving close federal Presidential elections is as wise as it is clear. However awkward or difficult it may be for Congress to resolve difficult electoral disputes, Congress, being a political body, expresses the people's will far more accurately than does an unelected Court. And the people's will is what elections are about.

Moreover, Congress was fully aware of the danger that would arise should it ask judges, unarmed with appropriate legal standards, to resolve a hotly contested Presidential election contest. Just after the 1876 Presidential election, Florida, South Carolina, and Louisiana each sent two slates of electors to Washington. Without these States, Tilden, the Democrat, had 184 electoral votes, one short of the number required to win the Presidency. With those States, Hayes, his Republican opponent, would have had 185. In order to choose between the two slates of electors, Congress decided to appoint an electoral commission composed of five Senators, five Representatives, and five Supreme Court Justices. Initially the Commission was to be evenly divided between Republicans and Democrats, with Justice David Davis, an Independent, to possess the decisive vote. However, when at the last minute the Illinois Legislature elected Justice Davis to the United States Senate, the final position on the Commission was filled by Supreme Court Justice Joseph P. Bradley.

The Commission divided along partisan lines, and the responsibility to cast the deciding vote fell to Justice Bradley. He decided to accept the votes of the Republican electors, and thereby awarded the Presidency to Hayes.

Justice Bradley immediately became the subject of vociferous attacks. Bradley was accused of accepting bribes, of being captured by railroad interests, and of an eleventh-hour change in position after a night in which his house "was surrounded by the carriages" of Republican partisans and railroad officials. C. Woodward, Reunion and Reaction 159–160 (1966). Many years later, Professor Bickel concluded that Bradley was honest and impartial. He thought that "'the great question' for Bradley was, in fact, whether Congress was entitled to go behind election returns or had to accept them as certified by state authorities," an "issue of principle." The Least Dangerous Branch 185 (1962). Nonetheless, Bickel points out, the legal question upon which Justice

Bradley's decision turned was not very important in the contemporaneous political context. He says that "in the circumstances the issue of principle was trivial, it was overwhelmed by all that hung in the balance, and it should not have been decisive." *Ibid.*

For present purposes, the relevance of this history lies in the fact that the participation in the work of the electoral commission by five Justices, including Justice Bradley, did not lend that process legitimacy. Nor did it assure the public that the process had worked fairly, guided by the law. Rather, it simply embroiled Members of the Court in partisan conflict, thereby undermining respect for the judicial process. And the Congress that later enacted the Electoral Count Act knew it.

This history may help to explain why I think it not only legally wrong, but also most unfortunate, for the Court simply to have terminated the Florida recount. Those who caution judicial restraint in resolving political disputes have described the quintessential case for that restraint as a case marked, among other things, by the "strangeness of the issue," its "intractability to principled resolution," its "sheer momentousness, . . . which tends to unbalance judicial judgment," and "the inner vulnerability, the self-doubt of an institution which is electorally irresponsible and has no earth to draw strength from." *Id.*, at 184. Those characteristics mark this case.

At the same time, as I have said, the Court is not acting to vindicate a fundamental constitutional principle, such as the need to protect a basic human liberty. No other strong reason to act is present. Congressional statutes tend to obviate the need. And, above all, in this highly politicized matter, the appearance of a split decision runs the risk of undermining the public's confidence in the Court itself. That confidence is a public treasure. It has been built slowly over many years, some of which were marked by a Civil War and the tragedy of segregation. It is a vitally

necessary ingredient of any successful effort to protect basic liberty and, indeed, the rule of law itself. We run no risk of returning to the days when a President (responding to this Court's efforts to protect the Cherokee Indians) might have said, "John Marshall has made his decision; now let him enforce it!" D. Loth, Chief Justice John Marshall and The Growth of the American Republic 365 (1948). But we do risk a self-inflicted wound—a wound that may harm not just the Court, but the Nation.

I fear that in order to bring this agonizingly long election process to a definitive conclusion, we have not adequately attended to that necessary "check upon our own exercise of power," "our own sense of self-restraint." *United States* v. *Butler*, 297 U. S. 1, 79 (1936) (Stone, J., dissenting). Justice Brandeis once said of the Court, "The most important thing we do is not doing." Bickel, *supra*, at 71. What it does today, the Court should have left undone. I would repair the damage as best we now can, by permitting the Florida recount to continue under uniform standards.

I respectfully dissent.

Syllabus

SOLID WASTE AGENCY OF NORTHERN COOK COUNTY *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 99–1178. Argued October 31, 2000—Decided January 9, 2001

Petitioner, a consortium of suburban Chicago municipalities, selected as a solid waste disposal site an abandoned sand and gravel pit with excavation trenches that had evolved into permanent and seasonal ponds. Because the operation called for filling in some of the ponds, petitioner contacted federal respondents, including the Army Corps of Engineers (Corps), to determine if a landfill permit was required under § 404(a) of the Clean Water Act (CWA), which authorizes the Corps to issue permits allowing the discharge of dredged or fill material into "navigable waters." The CWA defines "navigable waters" as "the waters of the United States," 33 U. S. C. § 1362(7), and the Corps' regulations define such waters to include intrastate waters, "the use, degradation or destruction of which could affect interstate or foreign commerce," 33 CFR § 328.3(a)(3). In 1986, the Corps attempted to clarify its jurisdiction, stating, in what has been dubbed the "Migratory Bird Rule," that § 404(a) extends to intrastate waters that, *inter alia*, provide habitat for migratory birds. 51 Fed. Reg. 41217. Asserting jurisdiction over the instant site pursuant to that Rule, the Corps refused to issue a § 404(a) permit. When petitioner challenged the Corps' jurisdiction and the merits of the permit denial, the District Court granted respondents summary judgment on the jurisdictional issue. The Seventh Circuit held that Congress has authority under the Commerce Clause to regulate intrastate waters and that the Migratory Bird Rule is a reasonable interpretation of the CWA.

Held: Title 33 CFR § 328.3(a)(3), as clarified and applied to petitioner's site pursuant to the Migratory Bird Rule, exceeds the authority granted to respondents under § 404(a) of the CWA. Pp. 166–174.

(a) In *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121, this Court held that the Corps had § 404(a) jurisdiction over wetlands adjacent to a navigable waterway, noting that the term "navigable" is of "limited import" and that Congress evidenced its intent to "regulate at least some waters that would not be deemed 'navigable' under [that term's] classical understanding," *id.*, at 133. But that holding was based in large measure upon Congress' unequivocal acquiescence to, and

approval of, the Corps' regulations interpreting the CWA to cover wetlands adjacent to navigable waters. See *id.*, at 135–139. The Court expressed no opinion on the question of the Corps' authority to regulate wetlands not adjacent to open water, and the statute's text will not allow extension of the Corps' jurisdiction to such wetlands here. Pp. 166–168.

(b) The Corps' *original* interpretation of the CWA in its 1974 regulations—which emphasized that a water body's capability of use by the public for transportation or commerce determines whether it is navigable—is inconsistent with that which it espouses here, yet respondents present no persuasive evidence that the Corps mistook Congress' intent in 1974. Respondents contend that whatever its original aim, when Congress amended the CWA in 1977, it approved the more expansive definition of "navigable waters" found in the Corps' 1977 regulations. Specifically, respondents submit that Congress' failure to pass legislation that would have overturned the 1977 regulations and the extension of the Environmental Protection Agency's jurisdiction in § 404(g) to include waters "other than" traditional "navigable waters" indicates that Congress recognized and accepted a broad definition of "navigable waters" that includes nonnavigable, isolated, intrastate waters. This Court recognizes congressional acquiescence to administrative interpretations of a statute with extreme care. Failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute, *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 187, because a bill can be proposed or rejected for any number of reasons. Here, respondents have failed to make the necessary showing that Congress' failure to pass legislation demonstrates acquiescence to the 1977 regulations or the 1986 Migratory Bird Rule. Section 404(g) is equally unenlightening, for it does not conclusively determine the construction to be placed on the use of the term "waters" elsewhere in the CWA. *Riverside Bayview Homes*, *supra*, at 138, n. 11. Pp. 168–172.

(c) Even if § 404(a) were not clear, this Court would not extend deference to the Migratory Bird Rule under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837. Where an administrative interpretation of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless the construction is plainly contrary to Congress' intent. *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575. The grant of authority to Congress under the Commerce Clause, though broad, is not unlimited. See, *e. g.*, *United States* v. *Morrison*, 529 U. S. 598. Respondents' arguments, *e. g.*, that the Migratory Bird Rule falls within Congress' power to regulate intra-

state activities that substantially affect interstate commerce, raise significant constitutional questions, yet there is nothing approaching a clear statement from Congress that it intended § 404(a) to reach an abandoned sand and gravel pit such as the one at issue. Permitting respondents to claim federal jurisdiction over ponds and mudflats falling within the Migratory Bird Rule would also result in a significant impingement of the States' traditional and primary power over land and water use. The Court thus reads the statute as written to avoid such significant constitutional and federalism questions and rejects the request for administrative deference. Pp. 172–174.

191 F. 3d 845, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post*, p. 174.

Timothy S. Bishop argued the cause for petitioner. With him on the briefs were *Kaspar J. Stoffelmayr*, *Sharon Swingle*, and *George J. Mannina, Jr.*

Deputy Solicitor General Wallace argued the cause for respondents. With him on the brief for the federal respondents were *Solicitor General Waxman*, *Assistant Attorney General Schiffer*, *Malcolm L. Stewart*, and *John A. Bryson*. *Myron M. Cherry* filed a brief for respondents Village of Bartlett et al.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama by *Bill Pryor*, Attorney General, *Alice Ann Byrne*, Assistant Attorney General, and *Jeffrey S. Sutton;* for the American Farm Bureau Federation et al. by *William G. Myers III;* for Arid Operations, Inc., by *Charles L. Kaiser;* for Cargill, Inc., by *Leslie G. Landau*, *Edgar B. Washburn*, and *David M. Ivester;* for the Cato Institute et al. by *Theodore M. Cooperstein*, *William H. Mellor*, *Clint Bolick*, *Scott G. Bullock*, *Timothy Lynch*, *Robert A. Levy*, and *Ronald D. Rotunda;* for the Center for the Original Intent of the Constitution by *Michael P. Farris* and *Scott W. Somerville;* for the Chamber of Commerce of the United States by *Robert R. Gasaway*, *Jeffrey B. Clark*, *Daryl Joseffer*, and *Robin S. Conrad;* for the Claremont Institute Center for Constitutional Jurisprudence by *Edwin Meese III;* for Defenders of Property Rights by *Nancie G. Marzulla;* for the National Association of Home Builders by *Thomas C. Jackson;* for the Nationwide

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Section 404(a) of the Clean Water Act (CWA or Act), 86 Stat. 884, as amended, 33 U. S. C. § 1344(a), regulates the discharge of dredged or fill material into "navigable waters." The United States Army Corps of Engineers (Corps) has interpreted § 404(a) to confer federal authority over an abandoned sand and gravel pit in northern Illinois which provides habitat for migratory birds. We are asked to decide whether the provisions of § 404(a) may be fairly extended to these waters, and, if so, whether Congress could exercise such authority consistent with the Commerce Clause, U. S. Const., Art. I, § 8, cl. 3. We answer the first question in the negative and therefore do not reach the second.

Petitioner, the Solid Waste Agency of Northern Cook County (SWANCC), is a consortium of 23 suburban Chicago

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Public Projects Coalition et al. by *Lawrence R. Liebesman;* for the Pacific Legal Foundation et al. by *Anne M. Hayes* and *M. Reed Hopper;* for the Serrano Water District et al. by *Virginia S. Albrecht* and *Stephen J. Wenderoth;* for the Washington Legal Foundation et al. by *Mark A. Perry, Daniel J. Popeo,* and *Paul D. Kamenar;* for the U. S. Conference of Mayors et al. by *Richard Ruda* and *James I. Crowley;* and for James J. Wilson by *Steven A. Steinbach* and *Gerald A. Feffer.*

Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Bill Lockyer,* Attorney General of California, *Richard M. Frank,* Chief Assistant Attorney General, *J. Matthew Rodriguez,* Senior Assistant Attorney General, *Dennis M. Eagan,* Supervising Deputy Attorney General, and *Joseph Barbieri,* Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Thomas J. Miller* of Iowa, *Andrew Ketterer* of Maine, *John J. Farmer, Jr.,* of New Jersey, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *William H. Sorrell* of Vermont, and *Christine O. Gregoire* of Washington; for the Anti-Defamation League et al. by *Martin E. Karlinsky, Steven M. Freeman, Michael Lieberman,* and *Elliot M. Mincberg;* and for Environmental Defense et al. by *Louis R. Cohen* and *Michael Bean.*

Briefs of *amici curiae* were filed for the American Forest & Paper Association et al. by *Russell S. Frye;* for the Center for Individual Rights by *Michael E. Rosman;* for the National Stone Association by *Kurt E. Blase;* and for Dr. Gene Likens et al. by *Michael Bean.*

cities and villages that united in an effort to locate and develop a disposal site for baled nonhazardous solid waste. The Chicago Gravel Company informed the municipalities of the availability of a 533-acre parcel, bestriding the Illinois counties Cook and Kane, which had been the site of a sand and gravel pit mining operation for three decades up until about 1960. Long since abandoned, the old mining site eventually gave way to a successional stage forest, with its remnant excavation trenches evolving into a scattering of permanent and seasonal ponds of varying size (from under one-tenth of an acre to several acres) and depth (from several inches to several feet).

The municipalities decided to purchase the site for disposal of their baled nonhazardous solid waste. By law, SWANCC was required to file for various permits from Cook County and the State of Illinois before it could begin operation of its balefill project. In addition, because the operation called for the filling of some of the permanent and seasonal ponds, SWANCC contacted federal respondents (hereinafter respondents), including the Corps, to determine if a federal landfill permit was required under § 404(a) of the CWA, 33 U. S. C. § 1344(a).

Section 404(a) grants the Corps authority to issue permits "for the discharge of dredged or fill material into the navigable waters at specified disposal sites." *Ibid.* The term "navigable waters" is defined under the Act as "the waters of the United States, including the territorial seas." § 1362(7). The Corps has issued regulations defining the term "waters of the United States" to include

> "waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce . . . ." 33 CFR § 328.3(a)(3) (1999).

In 1986, in an attempt to "clarify" the reach of its jurisdiction, the Corps stated that § 404(a) extends to instrastate waters:

> "a. Which are or would be used as habitat by birds protected by Migratory Bird Treaties; or
>
> "b. Which are or would be used as habitat by other migratory birds which cross state lines; or
>
> "c. Which are or would be used as habitat for endangered species; or
>
> "d. Used to irrigate crops sold in interstate commerce." 51 Fed. Reg. 41217.

This last promulgation has been dubbed the "Migratory Bird Rule."[1]

The Corps initially concluded that it had no jurisdiction over the site because it contained no "wetlands," or areas which support "vegetation typically adapted for life in saturated soil conditions," 33 CFR § 328.3(b) (1999). However, after the Illinois Nature Preserves Commission informed the Corps that a number of migratory bird species had been observed at the site, the Corps reconsidered and ultimately asserted jurisdiction over the balefill site pursuant to subpart (b) of the "Migratory Bird Rule." The Corps found that approximately 121 bird species had been observed at the site, including several known to depend upon aquatic environments for a significant portion of their life requirements. Thus, on November 16, 1987, the Corps formally "determined that the seasonally ponded, abandoned gravel mining depressions located on the project site, while not wetlands, did qualify as 'waters of the United States' . . . based upon the following criteria: (1) the proposed site had been abandoned as a gravel mining operation; (2) the water areas and spoil piles had developed a natural character; and (3) the water areas

[1] The Corps issued the "Migratory Bird Rule" without following the notice and comment procedures outlined in the Administrative Procedure Act, 5 U. S. C. § 553.

are used as habitat by migratory bird *[sic]* which cross state lines." U. S. Army Corps of Engineers, Chicago District, Dept. of Army Permit Evaluation and Decision Document, Lodging of Petitioner, Tab No. 1, p. 6.

During the application process, SWANCC made several proposals to mitigate the likely displacement of the migratory birds and to preserve a great blue heron rookery located on the site. Its balefill project ultimately received the necessary local and state approval. By 1993, SWANCC had received a special use planned development permit from the Cook County Board of Appeals, a landfill development permit from the Illinois Environmental Protection Agency, and approval from the Illinois Department of Conservation.

Despite SWANCC's securing the required water quality certification from the Illinois Environmental Protection Agency, the Corps refused to issue a § 404(a) permit. The Corps found that SWANCC had not established that its proposal was the "least environmentally damaging, most practicable alternative" for disposal of nonhazardous solid waste; that SWANCC's failure to set aside sufficient funds to remediate leaks posed an "unacceptable risk to the public's drinking water supply"; and that the impact of the project upon area-sensitive species was "unmitigatable since a landfill surface cannot be redeveloped into a forested habitat." *Id.*, at 87.

Petitioner filed suit under the Administrative Procedure Act, 5 U. S. C. § 701 *et seq.*, in the Northern District of Illinois challenging both the Corps' jurisdiction over the site and the merits of its denial of the § 404(a) permit. The District Court granted summary judgment to respondents on the jurisdictional issue, and petitioner abandoned its challenge to the Corps' permit decision. On appeal to the Court of Appeals for the Seventh Circuit, petitioner renewed its attack on respondents' use of the "Migratory Bird Rule" to assert jurisdiction over the site. Petitioner argued that respondents had exceeded their statutory authority in interpreting

the CWA to cover nonnavigable, isolated, intrastate waters based upon the presence of migratory birds and, in the alternative, that Congress lacked the power under the Commerce Clause to grant such regulatory jurisdiction.

The Court of Appeals began its analysis with the constitutional question, holding that Congress has the authority to regulate such waters based upon "the cumulative impact doctrine, under which a single activity that itself has no discernible effect on interstate commerce may still be regulated if the aggregate effect of that class of activity has a substantial impact on interstate commerce." 191 F. 3d 845, 850 (CA7 1999). The aggregate effect of the "destruction of the natural habitat of migratory birds" on interstate commerce, the court held, was substantial because each year millions of Americans cross state lines and spend over a billion dollars to hunt and observe migratory birds.[2] *Ibid.* The Court of Appeals then turned to the regulatory question. The court held that the CWA reaches as many waters as the Commerce Clause allows and, given its earlier Commerce Clause ruling, it therefore followed that respondents' "Migratory Bird Rule" was a reasonable interpretation of the Act. See *id.*, at 851–852.

We granted certiorari, 529 U. S. 1129 (2000), and now reverse.

Congress passed the CWA for the stated purpose of "restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation's waters." 33 U. S. C. § 1251(a). In so doing, Congress chose to "recognize, preserve, and protect the primary responsibilities and rights of

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[2] Relying upon its earlier decision in *Hoffman Homes, Inc.* v. *EPA*, 999 F. 2d 256 (CA7 1993), and a report from the United States Census Bureau, the Court of Appeals found that in 1996 approximately 3.1 million Americans spent $1.3 billion to hunt migratory birds (with 11 percent crossing state lines to do so) as another 17.7 million Americans observed migratory birds (with 9.5 million traveling for the purpose of observing shorebirds). See 191 F. 3d, at 850.

States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter." § 1251(b). Relevant here, § 404(a) authorizes respondents to regulate the discharge of fill material into "navigable waters," 33 U. S. C. § 1344(a), which the statute defines as "the waters of the United States, including the territorial seas," § 1362(7). Respondents have interpreted these words to cover the abandoned gravel pit at issue here because it is used as habitat for migratory birds. We conclude that the "Migratory Bird Rule" is not fairly supported by the CWA.

This is not the first time we have been called upon to evaluate the meaning of § 404(a). In *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985), we held that the Corps had § 404(a) jurisdiction over wetlands that actually abutted on a navigable waterway. In so doing, we noted that the term "navigable" is of "limited import" and that Congress evidenced its intent to "regulate at least some waters that would not be deemed 'navigable' under the classical understanding of that term." *Id.*, at 133. But our holding was based in large measure upon Congress' unequivocal acquiescence to, and approval of, the Corps' regulations interpreting the CWA to cover wetlands adjacent to navigable waters. See *id.*, at 135–139. We found that Congress' concern for the protection of water quality and aquatic ecosystems indicated its intent to regulate wetlands "inseparably bound up with the 'waters' of the United States." *Id.*, at 134.

It was the significant nexus between the wetlands and "navigable waters" that informed our reading of the CWA in *Riverside Bayview Homes*. Indeed, we did not "express any opinion" on the "question of the authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water . . . ." *Id.*, at 131–132,

n. 8. In order to rule for respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are *not* adjacent to open water. But we conclude that the text of the statute will not allow this.

Indeed, the Corps' *original* interpretation of the CWA, promulgated two years after its enactment, is inconsistent with that which it espouses here. Its 1974 regulations defined § 404(a)'s "navigable waters" to mean "those waters of the United States which are subject to the ebb and flow of the tide, and/or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce." 33 CFR § 209.120(d)(1). The Corps emphasized that "[i]t is the water body's capability of use by the public for purposes of transportation or commerce which is the determinative factor." § 209.260(e)(1). Respondents put forward no persuasive evidence that the Corps mistook Congress' intent in 1974.[3]

Respondents next contend that whatever its original aim in 1972, Congress charted a new course five years later when it approved the more expansive definition of "navigable waters" found in the Corps' 1977 regulations. In July 1977, the Corps formally adopted 33 CFR § 323.2(a)(5) (1978), which defined "waters of the United States" to include "isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect

[3] Respondents refer us to portions of the legislative history that they believe indicate Congress' intent to expand the definition of "navigable waters." Although the Conference Report includes the statement that the conferees "intend that the term 'navigable waters' be given the broadest possible constitutional interpretation," S. Conf. Rep. No. 92–1236, p. 144 (1972), neither this, nor anything else in the legislative history to which respondents point, signifies that Congress intended to exert anything more than its commerce power over navigation. Indeed, respondents admit that the legislative history is somewhat ambiguous. See Brief for Federal Respondents 24.

interstate commerce." Respondents argue that Congress was aware of this more expansive interpretation during its 1977 amendments to the CWA. Specifically, respondents point to a failed House bill, H. R. 3199, that would have defined "navigable waters" as "all waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce." 123 Cong. Rec. 10420, 10434 (1977).[4] They also point to the passage in § 404(g)(1) that authorizes a State to apply to the Environmental Protection Agency for permission "to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce . . . , including wetlands adjacent thereto) within its jurisdiction . . . ." 33 U. S. C. § 1344(g)(1). The failure to pass legislation that would have overturned the Corps' 1977 regulations and the extension of jurisdiction in § 404(g) to waters "other than" traditional "navigable waters," respondents submit, indicate that Congress recognized and accepted a broad definition of "navigable waters" that includes nonnavigable, isolated, intrastate waters.

Although we have recognized congressional acquiescence to administrative interpretations of a statute in some situations, we have done so with extreme care.[5] "[F]ailed legis-

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[4] While this bill passed in the House, a similarly worded amendment to a bill originating in the Senate, S. 1952, failed. See 123 Cong. Rec. 26710, 26728 (1977).

[5] In *Bob Jones Univ.* v. *United States*, 461 U. S. 574, 595, 600–601 (1983), for example, we upheld an Internal Revenue Service (IRS) Revenue Ruling that revoked the tax-exempt status of private schools practicing racial discrimination because the IRS' interpretation of the relevant statutes was "correct"; because Congress had held "hearings on this precise issue," making it "hardly conceivable that Congress—and in this setting, any Member of Congress—was not abundantly aware of what was going on";

lative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'" *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 187 (1994) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990)). A bill can be proposed for any number of reasons, and it can be rejected for just as many others. The relationship between the actions and inactions of the 95th Congress and the intent of the 92d Congress in passing § 404(a) is also considerably attenuated. Because "subsequent history is less illuminating than the contemporaneous evidence," *Hagen* v. *Utah*, 510 U. S. 399, 420 (1994), respondents face a difficult task in overcoming the plain text and import of § 404(a).

We conclude that respondents have failed to make the necessary showing that the failure of the 1977 House bill demonstrates Congress' acquiescence to the Corps' regulations or the "Migratory Bird Rule," which, of course, did not first appear until 1986. Although respondents cite some legislative history showing Congress' recognition of the Corps' assertion of jurisdiction over "isolated waters,"[6] as we explained in *Riverside Bayview Homes*, "[i]n both Chambers, debate on the proposals to narrow the definition of navigable waters centered largely on the issue of wetlands preservation." 474 U. S., at 136. Beyond Congress' desire to regu-

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and because "no fewer than 13 bills introduced to overturn the IRS interpretation" had failed. Absent such overwhelming evidence of acquiescence, we are loath to replace the plain text and original understanding of a statute with an amended agency interpretation. See *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118, n. 13 (1980) ("[E]ven when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment").

[6] Respondents cite, for example, the Senate Report on S. 1952, which referred to the Corps' "isolated waters" regulation. See S. Rep. No. 95–370, p. 75 (1977). However, the same report reiterated that "[t]he committee amendment does not redefine navigable waters." *Ibid.*

late wetlands adjacent to "navigable waters," respondents point us to no persuasive evidence that the House bill was proposed in response to the Corps' claim of jurisdiction over nonnavigable, isolated, intrastate waters or that its failure indicated congressional acquiescence to such jurisdiction.

Section 404(g) is equally unenlightening. In *Riverside Bayview Homes* we recognized that Congress intended the phrase "navigable waters" to include "at least some waters that would not be deemed 'navigable' under the classical understanding of that term." *Id.*, at 133. But § 404(g) gives no intimation of what those waters might be; it simply refers to them as "other . . . waters." Respondents conjecture that "other . . . waters" must incorporate the Corps' 1977 regulations, but it is also plausible, as petitioner contends, that Congress simply wanted to include all waters adjacent to "navigable waters," such as nonnavigable tributaries and streams. The exact meaning of § 404(g) is not before us and we express no opinion on it, but for present purposes it is sufficient to say, as we did in *Riverside Bayview Homes*, that "§ 404(g)(1) does not conclusively determine the construction to be placed on the use of the term 'waters' elsewhere in the Act (particularly in § 502(7), which contains the relevant definition of 'navigable waters') . . . ." *Id.*, at 138, n. 11.[7]

We thus decline respondents' invitation to take what they see as the next ineluctable step after *Riverside Bayview Homes:* holding that isolated ponds, some only seasonal, wholly located within two Illinois counties, fall under § 404(a)'s definition of "navigable waters" because they serve

[7] Respondents also make a passing reference to Congress' decision in 1977 to exempt certain types of discharges from § 404(a), including, for example, "discharge of dredged or fill material . . . for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches." § 67, 91 Stat. 1600, 33 U. S. C. § 1344(f)(C). As § 404(a) only regulates dredged or fill material that is discharged "into navigable waters," Congress' decision to exempt certain types of these discharges does not affect, much less address, the definition of "navigable waters."

as habitat for migratory birds. As counsel for respondents conceded at oral argument, such a ruling would assume that "the use of the word navigable in the statute . . . does not have any independent significance." Tr. of Oral Arg. 28. We cannot agree that Congress' separate definitional use of the phrase "waters of the United States" constitutes a basis for reading the term "navigable waters" out of the statute. We said in *Riverside Bayview Homes* that the word "navigable" in the statute was of "limited import," 474 U. S., at 133, and went on to hold that § 404(a) extended to nonnavigable wetlands adjacent to open waters. But it is one thing to give a word limited effect and quite another to give it no effect whatever. The term "navigable" has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made. See, *e. g.*, *United States* v. *Appalachian Elec. Power Co.*, 311 U. S. 377, 407–408 (1940).

Respondents—relying upon all of the arguments addressed above—contend that, at the very least, it must be said that Congress did not address the precise question of § 404(a)'s scope with regard to nonnavigable, isolated, intrastate waters, and that, therefore, we should give deference to the "Migratory Bird Rule." See, *e. g.*, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). We find § 404(a) to be clear, but even were we to agree with respondents, we would not extend *Chevron* deference here.

Where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result. See *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988). This requirement stems from our prudential desire not to needlessly reach constitutional issues and our assumption that Congress does not casually authorize administrative agencies to interpret a

statute to push the limit of congressional authority. See *ibid.* This concern is heightened where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power. See *United States* v. *Bass*, 404 U. S. 336, 349 (1971) ("[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance"). Thus, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *DeBartolo*, *supra*, at 575.

Twice in the past six years we have reaffirmed the proposition that the grant of authority to Congress under the Commerce Clause, though broad, is not unlimited. See *United States* v. *Morrison*, 529 U. S. 598 (2000); *United States* v. *Lopez*, 514 U. S. 549 (1995). Respondents argue that the "Migratory Bird Rule" falls within Congress' power to regulate intrastate activities that "substantially affect" interstate commerce. They note that the protection of migratory birds is a "national interest of very nearly the first magnitude," *Missouri* v. *Holland*, 252 U. S. 416, 435 (1920), and that, as the Court of Appeals found, millions of people spend over a billion dollars annually on recreational pursuits relating to migratory birds. These arguments raise significant constitutional questions. For example, we would have to evaluate the precise object or activity that, in the aggregate, substantially affects interstate commerce. This is not clear, for although the Corps has claimed jurisdiction over petitioner's land because it contains water areas used as habitat by migratory birds, respondents now, *post litem motam*, focus upon the fact that the regulated activity is petitioner's municipal landfill, which is "plainly of a commercial nature." Brief for Federal Respondents 43. But this is a far cry, indeed, from the "navigable waters" and "waters of the United States" to which the statute by its terms extends.

These are significant constitutional questions raised by respondents' application of their regulations, and yet we find nothing approaching a clear statement from Congress that it intended § 404(a) to reach an abandoned sand and gravel pit such as we have here. Permitting respondents to claim federal jurisdiction over ponds and mudflats falling within the "Migratory Bird Rule" would result in a significant impingement of the States' traditional and primary power over land and water use. See, *e. g.*, *Hess* v. *Port Authority Trans-Hudson Corporation*, 513 U. S. 30, 44 (1994) ("[R]egulation of land use [is] a function traditionally performed by local governments"). Rather than expressing a desire to readjust the federal-state balance in this manner, Congress chose to "recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources . . . ." 33 U. S. C. § 1251(b). We thus read the statute as written to avoid the significant constitutional and federalism questions raised by respondents' interpretation, and therefore reject the request for administrative deference.[8]

We hold that 33 CFR § 328.3(a)(3) (1999), as clarified and applied to petitioner's balefill site pursuant to the "Migratory Bird Rule," 51 Fed. Reg. 41217 (1986), exceeds the authority granted to respondents under § 404(a) of the CWA. The judgment of the Court of Appeals for the Seventh Circuit is therefore

Reversed.

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

In 1969, the Cuyahoga River in Cleveland, Ohio, coated with a slick of industrial waste, caught fire. Congress re-

[8] Because violations of the CWA carry criminal penalties, see 33 U. S. C. § 1319(c)(2), petitioner invokes the rule of lenity as another basis for rejecting the Corps' interpretation of the CWA. Brief for Petitioner 31–32. We need not address this alternative argument. See *United States* v. *Shabani*, 513 U. S. 10, 17 (1994).

sponded to that dramatic event, and to others like it, by enacting the Federal Water Pollution Control Act (FWPCA) Amendments of 1972, 86 Stat. 817, as amended, 33 U. S. C. § 1251 *et seq.*, commonly known as the Clean Water Act (Clean Water Act, CWA, or Act).[1] The Act proclaimed the ambitious goal of ending water pollution by 1985. § 1251(a). The Court's past interpretations of the CWA have been fully consistent with that goal. Although Congress' vision of zero pollution remains unfulfilled, its pursuit has unquestionably retarded the destruction of the aquatic environment. Our Nation's waters no longer burn. Today, however, the Court takes an unfortunate step that needlessly weakens our principal safeguard against toxic water.

It is fair to characterize the Clean Water Act as "watershed" legislation. The statute endorsed fundamental changes in both the purpose and the scope of federal regulation of the Nation's waters. In § 13 of the Rivers and Harbors Appropriation Act of 1899 (RHA), 30 Stat. 1152, as amended, 33 U. S. C. § 407, Congress had assigned to the Army Corps of Engineers (Corps) the mission of regulating discharges into certain waters in order to protect their use as highways for the transportation of interstate and foreign commerce; the scope of the Corps' jurisdiction under the RHA accordingly extended only to waters that were "navigable." In the CWA, however, Congress broadened the Corps' mission to include the purpose of protecting the quality of our Nation's waters for esthetic, health, recreational, and environmental uses. The scope of its jurisdiction was therefore redefined to encompass all of "the waters of the United States, including the territorial seas." § 1362(7). That definition requires neither actual nor potential navigability.

The Court has previously held that the Corps' broadened jurisdiction under the CWA properly included an 80-acre

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[1] See R. Adler, J. Landman, & D. Cameron, The Clean Water Act: 20 Years Later 5–10 (1993).

parcel of low-lying marshy land that was not itself navigable, directly adjacent to navigable water, or even hydrologically connected to navigable water, but which was part of a larger area, characterized by poor drainage, that ultimately abutted a navigable creek. *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985).[2] Our broad finding in *Riverside Bayview* that the 1977 Congress had acquiesced in the Corps' understanding of its jurisdiction applies equally to the 410-acre parcel at issue here. Moreover, once Congress crossed the legal watershed that separates navigable streams of commerce from marshes and inland lakes, there is no principled reason for limiting the statute's protection to those waters or wetlands that happen to lie near a navigable stream.

In its decision today, the Court draws a new jurisdictional line, one that invalidates the 1986 migratory bird regulation as well as the Corps' assertion of jurisdiction over all waters

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[2] See also App. to Pet. for Cert. 25a, and Brief for United States 8, n. 7, in *Riverside Bayview*, O. T. 1984, No. 84–701. The District Court in *Riverside Bayview* found that there was no direct "hydrological" connection between the parcel at issue and any nearby navigable waters. App. to Pet. for Cert. in *Riverside Bayview* 25a. The wetlands characteristics of the parcel were due, not to a surface or groundwater connection to any actually navigable water, but to "poor drainage" resulting from "the Lamson soil that underlay the property." Brief for Respondent in *Riverside Bayview* 7. Nevertheless, this Court found occasional surface runoff from the property into nearby waters to constitute a meaningful connection. *Riverside Bayview*, 474 U. S., at 134; Brief for United States in *Riverside Bayview* 8, n. 7. Of course, the *ecological* connection between the wetlands and the nearby waters also played a central role in this Court's decision. *Riverside Bayview*, 474 U. S., at 134–135. Both types of connection are also present in many, and possibly most, "isolated" waters. Brief for Dr. Gene Likens et al. as *Amici Curiae* 6–22. Indeed, although the majority and petitioner both refer to the waters on petitioner's site as "isolated," *ante*, at 172; Brief for Petitioner 11, their role as habitat for migratory birds, birds that serve important functions in the ecosystems of other waters throughout North America, suggests that—ecologically speaking—the waters at issue in this case are anything but isolated.

except for actually navigable waters, their tributaries, and wetlands adjacent to each. Its holding rests on two equally untenable premises: (1) that when Congress passed the 1972 CWA, it did not intend "to exert anything more than its commerce power over navigation," *ante*, at 168, n. 3; and (2) that in 1972 Congress drew the boundary defining the Corps' jurisdiction at the odd line on which the Court today settles.

As I shall explain, the text of the 1972 amendments affords no support for the Court's holding, and amendments Congress adopted in 1977 do support the Corps' present interpretation of its mission as extending to so-called "isolated" waters. Indeed, simple common sense cuts against the particular definition of the Corps' jurisdiction favored by the majority.

I

The significance of the FWPCA Amendments of 1972 is illuminated by a reference to the history of federal water regulation, a history that the majority largely ignores. Federal regulation of the Nation's waters began in the 19th century with efforts targeted exclusively at "promot[ing] water transportation and commerce." Kalen, Commerce to Conservation: The Call for a National Water Policy and the Evolution of Federal Jurisdiction Over Wetlands, 69 N. D. L. Rev. 873, 877 (1993). This goal was pursued through the various Rivers and Harbors Acts, the most comprehensive of which was the RHA of 1899.[3] Section 13 of the 1899 RHA, commonly known as the Refuse Act, prohibited the discharge of "refuse" into any "navigable water" or its tributaries, as well as the deposit of "refuse" on the bank of a navigable water "whereby navigation shall or may be impeded or obstructed" without first obtaining a permit from the Secretary of the Army. 30 Stat. 1152.

[3] See also Rivers and Harbors Appropriations Act of 1896, 29 Stat. 234; River and Harbor Act of 1894, 28 Stat. 363; River and Harbor Appropriations Act of 1890, 26 Stat. 426; The River and Harbor Appropriations Act of 1886, 24 Stat. 329.

During the middle of the 20th century, the goals of federal water regulation began to shift away from an exclusive focus on protecting navigability and toward a concern for preventing environmental degradation. Kalen, 69 N. D. L. Rev., at 877–879, and n. 30. This awakening of interest in the use of federal power to protect the aquatic environment was helped along by efforts to reinterpret § 13 of the RHA in order to apply its permit requirement to industrial discharges into navigable waters, even when such discharges did nothing to impede navigability. See, *e. g.*, *United States* v. *Republic Steel Corp.*, 362 U. S. 482, 490–491 (1960) (noting that the term "refuse" in § 13 was broad enough to include industrial waste).[4] Seeds of this nascent concern with pollution control can also be found in the FWPCA, which was first enacted in 1948 and then incrementally expanded in the following years.[5]

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[4] In 1970, the House Committee on Government Operations followed the Court's lead and advocated the use of § 13 as a pollution control provision. H. R. Rep. No. 91–917, pp. 14–18 (1970). President Nixon responded by issuing Executive Order No. 11574, 35 Fed. Reg. 19627 (1970) (revoked by Exec. Order No. 12553, 51 Fed. Reg. 7237 (1986)), which created the Refuse Act Permit Program. Power, The Fox in the Chicken Coop: The Regulatory Program of the U. S. Army Corps of Engineers, 63 Va. L. Rev. 503, 512 (1977) (hereinafter Power). The program ended soon after it started, however, when a District Court, reading the language of § 13 literally, held the permit program invalid. *Ibid.*; see *Kalur* v. *Resor*, 335 F. Supp. 1, 9 (DC 1971).

[5] The FWPCA of 1948 applied only to "interstate waters." § 10(e), 62 Stat. 1161. Subsequently, it was harmonized with the Rivers and Harbors Act such that—like the earlier statute—the FWPCA defined its jurisdiction with reference to "navigable waters." Pub. L. 89–753, § 211, 80 Stat. 1252. None of these early versions of the FWPCA could fairly be described as establishing a comprehensive approach to the problem, but they did contain within themselves several of the elements that would later be employed in the CWA. *Milwaukee* v. *Illinois*, 451 U. S. 304, 318, n. 10 (1981) (REHNQUIST, J.) (Congress intended to do something "quite different" in the 1972 Act); 2 W. Rodgers, Environmental Law: Air and Water § 4.1, pp. 10–11 (1986) (describing the early versions of the FWPCA).

The shift in the focus of federal water regulation from protecting navigability toward environmental protection reached a dramatic climax in 1972, with the passage of the CWA. The Act, which was passed as an amendment to the existing FWPCA, was universally described by its supporters as the first truly comprehensive federal water pollution legislation. The "major purpose" of the CWA was "to establish a *comprehensive* long-range policy for the elimination of water pollution." S. Rep. No. 92–414, p. 95 (1971), 2 Legislative History of the Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93–1, p. 1511 (1971) (hereinafter Leg. Hist.) (emphasis added). And "[n]o Congressman's remarks on the legislation were complete without reference to [its] 'comprehensive' nature . . . ." *Milwaukee* v. *Illinois*, 451 U. S. 304, 318 (1981) (REHNQUIST, J.). A House sponsor described the bill as "the most comprehensive and far-reaching water pollution bill we have ever drafted," 1 Leg. Hist. 369 (Rep. Mizell), and Senator Randolph, Chairman of the Committee on Public Works, stated: "It is perhaps the most comprehensive legislation that the Congress of the United States has ever developed in this particular field of the environment." 2 *id.*, at 1269. This Court was therefore undoubtedly correct when it described the 1972 amendments as establishing "a comprehensive program for controlling and abating water pollution." *Train* v. *City of New York*, 420 U. S. 35, 37 (1975).

Section 404 of the CWA resembles § 13 of the RHA, but, unlike the earlier statute, the primary purpose of which is the maintenance of navigability, § 404 was principally intended as a pollution control measure. A comparison of the contents of the RHA and the 1972 Act vividly illustrates the fundamental difference between the purposes of the two provisions. The earlier statute contains pages of detailed appropriations for improvements in specific navigation facilities, 30 Stat. 1121–1149, for studies concerning the feasibility

of a canal across the Isthmus of Panama, *id.*, at 1150, and for surveys of the advisability of harbor improvements at numerous other locations, *id.*, at 1155–1161. Tellingly, § 13, which broadly prohibits the discharge of refuse into navigable waters, contains an exception for refuse "flowing from streets and sewers . . . in a liquid state." *Id.*, at 1152.

The 1972 Act, in contrast, appropriated large sums of money for research and related programs for water pollution control, 86 Stat. 816–833, and for the construction of water treatment works, *id.*, at 833–844. Strikingly absent from its declaration of "goals and policy" is *any* reference to avoiding or removing obstructions to navigation. Instead, the principal objective of the Act, as stated by Congress in § 101, was "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U. S. C. § 1251. Congress therefore directed federal agencies in § 102 to "develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters." 33 U. S. C. § 1252. The CWA commands federal agencies to give "due regard," not to the interest of unobstructed navigation, but rather to "improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife [and] recreational purposes." *Ibid.*

Because of the statute's ambitious and comprehensive goals, it was, of course, necessary to expand its jurisdictional scope. Thus, although Congress opted to carry over the traditional jurisdictional term "navigable waters" from the RHA and prior versions of the FWPCA, it broadened the *definition* of that term to encompass all "waters of the United States." § 1362(7).[6] Indeed, the 1972 conferees arrived at the final formulation by specifically deleting the

[6] The definition of "navigable water" in earlier versions of the FWPCA had made express reference to navigability. § 211, 80 Stat. 1253.

word "navigable" from the definition that had originally appeared in the House version of the Act.[7] The majority today undoes that deletion.

The Conference Report explained that the definition in § 502(7) was intended to "be given the broadest possible constitutional interpretation." S. Conf. Rep. No. 92–1236, p. 144 (1972), reprinted in 1 Leg. Hist. 327. The Court dismisses this clear assertion of legislative intent with the back of its hand. *Ante*, at 168, n. 3. The statement, it claims, "signifies that Congress intended to exert [nothing] more than its commerce power over navigation." *Ibid.*

The majority's reading drains all meaning from the conference amendment. By 1972, Congress' Commerce Clause power over "navigation" had long since been established. *The Daniel Ball*, 10 Wall. 557 (1871); *Gilman* v. *Philadelphia*, 3 Wall. 713 (1866); *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824). Why should Congress intend that its assertion of federal jurisdiction be given the "broadest possible constitutional interpretation" if it did not intend to reach beyond the very heartland of its commerce power? The activities regulated by the CWA have nothing to do with Congress' "commerce power over navigation." Indeed, the goals of the 1972 statute have nothing to do with *navigation* at all.

As we recognized in *Riverside Bayview*, the interests served by the statute embrace the protection of " 'significant natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites' " for various species of aquatic wildlife. 474 U. S., at 134–135. For wetlands and "isolated" inland lakes, that in-

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[7] The version adopted by the House of Representatives defined "navigable waters" as "the navigable waters of the United States, including the territorial seas." H. R. 11896, 92d Cong., 2d Sess., § 502(8) (1971), reprinted in 1 Leg. Hist. 1069. The CWA ultimately defined "navigable waters" simply as "the waters of the United States, including the territorial seas." 33 U. S. C. § 1362(7).

terest is equally powerful, regardless of the proximity of the swamp or the water to a navigable stream. Nothing in the text, the stated purposes, or the legislative history of the CWA supports the conclusion that in 1972 Congress contemplated—much less commanded—the odd jurisdictional line that the Court has drawn today.

The majority accuses respondents of reading the term "navigable" out of the statute. *Ante*, at 172. But that was accomplished by Congress when it deleted the word from the § 502(7) definition. After all, it is the *definition* that is the appropriate focus of our attention. *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 697–698, n. 10 (1995) (refusing to be guided by the common-law definition of the term "take" when construing that term within the Endangered Species Act of 1973 and looking instead to the meaning of the terms contained in the definition of "take" supplied by the statute). Moreover, a proper understanding of the history of federal water pollution regulation makes clear that—even on respondents' broad reading—the presence of the word "navigable" in the statute is not inexplicable. The term was initially used in the various Rivers and Harbors Acts because (1) at the time those statutes were first enacted, Congress' power over the Nation's waters was viewed as extending only to "water bodies that were deemed 'navigable' and therefore suitable for moving goods to or from markets," Power 513; and (2) those statutes had the primary purpose of protecting navigation. Congress' choice to employ the term "navigable waters" in the 1972 Clean Water Act simply continued nearly a century of usage. Viewed in light of the history of federal water regulation, the broad § 502(7) definition, and Congress' unambiguous instructions in the Conference Report, it is clear that the term "navigable waters" operates in the statute as a shorthand for "waters over which federal authority may properly be asserted."

II

As the majority correctly notes, *ante*, at 168, when the Corps first promulgated regulations pursuant to § 404 of the 1972 Act, it construed its authority as being essentially the same as it had been under the 1899 RHA.[8] The reaction to those regulations in the federal courts,[9] in the Environmental Protection Agency (EPA),[10] and in Congress[11] convinced

[8] The Corps later acknowledged that the 1974 regulations "limited the Section 404 permit program to the same waters that were being regulated under the River and Harbor Act of 1899." 42 Fed. Reg. 37123 (1977). Although refusing to defer to the Corps' *present* interpretation of the statute, *ante*, at 172, the majority strangely attributes some significance to the Corps' *initial* reluctance to read the 1972 Act as expanding its jurisdiction, *ante*, at 168 ("Respondents put forward no persuasive evidence that the Corps mistook Congress' intent in 1974"). But, stranger still, by construing the statute as extending to nonnavigable tributaries and adjacent wetlands, the majority reads the statute more broadly than the 1974 regulations that it seems willing to accept as a correct construction of the Corps' jurisdiction. As I make clear in the text, there is abundant evidence that the Corps was wrong in 1974 and that the Court is wrong today.

[9] See, *e. g.*, *Natural Resources Defense Council* v. *Callaway*, 392 F. Supp. 685, 686 (DC 1975); *United States* v. *Holland*, 373 F. Supp. 665 (MD Fla. 1974).

[10] In a 1974 letter to the head of the Corps, the EPA Administrator expressed his disagreement with the Corps' parsimonious view of its own jurisdiction under the CWA. Section 404 of the Federal Water Pollution Control Act Amendments of 1972: Hearings before the Senate Committee on Public Works, 94th Cong., 2d Sess., 349 (1976) (letter dated June 19, 1974, from Russell E. Train, Administrator of EPA, to Lt. Gen. W. C. Gribble, Jr., Chief of Corps of Engineers). The EPA is the agency that generally administers the CWA, except as otherwise provided. 33 U. S. C. § 1251(d); see also 43 Op. Atty. Gen. 197 (1979) ("Congress intended to confer upon the administrator of the [EPA] the final administrative authority" to determine the reach of the term "navigable waters").

[11] The House Committee on Government Operations noted the disagreement between the EPA and the Corps over the meaning of "navigable waters" and ultimately expressed its agreement with the EPA's broader reading of the statute. H. R. Rep. No. 93–1396, pp. 23–27 (1974).

the Corps that the statute required it "to protect water quality to the full extent of the [C]ommerce [C]lause" and to extend federal regulation over discharges "to many areas that have never before been subject to Federal permits or to this form of water quality protection." 40 Fed. Reg. 31320 (1975).

In 1975, the Corps therefore adopted the interim regulations that we upheld in *Riverside Bayview*. As we noted in that case, the new regulations understood "the waters of the United States" to include, not only navigable waters and their tributaries, but also "nonnavigable intrastate waters whose use or misuse could affect interstate commerce." 474 U. S., at 123. The 1975 regulations provided that the new program would become effective in three phases: phase 1, which became effective immediately, encompassed the navigable waters covered by the 1974 regulation and the RHA; phase 2, effective after July 1, 1976, extended Corps jurisdiction to nonnavigable tributaries, freshwater wetlands adjacent to primary navigable waters, and lakes; and phase 3, effective after July 1, 1977, extended Corps jurisdiction to all other waters covered under the statute, including any waters not covered by phases 1 and 2 (such as "intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters") that "the District Engineer determines necessitate regulation for the protection of water quality." 40 Fed. Reg. 31325–31326 (1975). The final version of these regulations, adopted in 1977, made clear that the covered waters included "isolated lakes and wetlands, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce."[12]

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[12] 42 Fed. Reg. 37127 (1977), as amended, 33 CFR §328.3(a)(3) (1977). The so-called "migratory bird" rule, upon which the Corps based its assertion of jurisdiction in this case, is merely a specific application of the more general jurisdictional definition first adopted in the 1975 and 1977

The Corps' broadened reading of its jurisdiction provoked opposition among some Members of Congress. As a result, in 1977, Congress considered a proposal that would have limited the Corps' jurisdiction under § 404 to waters that are used, or by reasonable improvement could be used, as a means to transport interstate or foreign commerce and their adjacent wetlands. H. R. 3199, 95th Cong., 1st Sess., § 16(f) (1977). A bill embodying that proposal passed the House but was defeated in the Senate. The debates demonstrate that Congress was fully aware of the Corps' understanding of the scope of its jurisdiction under the 1972 Act. We summarized these debates in our opinion in *Riverside Bayview:*

> "In both Chambers, debate on the proposals to narrow the definition of navigable waters centered largely on the issue of wetlands preservation. See [123 Cong. Rec.], at 10426–10432 (House debate); *id.*, at 26710–26729 (Senate debate). Proponents of a more limited § 404 jurisdiction contended that the Corps' assertion of jurisdiction over wetlands and other nonnavigable 'waters' had far exceeded what Congress had intended in enacting § 404. Opponents of the proposed changes argued that a narrower definition of 'navigable waters' for purposes of § 404 would exclude vast stretches of crucial wetlands from the Corps' jurisdiction, with detrimental effects on wetlands ecosystems, water quality, and the aquatic environment generally. The debate, particularly in the Senate, was lengthy. In the House, the debate ended with the adoption of a narrowed definition of

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rules. The "rule," which operates as a rule of thumb for identifying the waters that fall within the Corps' jurisdiction over phase 3 waters, first appeared in the preamble to a 1986 repromulgation of the Corps' definition of "navigable waters." 51 Fed. Reg. 41217 (1986). As the Corps stated in the preamble, this repromulgation was not intended to alter its jurisdiction in any way. *Ibid.* Instead, the Corps indicated, the migratory bird rule was enacted simply to "clarif[y]" the scope of existing jurisdictional regulations. *Ibid.*

> 'waters'; but in the Senate the limiting amendment was defeated and the old definition retained. The Conference Committee adopted the Senate's approach: efforts to narrow the definition of 'waters' were abandoned; the legislation as ultimately passed, in the words of Senator Baker, 'retain[ed] the comprehensive jurisdiction over the Nation's waters exercised in the 1972 Federal Water Pollution Control Act.'" 474 U. S., at 136–137.

The net result of that extensive debate was a congressional endorsement of the position that the Corps maintains today. We explained in *Riverside Bayview:*

> "[T]he scope of the Corps' asserted jurisdiction over wetlands was specifically brought to Congress' attention, and Congress rejected measures designed to curb the Corps' jurisdiction in large part because of its concern that protection of wetlands would be unduly hampered by a narrowed definition of 'navigable waters.' Although we are chary of attributing significance to Congress' failure to act, a refusal by Congress to overrule an agency's construction of legislation is at least some evidence of the reasonableness of that construction, particularly where the administrative construction has been brought to Congress' attention through legislation specifically designed to supplant it." *Id.,* at 137.

Even if the majority were correct that Congress did not extend the Corps' jurisdiction in the 1972 CWA to reach beyond navigable waters and their nonnavigable tributaries, Congress' rejection of the House's efforts in 1977 to cut back on the Corps' 1975 assertion of jurisdiction clearly indicates congressional acquiescence in that assertion. Indeed, our broad determination in *Riverside Bayview* that the 1977 Congress acquiesced in the very regulations at issue in this case should foreclose petitioner's present urgings to the contrary. The majority's refusal in today's decision to acknowledge the scope of our prior decision is troubling. Compare

id., at 136 ("Congress acquiesced in the [1975] administrative construction [of the Corps' jurisdiction]"), with *ante*, at 170 ("We conclude that respondents have failed to make the necessary showing that the failure of the 1977 House bill demonstrates Congress' acquiescence to the Corps' regulations . . .").[13] Having already concluded that Congress acquiesced in the Corps' regulatory definition of its jurisdiction, the Court is wrong to reverse course today. See *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000) (REHNQUIST, C. J.) ("'[T]he doctrine [of *stare decisis*] carries such persuasive force that we have always required a departure from precedent to be supported by some "special justification"'").

More important than the 1977 bill that did not become law are the provisions that actually were included in the 1977 revisions. Instead of agreeing with those who sought to withdraw the Corps' jurisdiction over "isolated" waters,

[13] The majority appears to believe that its position is consistent with *Riverside Bayview* because of that case's reservation of the question whether the Corps' jurisdiction extends to "certain wetlands not necessarily adjacent to other waters," 474 U. S., at 124, n. 2. But it is clear from the context that the question reserved by *Riverside Bayview* did not concern "isolated" *waters*, such as those at issue in this case, but rather "isolated" *wetlands*. See *id.*, at 131–132, n. 8 ("We are not called upon to address the question of the authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water . . ."). Unlike the open waters present on petitioner's site, wetlands are *lands* "that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 33 CFR § 328.3(b) (2000). If, as I believe, actually navigable waters lie at the very heart of Congress' commerce power and "isolated," nonnavigable waters lie closer to (but well within) the margin, "isolated wetlands," which are themselves only marginally "waters," are the most marginal category of "waters of the United States" potentially covered by the statute. It was the question of the extension of federal jurisdiction to *that* category of "waters" that the *Riverside Bayview* Court reserved. That question is not presented in this case.

Congress opted to exempt several classes of such waters from federal control. § 67, 91 Stat. 1601, 33 U. S. C. § 1344(f). For example, the 1977 amendments expressly exclude from the Corps' regulatory power the discharge of fill material "for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches," and "for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters." *Ibid.* The specific exemption of these waters from the Corps' jurisdiction indicates that the 1977 Congress recognized that similarly "isolated" waters *not* covered by the exceptions would fall within the statute's outer limits.

In addition to the enumerated exceptions, the 1977 amendments included a new section, § 404(g), which authorized the States to administer their own permit programs over certain nonnavigable waters. Section 404(g)(1) provides, in relevant part:

> "The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce . . . , including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact." 33 U. S. C. § 1344(g)(1).

Section 404(g)(1)'s reference to navigable waters "other than those waters which are presently used, or are susceptible to use," for transporting commerce and their adjacent wetlands appears to suggest that Congress viewed (and accepted) the Act's regulations as covering more than naviga-

ble waters in the traditional sense. The majority correctly points out that § 404(g)(1) is itself ambiguous because it does not indicate precisely how far Congress considered federal jurisdiction to extend. *Ante*, at 171. But the Court ignores the provision's legislative history, which makes clear that Congress understood § 404(g)(1)—and therefore federal jurisdiction—to extend, not only to navigable waters and nonnavigable tributaries, but also to "isolated" waters, such as those at issue in this case.

The Conference Report discussing the 1977 amendments, for example, states that § 404(g) "establish[es] a process to allow the Governor of any State to administer an individual and general permit program for the discharge of dredged or fill material into *phase 2 and 3 waters* after the approval of a program by the Administrator." H. R. Conf. Rep. No. 95–830, p. 101 (1977), reprinted in 3 Legislative History of the Clean Water Act of 1977 (Committee Print compiled for the Committee on Environment and Public Works by the Library of Congress), Ser. No. 95–14, p. 285 (emphasis added) (hereinafter Leg. Hist. of CWA). Similarly, a Senate Report discussing the 1977 amendments explains that, under § 404(g), "the [C]orps will *continue* to administer the section 404 permit program in all navigable waters for a discharge of dredge or fill material until the approval of a State program *for phase 2 and 3 waters.*" S. Rep. No. 95–370, p. 75 (1977), reprinted in 4 Leg. Hist. of CWA 708 (emphases added).

Of course, as I have already discussed, "phase 1" waters are navigable waters and their contiguous wetlands, "phase 2" waters are the "primary tributaries" of navigable waters and their adjacent wetlands, and "phase 3" waters are all other waters covered by the statute, and can include such "isolated" waters as "intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters." The legislative history of the 1977 amendments therefore plainly establishes that,

when it enacted § 404(g), Congress believed—and desired—the Corps' jurisdiction to extend beyond just navigable waters, their tributaries, and the wetlands adjacent to each.

In dismissing the significance of § 404(g)(1), the majority quotes out of context language in the very same 1977 Senate Report that I have quoted above. *Ante*, at 170, n. 6. It is true that the Report states that "[t]he committee amendment does not *redefine* navigable waters." S. Rep. No. 95–370, at 75, reprinted in 4 Leg. Hist. of CWA 708 (emphasis added). But the majority fails to point out that the quoted language appears in the course of an explanation of the Senate's refusal to go along with House efforts to *narrow the scope* of the Corps' CWA jurisdiction to traditionally navigable waters. Thus, the immediately preceding sentence warns that "[t]o limit the jurisdiction of the [FWPCA] with reference to discharges of the pollutants of dredged or fill material would cripple efforts to achieve the act's objectives."[14] *Ibid.* The Court would do well to heed that warning.

The majority also places great weight, *ante*, at 171, on our statement in *Riverside Bayview* that § 404(g) "does not *con-*

[14] In any event, to attach significance to the Report's statement that the committee amendments do not "redefine navigable waters," one must first accept the majority's erroneous interpretation of the 1972 Act. But the very Report upon which the majority relies states that "[t]he 1972 [FWPCA] exercised *comprehensive jurisdiction* over the *Nation's waters* to control pollution to the *fullest constitutional extent.*" S. Rep. No. 95–370, at 75, reprinted in 4 Leg. Hist. of CWA 708 (emphases added). Even if the Court's flawed reading of the earlier statute were correct, however, the language to which the Court points does not counsel against finding congressional acquiescence in the Corps' 1975 regulations. Quite the contrary. From the perspective of the 1977 Congress, those regulations constituted the status quo that the proposed amendments sought to alter. Considering the Report's favorable references to the Corps' "continu[ing]" jurisdiction over phase 2 and 3 waters, the language concerning the failure of the amendments to "redefine navigable waters" cuts strongly against the majority's position, which instead completely excises phase 3 waters from the scope of the Act. *Ibid.*

clusively determine the construction to be placed on the use of the term 'waters' elsewhere in the Act," 474 U. S., at 138, n. 11 (emphasis added). This is simply more selective reading. In that case, we also went on to say with respect to the significance of § 404(g) that "the various provisions of the Act should be read *in pari materia*." *Ibid.* Moreover, our ultimate conclusion in *Riverside Bayview* was that § 404(g) "suggest[s] strongly that the term 'waters' as used in the Act" supports the Corps' reading. *Ibid.*

III

Although it might have appeared problematic on a "linguistic" level for the Corps to classify "lands" as "waters" in *Riverside Bayview*, 474 U. S., at 131–132, we squarely held that the agency's construction of the statute that it was charged with enforcing was entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Today, however, the majority refuses to extend such deference to the same agency's construction of the same statute, see *ante*, at 172–174. This refusal is unfaithful to both *Riverside Bayview* and *Chevron*. For it is the majority's reading, not the agency's, that does violence to the scheme Congress chose to put into place.

Contrary to the Court's suggestion, the Corps' interpretation of the statute does not "encroac[h]" upon "traditional state power" over land use. *Ante*, at 173. "Land use planning in essence chooses particular uses for the land; environmental regulation, at its core, does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Comm'n* v. *Granite Rock Co.*, 480 U. S. 572, 587 (1987). The CWA is not a land-use code; it is a paradigm of environmental regulation. Such regulation is an accepted exercise of federal power. *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 282 (1981).

It is particularly ironic for the Court to raise the specter of federalism while construing a statute that makes explicit efforts to foster local control over water regulation. Faced with calls to cut back on federal jurisdiction over water pollution, Congress rejected attempts to narrow the scope of that jurisdiction and, by incorporating § 404(g), opted instead for a scheme that encouraged States to supplant federal control with their own regulatory programs. S. Rep. No. 95–370, at 75, reprinted in 4 Leg. Hist. of CWA 708 ("The committee amendment does not redefine navigable waters. Instead, the committee amendment intends to assure continued protection of *all the Nation's waters*, but allows States to assume the primary responsibility for protecting those lakes, rivers, streams, swamps, marshes, and other portions of the navigable waters outside the [C]orps program in the so-called phase I waters" (emphasis added)). Because Illinois could have taken advantage of the opportunities offered to it through § 404(g), the federalism concerns to which the majority adverts are misplaced. The Corps' interpretation of the statute as extending beyond navigable waters, tributaries of navigable waters, and wetlands adjacent to each is manifestly reasonable and therefore entitled to deference.

IV

Because I am convinced that the Court's miserly construction of the statute is incorrect, I shall comment briefly on petitioner's argument that Congress is without power to prohibit it from filling any part of the 31 acres of ponds on its property in Cook County, Illinois. The Corps' exercise of its § 404 permitting power over "isolated" waters that serve as habitat for migratory birds falls well within the boundaries set by this Court's Commerce Clause jurisprudence.

In *United States* v. *Lopez*, 514 U. S. 549, 558–559 (1995), this Court identified "three broad categories of activity that Congress may regulate under its commerce power": (1) channels of interstate commerce; (2) instrumentalities of inter-

state commerce, or persons and things in interstate commerce; and (3) activities that "substantially affect" interstate commerce. *Ibid.* The migratory bird rule at issue here is properly analyzed under the third category. In order to constitute a proper exercise of Congress' power over intrastate activities that "substantially affect" interstate commerce, it is not necessary that each individual instance of the activity substantially affect commerce; it is enough that, taken in the aggregate, the *class of activities* in question has such an effect. *Perez* v. *United States*, 402 U. S. 146 (1971) (noting that it is the "class" of regulated activities, not the individual instance, that is to be considered in the "affects" commerce analysis); see also *Hodel*, 452 U. S., at 277; *Wickard* v. *Filburn*, 317 U. S. 111, 127–128 (1942).

The activity being regulated in this case (and by the Corps' § 404 regulations in general) is the discharge of fill material into water. The Corps did not assert jurisdiction over petitioner's land simply because the waters were "used as habitat by migratory birds." It asserted jurisdiction because petitioner planned to *discharge fill* into waters "used as habitat by migratory birds." Had petitioner intended to engage in some other activity besides discharging fill (*i. e.*, had there been no activity to regulate), or, conversely, had the waters not been habitat for migratory birds (*i. e.*, had there been no basis for federal jurisdiction), the Corps would never have become involved in petitioner's use of its land. There can be no doubt that, unlike the class of activities Congress was attempting to regulate in *United States* v. *Morrison*, 529 U. S. 598, 613 (2000) ("[g]ender-motivated crimes"), and *Lopez*, 514 U. S., at 561 (possession of guns near school property), the discharge of fill material into the Nation's waters is almost always undertaken for economic reasons. See V. Albrecht & B. Goode, Wetland Regulation in the Real World, Exh. 3 (Feb. 1994) (demonstrating that the overwhelming majority of acreage for which § 404

permits are sought is intended for commercial, industrial, or other economic use).[15]

Moreover, no one disputes that the discharge of fill into "isolated" waters that serve as migratory bird habitat will, in the aggregate, adversely affect migratory bird populations. See, *e. g.*, 1 Secretary of the Interior, Report to Congress, The Impact of Federal Programs on Wetlands: The Lower Mississippi Alluvial Plain and the Prairie Pothole Region 79–80 (Oct. 1988) (noting that "isolated," phase 3 waters "are among the most important and also [the] most threatened ecosystems in the United States" because "[t]hey are prime nesting grounds for many species of North American waterfowl . . ." and provide "[u]p to 50 percent of the [U. S.] production of migratory waterfowl"). Nor does petitioner dispute that the particular waters it seeks to fill are home to many important species of migratory birds, including the second-largest breeding colony of Great Blue Herons in northeastern Illinois, App. to Pet. for Cert. 3a, and several species of waterfowl protected by international treaty and Illinois endangered species laws, Brief for Federal Respondents 7.[16]

In addition to the intrinsic value of migratory birds, see *Missouri* v. *Holland*, 252 U. S. 416, 435 (1920) (noting the importance of migratory birds as "protectors of our forests and our crops" and as "a food supply"), it is undisputed that

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[15] The fact that petitioner can conceive of some people who may discharge fill for noneconomic reasons does not weaken the legitimacy of the Corps' jurisdictional claims. As we observed in *Perez* v. *United States*, 402 U. S. 146 (1971), "[w]here the *class of activities* is regulated and that *class* is within the reach of federal power, the courts have no power to excise, as trivial, individual instances of the class." *Id.*, at 154 (internal quotation marks omitted).

[16] Other bird species using petitioner's site as habitat include the " 'Great Egret, Green-backed Heron, Black-crowned Night Heron, Canada Goose, Wood Duck, Mallard, Greater Yellowlegs, Belted Kingfisher, Northern Waterthrush, Louisiana Waterthrush, Swamp Sparrow, and Red-winged Blackbird.' " Brief for Petitioner 4, n. 3.

literally millions of people regularly participate in bird-watching and hunting and that those activities generate a host of commercial activities of great value.[17] The causal connection between the filling of wetlands and the decline of commercial activities associated with migratory birds is not "attenuated," *Morrison*, 529 U. S., at 612; it is direct and concrete. Cf. *Gibbs* v. *Babbitt*, 214 F. 3d 483, 492–493 (CA4 2000) ("The relationship between red wolf takings and interstate commerce is quite direct—with no red wolves, there will be no red wolf related tourism . . .").

Finally, the migratory bird rule does not blur the "distinction between what is truly national and what is truly local." *Morrison*, 529 U. S., at 617–618. Justice Holmes cogently observed in *Missouri* v. *Holland* that the protection of migratory birds is a textbook example of a *national* problem. 252 U. S., at 435 ("It is not sufficient to rely upon the States [to protect migratory birds]. The reliance is vain . . ."). The destruction of aquatic migratory bird habitat, like so many other environmental problems, is an action in which the benefits (*e. g.*, a new landfill) are disproportionately local, while many of the costs (*e. g.*, fewer migratory birds) are widely dispersed and often borne by citizens living in other States. In such situations, described by economists as involving "externalities," federal regulation is both appropriate and necessary. Revesz, Rehabilitating Interstate

[17] In 1984, the U. S. Congress Office of Technology Assessment found that, in 1980, 5.3 million Americans hunted migratory birds, spending $638 million. U. S. Congress, Office of Technology Assessment, Wetlands: Their Use and Regulation 54 (OTA–O–206, Mar. 1984). More than 100 million Americans spent almost $14.8 billion in 1980 to watch and photograph fish and wildlife. *Ibid.* Of 17.7 million birdwatchers, 14.3 million took trips in order to observe, feed, or photograph waterfowl, and 9.5 million took trips specifically to view other water-associated birds, such as herons like those residing at petitioner's site. U. S. Dept. of Interior, U. S. Fish and Wildlife Service and U. S. Dept. of Commerce, Bureau of Census, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation 45, 90 (issued Nov. 1997).

Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation, 67 N. Y. U. L. Rev. 1210, 1222 (1992) ("The presence of interstate externalities is a powerful reason for intervention at the federal level"); cf. *Hodel*, 452 U. S., at 281–282 (deferring to Congress' finding that nationwide standards were "essential" in order to avoid "destructive interstate competition" that might undermine environmental standards). Identifying the Corps' jurisdiction by reference to waters that serve as habitat for birds that migrate over state lines also satisfies this Court's expressed desire for some "jurisdictional element" that limits federal activity to its proper scope. *Morrison*, 529 U. S., at 612.

The power to regulate commerce among the several States necessarily and properly includes the power to preserve the natural resources that generate such commerce. Cf. *Sporhase* v. *Nebraska ex rel. Douglas*, 458 U. S. 941, 953 (1982) (holding water to be an "article of commerce"). Migratory birds, and the waters on which they rely, are such resources. Moreover, the protection of migratory birds is a well-established federal responsibility. As Justice Holmes noted in *Missouri* v. *Holland*, the federal interest in protecting these birds is of "the first magnitude." 252 U. S., at 435. Because of their transitory nature, they "can be protected only by national action." *Ibid.*

Whether it is necessary or appropriate to refuse to allow petitioner to fill those ponds is a question on which we have no voice. Whether the Federal Government has the power to require such permission, however, is a question that is easily answered. If, as it does, the Commerce Clause empowers Congress to regulate particular "activities causing air or water pollution, or other environmental hazards that may have effects in more than one State," *Hodel*, 452 U. S., at 282, it also empowers Congress to control individual actions that, in the aggregate, would have the same effect.

Perez, 402 U. S., at 154; *Wickard*, 317 U. S., at 127–128.[18] There is no merit in petitioner's constitutional argument.

Because I would affirm the judgment of the Court of Appeals, I respectfully dissent.

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[18] JUSTICE THOMAS is the only Member of the Court who has expressed disagreement with the "aggregation principle." *United States* v. *Lopez*, 514 U. S. 549, 600 (1995) (concurring opinion).

Syllabus

GLOVER *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 99–8576. Argued November 27, 2000—Decided January 9, 2001

The probation office recommended that petitioner Glover's federal labor racketeering, money laundering, and tax evasion convictions be grouped under United States Sentencing Guidelines § 3D1.2, which allows the grouping of counts involving substantially the same harm. The Government objected to grouping the money laundering counts with the others, and the trial court agreed. Glover's offense level was thus increased by two levels, resulting in an increased sentence of between 6 and 21 months. His counsel did not press the grouping issue in the trial court or raise it on appeal to the Seventh Circuit, which affirmed his conviction and sentence. Glover then filed a *pro se* motion to correct his sentence, arguing that his counsel's failure to pursue the issue was ineffective assistance, without which his offense level would have been lower. The District Court denied the motion, determining that under Circuit precedent a 6- to 21-month sentencing increase was not significant enough to amount to prejudice for purposes of *Strickland* v. *Washington*, 466 U. S. 668. As a result, the court did not decide whether Glover's counsel fell below a reasonable standard of competence, and denied his ineffective-assistance claim. The Seventh Circuit affirmed, relying on the Government's theory that even were the performance of Glover's counsel ineffective, the resulting increase in sentence, under Circuit precedent, would not constitute prejudice.

Held: The Seventh Circuit erred in engrafting onto the prejudice branch of the *Strickland* test the requirement that any increase in sentence must meet a standard of significance. Pp. 202–205.

(a) The Government no longer asserts that a 6- to 21-month prison term increase is not prejudice under *Strickland.* The Seventh Circuit drew the substance of its rule from *Lockhart* v. *Fretwell*, 506 U. S. 364, 369, which holds that in some circumstances a mere difference in outcome will not suffice to establish prejudice. This Court explained last Term that the *Lockhart* holding does not supplant the *Strickland* analysis. See *Williams* v. *Taylor*, 529 U. S. 362, 393. The Seventh Circuit was incorrect to rely on *Lockhart* to deny relief to persons who might show deficient performance in their counsel's failure to object to an error of law affecting the sentencing calculation because the sentence increase does not meet some baseline prejudice standard. This Court's jurispru-

dence suggests that any amount of actual jail time has Sixth Amendment significance. *E. g., Argersinger* v. *Hamlin*, 407 U. S. 25. Moreover, decisions on the right to jury trial in a criminal case, see *id.*, at 29, do not control the question whether a showing of prejudice, in the context of an ineffective-assistance claim, requires a significant prison term increase. The Seventh Circuit's rule is not well considered in any event, because there is no obvious dividing line by which to measure how much longer a sentence must be for the increase to constitute substantial prejudice. Although the amount by which a defendant's sentence is increased by a particular decision may be a factor in determining whether counsel's performance in failing to argue the point constitutes ineffective assistance, under a determinate system of constrained discretion such as the Sentencing Guidelines it cannot serve as a bar to a showing of prejudice. Here the Court considers the sentencing calculation itself, which resulted from a ruling that had it been error, would have been correctable on appeal. The question of deficient performance is not before the Court, but it is clear that prejudice flowed from the asserted error in sentencing. Pp. 202–204.

(b) The Government's various arguments for affirming the Seventh Circuit's judgment were neither raised nor resolved below, and are outside the questions presented by the petition for certiorari. Whether these issues remain open, and if so whether they have merit, are questions for the lower courts to determine in the first instance. P. 205.

182 F. 3d 921, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.

Michael L. Waldman argued the cause and filed briefs for petitioner.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *Matthew D. Roberts*, and *Joel M. Gershowitz*.*

JUSTICE KENNEDY delivered the opinion of the Court.

The issue presented rests upon the initial assumption, which we accept for analytic purposes, that the trial court

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**David M. Zlotnick*, *Peter Goldberger*, and *Kyle O'Dowd* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

erred in a Sentencing Guidelines determination after petitioner's conviction of a federal offense. The legal error, petitioner alleges, increased his prison sentence by at least 6 months and perhaps by 21 months. We must decide whether this would be "prejudice" under *Strickland* v. *Washington*, 466 U. S. 668 (1984). The Government is not ready to concede error in the sentencing determination but now acknowledges that if an increased prison term did flow from an error the petitioner has established *Strickland* prejudice. In agreement with the Government and petitioner on this point, we reverse and remand for further proceedings.

I

In the 1980's and early 1990's, petitioner Paul Glover was the Vice President and General Counsel of the Chicago Truck Drivers, Helpers, and Warehouse Workers Union (Independent). The evidence showed Glover used his control over the union's investments to enrich himself and his co-conspirators through kickbacks. When the malfeasance was discovered, he was tried in the United States District Court for the Northern District of Illinois. His first trial ended when the jury could not agree, but a second jury convicted him. The presentence investigation report prepared by the probation office recommended that the convictions for labor racketeering, money laundering, and tax evasion be grouped together under United States Sentencing Commission, Guidelines Manual §3D1.2 (Nov. 1994), which allows the grouping of "counts involving substantially the same harm." The Government, insisting that the money laundering counts could not be grouped with the other counts, objected to that recommendation, and the District Court held a hearing on the matter. The money laundering counts, it ruled, should not be grouped with Glover's other offenses. The ruling, as the trial court viewed it, was in conformance with decisions in those Courts of Appeals which had refused to group money laundering counts with other counts for various reasons.

See, *e. g.*, *United States* v. *Lombardi*, 5 F. 3d 568 (CA1 1993); *United States* v. *Porter*, 909 F. 2d 789 (CA4 1990); *United States* v. *Taylor*, 984 F. 2d 298 (CA9 1993); *United States* v. *Johnson*, 971 F. 2d 562 (CA10 1992); *United States* v. *Harper*, 972 F. 2d 321 (CA11 1992). In the trial court, Glover's attorneys did not submit papers or offer extensive oral arguments contesting the no-grouping argument advanced by the Government. When the District Court decided not to group the money laundering counts with the other counts, Glover's offense level was increased by two levels, yielding a concomitant increase in the sentencing range. Glover was sentenced to 84 months in prison, which was in the middle of the Guidelines range of 78 to 97 months.

On appeal to the Seventh Circuit, Glover's counsel (the same attorneys who represented him in District Court) did not raise the grouping issue; instead, they concentrated on claims that certain testimony from his first trial should not have been admitted at his second trial and that he should not have been assessed a two-level increase for perjury at his first trial. A short time after argument on Glover's appeal, a different panel of the Seventh Circuit held that, under some circumstances, grouping of money laundering offenses with other counts was proper under § 3D1.2. *United States* v. *Wilson*, 98 F. 3d 281 (1996). A month and a half later, the Seventh Circuit rejected both of Glover's arguments and affirmed his conviction and sentence. 101 F. 3d 1183 (1996).

Glover filed a *pro se* motion to correct his sentence under 28 U. S. C. § 2255 (1994 ed., Supp. III). The failure of his counsel to press the grouping issue, he argued, was ineffective assistance, a position confirmed, in his view, by the Court of Appeals' decision in *Wilson*. The performance of counsel, he contended, fell below a reasonable standard both at sentencing, when his attorneys did not with any clarity or force contest the Government's argument, and on appeal, when they did not present the issue in their briefs or call the *Wilson* decision to the panel's attention following the oral

argument. He further argued that absent the ineffective assistance, his offense level would have been two levels lower, yielding a Guidelines sentencing range of 63 to 78 months. Under this theory, the 84-month sentence he received was an unlawful increase of anywhere between 6 and 21 months.

The District Court denied Glover's motion, determining that under Seventh Circuit precedent an increase of 6 to 21 months in a defendant's sentence was not significant enough to amount to prejudice for purposes of *Strickland* v. *Washington*, *supra*. As a result, the District Court did not decide the issue whether the performance of Glover's counsel fell below a reasonable standard of competence. On appeal to the Seventh Circuit, the Government argued only that Glover had not suffered prejudice within the meaning of *Strickland*. See App. to Reply Brief for Petitioner 1a–22a. Citing *Durrive* v. *United States*, 4 F. 3d 548 (CA7 1993), the Government contended that even were the performance of Glover's counsel ineffective, the resulting additional 6 to 21 months, under the law as established in the Seventh Circuit, would not constitute prejudice. App. to Reply Brief for Petitioner 21a. The Court of Appeals affirmed, relying on that theory. 182 F. 3d 921 (1999) (table). We granted Glover's petition for certiorari. 530 U. S. 1261 (2000).

II

The Government no longer puts forth the proposition that a 6- to 21-month prison term increase is not prejudice under *Strickland*. It now acknowledges that such a rule, without more, would be "inconsistent with this Court's cases and unworkable." Brief for United States 18.

It appears the Seventh Circuit drew the substance of its no-prejudice rule from our opinion in *Lockhart* v. *Fretwell*, 506 U. S. 364 (1993). *Lockhart* holds that in some circumstances a mere difference in outcome will not suffice to establish prejudice. *Id.*, at 369. The Seventh Circuit extracted from this holding the rule at issue here, which denies relief

when the increase in sentence is said to be not so significant as to render the outcome of sentencing unreliable or fundamentally unfair. See *Durrive*, *supra*, at 550–551. The Court explained last Term that our holding in *Lockhart* does not supplant the *Strickland* analysis. See *Williams* v. *Taylor*, 529 U. S. 362, 393 (2000) ("Cases such as *Nix* v. *Whiteside*, 475 U. S. 157 (1986), and *Lockhart* v. *Fretwell*, 506 U. S. 364 (1993), do not justify a departure from a straightforward application of *Strickland* when the ineffectiveness of counsel *does* deprive the defendant of a substantive or procedural right to which the law entitles him"); *id.*, at 414 (opinion of O'Connor, J.) ("As I explained in my concurring opinion in *[Lockhart]*, 'in the vast majority of cases . . . [t]he determinative question—whether there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"—remains unchanged' "). The Seventh Circuit was incorrect to rely on *Lockhart* to deny relief to persons attacking their sentence who might show deficient performance in counsel's failure to object to an error of law affecting the calculation of a sentence because the sentence increase does not meet some baseline standard of prejudice. Authority does not suggest that a minimal amount of additional time in prison cannot constitute prejudice. Quite to the contrary, our jurisprudence suggests that any amount of actual jail time has Sixth Amendment significance. Compare *Argersinger* v. *Hamlin*, 407 U. S. 25 (1972) (holding that the assistance of counsel must be provided when a defendant is tried for a crime that results in a sentence of imprisonment), with *Scott* v. *Illinois*, 440 U. S. 367 (1979) (holding that a criminal defendant has no Sixth Amendment right to counsel when his trial does not result in a sentence of imprisonment). Our decisions on the right to jury trial in a criminal case do not suggest that there is no prejudice in the circumstances here. Those cases have limited the right to jury trial to offenses where the potential punishment was imprisonment for six months or more. See

Argersinger, supra, at 29 (citing *Duncan* v. *Louisiana,* 391 U. S. 145 (1968)). But they do not control the question whether a showing of prejudice, in the context of a claim for ineffective assistance of counsel, requires a significant increase in a term of imprisonment.

The Seventh Circuit's rule is not well considered in any event, because there is no obvious dividing line by which to measure how much longer a sentence must be for the increase to constitute substantial prejudice. Indeed, it is not even clear if the relevant increase is to be measured in absolute terms or by some fraction of the total authorized sentence. See *Martin* v. *United States,* 109 F. 3d 1177, 1183 (CA7 1996) (Rovner, J., dissenting from denial of rehearing en banc). Although the amount by which a defendant's sentence is increased by a particular decision may be a factor to consider in determining whether counsel's performance in failing to argue the point constitutes ineffective assistance, under a determinate system of constrained discretion such as the Sentencing Guidelines it cannot serve as a bar to a showing of prejudice. Compare *Spriggs* v. *Collins,* 993 F. 2d 85, 88 (CA5 1993) (requiring a showing that a sentence would have been "*significantly* less harsh" under the Texas discretionary sentencing scheme), with *United States* v. *Phillips,* 210 F. 3d 345 (CA5 2000) (finding prejudice under the Sentencing Guidelines when an error by counsel led to an increased sentence). We hold that the Seventh Circuit erred in engrafting this additional requirement onto the prejudice branch of the *Strickland* test. This is not a case where trial strategies, in retrospect, might be criticized for leading to a harsher sentence. Here we consider the sentencing calculation itself, a calculation resulting from a ruling which, if it had been error, would have been correctable on appeal. We express no opinion on the ultimate merits of Glover's claim because the question of deficient performance is not before us, but it is clear that prejudice flowed from the asserted error in sentencing.

III

The Government makes various arguments for alternative grounds to affirm the Court of Appeals. Among other contentions, the Government suggests that the failure of Glover's counsel to argue for grouping of the money laundering counts was not deficient; that Glover's grouping claim has no legal merit in any event; and that even if Glover had prevailed on his grouping claim, his sentence in fact would have increased as a result. Glover disputes these contentions. We need not describe the arguments in great detail, because despite the fact the parties have joined issue at least in part on these points, they were neither raised in nor passed upon by the Court of Appeals. In the ordinary course we do not decide questions neither raised nor resolved below. See *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 646 (1992). As a general rule, furthermore, we do not decide issues outside the questions presented by the petition for certiorari. This Court's Rule 14.1(a). Whether these issues remain open, and if so whether they have merit, are questions for the Court of Appeals or the District Court to consider and determine in the first instance.

The judgment of the Seventh Circuit is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

GITLITZ ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 99–1295. Argued October 2, 2000—Decided January 9, 2001

Shareholders of a corporation taxed under Subchapter S of the Internal Revenue Code may elect a "pass-through" taxation system, under which the corporation's profits pass through directly to its shareholders on a pro rata basis and are reported on the shareholders' individual tax returns. 26 U. S. C. § 1366(a)(1)(A). To prevent double taxation of distributed income, shareholders may increase their corporate bases by certain items of income. § 1367(a)(1)(A). Corporate losses and deductions are passed through in a similar manner, § 1366(a)(1)(A), and the shareholders' bases in the S corporation's stock and debt are decreased accordingly, §§ 1367(a)(2)(B), 1367(b)(2)(A). However, to the extent that such losses and deductions exceed a shareholder's basis in the S corporation's stock and debt, the excess is "suspended" until that basis becomes large enough to permit the deduction. §§ 1366(d)(1)–(2). In 1991, an insolvent S corporation in which petitioners David Gitlitz and Philip Winn were shareholders excluded its entire discharge of indebtedness amount from gross income. On their tax returns, petitioners used their pro rata share of the discharge amount to increase their bases in the corporation's stock on the theory that it was an "item of income" subject to pass-through. They used their increased bases to deduct corporate losses and deductions, including suspended ones from previous years. With the upward basis adjustments, they were each able to deduct the full amount of their pro rata share of the corporation's losses. The Commissioner determined that they could not use the corporation's discharge of indebtedness to increase their bases in the stock and denied their loss deductions. The Tax Court ultimately agreed. In affirming, the Tenth Circuit assumed that excluded discharge of indebtedness is an item of income subject to pass-through, but held that the discharge amount first had to be used to reduce certain tax attributes of the S corporation under § 108(b) and that only the leftover amount could be used to increase basis. Because the tax attribute to be reduced here (the corporation's net operating loss) equaled the discharged debt amount, that entire amount was absorbed by the reduction at the corporate level and nothing remained to be passed through to the shareholders.

Syllabus

Held:

1. The statute's plain language establishes that excluded discharged debt is an "item of income," which passes through to shareholders and increases their bases in an S corporation's stock. Section 61(a)(12) states that discharge of indebtedness is included in gross income. And § 108(a) provides only that the discharge ceases to be included in gross income when the S corporation is insolvent, not that it ceases to be an *item of income,* as the Commissioner contends. Not all items of income are included in gross income, see § 1366(a)(1), so an item's mere exclusion from gross income does not imply that the amount ceases to be an item of income. Moreover, §§ 101 through 136 employ the same construction to exclude various items from gross income, but not even the Commissioner encourages a reading that would exempt all such items from pass-through. Instead the Commissioner asserts that discharge of indebtedness is unique because it requires no economic outlay on the taxpayer's part, but can identify no statutory language that makes this distinction relevant. On the contrary, the statute makes clear that § 108(a)'s exclusion does not alter the character of discharge of indebtedness as an item of income. Specifically, § 108(e) presumes that such discharge is always "income," and that the only question for § 108 purposes is whether it is includible in gross income. The Commissioner's contentions that, notwithstanding the statute's plain language, excluded discharge of indebtedness is not income and, specifically, that it is not "tax-exempt income" under § 1366(a)(1)(A) do not alter the conclusion reached here. Pp. 212–216.

2. Pass-through is performed before the reduction of an S corporation's tax attributes under § 108(b). The sequencing question presented here is important. If attribute reduction is performed *before* the discharge of indebtedness is passed through to the shareholders, the shareholders' losses that exceed basis are treated as the corporation's net operating loss and are then reduced by the amount of the discharged debt; in this case no suspended losses would remain that would permit petitioners to take deductions. However, if it is performed *after* the discharged debt income is passed through, then the shareholders would be able to deduct their losses (up to the amount of the increase in basis caused by the discharged debt). Any suspended losses remaining then will be treated as the S corporation's net operating loss and reduced by the discharged debt amount. Section 108(b)(4)(A) expressly addresses the sequencing question, directing that the attribute reductions "shall be made *after* the determination of the *tax imposed* . . . for the taxable year of the discharge." (Emphases added.) In order to determine the "tax imposed," a shareholder must adjust his basis in S corporation stock and pass through all items of income and loss. Consequently the

attribute reduction must be made *after* the basis adjustment and pass-through. Petitioners must pass through the discharged debt, increase corporate bases, and then deduct their losses, all before any attribute reduction could occur. Because their basis increase is equal to their losses, they have no suspended losses remaining and thus have no net operating losses to reduce. The primary arguments made in Courts of Appeals against this reading of the sequencing provision are rejected. Pp. 216–220.

182 F. 3d 1143, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. BREYER, J., filed a dissenting opinion, *post,* p. 220.

Darrell D. Hallett argued the cause for petitioners. With him on the briefs were *John M. Colvin* and *Robert J. Chicoine.*

Kent L. Jones argued the cause for respondent. With him on the brief were *Solicitor General Waxman, Acting Assistant Attorney General Junghans, Deputy Solicitor General Wallace, Teresa E. McLaughlin,* and *Edward T. Perelmuter.**

JUSTICE THOMAS delivered the opinion of the Court.

The Commissioner of Internal Revenue assessed tax deficiencies against petitioners David and Louise Gitlitz and Philip and Eleanor Winn because they used nontaxed discharge of indebtedness to increase their bases in S corporation stock and to deduct suspended losses. In this case we must answer two questions. First, we must decide whether the Internal Revenue Code (Code) permits taxpayers to increase bases in their S corporation stock by the amount of an S corporation's discharge of indebtedness excluded from gross income. And, second, if the Code permits such an in-

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**Richard M. Lipton* and *Theodore R. Bots* filed a brief for the Real Estate Roundtable as *amicus curiae* urging reversal.

crease, we must decide whether the increase occurs before or after taxpayers are required to reduce the S corporation's tax attributes.

I

David Gitlitz and Philip Winn[1] were shareholders of P. D. W. & A., Inc., a corporation that had elected to be taxed under Subchapter S of the Code, 26 U. S. C. §§ 1361–1379 (1994 ed. and Supp. III). Subchapter S allows shareholders of qualified corporations to elect a "pass-through" taxation system under which income is subjected to only one level of taxation. See *Bufferd* v. *Commissioner*, 506 U. S. 523, 525 (1993). The corporation's profits pass through directly to its shareholders on a pro rata basis and are reported on the shareholders' individual tax returns. See § 1366(a)(1)(A).[2] To prevent double taxation of income upon distribution from the corporation to the shareholders, § 1367(a)(1)(A) permits shareholders to increase their corporate bases by items of income identified in § 1366(a) (1994 ed. and Supp. III). Corporate losses and deductions are passed through in a similar manner, see § 1366(a)(1)(A), and the shareholders' bases in the S corporation's stock and debt are decreased accordingly, see §§ 1367(a)(2)(B), 1367(b)(2)(A). However, a shareholder cannot take corporate losses and deductions into account on his personal tax return to the extent that such items exceed his basis in the stock and debt of the S corporation. See

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[1] Each man filed a joint tax return with his wife.

[2] Section 1366(a)(1) provides:

"In determining the tax under this chapter of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends . . . , there shall be taken into account the shareholder's pro rata share of the corporation's—

"(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder . . . ."

§ 1366(d)(1) (Supp. III). If those items exceed the basis, the excess is "suspended" until the shareholder's basis becomes large enough to permit the deduction. See §§ 1366(d)(1), (2) (1994 ed. and Supp. III).

In 1991, P. D. W. & A. realized $2,021,296 of discharged indebtedness. At the time, the corporation was insolvent in the amount of $2,181,748. Because it was insolvent even after the discharge of indebtedness was added to its balance sheet, P. D. W. & A. excluded the entire discharge of indebtedness amount from gross income under 26 U. S. C. §§ 108(a) and 108(d)(7)(A). On their tax returns, Gitlitz and Winn increased their bases in P. D. W. & A. stock by their pro rata share (50 percent each) of the amount of the corporation's discharge of indebtedness. Petitioners' theory was that the discharge of indebtedness was an "item of income" subject to pass-through under § 1366(a)(1)(A). They used their increased bases to deduct on their personal tax returns corporate losses and deductions, including losses and deductions from previous years that had been suspended under § 1366(d). Gitlitz and Winn each had losses (including suspended losses and operating losses) that totaled $1,010,648. With the upward basis adjustments of $1,010,648 each, Gitlitz and Winn were each able to deduct the full amount of their pro rata share of P. D. W. & A.'s losses.

The Commissioner determined that petitioners could not use P. D. W. & A.'s discharge of indebtedness to increase their bases in the stock and denied petitioners' loss deductions. Petitioners petitioned the Tax Court to review the deficiency determinations. The Tax Court, in its initial opinion, granted relief to petitioners and held that the discharge of indebtedness was an "item of income" and therefore could support a basis increase. See *Winn* v. *Commissioner*, 73 TCM 3167 (1997), ¶ 97,286 RIA Memo withdrawn and reissued, 75 TCM 1840 (1998), ¶ 98,071 RIA Memo TC. In light of the Tax Court's decision in *Nelson* v. *Commis-*

sioner, 110 T. C. 114 (1998), aff'd, 182 F. 3d 1152 (CA10 1999),[3] however, the Tax Court granted the Commissioner's motion for reconsideration and held that shareholders may not use an S corporation's untaxed discharge of indebtedness to increase their bases in corporate stock. See *Winn* v. *Commissioner*, 75 TCM 1840 (1998), ¶ 98,071 RIA Memo TC.

The Court of Appeals affirmed. See 182 F. 3d 1143 (CA10 1999). It assumed that excluded discharge of indebtedness is an item of income subject to pass-through to shareholders pursuant to § 1366(a)(1)(A), *id.*, at 1148, 1151, n. 7, but held that the discharge of indebtedness amount first had to be used to reduce certain tax attributes of the S corporation under § 108(b), and that only the leftover amount could be used to increase basis.[4] The Court of Appeals explained that, because the tax attribute to be reduced (in this case the corporation's net operating loss) was equal to the amount of discharged debt, the entire amount of discharged debt was absorbed by the reduction at the corporate level, and nothing remained of the discharge of indebtedness to be passed through to the shareholders under § 1366(a)(1)(A). *Id.*, at 1151. Because Courts of Appeals have disagreed on how to treat discharge of indebtedness of an insolvent S corporation, compare *Gaudiano* v. *Commissioner*, 216 F. 3d 524, 535 (CA6 2000) (holding that tax attributes are reduced before excluded discharged debt income is passed through to shareholders), cert. pending, No. 00–459; *Witzel* v. *Commissioner*, 200 F. 3d 496, 498 (CA7 2000) (same), cert. pending,

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[3] In *Nelson*, the Tax Court held that excluded discharge of indebtedness does not pass through to an S corporation's shareholders because § 108 is an exception to normal S corporation pass-through rules. Specifically, the court held that, because § 108(d)(7)(A) requires that "subsections (a) [and (b) of § 108] shall be applied at the corporate level" in the case of an S corporation, it precludes any pass-through of the discharge of indebtedness to the *shareholder* level. See *Nelson*, 110 T. C., at 121–124.

[4] Section 108(b)(1) reads: "The amount excluded from gross income under [§ 108(a)(1)] shall be applied to reduce the tax attributes of the taxpayer . . . ."

No. 99–1693; and 182 F. 3d, at 1150 (case below), with *United States* v. *Farley*, 202 F. 3d 198, 206 (CA3 2000) (holding that excluded discharged debt income is passed through to shareholders before tax attributes are reduced), cert. pending, No. 99–1675 [REPORTER'S NOTE: See *post*, p. 1111]; see also *Pugh* v. *Commissioner*, 213 F. 3d 1324, 1330 (CA11 2000) (holding that excluded discharged debt income is subject to pass-through and can increase basis), cert. pending, No. 00–242, we granted certiorari. 529 U. S. 1097 (2000).

II

Before we can reach the issue addressed by the Court of Appeals—whether the increase in the taxpayers' corporate bases occurs before or after the taxpayers are required to reduce the S corporation's tax attributes—we must address the argument raised by the Commissioner.[5] The Commissioner argues that the discharge of indebtedness of an insolvent S corporation is not an "item of income" and thus never passes through to shareholders. Under a plain reading of the statute, we reject this argument and conclude that excluded discharged debt is indeed an "item of income," which passes through to the shareholders and increases their bases in the stock of the S corporation.

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[5] The Commissioner has altered his arguments throughout the course of this litigation. According to the Tax Court, during the first iteration of this case the Commissioner made several arguments but then settled on a "final" one—that the discharge of indebtedness of the insolvent S corporation was not an "item of income," see 73 TCM 3167 (1997), ¶ 97,286 RIA Memo TC. In the Court of Appeals, the Commissioner argued instead that, because any pass-through of excluded discharge of indebtedness to petitioners took place after any reduction of tax attributes and by then the income would have been fully absorbed by the tax attributes, no discharged debt remained to flow through to petitioners. The Commissioner relegated to a footnote his argument that discharge of indebtedness is not an "item of income." See Brief for Appellee in Nos. 98–9009 and 98–9010 (CA10), p. 33, n. 14.

Section 61(a)(12) states that discharge of indebtedness generally is included in gross income. Section 108(a)(1) provides an express exception to this general rule:

> "Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge . . . of indebtedness of the taxpayer if—
>
> . . . . . .
>
> "(B) the discharge occurs when the taxpayer is insolvent."

The Commissioner contends that this exclusion from gross income alters the character of the discharge of indebtedness so that it is no longer an "item of income." However, the text and structure of the statute do not support the Commissioner's theory. Section 108(a) simply does not say that discharge of indebtedness ceases to be an *item of income* when the S corporation is insolvent. Instead it provides only that discharge of indebtedness ceases to be *included in gross income*. Not all items of income are included in gross income, see § 1366(a)(1) (providing that "items of income," including "tax-exempt" income, are passed through to shareholders), so mere exclusion of an amount from gross income does not imply that the amount ceases to be an item of income. Moreover, §§ 101 through 136 employ the same construction to exclude various items from gross income: "Gross income does not include . . . ." The consequence of reading this language in the manner suggested by the Commissioner would be to exempt all items in these sections from pass-through under § 1366. However, not even the Commissioner encourages us to reach this sweeping conclusion. Instead the Commissioner asserts that discharge of indebtedness is unique among the types of items excluded from gross income because no economic outlay is required of the taxpayer re-

ceiving discharge of indebtedness. But the Commissioner is unable to identify language in the statute that makes this distinction relevant, and we certainly find none.

On the contrary, the statute makes clear that § 108(a)'s exclusion does not alter the character of discharge of indebtedness as an item of income. Specifically, § 108(e)(1) reads:

> "Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness."

This provision presumes that discharge of indebtedness is always "income," and that the only question for purposes of § 108 is whether it is includible in gross income. If discharge of indebtedness of insolvent entities were not actually "income," there would be no need to provide an exception to its inclusion in gross income; quite simply, if discharge of indebtedness of an insolvent entity were not "income," it would necessarily not be included in gross income.

Notwithstanding the plain language of the statute, the Commissioner argues, generally, that excluded discharge of indebtedness is not income and, specifically, that it is not "tax-exempt income" under § 1366(a)(1)(A).[6] First, the

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[6] The Commissioner also contends, as does the dissent, that because § 108(d)(7)(A) mandates that the discharged debt amount be determined and applied to reduce tax attributes "at the corporate level," rather than at the shareholder level, the discharged debt, even if it is some type of income, simply cannot pass through to shareholders. In other words, the Commissioner contends that § 108(d)(7)(A) excepts excluded discharged debt from the general pass-through provisions for S corporations. However, § 108(d)(7)(A) merely directs that the exclusion from gross income and the tax attribute reduction be made at the corporate level. Section 108(d)(7)(A) does not state or imply that the debt discharge provisions shall apply *only* "at the corporate level." The very purpose of Subchapter S is to tax at the shareholder level, not the corporate level. Income is determined at the S corporation level, see § 1363(b), not in order to tax

Commissioner argues that § 108 merely codified the "judicial insolvency exception," and that, under this exception, discharge of indebtedness of an insolvent taxpayer was not considered income. The insolvency exception was a rule that the discharge of indebtedness of an insolvent taxpayer was not taxable income. See, *e. g.*, *Dallas Transfer & Terminal Warehouse Co.* v. *Commissioner*, 70 F. 2d 95 (CA5 1934); *Astoria Marine Construction Co.* v. *Commissioner*, 12 T. C. 798 (1949). But the exception has since been limited by § 108(e). Section 108(e) precludes us from relying on any understanding of the judicial insolvency exception that was not codified in § 108. And as explained above, the language and logic of § 108 clearly establish that, although discharge of indebtedness of an insolvent taxpayer is not included in gross income, it is nevertheless income.

The Commissioner also relies on a Treasury Regulation to support his theory that no income is realized from the discharge of the debt of an insolvent:

> "*Proceedings under Bankruptcy Act.*
>
> "(1) Income is not realized by a taxpayer by virtue of the discharge, under section 14 of the Bankruptcy Act (11 U. S. C. 32), of his indebtedness as the result of an adjudication in bankruptcy, or by virtue of an agreement among his creditors not consummated under any provision of the Bankruptcy Act, if immediately thereafter the taxpayer's liabilities exceed the value of his assets." 26 CFR § 1.61–12(b) (2000).

Even if this regulation could be read (countertextually) to apply outside the bankruptcy context, it merely states that

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the corporation, see § 1363(a) (exempting an S corporation from income tax), but solely to pass through to the S corporation's shareholders the corporation's income. Thus, the controlling provision states that, in determining a shareholder's liability, "there shall be taken into account the shareholder's pro rata share of the corporation's . . . items of income (including tax-exempt income) . . . ." § 1366(a)(1). Nothing in § 108(d)(7)(A) suspends the operation of these ordinary pass-through rules.

"[i]ncome is not *realized*." The regulation says nothing about whether discharge of indebtedness is income subject to pass-through under § 1366.

Second, the Commissioner argues that excluded discharge of indebtedness is not "tax-exempt" income under § 1366(a)(1)(A), but rather "tax-deferred" income. According to the Commissioner, because the taxpayer is required to reduce tax attributes that could have provided future tax benefits, the taxpayer will pay taxes on future income that otherwise would have been absorbed by the forfeited tax attributes. Implicit in the Commissioner's labeling of such income as "tax-deferred," however, is the erroneous assumption that § 1366(a)(1)(A) does not include "tax-deferred" income. Section 1366 applies to "items of income." This section expressly includes "tax-exempt" income, but this inclusion does not mean that the statute must therefore exclude "tax-deferred" income. The section is worded broadly enough to include any item of income, even tax-deferred income, that "could affect the liability for tax of any shareholder." § 1366(a)(1)(A). Thus, none of the Commissioner's contentions alters our conclusion that discharge of indebtedness of an insolvent S corporation is an item of income for purposes of § 1366(a)(1)(A).

III

Having concluded that excluded discharge of indebtedness is an "item of income" and is therefore subject to pass-through to shareholders under § 1366, we must resolve the sequencing question addressed by the Court of Appeals—whether pass-through is performed before or after the reduction of the S corporation's tax attributes under § 108(b). Section 108(b)(1) provides that "[t]he amount excluded from gross income under [§ 108(a)] shall be applied to reduce the tax attributes of the taxpayer as provided [in this section]." Section 108(b)(2) then lists the various tax attributes to be reduced in the order of reduction. The first tax attribute to

be reduced, and the one at issue in this case, is the net operating loss. See § 108(b)(2)(A). Section 108(d)(7)(B) specifies that, for purposes of attribute reduction, the shareholders' suspended losses for the taxable year of discharge are to be treated as the S corporation's net operating loss. If tax attribute reduction is performed *before* the discharge of indebtedness is passed through to the shareholders (as the Court of Appeals held), the shareholders' losses that exceed basis are treated as the corporation's net operating loss and are then reduced by the amount of the discharged debt. In this case, no suspended losses would remain that would permit petitioners to take deductions.[7] If, however, attribute reduction is performed *after* the discharged debt income is passed through (as petitioners argue), then the shareholders would be able to deduct their losses (up to the amount of the increase in basis caused by the discharged debt). Any suspended losses remaining then will be treated as the S corporation's net operating loss and will be reduced by the amount of the discharged debt. Therefore, the sequence of the steps of pass-through and attribute reduction determines whether petitioners here were deficient when they increased their bases by the discharged debt amount and deducted their losses.

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[7] Under this scenario, the shareholders' losses would be reduced by the discharge of indebtedness. However, it is unclear precisely what would happen to the discharge of indebtedness. The Court of Appeals below stated that the discharged debt would be "absorbed" by the reduction to the extent of the net operating loss and that therefore only the excess excluded discharged debt would remain to pass through to the shareholders. 182 F. 3d 1143, 1149 (CA10 1999). In contrast, another Court of Appeals suggested, albeit in dictum, that the full amount of the discharge might still pass through to the shareholder and be used to increase basis; the discharged debt amount would reduce the net operating loss but would not be absorbed by it. *Witzel* v. *Commissioner*, 200 F. 3d 496, 498 (CA7 2000). We need not resolve this issue because we conclude that the discharge of indebtedness passes through before any attribute reduction takes place.

The sequencing question is expressly addressed in the statute. Section 108(b)(4)(A) directs that the attribute reductions "shall be made *after* the determination of the *tax imposed* by this chapter for the taxable year of the discharge." (Emphases added.) See also § 1017(a) (applying the same sequencing when § 108 attribute reduction affects basis of corporate property). In order to determine the "tax imposed," an S corporation shareholder must adjust his basis in his corporate stock and pass through all items of income and loss. See §§ 1366, 1367 (1994 ed. and Supp. III). Consequently, the attribute reduction must be made *after* the basis adjustment and pass-through. In the case of petitioners, they must pass through the discharged debt, increase corporate bases, and then deduct their losses, all before any attribute reduction could occur. Because their basis increase is equal to their losses, petitioners have no suspended losses remaining. They, therefore, have no net operating losses to reduce.

Although the Commissioner has now abandoned the reasoning of the Court of Appeals below,[8] we address the pri-

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[8] The Commissioner has abandoned his argument related to the sequencing issue before this Court. This abandonment is particularly odd given that the sequencing issue predominated in the Commissioner's argument to the Court of Appeals. Notwithstanding the Commissioner's attempt at oral argument to distance himself from the reasoning of the Court of Appeals on this issue—the Commissioner represented to us that the Court of Appeals developed its reading of the statute *sua sponte*, Tr. of Oral Arg. 22–24, 27—it is apparent from the Commissioner's brief in the Court of Appeals that the Commissioner *supplied* the very sequencing theory that the Court of Appeals adopted. Compare, *e. g.*, Brief for Appellee in Nos. 98–9009 and 98–9010 (CA10), p. 28 ("First, the discharge of indebtedness income that is excluded under Section 108(a) at the corporate level is temporarily set aside and has no tax consequences . . . . Second, PDW & A computes its tax attributes, *i. e.*, taxpayers' suspended losses. Third, the excluded discharge of indebtness income is applied against and eliminates the suspended losses. Because the excluded income is applied against—and offset by—the suspended losses, no item of income flows through to taxpayers under Section 1366(a), and no upward basis adjust-

mary arguments made in the Courts of Appeals against petitioners' reading of the sequencing provision. First, one court has expressed the concern that, if the discharge of indebtedness is passed through to the shareholder *before* the tax attributes are reduced, then there can never be any discharge of indebtedness remaining "at the corporate level," § 108(d)(7)(A), by which to reduce tax attributes.[9] *Gaudiano*, 216 F. 3d, at 533. This concern presumes that tax attributes can be reduced only if the discharge of indebtedness itself remains at the corporate level. The statute, however, does not impose this restriction. Section 108(b)(1) requires only that the tax attributes be reduced by "[t]he *amount* excluded from gross income" (emphasis added), and that amount is not altered by the mere pass-through of the income to the shareholder.

Second, courts have discussed the policy concern that, if shareholders were permitted to pass through the discharge of indebtedness before reducing any tax attributes, the shareholders would wrongly experience a "double windfall":

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ment is made under Section 1367(a)" (citations omitted)), with, *e. g.*, 182 F. 3d, at 1151 ("PDW & A first must compute its discharge of indebtedness income and set this figure aside temporarily. The corporation then must calculate its net operating loss tax attribute . . . . Finally, the corporation must apply the excluded discharged debt to reduce its tax attributes. In this case, the net operating loss tax attribute fully absorbs the corporation's excluded discharge of indebtedness income. Thus, there are no items of income to pass through to Gitlitz and Winn").

[9] Similar to this argument is the contention that, in cases such as this one in which the shareholders' suspended losses are fully deducted before attribute reduction could take place, no net operating loss remains and no attribute reduction can occur, thus rendering § 108(b) inoperative. However, there will be other cases in which § 108(b) will be inoperative. In particular, if a taxpayer has no tax attributes at all, there will be no reduction. Certainly the statute does not condition the exclusion under § 108(a) on the ability of the taxpayer to reduce attributes under § 108(b). Likewise, in the case of shareholders similarly situated to petitioners in this case, there is also the possibility that other attributes, see §§ 108(b)(2)(B)–(G), could be reduced.

They would be exempted from paying taxes on the full amount of the discharge of indebtedness, *and* they would be able to increase basis and deduct their previously suspended losses. See, *e. g.*, 182 F. 3d, at 1147–1148. Because the Code's plain text permits the taxpayers here to receive these benefits, we need not address this policy concern.[10]

* * *

The judgment of the Court of Appeals, accordingly, is reversed.

It is so ordered.

JUSTICE BREYER, dissenting.

I agree with the majority's reasoning with the exception of footnotes 6 and 10. The basic statutory provision before us is 26 U. S. C. § 108—the provision that excludes from the "gross income" of any "insolvent" taxpayer, income that cancellation of a debt (COD) would otherwise generate. As the majority acknowledges, however, *ante*, at 214–215, n. 6, § 108 contains a subsection that sets forth a special exception. The exception, entitled "Special rules for S corporation," says:

[10] The benefit at issue in this case arises in part because § 108(d)(7)(A) permits the exclusion of discharge of indebtedness income from gross income for an insolvent S corporation even when the S corporation shareholder is personally solvent. We are aware of no other instance in which § 108 directly benefits a solvent entity. However, the result is required by statute. Between 1982 and 1984, § 108 provided that the exclusion from gross income and the reduction in tax attributes occurred at the shareholder level. See Subchapter S Revision Act of 1982, Pub. L. 97–354, § 3(e), 96 Stat. 1689. This provision, which paralleled the current taxation of partnerships at the partner level, see 26 U. S. C. § 108(d)(6), prevented solvent shareholders from benefiting as a result of their S corporation's insolvency. In 1984, however, Congress amended the Code to provide that § 108 be applied "at the corporate level." Tax Reform Act of 1984, Pub. L. 98–369, § 721(b), 98 Stat. 966. It is as a direct result of this amendment that the solvent petitioners in this case are able to benefit from § 108's exclusion.

"(A) Certain provisions to be applied at corporate level.

"In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level." 26 U. S. C. § 108(d)(7)(A).

If one reads this language literally as exclusive, both the COD exclusion (§ 108(a)) and the tax attribute reduction (§ 108(b)) would apply only "at the corporate level." Hence the COD income would not flow through to S corporation shareholders. Consequently, the insolvent S corporation's COD income would not increase the shareholder's basis and would not help the shareholder take otherwise unavailable deductions for suspended losses.

The Commissioner argues that we should read the language in this way as preventing the flow-through of the corporation's COD income. Brief for Respondent 27. He points to the language of a House Committee, which apparently thought, when Congress passed an amendment to § 108, that the Commissioner's reading is correct. H. R. Rep. No. 103–111, pp. 624–625 (1993) ("[T]he exclusion and basis reduction are both made at the S corporation level (sec. 108(d)(7)). The shareholders' basis in their stock is not adjusted by the amount of debt discharge income that is excluded at the corporate level"). At least one commentator believes the same. See Loebl, Does the Excluded COD Income of an Insolvent S Corporation Increase the Basis of the Shareholders' Stock?, 52 U. Fla. L. Rev. 957, 981–988 (2000). But see Lockhart & Duffy, Tax Court Rules in *Nelson* That S Corporation Excluded COD Income Does Not Increase Shareholder Stock Basis, 25 Wm. Mitchell L. Rev. 287 (1999).

The Commissioner finds support for his literal, exclusive reading of § 108(d)(7)(A)'s language in the fact that his reading would close a significant tax loophole. That loophole—preserved by the majority—would grant a *solvent* shareholder of an insolvent S corporation a tax benefit in the form of permission to take an otherwise unavailable deduction,

thereby sheltering other, unrelated income from tax. See *Witzel* v. *Commissioner*, 200 F. 3d 496, 497 (CA7 2000) (Posner, C. J.) ("It is hard to understand the rationale for using a tax exemption to avoid taxation not only on the income covered by the exemption but also on unrelated income that is not tax exempt"). Moreover, the benefit often would increase in value as the amount of COD income increases, a result inconsistent with congressional intent to impose a "price" (attribute reduction), see Lipton, Different Courts Adopt Different Approaches to the Impact of COD Income on S Corporations, 92 J. Tax. 207 (2000), on excluded COD. Further, this deduction-related tax benefit would have very different tax consequences for identically situated taxpayers, depending only upon whether a single debt can be split into segments, each of which is canceled in a different year. For example, under the majority's interpretation, a $1 million debt canceled in one year would permit Taxpayer A to deduct $1 million of suspended losses in that year, thereby permitting A to shelter $1 million of unrelated income in that year. But because § 108 reduces tax attributes after the first year, five annual cancellations of $200,000 will not create a $1 million shelter. Timing is all important.

The majority acknowledges some of these policy concerns and confesses ignorance of any "other instance in which § 108 directly benefits a solvent entity," but claims that its reading is mandated by the plain text of § 108(d)(7)(A) and therefore that the Court may disregard the policy consequences. *Ante*, at 220, n. 10. It is difficult, however, to see why we should interpret that language as treating different solvent shareholders differently, given that the words "at the corporate level" were added "[i]n order to treat all shareholders in the same manner." H. R. Rep. No. 98–432, pt. 2, p. 1640 (1984). And it is more difficult to see why, given the fact that the "plain language" admits either interpretation, we should ignore the policy consequences. See *Commissioner* v. *Gillette Motor Transport, Inc.*, 364 U. S. 130, 134–135

(1960) (abandoning literal meaning of 26 U. S. C. § 1221 (1958 ed.) for a reading more consistent with congressional intent). Accord, *Commissioner* v. *P. G. Lake, Inc.*, 356 U. S. 260, 264–267 (1958); *Corn Products Refining Co.* v. *Commissioner*, 350 U. S. 46, 51–52 (1955); *Hort* v. *Commissioner*, 313 U. S. 28, 30–31 (1941).

The arguments from plain text on both sides here produce ambiguity, not certainty. And other things being equal, we should read ambiguous statutes as closing, not maintaining, tax loopholes. Such is an appropriate understanding of Congress' likely intent. Here, other things are equal, for, as far as I am aware, the Commissioner's literal interpretation of § 108(d)(7)(A) as exclusive would neither cause any tax-related harm nor create any statutory anomaly. Petitioners argue that it would create a linguistic inconsistency, for they point to a Treasury Regulation that says that the Commissioner will apply hobby loss limitations under § 183 "at the corporate level in determining" allowable deductions, while, presumably, nonetheless permitting the deduction so limited to flow through to the shareholder. Treas. Reg. § 1.183–1(f), 26 CFR § 1.183–1(f) (2000). But we are concerned here with the "*application*" of an exclusion, not with "*determining*" the amount of a deduction. Regardless, the regulation's use of the words "at the corporate level," like the three other appearances of the formulation "applied" or "determined" "at the corporate level" in the Code, occur in contexts that are so very different from this one that nothing we say here need affect their interpretation. See 26 U. S. C. § 49(a)(1)(E)(ii)(I) (determining whether financing is recourse financing); 26 U. S. C. § 264(f)(5)(B) (1994 ed., Supp. III) (determining how to allocate interest expense to portions of insurance policies); 26 U. S. C. § 302(e)(1)(A) (determining whether a stock distribution shall be treated as a partial liquidation). If there are other arguments militating in favor of the majority's interpretation, I have not found them.

The majority, in footnote 6, says that the words "at the corporate level" in § 108(d)(7)(A) apply to the exclusion of COD income from corporate income and to "tax attribute reduction," but do not "suspen[d] the operation of . . . ordinary pass-through rules" because § 108(d)(7)(A) "does not state or imply that the debt discharge provisions shall apply *only* 'at the corporate level.' " It is the majority, however, that should explain why it reads the provision as nonexclusive (where, as here, its interpretation of the Code results in the "practical equivalent of [a] double deduction," *Charles Ilfeld Co.* v. *Hernandez*, 292 U. S. 62, 68 (1934)). See *United States* v. *Skelly Oil Co.*, 394 U. S. 678, 684 (1969) (requiring "clear declaration of intent by Congress" in such circumstances). I do not contend that § 108(d)(7)(A) *must* be read as having exclusive effect, only that, given the alternative, this interpretation provides the best reading of § 108 as a whole. And I can find no "clear declaration of intent by Congress" to support the majority's contrary conclusion regarding § 108(d)(7)(A)'s effect. It is that conclusion from which, for the reasons stated, I respectfully dissent.

Syllabus

FIORE *v.* WHITE, WARDEN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 98–942. Argued October 12, 1999—Question certified November 30, 1999—Decided January 9, 2001

Petitioner Fiore was convicted of violating a Pennsylvania statute prohibiting the operation of a hazardous waste facility without a permit, although the Commonwealth conceded that he in fact had a permit. The Pennsylvania Supreme Court declined review, but later reversed the conviction of his co-defendant, Scarpone, who had been convicted of the same crime at the same time. After the Pennsylvania courts denied him collateral relief, Fiore brought a federal habeas action. The District Court granted the writ, but the Third Circuit reversed, believing that the Pennsylvania Supreme Court, in Scarpone's case, had announced a new rule of law, inapplicable to Fiore's already final conviction. This Court granted certiorari to determine whether Fiore's conviction was inconsistent with the Due Process Clause, and certified to the Pennsylvania court the question whether its decision interpreting the statute not to apply to conduct like Fiore's was a new interpretation or a correct statement of the law when his conviction became final, 528 U. S. 23, 29. The latter court responded that the statute's interpretation set out in *Commonwealth* v. *Scarpone*, 535 Pa. 273, 639 A. 2d 1109, merely clarified the statute and was the law—as properly interpreted—at the time of Fiore's conviction.

Held: Fiore's conviction fails to satisfy due process. Because *Scarpone* was not new law, this case presents no retroactivity issue. Rather, the question is simply whether Pennsylvania can convict Fiore for conduct that its criminal statute, as properly interpreted, does not prohibit. The Due Process Clause forbids a State to convict a person of a crime without proving the crime's elements beyond a reasonable doubt. See *Jackson* v. *Virginia*, 443 U. S. 307, 316. Here, failure to possess a permit is a basic element of the crime of which Fiore was convicted, and the parties agree that the Commonwealth presented no evidence to prove that element.

149 F. 3d 221, reversed and remanded.

After the Pennsylvania Supreme Court's response to the certified question, supplemental briefs were filed by *James Brandon Lieber* and *Harold Gondelman*, for petitioner, and

by *D. Michael Fisher*, Attorney General of Pennsylvania, *Robert A. Graci*, Assistant Executive Deputy Attorney General, and *Andrea F. McKenna*, Senior Deputy Attorney General, for respondents.

PER CURIAM.

Petitioner, William Fiore, was convicted of violating a Pennsylvania statute prohibiting the operation of a hazardous waste facility without a permit. After Fiore's conviction became final, the Pennsylvania Supreme Court interpreted the statute for the first time, and made clear that Fiore's conduct was not within its scope. However, the Pennsylvania courts refused to grant Fiore collateral relief. We granted certiorari in part to decide when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral review.

In order to determine if that question was in fact presented, we asked the Pennsylvania Supreme Court whether its decision interpreting the statute not to apply to conduct like Fiore's was a new interpretation, or whether it was, instead, a correct statement of the law when Fiore's conviction became final. The Pennsylvania Supreme Court, responding to our certified question, has now made clear that retroactivity is not at issue. At the same time, that court's interpretation of its statute makes clear that Fiore did not violate the statute. We consequently find that his conviction is not consistent with the demands of the Federal Due Process Clause. See *Jackson* v. *Virginia*, 443 U. S. 307, 316 (1979).

I

This case, previously described in greater detail in our opinion certifying the state-law question to the Pennsylvania Supreme Court, 528 U. S. 23 (1999), arises out of William Fiore's conviction under a Pennsylvania statute that prohibits "operat[ing] a hazardous waste" facility without a "per-

mit." Pa. Stat. Ann., Tit. 35, § 6018.401(a) (Purdon 1993); see *Commonwealth* v. *Fiore*, CC No. 8508740 (Ct. Common Pleas, Allegheny Cty., Pa., Jan. 19, 1988), App. 6. The Commonwealth conceded that Fiore in fact had a permit, but argued that Fiore had deviated so dramatically from the permit's terms that he nonetheless had violated the statute. And the Commonwealth's lower courts agreed. See *id.*, at 43–44; *Commonwealth* v. *Fiore*, 391 Pa. Super. 634, 563 A. 2d 189 (1989) (affirming Fiore's conviction on the trial court's reasoning).

The Pennsylvania Supreme Court declined to review Fiore's case, *Commonwealth* v. *Fiore*, 525 Pa. 577, 575 A. 2d 109 (1990), and his conviction became final. Thereafter, the Pennsylvania Supreme Court agreed to review the conviction of Fiore's co-defendant, David Scarpone, convicted of the same crime at the same time. The Supreme Court reversed Scarpone's conviction on the ground that the statute meant what it said: The statute made it unlawful to operate a facility *without* a permit; one who deviated from his permit's terms was not a person *without* a permit; hence, a person who deviated from his permit's terms did not violate the statute. *Commonwealth* v. *Scarpone*, 535 Pa. 273, 279, 634 A. 2d 1109, 1112 (1993) (describing the Commonwealth's interpretation as "a bald fiction we cannot endorse").

Fiore, unsuccessful in his subsequent state-court attempts to have his own conviction set aside, see *Commonwealth* v. *Fiore*, 445 Pa. Super. 401, 665 A. 2d 1185 (1995), appeal denied, *Commonwealth* v. *Fiore*, 544 Pa. 623, 675 A. 2d 1243 (1996), brought a federal habeas corpus action. The District Court granted the writ, but the Court of Appeals for the Third Circuit reversed. 149 F. 3d 221 (1998). The Court of Appeals believed that the Pennsylvania Supreme Court, in Scarpone's case, had announced a new rule of law, inapplicable to Fiore's already final conviction. *Id.*, at 227. And, the Court of Appeals said, "state courts are under no [federal] constitutional obligation to apply their decisions retroac-

tively." *Id.*, at 222. We granted certiorari to determine whether Fiore's conviction was inconsistent with the Due Process Clause. 526 U. S. 1038 (1999).

II

Because we were uncertain whether the Pennsylvania Supreme Court's decision in Scarpone's case represented a change in the law of Pennsylvania, we certified the following question to that court:

> "Does the interpretation of Pa. Stat. Ann., Tit. 35, § 6018.401(a) (Purdon 1993), set forth in *Commonwealth* v. *Scarpone*, 535 Pa. 273, 279, 634 A. 2d 1109, 1112 (1993), state the correct interpretation of the law of Pennsylvania at the date Fiore's conviction became final?" 528 U. S., at 29.

We received the following reply:

> "*Scarpone* did not announce a new rule of law. Our ruling merely clarified the plain language of the statute. . . . Our interpretation of [§ 6018.401(a)] in *Scarpone* furnishes the proper statement of law at the date Fiore's conviction became final." *Fiore* v. *White*, 562 Pa. 634, 646, 757 A. 2d 842, 848–849 (2000) (citation omitted).

The Pennsylvania Supreme Court's reply specifies that the interpretation of § 6018.401(a) set out in *Scarpone* "merely clarified" the statute and was the law of Pennsylvania—as properly interpreted—at the time of Fiore's conviction. Because *Scarpone* was not new law, this case presents no issue of retroactivity. Rather, the question is simply whether Pennsylvania can, consistently with the Federal Due Process Clause, convict Fiore for conduct that its criminal statute, as properly interpreted, does not prohibit.

This Court's precedents make clear that Fiore's conviction and continued incarceration on this charge violate due process. We have held that the Due Process Clause of the Four-

teenth Amendment forbids a State to convict a person of a crime without proving the elements of that crime beyond a reasonable doubt. See *Jackson*, 443 U. S., at 316; *In re Winship*, 397 U. S. 358, 364 (1970). In this case, failure to possess a permit is a basic element of the crime of which Fiore was convicted. *Scarpone*, *supra*, at 279, 634 A. 2d, at 1112. And the parties agree that the Commonwealth presented no evidence whatsoever to prove that basic element. To the contrary, the Commonwealth, conceding that Fiore did possess a permit, see Brief for Respondents 1, necessarily concedes that it did not prove he failed to possess one.

The simple, inevitable conclusion is that Fiore's conviction fails to satisfy the Federal Constitution's demands. We therefore reverse the contrary judgment of the Third Circuit and remand this case for proceedings consistent with this opinion.

So ordered.

Syllabus

LOPEZ *v.* DAVIS, WARDEN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 99–7504. Argued October 30, 2000—Decided January 10, 2001

Under 18 U. S. C. § 3621(e)(2)(B), "[t]he period a [federal] prisoner convicted of a nonviolent offense remains in custody after successfully completing a [substance abuse] treatment program may be reduced by the Bureau of Prisons" (BOP). The BOP therefore ranked ineligible for early release all inmates incarcerated for "crime[s] of violence." Initially, the BOP defined the term "crimes of violence" to include, among other offenses, a drug trafficking conviction under 21 U. S. C. § 841, if the offender received a two-level sentence enhancement under United States Sentencing Commission, Guidelines Manual (USSG) § 2D1.1(b)(1), for possessing a dangerous weapon in connection with the drug offense. The Courts of Appeals thereafter divided over the validity of classifying drug offenses involving firearms possession as crimes of violence. The Circuit division prompted the BOP to issue the regulation now before the Court. That regulation denies early release to several categories of prisoners, including inmates whose current offense is a felony attended by "the carrying, possession, or use of a firearm." 28 CFR § 550.58(a)(1)(vi)(B). The BOP rests this denial not on a definition of "crimes of violence," but on the BOP's asserted discretion to prescribe additional early release criteria.

Petitioner Lopez was convicted of possession with intent to distribute methamphetamine in violation of 21 U. S. C. § 841. Finding that Lopez possessed a firearm in connection with his offense, the District Court enhanced his sentence by two levels pursuant to USSG § 2D1.1(b)(1). While incarcerated, Lopez requested substance abuse treatment. The BOP found him qualified for its treatment program, but categorically ineligible, under 28 CFR § 550.58(a)(1)(vi), for early release. Ordering the BOP to reconsider Lopez's eligibility for early release, the District Court held that the BOP may not categorically count out, based upon sentencing factors or weapon possession, inmates whose underlying conviction was for a nonviolent crime. The Eighth Circuit reversed. It reasoned that § 3621(e)(2)(B)'s "*may* . . . reduc[e]" formulation allows the BOP discretion to devise a regime based on criteria that can be uniformly applied. To the extent Congress left a gap in § 3621(e)(2)(B) for the BOP to fill, the Court of Appeals stated, deference is owed the BOP's interpretation under *Chevron U. S. A. Inc.* v. *Natural Resources*

Defense Council, Inc., 467 U. S. 837, 843–845, 866, so long as the interpretation is a permissible construction of the statute. The BOP's decision to deny early release to drug traffickers who carry firearms, the court concluded, represents a manifestly permissible statutory construction and an appropriate exercise of discretion.

Held: The regulation at issue is a permissible exercise of the BOP's discretion under § 3621(e)(2)(B). Pp. 238–245.

(a) Section 3621(e)(2)(B) gives the BOP discretion to grant or deny a sentence reduction, but leaves open the manner in which the discretion is to be exercised. If an inmate meets the two statutory prerequisites for sentence reduction—conviction of a nonviolent offense and successful completion of drug treatment—then § 3621(e)(2)(B) instructs that the BOP "may," not that it must, grant early release. The statute's use of the permissive "may" contrasts with Congress' use of a mandatory "shall" elsewhere in § 3621 to impose discretionless obligations, *e. g.*, the obligation to provide drug treatment when funds are available, see § 3621(e)(1). Sensibly read, § 3621(e)(2)(B)'s sentence reduction discretion parallels the grant of discretion in § 3621(e)(2)(A) to retain a prisoner who successfully completes drug treatment "under such [custodial] conditions as the [BOP] deems appropriate." The constraints Lopez urges—requiring the BOP to make individualized determinations based only on postconviction conduct—are nowhere to be found in § 3621(e)(2)(B). Beyond instructing that the BOP has discretion to reduce the period of imprisonment for a nonviolent offender who successfully completes drug treatment, Congress has not identified any further circumstance in which the BOP either must grant the reduction, or is forbidden to do so. In this familiar situation, where Congress has enacted a law that does not answer the precise question at issue, all this Court must decide is whether the BOP, the agency empowered to administer the early release program, has filled the statutory gap in a way that is reasonable in light of the Legislature's revealed design. *E. g.*, *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.*, 513 U. S. 251, 257. Pp. 238–242.

(b) The BOP may categorically exclude prisoners from early release eligibility based on their preconviction conduct. The Court rejects Lopez's argument that the BOP may take into account only postconviction conduct. The BOP need not blind itself to preconviction conduct that the agency reasonably views as jeopardizing life and limb. By denying eligibility to violent offenders, the statute manifests congressional concern for preconviction behavior—and for the very conduct leading to conviction. The BOP may reasonably attend to these factors as well. The statute's restriction of early release eligibility to nonviolent offend-

ers does not cut short the considerations that may guide the BOP in implementing § 3621(e)(2)(B). See *INS* v. *Yueh-Shaio Yang*, 519 U. S. 26, 31. The Court also rejects Lopez's argument that the BOP must not make categorical exclusions, but may rely only on case-by-case assessments. Even if a statutory scheme requires individualized determinations, which this scheme does not, the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority. *E. g., Heckler* v. *Campbell*, 461 U. S. 458, 467. The approach pressed by Lopez—case-by-case decisionmaking in thousands of cases each year—could invite favoritism, disunity, and inconsistency. Pp. 242–244.

(c) The regulation excluding Lopez is permissible. The BOP reasonably concluded that an inmate's prior involvement with firearms, in connection with the commission of a felony, suggests his readiness to resort to life-endangering violence and therefore appropriately determines the early release decision. P. 244.

186 F. 3d 1092, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY, J., joined, *post*, p. 245.

Mark V. Meierhenry argued the cause and filed briefs for petitioner.

Beth S. Brinkmann argued the cause for respondents. With her on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, and *Deputy Solicitor General Dreeben*.*

JUSTICE GINSBURG delivered the opinion of the Court.

Congress has provided, in 18 U. S. C. § 3621(e)(2)(B), that the Bureau of Prisons (Bureau or BOP) may reduce by up to one year the prison term of an inmate convicted of a nonviolent felony, if the prisoner successfully completes a substance abuse program. The Bureau's implementing regula-

**Stephen R. Sady* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

tion categorically denies early release to prisoners whose current offense is a felony attended by "the carrying, possession, or use of a firearm." 28 CFR § 550.58(a)(1)(vi)(B) (2000). The validity of the Bureau's regulation is the question presented in this case. We hold, in accord with the Court of Appeals for the Eighth Circuit, that the regulation is a permissible exercise of the Bureau's discretion under 18 U. S. C. § 3621(e)(2)(B).

I

A

Title 18 U. S. C. § 3621 governs the imprisonment of persons convicted of federal crimes. In 1990, Congress amended the statute to provide that "[t]he Bureau shall . . . make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse." Pub. L. 101–647, § 2903, 104 Stat. 4913. Four years later, Congress again amended § 3621, this time to provide incentives for prisoner participation in BOP drug treatment programs. The incentive provision at issue reads: "The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve." Pub. L. 103–322, § 32001, 108 Stat. 1897 (codified at 18 U. S. C. § 3621(e)(2)(B)).

In 1995, the Bureau published a rule to implement the early release incentive. 60 Fed. Reg. 27692–27695; 28 CFR § 550.58. Because the statute explicitly confined the incentive to prisoners convicted of "nonviolent offense[s]," 18 U. S. C. § 3621(e)(2)(B), the BOP ranked ineligible for early release all inmates currently incarcerated for "crime[s] of violence," 60 Fed. Reg. 27692. As explained in the Bureau's program statement, the BOP defined "crimes of violence" to include a drug trafficking conviction under 21 U. S. C. § 841,

if the offender received a two-level sentence enhancement under United States Sentencing Commission, Guidelines Manual (USSG) § 2D1.1(b)(1) (Nov. 2000), for possessing a dangerous weapon during commission of the drug offense. Bureau of Prisons Program Statement No. 5162.02, § 9 (July 24, 1995), reprinted in App. to Brief for Petitioner 17–18.[1] "[E]xercising [its] discretion in reducing a sentence," the Bureau also excluded from early release eligibility inmates who had a prior conviction "for homicide, forcible rape, robbery, or aggravated assault." 60 Fed. Reg. 27692 (codified at 28 CFR § 550.58 (1995)).

The Courts of Appeals divided over the validity of the Bureau's definition of crimes of violence to include drug offenses that involved possession of a firearm. A majority of Circuits, including the Eighth, held that § 3621(e)(2)(B) required the Bureau to look only to the offense of conviction (drug trafficking), and not to sentencing factors (firearm possession), in determining whether an offender was convicted of a "nonviolent offense," and was therefore eligible under the statute for the early release incentive. *Martin* v. *Gerlinski*, 133 F. 3d 1076, 1079 (CA8 1998); see also *Fristoe* v. *Thompson*, 144 F. 3d 627, 631 (CA10 1998); *Byrd* v. *Hasty*, 142 F. 3d 1395, 1398 (CA11 1998); *Roussos* v. *Menifee*, 122 F. 3d 159, 164 (CA3 1997); *Downey* v. *Crabtree*, 100 F. 3d 662, 668 (CA9 1996). The Fourth and Fifth Circuits, however, upheld the Bureau's classification of drug offenses attended by firearm possession as violent crimes. *Pelissero* v. *Thompson*, 170

[1] Title 21 U. S. C. §§ 841(a)(1) and (2) make it unlawful "to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," or "to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance." Section 2D1.1(b)(1) of the Sentencing Guidelines provides for a two-level sentence enhancement if a dangerous weapon was possessed in connection with the commission of a drug offense. See USSG § 2D1.1(b)(1) and comment., n. 3 (Nov. 2000).

F. 3d 442, 447 (CA4 1999); *Venegas* v. *Henman*, 126 F. 3d 760, 763 (CA5 1997).

This split among the Circuits prompted the Bureau in 1997 to publish the regulation now before the Court. See 62 Fed. Reg. 53690–53691. Like the 1995 rule, the current regulation excludes from early release eligibility offenders who possessed a firearm in connection with their offenses. In contrast to the earlier rule, however, the 1997 regulation does not order this exclusion by defining the statutory term "prisoner convicted of a nonviolent offense" or the cognate term "crimes of violence." Instead, the current regulation relies upon "the discretion allotted to the Director of the Bureau of Prisons in granting a sentence reduction to exclude [enumerated categories of] inmates." *Id.*, at 53690. The regulation, designed to achieve consistent administration of the incentive, now provides:

> "(a) *Additional early release criteria.* (1) As an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release:
>
> . . . . .
>
> "(iv) Inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, or aggravated assault, or child sexual abuse offenses;
>
> . . . . .
>
> "(vi) Inmates whose current offense is a felony:
>
> . . . . .
>
> "(B) That involved the carrying, possession, or use of a firearm or other dangerous weapon . . . ." 28 CFR § 550.58(a) (2000).

In sum, the 1995 rule defined the statutory term "prisoner convicted of a nonviolent offense" to exclude categorically an inmate who possessed a firearm in connection with his offense. The current regulation categorically excludes such an inmate, not because § 3621(e)(2)(B) so mandates, but pur-

suant to the Bureau's asserted discretion to prescribe additional early release criteria. Drug traffickers who possess firearms when they engage in crimes are no longer characterized as "violent" offenders within the meaning of the statute. But they are bracketed, for sentence reduction purposes, with persons currently incarcerated for "nonviolent offense[s]" who in the past committed crimes qualifying as violent. The preconviction conduct of both armed offenders and certain redicivists, in the Bureau's view, "suggest[s] that they pose a particular risk to the public." Brief for Respondents 30.

B

In 1997, petitioner Christopher A. Lopez was convicted of possession with intent to distribute methamphetamine, in violation of 21 U. S. C. § 841. Upon finding that Lopez possessed a firearm in connection with his offense, the District Court enhanced his sentence by two levels pursuant to USSG § 2D1.1(b)(1). Lopez is currently scheduled to be released from prison in June 2002.

While incarcerated, Lopez requested substance abuse treatment. The Bureau found him qualified for its residential drug abuse program,[2] but categorically ineligible, under 28 CFR § 550.58(a)(1)(vi), for early release. App. 3–7.

When notified that he would not be a candidate for early release, Lopez challenged the BOP's determination by filing a petition for a writ of habeas corpus, under 28 U. S. C. § 2241, in the United States District Court for the District of South Dakota. The District Court granted the petition. In that court's view, the Bureau's 1997 regulation did not correct the infirmity the Eighth Circuit saw in the 1995 rule. See App. 17–18, and n. 4 (citing *Martin*, 133 F. 3d, at 1079). "[I]t is true," the District Court recognized, "that the BOP

[2] To qualify for residential substance abuse treatment, an inmate must be "determined by the Bureau of Prisons to have a substance abuse problem" and be "willing to participate in [the] program." 18 U. S. C. §§ 3621(e)(5)(B)(i), (ii).

may exercise a great deal of discretion in determining who among the eligible nonviolent offenders may be released." App. 17. But, the District Court held, the BOP may not categorically count out, "based upon sentencing factors or weapon possession," inmates whose underlying conviction was for a nonviolent crime. *Id.*, at 18. Accordingly, the District Court ordered the BOP "to reconsider Lopez's eligibility for early release." *Id.*, at 19.

The Eighth Circuit reversed. *Bellis* v. *Davis*, 186 F. 3d 1092 (1999). Section 3621(e)(2)(B), the Court of Appeals observed, "states only that the prison term of an inmate convicted of a nonviolent offense '*may* be reduced by the Bureau of Prisons.'" *Id.*, at 1094 (quoting 18 U. S. C. § 3621(e)(2)(B)). This discretionary formulation, the Eighth Circuit reasoned, allows the Bureau to devise a regime based on criteria that can be uniformly applied. The statute grants no entitlement to any inmate or class of inmates, the Court of Appeals noted, and it does not instruct the Bureau to make "individual, rather than categorical, assessments of eligibility for inmates convicted of nonviolent offenses." 186 F. 3d, at 1094. The court further reasoned that, to the extent Congress left a gap in § 3621(e)(2)(B) for the Bureau to fill, deference is owed the BOP's interpretation under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845, 866 (1984), so long as the interpretation is a permissible construction of the statute. 186 F. 3d, at 1095. The Bureau had elected to deny early release to certain categories of prisoners, notably recidivists and firearms carriers, whose "conduct indicates that they pose a serious risk to public safety." *Ibid.* That decision, the Court of Appeals concluded, "represents a manifestly permissible construction of the statute and an appropriate exercise of the BOP's discretion." *Ibid.*

The Eighth Circuit next explained why its earlier decision in *Martin* did not control this case, which trains on the BOP's 1997 regulation: *Martin* addressed only the Bureau's 1995

attempt to interpret the statutory term "nonviolent offense"; the court in that case did not address "whether the BOP may, as an exercise of its discretion, . . . look to sentencing factors in deciding which individuals among statutorily eligible inmates are appropriate candidates for early release." 186 F. 3d, at 1095. Facing that issue, the Court of Appeals held such an exercise of discretion proper. *Ibid.*

The Courts of Appeals have again divided, now over the permissibility of the Bureau's current (1997) regulation. The Tenth and Eleventh Circuits, in line with their prior decisions invalidating the 1995 rule, have concluded that § 3621(e)(2)(B) permits no categorical exclusions of nonviolent offenders based on sentence enhancements. *Ward* v. *Booker*, 202 F. 3d 1249, 1256–1257 (CA10 2000); *Kilpatrick* v. *Houston*, 197 F. 3d 1134, 1135 (CA11 1999). The Ninth Circuit, on the other hand, has agreed with the Eighth Circuit that precedent invalidating the 1995 rule does not control and that, in 1997, the BOP permissibly exercised its discretion under § 3621(e)(2)(B) when it categorically excluded from early release consideration inmates who possessed a firearm in connection with their nonviolent offenses. *Bowen* v. *Hood*, 202 F. 3d 1211, 1218–1220 (2000).

We granted certiorari to resolve this conflict, 529 U. S. 1086 (2000), and now affirm the judgment of the Eighth Circuit.

II

The statute provides: "The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons . . . ." 18 U. S. C. § 3621(e)(2)(B). The measure thus categorically denies early release eligibility to inmates convicted of violent offenses. The question we address is whether the Bureau has discretion to delineate, as an additional category of ineligible inmates, those whose current offense is a felony involving a firearm. 28 CFR § 550.58(a)(1)(vi)(B) (2000).

Lopez urges that the statute is unambiguous. He says that, by identifying a class of inmates ineligible for sentence reductions under § 3621(e)(2)(B), *i. e.*, those convicted of a violent offense, Congress has barred the Bureau from identifying further categories of ineligible inmates. "If Congress wanted the BOP to reduce the categories of inmates eligible for the early release incentive (beyond the one identified by Congress), Congress would have specifically placed this grant of authority in the language of the statute." Brief for Petitioner 23. As to the statutory instruction that the Bureau "may" reduce sentences, Lopez initially suggests it is merely a grant of authority to the BOP to reduce a sentence that, prior to the enactment of § 3621(e)(2)(B), could not be reduced for successful completion of drug treatment: "The power granted was to give reductions not the power to decide who was eligible to receive reductions." *Id.*, at 21. He alternately contends that the Bureau may take into account only "post-conviction conduct," not "pre-conviction conduct." Reply Brief 4–5. Acting on a case-by-case basis, Lopez asserts, the Bureau may "deny early release to those inmates [who] are statutorily eligible, but who do not deserve early release based on their conduct while in prison." *Id.*, at 5. Under this reading, the Bureau may exercise discretion in denying early release, but only on an individual basis, taking account solely of postconviction conduct.

In the Bureau's view, § 3621(e)(2)(B) establishes two prerequisites for sentence reduction: conviction of a nonviolent offense and successful completion of drug treatment. Brief for Respondents 18. If those prerequisites are met, the Bureau "may," but also may *not*, grant early release. The BOP opposes Lopez's argument that Congress barred the Bureau from imposing limitations categorically or on the basis of preconviction conduct. According to the Bureau, Congress simply "did not address how the Bureau should exercise its discretion within the class of inmates who satisfy the statutory prerequisites for early release." *Id.*, at 23. Because

Congress left the question unaddressed, the Bureau maintains, the agency may exclude inmates either categorically or on a case-by-case basis, subject of course to its obligation to interpret the statute reasonably, see *Chevron*, 467 U. S., at 844, in a manner that is not arbitrary or capricious, see 5 U. S. C. § 706(2)(A). In this instance, the Bureau urges, it has acted reasonably: Its denial of early release to all inmates who possessed a firearm in connection with their current offense rationally reflects the view that such inmates displayed a readiness to endanger another's life; accordingly, in the interest of public safety, they should not be released months in advance of completing their sentences.[3]

We agree with the Bureau's position. Preliminarily, we note conspicuous anomalies in Lopez's construction. If § 3621(e)(2)(B) functions not as a grant of discretion to determine early release eligibility, but both as an authorization and a command to reduce sentences, then Congress' use of the word "may," rather than "shall," has no significance. And if the BOP does have discretion to deny early release to certain inmates, but only based on individualized assessments of postconviction conduct, then the agency cannot categorically deny early release even to recidivists with prior (perhaps multiple) convictions for "homicide, forcible rape . . . , or child sexual abuse offenses." 28 CFR § 550.58(a)(1)(iv) (2000). For that provision, as much as the exclusion of inmates imprisoned for offenses involving a firearm, see *supra*, at 235, entails no individualized determination based on postconviction conduct. Furthermore,

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[3] The dissent straddles the fence, agreeing with Lopez that the statute addresses his case unambiguously, but disagreeing with him on precisely what the statute says. Lopez reads the statute to exclude Bureau consideration of preconviction conduct, Reply Brief 4–5; the dissent reads the same words to permit BOP consideration of such conduct, *post*, at 248 (opinion of STEVENS, J.). These divergent readings hardly strengthen the dissent's assertion that Congress supplied a definitive answer to the "precise question" at issue. See *post*, at 245.

Lopez's position would confine the BOP's discretion under § 3621(e)(2)(B) to consideration of factors of the kind the Bureau already may consider in granting credit for "satisfactory behavior." See 18 U. S. C. § 3624(b)(1) ("a prisoner [serving a term of more than one year and less than life] may receive credit toward the service of the prisoner's sentence . . . subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations").

We turn now to the Bureau's reading of the statutory text, which instructs that the agency "may" reduce the sentence of a nonviolent offender who has successfully completed a drug treatment program. Congress' use of the permissive "may" in § 3621(e)(2)(B) contrasts with the legislators' use of a mandatory "shall" in the very same section. Elsewhere in § 3621, Congress used "shall" to impose discretionless obligations, including the obligation to provide drug treatment when funds are available. See 18 U. S. C. § 3621(e)(1) ("Bureau of Prisons shall, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare)"); see also, *e. g.*, § 3621(b) ("The Bureau shall designate the place of the prisoner's imprisonment. . . . In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status."). Sensibly read, the grant of discretion in § 3621(e)(2)(B) to decide whether to reduce a sentence parallels the grant of discretion in § 3621(e)(2)(A) to retain a prisoner who successfully completes drug treatment "under such [custodial] conditions as the Bureau deems appropriate." § 3621(e)(2)(A). When an eligible prisoner successfully completes drug treatment, the Bureau thus has the authority, but not the duty, both to alter the prisoner's conditions of confinement and to reduce his term of imprisonment.

The constraints Lopez urges—requiring the BOP to make individualized determinations based only on postconviction

conduct—are nowhere to be found in § 3621(e)(2)(B). Beyond instructing that the Bureau has discretion to reduce the period of imprisonment for a nonviolent offender who successfully completes drug treatment, Congress has not identified any further circumstance in which the Bureau either must grant the reduction, or is forbidden to do so. In this familiar situation, where Congress has enacted a law that does not answer "the precise question at issue," all we must decide is whether the Bureau, the agency empowered to administer the early release program, has filled the statutory gap "in a way that is reasonable in light of the legislature's revealed design." *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.*, 513 U. S. 251, 257 (1995) (citing *Chevron*, 467 U. S., at 842); see also *Reno* v. *Koray*, 515 U. S. 50, 61 (1995) (deferring to BOP's interpretation of statute). We think the agency's interpretation is reasonable both in taking account of preconviction conduct and in making categorical exclusions.

First, as the dissent but not Lopez recognizes, see *post*, at 248, the Bureau need not blind itself to preconviction conduct that the agency reasonably views as jeopardizing life and limb. By denying eligibility to violent offenders, the statute manifests congressional concern for preconviction behavior—and for the very conduct leading to conviction. The Bureau may reasonably attend to these factors as well. Its regulation in this regard is kin to the Attorney General's order upheld in *INS* v. *Yueh-Shaio Yang*, 519 U. S. 26 (1996). That case involved a statute authorizing the Attorney General to waive deportation of aliens deportable for entry fraud. The Attorney General had refused to waive deportation for one alien because of "acts of fraud . . . in connection with his entry." *Id.*, at 27. The alien argued that because the statute made aliens who had committed entry fraud eligible for waiver, the Attorney General was precluded from taking such conduct into account "at all" in deciding whether to grant relief. *Id.*, at 30. We rejected this view, stating

that the statute "establishes only the alien's *eligibility* for the waiver. Such eligibility in no way limits the considerations that may guide the Attorney General in exercising her discretion to determine who, among those eligible, will be accorded grace." *Id.*, at 31. Similarly in this case, the statute's restriction of early release eligibility to nonviolent offenders does not cut short the considerations that may guide the Bureau. Just as the Attorney General permissibly considered aspects of entry fraud, even though entry fraud was a criterion of statutory eligibility, so the Bureau may consider aspects of the conduct of conviction, even though the conviction is a criterion of statutory eligibility.[4]

We also reject Lopez's argument, echoed in part by the dissent, *post,* at 248–249, that the agency must not make categorical exclusions, but may rely only on case-by-case assessments.[5] "[E]ven if a statutory scheme requires individual-

[4] Lopez contends that the Bureau's creation of additional hurdles to receipt of a sentence reduction defeats Congress' purpose of giving inmates an incentive to undergo drug treatment. Brief for Petitioner 24–29. In *INS* v. *Yueh-Shaio Yang,* 519 U. S. 26 (1996), we said that "[i]t could be argued that if the Attorney General determined that *any* entry fraud or misrepresentation, no matter how minor and no matter what the attendant circumstances, would cause her to withhold waiver, she would not be exercising the conferred discretion at all, but would be making a nullity of the statute." *Id.*, at 31. In this case, it is plain that the Bureau has not rendered § 3621(e)'s incentive a nullity. A total of 6,559 inmates have received sentence reductions under § 3621(e)(2)(B), including 2,633 inmates in Fiscal Year 1999 alone. Bureau of Prisons, Substance Abuse Treatment Programs in the Federal Bureau of Prisons, Report to Congress 8 (Jan. 2000). Moreover, inmates who do not qualify for early release, like inmates who do, receive other incentives to participate in substance abuse treatment. See 28 CFR §§ 550.57(a)(1), (3) (2000) ("An inmate may receive incentives for his or her satisfactory involvement in the residential [drug treatment] program," including "[l]imited financial awards" and "[l]ocal institution incentives such as preferred living quarters or special recognition privileges.").

[5] The dissent appears to acknowledge that the Bureau may give "near-dispositive weight to preconviction criteria." *Post,* at 249. To the extent the dissent would permit the BOP to accord heavy weight to preconviction

ized determinations," which this scheme does not, "the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority." *American Hospital Assn.* v. *NLRB*, 499 U. S. 606, 612 (1991); accord, *Heckler* v. *Campbell*, 461 U. S. 458, 467 (1983). The approach pressed by Lopez—case-by-case decisionmaking in thousands of cases each year, see *supra*, at 243, n. 4—could invite favoritism, disunity, and inconsistency. The Bureau is not required continually to revisit "issues that may be established fairly and efficiently in a single rulemaking proceeding." *Heckler*, 461 U. S., at 467.[6]

Having decided that the Bureau may categorically exclude prisoners based on their preconviction conduct, we further hold that the regulation excluding Lopez is permissible. The Bureau reasonably concluded that an inmate's prior involvement with firearms, in connection with the commission of a felony, suggests his readiness to resort to life-endangering violence and therefore appropriately determines the early release decision.[7]

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conduct, the structured "[i]ndividualized [BOP] consideration" the dissent would allow, *post*, at 249, seems but a shade different from the forthright categorical exclusion the Bureau has adopted.

[6] *Amici* urge reversal on the ground that the Bureau violated the notice and comment requirements of the Administrative Procedure Act when it published the 1997 regulation. Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 18–24. We decline to address this matter, which was not raised or decided below, or presented in the petition for certiorari. *Blessing* v. *Freestone*, 520 U. S. 329, 340, n. 3 (1997).

[7] Lopez invokes the rule of lenity in urging us to accede to his interpretation. Because, as discussed above, the statute cannot be read to prohibit the Bureau from exercising its discretion categorically or on the basis of preconviction conduct, his reliance on the rule is unavailing. See *Caron* v. *United States*, 524 U. S. 308, 316 (1998) ("The rule of lenity is not invoked by a grammatical possibility. It does not apply if the ambiguous reading relied on is an implausible reading of the congressional purpose.").

For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is

Affirmed.

JUSTICE STEVENS, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, dissenting.

The question at issue in this case is whether all, or merely some, of the federal prisoners who were convicted of nonviolent offenses and who have successfully completed a Bureau of Prisons (BOP or Bureau) drug treatment program are eligible for a sentence reduction pursuant to 18 U. S. C. § 3621(e)(2)(B). For the reasons outlined below, I believe that Congress has answered that precise question. The statute expressly states that the sentence of every prisoner in that category "may be reduced." *Ibid.* The disposition of this case is therefore governed by the first step in the familiar test announced in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984), for "Congress has directly spoken to the precise question at issue." *Id.*, at 842.

I

In drafting the statute in question, Congress was faced with a difficult policy choice: whether the commission of particular crimes made certain categories of offenders so dangerous that the costs of offering them early release in return for the successful completion of a drug treatment program outweighed the rewards. The initial drafts of the bill answered that question in the negative and made all federal prisoners eligible for a sentence reduction of up to one year if they successfully completed a drug treatment program. See, *e. g.*, H. R. Rep. No. 103–320, p. 2 (1993). However, the inclusion of those convicted of violent offenses within the category of those eligible for the inducement soon became a fulcrum of criticism for the larger crime bill within

which the statute was embedded.[1] Perhaps as a result of these criticisms,[2] the statute ultimately adopted limited the inducement to "prisoner[s] convicted of . . . nonviolent offense[s]." 18 U. S. C. § 3621(e)(2)(B).

Both the text of the statute and the aforementioned history demonstrate that Congress directly addressed the "precise question" of what offenses ought to disqualify prisoners from eligibility for a sentence reduction, and that its unambiguous answer was "violent offenses." Under the statute as enacted, those who commit crimes of violence are categorically barred from receiving a sentence reduction while those convicted of nonviolent offenses "may" receive such an inducement.

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[1] Throughout 1993 and 1994, Republican leaders gave numerous speeches contrasting their proposed crime bill and the administration's. One contrast repeatedly stressed was that the Republican bill set aside more money for prison construction while the Democratic bill allocated greater funds to drug treatment. This difference allegedly reflected differing views as to how society should deal with violent criminals. To this end, Republican leaders repeatedly criticized the inclusion of violent criminals in the sentence reduction provision. See, *e. g.*, 139 Cong. Rec. 27209 (1994) (remarks of Sen. Hatch) ("Their treatment allows all Federal prisoners, including the most violent, to have their sentences reduced, if you will, at the Bureau of Prisons' discretion if they complete a drug treatment program. Boy, I can see where everybody is going to do that. You can imagine the sincerity of that"); 139 Cong. Rec. 27460 (1993) (remarks of Sen. Hatch) ("The Democratic crime bill actually permits the Bureau of Prisons to decrease the sentence of Federal inmates—violent offenders included—who complete drug treatment programs. Their bill also proposes that States be given grant money which can be used to implement home confinement and other alternative sanctions for violent offenders").

[2] The House initially approved a version of the bill that would have extended the inducement to all federal prisoners. The Senate, where the criticism of the inclusion of violent offenders was more pronounced, see n. 1, *supra,* limited the provision to nonviolent offenders. The Conference Committee accepted the Senate's limitation. H. R. Conf. Rep. No. 103–711, p. 381 (1994).

The BOP regulation challenged here operates to redefine the set of prisoners categorically ineligible for a sentence reduction, a set unambiguously defined in the text of the statute. It does so by taking a group of prisoners whose offenses the Bureau acknowledges are "nonviolent" within the meaning of the statute[3] and imposing the same sanction—categorical ineligibility—upon them as the statute imposes upon violent offenders. In so doing, the Bureau ignores Congress' express determination that, when evaluating eligibility for a sentence reduction, the salient distinction is the line between violent and nonviolent offenses. By moving this line, the BOP exceeded its authority and sought to exercise its discretion on an issue with regard to which it has none. See, *e. g.*, *Chevron*, 467 U. S., at 842–843 ("First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress"); *United States* v. *Haggar Apparel Co.*, 526 U. S. 380, 392 (1999) ("In the process of considering a regulation in relation to specific factual situations, a court may conclude the regulation is inconsistent with the statutory language or is an unreasonable implementation of it. In those instances, the regulation will not control").

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[3] The BOP regulation challenged here treats an otherwise nonviolent offense where a gun was carried as a "nonviolent offense" within the meaning of the statute, and the case was argued on that assumption. As the majority notes, *ante*, at 233–236, the BOP initially attempted to classify such crimes as violent offenses, but receded when the Courts of Appeals divided over the validity of such a construction. The question over which the Courts of Appeals initially divided is not before us today. If it were, the arguments raised by both sides would be quite different, with the debate likely focusing on whether "nonviolent offense" is best understood as a term of art or in relation to a more colloquial understanding of violence.

II

I fully agree with the majority that federal prisoners do not become entitled to a sentence reduction upon their successful completion of a drug treatment program; the words "may be reduced" do not mean "shall be reduced." Nonetheless, while the statute does not entitle any prisoner to a sentence reduction, it does guarantee nonviolent offenders who successfully complete a drug treatment program consideration for such a reduction.

For every nonviolent offender who participates in a drug treatment program, the BOP may be required to make two individualized determinations: (1) whether he or she has successfully completed that program; and (2), if so, whether his or her preconviction conduct, postconviction conduct, and prospects for rehabilitation justify a sentence reduction. In evaluating whether or not a particular individual is entitled to a sentence reduction, the BOP may give great weight to whichever of these factors it determines to be most relevant. That, however, is a far cry from categorically excluding from consideration prisoners who Congress explicitly intended to obtain such consideration.[4]

The majority's concern about the risks and burdens associated with case-by-case decisionmaking in a large number of cases is understandable yet ultimately misguided. In order to fulfill the statute's requirements, the BOP must already

[4] This Court's decision in *INS* v. *Yueh-Shaio Yang*, 519 U. S. 26 (1996), relied upon by the majority, *ante*, at 242–243, is not to the contrary. *Yueh-Shaio Yang* did not involve an effort by an administrative agency to categorically exclude from consideration for a benefit a particular class of individuals because of a characteristic considered and rejected by Congress as a basis for categorical exclusion. Rather, that case involved the related yet distinct question whether such a characteristic may be given any weight by the agency in making an individualized case-by-case determination whether to grant the benefit to a particular individual. If the issue in this case were whether the BOP could even consider the nature of the offense in determining whether to grant a particular sentence reduction, *Yueh-Shaio Yang* would be relevant to our analysis.

evaluate every prisoner seeking the sentence reduction on an individual basis to determine whether that prisoner "successfully completed" his or her drug treatment program. Individualized consideration of the second salient question involves consideration of many of the same personalized factors that go into determining whether a prisoner's course of drug treatment has been "successful." To the extent that answering the second question requires consideration of additional factors with a concomitant administrative burden, the costs of such a scheme are, in Congress' judgment, outweighed by the benefits of encouraging drug treatment and of carefully distinguishing between those prisoners who have earned an early return to their communities and those who require further incarceration.

The majority's worry that individualized decisionmaking might lead to "favoritism, disunity, and inconsistency" is similarly misplaced. *Ante,* at 244. To suggest that decisionmaking must be individualized is not to imply that it must also be standardless. If the Court today invalidated the regulation in question, its decision would not preclude the BOP from adopting a uniform set of criteria for consideration in evaluating applications for sentence reductions. Nor would it necessarily preclude the Bureau from giving dispositive weight to certain postconviction criteria or near-dispositive weight to preconviction criteria. Cf. *Heckler* v. *Campbell,* 461 U. S. 458, 467 (1983). The Bureau would remain free to structure its decisionmaking in any way it saw fit as long as in so doing it did not contravene policy decisions explicitly made by the statute's drafters. As Congress has already addressed preincarceration conduct in § 3621(e)(2)(B), the Bureau may not categorically exclude a prisoner not convicted of a violent offense from consideration for early release on the basis of such conduct without exceeding the limits of its discretion.

Accordingly, I respectfully dissent.

Syllabus

SELING, SUPERINTENDENT, SPECIAL COMMITMENT CENTER *v.* YOUNG

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 99–1185. Argued October 31, 2000—Decided January 17, 2001

Washington State's Community Protection Act of 1990 (Act) authorizes the civil commitment of "sexually violent predators," persons who suffer from a mental abnormality or personality disorder that makes them likely to engage in predatory acts of sexual violence. Respondent Young is confined under the Act at the Special Commitment Center (Center), for which petitioner is the superintendent. Young's challenges to his commitment in state court proved largely unsuccessful. Young then instituted a habeas action under 28 U. S. C. § 2254, seeking release from confinement. The District Court initially granted the writ, concluding that the Act was unconstitutional. While the superintendent's appeal was pending, this Court decided *Kansas* v. *Hendricks*, 521 U. S. 346, holding that a similar commitment scheme, Kansas' Sexually Violent Predator Act, on its face, met substantive due process requirements, was nonpunitive, and thus did not violate the Double Jeopardy and *Ex Post Facto* Clauses. The Ninth Circuit remanded for reconsideration in light of *Hendricks.* The District Court then denied Young's petition. In particular, the District Court determined that, because the Washington Act is civil, Young's double jeopardy and *ex post facto* claims must fail. The Ninth Circuit reversed that ruling. The "linchpin" of Young's claims, the court reasoned, was whether the Act was punitive "as applied" to Young. The court did not read *Hendricks* to preclude the possibility that the Act could be punitive as applied. Reasoning that actual confinement conditions could divest a facially valid statute of its civil label upon a showing by the clearest proof that the statutory scheme is punitive in effect, the court remanded the case for the District Court to determine whether the conditions at the Center rendered the Act punitive as applied to Young.

Held: An Act, found to be civil, cannot be deemed punitive "as applied" to a single individual in violation of the Double Jeopardy and *Ex Post Facto* Clauses and provide cause for release. Pp. 260–267.

(a) Respondent cannot obtain release through an "as-applied" challenge to the Act on double jeopardy and *ex post facto* grounds. The Act is strikingly similar to, and, in fact, was the pattern for, the Kansas Act upheld in *Hendricks.* Among other things, the Court there applied

the principle that determining the civil or punitive nature of an Act must begin with reference to its text and legislative history. See 521 U. S., at 360–369. Subsequently, the Court expressly disapproved of evaluating an Act's civil nature by reference to its effect on a single individual, holding, instead, that courts must focus on a variety of factors considered in relation to the statute on its face, and that the clearest proof is required to override legislative intent and conclude that an Act denominated civil is punitive in purpose or effect. *Hudson* v. *United States*, 522 U. S. 93, 100. With this in mind, the Ninth Circuit's "as-applied" analysis for double jeopardy and *ex post facto* claims must be rejected as fundamentally flawed. This Court does not deny the seriousness of some of respondent's allegations. Nor does the Court express any view as to how his allegations would bear on a court determining in the first instance whether Washington's confinement scheme is civil. Here, however, the Court evaluates respondent's allegations under the assumption that the Act is civil, as the Washington Supreme Court held and the Ninth Circuit acknowledged. The Court agrees with petitioner that an "as-applied" analysis would prove unworkable. Such an analysis would never conclusively resolve whether a particular scheme is punitive and would thereby prevent a final determination of the scheme's validity under the Double Jeopardy and *Ex Post Facto* Clauses. Confinement is not a fixed event, but extends over time under conditions that are subject to change. The particular features of confinement may affect how a confinement scheme is evaluated to determine whether it is civil or punitive, but it remains no less true that the query must be answered definitively. A confinement scheme's civil nature cannot be altered based merely on vagaries in the authorizing statute's implementation. The Ninth Circuit's "as-applied" analysis does not comport with precedents in which this Court evaluated the validity of confinement schemes. See, *e. g.*, *Allen* v. *Illinois*, 478 U. S. 364, 373–374. Such cases presented the question whether the Act at issue was punitive, whereas permitting respondent's as-applied challenge would invite an end run around the Washington Supreme Court's decision that the Act is civil when that decision is not before this Court. Pp. 260–265.

(b) Today's decision does not mean that respondent and others committed as sexually violent predators have no remedy for the alleged conditions and treatment regime at the Center. The Act gives them the right to adequate care and individualized treatment. It is for the Washington courts to determine whether the Center is operating in accordance with state law and provide a remedy. Those courts also remain competent to adjudicate and remedy challenges to civil confinement schemes arising under the Federal Constitution. Because the

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Washington Supreme Court has held that the Act is civil in nature, designed to incapacitate and to treat, due process requires that the conditions and duration of confinement under the Act bear some reasonable relation to the purpose for which persons are committed. *E. g.*, *Foucha* v. *Louisiana*, 504 U. S. 71, 79. Finally, the Court notes that an action under 42 U. S. C. § 1983 is pending against the Center and that the Center operates under an injunction requiring it to take steps to improve confinement conditions. Pp. 265–266.

(c) This case gives the Court no occasion to consider how a confinement scheme's civil nature relates to other constitutional challenges, such as due process, or to consider the extent to which a court may look to actual conditions of confinement and implementation of the statute to determine in the first instance whether a confinement scheme is civil in nature. Whether such a scheme is punitive has been the threshold question for some constitutional challenges. See, *e. g.*, *Allen*, *supra.* However, the Court has not squarely addressed the relevance of confinement conditions to a first instance determination, and that question need not be resolved here. Pp. 266–267.

192 F. 3d 870, reversed and remanded.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Scalia, Kennedy, Souter, Ginsburg, and Breyer, JJ., joined. Scalia, J., filed a concurring opinion, in which Souter, J., joined, *post*, p. 267. Thomas, J., filed an opinion concurring in the judgment, *post*, p. 270. Stevens, J., filed a dissenting opinion, *post*, p. 274.

Maureen Hart, Senior Assistant Attorney General of Washington, argued the cause for petitioner. With her on the briefs were *Christine O. Gregoire*, Attorney General, *Sarah Blackman Sappington*, Assistant Attorney General, *David J. W. Hackett*, Special Assistant Attorney General, and *William Berggren Collins*, Senior Assistant Attorney General.

Robert C. Boruchowitz argued the cause for respondent. With him on the briefs were *David B. Hirsch*, *Dennis P. Carroll*, and *Christine Jackson.**

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*A brief of *amici curiae* urging reversal was filed for the State of Kansas et al. by *Carla J. Stovall*, Attorney General of Kansas, *Stephen R. McAllister*, State Solicitor, and *Jared S. Maag*, Assistant Attorney Gen-

JUSTICE O'CONNOR delivered the opinion of the Court.

Washington State's Community Protection Act of 1990 authorizes the civil commitment of "sexually violent predators," persons who suffer from a mental abnormality or personality disorder that makes them likely to engage in predatory acts of sexual violence. Wash. Rev. Code § 71.09.010 *et seq.* (1992). Respondent, Andre Brigham Young, is confined as a sexually violent predator at the Special Commitment Center (Center), for which petitioner is the superintendent. After respondent's challenges to his commitment in state court proved largely unsuccessful, he instituted a habeas action under 28 U. S. C. § 2254, seeking release from confinement. The Washington Supreme Court had already held that the Act is civil, *In re Young*, 122 Wash. 2d 1, 857 P. 2d 989 (1993) (en banc), and this Court held a similar commitment scheme for sexually violent predators in Kansas to be civil on its face, *Kansas* v. *Hendricks*, 521 U. S. 346 (1997). The Court of Appeals for the Ninth Circuit nevertheless concluded that respondent could challenge the statute as being punitive "as applied" to him in violation of the

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eral, and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Janet Napolitano* of Arizona, *Mark Pryor* of Arkansas, *Bill Lockyer* of California, *Ken Salazar* of Colorado, *Robert A. Butterworth* of Florida, *James E. Ryan* of Illinois, *Thomas J. Miller* of Iowa, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Jennifer M. Granholm* of Michigan, *Mike Moore* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *John J. Farmer, Jr.*, of New Jersey, *Heidi Heitkamp* of North Dakota, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, *Mark Barnett* of South Dakota, *Jan Graham* of Utah, *Mark L. Earley* of Virginia, and *James E. Doyle* of Wisconsin.

Briefs of *amici curiae* urging affirmance were filed for the California Atascadero State Hospital Section 6600 Civil Committees by *Joel E. Krischer;* and for the National Association of Criminal Defense Lawyers by *Edward M. Chikofsky* and *Barbara E. Bergman.*

Double Jeopardy and *Ex Post Facto* Clauses, and remanded the case to the District Court for an evidentiary hearing.

I

A

Washington State's Community Protection Act of 1990 (Act) was a response to citizens' concerns about laws and procedures regarding sexually violent offenders. One of the Act's provisions authorizes civil commitment of such offenders. Wash. Rev. Code § 71.09.010 *et seq.* (1992 and Supp. 2000). The Act defines a sexually violent predator as someone who has been convicted of, or charged with, a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. § 71.09.020(1) (Supp. 2000). The statute reaches prisoners, juveniles, persons found incompetent to stand trial, persons found not guilty by reason of insanity, and persons at any time convicted of a sexually violent offense who have committed a recent overt act. § 71.09.030. Generally, when it appears that a person who has committed a sexually violent offense is about to be released from confinement, the prosecuting attorney files a petition alleging that that person is a sexually violent predator. *Ibid.* That filing triggers a process for charging and trying the person as a sexually violent predator, during which he is afforded a panoply of protections including counsel and experts (paid for by the State in cases of indigency), a probable cause hearing, and trial by judge or jury at the individual's option. §§ 71.09.040–71.09.050. At trial, the State bears the burden to prove beyond a reasonable doubt that the person is a sexually violent predator. § 71.09.060(1).

Upon the finding that a person is a sexually violent predator, he is committed for control, care, and treatment to the custody of the department of social and health services. *Ibid.* Once confined, the person has a right to adequate care

and individualized treatment. § 71.09.080(2). The person is also entitled to an annual examination of his mental condition. § 71.09.070. If that examination indicates that the individual's condition is so changed that he is not likely to engage in predatory acts of sexual violence, state officials must authorize the person to petition the court for conditional release or discharge. § 71.09.090(1). The person is entitled to a hearing at which the State again bears the burden of proving beyond a reasonable doubt that he is not safe to be at large. *Ibid.* The person may also independently petition the court for release. § 71.09.090(2). At a show cause hearing, if the court finds probable cause to believe that the person is no longer dangerous, a full hearing will be held at which the State again bears the burden of proof. *Ibid.*

The Act also provides a procedure to petition for conditional release to a less restrictive alternative to confinement. § 71.09.090. Before ordering conditional release, the court must find that the person will be treated by a state certified sexual offender treatment provider, that there is a specific course of treatment, that housing exists that will be sufficiently secure to protect the community, and that the person is willing to comply with the treatment and supervision requirements. § 71.09.092. Conditional release is subject to annual review until the person is unconditionally released. §§ 71.09.096, 71.09.098.

B

Respondent, Andre Brigham Young, was convicted of six rapes over three decades. App. to Pet. for Cert. 33a. Young was scheduled to be released from prison for his most recent conviction in October 1990. One day prior to his scheduled release, the State filed a petition to commit Young as a sexually violent predator. *Id.*, at 32a.

At the commitment hearing, Young's mental health experts testified that there is no mental disorder that makes a person likely to reoffend and that there is no way to predict accurately who will reoffend. The State called an expert

who testified, based upon a review of Young's records, that Young suffered from a severe personality disorder not otherwise specified with primarily paranoid and antisocial features, and a severe paraphilia, which would be classified as either paraphilia sexual sadism or paraphilia not otherwise specified (rape). See generally American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 522–523, 530, 532, 634, 645–646, 673 (4th ed. 1994). In the state expert's opinion, severe paraphilia constituted a mental abnormality under the Act. The State's expert concluded that Young's condition, in combination with the personality disorder, the span of time during which Young committed his crimes, his recidivism, his persistent denial, and his lack of empathy or remorse, made it more likely than not that he would commit further sexually violent acts. The victims of Young's rapes also testified. The jury unanimously concluded that Young was a sexually violent predator.

Young and another individual appealed their commitments in state court, arguing that the Act violated the Double Jeopardy, *Ex Post Facto*, Due Process, and Equal Protection Clauses of the Federal Constitution. In major respects, the Washington Supreme Court held that the Act is constitutional. *In re Young*, 122 Wash. 2d 1, 857 P. 2d 989 (1993) (en banc). To the extent the court concluded that the Act violated due process and equal protection principles, those rulings are reflected in subsequent amendments to the Act. See Part I–A, *supra*.

The Washington court reasoned that the claimants' double jeopardy and *ex post facto* claims hinged on whether the Act is civil or criminal in nature. Following this Court's precedents, the court examined the language of the Act, the legislative history, and the purpose and effect of the statutory scheme. The court found that the legislature clearly intended to create a civil scheme both in the statutory language and legislative history. The court then turned to

examine whether the actual impact of the Act is civil or criminal. The Act, the court concluded, is concerned with treating committed persons for a current mental abnormality, and protecting society from the sexually violent acts associated with that abnormality, rather than being concerned with criminal culpability. The court distinguished the goals of incapacitation and treatment from the goal of punishment. The court found that the Washington Act is designed to further legitimate goals of civil confinement and that the claimants had failed to provide proof to the contrary. 122 Wash. 2d, at 18–25, 857 P. 2d, at 996–1000.

The Act spawned several other challenges in state and federal court, two of which bear mention. Richard Turay, committed as a sexually violent predator, filed suit in Federal District Court against Center officials under Rev. Stat. § 1979, 42 U. S. C. § 1983, alleging unconstitutional conditions of confinement and inadequate treatment at the Center. In 1994, a jury concluded that the Center had failed to provide constitutionally adequate mental health treatment. App. 64–68. The court ordered officials at the Center to bring the institution up to constitutional standards, appointing a Special Master to monitor progress at the Center. The Center currently operates under an injunction. *Turay* v. *Seling*, 108 F. Supp. 2d 1148 (WD Wash. 2000). See also Brief for Petitioner 8–9.

Turay also appealed his commitment as a sexually violent predator in state court, claiming, among other things, that the conditions of confinement at the Center rendered the Washington Act punitive "as applied" to him in violation of the Double Jeopardy Clause. The Washington Supreme Court ruled that Turay's commitment was valid. *In re Turay*, 139 Wash. 2d 379, 986 P. 2d 790 (1999) (en banc). The court explained that in *Young*, it had concluded that the Act is civil. 139 Wash. 2d, at 415, 986 P. 2d, at 809. The court also noted that this Court had recently held Kansas' Sexually Violent Predator Act, nearly identical to Washington's Act,

to be civil on its face. *Ibid.* The Washington Supreme Court rejected Turay's theory of double jeopardy, reasoning that the double jeopardy claim must be resolved by asking whether the Act itself is civil. *Id.*, at 416–417, 986 P. 2d, at 810 (citing *Hudson* v. *United States*, 522 U. S. 93 (1997)). The court concluded that Turay's proper remedy for constitutional violations in conditions of confinement at the Center was his § 1983 action for damages and injunctive relief. 139 Wash. 2d, at 420, 986 P. 2d, at 812.

C

That brings us to the action before this Court. In 1994, after unsuccessful challenges to his confinement in state court, Young filed a habeas action under 28 U. S. C. § 2254 against the superintendent of the Center. Young contended that the Act was unconstitutional and that his confinement was illegal. He sought immediate release. The District Court granted the writ, concluding that the Act violated substantive due process, that the Act was criminal rather than civil, and that it violated the double jeopardy and *ex post facto* guarantees of the Constitution. *Young* v. *Weston*, 898 F. Supp. 744 (WD Wash. 1995). The superintendent appealed. While the appeal was pending, this Court decided *Kansas* v. *Hendricks*, 521 U. S. 346 (1997), which held that Kansas' Sexually Violent Predator Act, on its face, met substantive due process requirements, was nonpunitive, and thus did not violate the Double Jeopardy and *Ex Post Facto* Clauses. The Ninth Circuit Court of Appeals remanded Young's case to the District Court for reconsideration in light of *Hendricks*. 122 F. 3d 38 (1997).

On remand, the District Court denied Young's petition. Young appealed and the Ninth Circuit reversed and remanded in part and affirmed in part. 192 F. 3d 870 (1999). The Ninth Circuit affirmed the District Court's ruling that Young's confinement did not violate the substantive due process requirement that the State prove mental illness

and dangerousness to justify confinement. *Id.*, at 876. The Court of Appeals also left undisturbed the District Court's conclusion that the Act meets procedural due process and equal protection guarantees, and the District Court's rejection of Young's challenges to his commitment proceedings. *Id.*, at 876–877. Young did not seek a petition for a writ of certiorari to the Ninth Circuit for its decision affirming the District Court in these respects, and accordingly, those issues are not before this Court.

The Ninth Circuit reversed the District Court's determination that because the Washington Act is civil, Young's double jeopardy and *ex post facto* claims must fail. The "linchpin" of Young's claims, the court reasoned, was whether the Act was punitive "as applied" to Young. *Id.*, at 873. The court did not read this Court's decision in *Hendricks* to preclude the possibility that the Act could be punitive as applied. The court reasoned that actual conditions of confinement could divest a facially valid statute of its civil label upon a showing by the clearest proof that the statutory scheme is punitive in effect. 192 F. 3d, at 874.

The Court of Appeals reviewed Young's claims that conditions of confinement at the Center were punitive and did not comport with due process. *Id.*, at 875. Young alleged that for seven years, he had been subject to conditions more restrictive than those placed on true civil commitment detainees, and even state prisoners. The Center, located wholly within the perimeter of a larger Department of Corrections (DOC) facility, relied on the DOC for a host of essential services, including library services, medical care, food, and security. More recently, Young claimed, the role of the DOC had increased to include daily security "walk-throughs." Young contended that the conditions and restrictions at the Center were not reasonably related to a legitimate nonpunitive goal, as residents were abused, confined to their rooms, subjected to random searches of their rooms and units, and placed under excessive security.

Young also contended that conditions at the Center were incompatible with the Act's treatment purpose. The Center had a policy of videotaping therapy sessions and withholding privileges for refusal to submit to treatment. The Center residents were housed in units that, according to the Special Master in the *Turay* litigation, were clearly inappropriate for persons in a mental health treatment program. The Center still lacked certified sex offender treatment providers. Finally, there was no possibility of release. A court-appointed resident advocate and psychologist concluded in his final report that because the Center had not fundamentally changed over so many years, he had come to suspect that the Center was designed and managed to punish and confine individuals for life without any hope of release to a less restrictive setting. 192 F. 3d, at 875. See also Amended Petition for Writ of Habeas Corpus, Supplemental Brief on Remand, and Motion to Alter Judgment 4–5, 8–9, 11–12, 15, 20, 24–26, in No. C94–480C (WD Wash.), Record, Doc. Nos. 57, 155, and 167.

The Ninth Circuit concluded that "[b]y alleging that [the Washington Act] is punitive as applied, Young alleged facts which, if proved, would entitle him to relief." 192 F. 3d, at 875. The court remanded the case to the District Court for a hearing to determine whether the conditions at the Center rendered the Act punitive as applied to Young. *Id.*, at 876.

This Court granted the petition for a writ of certiorari, 529 U. S. 1017 (2000), to resolve the conflict between the Ninth Circuit Court of Appeals and the Washington Supreme Court. Compare 192 F. 3d 870 (1999), with *In re Turay*, 139 Wash. 2d 379, 986 P. 2d 790 (1999).

II

As the Washington Supreme Court held and the Ninth Circuit acknowledged, we proceed on the understanding that the Washington Act is civil in nature. The Washington Act is strikingly similar to a commitment scheme we reviewed

four Terms ago in *Kansas* v. *Hendricks*, 521 U. S. 346 (1997). In fact, Kansas patterned its Act after Washington's. See *In re Hendricks*, 259 Kan. 246, 249, 912 P. 2d 129, 131 (1996). In *Hendricks*, we explained that the question whether an Act is civil or punitive in nature is initially one of statutory construction. 521 U. S., at 361 (citing *Allen* v. *Illinois*, 478 U. S. 364, 368 (1986)). A court must ascertain whether the legislature intended the statute to establish civil proceedings. A court will reject the legislature's manifest intent only where a party challenging the Act provides the clearest proof that the statutory scheme is so punitive in either purpose or effect as to negate the State's intention. 521 U. S., at 361 (citing *United States* v. *Ward*, 448 U. S. 242, 248–249 (1980)). We concluded that the confined individual in that case had failed to satisfy his burden with respect to the Kansas Act. We noted several factors: The Act did not implicate retribution or deterrence; prior criminal convictions were used as evidence in the commitment proceedings, but were not a prerequisite to confinement; the Act required no finding of scienter to commit a person; the Act was not intended to function as a deterrent; and although the procedural safeguards were similar to those in the criminal context, they did not alter the character of the scheme. 521 U. S., at 361–365.

We also examined the conditions of confinement provided by the Act. *Id.*, at 363–364. The Court was aware that sexually violent predators in Kansas were to be held in a segregated unit within the prison system. *Id.*, at 368. We explained that the Act called for confinement in a secure facility because the persons confined were dangerous to the community. *Id.*, at 363. We noted, however, that conditions within the unit were essentially the same as conditions for other involuntarily committed persons in mental hospitals. *Ibid.* Moreover, confinement under the Act was not necessarily indefinite in duration. *Id.*, at 364. Finally, we observed that in addition to protecting the public, the Act also provided treatment for sexually violent predators. *Id.*,

at 365–368. We acknowledged that not all mental conditions were treatable. For those individuals with untreatable conditions, however, we explained that there was no federal constitutional bar to their civil confinement, because the State had an interest in protecting the public from dangerous individuals with treatable as well as untreatable conditions. *Id.*, at 366. Our conclusion that the Kansas Act was "nonpunitive thus remove[d] an essential prerequisite for both Hendricks' double jeopardy and *ex post facto* claims." *Id.*, at 369.

Since deciding *Hendricks*, this Court has reaffirmed the principle that determining the civil or punitive nature of an Act must begin with reference to its text and legislative history. *Hudson* v. *United States*, 522 U. S. 93 (1997). In *Hudson*, which involved a double jeopardy challenge to monetary penalties and occupational debarment, this Court expressly disapproved of evaluating the civil nature of an Act by reference to the effect that Act has on a single individual. Instead, courts must evaluate the question by reference to a variety of factors "'considered in relation to the statute on its face'"; the clearest proof is required to override legislative intent and conclude that an Act denominated civil is punitive in purpose or effect. *Id.*, at 100 (quoting *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 169 (1963)).

With this in mind, we turn to the Court of Appeals' determination that respondent could raise an "as-applied" challenge to the Act on double jeopardy and *ex post facto* grounds and seek release from confinement. Respondent essentially claims that the conditions of his confinement at the Center are too restrictive, that the conditions are incompatible with treatment, and that the system is designed to result in indefinite confinement. Respondent's claims are in many respects like the claims presented to the Court in *Hendricks*, where we concluded that the conditions of confinement were largely explained by the State's goal to incapacitate, not to punish. 521 U. S., at 362–368. Nevertheless,

we do not deny that some of respondent's allegations are serious. Nor do we express any view as to how his allegations would bear on a court determining in the first instance whether Washington's confinement scheme is civil. Here, we evaluate respondent's allegations as presented in a double jeopardy and *ex post facto* challenge under the assumption that the Act is civil.

We hold that respondent cannot obtain release through an "as-applied" challenge to the Washington Act on double jeopardy and *ex post facto* grounds. We agree with petitioner that an "as-applied" analysis would prove unworkable. Such an analysis would never conclusively resolve whether a particular scheme is punitive and would thereby prevent a final determination of the scheme's validity under the Double Jeopardy and *Ex Post Facto* Clauses. Brief for Petitioner 30; Reply Brief for Petitioner 9. Unlike a fine, confinement is not a fixed event. As petitioner notes, it extends over time under conditions that are subject to change. The particular features of confinement may affect how a confinement scheme is evaluated to determine whether it is civil rather than punitive, but it remains no less true that the query must be answered definitively. The civil nature of a confinement scheme cannot be altered based merely on vagaries in the implementation of the authorizing statute.

Respondent contends that the Ninth Circuit's "as-applied" analysis comports with this Court's precedents. He points out that this Court has considered conditions of confinement in evaluating the validity of confinement schemes in the past. Brief for Respondent 11–16, 29 (citing *Hendricks*, *supra*, at 363; *Reno* v. *Flores*, 507 U. S. 292, 301–302 (1993); *United States* v. *Salerno*, 481 U. S. 739, 747–748 (1987); *Allen* v. *Illinois*, *supra*, at 373–374; *Schall* v. *Martin*, 467 U. S. 253, 269–273 (1984)). All of those cases, however, presented the question whether the Act at issue was punitive. Permitting respondent's as-applied challenge would invite an end run around the Washington Supreme Court's decision that the

Act is civil in circumstances where a direct attack on that decision is not before this Court.

JUSTICE THOMAS, concurring in the judgment, takes issue with our view that the question before the Court concerns an as-applied challenge to a civil Act. He first contends that respondent's challenge is not a true "as-applied" challenge because respondent does not claim that the statute "'by its own terms' is unconstitutional as applied . . . but rather that the statute is not being applied according to its terms at all." *Post*, at 271. We respectfully disagree. The Act requires "adequate care and individualized treatment," Wash. Rev. Code § 71.09.080(2) (Supp. 2000), but the Act is silent with respect to the confinement conditions required at the Center, and that is the source of many of respondent's complaints, see *supra*, at 259–260. JUSTICE THOMAS next contends that we incorrectly assume that the Act is civil, instead of viewing the Act as "'*otherwise* . . . civil,' or civil 'on its face.'" *Post*, at 270 (emphasis added by THOMAS, J.). However the Washington Act is described, our analysis in this case turns on the prior finding by the Washington Supreme Court that the Act is civil, and this Court's decision in *Hendricks* that a nearly identical Act was civil. Petitioner could not have claimed that the Washington Act is "otherwise" or "facially" civil without relying on those prior decisions.

In dissent, JUSTICE STEVENS argues that we "incorrectly assum[e]" that the Act is "necessarily civil," *post*, at 275, but the case has reached this Court under that very assumption. The Court of Appeals recognized that the Act is civil, and treated respondent's claim as an individual, "as-applied" challenge to the Act. The Court of Appeals then remanded the case to the District Court for an evidentiary hearing to determine respondent's conditions of confinement. Contrary to the dissent's characterization of the case, the Court of Appeals did not purport to undermine the validity of the Washington Act as a civil confinement scheme. The court did not conclude that respondent's allegations, if substanti-

ated, would be sufficient to refute the Washington Supreme Court's conclusion that the Act is civil, and to require the release of all those confined under its authority. The Ninth Circuit addressed only respondent's individual case, and we do not decide claims that are not presented by the decision below. *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 379 (1996). We reject the Ninth Circuit's "as-applied" analysis for double jeopardy and *ex post facto* claims as fundamentally flawed.

III

Our decision today does not mean that respondent and others committed as sexually violent predators have no remedy for the alleged conditions and treatment regime at the Center. The text of the Washington Act states that those confined under its authority have the right to adequate care and individualized treatment. Wash. Rev. Code § 71.09.080(2) (Supp. 2000); Brief for Petitioner 14. As petitioner acknowledges, if the Center fails to fulfill its statutory duty, those confined may have a state law cause of action. Tr. of Oral Arg. 6, 10–11, 52. It is for the Washington courts to determine whether the Center is operating in accordance with state law and provide a remedy.

State courts, in addition to federal courts, remain competent to adjudicate and remedy challenges to civil confinement schemes arising under the Federal Constitution. As noted above, the Washington Supreme Court has already held that the Washington Act is civil in nature, designed to incapacitate and to treat. *In re Young,* 122 Wash. 2d, at 18–25, 857 P. 2d, at 996–1000. Accordingly, due process requires that the conditions and duration of confinement under the Act bear some reasonable relation to the purpose for which persons are committed. *Foucha* v. *Louisiana,* 504 U. S. 71, 79 (1992); *Youngberg* v. *Romeo*, 457 U. S. 307, 324 (1982); *Jackson* v. *Indiana*, 406 U. S. 715, 738 (1972).

Finally, we note that a § 1983 action against the Center is pending in the Western District of Washington. See *supra*,

at 257. The Center operates under an injunction that requires it to adopt and implement a plan for training and hiring competent sex offender therapists; to improve relations between residents and treatment providers; to implement a treatment program for residents containing elements required by prevailing professional standards; to develop individual treatment programs; and to provide a psychologist or psychiatrist expert in the diagnosis and treatment of sex offenders to supervise the staff. App. 67. A Special Master has assisted in bringing the Center into compliance with the injunction. In its most recent published opinion on the matter, the District Court noted some progress at the Center in meeting the requirements of the injunction. *Turay* v. *Seling*, 108 F. Supp. 2d, at 1154–1155.

This case gives us no occasion to consider how the civil nature of a confinement scheme relates to other constitutional challenges, such as due process, or to consider the extent to which a court may look to actual conditions of confinement and implementation of the statute to determine in the first instance whether a confinement scheme is civil in nature. JUSTICE SCALIA, concurring, contends that conditions of confinement are irrelevant to determining whether an Act is civil unless state courts have interpreted the Act as permitting those conditions. By contrast, JUSTICE STEVENS would consider conditions of confinement at any time in order to gain "full knowledge of the effects of the statute." *Post*, at 277.

Whether a confinement scheme is punitive has been the threshold question for some constitutional challenges. See, *e.g.*, *Kansas* v. *Hendricks*, 521 U. S. 346 (1997) (double jeopardy and *ex post facto*); *United States* v. *Salerno*, 481 U. S. 739 (1987) (due process); *Allen* v. *Illinois*, 478 U. S. 364 (1986) (Fifth Amendment privilege against self-incrimination). Whatever these cases may suggest about the relevance of conditions of confinement, they do not endorse the approach of the dissent, which would render the inquiry into the "ef-

fects of the statute," *post,* at 277, completely open ended. In one case, the Court refused to consider alleged confinement conditions because the parties had entered into a consent decree to improve conditions. *Flores,* 507 U. S., at 301. The Court presumed that conditions were in compliance with the requirements of the consent decree. *Ibid.* In another case, the Court found that anecdotal case histories and a statistical study were insufficient to render a regulatory confinement scheme punitive. *Martin,* 467 U. S., at 272. In such cases, we have decided whether a confinement scheme is punitive notwithstanding the inherent difficulty in ascertaining current conditions and predicting future events.

We have not squarely addressed the relevance of conditions of confinement to a first instance determination, and that question need not be resolved here. An Act, found to be civil, cannot be deemed punitive "as applied" to a single individual in violation of the Double Jeopardy and *Ex Post Facto* Clauses and provide cause for release.

The judgment of the United States Court of Appeals for the Ninth Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE SOUTER joins, concurring.

I agree with the Court's holding that a statute, "found to be civil [in nature], cannot be deemed punitive" or criminal "as applied" for purposes of the *Ex Post Facto* and Double Jeopardy Clauses. *Ante* this page. The Court accurately observes that this holding gives us "no occasion to consider . . . the extent to which a court may look to actual conditions of confinement and implementation of the statute to determine in the first instance whether a confinement scheme is civil in nature." *Ante,* at 266. I write separately to dissociate myself from any implication that this reserved point may be an open question. I do not regard it as such since, three

years ago, we rejected a similar double jeopardy challenge (based upon the statute's implementation "as applied" to the petitioners), where the statute had *not* yet been determined to be civil in nature, and where we *were* making that determination "in the first instance." See *Hudson* v. *United States*, 522 U. S. 93 (1997). To be consistent with the most narrow holding of that case (which, unlike this one, did not involve imposition of confinement), any consideration of subsequent implementation in the course of making a "first instance" determination cannot extend to *all* subsequent implementation, but must be limited to implementation of confinement, and of other impositions that are "not a fixed event," *ante*, at 263. That, however, would be a peculiar limitation, since even "fixed events" such as the imposition of a fine can, in their implementation, acquire penal aspects—exemplified in *Hudson* by the allegedly punitive size of the fines, and by the availability of reduction for "good-faith" violations, see 522 U. S., at 97–98, 104. Moreover, the language and the reasoning of *Hudson* leave no room for such a peculiar limitation.

In that case, the petitioners contended that the punitive nature of the statute that had been applied to them could be assessed by considering the aforementioned features of the fines. We flatly rejected that contention, which found support in our prior decision in *United States* v. *Halper*, 490 U. S. 435 (1989). *Halper*, we said, had erroneously made a "significant departure" from our prior jurisprudence, in deciding "to 'asses[s] the character of the actual sanctions imposed,' 490 U. S., at 447, rather than, as *Kennedy* [v. *Mendoza-Martinez*, 372 U. S. 144 (1963),] demanded, evaluating the 'statute on its face' to determine whether it provided for what amounted to a criminal sanction, *[id.]*, at 169." 522 U. S., at 101. The *Kennedy* factors, we said, "'must be considered in relation to the statute on its face,'" 522 U. S., at 100, quoting from *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 169 (1963). We held that "[t]he fact that petitioners'

'good faith' was considered in determining the amount of the penalty to be imposed in this case [a circumstance that would normally indicate the assessment is punitive] is irrelevant, as we look only to 'the statute on its face' to determine whether a penalty is criminal in nature." *Hudson*, *supra*, at 104, quoting *Kennedy*, *supra*, at 169. We repeated, to be sure, the principle that the statutory scheme would be criminal if it was sufficiently punitive "'either in purpose *or effect,*'" *Hudson*, *supra*, at 99 (emphasis added), quoting *United States* v. *Ward*, 448 U. S. 242, 248–249 (1980), but it was clear from the opinion that this referred to effects apparent upon the face of the statute.

The short of the matter is that, for Double Jeopardy and *Ex Post Facto* Clause purposes, the question of criminal penalty *vel non* depends upon the intent of the legislature;* and harsh executive implementation cannot "transfor[m] what was clearly intended as a civil remedy into a criminal penalty," *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 154 (1956), any more than compassionate executive implementation can transform a criminal penalty into a civil remedy. This is not to say that there is no relief from a system that administers a facially civil statute in a fashion that would render it criminal. The remedy, however, is not to invalidate the legislature's handiwork under the Double Jeopardy Clause, but to eliminate whatever excess in administration contradicts the statute's civil character. When, as here, a state statute is at issue, the remedy for implementation that does not comport with the civil nature of the statute is resort to the traditional state proceedings that challenge unlawful executive action; if those proceedings fail, and the state

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**Hudson* v. *United States*, 522 U. S. 93 (1997), addressed only the Double Jeopardy Clause. Since, however, the very wording of the *Ex Post Facto* Clause—"No State shall . . . *pass* any . . . ex post facto *Law*," U. S. Const., Art. I, § 10, cl. 1 (emphases added)—leaves no doubt that it is a prohibition upon *legislative* action, the irrelevance of subsequent executive implementation to that constitutional question is, if anything, even clearer.

courts authoritatively interpret the state statute as permitting impositions that are indeed punitive, then and only then can federal courts pronounce a statute that on its face is civil to be criminal. Such an approach protects federal courts from becoming enmeshed in the sort of intrusive inquiry into local conditions at state institutions that are best left to the State's own judiciary, at least in the first instance. And it avoids federal invalidation of state statutes on the basis of executive implementation that the state courts themselves, given the opportunity, would find to be ultra vires. Only this approach, it seems to me, is in accord with our sound and traditional reluctance to be the initial interpreter of state law. See *Railroad Comm'n of Tex.* v. *Pullman Co.*, 312 U. S. 496, 500–501 (1941).

With this clarification, I join the opinion of the Court.

JUSTICE THOMAS, concurring in the judgment.

We granted certiorari to decide whether "an *otherwise* valid civil statute can be divested of its civil nature" simply because of an administrative agency's failure to implement the statute according to its terms. Pet. for Cert. i (emphasis added). The majority declines to answer this question. Instead, it assumes that the statute at issue *is* civil—rather than "*otherwise* . . . civil," or civil "on its face." *Young* v. *Weston*, 122 F. 3d 38 (CA9 1997). And then it merely holds that a statute that is civil cannot be deemed the opposite of civil—"punitive," as the majority puts it—as applied to a single individual. *Ante*, at 267. In explaining this conclusion, the majority expressly reserves judgment on whether the manner of implementation should affect a court's assessment of a statute as civil in the "first instance." *Ante*, at 263, 267. I write separately to express my view, first, that a statute which is civil on its face cannot be divested of its civil nature simply because of the manner in which it is implemented, and second, that the distinction between a challenge in the

"first instance" and a subsequent challenge is one without a difference.

Before proceeding, it is important to clarify the issue in this case. The majority adopts the Ninth Circuit's nomenclature and refers to respondent's claim as an "as-applied" challenge, see, *e. g.*, *ante*, at 263, but that label is at best misleading. Typically an "as-applied" challenge is a claim that a statute, "*by its own terms*, infringe[s] constitutional freedoms in the circumstances of [a] particular case." *United States* v. *Christian Echoes Nat. Ministry, Inc.*, 404 U. S. 561, 565 (1972) *(per curiam)* (emphasis added). In contrast, respondent's claim is not that Washington's Community Protection Act of 1990 (Washington Act or Act), Wash. Rev. Code § 71.09.010 *et seq.* (1992), "by its own terms" is unconstitutional as applied to him,[1] but rather that the statute is not being applied according to its terms at all.[2] Respondent essentially contends that the actual conditions of confinement, notwithstanding the text of the statute, are punitive and incompatible with the Act's treatment purpose. See *ante*, at 259–260.

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[1] Respondent has made the claim that the terms of the Washington Act are criminal so that his confinement under the Act thus violates the Double Jeopardy and *Ex Post Facto* Clauses, but this claim was rejected below—first by the Washington Supreme Court, *In re Young*, 122 Wash. 2d 1, 18–23, 857 P. 2d 989, 996–999 (1993), and then by the Ninth Circuit, *Young* v. *Weston*, 192 F. 3d 870, 874 (1999)—and has not been presented to this Court.

[2] Disagreeing with this characterization, the majority contends that the statute is silent with respect to conditions of confinement. See *ante*, at 264. Even if the majority were correct—which it is not, see Wash. Rev. Code § 71.09.070 (requiring annual examinations of each person's mental conditions); § 71.09.080(2) (Supp. 2000) (requiring "adequate care and individualized treatment"); see also *In re Young*, *supra*, at 18–23, 857 P. 2d, at 996–999 (discussing similar provisions on conditions of confinement in 1990 version of Washington Act)—the question on which we granted certiorari expressly assumes that the statute "mandate[s]" the "conditions of confinement" that petitioner seeks. See Pet. for Cert. i.

A challenge, such as this one, to the implementation of a facially civil statute is not only "unworkable," as the majority puts it, *ante*, at 263, but also prohibited by our decision in *Hudson* v. *United States*, 522 U. S. 93 (1997). In *Hudson*, we held that, when determining whether a statute is civil or criminal, a court must examine the "statute on its face." *Id.*, at 101, quoting *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 169 (1963) (internal quotation marks omitted). In so holding, we expressly disavowed the approach used in *United States* v. *Halper*, 490 U. S. 435, 448 (1989), which evaluated the "actual sanctions imposed." 522 U. S., at 101, quoting *Halper*, *supra*, at 447 (internal quotation marks omitted). Respondent's claim is flatly inconsistent with the holding of *Hudson* because respondent asks us to look beyond the face of the Washington Act and to examine instead the actual sanctions imposed on him, that is, the actual conditions of confinement. Respondent argues, and the Ninth Circuit held, that *Hudson*'s reach is limited to the particular sanctions involved in that case—monetary penalties and occupational disbarment—and does not apply here, where the sanction is confinement. *Hudson*, however, contains no indication whatsoever that its holding is limited to the specific sanctions at issue. To the contrary, as we explained in *Hudson*, a court may not elevate to dispositive status any of the factors that it may consider in determining whether a sanction is criminal.[3] 522 U. S., at 101. One of these nondispos-

[3] The *Hudson* Court referred to the seven factors listed in *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144 (1963), as "useful guideposts": "(1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of *scienter;* (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned." 522 U. S., at 99–100, quoting *Mendoza-Martinez*, *supra*, at 168–169 (internal quotation marks and alteration omitted).

itive factors is confinement. *Id.*, at 99 (stating that one of the factors is "[w]hether the sanction involves an affirmative disability or restraint," quoting *Mendoza-Martinez*, *supra*, at 168 (internal quotation marks omitted)). Yet elevating confinement to dispositive status is exactly what respondent asks us to do when he advances his distinction between confinement and other sanctions. Because *Hudson* rejects such an argument, respondent's claim fails.

An implementation-based challenge to a facially civil statute would be as inappropriate in reviewing the statute in the "first instance," *ante*, at 263, 267 (majority opinion), as it is here. In the first instance, as here, there is no place for such a challenge in the governing jurisprudence. *Hudson*, which requires courts to look at the face of the statute, precludes implementation-based challenges at any time. Moreover, the implementation-based claim would be as "unworkable," *ante*, at 263 (majority opinion), in the first instance as in later challenges. Because the actual conditions of confinement may change over time and may vary from facility to facility, an implementation-based challenge, if successful, would serve to invalidate a statute that may be implemented without any constitutional infirmities at a future time or in a separate facility. To use the majority's words, the validity of a statute should not be "based merely on vagaries in the implementation of the authorizing statute." *Ibid.*

And yet the majority suggests that courts may be able to consider conditions of confinement in determining whether a statute is punitive. *Ante*, at 263, 266. To the extent that the conditions are actually provided for on the face of the statute, I of course agree. Cf. *Hudson*, *supra*, at 101 (directing courts to look at "'the statute on its face'"). However, to the extent that the conditions result from the fact that the statute is not being applied according to its terms, the conditions are *not* the effect of the statute, but rather the

effect of its improper implementation.[4] A suit based on these conditions cannot prevail.

* * *

The Washington Act does not provide on its face for punitive conditions of confinement, and the actual conditions under which the Act is implemented are of no concern to our inquiry. I therefore concur in the judgment of the Court.

JUSTICE STEVENS, dissenting.

A sexual predator may be imprisoned for violating the law, and, if he is mentally ill, he may be committed to an institution until he is cured. Whether a specific statute authorizing the detention of such a person is properly viewed as "criminal" or "civil" in the context of federal constitutional issues is often a question of considerable difficulty. See *Kansas* v. *Hendricks*, 521 U. S. 346 (1997) (reversing, by a 5-to-4 vote, a decision of the Kansas Supreme Court invali-

[4] The dissent argues that, "under the majority's analysis, there is no inquiry beyond that of statutory construction," *post*, at 276 (opinion of STEVENS, J.). Although it is unclear to me whether the dissent is correct on this score, I hope that state and federal courts so interpret the majority opinion. For even if the majority opinion does not preclude venturing beyond the face of the statute, *Hudson* certainly does. See *Hudson*, 522 U. S., at 101 (holding that courts must examine a statute "'on its face'" and may not consider the "'actual sanctions imposed'"); *supra*, at 272.

To dispel any suggestion to the contrary, *ante*, at 261–262, 263, 266 (majority opinion); *post*, at 275 (STEVENS, J., dissenting), I note that *Kansas* v. *Hendricks*, 521 U. S. 346 (1997), does not provide support for implementation-based challenges. In *Hendricks*, "none of the parties argue[d] that people institutionalized under the . . . civil commitment statute are subject to punitive conditions." *Id.*, at 363. The viability of an implementation-based challenge was simply not at issue. And significantly, six months after *Hendricks*, we held in *Hudson* that inquiries into whether a statute is civil are restricted to the "face" of the statute. *Hudson*, *supra*, at 101. To the extent that *Hendricks* (or any previous opinion, *ante*, at 266 (majority opinion)) left a door open by not answering the implementation question, *Hudson* closed that door.

dating Kansas' Sexually Violent Predator Act); *Allen* v. *Illinois*, 478 U. S. 364 (1986) (upholding, by a 5-to-4 vote, Illinois' Sexually Dangerous Persons Act); *In re Young*, 122 Wash. 2d 1, 857 P. 2d 989 (1993) (en banc) (upholding, by a 5-to-4 vote, the provisions of Washington's Community Protection Act of 1990 dealing with sexually violent predators).

It is settled, however, that the question whether a state statute is civil or criminal in nature for purposes of complying with the demands of the Federal Constitution is a question of federal law. If a detainee comes forward with "'the clearest proof' that 'the statutory scheme [is] so punitive either in purpose *or effect* as to negate [the State's] intention' that the proceeding be civil, it must be considered criminal." *Allen*, 478 U. S., at 369 (quoting *United States* v. *Ward*, 448 U. S. 242, 248–249 (1980)) (emphasis added). See also *Hudson* v. *United States*, 522 U. S. 93, 100, 105 (1997). Accordingly, we have consistently looked to the conditions of confinement as evidence of both the legislative purpose behind the statute and its actual effect. See *Hendricks*, 521 U. S., at 361, 367–369; *Schall* v. *Martin*, 467 U. S. 253, 269–271 (1984); *Allen*, 478 U. S., at 369, 373–374. As we have acknowledged in those cases, the question whether a statute is in fact punitive cannot always be answered solely by reference to the text of the statute.

The majority in this case, however, incorrectly assumes that the Act at issue is necessarily civil. The issue the majority purports to resolve is whether an Act that is otherwise civil in nature can be deemed criminal in a specific instance based on evidence of its application to a particular prisoner. However, respondent Young's petition did not present that issue. Rather, consistent with our case law, Young sought to introduce evidence of the conditions of confinement as evidence of the punitive purpose and effect of the Washington statute. See Amended Pet. for Writ of Habeas Corpus 6 and Supp. Brief on Remand 2, 6, 10–11, in No. C94–480C (WD Wash.), Record, Doc. Nos. 57, 155. As a result, Young in no

way runs afoul of *Hudson* v. *United States*, 522 U. S. 93 (1997). Properly read, *Hudson* acknowledges that resolving whether an Act is civil or criminal in nature can take into account whether the statutory scheme has a punitive effect.[1] *Id.*, at 99. What *Hudson* rejects is an approach *not* taken by respondent—one that bypasses this threshold question in favor of a dispositive focus on the sanction actually imposed on the specific individual.[2] *Id.*, at 101–102.

To be sure, the question whether an Act is civil or punitive in nature "is initially one of statutory construction." *Ante*, at 261 (majority opinion). However, under the majority's analysis, there is no inquiry beyond that of statutory construction. *Ante*, at 263. In essence, the majority argues that because the constitutional query must be answered definitively and because confinement is not a "fixed event," conditions of confinement should not be considered at all, except in the first challenge to a statute, when, as a practical matter,

[1] In his concurrence, JUSTICE SCALIA concludes that, under the rule of *Hudson* v. *United States*, 522 U. S. 93 (1997), courts may *never* look to actual conditions of confinement and implementation of the statute to determine in the first instance whether a confinement scheme is civil in nature. See *ante*, at 267–268. JUSTICE THOMAS, concurring in the judgment, would take *Hudson* even further, precluding implementation-based challenges "at any time." *Ante*, at 273. However, for the reasons set out above, I believe that both concurrences misread *Hudson*. I also note that *Hudson* did not involve confinement. In cases that do involve confinement, this Court has relied on the principle that a statutory scheme must be deemed criminal if it was sufficiently punitive "'either in purpose or effect.'" See *Kansas* v. *Hendricks*, 521 U. S. 346, 361, 367–369 (1997); *Schall* v. *Martin*, 467 U. S. 253, 269–271 (1984); *Allen* v. *Illinois*, 478 U. S. 364, 369, 373–374 (1986).

[2] In response to my dissent, the Court has made it clear that it is simply holding that respondent may not prevail if he merely proves that the statute is punitive insofar as it has been applied to him. The question whether he may prevail if he can prove that the statute is punitive in its application to everyone confined under its provisions therefore remains open. In sum, the Court has rejected the narrow holding of the Ninth Circuit, but has not addressed the sufficiency of the broadest claim that petitioner has advanced.

the evidence of such conditions is most likely *not* to constitute the requisite "clearest proof." This seems to me quite wrong. If conditions of confinement are such that a detainee has been punished twice in violation of the Double Jeopardy Clause, it is irrelevant that the scheme has been previously labeled as civil without full knowledge of the effects of the statute.[3]

In this case, Young has made detailed allegations concerning both the absence of treatment for his alleged mental illness and the starkly punitive character of the conditions of his confinement. If proved, those allegations establish not just that those detained pursuant to the statute are treated like those imprisoned for violations of Washington's criminal laws, but that, in many respects, they receive significantly worse treatment.[4] If those allegations are correct, the statute in question should be characterized as a criminal law for federal constitutional purposes. I therefore agree with the Court of Appeals' conclusion that respondent should be given the opportunity to come forward with the "clearest proof" that his allegations are true.

Accordingly, I respectfully dissent.

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[3] In this case, those detained pursuant to Washington's statute have sought an improvement in conditions for almost seven years. Their success in the courts, however, has had little practical impact.

[4] Under such conditions, Young has now served longer in prison following the completion of his sentence than he did on the sentence itself.

Syllabus

CITY NEWS & NOVELTY, INC. *v.* CITY OF WAUKESHA

CERTIORARI TO THE COURT OF APPEALS OF WISCONSIN

No. 99–1680. Argued November 28, 2000—Decided January 17, 2001

The City of Waukesha, Wisconsin (City), requires sellers of sexually explicit materials to obtain and annually renew adult business licenses. When petitioner City News and Novelty, Inc. (City News), applied for a renewal of its adult business license, then due to expire in two months, Waukesha's Common Council denied the application, finding that City News had violated the City's ordinance in various ways. The denial was upheld in administrative proceedings and on judicial review in the state courts. Petitioning for certiorari, City News raised three questions, including whether the guarantee of a prompt judicial review that must accompany an adult business licensing scheme, see *Freedman* v. *Maryland*, 380 U. S. 51, 59; *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 229, means a prompt judicial determination on the merits of a permit denial, as some Federal Circuits have held, or simply prompt access to judicial review, as the Wisconsin Court of Appeals, below, and other courts have ruled. Because this Court granted the petition only on this question, City News cannot now contend that any of the substantive requirements governing adult business licenses in Waukesha conflict with the First Amendment. Nor does City News contend that the evidence failed to substantiate the charged violations.

Held: Because City News is not properly situated to raise the question on which this Court granted review, the petition is dismissed and the judgment of the Wisconsin court is left undisturbed. Pp. 282–286.

(a) This case has become moot. After petitioning for certiorari, City News withdrew its renewal application and ceased to operate as an adult business. City News no longer seeks to renew its license and currently expresses no intent to pursue a license. Accordingly, City News no longer has a legally cognizable interest in the outcome. *E. g.*, *County of Los Angeles* v. *Davis*, 440 U. S. 625, 631. Neither of City News's arguments that the case remains fit for adjudication is persuasive. The Court rejects City News's contention that, because it never promised not to reapply for a license, a live controversy remains under *Erie* v. *Pap's A. M.*, 529 U. S. 277. *Erie* differs critically from this case. In *Erie*, as in the instant case, the Court confronted an adult business' challenge to a city ordinance. There, the Court held that the controversy persisted, even after the adult business shut down, in part because the business could again decide to operate. *Id.*, at 287. That

speculation standing alone, however, did not shield the case from a mootness determination. Another factor figured prominently. The nude dancing entrepreneur in *Erie* sought to have the case declared moot after the business had prevailed below, obtaining a state-court judgment that invalidated Erie's ordinance. *Id.*, at 288. Acceptance of the mootness plea would have resulted in dismissal of the petition, leaving intact the judgment below. See *ASARCO Inc.* v. *Kadish*, 490 U. S. 605, 621, n. 1. As a result, Erie would have been saddled with an ongoing injury, *i. e.*, the judgment striking its law, and the adult business arguably would have prevailed in an attempt to manipulate the Court's jurisdiction to insulate a favorable decision from review, 529 U. S., at 288. Here, in contrast, City News left the fray a loser, not a winner. Dismissal of the petition will not keep Waukesha under the weight of an adverse judgment, deprive the City of its state-court victory, or reward an arguable manipulation of the Court's jurisdiction. The Court also rejects City News's contention that it experiences ongoing injury because it is conclusively barred by Waukesha's ordinance from reopening as an adult business until 2005. It is far from clear whether City News actually suffers that disability. And a live controversy is not maintained by speculation that City News might be temporarily disabled from reentering a business that it has left and currently asserts no plan to reenter. See *Spencer* v. *Kemna*, 523 U. S. 1, 15–16. Pp. 282–285.

(b) City News's contention that it remains a qualified complainant also fails on another ground. Full briefing and argument have revealed that the *Freedman* question City News tendered, and which the Court took up for review, is not now and never was accurately reflective of City News's grievance. Unlike the initial license applicant whose expression cannot begin prepermission, City News was already licensed to conduct an adult business and sought to fend off a stop order. Swift judicial review is the remedy needed by those held back from speaking. The Court does not doubt that an ongoing adult enterprise facing loss of its license to do business may allege First Amendment injuries. Such an establishment's typical concern, however, is not the speed of court proceedings, but the availability of a stay of adverse action during the pendency of judicial review, however long that review takes. Unlike the *Freedman* petitioner, who sought, through swift court review, an end to the status quo of silence, City News sought to maintain, *pendente lite*, the status quo of speech (or expressive conduct). This Court ventures no view on the merits of an argument urging preservation of speech (or expressive conduct) as the status quo pending administrative and judicial review proceedings. That question is not the one on which

the courts have divided or on which certiorari was granted here. Pp. 285–286.

Certiorari dismissed. Reported below: 231 Wis. 2d 93, 604 N. W. 2d 870.

GINSBURG, J., delivered the opinion for a unanimous Court.

Jeff Scott Olson argued the cause for petitioner. With him on the briefs were *Richard L. Wilson*, *John H. Weston*, *G. Randall Garrou*, and *Cathy E. Crosson.*

Curt R. Meitz argued the cause for respondent. With him on the brief were *Vincent D. Moschella* and *Thomas C. Goldstein.*

James A. Feldman argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Ogden*, *Deputy Solicitor General Kneedler*, *Lisa Schiavo Blatt*, *Michael Jay Singer*, and *Howard S. Scher.**

JUSTICE GINSBURG delivered the opinion of the Court.

In *Freedman* v. *Maryland*, 380 U. S. 51 (1965), a case involving a state motion-picture censorship scheme, the Court announced procedural requirements necessary to guard against unconstitutional prior restraint of expression.

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*Briefs of *amici curiae* urging reversal were filed for the American Booksellers Foundation for Free Expression et al. by *Michael A. Bamberger;* for the American Charities for Reasonable Fund Raising Regulation, Inc., by *Edward N. Mazlish;* and for the Liberty Project by *Jodie L. Kelley.*

Briefs of *amici curiae* urging affirmance were filed for the State of Alabama et al. by *James E. Doyle*, Attorney General of Wisconsin, *Thomas J. Balistreri*, Assistant Attorney General, *Bill Pryor*, Attorney General of Alabama, *Ken Salazar*, Attorney General of Colorado, and *Don Stenberg*, Attorney General of Nebraska; for the Community Defense Counsel by *Len L. Munsil* and *Scott D. Bergthold;* for Morality in Media, Inc., et al. by *Robin S. Whitehead* and *Bruce A. Taylor;* and for the National League of Cities et al. by *Richard Ruda* and *Charles A. Rothfeld.*

Gary S. Edinger filed a brief for the Florida Cannabis Action Network, Inc., as *amicus curiae.*

Those requirements included assurance of "a prompt final judicial decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license." *Id.*, at 59. Twenty-five years later, in *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215 (1990), the Court applied some of the *Freedman* standards to a municipal ordinance conditioning the operation of sexually oriented businesses on receipt of a license. Unsuccessful applicants for an adult business license, the opinion announcing the judgment stated, must be accorded "an avenue for prompt judicial review." 493 U. S., at 229.

Courts have divided over the meaning of *FW/PBS*'s "prompt judicial review" requirement. Some have held that the unsuccessful applicant for an adult business license must be assured a prompt judicial determination on the merits of the permit denial. See, *e. g.*, *Baby Tam & Co.* v. *Las Vegas*, 154 F. 3d 1097, 1101–1102 (CA9 1998); *11126 Baltimore Blvd., Inc.* v. *Prince George's County*, 58 F. 3d 988, 999–1000 (CA4 1995) (en banc). Others, like the Court of Appeals of Wisconsin whose judgment is before us, 231 Wis. 2d 93, 115–116, 604 N. W. 2d 870, 882 (1999), have held that prompt access to court review suffices. See, *e. g.*, *Boss Capital, Inc.* v. *Casselberry*, 187 F. 3d 1251, 1256–1257 (CA11 1999); *TK's Video, Inc.* v. *Denton County*, 24 F. 3d 705, 709 (CA5 1994). We granted certiorari to resolve the conflict. 530 U. S. 1242 (2000). We now find, however, that the issue stemming from *Freedman* is not genuinely presented to us in this case. We therefore dismiss the petition and leave the judgment of the Wisconsin court undisturbed.

I

The City of Waukesha, Wisconsin (City), requires sellers of sexually explicit materials to obtain and annually renew adult business licenses. See Waukesha Municipal Code §§ 8.195(2), (7) (1995), reprinted in App. to Pet. for Cert. 101, 104. Petitioner City News and Novelty, Inc. (City News), pursuant to a City license first obtained in 1989, owned and

operated an adult-oriented shop in downtown Waukesha. In November 1995, City News applied for a renewal of its license, then due to expire in two months. In December 1995, Waukesha's Common Council denied the application, finding that City News had violated the City's ordinance by permitting minors to loiter on the premises, failing to maintain an unobstructed view of booths in the store, and allowing patrons to engage in sexual activity inside the booths. Waukesha's refusal to renew City News's license was upheld in administrative proceedings and on judicial review in the state courts.

Petitioning for certiorari, City News raised three questions. First, City News asserted that the persuasion burden had been improperly assigned to it. Second, City News urged that Waukesha's ordinance unconstitutionally accorded City officials unbridled discretion to vary punishments for ordinance violations. Third, City News asked us to "resolve the conflict among the circuits concerning whether the guarantee of prompt judicial review that must accompany [an adult business] licensing scheme means a prompt judicial determination or simply the right to promptly file for judicial review." Pet. for Cert. 13. We granted the petition only on the third question. Accordingly, City News cannot now contend that any of the substantive requirements governing adult business licenses in Waukesha conflict with the First Amendment. Nor does City News contend that the evidence failed to substantiate the charged violations. We now explain why City News is not properly situated to raise the question on which we granted review.

II

In letters sent to Waukesha two months after petitioning for review in this Court, City News gave notice that it would withdraw its renewal application and close its business upon the City's grant of a license to another corporation, B. J. B., Inc., "a larger and more modern business" with which City

News felt "it [could not] effectively compete." Letters from Jeff Scott Olson to Vince Moschella (June 12 and 19, 2000), Respondent's Lodging, Vol. 1, Tab No. 14. Waukesha granted B. J. B.'s license application on June 20. It is undisputed that City News has ceased to operate as an adult business and no longer seeks to renew its license. Tr. of Oral Arg. 14–15.

Observing that City News neither now pursues nor currently expresses an intent to pursue a license under Waukesha law, Waukesha asserts that the case has become moot, for City News no longer has "a legally cognizable interest in the outcome." *County of Los Angeles* v. *Davis*, 440 U. S. 625, 631 (1979) (citing *Powell* v. *McCormack*, 395 U. S. 486, 496 (1969)). We agree that the case no longer qualifies for judicial review. Urging that the case remains fit for adjudication, City News tenders two points. We find neither persuasive.

Noting that it "has never promised not to apply for a license" in the future, Reply Brief 1, City News first contends that, notwithstanding the voluntary termination of its license renewal effort, a live controversy remains under the Court's reasoning in *Erie* v. *Pap's A. M.*, 529 U. S. 277 (2000). In our view, *Erie* differs critically from this case. In *Erie*, we similarly granted a petition to review a state-court judgment addressing an adult business' First Amendment challenge to a city ordinance. We concluded that the controversy persisted, even though the adult business had shut down. We reached that conclusion, it is true, in part because the business "could again decide to operate." *Id.*, at 287. That speculation standing alone, however, did not shield the case from a mootness determination. Another factor figured prominently. The nude dancing entrepreneur in *Erie* sought "to have the case declared moot" after the business had "prevailed below," obtaining a judgment that invalidated Erie's ordinance. *Id.*, at 288. Had we accepted the entrepreneur's plea, then consistent with our practice when a case

becomes moot on review from a state court, we would have dismissed the petition, leaving intact the judgment below. See *ASARCO Inc.* v. *Kadish*, 490 U. S. 605, 621, n. 1 (1989); *Erie*, 529 U. S., at 305 (SCALIA, J., concurring in judgment). Thus, had we declared *Erie* moot, the defendant municipality would have been saddled with an "ongoing injury," *i. e.*, the judgment striking its law. *Id.*, at 288. And the plaintiff arguably would have prevailed in an "attemp[t] to manipulate the Court's jurisdiction to insulate a favorable decision from review." *Ibid.*

In this case, we confront no parallel circumstance. The adult enterprise before us left the fray as a loser, not a winner. Our dismissal here does not keep Waukesha under the weight of an adverse judgment, or deprive Waukesha of its victory in state court. Nor does a mootness dismissal reward an arguable manipulation of our jurisdiction, for plaintiff City News, unlike the nude dancing entrepreneur in *Erie*, opposes a declaration of mootness.[1]

City News also urges that it experiences ongoing injury because it is conclusively barred by Waukesha's ordinance from reopening as an adult business until 2005. It is far

[1] City News appears to rely on the general rule that voluntary cessation of a challenged practice rarely moots a federal case. See, *e. g.*, *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189 (2000). But that rule traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior. See *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 66–67 (1987) ("Mootness doctrine . . . protects plaintiffs from defendants who seek to evade sanction by predictable 'protestations of repentance and reform.'") (quoting *United States* v. *Oregon State Medical Soc.*, 343 U. S. 326, 333 (1952)); see also *Friends of Earth*, 528 U. S., at 189 (Courts are not "compelled to leave '[t]he defendant . . . free to return to his old ways.'") (quoting *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283, 289, n. 10 (1982), in turn quoting *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632 (1953)). That principle does not aid City News. For it is City News, not its adversary, whose conduct saps the controversy of vitality, and City News can gain nothing from our dismissal.

from clear, however, whether City News actually suffers that disability.[2] And as our prior discussion suggests, *supra,* at 283, a live controversy is not maintained by speculation that City News might be temporarily disabled from reentering a business that City News has left and currently asserts no plan to reenter. See *Spencer* v. *Kemna,* 523 U. S. 1, 15–16 (1998).

City News's contention that it remains a qualified complainant also fails for a separate reason. Full briefing and argument have revealed that the question City News tendered, and which we took up for review, is not now and never was accurately reflective of City News's grievance. Unlike the initial license applicant whose expression cannot begin prepermission (the situation of the complainant in *Freedman*), City News was already licensed to conduct an adult business and sought to fend off a stop order. Swift judicial review is the remedy needed by those held back from speaking. We do not doubt that an ongoing adult enterprise facing loss of its license to do business may allege First Amendment injuries. Such an establishment's typical concern, however, is not the speed of court proceedings, but the avail-

[2] City News points to Waukesha's rule that to receive an adult entertainment license, an applicant "shall not have been found to have previously violated [the adult business ordinance] within 5 years immediately preceding the date of the application." Waukesha Municipal Code § 8.195(4)(a)(2) (1995), reprinted in App. to Pet. for Cert. 103. It was in 1995, however, that Waukesha last found City News to have violated the City ordinance. As City News recognizes, the disabilities from these violations expired in 2000. Reply Brief 2. City News asserts that it remains vulnerable to the bar because, in violation of the ordinance, it operated without a license into the year 2000. But this argument runs up against the facts that, since 1995, City News has not "been found" by Waukesha's Common Council to have violated the ordinance, and that the council expressly permitted City News to continue in business during the pendency of state-court proceedings. See Petitioner's Lodging, Tab No. 3. If City News seeks a license in the future, and if Waukesha attempts to invoke its five-year bar, nothing in the prior proceedings or in our disposition today will disable City News from contesting the bar's application.

ability of a stay of adverse action during the pendency of judicial review, however long that review takes.

Unlike the petitioner in *Freedman*, who sought, through swift court review, an end to the status quo of silence, City News sought to maintain, *pendente lite*, the status quo of speech (or expressive conduct). Brief for Petitioner 43–44. We venture no view on the merits of an argument urging preservation of speech (or expressive conduct) as the status quo pending administrative and judicial review proceedings. It suffices to point out that the question is not the one on which the courts have divided or on which we granted certiorari.

For the reasons stated, the writ of certiorari is

Dismissed.

Per Curiam

DISTRICT OF COLUMBIA ET AL. *v.* TRI COUNTY INDUSTRIES, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99–1953. Argued January 10, 2001—Decided January 17, 2001

Certiorari dismissed. Reported below: 200 F. 3d 836 and 208 F. 3d 1066.

Charles L. Reischel, Deputy Corporation Counsel for the District of Columbia, argued the cause for petitioners. With him on the briefs were *Robert R. Rigsby*, Corporation Counsel, and *Donna M. Murasky*, Senior Assistant Corporation Counsel.

Frank J. Emig argued the cause and filed a brief for respondent.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

**Jeffrey Robert White* and *Frederick M. Baron* filed a brief for the Association of Trial Lawyers of America as *amicus curiae* urging affirmance.

Syllabus

BRENTWOOD ACADEMY *v.* TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 99–901. Argued October 11, 2000—Decided February 20, 2001

Respondent not-for-profit athletic association (Association) regulates interscholastic sport among Tennessee public and private high schools. Most of the State's public high schools are members, representing 84% of the Association's membership. School officials make up the voting membership of the Association's governing council and control board, which typically hold meetings during regular school hours. The Association is largely funded by gate receipts. Association staff, although not state employees, may join the state retirement system. The Association sets membership standards and student eligibility rules and has the power to penalize any member school that violates those rules. The State Board of Education (State Board) has long acknowledged the Association's role in regulating interscholastic competition in public schools, and its members sit as nonvoting members of the Association's governing bodies. When the Association penalized petitioner Brentwood Academy for violating a recruiting rule, Brentwood sued the Association and its executive director under 42 U. S. C. § 1983, claiming that the rule's enforcement was state action that violated the First and Fourteenth Amendments. The District Court granted Brentwood summary judgment, enjoining the rule's enforcement, but the Sixth Circuit found no state action and reversed.

Held: The Association's regulatory activity is state action owing to the pervasive entwinement of state school officials in the Association's structure, there being no offsetting reason to see the Association's acts in any other way. Pp. 295–305.

(a) State action may be found only if there is such a "close nexus between the State and the challenged action" that seemingly private behavior "may be fairly treated as that of the State itself." *Jackson* v. *Metropolitan Edison Co.*, 419 U. S. 345, 351. No one fact is a necessary condition for finding state action, nor is any set of circumstances sufficient, for there may be some countervailing reason against attributing activity to the government. The facts that can bear on an attribution's fairness—*e. g.*, a nominally private entity may be a state actor when it is entwined with governmental policies or when government is en-

twined in its management or control, *Evans* v. *Newton*, 382 U. S. 296, 299, 301—unequivocally show that a legal entity's character is determined neither by its expressly private characterization in statutory law, nor by the law's failure to acknowledge its inseparability from recognized government officials or agencies. In *National Collegiate Athletic Assn.* v. *Tarkanian*, 488 U. S. 179, this Court anticipated that state action could be found when there is public entwinement in the management or control of an organization whose member public schools are all within a single State. Pp. 295–298.

(b) The necessarily fact-bound inquiry leads to the conclusion of state action here. The Association's nominally private character is overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it. To the extent of 84% of its membership, the Association is an organization of public schools represented by their officials acting in their official capacity to provide an integral element of secondary public schooling, interscholastic athletics. There would be no recognizable Association without the public school officials, who overwhelmingly determine and perform all but the Association's purely ministerial acts. Only the 16% minority of private school memberships keeps the entwinement of the Association and public schools from being total and their identities totally indistinguishable. To complement the entwinement from the bottom up, the State has provided entwinement from the top down: State Board members sit ex officio on the Association's governing bodies and Association employees participate in the state retirement system. Entwinement to the degree shown here requires that the Association be charged with a public character and judged by constitutional standards. Pp. 298–302.

(c) Entwinement is also the answer to the Association's several arguments that the instant facts would not support a state-action finding under various other criteria, *e. g.*, the public function test, *Rendell-Baker* v. *Kohn*, 457 U. S. 830, distinguished. Pp. 302–303.

(d) Although facts showing public action may be outweighed in the name of a value at odds with finding public accountability in the circumstances, *e. g.*, *Polk County* v. *Dodson*, 454 U. S. 312, 322, no such countervailing value is present here. The Association's fear that reversing the judgment will trigger an epidemic of federal litigation is unfounded. Save for the Sixth Circuit, every Court of Appeals to consider a statewide athletic association like this one has found it to be a state actor, and there has been no litigation explosion in those jurisdictions. Nor should the Association have dispensation merely because the public

schools themselves are state actors subject to suit under § 1983 and Title IX of the Education Amendments of 1972. Pp. 303–305.

180 F. 3d 758, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and KENNEDY, JJ., joined, *post*, p. 305.

James F. Blumstein argued the cause for petitioner. With him on the briefs were *H. Lee Barfield II* and *G. Thomas Nebel.*

Deputy Solicitor General Underwood argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Lee*, *Irving L. Gornstein*, *Dennis J. Dimsey*, and *Gregory B. Friel.*

Richard L. Colbert argued the cause and filed a brief for respondents.*

JUSTICE SOUTER delivered the opinion of the Court.

The issue is whether a statewide association incorporated to regulate interscholastic athletic competition among public and private secondary schools may be regarded as engaging in state action when it enforces a rule against a member school. The association in question here includes most public schools located within the State, acts through their representatives, draws its officers from them, is largely funded

*Briefs of *amici curiae* urging reversal were filed for the National Women's Law Center et al. by *Marcia D. Greenberger*, *Barbara A. Burr*, and *Neena K. Chaudhry;* for the Southeast Law Institute by *A. Eric Johnston;* and for the Tennessee Lawyers' Association for Women by *Linda Carver Whitlow Knight.*

Briefs of *amici curiae* urging affirmance were filed for the Florida High School Activities Association, Inc., by *Leonard E. Ireland, Jr.;* for the Interscholastic Associations by *Wayne F. Plaza*, *Daniel M. Noland*, *Mallory V. Mayse*, and *Edmund J. Sikorski, Jr.;* and for the Kentucky High School Athletic Association by *Danny C. Reeves* and *David A. French.*

David A. Wilson, *John C. Bonifaz*, and *Brenda Wright* filed a brief for the National Voting Rights Institute as *amicus curiae.*

by their dues and income received in their stead, and has historically been seen to regulate in lieu of the State Board of Education's exercise of its own authority. We hold that the association's regulatory activity may and should be treated as state action owing to the pervasive entwinement of state school officials in the structure of the association, there being no offsetting reason to see the association's acts in any other way.

I

Respondent Tennessee Secondary School Athletic Association (Association) is a not-for-profit membership corporation organized to regulate interscholastic sport among the public and private high schools in Tennessee that belong to it. No school is forced to join, but without any other authority actually regulating interscholastic athletics, it enjoys the memberships of almost all the State's public high schools (some 290 of them or 84% of the Association's voting membership), far outnumbering the 55 private schools that belong. A member school's team may play or scrimmage only against the team of another member, absent a dispensation.

The Association's rulemaking arm is its legislative council, while its board of control tends to administration. The voting membership of each of these nine-person committees is limited under the Association's bylaws to high school principals, assistant principals, and superintendents elected by the member schools, and the public school administrators who so serve typically attend meetings during regular school hours. Although the Association's staff members are not paid by the State, they are eligible to join the State's public retirement system for its employees. Member schools pay dues to the Association, though the bulk of its revenue is gate receipts at member teams' football and basketball tournaments, many of them held in public arenas rented by the Association.

The constitution, bylaws, and rules of the Association set standards of school membership and the eligibility of students to play in interscholastic games. Each school, for

example, is regulated in awarding financial aid, most coaches must have a Tennessee state teaching license, and players must meet minimum academic standards and hew to limits on student employment. Under the bylaws, "in all matters pertaining to the athletic relations of his school," App. 138, the principal is responsible to the Association, which has the power "to suspend, to fine, or otherwise penalize any member school for the violation of any of the rules of the Association or for other just cause," *id.*, at 100.

Ever since the Association was incorporated in 1925, Tennessee's State Board of Education (State Board) has (to use its own words) acknowledged the corporation's functions "in providing standards, rules and regulations for interscholastic competition in the public schools of Tennessee," *id.*, at 211. More recently, the State Board cited its statutory authority, Tenn. Code Ann. §49–1–302 (1996) (App. 220), when it adopted language expressing the relationship between the Association and the State Board. Specifically, in 1972, it went so far as to adopt a rule expressly "designat[ing]" the Association as "the organization to supervise and regulate the athletic activities in which the public junior and senior high schools in Tennessee participate on an interscholastic basis." Tennessee State Board of Education, Administrative Rules and Regulations, Rule 0520–1–2–.26 (1972) (later moved to Rule 0520–1–2–.08). The Rule provided that "the authority granted herein shall remain in effect until revoked" and instructed the State Board's chairman to "designate a person or persons to serve in an ex-officio capacity on the [Association's governing bodies]." App. 211. That same year, the State Board specifically approved the Association's rules and regulations, while reserving the right to review future changes. Thus, on several occasions over the next 20 years, the State Board reviewed, approved, or reaffirmed its approval of the recruiting Rule at issue in this case. In 1996, however, the State Board dropped the original Rule 0520–1–2–.08 expressly designating the Association

as regulator; it substituted a statement "recogniz[ing] the value of participation in interscholastic athletics and the role of [the Association] in coordinating interscholastic athletic competition," while "authoriz[ing] the public schools of the state to voluntarily maintain membership in [the Association]." *Id.*, at 220.

The action before us responds to a 1997 regulatory enforcement proceeding brought against petitioner, Brentwood Academy, a private parochial high school member of the Association. The Association's board of control found that Brentwood violated a rule prohibiting "undue influence" in recruiting athletes, when it wrote to incoming students and their parents about spring football practice. The Association accordingly placed Brentwood's athletic program on probation for four years, declared its football and boys' basketball teams ineligible to compete in playoffs for two years, and imposed a $3,000 fine. When these penalties were imposed, all the voting members of the board of control and legislative council were public school administrators.

Brentwood sued the Association and its executive director in federal court under Rev. Stat. § 1979, 42 U. S. C. § 1983, claiming that enforcement of the Rule was state action and a violation of the First and Fourteenth Amendments. The District Court entered summary judgment for Brentwood and enjoined the Association from enforcing the Rule. 13 F. Supp. 2d 670 (MD Tenn. 1998). In holding the Association to be a state actor under § 1983 and the Fourteenth Amendment, the District Court found that the State had delegated authority over high school athletics to the Association, characterized the relationship between the Association and its public school members as symbiotic, and emphasized the predominantly public character of the Association's membership and leadership. The court relied on language in *National Collegiate Athletic Assn.* v. *Tarkanian*, 488 U. S. 179, 193, n. 13 (1988), suggesting that statewide interscholastic athletic associations are state actors, and on other federal cases

in which such organizations had uniformly been held to be acting under color of state law.

The United States Court of Appeals for the Sixth Circuit reversed. 180 F. 3d 758 (1999). It recognized that there is no single test to identify state actions and state actors but applied three criteria derived from *Blum* v. *Yaretsky*, 457 U. S. 991 (1982), *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982), and *Rendell-Baker* v. *Kohn*, 457 U. S. 830 (1982), and found no state action under any of them. It said the District Court was mistaken in seeing a symbiotic relationship between the State and the Association, it emphasized that the Association was neither engaging in a traditional and exclusive public function nor responding to state compulsion, and it gave short shrift to the language from *Tarkanian* on which the District Court relied. Rehearing en banc was later denied over the dissent of two judges, who criticized the panel decision for creating a conflict among state and federal courts, for being inconsistent with *Tarkanian*, and for lacking support in the "functional" analysis of private activity required by *West* v. *Atkins*, 487 U. S. 42 (1988), for assessing the significance of cooperation between public officials and a private actor. 190 F. 3d 705 (CA6 1999) (Merritt, J., dissenting from denial of rehearing en banc).

We granted certiorari, 528 U. S. 1153 (2000), to resolve the conflict [1] and now reverse.

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[1] A number of other courts have held statewide athletic associations to be state actors. *Griffin High School* v. *Illinois High School Assn.*, 822 F. 2d 671, 674 (CA7 1987); *Clark* v. *Arizona Interscholastic Assn.*, 695 F. 2d 1126, 1128 (CA9 1982), cert. denied, 464 U. S. 818 (1983); *In re United States ex rel. Missouri State High School Activities Assn.*, 682 F. 2d 147, 151 (CA8 1982); *Louisiana High School Athletic Assn.* v. *St. Augustine High School*, 396 F. 2d 224, 227–228 (CA5 1968); *Oklahoma High School Athletic Assn.* v. *Bray*, 321 F. 2d 269, 272–273 (CA10 1963); *Indiana High School Athletic Assn.* v. *Carlberg*, 694 N. E. 2d 222, 229 (Ind. 1997); *Mississippi High School Activities Assn., Inc.* v. *Coleman*, 631 So. 2d 768, 774–775 (Miss. 1994); *Kleczek* v. *Rhode Island Interscholastic League, Inc.*, 612 A. 2d 734, 736 (R. I. 1992); see also *Moreland* v. *Western Penn. Inter-*

II

A

Our cases try to plot a line between state action subject to Fourteenth Amendment scrutiny and private conduct (however exceptionable) that is not. *Tarkanian*, *supra*, at 191; *Jackson* v. *Metropolitan Edison Co.*, 419 U. S. 345, 349 (1974). The judicial obligation is not only to "'preserv[e] an area of individual freedom by limiting the reach of federal law' and avoi[d] the imposition of responsibility on a State for conduct it could not control," *Tarkanian*, *supra*, at 191 (quoting *Lugar*, *supra*, at 936–937), but also to assure that constitutional standards are invoked "when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains," *Blum*, *supra*, at 1004 (emphasis in original). If the Fourteenth Amendment is not to be displaced, therefore, its ambit cannot be a simple line between States and people operating outside formally governmental organizations, and the deed of an ostensibly private organization or individual is to be treated sometimes as if a State had caused it to be performed. Thus, we say that state action may be found if, though only if, there is such a "close nexus between the State and the challenged action" that seemingly private behavior "may be fairly treated as that of the State itself." *Jackson*, *supra*, at 351.[2]

What is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity. From the range of circumstances that could point toward the State behind an individual face, no one fact can function as a necessary condition across the board for finding state action; nor is any set of circumstances absolutely sufficient, for there may be some

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scholastic Athletic League, 572 F. 2d 121, 125 (CA3 1978) (state action conceded).

[2] If a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action "under color of state law" for § 1983 purposes. *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 935 (1982).

countervailing reason against attributing activity to the government. See *Tarkanian*, 488 U. S., at 193, 196; *Polk County* v. *Dodson*, 454 U. S. 312 (1981).

Our cases have identified a host of facts that can bear on the fairness of such an attribution. We have, for example, held that a challenged activity may be state action when it results from the State's exercise of "coercive power," *Blum*, 457 U. S., at 1004, when the State provides "significant encouragement, either overt or covert," *ibid.*, or when a private actor operates as a "willful participant in joint activity with the State or its agents," *Lugar*, *supra*, at 941 (internal quotation marks omitted). We have treated a nominally private entity as a state actor when it is controlled by an "agency of the State," *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U. S. 230, 231 (1957) *(per curiam)*, when it has been delegated a public function by the State, cf., *e. g.*, *West* v. *Atkins*, *supra*, at 56; *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, 627–628 (1991), when it is "entwined with governmental policies," or when government is "entwined in [its] management or control," *Evans* v. *Newton*, 382 U. S. 296, 299, 301 (1966).

Amidst such variety, examples may be the best teachers, and examples from our cases are unequivocal in showing that the character of a legal entity is determined neither by its expressly private characterization in statutory law, nor by the failure of the law to acknowledge the entity's inseparability from recognized government officials or agencies. *Lebron* v. *National Railroad Passenger Corporation*, 513 U. S. 374 (1995), held that Amtrak was the Government for constitutional purposes, regardless of its congressional designation as private; it was organized under federal law to attain governmental objectives and was directed and controlled by federal appointees. *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, *supra*, held the privately endowed Girard College to be a state actor and enforcement of its private founder's limitation of admission

to whites attributable to the State, because, consistent with the terms of the settlor's gift, the college's board of directors was a state agency established by state law. Ostensibly the converse situation occurred in *Evans* v. *Newton*, *supra*, which held that private trustees to whom a city had transferred a park were nonetheless state actors barred from enforcing racial segregation, since the park served the public purpose of providing community recreation, and "the municipality remain[ed] entwined in [its] management [and] control," *id.*, at 301.

These examples of public entwinement in the management and control of ostensibly separate trusts or corporations foreshadow this case, as this Court itself anticipated in *Tarkanian*. *Tarkanian* arose when an undoubtedly state actor, the University of Nevada, suspended its basketball coach, Tarkanian, in order to comply with rules and recommendations of the National Collegiate Athletic Association (NCAA). The coach charged the NCAA with state action, arguing that the state university had delegated its own functions to the NCAA, clothing the latter with authority to make and apply the university's rules, the result being joint action making the NCAA a state actor.

To be sure, it is not the strict holding in *Tarkanian* that points to our view of this case, for we found no state action on the part of the NCAA. We could see, on the one hand, that the university had some part in setting the NCAA's rules, and the Supreme Court of Nevada had gone so far as to hold that the NCAA had been delegated the university's traditionally exclusive public authority over personnel. 488 U. S., at 190. But on the other side, the NCAA's policies were shaped not by the University of Nevada alone, but by several hundred member institutions, most of them having no connection with Nevada, and exhibiting no color of Nevada law. *Id.*, at 193. Since it was difficult to see the NCAA, not as a collective membership, but as surrogate for the one State, we held the organization's connection with Ne-

vada too insubstantial to ground a state-action claim. *Id.*, at 193, 196.

But dictum in *Tarkanian* pointed to a contrary result on facts like ours, with an organization whose member public schools are all within a single State. "The situation would, of course, be different if the [Association's] membership consisted entirely of institutions located within the same State, many of them public institutions created by the same sovereign." *Id.*, at 193, n. 13. To support our surmise, we approvingly cited two cases: *Clark* v. *Arizona Interscholastic Assn.*, 695 F. 2d 1126 (CA9 1982), cert. denied, 464 U. S. 818 (1983), a challenge to a state high school athletic association that kept boys from playing on girls' interscholastic volleyball teams in Arizona; and *Louisiana High School Athletic Assn.* v. *St. Augustine High School*, 396 F. 2d 224 (CA5 1968), a parochial school's attack on the racially segregated system of interscholastic high school athletics maintained by the athletic association. In each instance, the Court of Appeals treated the athletic association as a state actor.

B

Just as we foresaw in *Tarkanian*, the "necessarily factbound inquiry," *Lugar*, 457 U. S., at 939, leads to the conclusion of state action here. The nominally private character of the Association is overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it.

The Association is not an organization of natural persons acting on their own, but of schools, and of public schools to the extent of 84% of the total. Under the Association's bylaws, each member school is represented by its principal or a faculty member, who has a vote in selecting members of the governing legislative council and board of control from eligible principals, assistant principals, and superintendents.

Although the findings and prior opinions in this case include no express conclusion of law that public school officials act within the scope of their duties when they represent their institutions, no other view would be rational, the official nature of their involvement being shown in any number of ways. Interscholastic athletics obviously play an integral part in the public education of Tennessee, where nearly every public high school spends money on competitions among schools. Since a pickup system of interscholastic games would not do, these public teams need some mechanism to produce rules and regulate competition. The mechanism is an organization overwhelmingly composed of public school officials who select representatives (all of them public officials at the time in question here), who in turn adopt and enforce the rules that make the system work. Thus, by giving these jobs to the Association, the 290 public schools of Tennessee belonging to it can sensibly be seen as exercising their own authority to meet their own responsibilities. Unsurprisingly, then, the record indicates that half the council or board meetings documented here were held during official school hours, and that public schools have largely provided for the Association's financial support. A small portion of the Association's revenue comes from membership dues paid by the schools, and the principal part from gate receipts at tournaments among the member schools. Unlike mere public buyers of contract services, whose payments for services rendered do not convert the service providers into public actors, see *Rendell-Baker*, 457 U. S., at 839–843, the schools here obtain membership in the service organization and give up sources of their own income to their collective association. The Association thus exercises the authority of the predominantly public schools to charge for admission to their games; the Association does not receive this money from the schools, but enjoys the schools' moneymaking capacity as its own.

In sum, to the extent of 84% of its membership, the Association is an organization of public schools represented by their

officials acting in their official capacity to provide an integral element of secondary public schooling. There would be no recognizable Association, legal or tangible, without the public school officials, who do not merely control but overwhelmingly perform all but the purely ministerial acts by which the Association exists and functions in practical terms. Only the 16% minority of private school memberships prevents this entwinement of the Association and the public school system from being total and their identities totally indistinguishable.

To complement the entwinement of public school officials with the Association from the bottom up, the State of Tennessee has provided for entwinement from top down. State Board members are assigned ex officio to serve as members of the board of control and legislative council, and the Association's ministerial employees are treated as state employees to the extent of being eligible for membership in the state retirement system.

It is, of course, true that the time is long past when the close relationship between the surrogate association and its public members and public officials acting as such was attested frankly. As mentioned, the terms of the State Board's Rule expressly designating the Association as regulator of interscholastic athletics in public schools were deleted in 1996, the year after a Federal District Court held that the Association was a state actor because its rules were "caused, directed and controlled by the Tennessee Board of Education," *Graham* v. *TSSAA*, No. 1:95–CV–044, 1995 WL 115890, *5 (ED Tenn., Feb. 20, 1995).[3]

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[3] The District Court in *Graham* held that "[t]his delegation of authority to TSSAA by Tennessee, standing alone, is sufficient to make TSSAA a state actor" under the "state compulsion test," which it understood to provide that a State could exercise such coercive power or provide such significant encouragement, either overt or covert, that the choice of the private actor must be deemed to be that of the State as a matter of

But the removal of the designation language from Rule 0520–1–2–.08 affected nothing but words. Today the State Board's member-designees continue to sit on the Association's committees as nonvoting members, and the State continues to welcome Association employees in its retirement scheme. The close relationship is confirmed by the Association's enforcement of the same preamendment rules and regulations reviewed and approved by the State Board (including the recruiting Rule challenged by Brentwood), and by the State Board's continued willingness to allow students to satisfy its physical education requirement by taking part in interscholastic athletics sponsored by the Association. The most one can say on the evidence is that the State Board once freely acknowledged the Association's official character but now does it by winks and nods.[4] The amendment to the Rule in 1996 affected candor but not the "momentum" of the Association's prior involvement with the State Board. *Evans* v. *Newton*, 382 U. S., at 301. The District Court spoke to this point in finding that because of "custom and

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law. 1995 WL 115890, at *4–*5 (citing *Blum* v. *Yaretsky*, 457 U. S. 991, 1004 (1982)).

[4] The significance of winks and nods in state-action doctrine seems to be one of the points of the dissenters' departure from the rest of the Court. In drawing the public-private action line, the dissenters would emphasize the formal clarity of the legislative action providing for the appointment of Girard College's trustees, see *supra*, at 296–297; *post*, at 310, in preference to our reliance on the practical certainty in this case that public officials will control operation of the Association under its bylaws. Similarly, the dissenters stress the express formality of the special statute defining Amtrak's ties to the Government, see *supra*, at 296; *post*, at 310, in contrast to the reality in this case that the Association's organizers structured the Association's relationships to the officialdom of public education. But if formalism were the *sine qua non* of state action, the doctrine would vanish owing to the ease and inevitability of its evasion, and for just that reason formalism has never been controlling. For example, a criterion of state action like symbiosis (which the dissenters accept, *post*, at 311) looks not to form but to an underlying reality.

practice," "the conduct of the parties has not materially changed" since 1996, "the connections between TSSAA and the State [being] still pervasive and entwined." 13 F. Supp. 2d, at 681.

The entwinement down from the State Board is therefore unmistakable, just as the entwinement up from the member public schools is overwhelming. Entwinement will support a conclusion that an ostensibly private organization ought to be charged with a public character and judged by constitutional standards; entwinement to the degree shown here requires it.

C

Entwinement is also the answer to the Association's several arguments offered to persuade us that the facts would not support a finding of state action under various criteria applied in other cases. These arguments are beside the point, simply because the facts justify a conclusion of state action under the criterion of entwinement, a conclusion in no sense unsettled merely because other criteria of state action may not be satisfied by the same facts.

The Association places great stress, for example, on the application of a public function test, as exemplified in *Rendell-Baker* v. *Kohn*, 457 U. S. 830 (1982). There, an apparently private school provided education for students whose special needs made it difficult for them to finish high school. The record, however, failed to show any tradition of providing public special education to students unable to cope with a regular school, who had historically been cared for (or ignored) according to private choice. It was true that various public school districts had adopted the practice of referring students to the school and paying their tuition, and no one disputed that providing the instruction aimed at a proper public objective and conferred a public benefit. But we held that the performance of such a public function did not permit a finding of state action on the part of the school unless the function performed was exclusively and tradition-

ally public, as it was not in that case. The Association argues that application of the public function criterion would produce the same result here, and we will assume, *arguendo*, that it would. But this case does not turn on a public function test, any more than *Rendell-Baker* had anything to do with entwinement of public officials in the special school.

For the same reason, it avails the Association nothing to stress that the State neither coerced nor encouraged the actions complained of. "Coercion" and "encouragement" are like "entwinement" in referring to kinds of facts that can justify characterizing an ostensibly private action as public instead. Facts that address any of these criteria are significant, but no one criterion must necessarily be applied. When, therefore, the relevant facts show pervasive entwinement to the point of largely overlapping identity, the implication of state action is not affected by pointing out that the facts might not loom large under a different test.

D

This is not to say that all of the Association's arguments are rendered beside the point by the public officials' involvement in the Association, for after application of the entwinement criterion, or any other, there is a further potential issue, and the Association raises it. Even facts that suffice to show public action (or, standing alone, would require such a finding) may be outweighed in the name of some value at odds with finding public accountability in the circumstances. In *Polk County*, 454 U. S., at 322, a defense lawyer's actions were deemed private even though she was employed by the county and was acting within the scope of her duty as a public defender. Full-time public employment would be conclusive of state action for some purposes, see *West* v. *Atkins*, 487 U. S., at 50, accord, *Lugar*, 457 U. S., at 935, n. 18, but not when the employee is doing a defense lawyer's primary job; then, the public defender does "not ac[t] on behalf of the State; he is the State's adversary." *Polk County*, *supra*, at

323, n. 13. The state-action doctrine does not convert opponents into virtual agents.

The assertion of such a countervailing value is the nub of each of the Association's two remaining arguments, neither of which, however, persuades us. The Association suggests, first, that reversing the judgment here will somehow trigger an epidemic of unprecedented federal litigation. Brief for Respondents 35. Even if that might be counted as a good reason for a *Polk County* decision to call the Association's action private, the record raises no reason for alarm here. Save for the Sixth Circuit, every Court of Appeals to consider a statewide athletic association like the one here has found it a state actor. This majority view began taking shape even before *Tarkanian*, which cited two such decisions approvingly, see *supra*, at 298 (and this was six years after *Blum*, *Rendell-Baker*, and *Lugar*, on which the Sixth Circuit relied here). No one, however, has pointed to any explosion of § 1983 cases against interscholastic athletic associations in the affected jurisdictions. Not to put too fine a point on it, two District Courts in Tennessee have previously held the Association itself to be a state actor, see *Graham*, 1995 WL 115890, at *5; *Crocker* v. *Tennessee Secondary School Athletic Assn.*, 735 F. Supp. 753 (MD Tenn. 1990), affirmance order, 908 F. 2d 972, 973 (CA6 1990), but there is no evident wave of litigation working its way across the State. A reversal of the judgment here portends nothing more than the harmony of an outlying Circuit with precedent otherwise uniform.

Nor do we think there is anything to be said for the Association's contention that there is no need to treat it as a state actor since any public school applying the Association's rules is itself subject to suit under § 1983 or Title IX of the Education Amendments of 1972, 86 Stat. 373, 20 U. S. C. §§ 1681–1688. Brief for Respondents 30. If Brentwood's claim were pushing at the edge of the class of possible defendant state actors, an argument about the social utility of expand-

ing that class would at least be on point, but because we are nowhere near the margin in this case, the Association is really asking for nothing less than a dispensation for itself. Its position boils down to saying that the Association should not be dressed in state clothes because other, concededly public actors are; that Brentwood should be kept out of court because a different plaintiff raising a different claim in a different case may find the courthouse open. Pleas for special treatment are hard to sell, although saying that does not, of course, imply anything about the merits of Brentwood's complaint; the issue here is merely whether Brentwood properly names the Association as a § 1983 defendant, not whether it should win on its claim.

The judgment of the Court of Appeals for the Sixth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join, dissenting.

We have never found state action based upon mere "entwinement." Until today, we have found a private organization's acts to constitute state action only when the organization performed a public function; was created, coerced, or encouraged by the government; or acted in a symbiotic relationship with the government. The majority's holding—that the Tennessee Secondary School Athletic Association's (TSSAA) enforcement of its recruiting rule is state action—not only extends state-action doctrine beyond its permissible limits but also encroaches upon the realm of individual freedom that the doctrine was meant to protect. I respectfully dissent.

I

Like the state-action requirement of the Fourteenth Amendment, the state-action element of 42 U. S. C. § 1983 excludes from its coverage "merely private conduct, however

discriminatory or wrongful." *American Mfrs. Mut. Ins. Co.* v. *Sullivan*, 526 U. S. 40, 50 (1999) (internal quotation marks omitted). "Careful adherence to the 'state action' requirement" thus "preserves an area of individual freedom by limiting the reach of federal law and federal judicial power." *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 936 (1982). The state-action doctrine also promotes important values of federalism, "avoid[ing] the imposition of responsibility on a State for conduct it could not control." *National Collegiate Athletic Assn.* v. *Tarkanian*, 488 U. S. 179, 191 (1988). Although we have used many different tests to identify state action, they all have a common purpose. Our goal in every case is to determine whether an action "can fairly be attributed to the State." *Blum* v. *Yaretsky*, 457 U. S. 991, 1004 (1982); *American Mfrs.*, *supra*, at 52.

A

Regardless of these various tests for state action, common sense dictates that the TSSAA's actions cannot fairly be attributed to the State, and thus cannot constitute state action. The TSSAA was formed in 1925 as a private corporation to organize interscholastic athletics and to sponsor tournaments among its member schools. Any private or public secondary school may join the TSSAA by signing a contract agreeing to comply with its rules and decisions. Although public schools currently compose 84% of the TSSAA's membership, the TSSAA does not require that public schools constitute a set percentage of its membership, and, indeed, no public school need join the TSSAA. The TSSAA's rules are enforced not by a state agency but by its own board of control, which comprises high school principals, assistant principals, and superintendents, none of whom must work at a public school. Of course, at the time the recruiting rule was enforced in this case, all of the board members happened to be public school officials. However, each board member acts in

a representative capacity on behalf of all the private and public schools in his region of Tennessee, and not simply his individual school.

The State of Tennessee did not create the TSSAA. The State does not fund the TSSAA and does not pay its employees.[1] In fact, only 4% of the TSSAA's revenue comes from the dues paid by member schools; the bulk of its operating budget is derived from gate receipts at tournaments it sponsors. The State does not permit the TSSAA to use state-owned facilities for a discounted fee, and it does not exempt the TSSAA from state taxation. No Tennessee law authorizes the State to coordinate interscholastic athletics or empowers another entity to organize interscholastic athletics on behalf of the State.[2] The only state pronouncement ac-

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[1] Although the TSSAA's employees, who typically are retired teachers, are allowed to participate in the state retirement system, the State does not pay any portion of the employer contribution for them. The TSSAA is one of three private associations, along with the Tennessee Education Association and the Tennessee School Boards Association, whose employees are statutorily permitted to participate in the state retirement system. Tenn. Code Ann. § 8–35–118 (1993).

[2] The first formal state acknowledgment of the TSSAA's existence did not occur until 1972, when the State Board of Education passed a resolution stating that it "recognizes and designates [the TSSAA] as the organization to supervise and regulate the athletic activities in which the public junior and senior high schools of Tennessee participate in on an interscholastic basis." App. 211. There is no indication that the TSSAA invited this resolution or that the resolution in any way altered the actions of the TSSAA or the State following its adoption in 1972. In fact, it appears that the resolution was not entirely accurate: The TSSAA does not supervise or regulate regular season interscholastic contests. In any event, the resolution was revoked in 1996. Contrary to the majority's reference to its revocation as being "winks and nods," *ante*, at 301, the repeal of the 1972 resolution appears to have had no more impact on the TSSAA's operation than did its passage.

The majority also cites this resolution to support its assertion that "[e]ver since the Association was incorporated in 1925, Tennessee's State Board of Education . . . has acknowledged the corporation's function 'in

knowledging the TSSAA's existence is a rule providing that the State Board of Education permits public schools to maintain membership in the TSSAA if they so choose.[3]

Moreover, the State of Tennessee has never had any involvement in the particular action taken by the TSSAA in this case: the enforcement of the TSSAA's recruiting rule prohibiting members from using "undue influence" on students or their parents or guardians "to secure or to retain a student for athletic purposes." App. 115. There is no indication that the State has ever had any interest in how schools choose to regulate recruiting.[4] In fact, the TSSAA's authority to enforce its recruiting rule arises solely from the voluntary membership contract that each member school signs, agreeing to conduct its athletics in accordance with the rules and decisions of the TSSAA.

B

Even approaching the issue in terms of any of the Court's specific state-action tests, the conclusion is the same: The TSSAA's enforcement of its recruiting rule against Brentwood Academy is not state action. In applying these tests,

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providing standards, rules and regulations for interscholastic competition in the public schools of Tennessee.'" *Ante*, at 292. However, there is no evidence in the record that suggests that the State of Tennessee or the State Board of Education had any involvement or interest in the TSSAA prior to 1972.

[3] The Rule provides: "The State Board of Education recognizes the value of participation in interscholastic athletics and the role of the Tennessee Secondary School Athletic Association in coordinating interscholastic athletic competition. The State Board of Education authorizes the public schools of the state to voluntarily maintain membership in the Tennessee Secondary School Athletic Association." Tenn. Comp. Rules & Regs. § 0520–1–2–.08(1) (2000).

[4] The majority relies on the fact that the TSSAA permits members of the State Board of Education to serve ex officio on its board of control to support its "top-down" theory of state action. But these members are not voting members of the TSSAA's board of control and thus cannot exert any control over its actions.

courts of course must place the burden of persuasion on the plaintiff, not the defendant, because state action is an element of a § 1983 claim. *American Mfrs.*, 526 U. S., at 49–50; *West* v. *Atkins*, 487 U. S. 42, 48 (1988).

The TSSAA has not performed a function that has been "traditionally exclusively reserved to the State." *Jackson* v. *Metropolitan Edison Co.*, 419 U. S. 345, 352 (1974). The organization of interscholastic sports is neither a traditional nor an exclusive public function of the States. Widespread organization and administration of interscholastic contests by schools did not begin until the 20th century. See M. Lee, A History of Physical Education and Sports in the U. S. A. 73 (1983) (explaining that what little interscholastic athletics there was in the 19th century "came almost entirely in the closing decade of the century and was largely pupil inspired, pupil controlled, and pupil coached"); *id.*, at 68, 146 (stating that no control of high school sports occurred until 1896, when a group of teachers in Wisconsin set up a committee to control such contests, and pointing out that "[i]t was several years before the idea caught on in other states"). Certainly, in Tennessee, the State did not even show an interest in interscholastic athletics until 47 years after the TSSAA had been in existence and had been orchestrating athletic contests throughout the State. Even then, the State Board of Education merely acquiesced in the TSSAA's actions and did not assume the role of regulating interscholastic athletics. Cf. *Blum*, 457 U. S., at 1004–1005 ("Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives . . ."); see also *Flagg Bros., Inc.* v. *Brooks*, 436 U. S. 149, 164–165 (1978). The TSSAA no doubt serves the public, particularly the public schools, but the mere provision of a service to the public does not render such provision a traditional and exclusive public function. See *Rendell-Baker* v. *Kohn*, 457 U. S. 830, 842 (1982).

It is also obvious that the TSSAA is not an entity created and controlled by the government for the purpose of fulfilling a government objective, as was Amtrak in *Lebron* v. *National Railroad Passenger Corporation*, 513 U. S. 374, 394 (1995). See also *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U. S. 230 (1957) *(per curiam)* (holding that a state agency created under state law was a state actor). Indeed, no one claims that the State of Tennessee played any role in the creation of the TSSAA as a private corporation in 1925. The TSSAA was designed to fulfill an objective—the organization of interscholastic athletic tournaments—that the government had not contemplated, much less pursued. And although the board of control currently is composed of public school officials, and although public schools currently account for the majority of the TSSAA's membership, this is not required by the TSSAA's constitution.

In addition, the State of Tennessee has not "exercised coercive power or . . . provided such significant encouragement [to the TSSAA], either overt or covert," *Blum*, 457 U. S., at 1004, that the TSSAA's regulatory activities must in law be deemed to be those of the State. The State has not promulgated any regulations of interscholastic sports, and nothing in the record suggests that the State has encouraged or coerced the TSSAA in enforcing its recruiting rule. To be sure, public schools do provide a small portion of the TSSAA's funding through their membership dues, but no one argues that these dues are somehow conditioned on the TSSAA's enactment and enforcement of recruiting rules.[5]

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[5] The majority emphasizes that public schools joining the TSSAA "give up sources of their own income to their collective association" by allowing the TSSAA "to charge for admission to their games." *Ante*, at 299. However, this would be equally true whenever a State contracted with a private entity: The State presumably could provide the same service for profit, if it so chose. In *Rendell-Baker* v. *Kohn*, 457 U. S. 830 (1982), for example, the State could have created its own school for students with special needs and charged for admission. Or in *Blum* v. *Yaretsky*, 457

Likewise, even if the TSSAA were dependent on state funding to the extent of 90%, as was the case in *Blum*, instead of less than 4%, mere financial dependence on the State does not convert the TSSAA's actions into acts of the State. See *Blum*, *supra*, at 1011; *Rendell-Baker*, *supra*, at 840; see also *Moose Lodge No. 107* v. *Irvis*, 407 U. S. 163, 173 (1972) ("The Court has never held, of course, that discrimination by an otherwise private entity would be violative of the Equal Protection Clause if the private entity receives any sort of benefit or service at all from the State . . ."). Furthermore, there is no evidence of "joint participation," *Lugar*, 457 U. S., at 941–942, between the State and the TSSAA in the TSSAA's enforcement of its recruiting rule. The TSSAA's board of control enforces its recruiting rule solely in accordance with the authority granted to it under the contract that each member signs.

Finally, there is no "symbiotic relationship" between the State and the TSSAA. *Moose Lodge*, *supra*, at 175; cf. *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (1961). Contrary to the majority's assertion, see *ante*, at 299–300, the TSSAA's "fiscal relationship with the State is not different from that of many contractors performing services for the government." *Rendell-Baker*, *supra*, at 843. The TSSAA provides a service—the organization of athletic tournaments—in exchange for membership dues and gate fees, just as a vendor could contract with public schools to sell refreshments at school events. Certainly the public school could sell its own refreshments, yet the existence of that option does not transform the service performed by the contractor into a state action. Also, there is no suggestion in this case that, as was the case in *Burton*, the State profits from the TSSAA's decision to enforce its recruiting rule.

U. S. 991 (1982), the State could have created its own nursing homes and charged individuals to stay there. The ability of a State to make money by performing a service it has chosen to buy from a private entity is hardly an indication that the service provider is a state actor.

Because I do not believe that the TSSAA's action of enforcing its recruiting rule is fairly attributable to the State of Tennessee, I would affirm.

II

Although the TSSAA's enforcement activities cannot be considered state action as a matter of common sense or under any of this Court's existing theories of state action, the majority presents a new theory. Under this theory, the majority holds that the combination of factors it identifies evidences "entwinement" of the State with the TSSAA, and that such entwinement converts private action into state action. *Ante*, at 296–297. The majority does not define "entwinement," and the meaning of the term is not altogether clear. But whatever this new "entwinement" theory may entail, it lacks any support in our state-action jurisprudence. Although the majority asserts that there are three examples of entwinement analysis in our cases, there is no case in which we have rested a finding of state action on entwinement alone.

Two of the cases on which the majority relies do not even use the word "entwinement." See *Lebron* v. *National Railroad Passenger Corporation*, *supra; Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, *supra*. *Lebron* concerned the status of Amtrak, a corporation that Congress created and placed under Government control for the specific purpose of achieving a governmental objective (namely, to avert the threatened extinction of passenger train service in the United States). 513 U. S., at 383, 386. Without discussing any notion of entwinement, we simply held that, when "the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment." *Id.*, at 400. Similarly, in

City Trusts, we did not consider entwinement when we addressed the question whether an agency established by state law was a state actor. See 353 U. S., at 231. In that case, the Pennsylvania Legislature passed a law creating a board of directors to operate a racially segregated school for orphans. *Ibid.* Without mentioning "entwinement," we held that, because the board was a state agency, its actions were attributable to the State. *Ibid.*

The majority's third example, *Evans* v. *Newton*, 382 U. S. 296 (1966), lends no more support to an "entwinement" theory than do *Lebron* and *City Trusts*. Although *Evans* at least uses the word "entwined," 382 U. S., at 299 ("Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action"), we did not discuss entwinement as a distinct concept, let alone one sufficient to transform a private entity into a state actor when traditional theories of state action do not. On the contrary, our analysis rested on the recognition that the subject of the dispute, a park, served a "public function," much like a fire department or a police department. *Id.*, at 302. A park, we noted, is a "public facility" that "serves the community." *Id.*, at 301–302. Even if the city severed all ties to the park and placed its operation in private hands, the park still would be "municipal in nature," analogous to other public facilities that have given rise to a finding of state action: the streets of a company town in *Marsh* v. *Alabama*, 326 U. S. 501 (1946), the elective process in *Terry* v. *Adams*, 345 U. S. 461 (1953), and the transit system in *Public Util. Comm'n of D. C.* v. *Pollak*, 343 U. S. 451 (1952). 382 U. S., at 301–302. Because the park served public functions, the private trustees operating the park were considered to be state actors.[6]

[6] We have used the word "entwined" in another case, *Gilmore* v. *Montgomery*, 417 U. S. 556, 565 (1974), which the majority does not cite. In *Gilmore*, we held that a city could not grant exclusive use of public facili-

These cases, therefore, cannot support the majority's "entwinement" theory. Only *Evans* speaks of entwinement at all, and it does not do so in the same broad sense as does the majority.[7] Moreover, these cases do not suggest that the TSSAA's activities can be considered state action, whether the label for the state-action theory is "entwinement" or anything else.

* * *

Because the majority never defines "entwinement," the scope of its holding is unclear. If we are fortunate, the majority's fact-specific analysis will have little bearing beyond this case. But if the majority's new entwinement test develops in future years, it could affect many organizations that foster activities, enforce rules, and sponsor extracurricular competition among high schools—not just in athletics, but in such diverse areas as agriculture, mathematics, music, marching bands, forensics, and cheerleading. Indeed, this entwinement test may extend to other organizations that are composed of, or controlled by, public officials or public entities, such as firefighters, policemen, teachers, cities, or coun-

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ties to racially segregated groups. *Id.*, at 566. The city, we determined, was "engaged in an elaborate subterfuge" to circumvent a court order desegregating the city's recreational facilities. *Id.*, at 567. The grant of exclusive authority was little different from a formal agreement to run a segregated recreational program. *Ibid.* Thus, although we quoted the "entwined" language from *Evans* v. *Newton*, 382 U. S. 296 (1966), we were not using the term in the same loose sense the majority uses it today. And there is certainly no suggestion that the TSSAA has structured its recruiting rule specifically to evade review of an activity that previously was deemed to be unconstitutional state action.

[7] The majority's reference to *National Collegiate Athletic Assn.* v. *Tarkanian*, 488 U. S. 179 (1988), as foreshadowing this case, *ante*, at 297–298, also does not support its conclusion. Indeed, the reference to *Tarkanian* is ironic because it is not difficult to imagine that application of the majority's entwinement test could change the result reached in that case, so that the National Collegiate Athletic Association's actions could be found to be state action given its large number of public institution members that virtually control the organization.

ties. I am not prepared to say that any private organization that permits public entities and public officials to participate acts as the State in anything or everything it does, and our state-action jurisprudence has never reached that far. The state-action doctrine was developed to reach only those actions that are truly attributable to the State, not to subject private citizens to the control of federal courts hearing § 1983 actions.

I respectfully dissent.

Syllabus

DIRECTOR OF REVENUE OF MISSOURI *v.* COBANK ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES

CERTIORARI TO THE SUPREME COURT OF MISSOURI

No. 99–1792. Argued November 28, 2000—Decided February 20, 2001

The Farm Credit Act of 1933 created various lending institutions within the Farm Credit System—including banks for cooperatives—and addressed their taxation. Each of these institutions is designated as a federally chartered instrumentality of the United States. *E. g.*, 12 U. S. C. § 2121. Respondent CoBank ACB is the successor to all rights and obligations of a bank for cooperatives. In 1996, CoBank filed amended returns on behalf of that bank, requesting an exemption from all Missouri corporate income taxes and refunds on the taxes it paid for 1991 through 1994. CoBank asserted that the Supremacy Clause accords federal instrumentalities immunity from state taxation unless Congress has expressly waived this immunity, and that, because the Act's current version does not expressly do so, banks for cooperatives are exempt from Missouri's corporate income tax. The State denied the request, but the State Supreme Court reversed, stating that because the Act's current version is silent as to such banks' tax immunity, Congress cannot be said to have expressly consented to state income taxation and, thus, the banks are exempt.

Held: Banks for cooperatives are subject to state income taxation. Pp. 321–325.

(a) Congress has provided that banks for cooperatives are subject to state taxation. The 1933 Act subjected such banks to state taxation except when the Unites States held stock in the banks. As soon as governmental investment in the banks was repaid (as it was by 1968), the banks had to pay state income taxes because the exemption from such taxation no longer applied. Congress did not change that rule when it amended the Act in 1971. Nor did various 1985 amendments—which discontinued the Government's authority to own stock in banks for cooperatives and deleted the two sentences within 12 U. S. C. § 2134 that exempted such a bank from state taxation when the Government held stock in the bank—expressly change the taxation of banks for cooperatives. And, it would be surprising, indeed, if Congress had eliminated the States' ability to collect revenue from the banks *sub silentio*. The more logical interpretation, and one that accords with the Act's more than 50-year history, is that Congress merely deleted language in

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§ 2134 that had become superfluous once the United States no longer owned, and no longer could own, stock in banks for cooperatives. Pp. 321–324.

(b) The Act's structure confirms that banks for cooperatives are subject to state taxation. With respect to each lending institution in the Farm Credit System, the Act contains a taxation provision that specifically delineates that entity's tax immunity. Banks for cooperatives have been granted only limited tax exemptions. Had Congress intended to confer upon them the more comprehensive exemption it provided for other types of institutions, it would have done so expressly. Pp. 324–325.

10 S. W. 3d 142, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.

James R. Layton, State Solicitor of Missouri, argued the cause for petitioner. With him on the briefs were *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, and *Gail Vasterling* and *David Lieber*, Assistant Attorneys General.

David C. Frederick argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Junghans*, *Deputy Solicitor General Wallace*, *David English Carmack*, and *Donald B. Tobin*.

Richard A. Hanson argued the cause for respondent. With him on the brief was *Theodore R. Bots*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Edward B. Foley*, State Solicitor, and *Robert C. Maier*, Assistant Solicitor, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Janet Napolitano* of Arizona, *Robert A. Butterworth* of Florida, *Thurbert E. Baker* of Georgia, *Earl I. Anzai* of Hawaii, *James E. Ryan* of Illinois, *Karen M. Freeman-Wilson* of Indiana, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Jennifer M. Granholm* of Michigan, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Philip T. McLaughlin* of New Hampshire, *Eliot Spitzer* of New York, *Heidi Heitkamp* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Mark Barnett* of South Dakota, *William H. Sorrell* of Vermont, and *Christine O. Gregoire* of Washington; for the American Bankers Association by *John J. Gill III*,

JUSTICE THOMAS delivered the opinion of the Court.

In this case we are asked to decide whether the National Bank for Cooperatives, which Congress has designated as a federally chartered instrumentality of the United States, is exempt from state income taxation. We hold that it is not.

I

In the Farm Credit Act of 1933, 48 Stat. 257, as amended, 12 U. S. C. § 2001 *et seq.*, Congress created various lending institutions within the Farm Credit System to meet the specific credit needs of farmers. Among these institutions were banks for cooperatives, one in each of 12 farm credit districts, and a Central Bank for Cooperatives. These banks were designed to make loans to cooperative associations engaged in marketing farm products, purchasing farm supplies, or furnishing farm services.

Today, the Farm Credit System includes banks for cooperatives, production credit associations, farm credit banks, and federal land bank associations. § 2002(a). By statute, each of these institutions is designated as a "federally chartered instrumentalit[y] of the United States." § 2121 (banks for cooperatives and Central Bank for Cooperatives); § 2141 (National Bank for Cooperatives); §§ 2071(a) and (b)(7) (production credit associations); § 2011(a) (farm credit banks); §§ 2091(a) and (b)(4) (federal land bank associations). The Farm Credit Act also addresses the taxation of these institutions. The provision applicable to a bank for cooperatives, the institution at issue in this case, states:

> "Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such bank shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inher-

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Michael F. Crotty, and *Mark R. Baran;* and for the Multistate Tax Commission by *Paull Mines* and *Frank D. Katz.*

itance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder." § 2134.

Respondent CoBank ACB is the successor to all rights and obligations of the National Bank for Cooperatives, which had been formed in 1989 through the consolidation of 10 district banks for cooperatives and the Central Bank for Cooperatives.[1] The National Bank for Cooperatives filed Missouri corporate income tax returns for the years 1991 through 1994 and paid the taxes shown on those returns. In March 1996, CoBank filed amended returns on behalf of the National Bank for Cooperatives, requesting an exemption from all state income taxes and refunds on the taxes paid—erroneously, it alleged—for 1991 through 1994. Relying on the doctrine of implied tax immunity that originated in *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), CoBank asserted that the Supremacy Clause of the Constitution accords federal instrumentalities immunity from state taxation unless Congress has expressly waived this immunity. CoBank argued that, because the current version of the Farm Credit Act does not expressly waive this immunity, banks for cooperatives are exempt from Missouri's corporate income tax. The Director of Revenue of Missouri denied the request.

On appeal, the Administrative Hearing Commission upheld the Director of Revenue's assessment of corporate income tax, because the National Bank for Cooperatives had not established that it was a federal instrumentality statutorily exempt from state taxation of its income. The commission determined that Congress did not provide expressly that

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[1] CoBank is an "agricultural credit bank," which the Farm Credit Administration recognizes as having the combined authority of a bank for cooperatives and a farm credit bank. See 12 CFR §§ 618.8005(c), 619.9020 (2000).

banks for cooperatives, in contrast to farm credit banks and federal land bank associations, would have immunity from state income taxation. The commission reasoned that had Congress intended to confer upon banks for cooperatives the same immunity that was provided to farm credit banks and federal land bank associations, it would have done so expressly. For jurisdictional reasons, the commission did not decide CoBank's constitutional claim.

The Missouri Supreme Court reversed the commission's decision and held that banks for cooperatives are exempt from state income taxation.[2] *Production Credit Assn. of Southeastern Mo.* v. *Director of Revenue,* 10 S. W. 3d 142, 143 (2000). The Missouri Supreme Court held that the Supremacy Clause of the Constitution provides federal instrumentalities immunity from state taxation unless Congress has expressly waived this immunity. According to the Missouri Supreme Court, because the current version of the Farm Credit Act is silent as to such institutions' immunity from state taxation, Congress cannot be said to have expressly consented to state income taxation and, thus, the institutions are exempt from state income taxes. The Missouri Supreme Court noted that other courts that had addressed the issue of state taxation of member institutions of the Farm Credit System also had concluded that the States could not tax such institutions. *Id.*, at 143–144 (citing *Farm Credit Servs. of Central Ark.*, *PCA* v. *Arkansas,* 76 F. 3d 961, 964 (CA8 1996), rev'd on other grounds, 520 U. S. 821 (1997); *State* v. *Farm Credit Servs. of Central Ark.*, 338 Ark. 322, 327, 994 S. W. 2d 453, 456 (1999), cert. denied, 529 U. S. 1036 (2000); *Northwest La. Production Credit Assn.* v. *State,* 98–1995 (La. App. 11/5/99), 746 So. 2d 280).

The New Mexico Court of Appeals and the Indiana Supreme Court have reached the opposite conclusion with

[2] In this consolidated appeal, the Missouri Supreme Court also addressed the taxation of production credit associations and held that such institutions are exempt from state taxation.

respect to state taxation of production credit associations. See *Production Credit Assn. of Eastern N. M.* v. *Taxation and Revenue Dept.*, 2000 NMCA–021 ¶ 26, 999 P. 2d 1031, 1038, cert. denied, 128 N. M. 688, 997 P. 2d 820 (2000); *Indiana Dept. of State Revenue* v. *Farm Credit Servs. of Mid-America, ACA*, 734 N. E. 2d 551, 560 (Ind. 2000). Since the statutory history and provisions regarding the taxation of production credit associations and banks for cooperatives are virtually identical, compare 12 U. S. C. § 2077 with § 2134; compare Farm Credit Act of 1971, § 2.17, 85 Stat. 602, with § 3.13, 85 Stat. 608; compare Farm Credit Amendments Act of 1985, § 205(d)(16), 99 Stat. 1705, with § 205(e)(10), 99 Stat. 1705,[3] we granted certiorari to resolve this conflict. 530 U. S. 1260 (2000).

II

Congress has expressly designated banks for cooperatives as "instrumentalities of the United States." 12 U. S. C. § 2121. We have held, in addressing state taxation of contractors conducting business with the United States, that an instrumentality is entitled to implied tax immunity only when it is "so closely connected to the Government that the two cannot realistically be viewed as separate entities." *United States* v. *New Mexico*, 455 U. S. 720, 735 (1982). Relying on *New Mexico*, the Director of Revenue argues that banks for cooperatives are not "so closely connected" to the United States as to be indistinguishable from the United States, and that banks for cooperatives thus are not entitled to immunity from state taxation. CoBank disagrees with this characterization and asks us to conclude that banks for cooperatives are indeed virtual arms of the United States, worthy of implied tax immunity under *McCulloch*.

We need not, however, reach this implied immunity question. Implied immunity becomes an issue only when Congress has failed to indicate whether an instrumentality is

[3] See also Farm Credit Act of 1933, § 63, 48 Stat. 267.

subject to state taxation. In this case, Congress has provided that banks for cooperatives are subject to state taxation. To be sure, Congress did not include an express statement in the current version of § 2134. However, nothing in the statute indicates a repeal of the previous express approval of state taxation, and the structure of the Farm Credit Act indicates by negative implication that banks for cooperatives are not entitled to immunity.

A

Upon their creation in 1933, banks for cooperatives were subject to state income taxation except during periods when the United States held stock in the banks. Farm Credit Act of 1933, § 63, 48 Stat. 267 ("Such banks, . . . and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority . . . . The exemption provided herein shall not apply . . . with respect to . . . any . . . Bank for Cooperatives, or its property or income after the stock held in it by the United States has been retired"). Under this statute, as soon as governmental investment in a bank for cooperatives was repaid (as it was for all such banks by 1968), the bank had to pay state income taxes because the exemption from such taxation no longer applied.

When Congress amended the Farm Credit Act in 1971, it did not change the rule that banks for cooperatives are subject to state taxation unless the United States holds stock in the banks. Farm Credit Act of 1971, § 3.13, 85 Stat. 608. Although all banks for cooperatives were at the time privately owned, Congress provided that the Governor of the Farm Credit Administration had the authority on behalf of the United States to purchase stock in banks for cooperatives "as a temporary investment in the stock of the institution to help one or several of the banks . . . to meet emergency credit needs of borrowers." § 4.0, 85 Stat. 609. The 1971 version of § 2134 therefore provided, in relevant part:

> "Such banks . . . and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, territorial, or local taxing authority . . . . The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the bank for cooperatives is held by the Governor of the Farm Credit Administration." § 3.13, 85 Stat. 608–609.

In 1985, Congress enacted various amendments to the Act. Among other things, these amendments eliminated the position of Governor of the Farm Credit Administration, discontinued the Farm Credit Administration's authority to own stock in banks for cooperatives, and included numerous "Technical and Conforming Amendments." Farm Credit Amendments Act of 1985, § 201, 99 Stat. 1688; § 101, 99 Stat. 1678; § 205, 99 Stat. 1703–1707. One of these technical and conforming amendments was the deletion of the two sentences within § 2134 that, first, exempted a bank for cooperatives from state taxation and, second, limited that exemption to periods when the Governor held stock in the bank. § 205(e)(10), 99 Stat. 1705, as amended, 12 U. S. C. § 2134.

CoBank argues that the deletion of these two sentences altered the States' ability to tax the income of banks for cooperatives. According to CoBank, because the deletion eliminated the express statutory authorization for such taxation, Congress intended banks for cooperatives to be immune from state taxation under *McCulloch*'s implied immunity doctrine. We do not share CoBank's interpretation as to the effect of this amendment, because there is no indication that Congress intended to change the taxation of banks for cooperatives with the 1985 amendments. Since 1933, the States could collect revenue from banks for cooperatives. Nothing in the 1985 amendments expressly changes this. And, it would be surprising, indeed, if Congress had eliminated this important fact *sub silentio*.

CoBank's interpretation would mean that Congress made a radical—but entirely implicit—change in the taxation of banks for cooperatives with the 1985 amendment to § 2134. The amendment to § 2134 was merely one of numerous "technical and conforming amendments" to the Farm Credit Act. Farm Credit Amendments Act of 1985, § 205, 99 Stat. 1703–1707 (section entitled "Technical and Conforming Amendments"). In fact, the deletion of the sentence within § 2134 referring to the Governor was one of more than 30 deletions of references to the Governor, a position eliminated by the 1985 amendments to the Act. *Ibid.* The more logical interpretation of this amendment to § 2134 is that Congress merely deleted language that had become superfluous once the United States no longer owned, and no longer could own, stock in banks for cooperatives. This explanation accords with the more than 50-year history of the Farm Credit Act, permitting the States to tax banks for cooperatives except when there was governmental investment in the banks. Had Congress simply deleted the final sentence of § 2134 that limited the exemption while retaining the sentence granting the exemption, we would have no trouble concluding that Congress had eliminated the States' ability to tax banks for cooperatives. Short of this act, however, we find Congress' silence insufficient to disrupt the 50-year history of state taxation of banks for cooperatives.

B

In addition, the structure of the Farm Credit Act confirms that banks for cooperatives are subject to state taxation. With respect to each lending institution in the Farm Credit System, the Act contains a taxation provision that specifically delineates the immunity from taxation enjoyed by that entity. For example, farm credit banks and federal land bank associations receive the type of immunity from state taxation that the Missouri Supreme Court held to be implied here for banks for cooperatives. See 12 U. S. C. § 2023 ("The

Farm Credit Banks and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation . . .''); § 2098 (''Each Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation . . .'').

By contrast, since their creation in 1933, banks for cooperatives have been granted only limited exemptions from taxation. Had Congress intended to confer upon banks for cooperatives the more comprehensive exemption from taxation that it had provided to farm credit banks and federal land bank associations, it would have done so expressly as it had done elsewhere in the Farm Credit Act. Thus, in light of the structure of the Farm Credit Act—and the explicit grant of immunity to other institutions within the Farm Credit System—Congress' silence with respect to banks for cooperatives indicates that banks for cooperatives are subject to state taxation.

* * *

The judgment of the Missouri Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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ILLINOIS *v.* McARTHUR

CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

No. 99–1132. Argued November 1, 2000—Decided February 20, 2001

Police officers, with probable cause to believe that respondent McArthur had hidden marijuana in his home, prevented him from entering the home unaccompanied by an officer for about two hours while they obtained a search warrant. Once they did so, the officers found drug paraphernalia and marijuana, and arrested McArthur. He was subsequently charged with misdemeanor possession of those items. He moved to suppress the evidence on the ground that it was the "fruit" of an unlawful police seizure, namely, the refusal to let him reenter his home unaccompanied. The Illinois trial court granted the motion, and the State Appellate Court affirmed.

Held: Given the nature of the intrusion and the law enforcement interest at stake, the brief seizure of the premises was permissible under the Fourth Amendment. Pp. 330–337.

(a) The Amendment's central requirement is one of reasonableness. Although, in the ordinary case, personal property seizures are unreasonable unless accomplished pursuant to a warrant, *United States* v. *Place*, 462 U. S. 696, 701, there are exceptions to this rule involving special law enforcement needs, diminished expectations of privacy, minimal intrusions, and the like, see, *e. g.*, *Pennsylvania* v. *Labron*, 518 U. S. 938, 940–941. The circumstances here involve a plausible claim of specially pressing or urgent law enforcement need. Cf., *e. g.*, *United States* v. *Place*, *supra*, at 701. Moreover, the restraint at issue was tailored to that need, being limited in time and scope, cf. *Terry* v. *Ohio*, 392 U. S. 1, 29–30, and avoiding significant intrusion into the home itself, cf. *Payton* v. *New York*, 445 U. S. 573, 585. Consequently, rather than employing a *per se* rule of unreasonableness, the Court must balance the privacy-related and law enforcement-related concerns to determine if the intrusion here was reasonable. Cf. *Delaware* v. *Prouse*, 440 U. S. 648, 654. In light of the following circumstances, considered in combination, the Court concludes that the restriction was reasonable, and hence lawful. First, the police had probable cause to believe that McArthur's home contained evidence of a crime and unlawful drugs. Second, they had good reason to fear that, unless restrained, he would destroy the drugs before they could return with a warrant. Third, they

made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy by avoiding a warrantless entry or arrest and preventing McArthur only from entering his home unaccompanied. Fourth, they imposed the restraint for a limited period, which was no longer than reasonably necessary for them, acting with diligence, to obtain the warrant. Pp. 330–333.

(b) The conclusion that the restriction was lawful finds significant support in this Court's case law. See, *e. g.*, *Segura* v. *United States*, 468 U. S. 796; *United States* v. *Place*, *supra*, at 706. And in no case has this Court held unlawful a temporary seizure that was supported by probable cause and was designed to prevent the loss of evidence while the police diligently obtained a warrant in a reasonable period. But cf. *Welsh* v. *Wisconsin*, 466 U. S. 740, 754. Pp. 333–334.

(c) The Court is not persuaded by the countervailing considerations raised by the parties or lower courts: that the police proceeded without probable cause; that, because McArthur was on his porch, the police order that he stay outside his home amounted to an impermissible "constructive eviction"; that an officer, with McArthur's consent, stepped inside the home's doorway to observe McArthur when McArthur reentered the home on two or three occasions; and that *Welsh* v. *Wisconsin*, *supra*, at 742, 754, offers direct support for McArthur's position. Pp. 334–336.

304 Ill. App. 3d 395, 713 N. E. 2d 93, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. SOUTER, J., filed a concurring opinion, *post*, p. 337. STEVENS, J., filed a dissenting opinion, *post*, p. 338.

Joel D. Bertocchi, Solicitor General of Illinois, argued the cause for petitioner. With him on the briefs were *James E. Ryan*, Attorney General, and *William L. Browers* and *Colleen M. Griffin*, Assistant Attorneys General.

Matthew D. Roberts argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Robinson*, *Deputy Solicitor General Dreeben*, and *Deborah Watson*.

Deanne Fortna Jones argued the cause for respondent. With her on the brief was *Jeff Justice.**

JUSTICE BREYER delivered the opinion of the Court.

Police officers, with probable cause to believe that a man had hidden marijuana in his home, prevented that man from entering the home for about two hours while they obtained a search warrant. We must decide whether those officers violated the Fourth Amendment. We conclude that the officers acted reasonably. They did not violate the Amendment's requirements. And we reverse an Illinois court's holding to the contrary.

I

A

On April 2, 1997, Tera McArthur asked two police officers to accompany her to the trailer where she lived with her husband, Charles, so that they could keep the peace while she removed her belongings. The two officers, Assistant Chief John Love and Officer Richard Skidis, arrived with

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*A brief of *amici curiae* urging reversal was filed for the State of Ohio et al. by *Betty D. Montgomery,* Attorney General of Ohio, *Edward B. Foley,* State Solicitor, and *Robert C. Maier* and *Matthew D. Miko,* Assistant Solicitors, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Janet Napolitano* of Arizona, *M. Jane Brady* of Delaware, *Alan G. Lance* of Idaho, *Thomas J. Miller* of Iowa, *Andrew Ketterer* of Maine, *J. Joseph Curran, Jr.,* of Maryland, *Mike Hatch* of Minnesota, *Joseph P. Mazurek* of Montana, *Philip McLaughlin* of New Hampshire, *John J. Farmer, Jr.,* of New Jersey, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *W. A. Drew Edmondson* of Oklahoma, *Charles M. Condon* of South Carolina, *Mark Barnett* of South Dakota, *Jan Graham* of Utah, *William H. Sorrell* of Vermont, *Christine O. Gregoire* of Washington, *Thomas F. Reilly* of Massachusetts, *D. Michael Fisher* of Pennsylvania, and *Mark L. Earley* of Virginia.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers by *Lisa B. Kemler;* and for the Rutherford Institute by *John W. Whitehead* and *Steven H. Aden.*

Tera at the trailer at about 3:15 p.m. Tera went inside, where Charles was present. The officers remained outside.

When Tera emerged after collecting her possessions, she spoke to Chief Love, who was then on the porch. She suggested he check the trailer because "Chuck had dope in there." App. 15. She added (in Love's words) that she had seen Chuck "slid[e] some dope underneath the couch." *Id.*, at 19.

Love knocked on the trailer door, told Charles what Tera had said, and asked for permission to search the trailer, which Charles denied. Love then sent Officer Skidis with Tera to get a search warrant.

Love told Charles, who by this time was also on the porch, that he could not reenter the trailer unless a police officer accompanied him. Charles subsequently reentered the trailer two or three times (to get cigarettes and to make phone calls), and each time Love stood just inside the door to observe what Charles did.

Officer Skidis obtained the warrant by about 5 p.m. He returned to the trailer and, along with other officers, searched it. The officers found under the sofa a marijuana pipe, a box for marijuana (called a "one-hitter" box), and a small amount of marijuana. They then arrested Charles.

B

Illinois subsequently charged Charles McArthur with unlawfully possessing drug paraphernalia and marijuana (less than 2.5 grams), both misdemeanors. See Ill. Comp. Stat., ch. 720, §§ 550/4(a), 600/3.5(a) (1998). McArthur moved to suppress the pipe, box, and marijuana on the ground that they were the "fruit" of an unlawful police seizure, namely, the refusal to let him reenter the trailer unaccompanied, which would have permitted him, he said, to "have destroyed the marijuana." App. 27.

The trial court granted McArthur's suppression motion. The Appellate Court of Illinois affirmed, 304 Ill. App. 3d

395, 713 N. E. 2d 93 (1999), and the Illinois Supreme Court denied the State's petition for leave to appeal, 185 Ill. 2d 651, 720 N. E. 2d 1101 (1999). We granted certiorari to determine whether the Fourth Amendment prohibits the kind of temporary seizure at issue here.

II

A

The Fourth Amendment says that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U. S. Const., Amdt. 4. Its "central requirement" is one of reasonableness. See *Texas* v. *Brown*, 460 U. S. 730, 739 (1983). In order to enforce that requirement, this Court has interpreted the Amendment as establishing rules and presumptions designed to control conduct of law enforcement officers that may significantly intrude upon privacy interests. Sometimes those rules require warrants. We have said, for example, that in "the ordinary case," seizures of personal property are "unreasonable within the meaning of the Fourth Amendment," without more, "unless . . . accomplished pursuant to a judicial warrant," issued by a neutral magistrate after finding probable cause. *United States* v. *Place*, 462 U. S. 696, 701 (1983).

We nonetheless have made it clear that there are exceptions to the warrant requirement. When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable. See, *e. g.*, *Pennsylvania* v. *Labron*, 518 U. S. 938, 940–941 (1996) *(per curiam)* (search of automobile supported by probable cause); *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 455 (1990) (suspicionless stops at drunk driver checkpoint); *United States* v. *Place*, *supra*, at 706 (temporary seizure of luggage based on reasonable suspicion); *Michigan* v.

Summers, 452 U. S. 692, 702–705 (1981) (temporary detention of suspect without arrest warrant to prevent flight and protect officers while executing search warrant); *Terry* v. *Ohio*, 392 U. S. 1, 27 (1968) (temporary stop and limited search for weapons based on reasonable suspicion).

In the circumstances of the case before us, we cannot say that the warrantless seizure was *per se* unreasonable. It involves a plausible claim of specially pressing or urgent law enforcement need, *i. e.*, "exigent circumstances." Cf., *e. g.*, *United States* v. *Place*, *supra*, at 701 ("[T]he exigencies of the circumstances" may permit temporary seizure without warrant); *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 298–299 (1967) (warrantless search for suspect and weapons reasonable where delay posed grave danger); *Schmerber* v. *California*, 384 U. S. 757, 770–771 (1966) (warrantless blood test for alcohol reasonable where delay would have led to loss of evidence). Moreover, the restraint at issue was tailored to that need, being limited in time and scope, cf. *Terry* v. *Ohio*, *supra*, at 29–30, and avoiding significant intrusion into the home itself, cf. *Payton* v. *New York*, 445 U. S. 573, 585 (1980) ("'[T]he chief evil against which the . . . Fourth Amendment is directed'" is warrantless entry and search of home) (quoting *United States* v. *United States Dist. Court for Eastern Dist. of Mich.*, 407 U. S. 297, 313 (1972)). Consequently, rather than employing a *per se* rule of unreasonableness, we balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable. Cf. *Delaware* v. *Prouse*, 440 U. S. 648, 654 (1979) (determining lawfulness by balancing privacy and law enforcement interests); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975) (same).

We conclude that the restriction at issue was reasonable, and hence lawful, in light of the following circumstances, which we consider in combination. First, the police had probable cause to believe that McArthur's trailer home contained evidence of a crime and contraband, namely, unlawful

drugs. The police had had an opportunity to speak with Tera McArthur and make at least a very rough assessment of her reliability. They knew she had had a firsthand opportunity to observe her husband's behavior, in particular with respect to the drugs at issue. And they thought, with good reason, that her report to them reflected that opportunity. Cf. *Massachusetts* v. *Upton*, 466 U. S. 727, 732–734 (1984) *(per curiam)* (upholding search warrant issued in similar circumstances).

Second, the police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a warrant. They reasonably might have thought that McArthur realized that his wife knew about his marijuana stash; observed that she was angry or frightened enough to ask the police to accompany her; saw that after leaving the trailer she had spoken with the police; and noticed that she had walked off with one policeman while leaving the other outside to observe the trailer. They reasonably could have concluded that McArthur, consequently suspecting an imminent search, would, if given the chance, get rid of the drugs fast.

Third, the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy. They neither searched the trailer nor arrested McArthur before obtaining a warrant. Rather, they imposed a significantly less restrictive restraint, preventing McArthur only from entering the trailer unaccompanied. They left his home and his belongings intact—until a neutral Magistrate, finding probable cause, issued a warrant.

Fourth, the police imposed the restraint for a limited period of time, namely, two hours. Cf. *Terry* v. *Ohio*, *supra*, at 28 (manner in which police act is "vital . . . part of . . . inquiry"). As far as the record reveals, this time period was no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant. Compare *United*

States v. *Place*, 462 U. S., at 709–710 (holding 90-minute detention of luggage unreasonable based on nature of interference with person's travels and lack of diligence of police), with *United States* v. *Van Leeuwen*, 397 U. S. 249, 253 (1970) (holding 29-hour detention of mailed package reasonable given unavoidable delay in obtaining warrant and minimal nature of intrusion). Given the nature of the intrusion and the law enforcement interest at stake, this brief seizure of the premises was permissible.

B

Our conclusion that the restriction was lawful finds significant support in this Court's case law. In *Segura* v. *United States*, 468 U. S. 796 (1984), the Court considered the admissibility of drugs which the police had found in a lawful, warrant-based search of an apartment, but only after unlawfully entering the apartment and occupying it for 19 hours. The majority held that the drugs were admissible because, had the police acted lawfully throughout, they could have discovered and seized the drugs pursuant to the validly issued warrant. See *id.*, at 799, 814–815 (citing *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920)). The minority disagreed. However, when describing alternative lawful search and seizure methods, both majority and minority assumed, at least for argument's sake, that the police, armed with reliable information that the apartment contained drugs, might lawfully have sealed the apartment from the outside, restricting entry into the apartment while waiting for the warrant. Compare *Segura* v. *United States*, 468 U. S., at 814 ("Had police never entered the apartment, but instead conducted a perimeter stakeout to prevent anyone from entering . . . and destroying evidence, the contraband . . . would have been . . . seized precisely as it was here"), with *id.*, at 824, n. 15 (STEVENS, J., dissenting) ("I assume impoundment would be permissible

even absent exigent circumstances when it occurs 'from the outside'—when the authorities merely seal off premises pending the issuance of a warrant but do not enter"); see also *Mincey* v. *Arizona*, 437 U. S. 385, 394 (1978) (exigent circumstances do not justify search where police guard at door could prevent loss of evidence); *United States* v. *Jeffers*, 342 U. S. 48, 52 (1951) (same).

In various other circumstances, this Court has upheld temporary restraints where needed to preserve evidence until police could obtain a warrant. See, *e. g.*, *United States* v. *Place*, *supra*, at 706 (reasonable suspicion justifies brief detention of luggage pending further investigation); *United States* v. *Van Leeuwen*, *supra*, at 253 (reasonable suspicion justifies detaining package delivered for mailing). Cf. *Richards* v. *Wisconsin*, 520 U. S. 385, 395 (1997) (no need to "knock and announce" when executing a search warrant where officers reasonably suspect that evidence might be destroyed); *Carroll* v. *United States*, 267 U. S. 132, 153 (1925) (warrantless search of automobile constitutionally permissible).

We have found no case in which this Court has held unlawful a temporary seizure that was supported by probable cause and was designed to prevent the loss of evidence while the police diligently obtained a warrant in a reasonable period of time. But cf. *Welsh* v. *Wisconsin*, 466 U. S. 740, 754 (1984) (holding warrantless entry into and arrest in home unreasonable despite possibility that evidence of noncriminal offense would be lost while warrant was being obtained).

C

Nor are we persuaded by the countervailing considerations that the parties or lower courts have raised. McArthur argues that the police proceeded without probable cause. But McArthur has waived this argument. See 304 Ill. App. 3d, at 397, 713 N. E. 2d, at 95 (stating that McArthur

does not contest existence of probable cause); Brief in Opposition 7 (acknowledging probable cause). And, in any event, it is without merit. See *supra*, at 331–332.

The Appellate Court of Illinois concluded that the police could not order McArthur to stay outside his home because McArthur's porch, where he stood at the time, was part of his home; hence the order "amounted to a constructive eviction" of McArthur from his residence. 304 Ill. App. 3d, at 402, 713 N. E. 2d, at 98. This Court has held, however, that a person standing in the doorway of a house is "in a 'public' place," and hence subject to arrest without a warrant permitting entry of the home. *United States* v. *Santana*, 427 U. S. 38, 42 (1976). Regardless, we do not believe the difference to which the Appellate Court points—porch versus, *e. g.*, front walk—could make a significant difference here as to the reasonableness of the police restraint; and that, from the Fourth Amendment's perspective, is what matters.

The Appellate Court also found negatively significant the fact that Chief Love, with McArthur's consent, stepped inside the trailer's doorway to observe McArthur when McArthur reentered the trailer on two or three occasions. 304 Ill. App. 3d, at 402–403, 713 N. E. 2d, at 98. McArthur, however, reentered simply for his own convenience, to make phone calls and to obtain cigarettes. Under these circumstances, the reasonableness of the greater restriction (preventing reentry) implies the reasonableness of the lesser (permitting reentry conditioned on observation).

Finally, McArthur points to a case (and we believe it is the only case) that he believes offers direct support, namely, *Welsh* v. *Wisconsin*, *supra*. In *Welsh*, this Court held that police could not enter a home without a warrant in order to prevent the loss of evidence (namely, the defendant's blood alcohol level) of the "nonjailable traffic offense" of driving while intoxicated. 466 U. S., at 742, 754. McArthur notes

that his two convictions are for misdemeanors, which, he says, are as minor, and he adds that the restraint, keeping him out of his home, was nearly as serious.

We nonetheless find significant distinctions. The evidence at issue here was of crimes that were "jailable," not "nonjailable." See Ill. Comp. Stat., ch. 720, § 550/4(a) (1998); ch. 730, § 5/5–8–3(3) (possession of less than 2.5 grams of marijuana punishable by up to 30 days in jail); ch. 720, § 600/3.5; ch. 730, § 5/5–8–3(1) (possession of drug paraphernalia punishable by up to one year in jail). In *Welsh*, we noted that, "[g]iven that the classification of state crimes differs widely among the States, the penalty that may attach to any particular offense seems to provide the clearest and most consistent indication of the State's interest in arresting individuals suspected of committing that offense." 466 U. S., at 754, n. 14. The same reasoning applies here, where class C misdemeanors include such widely diverse offenses as drag racing, drinking alcohol in a railroad car or on a railroad platform, bribery by a candidate for public office, and assault. See, *e. g.*, Ill. Comp. Stat., ch. 65, § 5/4–8–2 (1998); ch. 610, § 90/1; ch. 625, § 5/11–504; ch. 720, § 5/12–1.

And the restriction at issue here is less serious. Temporarily keeping a person from entering his home, a consequence whenever police stop a person on the street, is considerably less intrusive than police entry into the home itself in order to make a warrantless arrest or conduct a search. Cf. *Payton* v. *New York*, 445 U. S., at 585 (the Fourth Amendment's central concern is the warrantless entry and search of the home).

We have explained above why we believe that the need to preserve evidence of a "jailable" offense was sufficiently urgent or pressing to justify the restriction upon entry that the police imposed. We need not decide whether the circumstances before us would have justified a greater restriction for this type of offense or the same restriction were only a "nonjailable" offense at issue.

III

In sum, the police officers in this case had probable cause to believe that a home contained contraband, which was evidence of a crime. They reasonably believed that the home's resident, if left free of any restraint, would destroy that evidence. And they imposed a restraint that was both limited and tailored reasonably to secure law enforcement needs while protecting privacy interests. In our view, the restraint met the Fourth Amendment's demands.

The judgment of the Illinois Appellate Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SOUTER, concurring.

I join the Court's opinion subject to this afterword on two points: the constitutionality of a greater intrusion than the one here and the permissibility of choosing impoundment over immediate search. Respondent McArthur's location made the difference between the exigency that justified temporarily barring him from his own dwelling and circumstances that would have supported a greater interference with his privacy and property. As long as he was inside his trailer, the police had probable cause to believe that he had illegal drugs stashed as his wife had reported and that with any sense he would flush them down the drain before the police could get a warrant to enter and search. This probability of destruction in anticipation of a warrant exemplifies the kind of present risk that undergirds the accepted exigent circumstances exception to the general warrant requirement. *Schmerber* v. *California*, 384 U. S. 757, 770–771 (1966). That risk would have justified the police in entering McArthur's trailer promptly to make a lawful, warrantless search. *United States* v. *Santana*, 427 U. S. 38, 42–43 (1976); *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 298–299 (1967). When McArthur stepped

outside and left the trailer uninhabited, the risk abated and so did the reasonableness of entry by the police for as long as he was outside. This is so because the only justification claimed for warrantless action here is the immediate risk, and the limit of reasonable response by the police is set by the scope of the risk. See *Terry* v. *Ohio*, 392 U. S. 1, 25–26 (1968).

Since, however, McArthur wished to go back in, why was it reasonable to keep him out when the police could perfectly well have let him do as he chose, and then enjoyed the ensuing opportunity to follow him and make a warrantless search justified by the renewed danger of destruction? The answer is not that the law officiously insists on safeguarding a suspect's privacy from search, in preference to respecting the suspect's liberty to enter his own dwelling. Instead, the legitimacy of the decision to impound the dwelling follows from the law's strong preference for warrants, which underlies the rule that a search with a warrant has a stronger claim to justification on later, judicial review than a search without one. See *United States* v. *Ventresca*, 380 U. S. 102, 106 (1965); see also 5 W. LaFave, Search and Seizure § 11.2(b), p. 38 (3d ed. 1996) ("[M]ost states follow the rule which is utilized in the federal courts: if the search or seizure was pursuant to a warrant, the defendant has the burden of proof; but if the police acted without a warrant the burden of proof is on the prosecution"). The law can hardly raise incentives to obtain a warrant without giving the police a fair chance to take their probable cause to a magistrate and get one.

JUSTICE STEVENS, dissenting.

The Illinois General Assembly has decided that the possession of less than 2.5 grams of marijuana is a class C misdemeanor. See Ill. Comp. Stat., ch. 720, § 550/4(a) (1998). In so classifying the offense, the legislature made a concerted policy judgment that the possession of small amounts of

marijuana for personal use does not constitute a particularly significant public policy concern. While it is true that this offense—like feeding livestock on a public highway or offering a movie for rent without clearly displaying its rating [1]—may warrant a jail sentence of up to 30 days, the detection and prosecution of possessors of small quantities of this substance is by no means a law enforcement priority in the State of Illinois.[2]

Because the governmental interest implicated by the particular criminal prohibition at issue in this case is so slight, this is a poor vehicle for probing the boundaries of the government's power to limit an individual's possessory interest in his or her home pending the arrival of a search warrant. Cf. *Segura* v. *United States*, 468 U. S. 796 (1984) (seven Justices decline to address this issue because case does not require its resolution). Given my preference, I would, therefore, dismiss the writ of certiorari as improvidently granted.

Compelled by the vote of my colleagues to reach the merits, I would affirm. As the majority explains, the essential inquiry in this case involves a balancing of the "privacy-

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[1] See Ill. Comp. Stat., ch. 605, § 5/9–124.1 (1998) (making feeding livestock on a public highway a class C misdemeanor); ch. 720, §§ 395/3–395/4 (making it a class C misdemeanor to sell or rent a video that does not display the official rating of the motion picture from which it is copied). Other examples of offenses classified as class C misdemeanors in Illinois include camping on the side of a public highway, ch. 605, § 5/9–124, interfering with the "lawful taking of wild animals," ch. 720, § 125/2, and tattooing the body of a person under 21 years of age, ch. 720, § 5/12–10.

[2] Nor in many other States. Under the laws of many other States, the maximum penalty McArthur would have faced for possession of 2.3 grams of marijuana would have been less than what he faced in Illinois. See, *e. g.*, Cal. Health & Safety Code Ann. § 11357(b) (West 1991) ($100 fine); Colo. Rev. Stat. § 18–18–406(1) (1999) ($100 fine); Minn. Stat. § 152.027(4) (2000) ($200 fine and drug education); Miss. Code Ann. § 41–29–139(c)(2)(A) (Supp. 1999) ($100–$250 fine); Neb. Rev. Stat. § 28–416(13) (1995) ($100 fine and drug education); N. M. Stat. Ann. § 30–31–23(B) (1997) ($50–$100 fine and 15 days in jail); N. Y. Penal Law § 221.05 (McKinney 2000) ($100 fine); Ore. Rev. Stat. § 475.992(4)(f) (Supp. 1998) ($100 fine).

related and law enforcement-related concerns to determine if the intrusion was reasonable." *Ante*, at 331. Under the specific facts of this case, I believe the majority gets the balance wrong. Each of the Illinois jurists who participated in the decision of this case placed a higher value on the sanctity of the ordinary citizen's home than on the prosecution of this petty offense. They correctly viewed that interest—whether the home be a humble cottage, a second-hand trailer, or a stately mansion—as one meriting the most serious constitutional protection.[3] Following their analysis and the reasoning in our decision in *Welsh* v. *Wisconsin*, 466 U. S. 740 (1984) (holding that some offenses may be so minor as to make it unreasonable for police to undertake searches that would be constitutionally permissible if graver offenses were suspected), I would affirm.

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[3] Principled respect for the sanctity of the home has long animated this Court's Fourth Amendment jurisprudence. See, *e. g.*, *Wilson* v. *Layne*, 526 U. S. 603, 610 (1999) ("The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home"); *Payton* v. *New York*, 445 U. S. 573, 601 (1980) (emphasizing "the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic"); *Mincey* v. *Arizona*, 437 U. S. 385, 393 (1978) ("[T]he Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law").

Syllabus

BUCKMAN CO. *v.* PLAINTIFFS' LEGAL COMMITTEE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 98–1768. Argued December 4, 2000—Decided February 21, 2001

Respondent represents plaintiffs claiming injuries caused by the use of orthopedic bone screws in the pedicles of their spines. Petitioner assisted the screws' manufacturer in securing approval for the devices from the Food and Drug Administration (FDA or Administration), which has regulatory authority under the Federal Food, Drug, and Cosmetic Act (FDCA), as amended by the Medical Devices Amendments of 1976 (MDA). While the screws are in a class that normally must go through a time-consuming process to receive premarket approval (PMA), they were approved under an exception, known as the § 510(k) process, for predicate devices—devices that were already on the market when the MDA was enacted—and for devices that are "substantially equivalent" to predicate devices. The § 510(k) application filed by petitioner and the manufacturer sought clearance to market the screws for use in arm and leg bones, not the spine. Claiming that the FDA would not have approved the screws had petitioner not made fraudulent representations regarding their intended use, plaintiffs sought damages under state tort law. The District Court dismissed these fraud-on-the-FDA claims on, *inter alia*, the ground that they were pre-empted by the MDA. The Third Circuit reversed.

Held: The plaintiffs' state-law fraud-on-the-FDA claims conflict with, and are therefore impliedly pre-empted by, the FDCA, as amended by the MDA. Pp. 347–353.

(a) The relationship between a federal agency and the entity it regulates is inherently federal because it originates from, is governed by, and terminates according to federal law. Because petitioner's FDA dealings were prompted by the MDA and the very subject matter of petitioner's statements were dictated by that statute—and in contrast to situations implicating "federalism concerns and the historic primacy of state regulation of [health and safety matters]," *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485—no presumption against pre-emption obtains in this case. The conflict here stems from the fact that the federal statutory scheme amply empowers the FDA to punish and deter fraud against the Administration, and the Administration uses this authority to achieve a delicate balance of statutory objectives that can be skewed by allowing state-law fraud-on-the-FDA claims. While the § 510(k)

Syllabus

process lacks the PMA review's rigor, the former does set forth a comprehensive scheme for determining substantial equivalence with a predicate device. Other provisions give the FDA enforcement options that allow it to make a measured response to suspected fraud upon the Administration. This flexibility is a critical component of the framework under which the FDA pursues its difficult (and often competing) objectives of regulating medical device marketing and distribution without intruding upon decisions committed by the FDCA to health care professionals. Pp. 347–350.

(b) State-law fraud-on-the-FDA claims inevitably conflict with the FDA's responsibility to police fraud consistently with the Administration's judgment and objectives. Complying with the FDA's detailed regulatory regime in the shadow of 50 States' tort regimes will dramatically increase the burdens facing potential applicants, who might be deterred from seeking approval of devices with potentially beneficial off-label uses—an accepted medical practice in which a device is used for some other purpose than that for which the FDA approved it—for fear of being exposed to unpredictable civil liability. Conversely, applicants' fear that their disclosures to the FDA will later be judged insufficient in state court might lead them to submit information that the Administration neither needs nor wants, thus delaying the comparatively speedy § 510(k) process, and, in turn, impeding competition and delaying the prescription of appropriate off-label uses. Respondent's reliance on *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, is misplaced. *Silkwood* was based on traditional state tort law principles, not on a fraud-on-the-agency theory, and, unlike *Silkwood*, there is clear evidence here that Congress intended that the MDA be enforced exclusively by the Federal Government. In addition, the MDA's express pre-emption provision does not bar the ordinary working of conflict pre-emption principles. *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 869. And although *Medtronic* can be read to allow certain state-law causes of actions that parallel federal safety requirements, it does not stand for the proposition that any FDCA violation will support a state-law claim. Pp. 350–353.

159 F. 3d 817, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post,* p. 353.

Kenneth S. Geller argued the cause for petitioner. With him on the briefs were *Alan E. Untereiner* and *Sharon Swingle.*

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Ogden*, *Deputy Solicitor General Kneedler*, *Douglas N. Letter*, *Peter J. Smith*, *Margaret Jane Porter*, and *Patricia J. Kaeding.*

Michael D. Fishbein argued the cause for respondent. With him on the brief were *Arnold Levin*, *Sandra L. Duggan*, and *John J. Cummings III.**

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent represents plaintiffs who claim injuries resulting from the use of orthopedic bone screws in the pedicles of their spines. Petitioner is a consulting company that assisted the screws' manufacturer, AcroMed Corporation, in navigating the federal regulatory process for these devices. Plaintiffs say petitioner made fraudulent representations to the Food and Drug Administration (FDA or Administration) in the course of obtaining approval to market the screws. Plaintiffs further claim that such representations were at least a "but for" cause of injuries that plaintiffs sustained from the implantation of these devices: Had the representations not been made, the FDA would not have approved the devices, and plaintiffs would not have been injured. Plaintiffs sought damages from petitioner under state tort law.

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*Briefs of *amici curiae* urging reversal were filed for the Medical Device Manufacturers Association by *Daniel G. Jarcho*, *Donald R. Stone*, and *Larry R. Pilot;* for Medtronic Sofamor Danek, Inc., by *James M. Beck* and *Stephen S. Phillips;* for Pharmaceutical Research and Manufacturers of America by *Bert W. Rein*, *Daniel E. Troy*, and *Jennifer A. Shah;* for the Product Liability Advisory Council, Inc., by *Malcolm E. Wheeler;* and for the Washington Legal Foundation by *Daniel J. Popeo* and *Richard A. Samp.*

Briefs of *amici curiae* urging affirmance were filed for the Association of Trial Lawyers of America by *Jeffrey Robert White* and *Frederick M. Baron;* and for Public Citizen by *Allison M. Zieve*, *Brian Wolfman*, and *Alan Morrison.*

We hold that such claims are pre-empted by the Federal Food, Drug, and Cosmetic Act (FDCA), 52 Stat. 1040, as amended by the Medical Device Amendments of 1976 (MDA), 90 Stat. 539, 21 U. S. C. § 301 (1994 ed. and Supp. V).

I

Regulation of medical devices is governed by the two Acts just named. The MDA separates devices into three categories: Class I devices are those that present no unreasonable risk of illness or injury and therefore require only general manufacturing controls; Class II devices are those possessing a greater potential dangerousness and thus warranting more stringent controls; Class III devices "presen[t] a potential unreasonable risk of illness or injury" and therefore incur the FDA's strictest regulation. § 360c(a)(1)(C)(ii)(II). It is not disputed that the bone screws manufactured by AcroMed are Class III devices.

Class III devices must complete a thorough review process with the FDA before they may be marketed. This premarket approval (PMA) process requires the applicant to demonstrate a "reasonable assurance" that the device is both "safe . . . [and] effective under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof." §§ 360e(d)(2)(A), (B). Among other information, an application must include all known reports pertaining to the device's safety and efficacy, see § 360e(c)(1)(A); "a full statement of the components, ingredients, and properties and of the principle or principles of operation of such device," § 360e(c)(1)(B); "a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such device," § 360e(c)(1)(C); samples of the device (when practicable), see § 360e(c)(1)(E); and "specimens of the labeling proposed to be used for such device," § 360e(c)(1)(F). The PMA process is ordinarily quite time consuming because

the FDA's review requires an "average of 1,200 hours [for] each submission." *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 477 (1996) (citing Hearings before the Subcommittee on Health and the Environment of the House Committee on Energy & Commerce, 100th Cong., 1st Sess. (Ser. No. 100–34), p. 384 (1987); Kahan, Premarket Approval Versus Premarket Notification: Different Routes to the Same Market, 39 Food Drug Cosm. L. J. 510, 512–514 (1984)).

An exception to the PMA requirement exists for devices that were already on the market prior to the MDA's enactment in 1976. See 21 U. S. C. § 360e(b)(1)(A). The MDA allows these "predicate" devices to remain available until the FDA initiates and completes the PMA process. In order to avoid the potentially monopolistic consequences of this predicate-device exception, the MDA allows other manufacturers to distribute (also pending completion of the predicate device's PMA review) devices that are shown to be "substantially equivalent" to a predicate device. § 360e(b)(1)(B).

Demonstrating that a device qualifies for this exception is known as the "§ 510(k) process," which refers to the section of the original MDA containing this provision. Section 510(k) submissions must include the following: "Proposed labels, labeling, and advertisements sufficient to describe the device, its intended use, and the directions for its use," 21 CFR § 807.87(e) (2000); "[a] statement indicating the device is similar to and/or different from other products of comparable type in commercial distribution, accompanied by data to support the statement," § 807.87(f); "[a] statement that the submitter believes, to the best of his or her knowledge, that all data and information submitted in the premarket notification are truthful and accurate and that no material fact has been omitted," § 807.87(k); and "[a]ny additional information regarding the device requested by the [FDA] Commissioner that is necessary for the Commissioner to make a finding as to whether or not the device is substan-

tially equivalent to a device in commercial distribution," § 807.87(l).

In 1984, AcroMed sought § 510(k) approval for its bone screw device, indicating it for use in spinal surgery. See *In re Orthopedic Bone Screw Products Liability Litigation*, 159 F. 3d 817, 820 (CA3 1998). The FDA denied approval on the grounds that the Class III device lacked substantial equivalence to a predicate device. See *ibid.* In September 1985, with the assistance of petitioner, AcroMed filed another § 510(k) application. "The application provided additional information about the . . . device and again indicated its intended use in spinal surgery. The FDA again rejected the application, determining that the device was not substantially equivalent to a predicate device and that it posed potential risks not exhibited by other spinal-fixation systems." *Ibid.* In December 1985, AcroMed and petitioner filed a third § 510(k) application.

> "AcroMed and [petitioner] split the . . . device into its component parts, renamed them 'nested bone plates' and '[cancellous] bone screws' and filed a separate § 510(k) application for each component. In both applications, a new intended use was specified: rather than seeking clearance for spinal applications, they sought clearance to market the plates and screws for use in the long bones of the arms and legs. AcroMed and Buckman claimed that the two components were substantially equivalent to predicate devices used in long bone surgery. The FDA approved the devices for this purpose in February 1986." *Ibid.*

Pursuant to its designation by the Judicial Panel on Multidistrict Litigation as the transferee court for *In re: Orthopedic Bone Screw Liability Litigation*, MDL No. 1014, the District Court for the Eastern District of Pennsylvania has been the recipient of some 2,300 civil actions related to these medical devices. Many of these actions include state-law

causes of action claiming that petitioner and AcroMed made fraudulent representations to the FDA as to the intended use of the bone screws and that, as a result, the devices were improperly given market clearance and were subsequently used to the plaintiffs' detriment. The District Court dismissed these "fraud-on-the-FDA" claims, first on the ground that they were expressly pre-empted by the MDA, and then, after our decision in *Medtronic*, on the ground that these claims amounted to an improper assertion of a private right of action under the MDA.[1] See 159 F. 3d, at 821.

A divided panel of the United States Court of Appeals for the Third Circuit reversed, concluding that plaintiffs' fraud claims were neither expressly nor impliedly pre-empted. We granted certiorari, 530 U. S. 1273 (2000), to resolve a split among the Courts of Appeals on this question, see *Kemp* v. *Medtronic, Inc.*, 231 F. 3d 216, 233–236 (CA6 2000) (identifying split and holding such claims expressly pre-empted), and we now reverse.

II

Policing fraud against federal agencies is hardly "a field which the States have traditionally occupied," *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947), such as to warrant a presumption against finding federal pre-emption of a state-law cause of action. To the contrary, the relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law. Cf. *Boyle* v. *United Technologies Corp.*, 487 U. S. 500, 504–505 (1988) (allowing pre-emption of state law by federal common law where the interests at stake are "uniquely federal" in nature). Here, petitioner's dealings with the FDA were prompted by the MDA, and the very subject matter

[1] The District Court also determined that the plaintiffs' fraud claims failed for lack of proximate cause, see *In re Orthopedic Bone Screw Products Liability Litigation*, 159 F. 3d 817, 821 (CA3 1998), but that question is not presently before us.

of petitioner's statements were dictated by that statute's provisions. Accordingly—and in contrast to situations implicating "federalism concerns and the historic primacy of state regulation of matters of health and safety," *Medtronic*, 518 U. S., at 485—no presumption against pre-emption obtains in this case.

Given this analytical framework, we hold that the plaintiffs' state-law fraud-on-the-FDA claims conflict with, and are therefore impliedly pre-empted by, federal law.[2] The conflict stems from the fact that the federal statutory scheme amply empowers the FDA to punish and deter fraud against the Administration, and that this authority is used by the Administration to achieve a somewhat delicate balance of statutory objectives. The balance sought by the Administration can be skewed by allowing fraud-on-the-FDA claims under state tort law.

As described in greater detail above, the § 510(k) process sets forth a comprehensive scheme for determining whether an applicant has demonstrated that a product is substantially equivalent to a predicate device. Among other information, the applicant must submit to the FDA "[p]roposed labels, labeling, and advertisements sufficient to describe the device, its intended use, and the directions for its use," 21 CFR § 807.87(e) (2000), and a statement attesting to and explaining the similarities to and/or differences from similar devices (along with supporting data), see § 807.87(f). The FDA is also empowered to require additional necessary information. See § 807.87(l). Admittedly, the § 510(k) process lacks the PMA review's rigor: The former requires only a showing of substantial equivalence to a predicate device, while the latter involves a time-consuming inquiry into the risks and efficacy of each device. Nevertheless, to achieve its limited purpose, the § 510(k) process imposes upon applicants a variety of requirements that are designed to enable the FDA to

[2] In light of this conclusion, we express no view on whether these claims are subject to express pre-emption under 21 U. S. C. § 360k.

make its statutorily required judgment as to whether the device qualifies under this exception.

Accompanying these disclosure requirements are various provisions aimed at detecting, deterring, and punishing false statements made during this and related approval processes. The FDA is empowered to investigate suspected fraud, see 21 U. S. C. § 372; 21 CFR § 5.35 (2000), and citizens may report wrongdoing and petition the agency to take action, § 10.30. In addition to the general criminal proscription on making false statements to the Federal Government, 18 U. S. C. § 1001 (1994 ed., Supp. V),[3] the FDA may respond to fraud by seeking injunctive relief, 21 U. S. C. § 332, and civil penalties, 21 U. S. C. § 333(f)(1)(A); seizing the device, § 334(a)(2)(D); and pursuing criminal prosecutions, § 333(a). The FDA[4] thus has at its disposal a variety of enforcement options that allow it to make a measured response to suspected fraud upon the Administration.

This flexibility is a critical component of the statutory and regulatory framework under which the FDA pursues difficult (and often competing) objectives. For example, with respect to Class III devices, the FDA simultaneously maintains the exhaustive PMA and the more limited § 510(k) processes in order to ensure both that medical devices are

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[3] Title 18 U. S. C. § 1001(a) (1994 ed., Supp. V) provides: "[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; [or] makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both."

[4] The FDCA leaves no doubt that it is the Federal Government rather than private litigants who are authorized to file suit for noncompliance with the medical device provisions: "[A]ll such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States." 21 U. S. C. § 337(a).

reasonably safe and effective and that, if the device qualifies under the § 510(k) exception, it is on the market within a relatively short period of time. Similarly, "off-label" usage of medical devices (use of a device for some other purpose than that for which it has been approved by the FDA) is an accepted and necessary corollary of the FDA's mission to regulate in this area without directly interfering with the practice of medicine. See, *e. g.*, Beck & Azari, FDA, Off-Label Use, and Informed Consent: Debunking Myths and Misconceptions, 53 Food & Drug L. J. 71, 76–77 (1998) (noting that courts, several States, and the "FDA itself recogniz[e] the value and propriety of off-label use"). Indeed, a recent amendment to the FDCA expressly states in part that "[n]othing in this chapter shall be construed to limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device to a patient for any condition or disease within a legitimate health care practitioner-patient relationship." 21 U. S. C. § 396 (1994 ed., Supp. V). Thus, the FDA is charged with the difficult task of regulating the marketing and distribution of medical devices without intruding upon decisions statutorily committed to the discretion of health care professionals.

State-law fraud-on-the-FDA claims inevitably conflict with the FDA's responsibility to police fraud consistently with the Administration's judgment and objectives. As a practical matter, complying with the FDA's detailed regulatory regime in the shadow of 50 States' tort regimes will dramatically increase the burdens facing potential applicants—burdens not contemplated by Congress in enacting the FDCA and the MDA. Would-be applicants may be discouraged from seeking § 510(k) approval of devices with potentially beneficial off-label uses for fear that such use might expose the manufacturer or its associates (such as petitioner) to unpredictable civil liability. In effect, then, fraud-on-the-FDA claims could cause the Administration's reporting requirements to deter off-label use despite the fact that the FDCA

expressly disclaims any intent to directly regulate the practice of medicine, see 21 U. S. C. § 396 (1994 ed., Supp. V), and even though off-label use is generally accepted.[5]

Conversely, fraud-on-the-FDA claims would also cause applicants to fear that their disclosures to the FDA, although deemed appropriate by the Administration, will later be judged insufficient in state court. Applicants would then have an incentive to submit a deluge of information that the Administration neither wants nor needs, resulting in additional burdens on the FDA's evaluation of an application. As a result, the comparatively speedy § 510(k) process could encounter delays, which would, in turn, impede competition among predicate devices and delay health care professionals' ability to prescribe appropriate off-label uses.[6]

Respondent relies heavily on *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238 (1984), which it reads to "creat[e] a virtually irrefutable presumption against implied preemption of private damage remedies predicated on an alleged conflict with a federal remedial scheme." Brief for Respondent 34.

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[5] See Green & Schultz, Tort Law Deference to FDA Regulation of Medical Devices, 88 Geo. L. J. 2119, 2133 (2000) ("Physicians may prescribe drugs and devices for off-label uses"); Smith, Physician Modification of Legally Marketed Medical Devices: Regulatory Implications Under the Federal Food, Drug, and Cosmetic Act, 55 Food & Drug L. J. 245, 251–252 (2000) (discussing off-label use in terms of the "practice of medicine doctrine[, which] stands firmly for the proposition that regulatory efforts are directed primarily at device marketing by manufacturers, not device use by physicians"); Beck & Azari, FDA, Off-Label Use, and Informed Consent: Debunking Myths and Misconceptions, 53 Food & Drug L. J. 71, 72 (1998) ("Off-label use is widespread in the medical community and often is essential to giving patients optimal medical care, both of which medical ethics, FDA, and most courts recognize").

[6] In light of the likely impact that the fraud-on-the-FDA claims would have on the administration of the Administration's duties, we must reject respondent's contention that these claims "will . . . affect only the litigants and will not have the kind of direct impact on the United States, which preemption is designed to protect from undue incursion." Brief for Respondent 30 (citing *Miree* v. *DeKalb County*, 433 U. S. 25 (1977)).

Silkwood is different from the present case, however, in several respects. Silkwood's claim was not based on any sort of fraud-on-the-agency theory, but on traditional state tort law principles of the duty of care owed by the producer of plutonium fuel pins to an employee working in its plant. See 464 U. S., at 241. Moreover, our decision there turned on specific statutory evidence that Congress "disclaimed any interest in promoting the development and utilization of atomic energy by means that fail to provide adequate remedies for those who are injured by exposure to hazardous nuclear materials." *Id.*, at 257. In the present case, by contrast, we have clear evidence that Congress intended that the MDA be enforced exclusively by the Federal Government. 21 U. S. C. § 337(a).

Respondent also suggests that we should be reluctant to find a pre-emptive conflict here because Congress included an express pre-emption provision in the MDA. See Brief for Respondent 37. To the extent respondent posits that anything other than our ordinary pre-emption principles apply under these circumstances, that contention must fail in light of our conclusion last Term in *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), that neither an express pre-emption provision nor a saving clause "bar[s] the ordinary working of conflict pre-emption principles." *Id.*, at 869.

We must also reject respondent's attempt to characterize both the claims at issue in *Medtronic* (common-law negligence action against the manufacturer of an allegedly defective pacemaker lead) and the fraud claims here as "claims arising from violations of FDCA requirements." Brief for Respondent 38. Notwithstanding the fact that *Medtronic* did not squarely address the question of implied pre-emption, it is clear that the *Medtronic* claims arose from the manufacturer's alleged failure to use reasonable care in the production of the product, not solely from the violation of FDCA requirements. See 518 U. S., at 481. In the present case,

however, the fraud claims exist solely by virtue of the FDCA disclosure requirements. Thus, although *Medtronic* can be read to allow certain state-law causes of actions that parallel federal safety requirements, it does not and cannot stand for the proposition that any violation of the FDCA will support a state-law claim.

In sum, were plaintiffs to maintain their fraud-on-the-agency claims here, they would not be relying on traditional state tort law which had predated the federal enactments in questions. On the contrary, the existence of these federal enactments is a critical element in their case. For the reasons stated above, we think this sort of litigation would exert an extraneous pull on the scheme established by Congress, and it is therefore pre-empted by that scheme.

The judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE THOMAS joins, concurring in the judgment.

As the Court points out, an essential link in the chain of causation that respondent must prove in order to prevail is that, but for petitioner's fraud, the allegedly defective orthopedic bone screws would not have reached the market. The fact that the Food and Drug Administration (FDA) has done nothing to remove the devices from the market, even though it is aware of the basis for the fraud allegations, convinces me that this essential element of the claim cannot be proved. I therefore agree that the case should not proceed.[1]

[1] Though my analysis focuses on the failure of the plaintiffs to establish a necessary element of their claim, that failure is grounded not in the minutiae of state law but in the details of the federal regulatory system for medical devices. Therefore, while this case does not fit neatly into our pre-existing pre-emption jurisprudence, it is accurate, in a sense, to say that federal law "pre-empts" this state-law fraud-on-the-FDA claim because the FDA has not acknowledged such a fraud and taken steps to remove the device from the market.

This would be a different case if, prior to the instant litigation, the FDA had determined that petitioner had committed fraud during the § 510(k) process and had then taken the necessary steps to remove the harm-causing product from the market. Under those circumstances, respondent's state-law fraud claim would not depend upon speculation as to the FDA's behavior in a counterfactual situation but would be grounded in the agency's explicit actions. In such a case, a plaintiff would be able to establish causation without second-guessing the FDA's decisionmaking or overburdening its personnel, thereby alleviating the Government's central concerns regarding fraud-on-the-agency claims.

If the FDA determines both that fraud has occurred and that such fraud requires the removal of a product from the market, state damages remedies would not encroach upon, but rather would supplement and facilitate, the federal enforcement scheme. Cf. *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 495 (1996) (holding that the presence of a state-law damages remedy for violations of FDA requirements does not impose an additional requirement upon medical device manufacturers but "merely provides another reason for manufacturers to comply with . . . federal law"); *id.*, at 513 (O'CONNOR, J., concurring in part and dissenting in part) (same).[2]

[2] Though the United States in this case appears to take the position that fraud-on-the-FDA claims conflict with the federal enforcement scheme even when the FDA has publicly concluded that it was defrauded and taken all the necessary steps to remove a device from the market, see Brief for United States as *Amicus Curiae* 24, 30, that has not always been its position. As recently as 1994, the United States took the position that state-law tort suits alleging fraud in FDA applications for medical devices do not conflict with federal law where the FDA has "subsequently concluded" that the device in question never met the appropriate federal requirements and "initiated enforcement actions" against those responsible for fraudulently obtaining its approval. Brief for United States as *Amicus Curiae* in *Talbott* v. *C. R. Bard, Inc.*, No. 94–1951 (CA1), reprinted in App. to Pet. for Cert. in *Talbott* v. *C. R. Bard., Inc.*, O. T. 1995, No. 95–1321, p. 84a.

Under the pre-emption analysis the Court offers today, however, parties injured by fraudulent representations to federal agencies would have no remedy even if recognizing such a remedy would have no adverse consequences upon the operation or integrity of the regulatory process. I do not believe the reasons advanced in the Court's opinion support the conclusion that Congress intended such a harsh result. Cf. *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 251 (1984) (declining to infer that a federal statutory scheme that affords no alternative means of seeking redress pre-empted traditional state-law remedies). For that reason, although I concur in the Court's disposition of this case, I do not join its opinion.

Syllabus

BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL. *v.* GARRETT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 99–1240. Argued October 11, 2000—Decided February 21, 2001

Respondents Garrett and Ash filed separate lawsuits against petitioners, Alabama state employers, seeking money damages under Title I of the Americans with Disabilities Act of 1990 (ADA), which prohibits the States and other employers from "discriminat[ing] against a qualified individual with a disability because of th[at] disability . . . in regard to . . . terms, conditions, and privileges of employment," 42 U. S. C. § 12112(a). In an opinion disposing of both cases, the District Court granted petitioners summary judgment, agreeing with them that the ADA exceeds Congress' authority to abrogate the State's Eleventh Amendment immunity. The Eleventh Circuit reversed on the ground that the ADA validly abrogates such immunity.

Held: Suits in federal court by state employees to recover money damages by reason of the State's failure to comply with Title I of the ADA are barred by the Eleventh Amendment. Pp. 363–374.

(a) Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority. *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62, 73. Only the second of these requirements is in dispute here. While Congress may not base abrogation of state immunity upon its Article I powers, see, *e. g.*, *id.*, at 79, it may subject nonconsenting States to federal-court suit when it does so pursuant to a valid exercise of its power under § 5 of the Fourteenth Amendment, see, *e. g.*, *id.*, at 80. Section 5 authorizes Congress to enforce the substantive guarantees contained in § 1 of that Amendment by enacting "appropriate legislation." See *City of Boerne* v. *Flores*, 521 U. S. 507, 536. Because it is this Court's responsibility, not Congress', to define the substance of constitutional guarantees, *id.*, at 519–524, § 5 legislation, to the extent it reaches beyond the precise scope of § 1's protections, must exhibit congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end, *id.*, at 520. Pp. 363–365.

(b) The first step in applying these principles is to identify with some precision the scope of the constitutional right at issue. Here, that inquiry requires examination of the limitations § 1 of the Fourteenth

Amendment places upon States' treatment of the disabled. To do so, the Court looks to its prior decisions under the Equal Protection Clause dealing with this issue. *Kimel*, *supra*, at 83. In *Cleburne* v. *Cleburne Living Center*, *Inc.*, 473 U. S. 432, the Court held, *inter alia*, that mental retardation did not qualify as a "quasi-suspect" classification for equal protection purposes, *id.*, at 435, and that, accordingly, a city ordinance requiring a special use permit for the operation of a group home for the mentally retarded incurred only the minimum "rational-basis" review applicable to general social and economic legislation, *id.*, at 446. Although "negative attitudes" and "fear" often accompany irrational biases, their presence alone does not a constitutional violation make. Thus, the Fourteenth Amendment does not require States to make special accommodations for the disabled, so long as their actions toward such individuals are rational. They could quite hardheadedly—and perhaps hardheartedly—hold to job-qualification requirements which do not make allowance for the disabled. If special accommodations for the disabled are to be required, they have to come from positive law and not through the Equal Protection Clause. Pp. 365–368.

(c) The requirements for private individuals to recover money damages against the States—that there be state discrimination violative of the Fourteenth Amendment and that the remedy imposed by Congress be congruent and proportional to the targeted violation—are not met here. First, the ADA's legislative record fails to show that Congress identified a history and pattern of irrational employment discrimination by the States against the disabled. See, *e. g.*, *Kimel*, *supra*, at 89. Because Eleventh Amendment immunity does not extend to local governmental units such as cities and counties, see *Lincoln County* v. *Luning*, 133 U. S. 529, 530, the Court rejects respondents' contention that the inquiry as to unconstitutional discrimination should extend to such units as well as to States. Congress made a general finding in the ADA that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination . . . continue to be a serious and pervasive social problem." 42 U. S. C. § 12101(a)(2). Although the record includes instances to support such a finding, the great majority of these incidents do not deal with state activities in employment. Even if it were to be determined that the half a dozen relevant examples from the record showed unconstitutional action on the part of States, these incidents taken together fall far short of even suggesting the pattern of unconstitutional discrimination on which § 5 legislation must be based. See, *e. g.*, *Kimel*, *supra*, at 89–91. Moreover, statements in House and Senate committee reports indicate that Congress targeted the ADA at employment discrimination in the private sector. Second, the rights and

remedies created by the ADA against the States raise the same sort of concerns as to congruence and proportionality as were found in *City of Boerne*, *supra.* For example, while it would be entirely rational (and therefore constitutional) for a state employer to conserve scarce financial resources by hiring employees able to use existing facilities, the ADA requires employers to make such facilities readily accessible to and usable by disabled individuals, §§ 12112(5)(B), 12111(9). The ADA does except employers from the "reasonable accommodatio[n]" requirement where the employer can demonstrate that accommodation would impose an "undue hardship" upon it, § 12112(b)(5)(A), but, even with this exception, the accommodation duty far exceeds what is constitutionally required. The ADA's constitutional shortcomings are apparent when it is compared to the Voting Rights Act of 1965. Holding the latter Act to be "appropriate" legislation to enforce the Fifteenth Amendment's protection against racial discrimination in voting, *South Carolina* v. *Katzenbach*, 383 U. S. 301, this Court emphasized that Congress had there documented a marked pattern of unconstitutional action by the States, see *id.*, at 312, and had determined that litigation had proved ineffective to remedy the problem, see *id.*, at 313. The contrast between the kind of evidence detailed in *Katzenbach*, and the evidence that Congress considered in the present case, is stark. To uphold the ADA's application to the States would allow Congress to rewrite the Fourteenth Amendment law laid down by this Court in *Cleburne.* Section 5 does not so broadly enlarge congressional authority. Pp. 368–374.

193 F. 3d 1214, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a concurring opinion, in which O'CONNOR, J., joined, *post,* p. 374. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post,* p. 376.

Jeffrey S. Sutton argued the cause for petitioners. With him on the briefs were *Bill Pryor*, Attorney General of Alabama, *Alice Ann Byrne* and *Margaret L. Fleming*, Assistant Attorneys General, *Gregory G. Katsas*, and *Lisa Huggins.*

Michael H. Gottesman argued the cause for respondents. With him on the brief were *Arlene Mayerson*, *Laurence Gold*, *Deborah Mattison*, *Sandra Reiss*, *Ira Burnim*, and *Jennifer Mathis.*

Solicitor General Waxman argued the cause for the United States as *amicus curiae* urging affirmance. With

Counsel

him on the brief were *Assistant Attorney General Lee*, *Deputy Solicitor General Underwood*, *Patricia A. Millett*, *Jessica Dunsay Silver*, and *Seth M. Galanter*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Hawaii et al. by *Audrey J. Anderson*, *Earl I. Anzai*, Attorney General of Hawaii, *Charles F. Fell*, Senior Deputy Attorney General, and *Nancy Albano*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Mark Pryor* of Arkansas, *Alan G. Lance* of Idaho, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Betty D. Montgomery* of Ohio, and *Paul G. Summers* of Tennessee; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger;* and for the Pacific Legal Foundation by *Anne M. Hayes* and *M. Reed Hopper*.

Briefs of *amici curiae* urging affirmance were filed for the State of Minnesota et al. by *Mike Hatch*, Attorney General of Minnesota, *Alan I. Gilbert*, Chief Deputy Attorney General, and *W. Karl Hansen*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Janet Napolitano* of Arizona, *Richard Blumenthal* of Connecticut, *James E. Ryan* of Illinois, *Thomas J. Miller* of Iowa, *A. B. "Ben" Chandler III* of Kentucky, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Jeremiah W. (Jay) Nixon* of Missouri, *Patricia A. Madrid* of New Mexico, *Eliot Spitzer* of New York, *Heidi Heitkamp* of North Dakota, *William H. Sorrell* of Vermont, and *Christine O. Gregoire* of Washington; for the American Association on Mental Retardation et al. by *James W. Ellis*, *Michael B. Browde*, and *Christian G. Fritz;* for the American Association of People with Disabilities et al. by *John Townsend Rich;* for the American Bar Association by *Robert Lewin*, *James A. Shifren*, and *Claude G. Szyfer;* for the American Cancer Society by *Daniel G. Jarcho*, *Michael J. Haungs*, *William J. Dalton*, and *Mary P. Rouvelas;* for the Lambda Legal Defense & Education Fund, Inc., et al. by *Catherine A. Hanssens* and *David S. Buckel;* for the National Association of Protection and Advocacy Systems et al. by *Mark E. Haddad*, *Jacqueline G. Cooper*, and *Sharon Masling;* for the National Council on Disability by *Robert L. Burgdorf, Jr.;* for Self-Advocates Becoming Empowered et al. by *Thomas K. Gilhool*, *Michael Churchill*, *Barbara Ransom*, and *Max Lapertosa;* for the Voice of the Retarded et al. by *William J. Burke* and *Tamie Hopp;* for Senator Robert Dole et al. by *Chai R. Feldblum;* and for Law Professors by *Leo G. Rydzewski*.

Briefs of *amici curiae* were filed for the Association of State Correctional Administrators by *Marci A. Hamilton;* for the Coalition for Local Sovereignty by *Kenneth B. Clark;* for the National Employment Lawyers Association et al. by *Daniel F. Goldstein*, *C. Christopher Brown*, and *Merl H. Wayman;* for Paralyzed Veterans of America et al. by *Ted G. Dane*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We decide here whether employees of the State of Alabama may recover money damages by reason of the State's failure to comply with the provisions of Title I of the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 330, 42 U. S. C. §§ 12111–12117.[1] We hold that such suits are barred by the Eleventh Amendment.

The ADA prohibits certain employers, including the States, from "discriminat[ing] against a qualified individual

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and *Eve Hill;* for the Southern Poverty Law Center by *Pamela L. Sumners* and *Elizabeth J. Hubertz;* and for Morton Horwitz et al. by *Kenneth W. Brothers, Elizabeth B. McCallum,* and *Claudia Center. A. Stephen Hut, Jr.,* filed a statement by former President George H. W. Bush as *amicus curiae.*

[1] Respondents' complaints in the United States District Court alleged violations of both Title I and Title II of the ADA, and petitioners' "Question Presented" can be read to apply to both sections. See Brief for Petitioners i; Brief for United States I. Though the briefs of the parties discuss both sections in their constitutional arguments, no party has briefed the question whether Title II of the ADA, dealing with the "services, programs, or activities of a public entity," 42 U. S. C. § 12132, is available for claims of employment discrimination when Title I of the ADA expressly deals with that subject. See, *e. g., Russello* v. *United States,* 464 U. S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" (internal quotation marks omitted)). The Courts of Appeals are divided on this issue, compare *Zimmerman* v. *Oregon Dept. of Justice,* 170 F. 3d 1169 (CA9 1999), with *Bledsoe* v. *Palm Beach Cty. Soil & Water Conservation Dist.,* 133 F. 3d 816 (CA11 1998). We are not disposed to decide the constitutional issue whether Title II, which has somewhat different remedial provisions from Title I, is appropriate legislation under § 5 of the Fourteenth Amendment when the parties have not favored us with briefing on the statutory question. To the extent the Court granted certiorari on the question whether respondents may sue their state employers for damages under Title II of the ADA, see this Court's Rule 24.1(a), that portion of the writ is dismissed as improvidently granted. See *The Monrosa* v. *Carbon Black Export, Inc.,* 359 U. S. 180, 184 (1959).

with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." §§ 12112(a), 12111(2), (5), (7). To this end, the Act requires employers to "mak[e] reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the [employer's] business." § 12112(b)(5)(A).

> "'[R]easonable accommodation' may include—
>
> "(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities." § 12111(9).

The Act also prohibits employers from "utilizing standards, criteria, or methods of administration . . . that have the effect of discrimination on the basis of disability." § 12112(b)(3)(A).

The Act defines "disability" to include "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." § 12102(2). A disabled individual is otherwise "qualified" if he or she, "with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." § 12111(8).

Respondent Patricia Garrett, a registered nurse, was employed as the Director of Nursing, OB/Gyn/Neonatal Services, for the University of Alabama in Birmingham Hospital. See App. 31, 38. In 1994, Garrett was diagnosed with breast cancer and subsequently underwent a lumpectomy, radiation treatment, and chemotherapy. See *id.*, at 38. Garrett's treatments required her to take substantial leave from work. Upon returning to work in July 1995, Garrett's supervisor informed Garrett that she would have to give up her Director position. See *id.*, at 39. Garrett then applied for and received a transfer to another, lower paying position as a nurse manager. See *ibid.*

Respondent Milton Ash worked as a security officer for the Alabama Department of Youth Services (Department). See *id.*, at 8. Upon commencing this employment, Ash informed the Department that he suffered from chronic asthma and that his doctor recommended he avoid carbon monoxide and cigarette smoke, and Ash requested that the Department modify his duties to minimize his exposure to these substances. See *ibid.* Ash was later diagnosed with sleep apnea and requested, again pursuant to his doctor's recommendation, that he be reassigned to daytime shifts to accommodate his condition. See *id.*, at 9. Ultimately, the Department granted none of the requested relief. See *id.*, at 8–9. Shortly after Ash filed a discrimination claim with the Equal Employment Opportunity Commission, he noticed that his performance evaluations were lower than those he had received on previous occasions. See *id.*, at 9.

Garrett and Ash filed separate lawsuits in the District Court, both seeking money damages under the ADA.[2] Petitioners moved for summary judgment, claiming that the ADA exceeds Congress' authority to abrogate the State's Eleventh Amendment immunity. See 989 F. Supp. 1409, 1410 (ND Ala. 1998). In a single opinion disposing of both

[2] Garrett raised other claims, but those are not presently before the Court.

cases, the District Court agreed with petitioners' position and granted their motions for summary judgment. See *id.*, at 1410, 1412. The cases were consolidated on appeal to the Eleventh Circuit. The Court of Appeals reversed, 193 F. 3d 1214 (1999), adhering to its intervening decision in *Kimel* v. *State Bd. of Regents*, 139 F. 3d 1426, 1433 (CA11 1998), aff'd, 528 U. S. 62 (2000), that the ADA validly abrogates the States' Eleventh Amendment immunity.

We granted certiorari, 529 U. S. 1065 (2000), to resolve a split among the Courts of Appeals on the question whether an individual may sue a State for money damages in federal court under the ADA.

I

The Eleventh Amendment provides:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Although by its terms the Amendment applies only to suits against a State by citizens of another State, our cases have extended the Amendment's applicability to suits by citizens against their own States. See *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62, 72–73 (2000); *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 669–670 (1999); *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 54 (1996); *Hans* v. *Louisiana*, 134 U. S. 1, 15 (1890). The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court. See *Kimel*, *supra*, at 73.

We have recognized, however, that Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and "act[s] pursuant to a valid grant of constitutional authority." 528 U. S., at 73. The

first of these requirements is not in dispute here. See 42 U. S. C. § 12202 ("A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this chapter"). The question, then, is whether Congress acted within its constitutional authority by subjecting the States to suits in federal court for money damages under the ADA.

Congress may not, of course, base its abrogation of the States' Eleventh Amendment immunity upon the powers enumerated in Article I. See *Kimel*, *supra*, at 79 ("Under our firmly established precedent then, if the [Age Discrimination in Employment Act of 1967] rests solely on Congress' Article I commerce power, the private petitioners in today's cases cannot maintain their suits against their state employers"); *Seminole Tribe*, *supra*, at 72–73 ("The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction"); *College Savings Bank*, *supra*, at 672; *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627, 636 (1999); *Alden* v. *Maine*, 527 U. S. 706, 730–733 (1999). In *Fitzpatrick* v. *Bitzer*, 427 U. S. 445 (1976), however, we held that "the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment." *Id.*, at 456 (citation omitted). As a result, we concluded, Congress may subject nonconsenting States to suit in federal court when it does so pursuant to a valid exercise of its § 5 power. See *ibid.* Our cases have adhered to this proposition. See, *e. g.*, *Kimel*, *supra*, at 80. Accordingly, the ADA can apply to the States only to the extent that the statute is appropriate § 5 legislation.[3]

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[3] It is clear that Congress intended to invoke § 5 as one of its bases for enacting the ADA. See 42 U. S. C. § 12101(b)(4).

Section 1 of the Fourteenth Amendment provides, in relevant part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5 of the Fourteenth Amendment grants Congress the power to enforce the substantive guarantees contained in § 1 by enacting "appropriate legislation." See *City of Boerne* v. *Flores*, 521 U. S. 507, 536 (1997). Congress is not limited to mere legislative repetition of this Court's constitutional jurisprudence. "Rather, Congress' power 'to enforce' the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel*, *supra*, at 81; *City of Boerne*, *supra*, at 536.

City of Boerne also confirmed, however, the long-settled principle that it is the responsibility of this Court, not Congress, to define the substance of constitutional guarantees. 521 U. S., at 519–524. Accordingly, § 5 legislation reaching beyond the scope of § 1's actual guarantees must exhibit "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.*, at 520.

II

The first step in applying these now familiar principles is to identify with some precision the scope of the constitutional right at issue. Here, that inquiry requires us to examine the limitations § 1 of the Fourteenth Amendment places upon States' treatment of the disabled. As we did last Term in *Kimel*, see 528 U. S., at 83, we look to our prior decisions under the Equal Protection Clause dealing with this issue.

In *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432 (1985), we considered an equal protection challenge to a city ordinance requiring a special use permit for the operation of a group home for the mentally retarded. The specific question before us was whether the Court of Appeals had erred by holding that mental retardation qualified as a "quasi-suspect" classification under our equal protection jurisprudence. *Id.*, at 435. We answered that question in the affirmative, concluding instead that such legislation incurs only the minimum "rational-basis" review applicable to general social and economic legislation.[4] *Id.*, at 446. In a statement that today seems quite prescient, we explained that

> "if the large and amorphous class of the mentally retarded were deemed quasi-suspect for the reasons given by the Court of Appeals, it would be difficult to find a principled way to distinguish a variety of other groups who have perhaps immutable disabilities setting them off from others, who cannot themselves mandate the desired legislative responses, and who can claim some degree of prejudice from at least part of the public at large. One need mention in this respect only the aging, the disabled, the mentally ill, and the infirm. We are reluctant to set out on that course, and we decline to do so." *Id.*, at 445–446.

Under rational-basis review, where a group possesses "distinguishing characteristics relevant to interests the State has the authority to implement," a State's decision

[4] Applying the basic principles of rationality review, *Cleburne* struck down the city ordinance in question. 473 U. S., at 447–450. The Court's reasoning was that the city's purported justifications for the ordinance made no sense in light of how the city treated other groups similarly situated in relevant respects. Although the group home for the mentally retarded was required to obtain a special use permit, apartment houses, other multiple-family dwellings, retirement homes, nursing homes, sanitariums, hospitals, boarding houses, fraternity and sorority houses, and dormitories were not subject to the ordinance. See *ibid.*

to act on the basis of those differences does not give rise to a constitutional violation. *Id.*, at 441. "Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller* v. *Doe*, 509 U. S. 312, 320 (1993) (citing *Nordlinger* v. *Hahn*, 505 U. S. 1 (1992); *New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976) *(per curiam)*). Moreover, the State need not articulate its reasoning at the moment a particular decision is made. Rather, the burden is upon the challenging party to negative " 'any reasonably conceivable state of facts that could provide a rational basis for the classification.' " *Heller*, *supra*, at 320 (quoting *FCC* v. *Beach Communications, Inc.*, 508 U. S. 307, 313 (1993)).

JUSTICE BREYER suggests that *Cleburne* stands for the broad proposition that state decisionmaking reflecting "negative attitudes" or "fear" necessarily runs afoul of the Fourteenth Amendment. See *post*, at 382 (dissenting opinion) (quoting *Cleburne*, 473 U. S., at 448). Although such biases may often accompany irrational (and therefore unconstitutional) discrimination, their presence alone does not a constitutional violation make. As we noted in *Cleburne:* "[M]ere negative attitudes, or fear, *unsubstantiated by factors which are properly cognizable* in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently . . . ." *Id.*, at 448 (emphases added). This language, read in context, simply states the unremarkable and widely acknowledged tenet of this Court's equal protection jurisprudence that state action subject to rational-basis scrutiny does not violate the Fourteenth Amendment when it "rationally furthers the purpose identified by the State." *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U. S. 307, 314 (1976) *(per curiam)*.

Thus, the result of *Cleburne* is that States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions toward such individuals are rational. They could quite hardheadedly—

and perhaps hardheartedly—hold to job-qualification requirements which do not make allowance for the disabled. If special accommodations for the disabled are to be required, they have to come from positive law and not through the Equal Protection Clause.[5]

III

Once we have determined the metes and bounds of the constitutional right in question, we examine whether Congress identified a history and pattern of unconstitutional employment discrimination by the States against the disabled. Just as § 1 of the Fourteenth Amendment applies only to actions committed "under color of state law," Congress' § 5 authority is appropriately exercised only in response to state transgressions. See *Florida Prepaid*, 527 U. S., at 640 ("It is this conduct then—unremedied patent infringement by the States—that must give rise to the Fourteenth Amendment violation that Congress sought to redress in the Patent Remedy Act"); *Kimel*, 528 U. S., at 89 ("Congress never identified any pattern of age discrimination by the States, much less any discrimination whatsoever that rose to the level of constitutional violation"). The legislative record of the ADA, however, simply fails to show that Congress did in fact identify a pattern of irrational state discrimination in employment against the disabled.

Respondents contend that the inquiry as to unconstitutional discrimination should extend not only to States themselves, but to units of local governments, such as cities and counties. All of these, they say, are "state actors" for

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[5] It is worth noting that by the time that Congress enacted the ADA in 1990, every State in the Union had enacted such measures. At least one Member of Congress remarked that "this is probably one of the few times where the States are so far out in front of the Federal Government, it's not funny." Hearing on Discrimination Against Cancer Victims and the Handicapped before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, 100th Cong., 1st Sess., 5 (1987). A number of these provisions, however, did not go as far as the ADA did in requiring accommodation.

purposes of the Fourteenth Amendment. Brief for Respondents 8. This is quite true, but the Eleventh Amendment does not extend its immunity to units of local government. See *Lincoln County* v. *Luning*, 133 U. S. 529, 530 (1890). These entities are subject to private claims for damages under the ADA without Congress' ever having to rely on § 5 of the Fourteenth Amendment to render them so. It would make no sense to consider constitutional violations on their part, as well as by the States themselves, when only the States are the beneficiaries of the Eleventh Amendment.

Congress made a general finding in the ADA that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U. S. C. § 12101(a)(2). The record assembled by Congress includes many instances to support such a finding. But the great majority of these incidents do not deal with the activities of States.

Respondents in their brief cite half a dozen examples from the record that did involve States. A department head at the University of North Carolina refused to hire an applicant for the position of health administrator because he was blind; similarly, a student at a state university in South Dakota was denied an opportunity to practice teach because the dean at that time was convinced that blind people could not teach in public schools. A microfilmer at the Kansas Department of Transportation was fired because he had epilepsy; deaf workers at the University of Oklahoma were paid a lower salary than those who could hear. The Indiana State Personnel Office informed a woman with a concealed disability that she should not disclose it if she wished to obtain employment.[6]

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[6] The record does show that some States, adopting the tenets of the eugenics movement of the early part of this century, required extreme measures such as sterilization of persons suffering from hereditary mental disease. These laws were upheld against constitutional attack 70 years ago in *Buck* v. *Bell*, 274 U. S. 200 (1927). But there is no indication that

Several of these incidents undoubtedly evidence an unwillingness on the part of state officials to make the sort of accommodations for the disabled required by the ADA. Whether they were irrational under our decision in *Cleburne* is more debatable, particularly when the incident is described out of context. But even if it were to be determined that each incident upon fuller examination showed unconstitutional action on the part of the State, these incidents taken together fall far short of even suggesting the pattern of unconstitutional discrimination on which § 5 legislation must be based. See *Kimel*, *supra*, at 89–91; *City of Boerne*, 521 U. S., at 530–531. Congress, in enacting the ADA, found that "some 43,000,000 Americans have one or more physical or mental disabilities." 42 U. S. C. § 12101(a)(1). In 1990, the States alone employed more than 4.5 million people. U. S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 338 (119th ed. 1999) (Table 534). It is telling, we think, that given these large numbers, Congress assembled only such minimal evidence of unconstitutional state discrimination in employment against the disabled.

JUSTICE BREYER maintains that Congress applied Title I of the ADA to the States in response to a host of incidents representing unconstitutional state discrimination in employment against persons with disabilities. A close review of the relevant materials, however, undercuts that conclusion. JUSTICE BREYER's Appendix C consists not of legislative findings, but of unexamined, anecdotal accounts of "adverse, disparate treatment by state officials." *Post*, at 379. Of course, as we have already explained, "adverse, disparate treatment" often does not amount to a constitutional violation where rational-basis scrutiny applies. These accounts, moreover, were submitted not directly to Congress but to the Task Force on the Rights and Empowerment of

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any State had persisted in requiring such harsh measures as of 1990 when the ADA was adopted.

Americans with Disabilities, which made no findings on the subject of state discrimination in employment.[7] See the Task Force's Report entitled From ADA to Empowerment (Oct. 12, 1990). And, had Congress truly understood this information as reflecting a pattern of unconstitutional behavior by the States, one would expect some mention of that conclusion in the Act's legislative findings. There is none. See 42 U. S. C. § 12101. Although JUSTICE BREYER would infer from Congress' general conclusions regarding societal discrimination against the disabled that the States had likewise participated in such action, *post*, at 378, the House and Senate committee reports on the ADA flatly contradict this assertion. After describing the evidence presented to the Senate Committee on Labor and Human Resources and its subcommittee (including the Task Force Report upon which the dissent relies), the Committee's Report reached, among others, the following conclusion: "Discrimination still persists in such critical areas as *employment in the private sector*, public accommodations, public services, transportation, and telecommunications." S. Rep. No. 101–116, p. 6 (1989) (emphasis added). The House Committee on Education and Labor, addressing the ADA's employment provisions, reached the same conclusion: "[A]fter extensive review and analysis over a number of Congressional sessions, . . . there exists a compelling need to establish a clear and comprehensive Federal prohibition of discrimination on the basis of disability in the areas of *employment in the private sector*, public accommodations, public services, transporta-

[7] Only a small fraction of the anecdotes JUSTICE BREYER identifies in his Appendix C relate to state discrimination against the disabled in employment. At most, somewhere around 50 of these allegations describe conduct that could conceivably amount to constitutional violations by the States, and most of them are so general and brief that no firm conclusion can be drawn. The overwhelming majority of these accounts pertain to alleged discrimination by the States in the provision of public services and public accommodations, which areas are addressed in Titles II and III of the ADA.

tion, and telecommunications." H. R. Rep. No. 101–485, pt. 2, p. 28 (1990) (emphasis added). Thus, not only is the inference JUSTICE BREYER draws unwarranted, but there is also strong evidence that Congress' failure to mention States in its legislative findings addressing discrimination in employment reflects that body's judgment that no pattern of unconstitutional state action had been documented.

Even were it possible to squeeze out of these examples a pattern of unconstitutional discrimination by the States, the rights and remedies created by the ADA against the States would raise the same sort of concerns as to congruence and proportionality as were found in *City of Boerne*, *supra*. For example, whereas it would be entirely rational (and therefore constitutional) for a state employer to conserve scarce financial resources by hiring employees who are able to use existing facilities, the ADA requires employers to "mak[e] existing facilities used by employees readily accessible to and usable by individuals with disabilities." 42 U. S. C. §§ 12112(5)(B), 12111(9). The ADA does except employers from the "reasonable accommodatio[n]" requirement where the employer "can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." § 12112(b)(5)(A). However, even with this exception, the accommodation duty far exceeds what is constitutionally required in that it makes unlawful a range of alternative responses that would be reasonable but would fall short of imposing an "undue burden" upon the employer. The Act also makes it the employer's duty to prove that it would suffer such a burden, instead of requiring (as the Constitution does) that the complaining party negate reasonable bases for the employer's decision. See *ibid.*

The ADA also forbids "utilizing standards, criteria, or methods of administration" that disparately impact the disabled, without regard to whether such conduct has a rational basis. § 12112(b)(3)(A). Although disparate impact may be

relevant evidence of racial discrimination, see *Washington* v. *Davis*, 426 U. S. 229, 239 (1976), such evidence alone is insufficient even where the Fourteenth Amendment subjects state action to strict scrutiny. See, *e. g.*, *ibid.* ("[O]ur cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional *solely* because it has a racially disproportionate impact").

The ADA's constitutional shortcomings are apparent when the Act is compared to Congress' efforts in the Voting Rights Act of 1965 to respond to a serious pattern of constitutional violations. In *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966), we considered whether the Voting Rights Act was "appropriate" legislation to enforce the Fifteenth Amendment's protection against racial discrimination in voting. Concluding that it was a valid exercise of Congress' enforcement power under § 2 of the Fifteenth Amendment,[8] we noted that "[b]efore enacting the measure, Congress explored with great care the problem of racial discrimination in voting." *Id.*, at 308.

In that Act, Congress documented a marked pattern of unconstitutional action by the States. State officials, Congress found, routinely applied voting tests in order to exclude African-American citizens from registering to vote. See *id.*, at 312. Congress also determined that litigation had proved ineffective and that there persisted an otherwise inexplicable 50-percentage-point gap in the registration of white and African-American voters in some States. See *id.*, at 313. Congress' response was to promulgate in the Voting Rights Act a detailed but limited remedial scheme designed to guarantee meaningful enforcement of the Fifteenth Amendment in those areas of the Nation where abundant evidence of States' systematic denial of those rights was identified.

[8] Section 2 of the Fifteenth Amendment is virtually identical to § 5 of the Fourteenth Amendment.

The contrast between this kind of evidence, and the evidence that Congress considered in the present case, is stark. Congressional enactment of the ADA represents its judgment that there should be a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U. S. C. § 12101(b)(1). Congress is the final authority as to desirable public policy, but in order to authorize private individuals to recover money damages against the States, there must be a pattern of discrimination by the States which violates the Fourteenth Amendment, and the remedy imposed by Congress must be congruent and proportional to the targeted violation. Those requirements are not met here, and to uphold the Act's application to the States would allow Congress to rewrite the Fourteenth Amendment law laid down by this Court in *Cleburne*.[9] Section 5 does not so broadly enlarge congressional authority. The judgment of the Court of Appeals is therefore

Reversed.

JUSTICE KENNEDY, with whom JUSTICE O'CONNOR joins, concurring.

Prejudice, we are beginning to understand, rises not from malice or hostile animus alone. It may result as well from insensitivity caused by simple want of careful, rational reflection or from some instinctive mechanism to guard against people who appear to be different in some respects from ourselves. Quite apart from any historical documentation,

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[9] Our holding here that Congress did not validly abrogate the States' sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief under *Ex parte Young*, 209 U. S. 123 (1908). In addition, state laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of redress. See n. 5, *supra.*

knowledge of our own human instincts teaches that persons who find it difficult to perform routine functions by reason of some mental or physical impairment might at first seem unsettling to us, unless we are guided by the better angels of our nature. There can be little doubt, then, that persons with mental or physical impairments are confronted with prejudice which can stem from indifference or insecurity as well as from malicious ill will.

One of the undoubted achievements of statutes designed to assist those with impairments is that citizens have an incentive, flowing from a legal duty, to develop a better understanding, a more decent perspective, for accepting persons with impairments or disabilities into the larger society. The law works this way because the law can be a teacher. So I do not doubt that the Americans with Disabilities Act of 1990 will be a milestone on the path to a more decent, tolerant, progressive society.

It is a question of quite a different order, however, to say that the States in their official capacities, the States as governmental entities, must be held in violation of the Constitution on the assumption that they embody the misconceived or malicious perceptions of some of their citizens. It is a most serious charge to say a State has engaged in a pattern or practice designed to deny its citizens the equal protection of the laws, particularly where the accusation is based not on hostility but instead on the failure to act or the omission to remedy. States can, and do, stand apart from the citizenry. States act as neutral entities, ready to take instruction and to enact laws when their citizens so demand. The failure of a State to revise policies now seen as incorrect under a new understanding of proper policy does not always constitute the purposeful and intentional action required to make out a violation of the Equal Protection Clause. See *Washington* v. *Davis*, 426 U. S. 229 (1976).

For the reasons explained by the Court, an equal protection violation has not been shown with respect to the several States in this case. If the States had been trans-

gressing the Fourteenth Amendment by their mistreatment or lack of concern for those with impairments, one would have expected to find in decisions of the courts of the States and also the courts of the United States extensive litigation and discussion of the constitutional violations. This confirming judicial documentation does not exist. That there is a new awareness, a new consciousness, a new commitment to better treatment of those disadvantaged by mental or physical impairments does not establish that an absence of state statutory correctives was a constitutional violation.

It must be noted, moreover, that what is in question is not whether the Congress, acting pursuant to a power granted to it by the Constitution, can compel the States to act. What is involved is only the question whether the States can be subjected to liability in suits brought not by the Federal Government (to which the States have consented, see *Alden* v. *Maine*, 527 U. S. 706, 755 (1999)), but by private persons seeking to collect moneys from the state treasury without the consent of the State. The predicate for money damages against an unconsenting State in suits brought by private persons must be a federal statute enacted upon the documentation of patterns of constitutional violations committed by the State in its official capacity. That predicate, for reasons discussed here and in the decision of the Court, has not been established. With these observations, I join the Court's opinion.

JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join, dissenting.

Reviewing the congressional record as if it were an administrative agency record, the Court holds the statutory provision before us, 42 U. S. C. § 12202, unconstitutional. The Court concludes that Congress assembled insufficient evidence of unconstitutional discrimination, *ante*, at 370, that Congress improperly attempted to "rewrite" the law we established in *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432 (1985), *ante*, at 374, and that the law is not suffi-

ciently tailored to address unconstitutional discrimination, *ante*, at 372–373.

Section 5, however, grants Congress the "power to enforce, by appropriate legislation," the Fourteenth Amendment's equal protection guarantee. U. S. Const., Amdt. 14, § 5. As the Court recognizes, state discrimination in employment against persons with disabilities might "'run afoul of the Equal Protection Clause'" where there is no "'rational relationship between the disparity of treatment and some legitimate governmental purpose.'" *Ante*, at 367 (quoting *Heller* v. *Doe*, 509 U. S. 312, 320 (1993)). See also *Cleburne* v. *Cleburne Living Center, Inc.*, *supra*, at 440 (stating that the Court will sustain a classification if it is "rationally related to a legitimate state interest"). In my view, Congress reasonably could have concluded that the remedy before us constitutes an "appropriate" way to enforce this basic equal protection requirement. And that is all the Constitution requires.

I

The Court says that its primary problem with this statutory provision is one of legislative evidence. It says that "Congress assembled only . . . minimal evidence of unconstitutional state discrimination in employment." *Ante*, at 370. In fact, Congress compiled a vast legislative record documenting "'massive, society-wide discrimination'" against persons with disabilities. S. Rep. No. 101–116, pp. 8–9 (1989) (quoting testimony of Justin Dart, chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities). In addition to the information presented at 13 congressional hearings (see Appendix A, *infra*), and its own prior experience gathered over 40 years during which it contemplated and enacted considerable similar legislation (see Appendix B, *infra*), Congress created a special task force to assess the need for comprehensive legislation. That task force held hearings in every State, attended by more than 30,000 people, including thousands who had experienced discrimination first hand. See From ADA to Em-

powerment, Task Force on the Rights and Empowerment of Americans with Disabilities 16 (Oct. 12, 1990) (hereinafter Task Force Report). The task force hearings, Congress' own hearings, and an analysis of "census data, national polls, and other studies" led Congress to conclude that "people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally." 42 U. S. C. § 12101(a)(6). As to employment, Congress found that "[t]wo-thirds of all disabled Americans between the age of 16 and 64 [were] not working at all," even though a large majority wanted to, and were able to, work productively. S. Rep. No. 101–116, at 9. And Congress found that this discrimination flowed in significant part from "stereotypic assumptions" as well as "purposeful unequal treatment." 42 U. S. C. § 12101(a)(7).

The powerful evidence of discriminatory treatment throughout society in general, including discrimination by private persons and local governments, implicates state governments as well, for state agencies form part of that same larger society. There is no particular reason to believe that they are immune from the "stereotypic assumptions" and pattern of "purposeful unequal treatment" that Congress found prevalent. The Court claims that it "make[s] no sense" to take into consideration constitutional violations committed by local governments. *Ante*, at 369. But the substantive obligation that the Equal Protection Clause creates applies to state and local governmental entities alike. *E. g.*, *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469 (1989). Local governments often work closely with, and under the supervision of, state officials, and in general, state and local government employers are similarly situated. Nor is determining whether an apparently "local" entity is entitled to Eleventh Amendment immunity as simple as the majority suggests—it often requires a "'detailed examination of the relevant provisions of [state] law.'" *Regents of Univ. of Cal.*

v. *Doe*, 519 U. S. 425, 430, n. 6 (1997) (quoting *Moor* v. *County of Alameda*, 411 U. S. 693, 719–721 (1973)).

In any event, there is no need to rest solely upon evidence of discrimination by local governments or general societal discrimination. There are roughly 300 examples of discrimination by state governments themselves in the legislative record. See, *e. g.*, Appendix C, *infra*. I fail to see how this evidence "fall[s] far short of even suggesting the pattern of unconstitutional discrimination on which § 5 legislation must be based." *Ante*, at 370.

The congressionally appointed task force collected numerous specific examples, provided by persons with disabilities themselves, of adverse, disparate treatment by state officials. They reveal, not what the Court describes as "half a dozen" instances of discrimination, *ante*, at 369, but hundreds of instances of adverse treatment at the hands of state officials—instances in which a person with a disability found it impossible to obtain a state job, to retain state employment, to use the public transportation that was readily available to others in order to get to work, or to obtain a public education, which is often a prerequisite to obtaining employment. State-imposed barriers also frequently made it difficult or impossible for people to vote, to enter a public building, to access important government services, such as calling for emergency assistance, and to find a place to live due to a pattern of irrational zoning decisions similar to the discrimination that we held unconstitutional in *Cleburne*, 473 U. S., at 448. See Appendix C, *infra*.

As the Court notes, those who presented instances of discrimination rarely provided additional, independent evidence sufficient to prove in court that, in each instance, the discrimination they suffered lacked justification from a judicial standpoint. *Ante*, at 370 (stating that instances of discrimination are "described out of context"). Perhaps this explains the Court's view that there is "minimal evidence of unconstitutional state discrimination." *Ibid.* But a leg-

islature is not a court of law. And Congress, unlike courts, must, and does, routinely draw general conclusions—for example, of likely motive or of likely relationship to legitimate need—from anecdotal and opinion-based evidence of this kind, particularly when the evidence lacks strong refutation. See Task Force Report 16, 20 (task force "met many times with significant representatives of groups opposed to [the] ADA," and as to the general public, although the task force received "about 2,000 letters" in support of the ADA, there was only "one letter in opposition"); S. Rep. No. 101–116, at 10 (summarizing testimony that many reasonable accommodations cost "less than $50," and the expense of others, such as hiring employees who can interpret for the deaf, is "frequently exaggerated"). In reviewing § 5 legislation, we have never required the sort of extensive investigation of each piece of evidence that the Court appears to contemplate. Compare *ante*, at 370–371, with *Katzenbach* v. *Morgan*, 384 U. S. 641, 652–656 (1966) (asking whether Congress' likely conclusions were reasonable, not whether there was adequate evidentiary support in the record). Nor has the Court traditionally required Congress to make findings as to state discrimination, or to break down the record evidence, category by category. Compare *ante*, at 371–372 (noting statements in two congressional Reports that mentioned state discrimination in public services and transportation but not in employment), with *Morgan*, *supra*, at 654 (considering what Congress "might" have concluded); 384 U. S., at 652 (holding that likely discrimination against Puerto Ricans in areas other than voting supported statute abolishing literacy test as qualification for voting).

Regardless, Congress expressly found substantial unjustified discrimination against persons with disabilities. 42 U. S. C. § 12101(9) (finding a pattern of "*unnecessary* discrimination and prejudice" that "costs the United States billions of dollars in *unnecessary* expenses resulting from dependency and nonproductivity" (emphasis added)). See also 2 Legislative History of the Americans with Disabilities

Act (Leg. Hist.) (Committee Print compiled for the House Committee on Education and Labor), Ser. No. 102–B, p. 1620 (1990) (testimony of Arlene B. Mayerson) (describing "unjustifiable and discriminatory loss of job opportunities"); *id.*, at 1623 (citing study showing " 'strong evidence that employers' fears of low performance among disabled workers are unjustified' "). Moreover, it found that such discrimination typically reflects "stereotypic assumptions" or "purposeful unequal treatment." 42 U. S. C. § 12101(7). See also 2 Leg. Hist. 1622 (testimony of Arlene B. Mayerson) ("Outmoded stereotypes whether manifested in medical or other job 'requirements' that are unrelated to the successful performance of the job, or in decisions based on the generalized perceptions of supervisors and hiring personnel, have excluded many disabled people from jobs for which they are qualified"). In making these findings, Congress followed our decision in *Cleburne*, which established that not only discrimination against persons with disabilities that rests upon " 'a bare . . . desire to harm a politically unpopular group,' " 473 U. S., at 447 (quoting *Department of Agriculture* v. *Moreno*, 413 U. S. 528, 534 (1973) (omission in *Cleburne*)), violates the Fourteenth Amendment, but also discrimination that rests solely upon "negative attitude[s]," "fea[r]," 473 U. S., at 448, or "irrational prejudice," *id.*, at 450. Adverse treatment that rests upon such motives is unjustified discrimination in *Cleburne*'s terms.

The evidence in the legislative record bears out Congress' finding that the adverse treatment of persons with disabilities was often arbitrary or invidious in this sense, and thus unjustified. For example, one study that was before Congress revealed that "most . . . governmental agencies in [one State] discriminated in hiring against job applicants for an average period of five years after treatment for cancer," based in part on coworkers' misguided belief that "cancer is contagious." 2 Leg. Hist. 1619–1620 (testimony of Arlene B. Mayerson). A school inexplicably refused to exempt a deaf teacher, who taught at a school for the deaf, from a

"listening skills" requirement. Government's Lodging 1503. A State refused to hire a blind employee as director of an agency for the blind—even though he was the most qualified applicant. *Id.*, at 974. Certain state agencies apparently had general policies against hiring or promoting persons with disabilities. *Id.*, at 1159, 1577. A zoo turned away children with Downs Syndrome "because [the zookeeper] feared they would upset the chimpanzees." S. Rep. No. 101–116, at 7. There were reports of numerous zoning decisions based upon "negative attitudes" or "fear," *Cleburne*, *supra*, at 448, such as a zoning board that denied a permit for an obviously pretextual reason after hearing arguments that a facility would house "'deviants'" who needed "'room to roam,'" Government's Lodging 1068. A complete listing of the hundreds of examples of discrimination by state and local governments that were submitted to the task force is set forth in Appendix C, *infra*. Congress could have reasonably believed that these examples represented signs of a widespread problem of unconstitutional discrimination.

II

The Court's failure to find sufficient evidentiary support may well rest upon its decision to hold Congress to a strict, judicially created evidentiary standard, particularly in respect to lack of justification. JUSTICE KENNEDY's empirical conclusion—which rejects that of Congress—rests heavily upon his failure to find "extensive litigation and discussion of the constitutional violations," in "*the courts* of the United States." *Ante*, at 376 (concurring opinion) (emphasis added). And the Court itself points out that, when economic or social legislation is challenged in court as irrational, hence unconstitutional, the "burden is upon the challenging party to negative any reasonably conceivable state of facts that could provide a rational basis for the classification." *Ante*, at 367 (internal quotation marks omitted). Or as Justice Brandeis, writing for the Court, put the matter many years ago, "'if any state of facts reasonably can be conceived that

would sustain'" challenged legislation, then "'there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing . . . that the action is arbitrary.'" *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176, 185 (1935) (quoting *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209 (1934)). Imposing this special "burden" upon Congress, the Court fails to find in the legislative record sufficient indication that Congress has "negative[d]" the presumption that state action is rationally related to a legitimate objective. *Ante*, at 367.

The problem with the Court's approach is that neither the "burden of proof" that favors States nor any other rule of restraint applicable to *judges* applies to *Congress* when it exercises its § 5 power. "Limitations stemming from the nature of the judicial process . . . have no application to Congress." *Oregon* v. *Mitchell*, 400 U. S. 112, 248 (1970) (Brennan, White, and Marshall, JJ., concurring in part and dissenting in part). Rational-basis review—with its presumptions favoring constitutionality—is "a paradigm of *judicial* restraint." *FCC* v. *Beach Communications, Inc.*, 508 U. S. 307, 314 (1993) (emphasis added). And the Congress of the United States is not a lower court.

Indeed, the Court in *Cleburne* drew this very institutional distinction. We emphasized that "courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices." 473 U. S., at 441. Our invocation of judicial deference and respect for Congress was based on the fact that "[§]5 of the [Fourteenth] Amendment empowers *Congress* to enforce [the equal protection] mandate." *Id.*, at 439 (emphasis added). Indeed, we made clear that the absence of a contrary congressional finding was critical to our decision to apply mere rational-basis review to disability discrimination claims—a "congressional direction" to apply a more stringent standard would have been "controlling." *Ibid.* See also *Washington* v. *Davis*, 426 U. S. 229, 248

(1976) (refusing to invalidate a law based on the Equal Protection Clause because a disparate-impact standard "should await legislative prescription"). Cf. *Mitchell*, *supra*, at 284 (Stewart, J., concurring in part and dissenting in part) ("Congress may paint with a much broader brush than may this Court, which must confine itself to the judicial function of deciding individual cases and controversies upon individual records"). In short, the Court's claim that "to uphold the Act's application to the States would allow Congress to rewrite the Fourteenth Amendment law laid down by this Court in *Cleburne*," *ante*, at 374, is repudiated by *Cleburne* itself.

There is simply no reason to require Congress, seeking to determine facts relevant to the exercise of its § 5 authority, to adopt rules or presumptions that reflect a court's institutional limitations. Unlike courts, Congress can readily gather facts from across the Nation, assess the magnitude of a problem, and more easily find an appropriate remedy. Cf. *Cleburne*, *supra*, at 442–443 (addressing the problems of the "large and diversified group" of persons with disabilities "is a difficult and often a technical matter, very much a task for legislators guided by qualified professionals and not by the perhaps ill-informed opinions of the judiciary"). Unlike courts, Congress directly reflects public attitudes and beliefs, enabling Congress better to understand where, and to what extent, refusals to accommodate a disability amount to behavior that is callous or unreasonable to the point of lacking constitutional justification. Unlike judges, Members of Congress can directly obtain information from constituents who have firsthand experience with discrimination and related issues.

Moreover, unlike judges, Members of Congress are elected. When the Court has applied the majority's burden of proof rule, it has explained that we, *i. e.*, the courts, do not "'sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations.'" *Heller*, 509 U. S., at 319

(quoting *New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976) *(per curiam)*). To apply a rule designed to restrict courts as if it restricted Congress' legislative power is to stand the underlying principle—a principle of judicial restraint—on its head. But without the use of this burden of proof rule or some other unusually stringent standard of review, it is difficult to see how the Court can find the legislative record here inadequate. Read with a reasonably favorable eye, the record indicates that state governments subjected those with disabilities to seriously adverse, disparate treatment. And Congress could have found, in a significant number of instances, that this treatment violated the substantive principles of justification—shorn of their judicial-restraint-related presumptions—that this Court recognized in *Cleburne*.

III

The Court argues in the alternative that the statute's damages remedy is not "congruent" with and "proportional" to the equal protection problem that Congress found. *Ante*, at 374 (citing *City of Boerne* v. *Flores*, 521 U. S. 507, 520 (1997)). The Court suggests that the Act's "reasonable accommodation" requirement, 42 U. S. C. § 12112(b)(5)(A), and disparate-impact standard, § 12112(b)(3)(A), "far excee[d] what is constitutionally required." *Ante*, at 372. But we have upheld disparate-impact standards in contexts where they were not "constitutionally required." Compare *Griggs* v. *Duke Power Co.*, 401 U. S. 424, 432 (1971), with *Washington*, *supra*, at 239, and *City of Rome* v. *United States*, 446 U. S. 156, 172–173 (1980), with *Mobile* v. *Bolden*, 446 U. S. 55, 62 (1980) (plurality opinion).

And what is wrong with a remedy that, in response to unreasonable employer behavior, requires an employer to make accommodations that are reasonable? Of course, what is "reasonable" in the statutory sense and what is "unreasonable" in the constitutional sense might differ. In other words, the requirement may exceed what is necessary to

avoid a constitutional violation. But it is just that power—the power to require more than the minimum—that § 5 grants to Congress, as this Court has repeatedly confirmed. As long ago as 1880, the Court wrote that § 5 "brought within the domain of congressional power" whatever "tends to enforce submission" to its "prohibitions" and "to secure to all persons . . . the equal protection of the laws." *Ex parte Virginia*, 100 U. S. 339, 346 (1880). More recently, the Court added that § 5's "draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18." *Morgan*, 384 U. S., at 650 (citing *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819)).

In keeping with these principles, the Court has said that "[i]t is not for us to review the congressional resolution of . . . the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services . . . , the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected." 384 U. S., at 653. "It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Ibid.* See also *South Carolina* v. *Katzenbach*, 383 U. S. 301, 324 (1966) (interpreting the similarly worded Enforcement Clause of the Fifteenth Amendment to permit Congress to use "any rational means to effectuate the constitutional prohibition"). Nothing in the words "reasonable accommodation" suggests that the requirement has no "tend[ency] to enforce" the Equal Protection Clause, *Ex parte Virginia*, *supra*, at 346, that it is an irrational way to achieve the objective, *Katzenbach*, *supra*, at 324, that it would fall outside the scope of the Necessary and Proper Clause, *Morgan*, *supra*, at 650, or that it somehow otherwise exceeds the bounds of the "appropriate," U. S. Const., Amdt. 14, § 5.

The Court's more recent cases have professed to follow the longstanding principle of deference to Congress. See *Kimel*

v. *Florida Bd. of Regents*, 528 U. S. 62, 81 (2000) ("Congress' § 5 power is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment." Rather, Congress can prohibit a "somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text"); *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627, 639 (1999) ("'Congress must have wide latitude'") (quoting *City of Boerne*, *supra*, at 519–520); *City of Boerne*, *supra*, at 528 (reaffirming *Morgan*); 521 U. S., at 536 (Congress' "conclusions are entitled to much deference"). And even today, the Court purports to apply, not to depart from, these standards. *Ante*, at 365. But the Court's analysis and ultimate conclusion deprive its declarations of practical significance. The Court 'sounds the word of promise to the ear but breaks it to the hope.'

IV

The Court's harsh review of Congress' use of its § 5 power is reminiscent of the similar (now-discredited) limitation that it once imposed upon Congress' Commerce Clause power. Compare *Carter* v. *Carter Coal Co.*, 298 U. S. 238 (1936), with *United States* v. *Darby*, 312 U. S. 100, 123 (1941) (rejecting *Carter Coal*'s rationale). I could understand the legal basis for such review were we judging a statute that discriminated against those of a particular race or gender, see *United States* v. *Virginia*, 518 U. S. 515 (1996), or a statute that threatened a basic constitutionally protected liberty such as free speech, see *Reno* v. *American Civil Liberties Union*, 521 U. S. 844 (1997); see also Post & Siegel, Equal Protection by Law: Federal Antidiscrimination Legislation After *Morrison* and *Kimel*, 110 Yale L. J. 441, 477 (2000) (stating that the Court's recent review of § 5 legislation appears to approach strict scrutiny); 1 L. Tribe, American Constitutional Law § 5–16, p. 959 (3d ed. 2000) (same). The legislation before us, however, does not discriminate against anyone, nor does it pose any threat to basic liberty. And it is diffi-

cult to understand why the Court, which applies "minimum 'rational-basis' review" to statutes that *burden* persons with disabilities, *ante*, at 366, subjects to far stricter scrutiny a statute that seeks to *help* those same individuals.

I recognize nonetheless that this statute imposes a burden upon States in that it removes their Eleventh Amendment protection from suit, thereby subjecting them to potential monetary liability. Rules for interpreting § 5 that would provide States with special protection, however, run counter to the very object of the Fourteenth Amendment. By its terms, that Amendment prohibits *States* from denying their citizens equal protection of the laws. U. S. Const., Amdt. 14, § 1. Hence "principles of federalism that might otherwise be an obstacle to congressional authority are necessarily overridden by the power to enforce the Civil War Amendments 'by appropriate legislation.' Those Amendments were specifically designed as an expansion of federal power and an intrusion on state sovereignty." *City of Rome*, 446 U. S., at 179. See also *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456 (1976); *Ex parte Virginia*, *supra*, at 345. And, ironically, the greater the obstacle the Eleventh Amendment poses to the creation by Congress of the kind of remedy at issue here—the decentralized remedy of private damages actions—the more Congress, seeking to cure important national problems, such as the problem of disability discrimination before us, will have to rely on more uniform remedies, such as federal standards and court injunctions, 42 U. S. C. § 12188(a)(2), which are sometimes draconian and typically more intrusive. See *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 704–705 (1999) (BREYER, J., dissenting). Cf. *ante*, at 374, n. 9. For these reasons, I doubt that today's decision serves any constitutionally based federalism interest.

The Court, through its evidentiary demands, its nondeferential review, and its failure to distinguish between judicial and legislative constitutional competencies, improperly invades a power that the Constitution assigns to Con-

gress. *Morgan*, 384 U. S., at 648, n. 7 (The "sponsors and supporters of the [Fourteenth] Amendment were primarily interested in augmenting the power of Congress"). Its decision saps § 5 of independent force, effectively "confin[ing] the legislative power . . . to the insignificant role of abrogating only those state laws that the judicial branch [is] prepared to adjudge unconstitutional." *Id.*, at 648–649. Whether the Commerce Clause does or does not enable Congress to enact this provision, see, *e. g., Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 100–185 (1996) (SOUTER, J., joined by GINSBURG and BREYER, JJ., dissenting); *College Savings Bank*, *supra*, at 699–700 (BREYER, J., dissenting), in my view, § 5 gives Congress the necessary authority.

For the reasons stated, I respectfully dissent.

APPENDIX A TO OPINION OF BREYER, J.

Congressional hearings on the Americans with Disabilities Act

Americans with Disabilities Act of 1989: Hearings on H. R. 2273 before the House Committee on the Judiciary and the Subcommittee on Civil and Constitutional Rights, 101st Cong., 1st Sess. (1989).

Americans with Disabilities Act: Hearing on H. R. 2273 and S. 933 before the Subcommittee on Transportation and Hazardous Materials of the House Committee on Energy and Commerce, 101st Cong., 1st Sess. (1990).

Americans with Disabilities Act: Hearings on H. R. 2273 before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation, 101st Cong., 1st Sess. (1990).

Americans with Disabilities: Telecommunications Relay Services, Hearing on Title V of H. R. 2273 before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 101st Cong., 1st Sess. (1990).

Americans with Disabilities Act of 1989: Hearing on H. R. 2273 before the Subcommittee on Select Education of the

House Committee on Education and Labor, 101st Cong., 1st Sess. (1989).

Field Hearing on Americans with Disabilities Act: Hearing before the Subcommittee on Select Education of the House Committee on Education and Labor, 101st Cong., 1st Sess. (1989).

Hearing on H. R. 2273, The Americans with Disabilities Act of 1989: Joint Hearing before the Subcommittee on Select Education and Employment Opportunities of the House Committee on Education and Labor, 101st Cong., 1st Sess. (July 18 & Sept. 13, 1989) (two hearings).

Oversight Hearing on H. R. 4498, Americans with Disabilities Act of 1988: Hearing before the Subcommittee on Select Education of the House Committee on Education and Labor, 100th Cong., 2d Sess. (1989).

Americans with Disabilities Act: Hearing before the House Committee on Small Business, 101st Cong., 2d Sess. (1990); Americans with Disabilities Act of 1989: Hearings on S. 933 before the Senate Committee on Labor and Human Resources and the Subcommittee on the Handicapped, 101st Cong., 1st Sess. (1989) (May 1989 Hearings).

Americans with Disabilities Act of 1988: Joint Hearing on S. 2345 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Human Resources and the Subcommittee on Select Education of the House Committee on Education and Labor, 100th Cong., 2d Sess. (1989).

APPENDIX B TO OPINION OF BREYER, J.

Disability discrimination laws enacted by Congress prior to the Americans with Disabilities Act

Act of June 10, 1948, ch. 434, 62 Stat. 351

Architectural Barriers Act of 1968, 42 U. S. C. § 4151 *et seq.*

Rehabilitation Act of 1973, 29 U. S. C. § 701 *et seq.*

Education of the Handicapped Act, Pub. L. 91–230, Title VI, 84 Stat. 175 (reenacted in 1990 as the Individuals with Disabilities Education Act, 20 U. S. C. § 1400 *et seq.*)

Developmental Disabilities Assistance and Bill of Rights Act, 42 U. S. C. § 6000 *et seq.*

Voting Accessibility for the Elderly and Handicapped Act, 42 U. S. C. § 1973ee *et seq.*

Air Carrier Access Act of 1986, 49 U. S. C. § 41705

Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U. S. C. § 10801 *et seq.*

Fair Housing Amendments Act of 1988, 42 U. S. C. § 3604.

APPENDIX C TO OPINION OF BREYER, J.

Submissions made by individuals to the Task Force on Rights and Empowerment of Americans with Disabilities. See the Government's Lodging (available in Clerk of Court's case file).

ALABAMA

Page No.	
00002	discrimination against the mentally ill in city zoning process
00003	inaccessible exercise equipment at University of Alabama
00004	school failed to train teachers how to work with students with learning disabilities
00005	courts failed to provide interpretive services for deaf people
00006	lack of accessible police and court services for deaf people
00007	inaccessible public transportation
00008	child denied public education because of cerebral palsy
00009	inaccessible public transportation, which prevented persons with disabilities from getting to work

00010 inaccessible public buildings and services; inaccessible transportation

00011 inaccessible public schools; inaccessible public transportation

00013 inaccessible public schools; inaccessible public transportation

00014 failure to enforce building codes requiring access for persons with disabilities

00015 inaccessible courthouse

00017 lack of instructions for use of voting machine by blind people; inaccessible restrooms in newly renovated State House

00021 inaccessible public transportation

00023 inaccessible public transportation

00024 failure to enforce state and local laws protecting persons with disabilities

00025 schools failed to provide an adequate education for children with disabilities

00026 inaccessible public transportation

00027 man denied vocational rehabilitation services based on his cerebral palsy; inaccessible public transportation

00031 vocational rehabilitation agency failed to provide services for schizophrenics; zoning discrimination against group homes

00032 school failed to provide an adequate education

00033 school failed to provide an adequate education

ALASKA

Page No.

00038 school placed child with cerebral palsy in special education classes

00041 inaccessible restrooms in state legislature information office

00042 inaccessible areas at new Alaska Performing Arts Center

00044 inaccessible public transportation, which prevented persons with disabilities from getting to work
00046 lack of curb cuts in sidewalks near apartment building for persons with disabilities
00048 child erroneously placed in special education classes
00049 inaccessible new performing arts center
00050 Alaska Psychiatric Institute failed to provide interpretive services for deaf patients
00052 state and local agencies disregarded laws requiring accessibility
00055 jail failed to provide person with disability medical treatment
00056 inaccessible government buildings in Seward
00057 inaccessible public transportation
00058 city failed to train employees how to communicate with people with hearing impairments
00059 segregated seating and inaccessibility at new performing arts center
00061 inaccessibility of State Ferry Columbia and Alaska Railroad; denial of job interview because person was in a wheelchair
00062 inaccessible new performing arts center
00063 person using a respirator denied access to Alaska State Division of Medical Assistance
00065 inaccessible city hall
00067 school district retaliated against teacher for asking to be assigned to an accessible classroom
00069 inaccessible public transportation
00070 lack of curb cuts; inaccessible public transportation
00071 state agencies failed to provide interpretive services for deaf people
00072 department of motor vehicles failed to provide interpretive services
00073 inaccessibility of Seward City Hall and other state and local buildings

ARIZONA

Page No.

ARKANSAS

Page No.

00138 public school teacher refused to allow student with disability to use authorized calculator
00139 state university failed to inform student with hearing impairment about activities and rules
00140 lack of curb cuts
00141 inaccessible public transportation
00143 inaccessible office area at public housing for persons with disabilities
00144 inaccessible public transportation
00145 inaccessible state office of human services; state agencies failed to hire persons with disabilities
00146 failure to enforce handicapped parking law
00147 school erroneously placed child with mobility impairment in special education classes
00149 public schools failed to provide interpretive services for deaf people
00150 inaccessible public transportation
00153 person with disability forced to resign employment because of architectural barriers
00154 public school held meetings and conferences at inaccessible locations
00155 physical barriers prevented citizens from voting
00156 rehabilitation services failed to assist people with all kinds of disabilities
00159 inaccessible city and county buildings
00161 human services office relocated to inaccessible building
00163 lack of curb cuts

CALIFORNIA

Page No.

00166 inaccessible public recreation sites
00168 California Relay System failed to provide telephone access to other States for deaf people

00180 public transit failed to provide visual signs for deaf people
00181 inaccessible public transportation
00202 California Children's Services refused to help with cost of caring for child with head injury at home
00206 inaccessible county buildings
00208 deaf people denied access to state agencies that lacked TDD's
00210 deaf people denied access to state agencies that lacked TDD's
00211 public transit failed to provide visual signs for deaf people
00212 public transit failed to provide visual signs for deaf people
00213 limited out-of-state telephone relay services
00214 inaccessible public transportation limited access to community college
00215 inaccessible public transportation
00218 deaf people denied access to state agencies that lacked TDD's
00219 state mental health services failed to provide access for deaf people
00220 government failed to provide interpretive services for deaf people
00221 inaccessible public transportation; lack of curb cuts
00222 inaccessible public transportation
00223 inaccessible airport; inaccessible public transportation
00224 California Relay Service failed to enable deaf people to make interstate calls
00225 California Relay Service failed to enable deaf people to make interstate calls
00226 inaccessible public transportation; inaccessible restrooms in public buildings

00227 University of California attempted to terminate employees with disabilities for taking medical leave

00231 state agencies failed to provide TDD's

00232 person denied opportunity to serve on jury because county failed to provide interpretive services for deaf people

00236 public school district failed to provide TTD for deaf parents

00237 California Relay Service failed to enable deaf people to make interstate calls

00240 lack of curb cuts; inaccessible public transportation

00241 inaccessible public transportation

00244 inaccessible public transportation

00245 California Civil Service Exam held at high school with inaccessible restrooms

00246 inaccessible restrooms in county administration building; lack of curb cuts

00247 inaccessible public transportation prevented persons with disabilities from getting to work; State failed to enforce laws requiring accessibility

00248 inaccessible public transportation

00249 California Relay Service failed to enable deaf people to make interstate calls

00250 inaccessible public transportation

00252 inaccessible public transportation

00253 inaccessible public transportation

00254 inaccessible county courthouse; street signals too fast for safe crossing by wheelchair

00255 public functions failed to provide interpretive services for deaf people

00258 deaf people denied access to state agencies that lacked TDD's

00261 California Basic Educational Skills Test discriminated against deaf adults who wanted to become teachers of deaf students

00262 department of motor vehicles required doctors to report patients with seizure disorders and revoked such patients' licenses, but did not require reporting of other conditions that could cause erratic driving

COLORADO

Page No.

00266 person in wheelchair passed by five bus drivers, all of whom claimed that lifts were broken

00267 lack of curb cuts and ramps; inaccessible public transportation

00268 inaccessible public transportation

00269 inaccessible public transportation

00270 persons with disabilities placed in segregated public housing

00271 inaccessible public transportation

00272 lack of curb cuts forced person in wheelchair to use street

00273 inaccessible county courthouse

00274 inaccessible public transportation

00275 inaccessible public transportation in small cities; public schools failed to assist students with disabilities

00276 inaccessible public transportation; inaccessible public facilities and recreation sites

00277 political parties held caucuses at inaccessible private home

00280 children with developmental disabilities required to attend segregated schools

00281 public school system refused to transfer student with disabilities from special to regular school until she brought suit

CONNECTICUT

Page No.

DELAWARE

Page No.

00329 State refused to fund services for people with mental illness

00330 state transit system provided special vouchers for persons with physical disabilities, but not for mentally ill

00331 state criminal justice system failed to provide psychiatric treatment

00333 State kept child with schizophrenia in Delaware State Hospital because it lacked services for people who could be released

00335 state labor department's restrictive policies prevented persons with disabilities from applying for employment

00336 failure to enforce laws requiring handicapped parking spaces, which were usually occupied by police cars

00337 public transportation refused to transport person carrying oxygen

00338 staff and patients at Delaware State Hospital sexually abused women patients

00343 inaccessible public transportation

00345 state police interrogated deaf citizens without providing interpretive services

00347 vocational high school sought to transfer student back to special segregated school

GEORGIA

Page No.

00362 public colleges failed to provide assistance for students with learning disabilities

00365 University of Georgia students with disabilities faced architectural barriers, inaccessible public transportation, lack of housing, and failure to enforce handicapped parking laws

00366 inaccessible classrooms at University of Georgia

00367 University of Georgia located its office of handicapped services in inaccessible second floor office

00370 University of Georgia charged students with learning disabilities $600 per quarter for services that other students with disabilities received at no cost

00371 Learning Disability Adult Clinic at University of Georgia charged unreasonable fees

00372 inaccessible public transportation

00374 traffic court failed to provide interpretive services for deaf person

HAWAII

Page No.

00444 inaccessible public transportation

00446 inaccessible public transportation

00448 state university failed to enforce handicapped parking laws

00451 state employee in wheelchair forced to resign job because frequently unable to get to office due to broken elevator in state building; State Commission on the Handicapped refused employee's request for reasonable accommodation

00452 state university failed to provide blind student with timely or adequate books on tape for coursework; lack of signs or information for blind people using public transit

00455 person with disability denied opportunity to testify because department of labor held hearing in an inaccessible room

00456 state employment agency refused to provide interpretive services for deaf people

00457 public school put three-year-old deaf child in same class as fourth graders

00458 quadriplegic person who had California driver's license denied license by Hawaii
00460 state government office refused to interview persons with emotional disorder or history of alcoholism
00461 inaccessible state buildings
00462 person with mobility impairment denied serious consideration for state job due to unreliability of accessible public transportation
00463 inaccessible public transportation prevented person with disability from getting to work; inaccessible public buildings
00464 lack of curb cuts forced person in wheelchair to use street
00467 elevators in public buildings not marked for blind people; bus drivers failed to announce stops for blind people
00468 inaccessible public transportation; bus drivers harassed mentally retarded passengers
00469 inaccessible public transportation
00472 state mental health system had restrictive institutional policies
00473 state social service employees placed limits on opportunities for persons with disabilities based on stereotypical assumptions
00474 lack of curb cuts and ramps
00475 inaccessible public transportation
00476 inaccessible public transportation
00477 inaccessible public library
00479 denial of certain licenses to persons with mental disabilities
00480 inaccessible restroom in state park; lack of curb cuts
00484 state and local government meetings failed to provide interpretive services for deaf people
00485 students with disabilities unable to participate in school interscholastic sports

00486 blind people prevented from traveling outside State because quarantine laws permitted no exemption for their guide dogs

00487 state mental health services unavailable for deaf people due to failure to train staff

00488 inaccessible public transportation; inaccessible city and county buildings

00490 handi-van refused service to person paralyzed from waist down

00491 inaccessible public transportation

00492 state agencies failed to monitor conditions in community residential facilities for persons with disabilities

00494 inaccessible public transportation

00495 inaccessible public transportation

00496 inadequate assistance for deaf person at court appearance

IDAHO

Page No.

00502 inaccessible public transportation

00505 inaccessible public transportation

00506 adult victims of abuse with developmental disabilities denied equal rights to testify in court

00507 inaccessible public recreation activities

00508 inaccessible public transportation

00509 lack of curb cuts

00510 inaccessible public transportation

00511 city and county failed to provide assistance for deaf people at public meetings

00514 inaccessible public transportation

00515 public school failed to provide adequate assistance for students with disabilities

00516 inaccessible public transportation

00517 public defenders' offices and public meetings failed to provide interpretive services for deaf people; police harassed persons with disabilities who appeared to be intoxicated

00518 vocational rehabilitation agency lacked TTY service

00521 government agencies lacked staff to assist people with head injuries

00522 inaccessible public transportation

00523 inaccessible public transportation

00524 inaccessible public transportation; inaccessible public buildings

00528 limited access at new county courthouse, library, and city hall

00531 school district refused to hire licensed teacher because of speech impediment

00533 public school failed to provide assistance for deaf student

00537 public school failed to provide interpretive services for deaf student

00540 Idaho lacked statewide telephone relay service for deaf people

00541 department of employment and department of health and welfare lacked telephone access for deaf people

00543 inaccessible restrooms at public high school; student in wheelchair denied admission to regular classes

ILLINOIS

Page No.

00546 state system for providing ballots to people unable to enter polling place and special bus service caused long wait outside in cold weather

00548 schools that mainstream deaf children refused to hire deaf teacher

00553 government failed to provide interpretive services for deaf people at public hearing on school budget

00554 lack of curb cuts; inaccessible public transportation
00559 department of rehabilitation limited services to persons with disabilities by threatening placement in nursing home
00569 police stations lacked TTY service
00572 deaf people arrested and held in jail overnight without explanation because of failure to provide interpretive services
00573 inaccessible polling place
00574 inaccessible public schools prevented attendance at PTA meetings
00575 inaccessible public transportation
00576 inaccessible public transportation
00578 lack of curb cuts and ramps for wheelchairs
00579 most state housing agencies lacked telecommunications devices or interpretive services for deaf people
00581 state and local government agencies lacked telecommunications devices for deaf people
00583 emergency medical, police, and fire services lacked TDD's or personnel trained to receive TDD calls
00585 inaccessible public pools; inaccessible restrooms in municipal building
00586 inaccessible public transportation
00587 inaccessible polling place
00588 inaccessible polling place
00589 inaccessible public transportation
00590 inaccessible public transportation
00591 inaccessible library
00592 inaccessible voting system
00594 inaccessible polling place
00595 lack of curb cuts
00596 inaccessible public transportation
00597 inaccessible public transportation
00600 inaccessible public transportation
00603 inaccessible public transportation

00605 lack of curb cuts; inaccessible public buildings; inaccessible public transportation; inaccessible polling place

INDIANA

Page No.

00608 state vocational rehabilitation agency refused to help person it classified as severely disabled

00609 for five years, state vocational rehabilitation agency failed to provide assistance

00612 inadequate curb cuts

00613 inaccessible public transportation

00616 inaccessible public transportation

00618 inadequate curb cuts

00619 inaccessible public transportation; inaccessible public facilities

00621 inaccessible public transportation

00622 government agencies failed to provide interpretive services and TTY/TDD's for deaf people

00629 deaf counselors discouraged from applying for jobs as rehabilitation counselors for deaf people

00637 staff at state psychiatric facilities abused and physically dragged patients

00644 person with disability dismissed as director of deaf unit at Central State Hospital

00651 public meetings held at inaccessible locations

00653 inaccessible polling place

00655 state counselors failed to provide rehabilitation assistance to person with head injury

IOWA

Page No.

00659 person dismissed as city bus operator after seeking treatment for mental illness

00664 state commission failed to supply necessary equipment for deaf and blind employee

00665 high school limited opportunities for mentally retarded student to be integrated

KANSAS

Page No.

00670 Kansas Commission of Civil Rights denied legally blind person job as investigator because of limited ability to drive and refused to allow accommodation that would have permitted use of public transportation

00673 police failed to provide interpretive services after arresting deaf man

00676 Kansas Department of Transportation fired person because she had epilepsy

00679 state investigator failed to examine employment discrimination claims

00685 inaccessible public transportation

00695 county failed to assist mentally ill with housing and vocational opportunities

00696 damaged sidewalks and poor street lighting posed risk to persons with disabilities

00704 inaccessible city-owned arena

KENTUCKY

Page No.

00706 bus driver bypassed person standing at stop with guide dog

00709 inaccessible public transportation

00712 department of employment services failed to make reasonable accommodations for persons with disabilities

00717 lack of curb cuts; inaccessible public transportation

00720 inaccessible public transportation

00723 state employment service refused to place person in wheelchair

00724 inaccessible public buildings

LOUISIANA

Page No.

MAINE

Page No.

MARYLAND

Page No.

MASSACHUSETTS

Page No.

MICHIGAN

Page No.

00964 Michigan Rehabilitation Services failed to accommodate mentally ill persons
00968 inaccessible public transportation
00969 man with disability forced to use girls' restroom at state job
00970 person with disability terminated from county job and banned from future county employment

MINNESOTA

Page No.

00974 person with disability and score of 100 was finalist for job as director of agency for the blind, but able-bodied person with score of 70 was hired
00980 person with cerebral palsy humiliated at interview for job with state department of education

MISSISSIPPI

Page No.

00853 inaccessible public transportation
00855 inaccessible beaches, pools, and parks
00984 inaccessible classrooms and library at Mississippi School for the Deaf
00985 no state agency to provide or coordinate community service programs for deaf adults
00986 inaccessible classrooms at Mississippi School for the Deaf
00987 public programs failed to provide interpretive services for deaf people; government failed to post caution signs warning drivers of deaf children
00988 inaccessible polling places and voting booths
00989 inaccessible public buildings
00990 courts refused to pay for qualified interpretive services for deaf people
00992 inaccessible state university building
00993 teacher denied position at public elementary school because of need for braces and a cane to walk

00994 lack of curb cuts; inaccessible public school rooms; inaccessible public transportation
00996 inaccessible department of motor vehicles
00997 inaccessible public transportation; inaccessible public facilities
00998 inaccessible courthouses
00999 state university instructor refused to teach blind person
01000 inaccessible public transportation
01001 inaccessible polling place; city employee required to go outside to get to restroom

MISSOURI

Page No.

01003 lack of curb cuts
01004 inaccessible restrooms in public buildings; lack of curb cuts
01006 public schools segregated children with disabilities; inaccessible school buildings
01009 inaccessible public transportation and public buildings such as post offices, libraries, schools, and polling places
01010 state university tried to discourage blind person's chosen field of study
01013 inaccessible public transportation
01015 courthouse failed to provide amplified sound system in courtrooms

MONTANA

Page No.

01017 inadequate curb cuts
01022 inadequate curb cuts in downtown area
01023 state agencies refused to make reasonable accommodations to paraplegics seeking employment
01024 inaccessible polling place

NEBRASKA

NEVADA

NEW HAMPSHIRE

NEW JERSEY

Page No.

NEW MEXICO

Page No.

NEW YORK

Page No.	
01109	state agencies failed to hire persons with disabilities
01114	custodian in public high school denied request of person with disability to use locked elevator
01119	at state legislature, person in wheelchair had to wait 45 minutes to use freight elevator
01129	public village meetings held in second floor meeting room with no elevator; many polling places inaccessible
01130	lack of curb cuts; failure to enforce handicapped parking laws
01134	inaccessible state parks and public beaches

NORTH CAROLINA

Page No.	
01144	public elementary school initially denied admission and then charged extra fee for child with Down's Syndrome to attend afterschool day-care program
01155	blind people told not to participate in regular public parks and recreation programs
01158	state agencies, other than services for the blind and vocational rehabilitation, employed few persons with disabilities
01161	police arrested and jailed deaf person without providing interpretive services

NORTH DAKOTA

Page No.	
01170	person with disability denied access to driver's license exam because held in inaccessible room
01172	inaccessible polling places
01175	lack of curb cuts; failure to enforce handicapped parking laws; inaccessible polling places; inaccessible city government meetings

01178 failure to enforce handicapped parking laws
01183 inaccessible polling places; inaccessible state and local government buildings
01185 government agencies failed to enforce policies regarding hiring persons with disabilities; inaccessible polling places; inaccessible public buildings
01186 state and local government failed to hire persons with disabilities; inaccessible polling places
01187 failure to enforce handicapped parking laws
01196 person with head-injury disability denied consideration for position of election polls inspector

OHIO

Page No.

01215 city failed to trim trees regularly, which posed a hazard to blind people
01216 inaccessible state, county, and city buildings
01218 inaccessible social service agency offices; inaccessible public transportation
01221 vocational rehabilitation agency denied assistance to person with disability
01224 rehabilitation services agency failed to assist paranoid schizophrenic
01229 vocational rehabilitation agency discouraged person with disability from being a nurse
01230 persons with disabilities denied jobs because of inaccessible public transportation
01231 blind person denied driver's license though legally eligible
01234 inaccessible public transportation; lack of curb cuts
01235 public paratransit system often left passengers stranded
01236 vocational rehabilitation agency steered person with mental disability to menial job, despite his Ph.D. degree

01239 police failed to provide interpretive services for deaf person who was arrested

01241 Cleveland State University lacked wheelchair ramps

01242 inaccessible public transportation

OKLAHOMA

Page No.

01251 Tulsa Housing Authority failed to communicate with and provide information to tenants with disabilities

01258 state employment office lacked TDD or workers with interpretive skills; state university paid deaf employees less than hearing employees; state agencies made no effort to hire deaf applicants

01265 police officer pointed gun at person with disability who could not get out of car quickly

01266 inaccessible public transportation

01269 person with speech impediment denied numerous state jobs

01271 inaccessible restrooms at city parks

01275 state government held meeting at hotel with inaccessible restrooms

01278 person in wheelchair worked at polling place with inaccessible restrooms

01280 inaccessible polling places

01286 qualified blind person who offered to provide own driver denied job as state social worker

OREGON

Page No.

01370 blind people unable to access printed material from state government

01375 school system barred child with cerebral palsy from physical education class and gave her cleaning job instead

01377 person with two college degrees and extensive professional experience turned down for appropriate state government jobs and advised to seek entry-level jobs because of his disability

01378 commission for the handicapped lacked funds to enforce laws

PENNSYLVANIA

Page No.

01391 public library had restrictive policy regarding issuance of library cards to residents of group homes

01397 government failed to provide interpretive services for deaf people at school budget hearing

01399 inaccessible public transportation

01407 inaccessible polling places

01408 inaccessible public transportation

01409 inaccessible polling places

01410 inaccessible polling place

01413 inaccessible public transportation; lack of curb cuts

01421 inaccessible public library

01423 inaccessible automatic ticket dispensers on Pennsylvania Turnpike

01425 bus drivers refused to transport person in wheelchair

01427 inaccessible county offices

01429 lack of curb cuts

01430 GED programs offered at inaccessible public schools; bus drivers unwilling or unable to use wheelchair lifts

01432 child unable to enroll in first grade because of inaccessible classroom

01434 lack of curb cuts; inaccessible public transportation

01435 lack of curb cuts in rural areas

01436 inaccessible polling place

SOUTH CAROLINA

Page No.

SOUTH DAKOTA

Page No.

TEXAS

Page No.

01514 medical examination required for renewal of driver's license despite unblemished 20-year driving record
01520 inadequate handicapped parking spaces
01521 state vocational rehabilitation agency refused to assist college student who chose to major in political science
01522 employee of county human services agency denied handicapped parking place
01526 failure to enforce handicapped parking laws
01527 inaccessible state university transportation system
01529 denial of driver's licenses or accommodations to take driver's test
01531 inaccessible buildings at state university
01536 state hospital sought to discharge mentally ill boy with HIV
01540 special transit system refused to transport man with mental retardation though he could not use regular bus
01542 deaf man not permitted to take state cosmetology exam with assistance from interpreter
01543 blind man not permitted to take state chiropractic exam because he could not read x-rays alone
01549 deaf instructors unable to pass state teachers' exam for teachers of deaf students that assessed speech and language skills
01551 inadequate handicapped parking and enforcement

UTAH

Page No.

01554 state rehabilitation service had never hired deaf counselor or administrator
01556 child denied admission to public school because first-grade teacher refused to teach him
01563 public school failed to implement state review panel findings regarding accommodation for child with disability

VERMONT

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VIRGINIA

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WASHINGTON

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WEST VIRGINIA

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WISCONSIN

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WYOMING

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Syllabus

CENTRAL GREEN CO. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 99–859. Argued October 30, 2000—Decided February 21, 2001

The Madera Canal, a federal facility leased to the Madera Irrigation District (MID), flows through petitioner's California orchards. Petitioner brought suit against respondent United States and the MID alleging that their negligence in the canal's design, construction, and maintenance caused subsurface flooding resulting in damage to the orchards and increased operating costs for petitioner. The complaint sought damages under the Federal Tort Claims Act and other relief. Relying on the immunity granted by the Flood Control Act of 1928, 33 U. S. C. § 702c—which states that "[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place"—the United States moved for judgment on the pleadings. The District Court dismissed the complaint because the parties agreed that the canal was a part of the Friant Division of the Central Valley Project, and that flood control was one of that project's purposes. The Ninth Circuit affirmed, holding that although the canal serves no flood control purpose, immunity attached solely because it is a branch of the larger project.

Held: In determining whether § 702c immunity attaches, courts should consider the character of the waters that cause the relevant damage and the purposes behind their release rather than the relation between that damage and a flood control project. Pp. 428–437.

(a) A passage in *United States* v. *James*, 478 U. S. 597, 605—which states that it is "clear from § 702c's plain language that the terms 'flood' and 'flood waters' apply to all waters contained in or carried through a federal flood control project for purposes of or related to flood control"—lends support to the Ninth Circuit's holding, but is unquestionably dictum. It is therefore appropriate to resort to the statute's text, as illuminated by the *James* holding, rather than to that isolated comment, to determine whether the water flowing through the canal that allegedly damaged petitioner's orchards is covered by § 702c. The *James* holding—that the phrase "flood or flood waters" encompasses waters that are released for flood control purposes when reservoired waters are at flood stage—is vastly different from the Ninth Circuit's reading of § 702c, under which immunity attaches simply because the Madera Canal

is part of the Friant Division of the Central Valley Project, and flood control is one of the project's purposes. Pp. 428–432.

(b) To characterize every drop of water flowing through the immense Central Valley Project as "flood water" simply because flood control is among its purposes unnecessarily dilutes the statute's language. The statute's text does not include the words "flood control project," but, rather, states that immunity attaches to "any damage from or by floods or flood waters." Pp. 432–434.

(c) Neither the statute's language nor the *James* holding even arguably supports the Government's conclusion that § 702c immunity must attach to all the water flowing through the canal, even if the water never approached flood stage and the terminus of the canal was parched at the end of the summer. Accordingly, the Court disavows the "related to" portion of *James*' dicta. Pp. 435–436.

(d) Because the question of immunity was decided on the pleadings, using an incorrect test and without benefit of an evidentiary hearing or further factual development, the case is remanded for further proceedings. Pp. 436–437.

177 F. 3d 834, reversed and remanded.

STEVENS, J., delivered the opinion for a unanimous Court.

Timothy Jones argued the cause for petitioner. With him on the briefs were *Thomas C. Goldstein*, *W. Allen Bennett*, and *Erik S. Jaffe*.

David C. Frederick argued the cause for the United States. With him on the brief were *Solicitor General Waxman*, *Assistant Attorney General Ogden*, *Deputy Solicitor General Underwood*, and *Irene M. Solet*.*

JUSTICE STEVENS delivered the opinion of the Court.

Incident to the authorization of a massive flood control project for the Mississippi River in 1928, Congress enacted an immunity provision which stated that "[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place." 45

**M. Reed Hopper* filed a brief for the Pacific Legal Foundation as *amicus curiae* urging reversal.

Stat. 535, as amended, 33 U. S. C. § 702c. At issue in this case is the meaning of the words "floods or flood waters." The narrow question presented is whether those words encompass all the water that flows through a federal facility that was designed and is operated, at least in part, for flood control purposes. The Ninth Circuit, relying upon a broader construction of § 702c than some other federal courts have adopted, concluded that they do. We granted certiorari to resolve the conflict, 529 U. S. 1017 (2000), and now reverse.

I

Petitioner owns 1,000 acres of pistachio orchards in California's San Joaquin Valley. The Madera Canal, a federal facility that has been leased to the Madera Irrigation District (MID), flows through petitioner's property. In 1996, petitioner brought this action against respondent United States and the MID alleging that their negligence in the design, construction, and maintenance of the canal had caused subsurface flooding resulting in damage to the orchards and increased operating costs for petitioner. Petitioner did not allege that any physical failure of the dam caused the damage to its property. The complaint sought damages under the Federal Tort Claims Act, 28 U. S. C. § 2671 *et seq.*, as well as injunctive relief. Relying on the immunity granted by the Flood Control Act of 1928, 33 U. S. C. § 702c, the United States moved for judgment on the pleadings.

Accepting petitioner's submission that the Madera Canal was used for irrigation purposes, the District Court nevertheless dismissed the complaint because the parties agreed that the canal was a part of the Friant Division of the Central Valley Project, and that flood control was one of the purposes of that project. The District Court's decision was dictated by an earlier Ninth Circuit case, which held that if a "'project has flood control as one of its purposes, and the

events giving rise to the action were not wholly unrelated to the project,' " immunity necessarily attached.[1]

On appeal, the Ninth Circuit affirmed. It agreed with petitioner that the Madera Canal "serves no flood control purpose," but nevertheless held that immunity attached "solely because it is a branch of the Central Valley Project." 177 F. 3d 834, 839 (1999). As the Ninth Circuit put it, "[a]lthough the water in the Madera Canal was not held for the purpose of flood control, because it was part of the Central Valley Project, it was '*not wholly unrelated*' to flood control." *Ibid.* (emphasis added). In so holding, however, the court recognized that the Government would probably not have enjoyed immunity in at least three other Circuits where the courts require a nexus between flood control activities and the harm done to the plaintiff.[2] Noting the "harsh result of [the] decision," the Ninth Circuit frankly acknowledged that "[t]he 'not wholly unrelated' test applied by this and other circuits reads broadly an already broadly written grant of immunity." *Ibid.* As the Ninth Circuit recognized, under such a test, there would seem to be no "set of facts where the government is not immune from damage arising from water that at one time passed through part of the Central Valley or other flood control project." *Ibid.*

II

Not until more than a half century after its enactment did this Court have occasion to interpret § 702c. In a consolidated case arising out of two separate accidents, we held that the section "bars recovery where the Federal Government

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[1] App. to Pet. for Cert. 15 (quoting *Washington* v. *East Columbia Basin Irrigation Dist.*, 105 F. 3d 517, 520 (1997)).

[2] Citing *Fryman* v. *United States*, 901 F. 2d 79 (CA7 1990); *Boyd* v. *United States*, 881 F. 2d 895 (CA10 1989); and *Hayes* v. *United States*, 585 F. 2d 701 (CA4 1978), the Ninth Circuit specifically identified the Fourth, Seventh, and Tenth Circuits as ones which likely would have reached a different result.

would otherwise be liable under the Federal Tort Claims Act, 28 U. S. C. § 2671 *et seq.*, for personal injury caused by the Federal Government's negligent failure to warn of the dangers from the release of floodwaters from federal flood control projects." *United States* v. *James*, 478 U. S. 597, 599 (1986).

The principal issue in the *James* case was whether the statutory word "damage" encompassed not just property damage, but also personal injuries and death. In light of the legislative history, which it reviewed at some length, *id.*, at 606–609, 610–612, the Court concluded that the best reading of the statutory text was one which was both broader and less literal, and which encompassed the claims at issue in the two cases before the Court.

In both instances, the injuries were caused by the turbulent current generated by unwarned releases of waters from a reservoir after the Army Corps of Engineers had determined that the waters were at "flood stage." The fact that the injuries were caused by "flood waters" was undisputed.[3] In its opinion, the Court held that the language of the statute covered the two accidents because the "injuries occurred as a result of the release of waters from reservoirs that had reached flood stage." *Id.*, at 604.

Nevertheless, the Court's opinion in *James* included a passage that lends support to the Ninth Circuit's holding in this case. In that passage, the Court wrote:

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[3] The first case arose out of an incident at the Millwood Dam in Arkansas, when "the level of the Reservoir was such that the United States Corps of Engineers designated it at 'flood stage.' As part of the flood control function of the Millwood facility, the Corps of Engineers began to release water through the tainter gates. This release created a swift, strong current toward the underwater discharge." 478 U. S., at 599. The second case arose as a result of a decision by the Corps of Engineers to release waters in the reservoir of Bayou Courtableau Basin which "were at flood stage." *Id.*, at 601. The District Court found that § 702c applied because the "'gates were opened to *prevent* flooding and inundation landside of the drainage structure.'" *Id.*, at 602 (emphasis added).

> "Nor do the terms 'flood' and 'flood waters' create any uncertainty in the context of accidents such as the ones at issue in these cases. The Act concerns flood control projects designed to carry floodwaters. *It is thus clear from § 702c's plain language that the terms 'flood' and 'flood waters' apply to all waters contained in or carried through a federal flood control project for purposes of or related to flood control*, as well as to waters that such projects cannot control." *Id.*, at 605 (emphasis added).[4]

The sentence that we have italicized and, in particular, the phrase "related to flood control" have generated conflicting opinions among the Courts of Appeals. In an attempt to make sense of what is admittedly confusing dicta, some courts have focused on whether the damage relates in some, often tenuous, way to a flood control project, rather than whether it relates to "floods or flood waters."[5] However,

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[4] The Court appended a footnote pointing out that the District Court in each case had found that the waters at issue had been "released from federal flood control facilities to prevent flooding" and that the Court of Appeals had upheld those findings "and assumed that 'the waters in this [consolidated] case were floodwaters.'" See *id.*, at 606, n. 7.

[5] See, *e. g.*, *Washington* v. *East Columbia Basin Irrigation Dist.*, 105 F. 3d 517 (CA9 1997); *Williams* v. *United States*, 957 F. 2d 742 (CA10 1992); *Dawson* v. *United States*, 894 F. 2d 70 (CA3 1990); *DeWitt Bank & Trust Co.* v. *United States*, 878 F. 2d 246 (CA8 1989). This approach, however, can be overinclusive. As Judge Easterbrook has pointed out: "The 'management of a flood control project' includes building roads to reach the beaches and hiring staff to run the project. If the Corps of Engineers should allow a walrus-sized pothole to swallow tourists' cars on the way to the beach, or if a tree-trimmer's car should careen through some picnickers, these injuries would be 'associated with' flood control. They would occur within the boundaries of the project, and but for the effort to curtail flooding the injuries would not have happened. Yet they would have nothing to do with management of flood waters, and it is hard to conceive that they are 'damage from or by floods or flood waters' within the scope of § 702c.'" *Fryman* v. *United States*, 901 F. 2d, at 81. More

more than one court has pointed out that, if read literally, the sentence sweeps so broadly as to make little sense.[6] Moreover, the sentence was unquestionably dictum because it was not essential to our disposition of any of the issues contested in *James*.[7] It is therefore appropriate to resort to the text of the statute, as illuminated by our holding in *James*, rather than to that isolated comment, to determine whether the water flowing through the Madera Canal that allegedly caused the damage to petitioner's pistachio orchards is covered by § 702c. See *Humphrey's Executor* v. *United States*, 295 U. S. 602, 627 (1935) (dicta "may be followed if sufficiently persuasive" but are not binding). See also *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18, 24 (1994).

In *James*, we held that the phrase "floods or flood waters" is not narrowly confined to those waters that a federal project is unable to control, and that it encompasses waters that are released for flood control purposes when reservoired waters are at flood stage. That holding, however, is vastly different from the Ninth Circuit's reading of § 702c, under which immunity attaches simply because the Madera Canal is part of the Friant Division of the Central Valley Project, and flood control is one of the purposes served by that project. The

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to the point, such an approach is also inconsistent with the statutory language. See *infra*, at 434.

[6] "Other circuits recognize that such a sweeping grant of immunity makes little sense in light of the text and purpose of the Act." *Cantrell* v. *United States Dept. of Army Corps of Engineers*, 89 F. 3d 268, 271 (CA6 1996). See also *Fryman*, 901 F. 2d, at 81 ("*James* was so broadly written that it cannot be applied literally").

[7] In addition to concluding that the word "damage" includes personal injury and death, the Court also rejected the previously arguable propositions that the Federal Government's subsequent waiver of sovereign immunity in the Federal Tort Claims Act had impliedly repealed § 702c; and that the immunity applied only to the flood control on the Mississippi River authorized by the 1928 Act.

holding in *James* also differs from the less attenuated and more fact-specific position advanced by the Government, which would require us to take judicial notice of evidence that the Friant Division of the Central Valley Project and, indeed, the Madera Canal itself can and do serve flood control purposes. We ultimately conclude that the judgment cannot be upheld under either rationale, but begin with a description of the Central Valley Project and an explanation of the factual basis for the Government's submission.

III

We begin by observing that water can be either a liability or an asset. The Mississippi River flood of 1927 was unquestionably an example of the former. That flood in turn led to the enactment of the 1928 Flood Control Act. Similar, though less extreme, floods of the Sacramento and San Joaquin Rivers in California provided an important motivation for the authorization of the Central Valley Project. Although that project has not completely eliminated flooding on either river, it has succeeded in converting a huge liability into an immensely valuable asset. Justice Jackson described the magnitude of that transformation in his opinion for the Court in *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725 (1950):

> "This is a gigantic undertaking to redistribute the principal fresh-water resources of California. Central Valley is a vast basin, stretching over 400 miles on its polar axis and a hundred in width, in the heart of California. Bounded by the Sierra Nevada on the east and by coastal ranges on the west, it consists actually of two separate river valleys which merge in a single pass to the sea at the Golden Gate. Its rich acres, counted in the millions, are deficient in rainfall and must remain generally arid and unfruitful unless artificially watered.
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> . . . . .

"To . . . make water available where it would be of greatest service, the State of California proposed to reengineer its natural water distribution. This project was taken over by the United States in 1935 and has since been a federal enterprise. The plan, in broad outline, is to capture and store waters of both rivers and many of their tributaries in their highland basins, in some cases taking advantage of the resulting head for generation of electric energy. . . . [T]he waters of the San Joaquin will be arrested at Friant, where they would take leave of the mountains, and will be diverted north and south through a system of canals and sold to irrigate more than a million acres of land, some as far as 160 miles away. A cost of refreshing this great expanse of semiarid land is that, except for occasional spills, only a dry river bed will cross the plain below the dam. Here, however, surplus waters from the north are utilized, for through a 150-mile canal Sacramento water is to be pumped to the cultivated lands formerly dependent on the San Joaquin." *Id.*, at 728–729.

"The Central Valley basin development envisions, in one sense, an integrated undertaking, but also an aggregate of many subsidiary projects, each of which is of first magnitude. It consists of thirty-eight major dams and reservoirs bordering the valley floor and scores of smaller ones in headwaters. It contemplates twenty-eight hydropower generating stations. It includes hundreds of miles of main canals, thousands of miles of laterals and drains, electric transmission and feeder lines and substations, and a vast network of structures for the control and use of water on two million acres of land already irrigated, three million acres of land to be newly irrigated, 360,000 acres in the delta needing protection from intrusions of salt water, and for municipal and miscellaneous purposes including cities, towns, duck clubs and game refuges. These projects are not only widely

> separated geographically, many of them physically independent in operation, but they are authorized in separate acts from year to year and are to be constructed at different times over a considerable span of years." *Id.*, at 733.

Justice Jackson's description of the magnitude of the Central Valley Project makes one proposition perfectly clear: to characterize every drop of water that flows through that immense project as "flood water" simply because flood control is among the purposes served by the project unnecessarily dilutes the language of the statute. The text of the statute does not include the words "flood control project." Rather, it states that immunity attaches to "any damage from or by floods or flood waters . . . ." Accordingly, the text of the statute directs us to determine the scope of the immunity conferred, not by the character of the federal project or the purposes it serves, but by the character of the waters that cause the relevant damage and the purposes behind their release.

IV

The Government has asked us to take judicial notice of certain basic facts about the Friant Division of the Central Valley Project and about the waters flowing through that division and, more particularly, through the Madera Canal. Although petitioner will have an opportunity to challenge those details on remand, we accept them for purposes of this opinion.

The two major rivers supplying water to the Central Valley Project are the Sacramento in the north, and the San Joaquin in the south. From its headwaters in the Sierra Nevada Mountains, the San Joaquin flows in a southwesterly direction into a reservoir, known as Millerton Lake, just above the Friant Dam. The reservoir has a storage capacity of 520,500 acre-feet of water. In dry years, the total flow in the river does not produce that amount, but on average, the

annual flow apparently approximates 3½ times the reservoir's capacity. Water is released through outlets in the dam that send it down the San Joaquin River, and also through outlets that direct it into either the Madera Canal to the northwest, or the Friant-Kern Canal to the southeast. When the water level exceeds 578 feet, it flows over the dam's spillway into the San Joaquin. At that point, the river can accommodate a flow of 8,000 cubic feet per second without flooding. The Madera Canal can accommodate 1,200 cubic feet per second, and the Friant-Kern another 4,500 cubic feet per second. Thus, a total release of 13,700 cubic feet per second in three directions would not appear to include any "flood water."

The Madera Canal, which is about 40 miles in length, is used primarily for irrigation purposes. Water that enters the canal at the Friant Dam is purchased by farmers who either use it immediately or store it for future use. As a result, the amount of water that enters the canal is larger than the quantity that may flow into the Chowchilla River at its terminus.[8] Except in years of extreme drought, the Madera Irrigation District provides contracting farmers with "a dependable water supply" of approximately 138,000 acre-feet of "Class 1 water." In addition, "if, as, and when it can be made available," the District sells "Class 2 water" to the farmers at a price that is lower than the Class 1 price because of the "uncertainty as to availability and time of occurrence."[9] Thus, again in a literal sense, it seems clear that none of the Class 1 or Class 2 water sold by the District and purchased by the farmers to store or irrigate their lands includes any "flood water."

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[8] The Chowchilla flows in a westerly direction into the San Joaquin, which in turn flows in a northwesterly direction at that point.

[9] In some exceptional circumstances, irrigation contractors may be obligated to buy Class 2 water at a particular time. However, contractors still pay for the water, regardless of the potential inconvenience with respect to the timing or date of delivery.

Water that is not purchased under either class simply flows through the canal into the Chowchilla River. As the Government points out, that excess may include flood water. However, given the fact that the canal can accommodate a flow of 1,200 cubic feet per second, which amounts to about 2,380 acre-feet per day, it is entirely possible that over the span of a year, several times the amount of Class 1 and Class 2 waters described in the papers submitted by the Government could flow through the canal without causing anything approaching a flood. Nevertheless, according to the Government, because the Madera Canal is available to divert water that might otherwise produce a flood on the San Joaquin and flood control is among the purposes served by the canal, § 702c immunity must attach to all the water that flows through the canal. Under the Government's approach, this would be true even if the water never approached flood stage and the terminus of the canal was parched at the end of the summer. Admittedly, it is possible to read the "related to" portion of the dictum from *James* to support that result, but neither the language of the statute itself, nor the holding in *James*, even arguably supports such a strange conclusion. Accordingly, we disavow that portion of *James*' dicta.

V

This case does raise a difficult issue because the property damage at issue was allegedly caused by continuous or repeated flows occurring over a period of years, rather than by a single, discrete incident. It is relatively easy to determine that a particular release of water that has reached flood stage is "flood water," as in *James*, or that a release directed by a power company for the commercial purpose of generating electricity is not, as in *Henderson* v. *United States*, 965 F. 2d 1488 (CA8 1992). It is, however, not such a simple matter when damage may have been caused over a period of time in part by flood waters and in part by the routine use of the canal when it contained little more than a trickle. The

fact that a serious flood did occur in the San Joaquin in 1997 creates the distinct possibility that flood waters may have surged down the Madera Canal and harmed petitioner's property.

For present purposes, we merely hold that it was error to grant the Government's motion for judgment on the pleadings and that it is the text of § 702c, as informed by our holding in *James*, rather than the broad dictum in that opinion, that governs the scope of the United States' immunity from liability for damage caused "by floods or flood waters." Accordingly, in determining whether § 702c immunity attaches, courts should consider the character of the waters that cause the relevant damage rather than the relation between that damage and a flood control project.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

LEWIS *v.* LEWIS & CLARK MARINE, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 99–1331. Argued November 29, 2000—Decided February 21, 2001

Petitioner sued respondent in an Illinois County Court for personal injuries he suffered while working on respondent's ship. He did not request a jury trial. In anticipation of his suit, respondent had filed a complaint for exoneration from, or limitation of, liability in Federal District Court pursuant to the Limitation of Liability Act (Limitation Act or Act). Following the procedure for limitation actions set forth in Supplemental Admiralty and Maritime Claims Rule F, the court approved a surety bond representing respondent's interest in the vessel, ordered that any claim related to the incident be filed with the court within a specified period, and enjoined the filing or prosecution of any suits related to the incident. Petitioner, *inter alia*, moved to dissolve the restraining order, stating that he was the only claimant, waiving any res judicata claim concerning limited liability from a state court judgment, stipulating that respondent could relitigate limited liability issues in the District Court, and stipulating that his claim's value was less than the value of the limitation fund. The District Court recognized that federal courts have exclusive jurisdiction to determine whether a vessel owner is entitled to limited liability, but also recognized that the statute conferring exclusive jurisdiction over admiralty and maritime suits to federal courts saves to suitors "all other remedies to which they are otherwise entitled." 28 U. S. C. § 1333(1). The court found two exceptions to exclusive federal jurisdiction under which a claimant may litigate his claim in state court—where the limitation fund's value exceeds the total value of all claims asserted against the vessel owner, and where there is a single claimant. The court dissolved the injunction because petitioner met the first and, probably, second exceptions, and retained jurisdiction over the limitation action to protect the vessel owner's right should the state proceedings necessitate further federal court proceedings. In holding that the District Court abused its discretion in dissolving the injunction, the Eighth Circuit found that respondent had a right to seek exoneration from, not mere limitation of, liability in federal court; that because petitioner did not request a jury trial, he had not sought a saved remedy in state court; and that because there was no conflict between the saving to suitors clause and the Limitation Act here, there was no basis for dissolving the injunction.

Syllabus

Held: Because state courts may adjudicate claims like petitioner's against vessel owners so long as the owner's right to seek limitation of liability is protected, the Eighth Circuit erred in reversing the District Court's decision to dissolve the injunction. Pp. 443–456.

(a) Section 1333(1)'s saving to suitors clause preserves common law remedies and concurrent state court jurisdiction over some admiralty and maritime claims. *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 123–124. The Limitation Act allows a vessel owner to limit liability for damage or injury, occasioned without the owner's privity or knowledge, to the value of the vessel or the owner's interest in the vessel. Potential tension exists between the saving to suitors clause and the Limitation Act because one gives suitors the right to a choice of remedies while the other gives vessel owners the right to seek limited liability in federal court. Claimants generally have been permitted to proceed with their claims in state court where there is only a single claimant, see *Langnes* v. *Green*, 282 U. S. 531, or where the total claims do not exceed the value of the limitation fund, see *Lake Tankers Corp.* v. *Henn*, 354 U. S. 147. Pp. 443–451.

(b) The District Court properly exercised its discretion in dissolving the injunction here. Guided by this Court's cases, it attempted to reconcile petitioner's right to his remedy under the saving to suitors clause with respondent's right to seek limited liability under the Limitation Act. It dissolved the injunction after concluding that respondent's right would be adequately protected by petitioner's stipulations and by the court's decision to stay the Limitation Act proceedings pending state court proceedings. The Eighth Circuit misapprehended this Court's decisions in holding that the injunction should not have been dissolved. The Eighth Circuit erred in holding that the Limitation Act grants vessel owners a right to obtain exoneration of liability where limitation of liability is not at issue. By its own terms the Act protects the owners' right to limit their liability to the vessel's value. Here, the District Court concluded that petitioner's stipulations would protect the owner's right to seek limited liability in federal court, and, out of an abundance of caution, it stayed the limitation proceedings. Nothing more was required to protect respondent's Limitation Act rights. Having satisfied itself that the vessel owner's right to seek limitation would be protected, the decision to dissolve the injunction was well within the District Court's discretion. The Eighth Circuit also erred in finding that petitioner's failure to demand a jury trial in state court meant that he had no saved remedy there. The saving to suitors clause protects all remedies, of which trial by jury is an obvious, but not exclusive, example. In sum, this Court's case law makes clear that state courts, with all of their remedies, may adjudicate claims like petitioner's against

vessel owners so long as the vessel owner's right to seek limitation of liability is protected. Pp. 451–456.

196 F. 3d 900, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.

Roy C. Dripps argued the cause for petitioner. With him on the briefs was *Gail G. Renshaw.*

James V. O'Brien argued the cause and filed a brief for respondent.

JUSTICE O'CONNOR delivered the opinion of the Court.

This case concerns a seaman's ability to sue a vessel owner in state court for personal injuries sustained aboard a vessel. Federal courts have exclusive jurisdiction over admiralty and maritime claims, but the jurisdictional statute "sav[es] to suitors in all cases all other remedies to which they are otherwise entitled." 28 U. S. C. § 1333(1). Another statute grants vessel owners the right to seek limited liability in federal court for claims of damage aboard their vessels. 46 U. S. C. App. § 181 *et seq.* In this case, the District Court, after conducting proceedings to preserve the vessel owner's right to seek limited liability, dissolved the injunction that prevented the seaman from litigating his personal injury claims in state court. The Eighth Circuit Court of Appeals reversed, concluding that the vessel owner had a right to contest liability in federal court, and that the seaman did not have a saved remedy in state court. The question presented is whether the District Court abused its discretion in dissolving the injunction.

I

Petitioner, James F. Lewis, worked as a deckhand aboard the M/V *Karen Michelle*, owned by respondent, Lewis & Clark Marine, Inc. Petitioner claims that on March 17, 1998, he was injured aboard the M/V *Karen Michelle* when he tripped over a wire and hurt his back. App. 12. In April 1998, petitioner sued respondent in the Circuit Court of Mad-

ison County, Illinois. Petitioner claimed negligence under the Jones Act, 46 U. S. C. App. § 688, unseaworthiness, and maintenance and cure. A Jones Act claim is an *in personam* action for a seaman who suffers injury in the course of employment due to negligence of his employer, the vessel owner, or crew members. *Ibid.; Plamals* v. *S. S. "Pinar Del Rio,"* 277 U. S. 151, 155–156 (1928). Unseaworthiness is a claim under general maritime law based on the vessel owner's duty to ensure that the vessel is reasonably fit to be at sea. See generally *Mitchell* v. *Trawler Racer, Inc.*, 362 U. S. 539, 550 (1960). A claim for maintenance and cure concerns the vessel owner's obligation to provide food, lodging, and medical services to a seaman injured while serving the ship. See generally *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525, 527–528 (1938). Petitioner did not demand a jury trial in state court.

In anticipation of petitioner's suit, respondent had filed a complaint for exoneration from, or limitation of, liability in the United States District Court for the Eastern District of Missouri pursuant to the Limitation of Liability Act (Limitation Act or Act), 46 U. S. C. App. § 181 *et seq.* The District Court followed the procedure for a limitation action provided in Supplemental Admiralty and Maritime Claims Rule F. The court entered an order approving a surety bond of $450,000, representing respondent's interest in the vessel. The court ordered that any person with a claim for the events of March 17, 1998, file a claim with the court within a specified period. The court then enjoined the filing or prosecution of any suits against respondent related to the incident on March 17, 1998. App. 30–33.

Petitioner filed an answer to respondent's complaint, a claim for damages for injury, and a motion to dissolve the restraining order. Petitioner averred that he was the sole claimant concerning the events of March 17, 1998. He waived any claim of res judicata concerning limited liability based on a state court judgment; he stipulated that respond-

ent could relitigate issues relating to the limitation of liability in District Court. *Id.*, at 72. Petitioner later stipulated that the value of his claim was less than the value of the limitation fund, *id.*, at 102, recanting his earlier allegation that his claim exceeded the vessel's value.

The District Court dissolved the restraining order that prevented petitioner from proceeding with his cause of action in state court. *In re Complaint of Lewis & Clark Marine, Inc.*, 31 F. Supp. 2d 1164 (ED Mo. 1998). The court recognized that federal courts have exclusive jurisdiction to determine whether a vessel owner is entitled to limited liability. The court also noted, however, that the statute that confers exclusive jurisdiction over admiralty and maritime claims to federal courts contains a clause that saves to suitors "all other remedies to which they are otherwise entitled." 28 U. S. C. § 1333(1). The court reasoned that "a tension exists between the exclusive jurisdiction vested in the admiralty courts to determine a vessel owner's right to limited liability and the savings to suitors clause." 31 F. Supp. 2d, at 1168.

The District Court found two exceptions to exclusive federal jurisdiction under which a claimant is allowed to litigate his claim in state court. The first is where the value of the limitation fund exceeds the total value of all claims asserted against the vessel owner. The second is where a single claimant brings an action against the vessel owner seeking damages in excess of the value of the vessel. The court concluded that it should dissolve the injunction in this case because petitioner met the limited fund exception and probably met the single claimant exception as well. *Id.*, at 1169, and n. 3. The court decided to retain jurisdiction over the limitation action to protect the vessel owner's right to limitation in the event that the state proceedings necessitated further proceedings in federal court.

The Eighth Circuit Court of Appeals held that the District Court abused its discretion in dissolving the injunction. 196

F. 3d 900 (1999). The Court of Appeals, like the District Court, recognized potential tension between the saving to suitors clause in the jurisdictional statute and the Limitation Act. The Court of Appeals, however, perceived no conflict between those provisions in the instant case. The Court of Appeals explained that a court must consider whether the vessel owner has the right to remain in federal court and whether the claimant is seeking a saved remedy in another forum. The court concluded that respondent had a right to seek exoneration from liability, not merely limitation of liability, in federal court. The court also concluded that because petitioner did not request a trial by jury, he had not sought a saved remedy in state court. The court determined that there was no substantive difference between the remedies afforded petitioner in state court and federal court. For these reasons, the court held that there was no basis for dissolving the injunction.

We granted certiorari, 530 U. S. 1202 (2000), to resolve a conflict between the Eighth Circuit's decision and the decisions of other Courts of Appeals. Compare 196 F. 3d 900 (CA8 1999), with *Kreta Shipping S. A.* v. *Preussag International Steel Corp.*, 192 F. 3d 41 (CA2 1999), *Beiswenger Enterprises Corp.* v. *Carletta*, 86 F. 3d 1032 (CA11 1996), and *Linton* v. *Great Lakes Dredge & Dock Co.*, 964 F. 2d 1480 (CA5 1992).

II

A

Article III, § 2, of the United States Constitution vests federal courts with jurisdiction over all cases of admiralty and maritime jurisdiction. Section 9 of the Judiciary Act of 1789 codified this grant of exclusive original jurisdiction, but "sav[ed] to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." Ch. 20, § 9, 1 Stat. 77. In the intervening years, Congress has revised the language of the saving to suitors clause, but

its substance has remained largely unchanged. See 28 U. S. C. §§ 41(3) and 371 Third (1940 ed.) ("saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it"); 28 U. S. C. § 1333(1) (1946 ed., Supp. II) ("saving to the libellant or petitioner in every case any other remedy to which he is otherwise entitled"); Act of May 24, 1949, ch. 139, § 79, 63 Stat. 101 ("saving to suitors in all cases all other remedies to which they are otherwise entitled"). The jurisdictional statute now states that "[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of . . . any civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled.*" 28 U. S. C. § 1333(1) (emphasis added).

What the drafters of the Judiciary Act intended in creating the saving to suitors clause is not entirely clear and has been the subject of some debate. See, *e. g.*, 1 J. Goebel, Antecedents and Beginnings to 1801, History of the Supreme Court of the United States 474 (1971). Compare Casto, The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates, 37 Am. J. Legal Hist. 117, 139–149 (1993), with Gutoff, Original Understandings and the Private Law Origins of the Federal Admiralty Jurisdiction, A Reply to Professor Casto, 30 J. Mar. L. & Com. 361, 387–390 (1999). This Court theorized that the saving to suitors clause was "inserted, probably, from abundant caution, lest the exclusive terms in which the power is conferred on the District Courts might be deemed to have taken away the concurrent remedy which had before existed. This leaves the concurrent power where it stood at common law." *New Jersey Steam Nav. Co.* v. *Merchants' Bank of Boston*, 6 How. 344, 390 (1848).

In early cases we defined the limits of the clause. For instance, proceedings *in rem* were deemed outside the scope of the clause because an *in rem* action was not a common law remedy, but instead a proceeding under civil law. See, *e. g.*,

The Hine v. *Trevor*, 4 Wall. 555, 571–572 (1867); *The Moses Taylor*, 4 Wall. 411, 431 (1867). We later distinguished between the concept of rights and remedies. *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 383–384 (1918). In *Chelentis*, we held that maritime law governs a seaman's right to recovery against a vessel owner for his injuries aboard the vessel. We explained that "[t]he distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury." *Id.*, at 384.

In a subsequent case, the Court defined the saving to suitors clause as a grant to state courts of *in personam* jurisdiction, concurrent with admiralty courts. *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 123 (1924). We held enforceable an arbitration agreement between an owner of a steamship and a company that chartered the ship. We reasoned that agreements to arbitrate were valid under admiralty law, and that the State of New York had the power to confer on its courts the authority to compel parties to submit to arbitration. We explained that the state arbitration law merely provided a remedy in state court:

> "The 'right of a common law remedy,' so saved to suitors, does not . . . include attempted changes by the States in the substantive admiralty law, but it does include all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. It includes remedies *in pais*, as well as proceedings in court; judicial remedies conferred by statute, as well as those existing at the common law; remedies in equity, as well as those enforceable in a court of law." *Id.*, at 123–124.

Thus, the saving to suitors clause preserves remedies and the concurrent jurisdiction of state courts over some admiralty and maritime claims. See also *Madruga* v. *Superior*

Court of Cal., County of San Diego, 346 U. S. 556, 560–561 (1954); *Steamboat Co.* v. *Chase*, 16 Wall. 522, 533–534 (1873).

B

Admiralty and maritime law includes a host of special rights, duties, rules, and procedures. See, *e. g.*, 46 U. S. C. App. § 721 *et seq.* (wrecks and salvage); § 741 *et seq.* (suits in admiralty by or against vessels or cargoes of the United States); 46 U. S. C. § 10101 *et seq.* (merchant seamen protection and relief). Among these provisions is the Limitation Act, 46 U. S. C. App. § 181 *et seq.* The Act allows a vessel owner to limit liability for damage or injury, occasioned without the owner's privity or knowledge, to the value of the vessel or the owner's interest in the vessel. The central provision of the Act provides:

> "The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." § 183(a).

See also § 183(b) (requiring supplemental fund for some vessels for personal injury and death claimants).

Congress passed the Limitation Act in 1851 "to encourage ship-building and to induce capitalists to invest money in this branch of industry." *Norwich Co.* v. *Wright*, 13 Wall. 104, 121 (1872). See also *British Transport Comm'n* v. *United States*, 354 U. S. 129, 133–135 (1957); *Just* v. *Chambers*, 312 U. S. 383, 385 (1941). The Act also had the purpose of "putting American shipping upon an equality with that of other

maritime nations" that had their own limitation acts. *The Main* v. *Williams*, 152 U. S. 122, 128 (1894). See also *Norwich Co.*, *supra*, at 116–119 (discussing history of limitation acts in England, France, and the States that led to the passage of the Limitation Act).

The Act is not a model of clarity. See 2 T. Schoenbaum, Admiralty and Maritime Law 299 (2d ed. 1994) ("Th[e] 1851 Act, badly drafted even by the standards of the time, continues in effect today"). Having created a right to seek limited liability, Congress did not provide procedures for determining the entitlement. This Court did not have an opportunity to review the Act in detail until 20 years after its enactment. See *Norwich Co.*, *supra*. Deeming the Act "incapable of execution" without further instructions to courts, *id.*, at 123, we designed the procedures that govern a limitation action, and promulgated them the same Term, see Supplementary Rules of Practice in Admiralty, 13 Wall. xii–xiv. We later explained that the scheme "was sketched in outline" by the Act, and "the regulation of details as to the form and modes of proceeding was left to be prescribed by judicial authority." *Providence & New York S. S. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, 590 (1883).

The 1872 rules were "intended to facilitate the proceedings of the owners of vessels for claiming the limitation of liability secured by the statute." *The "Benefactor,"* 103 U. S. 239, 244 (1880). Under the rules, a vessel owner seeking limitation of liability had to file a petition. The district court would obtain an appraisal of the vessel's value or the owner's interest in the vessel, and ensure that payment or some guarantee of payment was deposited with the court. The court would then order all claimants to appear. Supplementary Rule of Practice in Admiralty 54, 13 Wall., at xii–xiii. In the process of seeking limited liability, the owner was permitted to contest the fact of liability. Rule 56, 13 Wall., at xiii. The ability to contest liability relieved vessel owners of the "very onerous" English rule, which required

vessel owners to confess liability in order to seek the benefit of limitation. *The "Benefactor," supra*, at 243 ("[T]his court, in preparing the rules of procedure for a limitation of liability, deemed it proper to allow a party seeking such limitation to contest any liability whatever"). The claimants would then contest the vessel owner's claims for exoneration and limitation of liability. Rule 56, 13 Wall., at xiii. If the owner succeeded in its effort to limit liability, but was not exonerated, the court was responsible for distributing the fund deposited in the court among the claimants. Rule 55, 13 Wall., at xiii.

The procedure for a limitation action is now found in Supplemental Admiralty and Maritime Claims Rule F. Much like its predecessor provisions, Rule F sets forth the process for filing a complaint seeking exoneration from, or limitation of, liability. The district court secures the value of the vessel or owner's interest, marshals claims, and enjoins the prosecution of other actions with respect to the claims. In these proceedings, the court, sitting without a jury, adjudicates the claims. The court determines whether the vessel owner is liable and whether the owner may limit liability. The court then determines the validity of the claims, and if liability is limited, distributes the limited fund among the claimants.

C

Some tension exists between the saving to suitors clause and the Limitation Act. One statute gives suitors the right to a choice of remedies, and the other statute gives vessel owners the right to seek limitation of liability in federal court. We confronted this tension in *Langnes* v. *Green*, 282 U. S. 531 (1931). The respondent in *Langnes* was employed on the petitioner's vessel. The employee sued the vessel owner in state court for $25,000 for personal injuries suffered aboard the vessel. The vessel owner later filed a petition for limitation of liability in Federal District Court. The District Court enjoined any further proceedings in state court

and issued a notice that all claimants appear. The employee filed his claim in District Court. The parties stipulated that the vessel was worth no more than $5,000.

The employee sought dissolution of the injunction. He argued that the state court had jurisdiction over his claim, that he was the only possible claimant, that there was only one vessel owner, and therefore the vessel owner could claim the benefit of the Limitation Act by proper pleading in state court. The District Court denied the motion and proceeded to decide the merits, concluding that the vessel owner was not liable. The Court of Appeals reversed on the issue of limitation.

On review, this Court concluded that both courts erred in failing to recognize that the state court was competent to hear the employee's personal injury claim and the vessel owner's claim for limitation. In our view, the choice before the District Court was whether it should retain the limitation action and preserve the right of the vessel owner but destroy the right of the employee in state court to a common law remedy, or allow the action in state court to proceed and preserve the rights of both parties. We concluded that the latter course was just. We decided that the District Court should have dissolved the injunction and allowed the employee to proceed with his claim in state court, and retained jurisdiction over the petition for limitation of liability in the event that the state proceedings necessitated further proceedings in federal court. We explained that the District Court's decision is "one of discretion in every case," and remanded for further proceedings. *Id.*, at 544.

After our decision, the employee was permitted to pursue his claim in state court. See *Ex parte Green*, 286 U. S. 437 (1932). In those proceedings, notwithstanding this Court's recognition of the vessel owner's right to seek limitation of liability in federal court, the employee sought to litigate that issue in state court. We approved of the District Court's decision to enjoin any further proceedings in state court until

the employee agreed to withdraw his submission on the issue of limited liability. *Id.*, at 440.

We have also considered the conflict between the saving to suitors clause and the Limitation Act in a case where several claimants attempted to sue a vessel owner in state court. *Lake Tankers Corp.* v. *Henn*, 354 U. S. 147 (1957). A pleasure yacht, the *Blackstone*, capsized after a collision with a tug that was push-towing a barge, injuring several persons and killing one. Claimants sued the owner of the tug and barge in state court actions. The owner filed a petition for exoneration from, or limitation of, liability in federal court. The owner also filed a bond for the tug in the amount of approximately $119,000 and a bond for the barge in the amount of $165,000. The District Court enjoined other proceedings concerning the collision. Thereafter, the claimants made their demands for damages; the total claims were less than the amount of the two bonds. All claimants relinquished any right to damages in excess of that set forth in their claims. They further waived any claim of res judicata relating to the issue of the vessel owner's ability to limit liability. The District Court decided to dissolve the injunction because the total limitation fund exceeded the amount of the claims. The Court of Appeals affirmed.

We affirmed the Court of Appeals' decision. In examining the Limitation Act and its history, we found it "crystal clear that the operation of the Act is directed at misfortunes at sea where the losses incurred exceed the value of the vessel and the pending freight." *Id.*, at 151. Where the value of the vessel and the pending freight exceed the claims, however, there is no necessity for the maintenance of the action in federal court. *Id.*, at 152. The stipulations, in addition to other restrictions on the state court proceedings, ensured "beyond doubt that [the owner's] right of limitation under the Act was fully protected." *Ibid.* We explained that to expand the scope of exclusive jurisdiction to prevent the state court actions

> "would transform the Act from a protective instrument to an offensive weapon by which the shipowner could deprive suitors of their common-law rights, even where the limitation fund is known to be more than adequate to satisfy all demands upon it. The shipowner's right to limit liability is not so boundless. The Act is not one of immunity from liability but of limitation of it and we read no other privilege for the shipowner into its language over and above that granting him limited liability. In fact, the Congress not only created the limitation procedure for the primary purpose of apportioning the limitation fund among the claimants where that fund was inadequate to pay the claims in full, but it reserved to such suitors their common-law remedies." *Id.*, at 152–153.

Since these decisions, the Courts of Appeals have generally permitted claimants to proceed with their claims in state court where there is only a single claimant, as in *Langnes*, or where the total claims do not exceed the value of the limitation fund, as in *Lake Tankers*. See, *e. g.*, *Beiswenger Enterprises Corp.* v. *Carletta*, 86 F. 3d 1032 (CA11 1996); *Linton* v. *Great Lakes Dredge & Dock Co.*, 964 F. 2d 1480 (CA5 1992). See also *Kreta Shipping S. A.* v. *Preussag International Steel Corp.*, 192 F. 3d 41 (CA2 1999) (foreign forum).

III

In the instant case, we believe that the District Court properly exercised its discretion in dissolving the injunction that prevented petitioner from pursuing his claims in state court. The District Court, guided by our prior cases, attempted to reconcile petitioner's right to his remedy under the saving to suitors clause with respondent's right to seek limited liability under the Limitation Act. The court dissolved the injunction against the state court proceedings after it concluded that respondent's right to seek limitation of liability would be adequately protected. Respondent's

rights were protected by petitioner's stipulation that his claim did not exceed the limitation fund, petitioner's waiver of any defense of res judicata with respect to limitation of liability, and the District Court's decision to stay the Limitation Act proceedings pending state court proceedings.

The Eighth Circuit held that the District Court should not have dissolved the injunction without first "finding . . . actual statutory conflict between the Limitation Act and the 'saving to suitors' clause in the case at bar." 196 F. 3d, at 906. The Court of Appeals concluded that there was no conflict here because respondent had a right to seek exoneration from liability in federal court, and petitioner did not have a saved remedy under the saving to suitors clause. That reasoning misapprehends this Court's prior decisions.

In this case, there was a conflict between the saving to suitors clause and the Limitation Act. Petitioner sued respondent in state court; under the saving to suitors clause, that court had jurisdiction to hear his claims. Respondent sought limited liability for petitioner's claims in federal court; the Limitation Act granted the federal court jurisdiction over that action. Both parties selected legitimate forums for their claims, and therein lies the conflict. Had petitioner sought to institute *in rem* proceedings against respondent in state court, that court would have lacked jurisdiction because the saving to suitors clause does not reach actions *in rem*. Similarly, had respondent sought limited liability for payment of wages in federal court, that court would not have had jurisdiction under the Limitation Act because claims for wages due employees are not covered. 46 U. S. C. App. § 189. See also *In re East River Towing Co.*, 266 U. S. 355, 367 (1924). Here, however, there appears to have been no obstacle to each party pursuing its claim in the forum of its choice, except the competing action.

In deciding that the case should proceed in federal court, the Court of Appeals relied on two flawed premises: that the Limitation Act grants vessel owners a right to obtain

exoneration from liability in federal court where limitation of liability is not at issue, and that the saving to suitors clause reserves to claimants only the right to receive a jury trial.

By its own terms, the Limitation Act protects the right of vessel owners to limit their liability to the value of the vessel, provided that the events or circumstances giving rise to the damage occurred without the vessel owner's privity or knowledge. The Act was designed to encourage investment and protect vessel owners from unlimited exposure to liability. We have also made clear, however, that the scope of exclusive federal jurisdiction is proportional to the federal interest in protecting the vessel owner's right to seek limitation of liability. See *Lake Tankers*, 354 U. S., at 153. We have explained that "[t]he Act is not one of immunity from liability but of limitation of it." *Id.*, at 152. We see no reason to revisit that conclusion and decline respondent's invitation to expand the scope of the Act.

In construing the Limitation Act, this Court long ago determined that vessel owners may contest liability in the process of seeking limited liability, and we promulgated rules to that effect pursuant to our "power to regulate . . . proceedings." *The "Benefactor,"* 103 U. S., at 244; Supplementary Rule of Practice in Admiralty 56, 13 Wall., at xiii; Supplemental Admiralty and Maritime Claims Rule F(2). Thus, we agree with respondent that a vessel owner need not confess liability in order to seek limitation under the Act. The Act and the rules of practice, however, do not create a free-standing right to exoneration from liability in circumstances where limitation of liability is not at issue. In this case, petitioner stipulated that his claim for damages would not exceed the value of the vessel and waived any claim of res judicata from the state court action concerning issues bearing on the limitation of liability. The District Court concluded that these stipulations would protect the vessel owner's right to seek limited liability in federal court. Then, out of an "abundance of caution," the court stayed the limitation

proceedings so that it could act if the state court proceedings jeopardized the vessel owner's rights under the Limitation Act. 31 F. Supp. 2d, at 1170–1171. We believe nothing more was required to protect respondent's right to seek a limitation of liability.

The district courts have jurisdiction over actions arising under the Limitation Act, and they have discretion to stay or dismiss Limitation Act proceedings to allow a suitor to pursue his claims in state court. If the district court concludes that the vessel owner's right to limitation will not be adequately protected—where for example a group of claimants cannot agree on appropriate stipulations or there is uncertainty concerning the adequacy of the fund or the number of claims—the court may proceed to adjudicate the merits, deciding the issues of liability and limitation. See, *e. g.*, *Lake Tankers*, *supra*, at 152; *Port Arthur Towing Co.* v. *John W. Towing, Inc.*, 42 F. 3d 312, 314 (CA5 1995). But where, as here, the District Court satisfies itself that a vessel owner's right to seek limitation will be protected, the decision to dissolve the injunction is well within the court's discretion.

The Court of Appeals reasoned that the District Court also erred in dissolving the injunction because petitioner had no saved remedy in state court. The Court of Appeals apparently treated as dispositive petitioner's failure to demand a jury trial in state court. The jurisdictional statute, however, reserves to suitors "all other remedies to which they are otherwise entitled." 28 U. S. C. § 1333(1). Tracing the development of the clause since the Judiciary Act of 1789, it appears that the clause was designed to protect remedies available at common law. See, *e. g.*, *The Hine* v. *Trevor*, 4 Wall. 555 (1867). We later explained that the clause extends to "all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved." *Red Cross Line*, 264 U. S., at 124. Trial by jury is an obvious, but not exclusive, example of the remedies

available to suitors. See *Lake Tankers*, *supra*, at 153; *Red Cross Line*, *supra*, at 123–125.

The Court of Appeals concluded that forum choice could not be a saved remedy under the saving to suitors clause because a claimant does not have the ability to control the forum in which his claim will be heard. 196 F. 3d, at 909. The prospect that a vessel owner may remove a state court action to federal court, however, does not limit a claimant's forum choice under the saving to suitors clause any more than other litigants' forum choices may be limited. We have previously refused to hold that admiralty claims, such as a limitation claim, fall within the scope of federal question jurisdiction out of concern that saving to suitors actions in state court would be removed to federal court and undermine the claimant's choice of forum. *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 371–372 (1959). We explained that to define admiralty jurisdiction as federal question jurisdiction would be a "destructive oversimplification of the highly intricate interplay of the States and the National Government in their regulation of maritime commerce." *Id.*, at 373. Moreover, in this case respondent raised a Jones Act claim, which is not subject to removal to federal court even in the event of diversity of the parties. See 28 U. S. C. § 1445(a) (incorporated by reference into the Jones Act, 46 U. S. C. App. § 688(a)). Respondent's arguments to limit and enumerate the saved remedies under the saving to suitors clause must fail in view of the consistent recognition by Congress and this Court that both state and federal courts may be proper forums for adjudicating claims such as petitioner's.

In sum, this Court's case law makes clear that state courts, with all of their remedies, may adjudicate claims like petitioner's against vessel owners so long as the vessel owner's right to seek limitation of liability is protected. Respondent seeks to invert that rule, making run of the mill personal

injury actions involving vessels a matter of exclusive federal jurisdiction except where the claimant happens to seek a jury trial. We reject that proposal and hold that the Court of Appeals erred in reversing the District Court's decision to dissolve the injunction.

The judgment of the United States Court of Appeals for the Eighth Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

WHITMAN, ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY, ET AL. *v.* AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99–1257. Argued November 7, 2000—Decided February 27, 2001*

Section 109(a) of the Clean Air Act (CAA) requires the Environmental Protection Agency (EPA) Administrator to promulgate national ambient air quality standards (NAAQS) for each air pollutant for which "air quality criteria" have been issued under § 108. Pursuant to § 109(d)(1), the Administrator in 1997 revised the ozone and particulate matter NAAQS. Respondents in No. 99–1257, private parties and several States (hereinafter respondents), challenged the revised NAAQS on several grounds. The District of Columbia Circuit found that, under the Administrator's interpretation, § 109(b)(1)—which instructs the EPA to set standards "the attainment and maintenance of which . . . are requisite to protect the public health" with "an adequate margin of safety"—delegated legislative power to the Administrator in contravention of the Federal Constitution, and it remanded the NAAQS to the EPA. The Court of Appeals also declined to depart from its rule that the EPA may not consider implementation costs in setting the NAAQS. And it held that, although certain implementation provisions for the ozone NAAQS contained in Part D, Subpart 2, of Title I of the CAA did not prevent the EPA from revising the ozone standard and designating certain areas as "nonattainment areas," those provisions, rather than more general provisions contained in Subpart 1, constrained the implementation of the new ozone NAAQS. The court rejected the EPA's argument that it lacked jurisdiction to reach the implementation question because there had been no "final" implementation action.

Held:

1. Section 109(b) does not permit the Administrator to consider implementation costs in setting NAAQS. Because the CAA often expressly grants the EPA the authority to consider implementation costs, a provision for costs will not be inferred from its ambiguous provisions. *Union Elec. Co.* v. *EPA*, 427 U. S. 246, 257, and n. 5. And since

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*Together with No. 99–1426, *American Trucking Associations, Inc., et al.* v. *Whitman, Administrator of Environmental Protection Agency, et al.*, also on certiorari to the same court.

Syllabus

§ 109(b)(1) is the engine that drives nearly all of Title I of the CAA, the textual commitment of costs must be clear; Congress does not alter a regulatory scheme's fundamental details in vague terms or ancillary provisions, see *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 231. Respondents' arguments founder upon this principle. It is implausible that § 109(b)(1)'s modest words "adequate margin" and "requisite" give the EPA the power to determine whether implementation costs should moderate national air quality standards. Cf. *ibid.* And the cost factor is *both* so indirectly related to public health *and* so full of potential for canceling the conclusions drawn from direct health effects that it would have been expressly mentioned in §§ 108 and 109 had Congress meant it to be considered. Other CAA provisions, which do require cost data, have no bearing upon whether costs are to be taken into account in setting the NAAQS. Because the text of § 109(b)(1) in its context is clear, the canon of construing texts to avoid serious constitutional problems is not applicable. See, *e. g.*, *Miller* v. *French*, 530 U. S. 327, 341. Pp. 464–471.

2. Section 109(b)(1) does not delegate legislative power to the EPA. When conferring decisionmaking authority upon agencies, Congress must lay down an intelligible principle to which the person or body authorized to act is directed to conform. *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 409. An agency cannot cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute. The limits that § 109(b)(1) imposes on the EPA's discretion are strikingly similar to the ones approved in, *e. g.*, *Touby* v. *United States*, 500 U. S. 160, and the scope of discretion that § 109(b)(1) allows is well within the outer limits of the Court's nondelegation precedents, see, *e. g.*, *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. Statutes need not provide a determinate criterion for saying how much of a regulated harm is too much to avoid delegating legislative power. Pp. 472–476.

3. The Court of Appeals had jurisdiction to consider the implementation issue under § 307 of the CAA. The implementation policy constitutes final agency action under § 307 because it marked the consummation of the EPA's decisionmaking process, see *Bennett* v. *Spear*, 520 U. S. 154. The decision is also ripe for review. The question is purely one of statutory interpretation that would not benefit from further factual development, see *Ohio Forestry Assn., Inc.* v. *Sierra Club*, 523 U. S. 726, 733; review will not interfere with further administrative development; and the hardship on respondent States in developing state implementation plans satisfies the CAA's special judicial-review provision permitting preenforcement review, see *id.*, at 737.

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The implementation issue was also fairly included within the challenges to the final ozone rule that were before the Court of Appeals, which all parties agree is final agency action ripe for review. Pp. 476–480.

4. The implementation policy is unlawful. Under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, if the statute resolves the question whether Subpart 1 or Subpart 2 applies to revised ozone NAAQS, that ends the matter; but if the statute is ambiguous, the Court must defer to a reasonable agency interpretation. Here, the statute is ambiguous concerning the interaction between Subpart 1 and Subpart 2, but the Court cannot defer to the EPA's interpretation, which would render Subpart 2's carefully designed restrictions on EPA discretion nugatory once a new ozone NAAQS has been promulgated. The principal distinction between the subparts is that Subpart 2 eliminates regulatory discretion allowed by Subpart 1. The EPA may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion. In addition, although Subpart 2 was obviously written to govern implementation for some time into the future, nothing in the EPA's interpretation would have prevented the agency from aborting the subpart the day after it was enacted. It is left to the EPA to develop a reasonable interpretation of the nonattainment implementation provisions insofar as they apply to revised ozone NAAQS. Pp. 481–486.

175 F. 3d 1027 and 195 F. 3d 4, affirmed in part, reversed in part, and remanded.

SCALIA, J., delivered the opinion of the Court, Parts I and IV of which were unanimous, Part II of which was joined by REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., and Part III of which was joined by REHNQUIST, C. J., and O'CONNOR, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ. THOMAS, J., filed a concurring opinion, *post*, p. 486. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which SOUTER, J., joined, *post*, p. 487. BREYER, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 490.

Solicitor General Waxman argued the cause for petitioners in No. 99–1257 and federal respondents in No. 99–1426. With him on the briefs were *Assistant Attorney General Schiffer*, *Deputy Solicitor General Wallace*, *Jeffrey P. Minear*, *Christopher S. Vaden*, *David J. Kaplan*, *Mary F. Edgar*, *Gary S. Guzy*, *Gerald K. Gleason*, and *Michael L. Goo*.

Counsel

Edward W. Warren argued the cause for American Trucking Associations et al., respondents in No. 99–1257 and cross-petitioners in No. 99–1426. With him on the briefs were *Robert R. Gasaway*, *Jeffrey B. Clark*, *Daryl Joseffer*, *Charles Fried*, *Robin S. Conrad*, *Beth L. Law*, *Robert S. Digges*, *Gary H. Baise*, *David M. Friedland*, *Erika Z. Jones*, *Timothy S. Bishop*, *Jan S. Amundson*, *Dimetria G. (Jim) Daskal*, *Douglas I. Greenhaus*, and *Chet M. Thompson*. *Judith L. French*, Assistant Attorney General of Ohio, argued the cause for respondents State of Ohio et al. in No. 99–1257. With her on the brief in No. 99–1257 and on the briefs for State of Ohio et al., respondents in support of cross-petitioners in No. 99–1426, were *Betty D. Montgomery*, Attorney General, *Edward B. Foley*, State Solicitor, *Elise W. Porter*, *Frank J. Reed, Jr.*, and *James G. Tassie*, Assistant Attorneys General, *Mark J. Rudolph*, *Jennifer M. Granholm*, Attorney General of Michigan, *Thomas Casey*, Solicitor General, and *Alan F. Hoffman* and *Pamela J. Stevenson*, Assistant Attorneys General. *Thomas F. Reilly*, Attorney General of Massachusetts, *Edward G. Bohlen*, Assistant Attorney General, *Lisa Heinzerling*, *John J. Farmer*, Attorney General of New Jersey, and *Howard L. Geduldig* and *John R. Renella*, Deputy Attorneys General, filed briefs for the Commonwealth of Massachusetts et al., respondents in support of petitioners in No. 99–1257 and respondents in No. 99–1426. *Howard I. Fox* filed briefs for the American Lung Association, respondent in support of petitioners in No. 99–1257 and respondent in No. 99–1426. *Henry V. Nickel*, *F. William Brownell*, *Lucinda Minton Langworthy*, *David E. Menotti*, *William F. Pedersen*, *Jeffrey A. Knight*, *G. William Frick*, *M. Elizabeth Cox*, *Russel S. Frye*, *Richard Wasserstrom*, *Grant Crandall*, *David F. Zoll*, *Alexandra Dapolito Dunn*, *Julie Becker*, *Harold P. Quinn, Jr.*, *Newman R. Porter*, *David M. Flannery*, and *Kurt E. Blase* filed briefs for Appalachian Power Co. et al., respondents in

Counsel

No. 99–1257 and respondents in support of cross-petitioners in No. 99–1426. *Robert E. Yuhnke* filed a brief for Citizens for Balanced Transportation et al., respondents in No. 99–1426.†

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†Briefs of *amici curiae* urging reversal were filed for the State of New York et al. by *Eliot Spitzer*, Attorney General of New York, *Preeta D. Bansal*, Solicitor General, *Daniel X. Smirlock*, Deputy Solicitor General, and *Lisa Feiner* and *J. Jared Snyder*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Bill Lockyer* of California, *Richard Blumenthal* of Connecticut, *Andrew Ketterer* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Philip McLaughlin* of New Hampshire, *D. Michael Fisher* of Pennsylvania, *Sheldon Whitehouse* of Rhode Island, and *William H. Sorrell* of Vermont; for the State of North Carolina by *Michael F. Easley*, Attorney General, *Daniel C. Oakley*, Senior Deputy Attorney General, and *Marc D. Bernstein*, Assistant Attorney General; for the American Boiler Manufacturers Association by *Gene E. Godley* and *Shannon H. Ratliff II;* and for the American Crop Protection Association et al. by *Herbert L. Fenster* and *Lawrence S. Ebner.*

Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Bill Lockyer*, Attorney General of California, *Richard M. Frank*, Chief Assistant Attorney General, *Theodora P. Berger*, Senior Assistant Attorney General, and *Susan L. Durbin* and *Sean B. Hecht*, Deputy Attorneys General, *Richard Blumenthal*, Attorney General of Connecticut, *Thomas J. Miller*, Attorney General of Iowa, *Andrew Ketterer*, Attorney General of Maine, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Patricia Madrid*, Attorney General of New Mexico, *Eliot Spitzer*, Attorney General of New York, *Preeta D. Bansal*, Solicitor General, and *Daniel X. Smirlock*, Deputy Solicitor General, *William H. Sorrell*, Attorney General of Vermont, and *Christine O. Gregoire*, Attorney General of Washington; for the Commonwealth of Virginia by *Mark L. Earley*, Attorney General, *William Hurd*, Solicitor General, *Roger L. Chaffe*, Senior Assistant Attorney General, and *Stewart T. Leeth*, Assistant Attorney General; for the American Institute of Certified Public Accountants et al. by *Theodore B. Olson*, *Douglas R. Cox*, and *Mark A. Perry;* for the Association of American Physicians & Surgeons et al. by *Erik S. Jaffe;* for the Clean Air Trust et al. by *Christopher H. Schroeder;* for the Lincoln Institute for Research and Education et al. by *William J. Olson*, *John S. Miles*, *Herbert W. Titus*, and *Lawrence J. Straw, Jr.;* for the Manufacturers Alliance/MAPI Inc. et al. by *David Schoenbrod* and *Marci A. Hamilton;* for the United States Public Interest Research Group

JUSTICE SCALIA delivered the opinion of the Court.

These cases present the following questions: (1) Whether § 109(b)(1) of the Clean Air Act (CAA) delegates legislative power to the Administrator of the Environmental Protection Agency (EPA). (2) Whether the Administrator may consider the costs of implementation in setting national ambient air quality standards (NAAQS) under § 109(b)(1). (3) Whether the Court of Appeals had jurisdiction to review the EPA's interpretation of Part D of Title I of the CAA, 42 U. S. C. §§ 7501–7515, with respect to implementing the revised ozone NAAQS. (4) If so, whether the EPA's interpretation of that part was permissible.

I

Section 109(a) of the CAA, as added, 84 Stat. 1679, and amended, 42 U. S. C. § 7409(a), requires the Administrator of the EPA to promulgate NAAQS for each air pollutant for which "air quality criteria" have been issued under § 108, 42 U. S. C. § 7408. Once a NAAQS has been promulgated, the Administrator must review the standard (and the criteria

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Education Fund by *James Keith Weeks* and *David M. Driesen;* and for Senator James H. Inhofe et al. by *Paul Rosenzweig.*

Briefs of *amici curiae* were filed for the AEI-Brookings Joint Center for Regulatory Studies et al. by *Robert E. Litan;* for Alcan Aluminum Corp. by *Lawrence A. Salibra II;* for Environmental Defense et al. by *Richard L. Revesz* and *Ann Brewster Weeks;* for General Electric Co. by *Laurence H. Tribe, Jonathan S. Massey, Thomas C. Goldstein, Benjamin W. Heineman, Jr., Brackett B. Denniston III,* and *Matthew Tanzer;* for the Institute for Justice et al. by *William H. Mellor, Clint Bolick, Deborah Simpson, Timothy Lynch,* and *Ronald D. Rotunda;* for Intel Corp. et al. by *Richard P. Bress, Claudia M. O'Brien,* and *Gregory S. Slater;* for the Mercatus Center by *Ernest Gelhorn* and *Ann G. Weymouth;* for the Pacific Legal Foundation et al. by *M. Reed Hopper;* for People for the U. S. A. et al. by *Christopher C. Horner;* for the Washington Legal Foundation et al. by *Paul D. Clement, Jeffrey S. Bucholtz, Daniel J. Popeo,* and *Paul D. Kamenar;* for Senator Orrin Hatch et al. by *Carter G. Phillips, Alan Charles Raul, Stephen B. Kinnaird, Lloyd N. Cutler,* and *C. Boyden Gray;* and for Gary E. Marchant et al. by *Cary Coglianese.*

on which it is based) "at five-year intervals" and make "such revisions . . . as may be appropriate." CAA § 109(d)(1), 42 U. S. C. § 7409(d)(1). These cases arose when, on July 18, 1997, the Administrator revised the NAAQS for particulate matter and ozone. See NAAQS for Particulate Matter, 62 Fed. Reg. 38652 (codified in 40 CFR § 50.7 (1999)); NAAQS for Ozone, *id.*, at 38856 (codified in 40 CFR §§ 50.9, 50.10 (1999)). American Trucking Associations, Inc., and its co-respondents in No. 99–1257—which include, in addition to other private companies, the States of Michigan, Ohio, and West Virginia—challenged the new standards in the Court of Appeals for the District of Columbia Circuit, pursuant to 42 U. S. C. § 7607(b)(1).

The District of Columbia Circuit accepted some of the challenges and rejected others. It agreed with the No. 99–1257 respondents (hereinafter respondents) that § 109(b)(1) delegated legislative power to the Administrator in contravention of the United States Constitution, Art. I, § 1, because it found that the EPA had interpreted the statute to provide no "intelligible principle" to guide the agency's exercise of authority. *American Trucking Assns., Inc.* v. *EPA*, 175 F. 3d 1027, 1034 (1999). The court thought, however, that the EPA could perhaps avoid the unconstitutional delegation by adopting a restrictive construction of § 109(b)(1), so instead of declaring the section unconstitutional the court remanded the NAAQS to the agency. *Id.*, at 1038. (On this delegation point, Judge Tatel dissented, finding the statute constitutional as written. *Id.*, at 1057.) On the second issue that the Court of Appeals addressed, it unanimously rejected respondents' argument that the court should depart from the rule of *Lead Industries Assn., Inc.* v. *EPA*, 647 F. 2d 1130, 1148 (CADC 1980), that the EPA may not consider the cost of implementing a NAAQS in setting the initial standard. It also rejected respondents' argument that the implementation provisions for ozone found in Part D, Subpart 2, of Title I of the CAA, 42 U. S. C. §§ 7511–7511f, were

so tied to the existing ozone standard that the EPA lacked the power to revise the standard. The court held that although Subpart 2 constrained the agency's method of implementing the new standard, 175 F. 3d, at 1050, it did not prevent the EPA from revising the standard and designating areas of the country as "nonattainment areas," see 42 U. S. C. § 7407(d)(1), by reference to it, 175 F. 3d, at 1047–1048. On the EPA's petition for rehearing, the panel adhered to its position on these points, and unanimously rejected the EPA's new argument that the court lacked jurisdiction to reach the implementation question because there had been no "final" implementation action. *American Trucking Assns., Inc.* v. *EPA*, 195 F. 3d 4 (CADC 1999). The Court of Appeals denied the EPA's suggestion for rehearing en banc, with five judges dissenting. *Id.*, at 13.

The Administrator and the EPA petitioned this Court for review of the first, third, and fourth questions described in the first paragraph of this opinion. Respondents conditionally cross-petitioned for review of the second question. We granted certiorari on both petitions, 529 U. S. 1129 (2000); 530 U. S. 1202 (2000), and scheduled the cases for argument in tandem. We have now consolidated the cases for purposes of decision.

II

In *Lead Industries Assn., Inc.* v. *EPA*, *supra*, at 1148, the District of Columbia Circuit held that "economic considerations [may] play no part in the promulgation of ambient air quality standards under Section 109" of the CAA. In the present cases, the court adhered to that holding, 175 F. 3d, at 1040–1041, as it had done on many other occasions. See, *e. g.*, *American Lung Assn.* v. *EPA*, 134 F. 3d 388, 389 (1998); *NRDC* v. *Administrator, EPA*, 902 F. 2d 962, 973 (1990), vacated in part on other grounds, *NRDC* v. *EPA*, 921 F. 2d 326 (CADC 1991); *American Petroleum Institute* v. *Costle*, 665 F. 2d 1176, 1185 (1981). Respondents argue that these

decisions are incorrect. We disagree; and since the first step in assessing whether a statute delegates legislative power is to determine what authority the statute confers, we address that issue of interpretation first and reach respondents' constitutional arguments in Part III, *infra*.

Section 109(b)(1) instructs the EPA to set primary ambient air quality standards "the attainment and maintenance of which . . . are requisite to protect the public health" with "an adequate margin of safety." 42 U. S. C. § 7409(b)(1). Were it not for the hundreds of pages of briefing respondents have submitted on the issue, one would have thought it fairly clear that this text does not permit the EPA to consider costs in setting the standards. The language, as one scholar has noted, "is absolute." D. Currie, Air Pollution: Federal Law and Analysis 4–15 (1981). The EPA, "based on" the information about health effects contained in the technical "criteria" documents compiled under § 108(a)(2), 42 U. S. C. § 7408(a)(2), is to identify the maximum airborne concentration of a pollutant that the public health can tolerate, decrease the concentration to provide an "adequate" margin of safety, and set the standard at that level. Nowhere are the costs of achieving such a standard made part of that initial calculation.

Against this most natural of readings, respondents make a lengthy, spirited, but ultimately unsuccessful attack. They begin with the object of § 109(b)(1)'s focus, the "public health." When the term first appeared in federal clean air legislation—in the Act of July 14, 1955 (1955 Act), 69 Stat. 322, which expressed "recognition of the dangers to the public health" from air pollution—its ordinary meaning was "[t]he health of the community." Webster's New International Dictionary 2005 (2d ed. 1950). Respondents argue, however, that § 109(b)(1), as added by the Clean Air Amendments of 1970, 84 Stat. 1676, meant to use the term's secondary meaning: "[t]he ways and means of conserving the health

of the members of a community, as by preventive medicine, organized care of the sick, etc." *Ibid.* Words that can have more than one meaning are given content, however, by their surroundings, *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 132–133 (2000); *Jones* v. *United States*, 527 U. S. 373, 389 (1999), and in the context of § 109(b)(1) this second definition makes no sense. Congress could not have meant to instruct the Administrator to set NAAQS at a level "requisite to protect" "the art and science dealing with the protection and improvement of community health." Webster's Third New International Dictionary 1836 (1981). We therefore revert to the primary definition of the term: the health of the public.

Even so, respondents argue, many more factors than air pollution affect public health. In particular, the economic cost of implementing a very stringent standard might produce health losses sufficient to offset the health gains achieved in cleaning the air—for example, by closing down whole industries and thereby impoverishing the workers and consumers dependent upon those industries. That is unquestionably true, and Congress was unquestionably aware of it. Thus, Congress had commissioned in the Air Quality Act of 1967 (1967 Act) "a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution." § 2, 81 Stat. 505. The 1970 Congress, armed with the results of this study, see The Cost of Clean Air, S. Doc. No. 91–40 (1969) (publishing the results of the study), not only anticipated that compliance costs could injure the public health, but provided for that precise exigency. Section 110(f)(1) of the CAA permitted the Administrator to waive the compliance deadline for stationary sources if, *inter*

alia, sufficient control measures were simply unavailable and "the continued operation of such sources is *essential . . . to the public health* or welfare." 84 Stat. 1683 (emphasis added). Other provisions explicitly permitted or required economic costs to be taken into account in implementing the air quality standards. Section 111(b)(1)(B), for example, commanded the Administrator to set "standards of performance" for certain new sources of emissions that as specified in § 111(a)(1) were to "reflec[t] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated." Section 202(a)(2) prescribed that emissions standards for automobiles could take effect only "after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." 84 Stat. 1690. See also § 202(b)(5)(C) (similar limitation for interim standards); § 211(c)(2) (similar limitation for fuel additives); § 231(b) (similar limitation for implementation of aircraft emission standards). Subsequent amendments to the CAA have added many more provisions directing, in explicit language, that the Administrator consider costs in performing various duties. See, *e. g.*, 42 U. S. C. § 7545(k)(1) (reformulate gasoline to "require the greatest reduction in emissions . . . taking into consideration the cost of achieving such emissions reductions"); § 7547(a)(3) (emission reduction for nonroad vehicles to be set "giving appropriate consideration to the cost" of the standards). We have therefore refused to find implicit in ambiguous sections of the CAA an authorization to consider costs that has elsewhere, and so often, been expressly granted. See *Union Elec. Co.* v. *EPA*, 427 U. S. 246, 257, and n. 5 (1976). Cf. *General Motors Corp.* v. *United States*, 496 U. S. 530, 538, 541 (1990)

(refusing to infer in certain provisions of the CAA deadlines and enforcement limitations that had been expressly imposed elsewhere).

Accordingly, to prevail in their present challenge, respondents must show a textual commitment of authority to the EPA to consider costs in setting NAAQS under § 109(b)(1). And because § 109(b)(1) and the NAAQS for which it provides are the engine that drives nearly all of Title I of the CAA, 42 U. S. C. §§ 7401–7515, that textual commitment must be a clear one. Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes. See *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 231 (1994); *FDA* v. *Brown & Williamson Tobacco Corp.*, *supra*, at 159–160. Respondents' textual arguments ultimately founder upon this principle.

Their first claim is that § 109(b)(1)'s terms "adequate margin" and "requisite" leave room to pad health effects with cost concerns. Just as we found it "highly unlikely that Congress would leave the determination of whether an industry will be entirely, or even substantially, rate-regulated to agency discretion—and even more unlikely that it would achieve that through such a subtle device as permission to 'modify' rate-filing requirements," *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, *supra*, at 231, so also we find it implausible that Congress would give to the EPA through these modest words the power to determine whether implementation costs should moderate national air quality standards. Accord, *Christensen* v. *Harris County*, 529 U. S. 576, 590, n. (2000) (SCALIA, J., concurring in part and concurring in judgment) ("The implausibility of Congress's leaving a highly significant issue unaddressed (and thus 'delegating' its resolution to the administering agency) is assuredly one of the factors

to be considered in determining whether there is ambiguity" (emphasis deleted)).[1]

The same defect inheres in respondents' next two arguments: that while the Administrator's judgment about what is requisite to protect the public health must be "based on [the] criteria" documents developed under § 108(a)(2), see § 109(b)(1), it need not be based *solely* on those criteria; and that those criteria themselves, while they must include "effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air," are not necessarily *limited* to those effects. Even if we were to concede those premises, we still would not conclude that one of the unenumerated factors that the agency can consider in developing and applying the criteria is cost of implementation. That factor is *both* so indirectly related to public health *and* so full of potential for canceling the conclusions drawn from direct health effects that it would surely have been expressly mentioned in §§ 108 and 109 had Congress meant it to be considered. Yet while those provisions describe in detail how the health effects of pollutants in the ambient air are to be calculated and given effect, see § 108(a)(2), they say not a word about costs.

Respondents point, finally, to a number of provisions in the CAA that *do* require attainment cost data to be generated. Section 108(b)(1), for example, instructs the Administrator to "issue to the States," simultaneously with the criteria documents, "information on air pollution control techniques, which information shall include data relating to the cost of installation and operation." 42 U. S. C. § 7408(b)(l). And

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[1] None of the sections of the CAA in which the District of Columbia Circuit has found authority for the EPA to consider costs shares § 109(b)(1)'s prominence in the overall statutory scheme. See, *e. g.*, *Michigan* v. *EPA*, 213 F. 3d 663, 678–679 (CADC 2000); *George E. Warren Corp.* v. *EPA*, 159 F. 3d 616, 623–624 (CADC 1998); *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F. 2d 1146, 1154–1163 (CADC 1987) (en banc).

§ 109(d)(2)(C)(iv) requires the Clean Air Scientific Advisory Committee to "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS.[2] 42 U. S. C. § 7409(d)(2)(C)(iv). Respondents argue that these provisions make no sense unless costs are to be considered in setting the NAAQS. That is not so. These provisions enable the Administrator to assist the States in carrying out their statutory role as primary *implementers* of the NAAQS. It is to the States that the CAA assigns initial and primary responsibility for deciding what emissions reductions will be required from which sources. See 42 U. S. C. §§ 7407(a), 7410 (giving States the duty of developing implementation plans). It would be impossible to perform that task intelligently without considering which abatement technologies are most efficient, and most economically feasible—which is why we have said that "the most important forum for consideration of claims of economic and technological infeasibility is before the state agency formulating the implementation plan," *Union Elec. Co.* v. *EPA*, 427 U. S., at 266. Thus, federal clean air legislation has, from the very beginning, directed federal agencies to develop and transmit implementation data, including cost data, to the States. See 1955 Act,

[2] Respondents contend that this advice is required to be included in the NAAQS rulemaking record—which, if true, would suggest that it was relevant to the standard-setting process. But the provision respondents cite for their contention, 42 U. S. C. § 7607(d)(3), requires only that "*pertinent* findings, recommendations, and comments by the Scientific Review Committee" be included. The Committee's advice concerning certain aspects of "adverse public health . . . effects" from various attainment strategies is unquestionably pertinent; but to say that Committee-generated cost data are pertinent is to beg the question. Likewise, while "all written comments" must be placed in the docket, § 7607(d)(4)(B)(i), the EPA need respond only to the "significant" ones, § 7407(d)(6)(B); comments regarding cost data are not significant if cost data are irrelevant.

§ 2(b), 69 Stat. 322; Clean Air Act of 1963, amending §§ 3(a), (b) of the CAA, 77 Stat. 394; 1967 Act, §§ 103(a)–(d), 104, 107(c), 81 Stat. 486–488. That Congress chose to carry forward this research program to assist States in choosing the means through which they would implement the standards is perfectly sensible, and has no bearing upon whether cost considerations are to be taken into account in formulating the standards.[3]

It should be clear from what we have said that the canon requiring texts to be so construed as to avoid serious constitutional problems has no application here. No matter how severe the constitutional doubt, courts may choose only between reasonably available interpretations of a text. See, *e. g.*, *Miller* v. *French*, 530 U. S. 327, 341 (2000); *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 212 (1998). The text of § 109(b), interpreted in its statutory and historical context and with appreciation for its importance to the CAA as a whole, unambiguously bars cost considerations from the NAAQS-setting process, and thus ends the matter for us as well as the EPA.[4] We therefore affirm the judgment of the Court of Appeals on this point.

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[3] Respondents scarcely mention in their arguments the *secondary* NAAQS required by § 109(b)(2), 42 U. S. C. § 7409(b)(2). For many of the same reasons described in the body of the opinion, as well as the text of § 109(b)(2), which instructs the EPA to set the standards at a level "requisite to protect the public welfare from any known or anticipated adverse effects *associated with the presence of such air pollutant in the ambient air*" (emphasis added), we conclude that the EPA may not consider implementation costs in setting the secondary NAAQS.

[4] Respondents' speculation that the EPA is secretly considering the costs of attainment without telling anyone is irrelevant to our interpretive inquiry. If such an allegation could be proved, it would be grounds for vacating the NAAQS, because the Administrator had not followed the law. See, *e. g.*, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984); *Atlantic Mut. Ins. Co.* v. *Commissioner*, 523 U. S. 382, 387 (1998). It would not, however, be grounds for this Court's changing the law.

III

Section 109(b)(1) of the CAA instructs the EPA to set "ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on [the] criteria [documents of § 108] and allowing an adequate margin of safety, are requisite to protect the public health." 42 U. S. C. § 7409(b)(1). The Court of Appeals held that this section as interpreted by the Administrator did not provide an "intelligible principle" to guide the EPA's exercise of authority in setting NAAQS. "[The] EPA," it said, "lack[ed] any determinate criteria for drawing lines. It has failed to state intelligibly how much is too much." 175 F. 3d, at 1034. The court hence found that the EPA's interpretation (but not the statute itself) violated the nondelegation doctrine. *Id.*, at 1038. We disagree.

In a delegation challenge, the constitutional question is whether the statute has delegated legislative power to the agency. Article I, § 1, of the Constitution vests "[a]ll legislative Powers herein granted . . . in a Congress of the United States." This text permits no delegation of those powers, *Loving* v. *United States*, 517 U. S. 748, 771 (1996); see *id.*, at 776–777 (SCALIA, J., concurring in part and concurring in judgment), and so we repeatedly have said that when Congress confers decisionmaking authority upon agencies *Congress* must "lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform." *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 409 (1928). We have never suggested that an agency can cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute. Both *Fahey* v. *Mallonee*, 332 U. S. 245, 252–253 (1947), and *Lichter* v. *United States*, 334 U. S. 742, 783 (1948), mention agency regulations in the course of their nondelegation discussions, but *Lichter* did so because a subsequent Congress had incorporated the regulations into a revised version of the statute, *ibid.*, and *Fahey* because the custom-

ary practices in the area, implicitly incorporated into the statute, were reflected in the regulations, 332 U. S., at 250. The idea that an agency can cure an unconstitutionally standardless delegation of power by declining to exercise some of that power seems to us internally contradictory. The very choice of which portion of the power to exercise—that is to say, the prescription of the standard that Congress had omitted—would *itself* be an exercise of the forbidden legislative authority. Whether the statute delegates legislative power is a question for the courts, and an agency's voluntary self-denial has no bearing upon the answer.

We agree with the Solicitor General that the text of § 109(b)(1) of the CAA at a minimum requires that "[f]or a discrete set of pollutants and based on published air quality criteria that reflect the latest scientific knowledge, [the] EPA must establish uniform national standards at a level that is requisite to protect public health from the adverse effects of the pollutant in the ambient air." Tr. of Oral Arg. in No. 99–1257, p. 5. Requisite, in turn, "mean[s] sufficient, but not more than necessary." *Id.*, at 7. These limits on the EPA's discretion are strikingly similar to the ones we approved in *Touby* v. *United States*, 500 U. S. 160 (1991), which permitted the Attorney General to designate a drug as a controlled substance for purposes of criminal drug enforcement if doing so was "'necessary to avoid an imminent hazard to the public safety.'" *Id.*, at 163. They also resemble the Occupational Safety and Health Act of 1970 provision requiring the agency to "'set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer any impairment of health'"—which the Court upheld in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607, 646 (1980), and which even then-JUSTICE REHNQUIST, who alone in that case thought the statute violated the nondelegation doctrine, see *id.*, at 671 (opinion concurring in judgment), would have upheld if, like the statute

here, it did not permit economic costs to be considered. See *American Textile Mfrs. Institute, Inc.* v. *Donovan*, 452 U. S. 490, 545 (1981) (REHNQUIST, J., dissenting).

The scope of discretion § 109(b)(1) allows is in fact well within the outer limits of our nondelegation precedents. In the history of the Court we have found the requisite "intelligible principle" lacking in only two statutes, one of which provided literally no guidance for the exercise of discretion, and the other of which conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring "fair competition." See *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935); *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935). We have, on the other hand, upheld the validity of § 11(b)(2) of the Public Utility Holding Company Act of 1935, 49 Stat. 821, which gave the Securities and Exchange Commission authority to modify the structure of holding company systems so as to ensure that they are not "unduly or unnecessarily complicate[d]" and do not "unfairly or inequitably distribute voting power among security holders." *American Power & Light Co.* v. *SEC*, 329 U. S. 90, 104 (1946). We have approved the wartime conferral of agency power to fix the prices of commodities at a level that "'will be generally fair and equitable and will effectuate the [in some respects conflicting] purposes of th[e] Act.'" *Yakus* v. *United States*, 321 U. S. 414, 420, 423–426 (1944). And we have found an "intelligible principle" in various statutes authorizing regulation in the "public interest." See, *e. g.*, *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 225–226 (1943) (Federal Communications Commission's power to regulate airwaves); *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24–25 (1932) (Interstate Commerce Commission's power to approve railroad consolidations). In short, we have "almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or apply-

ing the law." *Mistretta* v. *United States*, 488 U. S. 361, 416 (1989) (SCALIA, J., dissenting); see *id.*, at 373 (majority opinion).

It is true enough that the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred. See *Loving* v. *United States*, 517 U. S., at 772–773; *United States* v. *Mazurie*, 419 U. S. 544, 556–557 (1975). While Congress need not provide any direction to the EPA regarding the manner in which it is to define "country elevators," which are to be exempt from new-stationary-source regulations governing grain elevators, see 42 U. S. C. § 7411(i), it must provide substantial guidance on setting air standards that affect the entire national economy. But even in sweeping regulatory schemes we have never demanded, as the Court of Appeals did here, that statutes provide a "determinate criterion" for saying "how much [of the regulated harm] is too much." 175 F. 3d, at 1034. In *Touby*, for example, we did not require the statute to decree how "imminent" was too imminent, or how "necessary" was necessary enough, or even—most relevant here—how "hazardous" was too hazardous. 500 U. S., at 165–167. Similarly, the statute at issue in *Lichter* authorized agencies to recoup "excess profits" paid under wartime Government contracts, yet we did not insist that Congress specify how much profit was too much. 334 U. S., at 783–786. It is therefore not conclusive for delegation purposes that, as respondents argue, ozone and particulate matter are "nonthreshold" pollutants that inflict a continuum of adverse health effects at any airborne concentration greater than zero, and hence require the EPA to make judgments of degree. "[A] certain degree of discretion, and thus of lawmaking, inheres in most executive or judicial action." *Mistretta* v. *United States*, *supra*, at 417 (SCALIA, J., dissenting) (emphasis deleted); see 488 U. S., at 378–379 (majority opinion). Section 109(b)(1) of the CAA, which to repeat we interpret as requiring the EPA to set air quality standards at the level that is "requi-

site"—that is, not lower or higher than is necessary—to protect the public health with an adequate margin of safety, fits comfortably within the scope of discretion permitted by our precedent.

We therefore reverse the judgment of the Court of Appeals remanding for reinterpretation that would avoid a supposed delegation of legislative power. It will remain for the Court of Appeals—on the remand that we direct for other reasons—to dispose of any other preserved challenge to the NAAQS under the judicial-review provisions contained in 42 U. S. C. § 7607(d)(9).

IV

The final two issues on which we granted certiorari concern the EPA's authority to implement the revised ozone NAAQS in areas whose ozone levels currently exceed the maximum level permitted by that standard. The CAA designates such areas "nonattainment," § 107(d)(1), 42 U. S. C. § 7407(d)(1); see also Pub. L. 105–178, § 6103, 112 Stat. 465 (setting timeline for new ozone designations), and it exposes them to additional restrictions over and above the implementation requirements imposed generally by § 110 of the CAA. These additional restrictions are found in the five substantive subparts of Part D of Title I, 42 U. S. C. §§ 7501–7515. Subpart 1, §§ 7501–7509a, contains general nonattainment regulations that pertain to every pollutant for which a NAAQS exists. Subparts 2 through 5, §§ 7511–7514a, contain rules tailored to specific individual pollutants. Subpart 2, added by the Clean Air Act Amendments of 1990, § 103, 104 Stat. 2423, addresses ozone. 42 U. S. C. §§ 7511–7511f. The dispute before us here, in a nutshell, is whether Subpart 1 alone (as the agency determined), or rather Subpart 2 or some combination of Subparts 1 and 2, controls the implementation of the revised ozone NAAQS in nonattainment areas.

A

The Administrator first urges, however, that we vacate the judgment of the Court of Appeals on this issue because it lacked jurisdiction to review the EPA's implementation policy. Section 307(b)(1) of the CAA, 42 U. S. C. § 7607(b)(1), gives the court jurisdiction over "any . . . nationally applicable regulations promulgated, or final action taken, by the Administrator," but the EPA argues that its implementation policy was not agency "action," was not "final" action, and is not ripe for review. We reject each of these three contentions.

At the same time the EPA proposed the revised ozone NAAQS in 1996, it also proposed an "interim implementation policy" for the NAAQS, see 61 Fed. Reg. 65752 (1996), that was to govern until the details of implementation could be put in final form through specific "rulemaking actions." The preamble to this proposed policy declared that "the interim implementation policy . . . represent[s] EPA's preliminary views on these issues and, while it may include various statements that States must take certain actions, these statements are made pursuant to EPA's preliminary interpretations, and thus do not bind the States and public as a matter of law." *Ibid.* If the EPA had done no more, we perhaps could accept its current claim that its action was not final. However, after the agency had accepted comments on its proposed policy, and on the same day that the final ozone NAAQS was promulgated, the White House published in the Federal Register what it titled a "Memorandum for the Administrator of the Environmental Protection Agency" that prescribed implementation procedures for the EPA to follow. 62 Fed. Reg. 38421 (1997). (For purposes of our analysis we shall assume that this memorandum was not itself action by the EPA.) The EPA supplemented this memorandum with an explanation of the implementation procedures, which it published in the explanatory preamble to its final ozone

NAAQS under the heading, "Final decision on the primary standard." *Id.*, at 38873. "In light of comments received regarding the interpretation proposed in the Interim Implementation Policy," the EPA announced, it had "reconsidered that interpretation" and settled on a new one. *Ibid.* The provisions of "subpart 1 of part D of Title I of the Act" will immediately "apply to the implementation of the new 8-hour [ozone] standards." *Ibid.;* see also *id.*, at 38885 (new standard to be implemented "simultaneously [with the old standard] . . . under the provisions of . . . subpart 1"). Moreover, the provisions of subpart 2 "will [also] continue to apply as a matter of law for so long as an area is not attaining the [old] 1-hour standard." *Id.*, at 38873. Once the area reaches attainment for the old standard, however, "the provisions of subpart 2 will have been achieved and those provisions will no longer apply." *Ibid.;* see also *id.*, at 38884–38885.

We have little trouble concluding that this constitutes final agency action subject to review under § 307. The bite in the phrase "final action" (which bears the same meaning in § 307(b)(1) that it does under the Administrative Procedure Act (APA), 5 U. S. C. § 704, see *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 586 (1980)), is not in the word "action," which is meant to cover comprehensively every manner in which an agency may exercise its power. See *FTC* v. *Standard Oil Co. of Cal.*, 449 U. S. 232, 238, n. 7 (1980). It is rather in the word "final," which requires that the action under review "mark the consummation of the agency's decisionmaking process." *Bennett* v. *Spear*, 520 U. S. 154, 177–178 (1997). Only if the "EPA has rendered its last word on the matter" in question, *Harrison* v. *PPG Industries, Inc.*, *supra*, at 586, is its action "final" and thus reviewable. That standard is satisfied here. The EPA's "decisionmaking process," which began with the 1996 proposal and continued with the reception of public comments, concluded

when the agency, "in light of [these comments]," and in conjunction with a corresponding directive from the White House, adopted the interpretation of Part D at issue here. Since that interpretation issued, the EPA has refused in subsequent rulemakings to reconsider it, explaining to disappointed commenters that its earlier decision was conclusive. See 63 Fed. Reg. 31014, 31018–31019 (1998). Though the agency has not dressed its decision with the conventional procedural accoutrements of finality, its own behavior thus belies the claim that its interpretation is not final.

The decision is also ripe for our review. "Ripeness 'requir[es] us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.' " *Texas* v. *United States*, 523 U. S. 296, 300–301 (1998) (quoting *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149 (1967)). The question before us here is purely one of statutory interpretation that would not "benefit from further factual development of the issues presented." *Ohio Forestry Assn., Inc.* v. *Sierra Club*, 523 U. S. 726, 733 (1998). Nor will our review "inappropriately interfere with further administrative action," *ibid.*, since the EPA has concluded its consideration of the implementation issue. Finally, as for hardship to the parties: The respondent States must—on pain of forfeiting to the EPA control over implementation of the NAAQS—promptly undertake the lengthy and expensive task of developing state implementation plans (SIP's) that will attain the new, more stringent standard within five years. See 42 U. S. C. §§ 7410, 7502. Whether or not this would suffice in an ordinary case brought under the review provisions of the APA, see 5 U. S. C. § 704, we have characterized the special judicial-review provision of the CAA, 42 U. S. C. § 7607(b), as one of those statutes that specifically provides for "preenforcement" review, see *Ohio Forestry Assn., Inc.* v. *Sierra Club*, *supra*, at 737. Such statutes, we have said, permit "judicial review directly, even before the

concrete effects normally required for APA review are felt." *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 891 (1990). The effects at issue here surely meet that lower standard.

Beyond all this, the implementation issue was fairly included within the challenges to the final ozone rule that were properly before the Court of Appeals. Respondents argued below that the EPA could not revise the ozone standard, because to do so would trigger the use of Subpart 1, which had been supplanted (for ozone) by the specific rules of Subpart 2. Brief for Industry Petitioners and Intervenors in No. 97–1441 (and consolidated cases) (CADC), pp. 32–34. The EPA responded that Subpart 2 did not supplant but simply supplemented Subpart 1, so that the latter section still "applies to all nonattainment areas for all NAAQS, . . . including nonattainment areas for any revised ozone standard." Final Brief for EPA in No. 97–1441 (and consolidated cases) (CADC), pp. 67–68. The agency later reiterated that Subpart 2 "does not supplant implementation provisions for revised ozone standards. This interpretation fully harmonizes Subpart 2 with EPA's clear authority to revise any NAAQS." *Id.*, at 71. In other words, the EPA was arguing that the revised standard could be issued, despite its apparent incompatibility with portions of Subpart 2, *because it would be implemented under Subpart 1 rather than Subpart 2*. The District of Columbia Circuit ultimately agreed that Subpart 2 could be harmonized with the EPA's authority to promulgate revised NAAQS, but *not* because Subpart 2 is entirely inapplicable—which is one of EPA's assignments of error. It is unreasonable to contend, as the EPA now does, that the Court of Appeals was obligated to reach the agency's preferred result, but forbidden to assess the reasons the EPA had given for reaching that result. The implementation issue was fairly included within respondents' challenge to the ozone rule, which all parties agree is final agency action ripe for review.

B

Our approach to the merits of the parties' dispute is the familiar one of *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). If the statute resolves the question whether Subpart 1 or Subpart 2 (or some combination of the two) shall apply to revised ozone NAAQS, then "that is the end of the matter." *Id.*, at 842–843. But if the statute is "silent or ambiguous" with respect to the issue, then we must defer to a "reasonable interpretation made by the administrator of an agency." *Id.*, at 844. We cannot agree with the Court of Appeals that Subpart 2 clearly controls the implementation of revised ozone NAAQS, see 175 F. 3d, at 1048–1050, because we find the statute to some extent ambiguous. We conclude, however, that the agency's interpretation goes beyond the limits of what is ambiguous and contradicts what in our view is quite clear. We therefore hold the implementation policy unlawful. See *AT&T Corp.* v. *Iowa Utilities Bd.*, 525 U. S. 366, 392 (1999).

The text of Subpart 1 at first seems to point the way to a clear answer to the question, which Subpart controls? Two sections of Subpart 1, 7502(a)(1)(C) and 7502(a)(2)(D), contain switching provisions stating that if the classification of ozone nonattainment areas is "specifically provided [for] under other provisions of [Part D]," then those provisions will control instead of Subpart 1's. Thus, it is true but incomplete to note, as the Administrator does, that the substantive language of Subpart 1 is broad enough to apply to revised ozone standards. See, *e. g.*, § 7502(a)(1)(A) (instructing the Administrator to classify nonattainment areas according to "any revised standard, including a revision of any standard in effect on November 15, 1990"); § 7502(a)(2)(A) (setting attainment deadlines). To determine whether that language *does* apply one must resolve the further textual issue whether some *other* provision, namely Subpart 2, provides for the classification of ozone nonattainment areas. If

it does, then according to the switching provisions of Subpart 1 it will control.

So, does Subpart 2 provide for classifying nonattainment ozone areas under the revised standard? It unquestionably does. The backbone of the subpart is Table 1, printed in § 7511(a)(1) and reproduced in the margin here,[5] which defines five categories of ozone nonattainment areas and prescribes attainment deadlines for each. Section 7511(a)(1) funnels all nonattainment areas into the table for classification, declaring that "[e]ach area designated nonattainment for ozone . . . shall be classified at the time of such designation, under table 1, by operation of law." And once an area has been classified, "the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1." The EPA argues that this text is not as clear or comprehensive as it seems, because the title of § 7511(a) reads "Classification and attainment dates for 1989 nonattainment areas," which suggests that Subpart 2 applies only to areas that were in nonattainment in 1989, and not to areas later designated non-

[5] TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal	0.121 up to 0.138	3 years after November 15, 1990
Moderate	0.138 up to 0.160	6 years after November 15, 1990
Serious	0.160 up to 0.180	9 years after November 15, 1990
Severe	0.180 up to 0.280	15 years after November 15, 1990
Extreme	0.280 and above	20 years after November 15, 1990

*The design value is measured in parts per million (ppm).
**The primary standard attainment date is measured from November 15, 1990.

attainment under a revised ozone standard. The suggestion must be rejected, however, because § 7511(b)(1) specifically provides for the classification of areas that *were* in attainment in 1989 but have subsequently slipped into nonattainment. It thus makes clear that Subpart 2 is *not* limited solely to 1989 nonattainment areas. This eliminates the interpretive role of the title, which may only "she[d] light on some ambiguous word or phrase in the statute itself," *Carter* v. *United States*, 530 U. S. 255, 267 (2000) (internal quotation marks omitted) (quoting *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S., at 212, in turn quoting *Trainmen* v. *Baltimore & Ohio R. Co.*, 331 U. S. 519, 528–529 (1947)).

It may well be, as the EPA argues—and as the concurring opinion below on denial of rehearing pointed out, see 195 F. 3d, at 11–12—that some provisions of Subpart 2 are ill fitted to implementation of the revised standard. Using the old 1-hour averages of ozone levels, for example, as Subpart 2 requires, see § 7511(a)(1); 44 Fed. Reg. 8202 (1979), would produce at best an inexact estimate of the new 8-hour averages, see 40 CFR § 50.10, and App. I (1999). Also, to the extent that the new ozone standard is stricter than the old one, see Reply Brief for Petitioners in No. 99–1257, p. 17 ("the stricter 8-hour NAAQS"); 62 Fed. Reg. 38856, 38858 (1997) (8-hour standard of 0.09 ppm rather than 0.08 ppm would have "generally represent[ed] the continuation of the [old] level of protection"), the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard (and thus nonattaining) but less than the approximation of the old standard codified by Table 1. And finally, Subpart 2's method for calculating attainment dates—which is simply to count forward a certain number of years from November 15, 1990 (the date the 1990 CAA Amendments took force), depending on how far out of attainment the area started—seems to make no sense for areas that are first classified under a new standard after November 15, 1990.

If, for example, areas were classified in the year 2000, many of the deadlines would already have expired at the time of classification.

These gaps in Subpart 2's scheme prevent us from concluding that Congress clearly intended Subpart 2 to be the exclusive, permanent means of enforcing a revised ozone standard in nonattainment areas. The statute is in our view ambiguous concerning the manner in which Subpart 1 and Subpart 2 interact with regard to revised ozone standards, and we would defer to the EPA's reasonable resolution of that ambiguity. See *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S., at 132; *INS* v. *Aguirre-Aguirre*, 526 U. S. 415, 424 (1999). We cannot defer, however, to the interpretation the EPA has given.

Whatever effect may be accorded the gaps in Subpart 2 as implying some limited applicability of Subpart 1, they cannot be thought to render Subpart 2's carefully designed restrictions on EPA discretion utterly nugatory once a new standard has been promulgated, as the EPA has concluded. The principal distinction between Subpart 1 and Subpart 2 is that the latter eliminates regulatory discretion that the former allowed. While Subpart 1 permits the EPA to establish classifications for nonattainment areas, Subpart 2 classifies areas as a matter of law based on a table. Compare § 7502(a)(1) with § 7511(a)(1) (Table 1). Whereas the EPA has discretion under Subpart 1 to extend attainment dates for as long as 12 years, under Subpart 2 it may grant no more than 2 years' extension. Compare §§ 7502(a)(2)(A) and (C) with § 7511(a)(5). Whereas Subpart 1 gives the EPA considerable discretion to shape nonattainment programs, Subpart 2 prescribes large parts of them by law. Compare §§ 7502(c) and (d) with § 7511a. Yet according to the EPA, Subpart 2 was simply Congress's "approach to the implementation of the [old] 1-hour" standard, and so there was no reason that "the new standard could not simultaneously be implemented under . . . subpart 1." 62 Fed. Reg.

38856, 38885 (1997); see also *id.*, at 38873 ("[T]he provisions of subpart 1 . . . would apply to the implementation of the new 8-hour ozone standards"). To use a few apparent gaps in Subpart 2 to render its textually explicit applicability to nonattainment areas under the new standard utterly inoperative is to go over the edge of reasonable interpretation. The EPA may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion.

The EPA's interpretation making Subpart 2 abruptly obsolete is all the more astonishing because Subpart 2 was obviously written to govern implementation for some time. Some of the elements required to be included in SIP's under Subpart 2 were not to take effect until many years after the passage of the CAA. See § 7511a(e)(3) (restrictions on "electric utility and industrial and commercial boiler[s]" to be "effective 8 years after November 15, 1990"); § 7511a(c)(5)(A) (vehicle monitoring program to "[b]egi[n] 6 years after November 15, 1990"); § 7511a(g)(1) (emissions milestone requirements to be applied "6 years after November 15, 1990, and at intervals of every 3 years thereafter"). A plan reaching so far into the future was not enacted to be abandoned the next time the EPA reviewed the ozone standard—which Congress knew could happen at any time, since the technical staff papers had already been completed in late 1989. See 58 Fed. Reg. 13008, 13010 (1993); see also 42 U. S. C. § 7409(d)(1) (NAAQS must be reviewed and, if appropriate, revised at least once every five years). Yet nothing in the EPA's interpretation would have prevented the agency from aborting Subpart 2 the day after it was enacted. Even now, if the EPA's interpretation were correct, some areas of the country could be required to meet the new, more stringent ozone standard in *at most* the same time that Subpart 2 had allowed them to meet the old standard. Compare § 7502(a)(2) (Subpart 1 attainment dates) with § 7511(a) (Subpart 2 attainment dates). Los Angeles, for instance, "would

be required to attain the revised NAAQS under Subpart 1 no later than the same year that marks the outer time limit for attaining Subpart 2's one-hour ozone standard." Brief for Petitioners in No. 99–1257, p. 49. An interpretation of Subpart 2 so at odds with its structure and manifest purpose cannot be sustained.

We therefore find the EPA's implementation policy to be unlawful, though not in the precise respect determined by the Court of Appeals. After our remand, and the Court of Appeals' final disposition of these cases, it is left to the EPA to develop a reasonable interpretation of the nonattainment implementation provisions insofar as they apply to revised ozone NAAQS.

* * *

To summarize our holdings in these unusually complex cases: (1) The EPA may not consider implementation costs in setting primary and secondary NAAQS under § 109(b) of the CAA. (2) Section 109(b)(1) does not delegate legislative power to the EPA in contravention of Art. I, § 1, of the Constitution. (3) The Court of Appeals had jurisdiction to review the EPA's interpretation of Part D of Title I of the CAA, relating to the implementation of the revised ozone NAAQS. (4) The EPA's interpretation of that Part is unreasonable.

The judgment of the Court of Appeals is affirmed in part and reversed in part, and the cases are remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring.

I agree with the majority that § 109's directive to the agency is no less an "intelligible principle" than a host of other directives that we have approved. *Ante*, at 474–476. I also agree that the Court of Appeals' remand to the agency to make its own corrective interpretation does not accord with our understanding of the delegation issue. *Ante*, at 472–473. I write separately, however, to express my con-

cern that there may nevertheless be a genuine constitutional problem with § 109, a problem which the parties did not address.

The parties to these cases who briefed the constitutional issue wrangled over constitutional doctrine with barely a nod to the text of the Constitution. Although this Court since 1928 has treated the "intelligible principle" requirement as the only constitutional limit on congressional grants of power to administrative agencies, see *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 409 (1928), the Constitution does not speak of "intelligible principles." Rather, it speaks in much simpler terms: "*All* legislative Powers herein granted shall be vested in a Congress." U. S. Const., Art. 1, § 1 (emphasis added). I am not convinced that the intelligible principle doctrine serves to prevent all cessions of legislative power. I believe that there are cases in which the principle is intelligible and yet the significance of the delegated decision is simply too great for the decision to be called anything other than "legislative."

As it is, none of the parties to these cases has examined the text of the Constitution or asked us to reconsider our precedents on cessions of legislative power. On a future day, however, I would be willing to address the question whether our delegation jurisprudence has strayed too far from our Founders' understanding of separation of powers.

JUSTICE STEVENS, with whom JUSTICE SOUTER joins, concurring in part and concurring in the judgment.

Section 109(b)(1) delegates to the Administrator of the Environmental Protection Agency (EPA) the authority to promulgate national ambient air quality standards (NAAQS). In Part III of its opinion, *ante*, at 472–476, the Court convincingly explains why the Court of Appeals erred when it concluded that § 109 effected "an unconstitutional delegation of legislative power." *American Trucking Assns., Inc.* v. *EPA*, 175 F. 3d 1027, 1033 (CADC 1999) *(per curiam)*.

I wholeheartedly endorse the Court's result and endorse its explanation of its reasons, albeit with the following caveat.

The Court has two choices. We could choose to articulate our ultimate disposition of this issue by frankly acknowledging that the power delegated to the EPA is "legislative" but nevertheless conclude that the delegation is constitutional because adequately limited by the terms of the authorizing statute. Alternatively, we could pretend, as the Court does, that the authority delegated to the EPA is somehow not "legislative power." Despite the fact that there is language in our opinions that supports the Court's articulation of our holding,[1] I am persuaded that it would be both wiser and more faithful to what we have actually done in delegation cases to admit that agency rulemaking authority is "legislative power."[2]

The proper characterization of governmental power should generally depend on the nature of the power, not on the identity of the person exercising it. See Black's Law Dictionary 899 (6th ed. 1990) (defining "legislation" as, *inter alia*, "[f]ormulation of rule[s] for the future"); 1 K. Davis & R. Pierce, Administrative Law Treatise § 2.3, p. 37 (3d ed. 1994) ("If legislative power means the power to make rules of conduct that bind everyone based on resolution of major policy issues, scores of agencies exercise legislative power routinely by

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[1] See, *e. g.*, *Touby* v. *United States*, 500 U. S. 160, 165 (1991); *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 85 (1932); *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U. S. 394, 407 (1928); *Field* v. *Clark*, 143 U. S. 649, 692 (1892).

[2] See *Mistretta* v. *United States*, 488 U. S. 361, 372 (1989) ("[O]ur jurisprudence has been driven by a practical understanding that in our increasingly complex society . . . Congress simply cannot do its job absent an ability to delegate power . . ."). See also *Loving* v. *United States*, 517 U. S. 748, 758 (1996) ("[The nondelegation] principle does not mean . . . that only Congress can make a rule of prospective force"); 1 K. Davis & R. Pierce, Administrative Law Treatise § 2.6, p. 66 (3d ed. 1994) ("Except for two 1935 cases, the Court has never enforced its frequently announced prohibition on congressional delegation of legislative power").

promulgating what are candidly called 'legislative rules' "). If the NAAQS that the EPA promulgated had been prescribed by Congress, everyone would agree that those rules would be the product of an exercise of "legislative power." The same characterization is appropriate when an agency exercises rulemaking authority pursuant to a permissible delegation from Congress.

My view is not only more faithful to normal English usage, but is also fully consistent with the text of the Constitution. In Article I, the Framers vested "All legislative Powers" in the Congress, Art. I, § 1, just as in Article II they vested the "executive Power" in the President, Art. II, § 1. Those provisions do not purport to limit the authority of either recipient of power to delegate authority to others. See *Bowsher* v. *Synar*, 478 U. S. 714, 752 (1986) (STEVENS, J., concurring in judgment) ("Despite the statement in Article I of the Constitution that 'All legislative powers herein granted shall be vested in a Congress of the United States,' it is far from novel to acknowledge that independent agencies do indeed exercise legislative powers"); *INS* v. *Chadha*, 462 U. S. 919, 985–986 (1983) (White, J., dissenting) ("[L]egislative power can be exercised by independent agencies and Executive departments . . ."); 1 Davis & Pierce, Administrative Law Treatise § 2.6, at 66 ("The Court was probably mistaken from the outset in interpreting Article I's grant of power to Congress as an implicit limit on Congress' authority to delegate legislative power"). Surely the authority granted to members of the Cabinet and federal law enforcement agents is properly characterized as "Executive" even though not exercised by the President. Cf. *Morrison* v. *Olson*, 487 U. S. 654, 705–706 (1988) (SCALIA, J., dissenting) (arguing that the independent counsel exercised "executive power" unconstrained by the President).

It seems clear that an executive agency's exercise of rulemaking authority pursuant to a valid delegation from Congress is "legislative." As long as the delegation provides a

sufficiently intelligible principle, there is nothing inherently unconstitutional about it. Accordingly, while I join Parts I, II, and IV of the Court's opinion, and agree with almost everything said in Part III, I would hold that when Congress enacted § 109, it effected a constitutional delegation of legislative power to the EPA.

JUSTICE BREYER, concurring in part and concurring in the judgment.

I join Parts I, III, and IV of the Court's opinion. I also agree with the Court's determination in Part II that the Clean Air Act does not permit the Environmental Protection Agency to consider the economic costs of implementation when setting national ambient air quality standards under § 109(b)(1) of the Act. But I would not rest this conclusion solely upon § 109's language or upon a presumption, such as the Court's presumption that any authority the Act grants the EPA to consider costs must flow from a "textual commitment" that is "clear." *Ante*, at 468. In order better to achieve regulatory goals—for example, to allocate resources so that they save more lives or produce a cleaner environment—regulators must often take account of all of a proposed regulation's adverse effects, at least where those adverse effects clearly threaten serious and disproportionate public harm. Hence, I believe that, other things being equal, we should read silences or ambiguities in the language of regulatory statutes as permitting, not forbidding, this type of rational regulation.

In these cases, however, other things are not equal. Here, legislative history, along with the statute's structure, indicates that § 109's language reflects a congressional decision not to delegate to the agency the legal authority to consider economic costs of compliance.

For one thing, the legislative history shows that Congress intended the statute to be "technology forcing." Senator Edmund Muskie, the primary sponsor of the 1970 amend-

ments to the Act, introduced them by saying that Congress' primary responsibility in drafting the Act was not "to be limited by what is or appears to be technologically or economically feasible," but "to establish what the public interest requires to protect the health of persons," even if that means that "*industries will be asked to do what seems to be impossible at the present time.*" 116 Cong. Rec. 32901–32902 (1970), 1 Legislative History of the Clean Air Amendments of 1970 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93–18, p. 227 (1974) (hereinafter Leg. Hist.) (emphasis added).

The Senate directly focused upon the technical feasibility and cost of implementing the Act's mandates. And it made clear that it intended the Administrator to develop air quality standards set independently of either. The Senate Report for the 1970 amendments explains:

> "In the Committee discussions, considerable concern was expressed regarding the use of the concept of technical feasibility as the basis of ambient air standards. The Committee determined that 1) *the health of people is more important than the question of whether the early achievement of ambient air quality standards protective of health is technically feasible;* and, 2) the growth of pollution load in many areas, even with application of available technology, would still be deleterious to public health. . . .
>
> "Therefore, the Committee determined that *existing sources of pollutants either should meet the standard of the law or be closed down* . . . ." S. Rep. No. 91–1196, pp. 2–3 (1970), 1 Leg. Hist. 402–403 (emphasis added).

Indeed, this Court, after reviewing the entire legislative history, concluded that the 1970 amendments were "expressly designed to force regulated sources to develop pollution control devices that *might at the time appear to be economically or technologically infeasible.*" *Union Elec. Co.*

v. *EPA*, 427 U. S. 246, 257 (1976) (emphasis added). And the Court added that the 1970 amendments were intended to be a "drastic remedy to . . . a serious and otherwise uncheckable problem." *Id.*, at 256. Subsequent legislative history confirms that the technology-forcing goals of the 1970 amendments are still paramount in today's Act. See Clean Air Conference Report (1977): Statement of Intent; Clarification of Select Provisions, 123 Cong. Rec. 27070 (1977) (stating, regarding the 1977 amendments to the Act, that "this year's legislation retains and even strengthens the technology forcing . . . goals of the 1970 Act"); S. Rep. No. 101–228, p. 5 (1989) (stating that the 1990 amendments to the Act require ambient air quality standards to be set at "the level that 'protects the public health' with an 'adequate margin of safety,' *without regard to the economic or technical feasibility of attainment*" (emphasis added)).

To read this legislative history as meaning what it says does not impute to Congress an irrational intent. Technology-forcing hopes can prove realistic. Those persons, for example, who opposed the 1970 Act's insistence on a 90% reduction in auto emission pollutants, on the ground of excessive cost, saw the development of catalytic converter technology that helped achieve substantial reductions without the economic catastrophe that some had feared. See § 6(a) of the Clean Air Act Amendments of 1970, amending §§ 202(b)(1)(A), (B), 84 Stat. 1690 (codified at 42 U. S. C. §§ 7521(b)(1)(A), (B)) (requiring a 90% reduction in emissions); 1 Leg. Hist. 238, 240 (statement of Sen. Griffin) (arguing that the emissions standards could "force [the automobile] industry out of existence" because costs "would not be taken into account"); see generally Reitze, Mobile Source Air Pollution Control, 6 Env. Law. 309, 326–327 (2000) (discussing the development of the catalytic converter).

At the same time, the statute's technology-forcing objective makes regulatory efforts to determine the costs of implementation both less important and more difficult. It

means that the relevant economic costs are speculative, for they include the cost of unknown future technologies. It also means that efforts to take costs into account can breed time-consuming and potentially unresolvable arguments about the accuracy and significance of cost estimates. Congress could have thought such efforts not worth the delays and uncertainties that would accompany them. In any event, that is what the statute's history seems to say. See *Union Elec.*, *supra*, at 256–259. And the matter is one for Congress to decide.

Moreover, the Act does not, on this reading, wholly ignore cost and feasibility. As the majority points out, *ante*, at 466–467, the Act allows regulators to take those concerns into account when they determine how to implement ambient air quality standards. Thus, States may consider economic costs when they select the particular control devices used to meet the standards, and industries experiencing difficulty in reducing their emissions can seek an exemption or variance from the state implementation plan. See *Union Elec.*, *supra*, at 266 ("[T]he most important forum for consideration of claims of economic and technological infeasibility is before the state agency formulating the implementation plan").

The Act also permits the EPA, within certain limits, to consider costs when it sets deadlines by which areas must attain the ambient air quality standards. 42 U. S. C. § 7502(a)(2)(A) (providing that "the Administrator may extend the attainment date . . . for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures"); § 7502(a)(2)(C) (permitting the Administrator to grant up to two additional 1-year extensions); cf. §§ 7511(a)(1), (5) (setting more rigid attainment deadlines for areas in nonattainment of the ozone standard, but permitting the Administrator to grant up to two 1-year extensions). And Congress can change those statutory limits if necessary. Given the ambient air quality

standards' substantial effects on States, cities, industries, and their suppliers and customers, Congress will hear from those whom compliance deadlines affect adversely, and Congress can consider whether legislative change is warranted. See, *e. g.*, Steel Industry Compliance Extension Act of 1981, 95 Stat. 139 (codified at 42 U. S. C. § 7413(e) (1988 ed.)) (repealed 1990) (granting the Administrator discretion to extend the ambient air quality standard attainment date set in the 1977 Act by up to three years for steelmaking facilities).

Finally, contrary to the suggestion of the Court of Appeals and of some parties, this interpretation of § 109 does not require the EPA to eliminate every health risk, however slight, at any economic cost, however great, to the point of "hurtling" industry over "the brink of ruin," or even forcing "deindustrialization." *American Trucking Assns., Inc.* v. *EPA*, 175 F. 3d 1027, 1037, 1038, n. 4 (CADC 1999); see also Brief for Cross-Petitioners in No. 99–1426, p. 25. The statute, by its express terms, does not compel the elimination of *all* risk; and it grants the Administrator sufficient flexibility to avoid setting ambient air quality standards ruinous to industry.

Section 109(b)(1) directs the Administrator to set standards that are "requisite to protect the public health" with "an adequate margin of safety." But these words do not describe a world that is free of all risk—an impossible and undesirable objective. See *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607, 642 (1980) (plurality opinion) (the word "safe" does not mean "risk-free"). Nor are the words "requisite" and "public health" to be understood independent of context. We consider football equipment "safe" even if its use entails a level of risk that would make drinking water "unsafe" for consumption. And what counts as "requisite" to protecting the public health will similarly vary with background circumstances, such as the public's ordinary tolerance of the particular health risk in the particular context at issue. The Administrator can

consider such background circumstances when "decid[ing] what risks are acceptable in the world in which we live." *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F. 2d 1146, 1165 (CADC 1987).

The statute also permits the Administrator to take account of comparative health risks. That is to say, she may consider whether a proposed rule promotes safety overall. A rule likely to cause more harm to health than it prevents is not a rule that is "requisite to protect the public health." For example, as the Court of Appeals held and the parties do not contest, the Administrator has the authority to determine to what extent possible health risks stemming from reductions in tropospheric ozone (which, it is claimed, helps prevent cataracts and skin cancer) should be taken into account in setting the ambient air quality standard for ozone. See 175 F. 3d, at 1050–1053 (remanding for the Administrator to make that determination).

The statute ultimately specifies that the standard set must be "requisite to protect the public health" "*in the judgment of the Administrator*," § 109(b)(1), 84 Stat. 1680 (emphasis added), a phrase that grants the Administrator considerable discretionary standard-setting authority.

The statute's words, then, authorize the Administrator to consider the severity of a pollutant's potential adverse health effects, the number of those likely to be affected, the distribution of the adverse effects, and the uncertainties surrounding each estimate. Cf. Sunstein, Is the Clean Air Act Unconstitutional?, 98 Mich. L. Rev. 303, 364 (1999). They permit the Administrator to take account of comparative health consequences. They allow her to take account of context when determining the acceptability of small risks to health. And they give her considerable discretion when she does so.

This discretion would seem sufficient to avoid the extreme results that some of the industry parties fear. After all, the EPA, in setting standards that "protect the public health"

with "an adequate margin of safety," retains discretionary authority to avoid regulating risks that it reasonably concludes are trivial in context. Nor need regulation lead to deindustrialization. Preindustrial society was not a very healthy society; hence a standard demanding the return of the Stone Age would not prove "requisite to protect the public health."

Although I rely more heavily than does the Court upon legislative history and alternative sources of statutory flexibility, I reach the same ultimate conclusion. Section 109 does not delegate to the EPA authority to base the national ambient air quality standards, in whole or in part, upon the economic costs of compliance.

Syllabus

SEMTEK INTERNATIONAL INC. *v.* LOCKHEED MARTIN CORP.

CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 99–1551. Argued December 5, 2000—Decided February 27, 2001

Respondent removed petitioner's California state-court suit to a California Federal District Court based on diversity of citizenship, and successfully moved to dismiss the case "on the merits" as barred by California's statute of limitations. Petitioner then brought suit in a Maryland Circuit Court, alleging the same causes of action, which were not time barred under Maryland's statute of limitations. That court dismissed the case on the ground of res judicata. In affirming, the Maryland Court of Special Appeals held that, regardless of whether California would have accorded claim-preclusive effect to a statute-of-limitations dismissal by one of its own courts, the California federal court's dismissal barred the Maryland complaint because the res judicata effect of federal diversity judgments is prescribed by federal law, under which the earlier dismissal was on the merits and claim preclusive.

Held: Because the claim-preclusive effect of a federal court's dismissal "upon the merits" of a diversity action on state statute-of-limitations grounds is governed by a federal rule, which in turn (in diversity cases) incorporates the claim-preclusion law that would be applied by state courts in the State in which the federal court sits, the Maryland Court of Special Appeals erred in holding that the California federal court's dismissal "upon the merits" necessarily precluded the Maryland state-court action. Pp. 500–509.

(a) *Dupasseur* v. *Rochereau*, 21 Wall. 130, held that the res judicata effect of a federal diversity judgment "is such as would belong to judgments of the State courts rendered under similar circumstances," *id.*, at 135. That case is not dispositive here, however, because it was decided under the Conformity Act of 1872, which required federal courts to apply the procedural law of the forum State in nonequity cases. Neither is claim-preclusive effect demanded by Rule 41(b)—which provides that, unless the court "otherwise specifies," an involuntary dismissal, other than a dismissal for lack of jurisdiction, improper venue, or failure to join a party under Rule 19, "operates as an adjudication upon the merits." Although the original connotation of a judgment "on the merits" was one that passes directly on the substance of a claim

Syllabus

(which would be claim preclusive), the meaning of the term has undergone change, and does not necessarily designate a judgment effecting claim preclusion. There are a number of reasons for believing it does not bear that meaning in Rule 41(b). It would be peculiar to announce a federally prescribed rule on claim preclusion in a default rule for determining a dismissal's import, or to find a rule governing the effect to be accorded federal judgments by other courts ensconced in rules governing the internal procedures of the rendering court itself. Moreover, as so interpreted, the Rule would in many cases violate the federalism principle of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78–80, by engendering substantial variations in outcomes between state and federal litigation which would likely influence forum choice, *Hanna* v. *Plumer*, 380 U. S. 460, 467–468. Finally, this Court has never relied upon the Rule when recognizing the claim-preclusive effect of federal judgments in federal-question cases. Rule 41(a) makes clear that "an adjudication upon the merits" in Rule 41(b) is the opposite of a dismissal without prejudice—that is, it is a dismissal that prevents refiling of the claim in the same court. That is undoubtedly a necessary condition, but not a sufficient one, for claim-preclusive effect in other courts. Pp. 500–506.

(b) Federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity, and it is up to this Court to determine the appropriate federal rule. Since in diversity cases state, rather than federal, substantive law is at issue, there is no need for a uniform federal rule; and nationwide uniformity is better served by having the same claim-preclusive rule (the state rule) apply whether the dismissal has been ordered by a state or a federal court. Any other rule would produce the sort of forum shopping and inequitable administration of the laws that *Erie* seeks to avoid. While the federal reference to state law will not obtain in situations in which the state law is incompatible with federal interests, no such conflict exists here. Pp. 506–509.

128 Md. App. 39, 736 A. 2d 1104, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court.

Michael Gottesman argued the cause for petitioner. With him on the briefs were *Jonathan S. Massey*, *Kenneth J. Chesebro*, *Thomas V. Girardi*, *Thomas C. Goldstein*, *Walter J. Lack*, *Andrew W. Zepeda*, and *Steven L. Hogan*.

Walter E. Dellinger argued the cause for respondent. With him on the brief were *Robert E. Willett*, *Francis B. Burch, Jr.*, and *Martin H. Redish*.*

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether the claim-preclusive effect of a federal judgment dismissing a diversity action on statute-of-limitations grounds is determined by the law of the State in which the federal court sits.

I

Petitioner filed a complaint against respondent in California state court, alleging inducement of breach of contract and various business torts. Respondent removed the case to the United States District Court for the Central District of California on the basis of diversity of citizenship, see 28 U. S. C. §§ 1332, 1441 (1994 ed. and Supp. IV), and successfully moved to dismiss petitioner's claims as barred by California's 2-year statute of limitations. In its order of dismissal, the District Court, adopting language suggested by respondent, dismissed petitioner's claims "in [their] entirety on the merits and with prejudice." App. to Pet. for Cert. 59a. Without contesting the District Court's designation of its dismissal as "on the merits," petitioner appealed to the Court of Appeals for the Ninth Circuit, which affirmed the District Court's order. 168 F. 3d 501 (1999) (table). Petitioner also brought suit against respondent in the State Circuit Court for Baltimore City, Maryland, alleging the same causes of action, which were not time barred under Maryland's 3-year statute of limitations. Respondent sought injunctive relief against this action from the California federal court under the All Writs Act, 28 U. S. C. § 1651, and removed the action to the United States District Court for the

**Griffin B. Bell*, *Chilton Davis Varner*, *Paul D. Clement*, and *Jeffrey S. Bucholtz* filed a brief for the Product Liability Advisory Council, Inc., as *amicus curiae* urging affirmance.

District of Maryland on federal-question grounds (diversity grounds were not available because Lockheed "is a Maryland citizen," *Semtek Int'l, Inc.* v. *Lockheed Martin Corp.*, 988 F. Supp. 913, 914 (1997)). The California federal court denied the relief requested, and the Maryland federal court remanded the case to state court because the federal question arose only by way of defense, *ibid.* Following a hearing, the Maryland state court granted respondent's motion to dismiss on the ground of res judicata. Petitioner then returned to the California federal court and the Ninth Circuit, unsuccessfully moving both courts to amend the former's earlier order so as to indicate that the dismissal was not "on the merits." Petitioner also appealed the Maryland trial court's order of dismissal to the Maryland Court of Special Appeals. The Court of Special Appeals affirmed, holding that, regardless of whether California would have accorded claim-preclusive effect to a statute-of-limitations dismissal by one of its own courts, the dismissal by the California federal court barred the complaint filed in Maryland, since the res judicata effect of federal diversity judgments is prescribed by federal law, under which the earlier dismissal was on the merits and claim preclusive. 128 Md. App. 39, 736 A. 2d 1104 (1999). After the Maryland Court of Appeals declined to review the case, we granted certiorari. 530 U. S. 1260 (2000).

II

Petitioner contends that the outcome of this case is controlled by *Dupasseur* v. *Rochereau*, 21 Wall. 130, 135 (1875), which held that the res judicata effect of a federal diversity judgment "is such as would belong to judgments of the State courts rendered under similar circumstances," and may not be accorded any "higher sanctity or effect." Since, petitioner argues, the dismissal of an action on statute-of-limitations grounds by a California state court would not be claim preclusive, it follows that the similar dismissal of this diversity action by the California federal court cannot be

claim preclusive. While we agree that this would be the result demanded by *Dupasseur*, the case is not dispositive because it was decided under the Conformity Act of 1872, 17 Stat. 196, which required federal courts to apply the procedural law of the forum State in nonequity cases. That arguably affected the outcome of the case. See *Dupasseur*, *supra*, at 135. See also Restatement (Second) of Judgments § 87, Comment *a*, p. 315 (1980) (hereinafter Restatement) ("Since procedural law largely determines the matters that may be adjudicated in an action, state law had to be considered in ascertaining the effect of a federal judgment").

Respondent, for its part, contends that the outcome of this case is controlled by Federal Rule of Civil Procedure 41(b), which provides as follows:

> "Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

Since the dismissal here did not "otherwise specif[y]" (indeed, it specifically stated that it *was* "on the merits"), and did not pertain to the excepted subjects of jurisdiction, venue, or joinder, it follows, respondent contends, that the dismissal "is entitled to claim preclusive effect." Brief for Respondent 3–4.

Implicit in this reasoning is the unstated minor premise that all judgments denominated "on the merits" are entitled to claim-preclusive effect. That premise is not necessarily valid. The original connotation of an "on the merits" adjudication is one that actually "pass[es] directly on the substance

of [a particular] claim" before the court. Restatement § 19, Comment *a*, at 161. That connotation remains common to every jurisdiction of which we are aware. See *ibid.* ("The prototyp[ical] [judgment on the merits is] one in which the merits of [a party's] claim are in fact adjudicated [for or] against the [party] after trial of the substantive issues"). And it is, we think, the meaning intended in those many statements to the effect that a judgment "on the merits" triggers the doctrine of res judicata or claim preclusion. See, *e. g.*, *Parklane Hosiery Co.* v. *Shore*, 439 U. S. 322, 326, n. 5 (1979) ("Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action"); *Goddard* v. *Security Title Ins. & Guarantee Co.*, 14 Cal. 2d 47, 51, 92 P. 2d 804, 806 (1939) ("[A] final judgment, rendered upon the merits by a court having jurisdiction of the cause . . . is a complete bar to a new suit between [the parties or their privies] on the same cause of action" (internal quotation marks and citations omitted)).

But over the years the meaning of the term "judgment on the merits" "has gradually undergone change," R. Marcus, M. Redish, & E. Sherman, Civil Procedure: A Modern Approach 1140–1141 (3d ed. 2000), and it has come to be applied to some judgments (such as the one involved here) that do *not* pass upon the substantive merits of a claim and hence do *not* (in many jurisdictions) entail claim-preclusive effect. Compare, *e. g.*, *Western Coal & Mining Co.* v. *Jones*, 27 Cal. 2d 819, 826, 167 P. 2d 719, 724 (1946), and *Koch* v. *Rodlin Enterprises, Inc.*, 223 Cal. App. 3d 1591, 1596, 273 Cal. Rptr. 438, 441 (1990), with *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 228 (1995) (statute of limitations); *Goddard*, *supra*, at 50–51, 92 P. 2d, at 806–807, and *Allston* v. *Incorporated Village of Rockville Centre*, 25 App. Div. 2d 545, 546, 267 N. Y. S. 2d 564, 565–566 (1966), with *Federated Department Stores, Inc.* v. *Moitie*, 452 U. S. 394, 399, n. 3 (1981) (demurrer or failure to state a claim). See also Restatement § 19, Com-

ment *a* and Reporter's Note; 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4439, pp. 355–358 (1981) (hereinafter Wright & Miller). That is why the Restatement of Judgments has abandoned the use of the term—"because of its possibly misleading connotations," Restatement § 19, Comment *a,* at 161.

In short, it is no longer true that a judgment "on the merits" is necessarily a judgment entitled to claim-preclusive effect; and there are a number of reasons for believing that the phrase "adjudication upon the merits" does not bear that meaning in Rule 41(b). To begin with, Rule 41(b) sets forth nothing more than a default rule for determining the import of a dismissal (a dismissal is "upon the merits," with the three stated exceptions, unless the court "otherwise specifies"). This would be a highly peculiar context in which to announce a federally prescribed rule on the complex question of claim preclusion, saying in effect, "All federal dismissals (with three specified exceptions) preclude suit elsewhere, unless the court otherwise specifies."

And even apart from the purely default character of Rule 41(b), it would be peculiar to find a rule governing the effect that must be accorded federal judgments by other courts ensconced in rules governing the internal procedures of the rendering court itself. Indeed, such a rule would arguably violate the jurisdictional limitation of the Rules Enabling Act: that the Rules "shall not abridge, enlarge or modify any substantive right," 28 U. S. C. § 2072(b). Cf. *Ortiz* v. *Fibreboard Corp.*, 527 U. S. 815, 842 (1999) (adopting a "limiting construction" of Federal Rule of Civil Procedure 23(b)(1)(B) in order to "minimiz[e] potential conflict with the Rules Enabling Act, and [to] avoi[d] serious constitutional concerns"). In the present case, for example, if California law left petitioner free to sue on this claim in Maryland even after the California statute of limitations had expired, the federal court's extinguishment of that right (through Rule 41(b)'s

mandated claim-preclusive effect of its judgment) would seem to violate this limitation.

Moreover, as so interpreted, the Rule would in many cases violate the federalism principle of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78–80 (1938), by engendering "'substantial' variations [in outcomes] between state and federal litigation" which would "[l]ikely . . . influence the choice of a forum," *Hanna* v. *Plumer*, 380 U. S. 460, 467–468 (1965). See also *Guaranty Trust Co.* v. *York*, 326 U. S. 99, 108–110 (1945). Cf. *Walker* v. *Armco Steel Corp.*, 446 U. S. 740, 748–753 (1980). With regard to the claim-preclusion issue involved in the present case, for example, the traditional rule is that expiration of the applicable statute of limitations merely bars the remedy and does not extinguish the substantive right, so that dismissal on that ground does not have claim-preclusive effect in other jurisdictions with longer, unexpired limitations periods. See Restatement (Second) of Conflict of Laws §§ 142(2), 143 (1969); Restatement of Judgments § 49, Comment *a* (1942). Out-of-state defendants sued on stale claims in California and in other States adhering to this traditional rule would systematically remove state-law suits brought against them to federal court—where, unless otherwise specified, a statute-of-limitations dismissal would bar suit everywhere.[1]

Finally, if Rule 41(b) did mean what respondent suggests, we would surely have relied upon it in our cases recognizing the claim-preclusive effect of federal judgments in federal-question cases. Yet for over half a century since the pro-

[1] Rule 41(b), interpreted as a preclusion-establishing rule, would not have the two effects described in the preceding paragraphs—arguable violation of the Rules Enabling Act and incompatibility with *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938)—if the court's failure to specify an other-than-on-the-merits dismissal were subject to reversal on appeal whenever it would alter the rule of claim preclusion applied by the State in which the federal court sits. No one suggests that this is the rule, and we are aware of no case that applies it.

mulgation of Rule 41(b), we have not once done so. See, *e. g.*, *Heck* v. *Humphrey*, 512 U. S. 477, 488–489, n. 9 (1994); *Federated Department Stores, Inc.* v. *Moitie*, *supra*, at 398; *Blonder-Tongue Laboratories, Inc.* v. *University of Ill. Foundation*, 402 U. S. 313, 324, n. 12 (1971).

We think the key to a more reasonable interpretation of the meaning of "operates as an adjudication upon the merits" in Rule 41(b) is to be found in Rule 41(a), which, in discussing the effect of voluntary dismissal by the plaintiff, makes clear that an "adjudication upon the merits" is the opposite of a "dismissal without prejudice":

> "Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim."

See also 18 Wright & Miller § 4435, at 329, n. 4 ("Both parts of Rule 41 . . . use the phrase 'without prejudice' as a contrast to adjudication on the merits"); 9 *id.*, § 2373, at 396, n. 4 (" '[W]ith prejudice' is an acceptable form of shorthand for 'an adjudication upon the merits' "). See also *Goddard*, 14 Cal. 2d, at 54, 92 P. 2d, at 808 (stating that a dismissal "with prejudice" evinces "[t]he intention of the court to make [the dismissal] on the merits"). The primary meaning of "dismissal without prejudice," we think, is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim. That will also ordinarily (though not always) have the consequence of not barring the claim from *other* courts, but its primary meaning relates to the dismissing court itself. Thus, Black's Law Dictionary (7th ed. 1999) defines "dismissed without prejudice" as "removed from the court's docket in such a way that the plaintiff may refile the same suit on the same claim," *id.*, at 482, and defines "dismissal without prejudice" as "[a] dismissal that

does not bar the plaintiff from refiling the lawsuit within the applicable limitations period," *ibid.*

We think, then, that the effect of the "adjudication upon the merits" default provision of Rule 41(b)—and, presumably, of the explicit order in the present case that used the language of that default provision—is simply that, unlike a dismissal "without prejudice," the dismissal in the present case barred refiling of the same claim in the United States District Court for the Central District of California. That is undoubtedly a necessary condition, but it is not a sufficient one, for claim-preclusive effect in other courts.[2]

III

Having concluded that the claim-preclusive effect, in Maryland, of this California federal diversity judgment is dictated neither by *Dupasseur* v. *Rochereau*, as petitioner contends, nor by Rule 41(b), as respondent contends, we turn to consideration of what determines the issue. Neither the Full Faith and Credit Clause, U. S. Const., Art. IV, § 1,[3] nor the full faith and credit statute, 28 U. S. C. § 1738,[4] ad-

[2] We do not decide whether, in a diversity case, a federal court's "dismissal upon the merits" (in the sense we have described), under circumstances where a state court would decree only a "dismissal without prejudice," abridges a "substantive right" and thus exceeds the authorization of the Rules Enabling Act. We think the situation will present itself more rarely than would the arguable violation of the Act that would ensue from interpreting Rule 41(b) as a rule of claim preclusion; and if it is a violation, can be more easily dealt with on direct appeal.

[3] Article IV, § 1, provides as follows:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[4] Title 28 U. S. C. § 1738 provides in relevant part as follows:

"The records and judicial proceedings of any court of any . . . State, Territory or Possession . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

dresses the question. By their terms they govern the effects to be given only to state-court judgments (and, in the case of the statute, to judgments by courts of territories and possessions). And no other federal textual provision, neither of the Constitution nor of any statute, addresses the claim-preclusive effect of a judgment in a federal diversity action.

It is also true, however, that no federal textual provision addresses the claim-preclusive effect of a federal-court judgment in a federal-question case, yet we have long held that States cannot give those judgments merely whatever effect they would give their own judgments, but must accord them the effect that this Court prescribes. See *Stoll* v. *Gottlieb*, 305 U. S. 165, 171–172 (1938); *Gunter* v. *Atlantic Coast Line R. Co.*, 200 U. S. 273, 290–291 (1906); *Deposit Bank* v. *Frankfort*, 191 U. S. 499, 514–515 (1903). The reasoning of that line of cases suggests, moreover, that even when States are allowed to give federal judgments (notably, judgments in diversity cases) no more than the effect accorded to state judgments, that disposition is by direction of *this* Court, which has the last word on the claim-preclusive effect of *all* federal judgments:

> "It is true that for some purposes and within certain limits it is only required that the judgments of the courts of the United States shall be given the same force and effect as are given the judgments of the courts of the States wherein they are rendered; but it is equally true that whether a Federal judgment has been given due force and effect in the state court is a Federal question reviewable by this court, which will determine for itself whether such judgment has been given due weight or otherwise. . . .
>
> "When is the state court obliged to give to Federal judgments only the force and effect it gives to state court judgments within its own jurisdiction? Such cases are distinctly pointed out in the opinion of Mr. Jus-

> tice Bradley in *Dupasseur* v. *Rochereau* [which stated that the case was a diversity case, applying state law under state procedure]." *Ibid.*

In other words, in *Dupasseur* the State was allowed (indeed, required) to give a federal diversity judgment no more effect than it would accord one of its own judgments only because reference to state law was *the federal rule that this Court deemed appropriate.* In short, federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity. See generally R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1473 (4th ed. 1996); Degnan, Federalized Res Judicata, 85 Yale L. J. 741 (1976).

It is left to us, then, to determine the appropriate federal rule. And despite the sea change that has occurred in the background law since *Dupasseur* was decided—not only repeal of the Conformity Act but also the watershed decision of this Court in *Erie*—we think the result decreed by *Dupasseur* continues to be correct for diversity cases. Since state, rather than federal, substantive law is at issue there is no need for a uniform federal rule. And indeed, nationwide uniformity in the substance of the matter is better served by having the same claim-preclusive rule (the state rule) apply whether the dismissal has been ordered by a state or a federal court. This is, it seems to us, a classic case for adopting, as the federally prescribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity court sits. See *Gasperini* v. *Center for Humanities, Inc.*, 518 U. S. 415, 429–431 (1996); *Walker* v. *Armco Steel Corp.*, 446 U. S., at 752–753; *Bernhardt* v. *Polygraphic Co. of America*, 350 U. S. 198, 202–205 (1956); *Palmer* v. *Hoffman*, 318 U. S. 109, 117 (1943); *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487, 496 (1941); *Cities Service Oil Co.* v. *Dunlap*, 308 U. S. 208, 212 (1939). As we have alluded to above, any other rule would produce the sort of "forum-shopping . . . and . . . inequitable ad-

ministration of the laws" that *Erie* seeks to avoid, *Hanna*, 380 U. S., at 468, since filing in, or removing to, federal court would be encouraged by the divergent effects that the litigants would anticipate from likely grounds of dismissal. See *Guaranty Trust Co.* v. *York*, 326 U. S., at 109–110.

This federal reference to state law will not obtain, of course, in situations in which the state law is incompatible with federal interests. If, for example, state law did not accord claim-preclusive effect to dismissals for willful violation of discovery orders, federal courts' interest in the integrity of their own processes might justify a contrary federal rule. No such conflict with potential federal interests exists in the present case. Dismissal of this state cause of action was decreed by the California federal court only because the California statute of limitations so required; and there is no conceivable federal interest in giving that time bar more effect in other courts than the California courts themselves would impose.

* * *

Because the claim-preclusive effect of the California federal court's dismissal "upon the merits" of petitioner's action on statute-of-limitations grounds is governed by a federal rule that in turn incorporates California's law of claim preclusion (the content of which we do not pass upon today), the Maryland Court of Special Appeals erred in holding that the dismissal necessarily precluded the bringing of this action in the Maryland courts. The judgment is reversed, and the case remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

COOK *v.* GRALIKE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 99–929. Argued November 6, 2000—Decided February 28, 2001

In *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, the Court held that an Arkansas law prohibiting otherwise eligible congressional candidates from appearing on the general election ballot if they had already served two Senate terms or three House terms was an impermissible attempt to add qualifications to congressional office rather than a permissible exercise of the State's Elections Clause power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives," U. S. Const., Art. I, § 4, cl. 1. In response, Missouri voters adopted an amendment to Article VIII of their State Constitution designed to bring about a specified "Congressional Term Limits Amendment" to the Federal Constitution. Among other things, Article VIII "instruct[s]" Missouri Congress Members to use all their powers to pass the federal amendment; prescribes that "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" be printed on ballots by the names of Members failing to take certain legislative acts in support of the proposed amendment; provides that "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" be printed by the names of nonincumbent candidates refusing to take a "Term Limit" pledge to perform those acts if elected; and directs the Missouri Secretary of State (Secretary), the petitioner here, to determine and declare whether either statement should be printed by candidates' names. Respondent Gralike, a nonincumbent House candidate, sued to enjoin petitioner from implementing Article VIII on the ground it violated the Federal Constitution. The District Court granted Gralike summary judgment, and the Eighth Circuit affirmed.

Held: Article VIII is unconstitutional. Pp. 518–527.

(a) Because petitioner's arguments that Article VIII is an exercise of the people's right to instruct their representatives reserved by the Tenth Amendment, as well as a permissible regulation of the "manner" of electing federal legislators under the Elections Clause, rely on different sources of state power, the Court reviews the distinction in kind between reserved state powers and those delegated to the States by the Constitution. The Constitution draws a basic distinction between the powers of the newly created Federal Government and the powers retained by the pre-existing sovereign States. *U. S. Term Limits*, 514

U. S., at 801. On the one hand, such retained powers proceed, not from the American people, but from the people of the several States. They remain, after the Constitution's adoption, what they were before, except insofar as they are abridged by that instrument. *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193. On the other hand, the States can exercise no powers springing exclusively from the National Government's existence which the Constitution did not delegate. Pp. 518–519.

(b) Petitioner's argument that Article VIII is a valid exercise of the State's reserved power to give binding instructions to its representatives is unpersuasive for three reasons. First, the historical precedents on which she relies—concerning the part instructions played in the Second Continental Congress, the Constitutional Convention, the early Congress, the selection of United States Senators before the Seventeenth Amendment's passage, and the ratification of certain federal constitutional amendments—are distinguishable because, unlike Article VIII, none of petitioner's examples was coupled with an express legal sanction for disobedience. Second, countervailing historical evidence is provided by the fact that the First Congress rejected a proposal to insert a right of the people "to instruct their representatives" into what would become the First Amendment. Third, and of decisive significance, the means employed to issue the instructions, ballots for congressional elections, are unacceptable unless Article VIII is a permissible exercise of the State's power to regulate the manner of holding congressional elections. Pp. 519–522.

(c) The federal offices at stake arise from the Constitution itself. See *U. S. Term Limits*, 514 U. S., at 805. Because any state authority to regulate election to those offices could not precede their very creation by the Constitution, such power had to be delegated to the States, rather than reserved under the Tenth Amendment. *Id.*, at 804. No constitutional provision other than the Elections Clause gives the States authority over congressional elections. By process of elimination then, the States may regulate the incidents of such elections, including balloting, only within the exclusive delegation of their Elections Clause power. The Court disagrees with petitioner's argument that Article VIII is a valid exercise of that power in that it regulates the "manner" in which elections are held by disclosing information about congressional candidates. The Clause grants to the States "broad power" to prescribe the procedural mechanisms for holding congressional elections, *e. g.*, *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217, but does not authorize them to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints, *U. S. Term Limits*, 514 U. S., at 833–834. Article VIII is not a procedural regulation. It does not control the "manner" of elections, for that term

Syllabus

encompasses matters like notices, registration, supervision of voting, and other requirements as to procedure and safeguards which experience shows are necessary to enforce the fundamental right involved. See, *e. g., Smiley* v. *Holm*, 285 U. S. 355, 366. Rather, Article VIII is plainly designed to favor candidates who are willing to support the particular form of a term limits amendment set forth in its text and to disfavor those who either oppose term limits entirely or would prefer a different proposal. Cf. *Anderson* v. *Celebrezze*, 460 U. S. 780, 788, n. 9. It not only "instruct[s]" Missouri's congressional Members to promote the passage of the specified term limits amendment, but also attaches a concrete consequence to noncompliance—the printing of an adverse label by the candidate's name on ballots. The two labels impose substantial political risk on candidates who fail to comply with Article VIII, handicapping them at the most crucial stage in the election process—the instant before the vote is cast, *Anderson* v. *Martin*, 375 U. S. 399, 402. And, by directing the citizen's attention to the single consideration of the candidates' fidelity to term limits, the labels imply that the issue is an important—perhaps paramount—consideration in the citizen's choice. *Ibid.* Article VIII thus attempts to "dictate electoral outcomes." *U. S. Term Limits*, 514 U. S., at 833–834. Such "regulation" of congressional elections is not authorized by the Elections Clause. Pp. 522–527.

191 F. 3d 911, affirmed.

STEVENS, J., delivered the opinion of the Court, in which SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined, in which SOUTER, J., joined as to Parts I, II, and IV, and in which THOMAS, J., joined as to Parts I and IV. KENNEDY, J., filed a concurring opinion, *post*, p. 527. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 530. REHNQUIST, C. J., filed an opinion concurring in the judgment, in which O'CONNOR, J., joined, *post*, p. 530.

James R. McAdams argued the cause for petitioner. With him on the briefs were *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, *James R. Layton*, State Solicitor, and *Tina M. Crow Halcomb* and *J. Eric Durr*, Assistant Attorneys General.

Jonathan S. Franklin argued the cause for respondents. With him on the brief were *H. Christopher Bartolomucci* and *Arthur A. Benson II.*

Deputy Solicitor General Underwood argued the cause for the United States as *amicus curiae* urging affirmance.

With her on the brief were *Solicitor General Waxman*, *Assistant Attorney General Ogden*, *Paul R. Q. Wolfson*, and *Douglas N. Letter*.*

JUSTICE STEVENS delivered the opinion of the Court.

In *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779 (1995), we reviewed a challenge to an Arkansas law that prohibited the name of an otherwise eligible candidate for the United States Congress from appearing on the general election ballot if he or she had already served three terms in the House of Representatives or two terms in the Senate. We held that the ballot restriction was an indirect attempt to impose term limits on congressional incumbents that violated the Qualifications Clauses in Article I of the Constitution rather than a permissible exercise of the State's power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives" within the meaning of Article I, § 4, cl. 1.

In response to that decision, the voters of Missouri adopted in 1996 an amendment to Article VIII [1] of their State Constitution designed to lead to the adoption of a specified "Congressional Term Limits Amendment" to the Federal Constitution. At issue in this case is the constitutionality of Article VIII.

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*Briefs of *amici curiae* urging reversal were filed for the State of Nebraska by *Don Stenberg*, Attorney General, and *L. Steven Grasz*, Deputy Attorney General; for the Initiative and Referendum Institute by *Patrick T. O'Brien* and *John M. Boehm;* for Missouri Term Limits by *Stephen J. Safranek;* and for U. S. PIRG Education Fund by *David Jonathan Fine*.

Briefs of *amici curiae* urging affirmance were filed for the James Madison Center for Free Speech by *James Bopp, Jr.*, and *Heidi K. Meyer;* and for the League of Women Voters of the United States et al. by *Louis R. Cohen* and *Jonathan J. Frankel*.

Kris W. Kobach, *pro se*, filed a brief as *amicus curiae*.

[1] We shall follow the parties' practice of referring to the amendment as "Article VIII" even though it merely added new §§ 15 through 22 to the pre-existing article.

I

Article VIII "instruct[s]" each Member of Missouri's congressional delegation "to use all of his or her delegated powers to pass the Congressional Term Limits Amendment" set forth in § 16 of the Article. Mo. Const., Art. VIII, § 17(1). That proposed amendment would limit service in the United States Congress to three terms in the House of Representatives and two terms in the Senate.[2]

Three provisions in Article VIII combine to advance its purpose. Section 17 prescribes that the statement "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" be printed on all primary and general ballots adjacent to the name of a Senator or Representative who fails to take any one of eight legislative acts in support of the proposed amendment.[3] Section 18 provides that the statement "DE-

[2] The full text of the proposed amendment is as follows:

"Congressional Term Limits Amendment

"(a) No person shall serve in the office of United States Representative for more than three terms, but upon ratification of this amendment no person who has held the office of the United States Representative or who then holds the office shall serve for more than two additional terms.

"(b) No person shall serve in the office of United States Senator for more than two terms, but upon ratification of this amendment no person who has held the office of United States Senator or who then holds the office shall serve in the office for more than one additional term.

"(c) Any state may enact by state constitutional amendment longer or shorter limits than those specified in section 'a' or 'b' herein.

"(d) This article shall have no time limit within which it must be ratified to become operative upon the ratification of the legislatures of three-fourths of the several States."

[3] Section 17(2) provides that the statement shall be printed

"adjacent to the name of any United States Senator or Representative who:

"(a) fails to vote in favor of the proposed Congressional Term Limits Amendment set forth above when brought to a vote or;

"(b) fails to second the proposed Congressional Term Limits Amendment set forth above if it lacks for a second before any proceeding of the legislative body or;

"(c) fails to propose or otherwise bring to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above if it otherwise lacks a legislator who so proposes or brings to a

CLINED TO PLEDGE TO SUPPORT TERM LIMITS" be printed on all primary and general election ballots next to the name of every nonincumbent congressional candidate who refuses to take a "Term Limit" pledge that commits the candidate, if elected, to performing the legislative acts enumerated in § 17.[4] And § 19 directs the Missouri Secretary of State to determine and declare, pursuant to §§ 17 and 18, whether either statement should be printed alongside the name of each candidate for Congress.[5]

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vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above or;

"(d) fails to vote in favor of all votes bringing the proposed Congressional Term Limits Amendment set forth above before any committee or subcommittee of the respective house upon which he or she serves or;

"(e) fails to reject any attempt to delay, table or otherwise prevent a vote by the full legislative body of the proposed Congressional Term Limits Amendment set forth above or;

"(f) fails to vote against any proposed constitutional amendment that would establish longer term limits than those in the proposed Congressional Term Limits Amendment set forth above regardless of any other actions in support of the proposed Congressional Term Limits Amendment set forth above or;

"(g) sponsors or cosponsors any proposed constitutional amendment or law that would increase term limits beyond those in the proposed Congressional Term Limits Amendment set forth above or;

"(h) fails to ensure that all votes on Congressional Term Limits are recorded and made available to the public."

[4] The pledge, contained in § 18(3), reads:

"I support term limits and pledge to use all my legislative powers to enact the proposed Constitutional Amendment set forth in the Term Limits Act of 1996. If elected, I pledge to vote in such a way that the designation 'DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS' will not appear adjacent to my name."

[5] Section 19(5) permits a voter to appeal to the Missouri Supreme Court a determination that a statement should not be placed next to a candidate's name, and § 19(6) allows a candidate to appeal to the State's highest court a determination that such a statement should be printed. In either case, clear and convincing evidence is required to demonstrate that the statement does not belong on the ballot adjacent to the candidate's name.

The remainder of Article VIII provides for automatic repeal of the Article should the specified Congressional Term Limits Amendment be rati-

Respondent Don Gralike was a nonincumbent candidate for election in 1998 to the United States House of Representatives from Missouri's Third Congressional District. A month after Article VIII was amended, Gralike brought suit[6] in the United States District Court for the Western District of Missouri to enjoin petitioner, the Secretary of State of Missouri, from implementing the Article, which the complaint alleges violates several provisions of the Federal Constitution.

The District Court decided the case on the pleadings, granting Gralike's motion for summary judgment. The court first held that Article VIII contravened the Qualifications Clauses of Article I of the Federal Constitution because it "has the sole purpose of creating additional qualifications for Congress indirectly and has the likely effect of handicapping a class of candidates for Congress." 996 F. Supp. 917, 920 (1998); see 996 F. Supp. 901, 905–909 (1998). The court further held that Article VIII places an impermissible burden on the candidates' First Amendment right to speak freely on the issue of term limits by "punish[ing] candidates for speaking out against term limits" through putting "negative words next to their names on the ballot," and by "us[ing] the threat of being disadvantaged in the election to coerce candidates into taking a position on the term limits issue." 996 F. Supp., at 910; see 996 F. Supp., at 920. Lastly, the court found Article VIII to be an indirect and unconstitutional attempt by the people of Missouri to interject themselves into the amending process authorized by Article V of the Federal Constitution. In doing so, the court endorsed the reasoning of other decisions invalidating provisions simi-

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fied, § 20; exclusive jurisdiction of challenges to the Amendment in the Supreme Court of Missouri, § 21; and severance of "any portion, clause, or phrase" of Article VIII that is declared invalid, § 22.

[6] Although Gralike intended to run for Congress when he filed suit, under Missouri law he could not formally file a declaration for candidacy until February 1998. App. 25–26.

lar to Article VIII on the ground that negative ballot designations "place an undue influence on the legislator to vote in favor of term limits rather than exercise his or her own independent judgment as is contemplated by Article V." 996 F. Supp., at 916; see 996 F. Supp., at 920.[7] Accordingly, the court permanently enjoined petitioner from enforcing §§ 15 through 19 of Article VIII.

The United States Court of Appeals for the Eighth Circuit affirmed.[8] Like the District Court, it found that Article VIII "threatens a penalty that is serious enough to compel candidates to speak—the potential political damage of the ballot labels"; "seeks to impose an additional qualification for candidacy for Congress and does so in a manner which is highly likely to handicap term limit opponents and other labeled candidates"; and "coerce[s] legislators into proposing or ratifying a particular constitutional amendment" in violation of Article V. 191 F. 3d 911, 918, 924, 925 (1999). The Court of Appeals also observed that, contrary to the Speech or Debate Clause in Art. I, § 6, cl. 1, of the Federal Constitution, Article VIII "establishes a regime in which a state officer—the secretary of state—is permitted to judge and punish Members of Congress for their legislative actions or positions." 191 F. 3d, at 922.[9]

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[7] See *League of Women Voters of Me.* v. *Gwadosky*, 966 F. Supp. 52 (Me. 1997); *Donovan* v. *Priest*, 326 Ark. 353, 931 S. W. 2d 119 (1996).

[8] While the appeal was pending, respondent Gralike withdrew from the 1998 election and respondent Harmon, a nonincumbent candidate in the 2000 Republican congressional primary in the Seventh District of Missouri, intervened as an appellee. In view of Harmon's participation, there is no contention that this case is moot. See *Storer* v. *Brown*, 415 U. S. 724, 737, n. 8 (1974).

[9] Although Judge Hansen, dissenting in part, thought that §§ 17 through 19 should be severed, leaving the rest of Article VIII intact, the majority declined to do so. 191 F. 3d, at 926, n. 12. Petitioner does not contend here that any parts of Article VIII should be severed if found unconstitutional, but rather urges us to uphold the provision "in its entirety." Reply Brief for Petitioner 1–2.

Although the Court of Appeals' decision is consistent with the views of other courts that have passed on similar voter initiatives,[10] the importance of the case prompted our grant of certiorari. 529 U. S. 1065 (2000).

II

Article VIII furthers the State's interest in adding a term limits amendment to the Federal Constitution in two ways. It encourages Missouri's congressional delegation to support such an amendment in order to avoid an unfavorable ballot designation when running for reelection. And it encourages the election of representatives who favor such an amendment. Petitioner argues that Article VIII is an exercise of the "right of the people to instruct" their representatives reserved by the Tenth Amendment,[11] and that it is a permissible regulation of the "manner" of electing federal legislators within the authority delegated to the States by the Elections Clause, Art. I, § 4, cl. 1.[12] Because these two arguments rely on different sources of state power, it is

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[10] See *Miller* v. *Moore*, 169 F. 3d 1119 (CA8 1999) (Nebraska initiative invalidated on Article V and right-to-vote grounds); *Barker* v. *Hazeltine*, 3 F. Supp. 2d 1088 (SD 1998) (South Dakota initiative invalidated on Article V, First Amendment, Speech or Debate Clause, and due process grounds); *League of Women Voters of Me.* v. *Gwadosky*, 966 F. Supp. 52 (Me. 1997) (Maine initiative invalidated on Article V grounds); *Bramberg* v. *Jones*, 20 Cal. 4th 1045, 978 P. 2d 1240 (1999) (California initiative invalidated on Article V grounds); *Morrissey* v. *State*, 951 P. 2d 911 (Colo. 1998) (Colorado initiative invalidated on Article V and Guarantee Clause grounds); *Simpson* v. *Cenarrusa*, 130 Idaho 609, 944 P. 2d 1372 (1997) (Idaho initiative invalidated on Speech or Debate Clause and state constitutional grounds, but did not violate Article V); *Donovan* v. *Priest*, 326 Ark. 353, 931 S. W. 2d 119 (1996) (in preelection challenge, Arkansas initiative invalidated on Article V grounds); *In re Initiative Petition No. 364*, 930 P. 2d 186 (Okla. 1996) (Oklahoma initiative invalidated on Article V and state constitutional grounds).

[11] Brief for Petitioner 25, and n. 37; see Reply Brief for Petitioner 4.

[12] Brief for Petitioner 28, 38; Reply Brief for Petitioner 4, 8.

appropriate at the outset to review the distinction in kind between powers reserved to the States and those delegated to the States by the Constitution.

As we discussed at length in *U. S. Term Limits*, the Constitution "draws a basic distinction between the powers of the newly created Federal Government and the powers retained by the pre-existing sovereign States." 514 U. S., at 801. On the one hand, in the words of Chief Justice Marshall, "it was neither necessary nor proper to define the powers retained by the States. These powers proceed, not from the people of America, but from the people of the several States; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument." *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193 (1819). The text of the Tenth Amendment delineates this principle:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

On the other hand, as Justice Story observed, "the states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution did not delegate to them." 1 Commentaries on the Constitution of the United States § 627 (3d ed. 1858) (hereinafter Story). Simply put, "[n]o state can say, that it has reserved, what it never possessed." *Ibid.*

III*

To be persuasive, petitioner's argument that Article VIII is a valid exercise of the State's reserved power to give binding instructions to its representatives would have to overcome three hurdles. First, the historical precedents on

*JUSTICE SOUTER does not join this Part of the Court's opinion.

which she relies for the proposition that the States have such a reserved power are distinguishable. Second, there is countervailing historical evidence. Third, and of decisive significance, the means employed to issue the instructions, ballots for congressional elections, are unacceptable unless Article VIII is a permissible exercise of the State's power to regulate the manner of holding elections for Senators and Representatives. Only a brief comment on the first two points is necessary.

Petitioner relies heavily on the part instructions played in the Second Continental Congress, the Constitutional Convention, the early Congress, the selection of United States Senators before the passage of the Seventeenth Amendment, and the ratification of certain federal constitutional amendments.[13] However, unlike Article VIII, none of petitioner's examples was coupled with an express legal sanction for disobedience.[14] At best, as an *amicus curiae* for petitioner points out, and as petitioner herself acknowledges, such historical instructions at one point in the early Republic may have had "de facto binding force" because it might have been "political suicide" not to follow them.[15] This evidence falls short of demonstrating that either the people or the States

[13] Brief for Petitioner 10–17.

[14] For example, the Provincial Congress of North Carolina passed the following instruction on April 12, 1776: "*Resolved*, That the Delegates for this Colony in the Continental Congress be empowered to concur with the Delegates of the other Colonies in declaring Independency, and forming foreign alliances, reserving to this Colony the sole and exclusive right of forming a Constitution and Laws for this Colony . . . ." 5 American Archives 860 (P. Force ed. 1844).

[15] Brief for Professor Kris W. Kobach as *Amicus Curiae* 5, 13; see Brief for Petitioner 14, n. 13. But see 1 Annals of Cong. 744 (1789) (remarks of Rep. Wadsworth) ("I have known, myself, that [instructions] have been disobeyed, and yet the representative was not brought to account for it; on the contrary, he was caressed and re-elected, while those who have obeyed them, contrary to their private sentiments, have ever after been despised for it").

had a right to give legally binding, *i. e.*, nonadvisory, instructions to their representatives that the Tenth Amendment reserved, much less that such a right would apply to federal representatives. See *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 802 (Tenth Amendment "could only 'reserve' that which existed before"); cf. *McCulloch* v. *Maryland*, 4 Wheat. 316, 430 (1819) (rejecting argument that States had reserved power to tax corporations chartered by Congress because an "original right to tax" such federal entities "never existed").

Indeed, contrary evidence is provided by the fact that the First Congress rejected a proposal to insert a right of the people "to instruct their representatives" into what would become the First Amendment. 1 Annals of Cong. 732 (1789). The fact that the proposal was made suggests that its proponents thought it necessary, and the fact that it was rejected by a vote of 41 to 10, *id.*, at 747, suggests that we should give weight to the views of those who opposed the proposal. It was their view that binding instructions would undermine an essential attribute of Congress by eviscerating the deliberative nature of that National Assembly. See, *e. g.*, *id.*, at 735 (remarks of Rep. Sherman) ("[W]hen the people have chosen a representative, it is his duty to meet others from the different parts of the Union, and consult, and agree with them to such acts as are for the general benefit of the whole community. If they were to be guided by instructions, there would be no use in deliberation; all that a man would have to do, would be to produce his instructions, and lay them on the table, and let them speak for him"). As a result, James Madison, then a Representative from Virginia, concluded that a right to issue binding instructions would "run the risk of losing the whole system." *Id.*, at 739; see also *id.*, at 735 (remarks of Rep. Clymer) (proposed right to give binding instructions was "a most dangerous principle, utterly destructive of all ideas of an independent and deliber-

ative body, which are essential requisites in the Legislatures of free Governments").[16]

In any event, even assuming the existence of the reserved right that petitioner asserts (and that Article VIII falls within its ambit), the question remains whether the State may use ballots for congressional elections as a means of giving its instructions binding force.

IV

The federal offices at stake "aris[e] from the Constitution itself." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 805. Because any state authority to regulate election to those offices could not precede their very creation by the Constitution, such power "had to be delegated to, rather than reserved by, the States." *Id.*, at 804. Cf. 1 Story § 627 ("It is no original prerogative of state power to appoint a representative, a senator, or president for the union"). Through the Elections Clause, the Constitution delegated to the States the power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives," subject to a grant of authority to Congress to "make or alter such Regulations." Art. I, § 4, cl. 1; see *United States* v. *Classic*, 313 U. S. 299, 315 (1941). No other constitutional

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[16] Of course, whether the members of a representative assembly should be bound by the views of their constituents, or by their own judgment, is a matter that has been the subject of debate since even before the Federal Union was established. For instance, in his classic speech to the electors of Bristol, Edmund Burke set forth the latter view:

"To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience, these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution." The Speeches of the Right Hon. Edmund Burke 130 (J. Burke ed. 1867).

provision gives the States authority over congressional elections, and no such authority could be reserved under the Tenth Amendment. By process of elimination, the States may regulate the incidents of such elections, including balloting, only within the exclusive delegation of power under the Elections Clause.

With respect to the Elections Clause, petitioner argues that Article VIII "merely regulates the manner in which elections are held by disclosing information about congressional candidates."[17] As such, petitioner concludes, Article VIII is a valid exercise of Missouri's delegated power.

We disagree. To be sure, the Elections Clause grants to the States "broad power" to prescribe the procedural mechanisms for holding congressional elections. *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217 (1986); see also *Smiley* v. *Holm,* 285 U. S. 355, 366 (1932) ("It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections"). Nevertheless, Article VIII falls outside of that grant of authority. As we made clear in *U. S. Term Limits*, "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U. S., at 833–834. Article VIII is not a procedural regulation. It does not regulate the time of elections; it does not regulate the place of elections; nor, we believe, does it regulate the manner of elections.[18] As to the last point, Article VIII bears no relation to the "manner" of elections as we understand it, for in our commonsense view that term encompasses matters like "notices, registration, supervision of voting, protection of voters, prevention of fraud and cor-

[17] Brief for Petitioner 28; see also *id.*, at 38.

[18] Petitioner once shared our belief, when, in deposition testimony before the District Court, she admitted that Article VIII does not regulate the time, place, or manner of elections. App. 58.

rupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley,* 285 U. S., at 366; see also *U. S. Term Limits, Inc.* v. *Thornton,* 514 U. S., at 833. In short, Article VIII is not among "the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved," *Smiley,* 285 U. S., at 366, ensuring that elections are "fair and honest," and that "some sort of order, rather than chaos, is to accompany the democratic process," *Storer* v. *Brown,* 415 U. S. 724, 730 (1974).

Rather, Article VIII is plainly designed to favor candidates who are willing to support the particular form of a term limits amendment set forth in its text and to disfavor those who either oppose term limits entirely or would prefer a different proposal. Cf. *Anderson* v. *Celebrezze,* 460 U. S. 780, 788, n. 9 (1983) ("We have upheld generally applicable and evenhanded [ballot access] restrictions that protect the integrity and reliability of the electoral process itself"). As noted, the state provision does not just "instruct" each member of Missouri's congressional delegation to promote in certain ways the passage of the specified term limits amendment. It also attaches a concrete consequence to noncompliance—the printing of the statement "DISREGARDED VOTERS' INSTRUCTIONS ON TERM LIMITS" by the candidate's name on all primary and general election ballots. Likewise, a nonincumbent candidate who does not pledge to follow the instruction receives the ballot designation "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."

In describing the two labels, the courts below have employed terms such as "pejorative," "negative," "derogatory," " 'intentionally intimidating,' " "particularly harmful," "politically damaging," "a serious sanction," "a penalty," and "official denunciation." 191 F. 3d, at 918, 919, 922, 925; 996 F. Supp., at 908; see *id.,* at 910, 916. The general counsel to

petitioner's office, no less, has denominated the labels as "the Scarlet Letter." App. 34–35. We agree with the sense of these descriptions. They convey the substantial political risk the ballot labels impose on current and prospective congressional members who, for one reason or another, fail to comply with the conditions set forth in Article VIII for passing its term limits amendment. Although petitioner now claims that the labels "merely" inform Missouri voters about a candidate's compliance with Article VIII, she has acknowledged under oath that the ballot designations would handicap candidates for the United States Congress. *Id.*, at 66. To us, that is exactly the intended effect of Article VIII.

Indeed, it seems clear that the adverse labels handicap candidates "at the most crucial stage in the election process—the instant before the vote is cast." *Anderson* v. *Martin*, 375 U. S. 399, 402 (1964). At the same time, "by directing the citizen's attention to the single consideration" of the candidates' fidelity to term limits, the labels imply that the issue "is an important—perhaps paramount—consideration in the citizen's choice, which may decisively influence the citizen to cast his ballot" against candidates branded as unfaithful. *Ibid.* While the precise damage the labels may exact on candidates is disputed between the parties, the labels surely place their targets at a political disadvantage to unmarked candidates for congressional office.[19] Thus, far from

[19] That much, apparently, also seemed clear to many Members of Congress operating under Article VIII or similar label laws adopted by other States, who consequently tailored their behavior to avoid the ballot designations. For example, in 1997, the House of Representatives voted on 11 different proposals to adopt a term limits amendment to the Constitution; 7 of those proposals were dictated by voter initiatives in 7 different States. Representative Blunt of Missouri introduced the Article VIII version to "ensure that members of the Missouri delegation have the ability to vote for language that meets a verbatim test of [the] Missouri Amendment" and thereby avoid "the scarlet letter provision." 143 Cong. Rec. H494 (Feb. 12, 1997). However, because each of the state initiatives provided

regulating the procedural mechanisms of elections, Article VIII attempts to "dictate electoral outcomes." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S., at 833–834. Such "regulation" of congressional elections simply is not authorized by the Elections Clause.[20]

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a sanction similar to the ballot labels included in Article VIII, some Representatives explained that they were constrained to vote only for the version endorsed by the voters of their States, and to vote against differing versions proposed by congressional members from other States, even though they were supportive of term limits generally. See, *e. g.*, *id.*, at H486 (remarks of Rep. Hutchinson) ("I will vote against the bill of the gentleman from Florida [Mr. McCollum], not because I am opposed to term limits but because this particular resolution does not comply with the term limit instructions approved by the voters and the people of Arkansas"); *id.*, at H490 (remarks of Rep. Crapo) ("Last Congress I supported the McCollum term limits bill that, as I said, supported a 12-year term limit. However, in this Congress I must oppose this bill because of the initiative passed by the people of the State of Idaho which requires me to oppose any term limits measure that does not have the same set of term limit conditions that are included in the initiative that was passed in the State"). As Representative Frank of Massachusetts put it, "[e]very State's Members get to vote on their State's term limits so they make them feel better and they do not get the scarlet letter." *Id.*, at H487. Consequently, the most popular proposal for such an amendment, that of Representative McCollum of Florida, received 217 votes, 10 fewer than it had in the preceding Congress. *Id.*, at H511. As for the Missouri version, it suffered a 353-to-72 defeat. *Id.*, at H497.

[20] At the margins, the parties have fought over whether the Elections Clause is even applicable because it is a grant of power to "each State by the Legislature thereof" and Article VIII is the product of referendum. Compare Brief for Petitioner 38, n. 46, with Brief for Respondents 12–13, n. 8. Of course, "[w]herever the term 'legislature' is used in the Constitution, it is necessary to consider the nature of the particular action in view." *Smiley* v. *Holm*, 285 U. S. 355, 366 (1932). Nevertheless, we need not delve into this inquiry, as it is clear, for the reasons stated in the text, that Article VIII is not authorized by the Elections Clause.

In discussing the Elections Clause issue, respondents have also relied in part on First Amendment cases upholding "time, place, and manner" regulations of speech. Brief for Respondents 13–14. Although the Elections Clause uses the same phrase as that branch of our First Amendment

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE KENNEDY, concurring.

I join the opinion of the Court, holding § 15 *et seq.* of Article VIII of the Missouri Constitution violative of the Constitution of the United States. It seems appropriate, however, to add these brief observations with respect to Part III of the opinion. The Court does not say the States are disabled from requesting specific action from Congress or from expressing their concerns to it. As the Court holds, however, the mechanism the State seeks to employ here goes well beyond this prerogative.

A State is not permitted to interpose itself between the people and their National Government as it seeks to do here. Whether a State's concern is with the proposed enactment of a constitutional amendment or an ordinary federal statute it simply lacks the power to impose any conditions on the election of Senators and Representatives, save neutral provisions as to the time, place, and manner of elections pursuant to Article I, § 4. As the Court observed in *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779 (1995), the Elections Clause is a "grant of authority to issue procedural regulations," and not "a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *Id.*, at 833–834. The Elections Clause thus delegates but limited power over federal elections to the States. *Id.*, at 804. The Court rules, as it must, that the amendments to Article VIII of the Missouri Constitution do not regulate the time or place of federal elections; rather, those provisions are an attempt to control the actions of the State's congressional delegation.

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jurisprudence, it by no means follows that such cases have any relevance to our disposition of this case.

The dispositive principle in this case is fundamental to the Constitution, to the idea of federalism, and to the theory of representative government. The principle is that Senators and Representatives in the National Government are responsible to the people who elect them, not to the States in which they reside. The Constitution was ratified by Conventions in the several States, not by the States themselves, U. S. Const., Art. VII, a historical fact and a constitutional imperative which underscore the proposition that the Constitution was ordained and established by the people of the United States. U. S. Const., preamble. The idea of federalism is that a National Legislature enacts laws which bind the people as individuals, not as citizens of a State; and, it follows, freedom is most secure if the people themselves, not the States as intermediaries, hold their federal legislators to account for the conduct of their office. If state enactments were allowed to condition or control certain actions of federal legislators, accountability would be blurred, with the legislators having the excuse of saying that they did not act in the exercise of their best judgment but simply in conformance with a state mandate. As noted in the concurring opinion in *Thornton*, "[n]othing in the Constitution or The Federalist Papers . . . supports the idea of state interference with the most basic relation between the National Government and its citizens, the selection of legislative representatives." 514 U. S., at 842. Yet that is just what Missouri seeks to do through its law—to wield the power granted to it by the Elections Clause to handicap those who seek federal office by affixing pejorative labels next to their names on the ballot if they do not pledge to support the State's preferred position on a certain issue. Neither the design of the Constitution nor sound principles of representative government are consistent with the right or power of a State to interfere with the direct line of accountability between the National Legislature and the people who elect it. For these reasons Article VIII is void.

This said, it must be noted that when the Constitution was enacted, respectful petitions to legislators were an accepted mode of urging legislative action. See W. Miller, Arguing About Slavery 105–107 (1995). This right is preserved to individuals (the people) in the First Amendment. Even if a State, as an entity, is not itself protected by the Petition Clause, there is no principle prohibiting a state legislature from following a parallel course and by a memorial resolution requesting the Congress of the United States to pay heed to certain state concerns. From the earliest days of our Republic to the present time, States have done so in the context of federal legislation. See, *e. g.*, 22 Annals of Cong. 153–154 (1811) (reprinting a resolution by the General Assembly of the Commonwealth of Pennsylvania requesting that the charter of the Bank of the United States not be renewed); 2000 Ala. Acts 66 (requesting targeted relief for Medicare cuts); 2000 Kan. Sess. Laws, ch. 186 (urging Congress to allow state-inspected meat to be shipped in interstate commerce). Indeed, the situation was even more complex in the early days of our Nation, when Senators were appointed by state legislatures rather than directly elected. At that time, it appears that some state legislatures followed a practice of instructing the Senators whom they had appointed to pass legislation, while only requesting that the Representatives, who had been elected by the people, do so. See 22 Annals of Cong., at 153–154. I do not believe that the situation should be any different with respect to a proposed constitutional amendment, and indeed history bears this out. See, *e. g.*, 13 Annals of Cong. 95–96 (1803) (reprinting a resolution from the State of Vermont and the Commonwealth of Massachusetts requesting that Congress propose to the legislatures of the States a constitutional amendment akin to the Twelfth Amendment). The fact that the Members of the First Congress decided not to codify a right to instruct legislative representatives does not, in my view, prove that they

intended to prohibit nonbinding petitions or memorials by the State as an entity.

If there are to be cases in which a close question exists regarding whether the State has exceeded its constitutional authority in attempting to influence congressional action, this case is not one of them. In today's case the question is not close. Here the State attempts to intrude upon the relationship between the people and their congressional delegates by seeking to control or confine the discretion of those delegates, and the interference is not permissible.

With these observations, I concur in the Court's opinion.

JUSTICE THOMAS, concurring in Parts I and IV and concurring in the judgment.

I continue to believe that, because they possess "reserved" powers, "the people of the States need not point to any affirmative grant of power in the Constitution in order to prescribe qualifications for their representatives in Congress, or to authorize their elected state legislators to do so." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 846 (1995) (THOMAS, J., dissenting). For this reason, I disagree with the Court's premise, derived from *U. S. Term Limits*, that the States have no authority to regulate congressional elections except for the authority that the Constitution expressly delegates to them. See *ante*, at 522. Nonetheless, the parties conceded the validity of this premise, see Brief for Petitioner 25–26; Brief for Respondents 12–13, and I therefore concur.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR joins, concurring in the judgment.

I would affirm the judgment of the Court of Appeals, but on the ground that Missouri's Article VIII violates the First Amendment to the United States Constitution. Specifically, I believe that Article VIII violates the First Amendment right of a political candidate, once lawfully on the ballot, to

have his name appear unaccompanied by pejorative language required by the State. Our ballot access cases based on First Amendment grounds have rarely distinguished between the rights of candidates and the rights of voters. In *Bullock* v. *Carter*, 405 U. S. 134, 143 (1972), we said: "[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." And in *Anderson* v. *Celebrezze*, 460 U. S. 780, 787 (1983), we said that "voters can assert their preferences only through candidates or parties or both." Actions such as the present one challenging ballot provisions have in most instances been brought by the candidates themselves, and no one questions the standing of respondents Gralike and Harmon to raise a First Amendment challenge to such laws.*

Article I, § 4, provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ." Missouri justifies Article VIII as a "time, place, and manner" regulation of election. Restrictions of this kind are valid "provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984). Missouri's Article VIII flunks two of these three requirements. Article VIII is not only not content neutral, but it

*The Court of Appeals upheld their First Amendment claim, but based its reasoning on the view that the ballot statements were "compelled speech" by the candidate, and therefore ran afoul of cases such as *Wooley* v. *Maynard*, 430 U. S. 705 (1977). I do not agree with the reasoning of the Court of Appeals. I do not believe a reasonable voter, viewing the ballot labeled as Article VIII requires, would think that the candidate in question chose to characterize himself as having "disregarded voters' instructions" or as "having declined to pledge" to support term limits.

actually discriminates on the basis of viewpoint because only those candidates who fail to conform to the State's position receive derogatory labels. The result is that the State injects itself into the election process at an absolutely critical point—the composition of the ballot, which is the last thing the voter sees before he makes his choice—and does so in a way that is not neutral as to issues or candidates. The candidates who are thus singled out have no means of replying to their designation which would be equally effective with the voter.

In *Anderson* v. *Martin*, 375 U. S. 399 (1964), we held that a Louisiana statute requiring the designation of a candidate's race on the ballot violated the Equal Protection Clause. In describing the effect of such a designation, the Court said: "[B]y directing the citizen's attention to the single consideration of race or color, the State indicates that a candidate's race or color is an important—perhaps paramount—consideration in the citizen's choice, which may decisively influence the citizen to cast his ballot along racial lines." *Id.*, at 402. So, too, here the State has chosen one and only one issue to comment on the position of the candidates. During the campaign, they may debate tax reform, Social Security, national security, and a host of other issues; but when it comes to the ballot on which one or the other of them is chosen, the State is saying that the issue of term limits is paramount. Although uttered in a different context, what we said in *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972), is equally applicable here: "[Government] may not select which issues are worth discussing or debating."

If other Missouri officials feel strongly about the need for term limits, they are free to urge rejection of candidates who do not share their view and refuse to "take the pledge." Such candidates are able to respond to that sort of speech with speech of their own. But the State itself may not skew the ballot listings in this way without violating the First Amendment.

Syllabus

LEGAL SERVICES CORPORATION *v.* VELAZQUEZ ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 99–603. Argued October 4, 2000—Decided February 28, 2001*

The Legal Services Corporation Act authorizes petitioner Legal Services Corporation (LSC) to distribute funds appropriated by Congress to local grantee organizations providing free legal assistance to indigent clients in, *inter alia*, welfare benefits claims. In every annual appropriations Act since 1996, Congress has prohibited LSC funding of any organization that represented clients in an effort to amend or otherwise challenge existing welfare law. Grantees cannot continue representation in a welfare matter even where a constitutional or statutory validity challenge becomes apparent after representation is well under way. Respondents—lawyers employed by LSC grantees, together with others—filed suit to declare, *inter alia*, the restriction invalid. The District Court denied them a preliminary injunction, but the Second Circuit invalidated the restriction, finding it impermissible viewpoint discrimination that violated the First Amendment.

Held: The funding restriction violates the First Amendment. Pp. 540–549.

(a) LSC and the Government, also a petitioner, claim that *Rust* v. *Sullivan*, 500 U. S. 173, in which this Court upheld a restriction prohibiting doctors employed by federally funded family planning clinics from discussing abortion with their patients, supports the restriction here. However, the Court has since explained that the *Rust* counseling activities amounted to governmental speech, sustaining viewpoint-based funding decisions in instances in which the government is itself the speaker, see *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 229, 235, or instances, like *Rust*, in which the government uses private speakers to transmit information pertaining to its own program, *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833. Although the government has the latitude to ensure that its own message is being delivered, neither that latitude nor its rationale applies to subsidies for private speech in every instance. Like the *Rosenberger*

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*Together with No. 99–960, *United States* v. *Velazquez et al.*, also on certiorari to the same court.

program, the LSC program was designed to facilitate private speech, not to promote a governmental message. An LSC attorney speaks on behalf of a private, indigent client in a welfare benefits claim, while the Government's message is delivered by the attorney defending the benefits decision. The attorney's advice to the client and advocacy to the courts cannot be classified as governmental speech even under a generous understanding of that concept. In this vital respect this suit is distinguishable from *Rust*. Pp. 540–543.

(b) The private nature of the instant speech, and the extent of LSC's regulation of private expression, are indicated further by the circumstance that the Government seeks to control an existing medium of expression in ways which distort its usual functioning. Cases involving a limited forum, though not controlling, provide instruction for evaluating restrictions in governmental subsidies. Here the program presumes that private, nongovernmental speech is necessary, and a substantial restriction is placed upon that speech. By providing subsidies to LSC, the Government seeks to facilitate suits for benefits by using the State and Federal Judiciaries and the independent bar on which they depend for the proper performance of their duties and responsibilities. Restricting LSC attorneys in advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the attorneys' traditional role in much the same way broadcast systems or student publication networks were changed in the limited forum cases of *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666, and *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, *supra*. The Government may not design a subsidy to effect such a serious and fundamental restriction on the advocacy of attorneys and the functioning of the judiciary. An informed, independent judiciary presumes an informed, independent bar. However, the instant restriction prevents LSC attorneys from advising the courts of serious statutory validity questions. It also threatens severe impairment of the judicial function by sifting out cases presenting constitutional challenges in order to insulate the Government's laws from judicial inquiry. The result of this restriction would be two tiers of cases. There would be lingering doubt whether an LSC attorney's truncated representation had resulted in complete analysis of the case, full advice to the client, and proper presentation to the court; and the courts and the public would come to question the adequacy and fairness of professional representations when the attorney avoided all reference to statutory validity and constitutional authority questions. A scheme so inconsistent with accepted separation-of-powers principles is an insufficient basis to sustain or uphold the restriction on speech. Pp. 543–546.

Syllabus

(c) That LSC attorneys can withdraw does not make the restriction harmless, for the statute is an attempt to draw lines around the LSC program to exclude from litigation arguments and theories Congress finds unacceptable but which by their nature are within the courts' province to consider. The restriction is even more problematic because in cases where the attorney withdraws, the indigent client is unlikely to find other counsel. There may be no alternative source of vital information on the client's constitutional or statutory rights, in stark contrast to *Rust*, where a patient could receive both governmentally subsidized counseling and consultation with independent or affiliate organizations. Finally, notwithstanding Congress' purpose to confine and limit its program, the restriction insulates current welfare laws from constitutional scrutiny and certain other legal challenges, a condition implicating central First Amendment concerns. There can be little doubt that the LSC Act funds constitutionally protected expression; and there is no programmatic message of the kind recognized in *Rust* and which sufficed there to allow the Government to specify the advice deemed necessary for its legitimate objectives. Pp. 546–549.

(d) The Court of Appeals concluded that the funding restriction could be severed from the statute, leaving the remaining portions operative. Because that determination was not contested here, the Court in the exercise of its discretion and prudential judgment declines to address it. P. 549.

164 F. 3d 757, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion in which REHNQUIST, C. J., and O'CONNOR and THOMAS, JJ., joined, *post*, p. 549.

Alan Levine argued the cause for petitioner in No. 99–603. With him on the briefs was *Stephen L. Ascher*.

Deputy Solicitor General Kneedler argued the cause for the United States in No. 99–960. With him on the briefs were *Solicitor General Waxman*, *Acting Assistant Attorney General Ogden*, *Beth S. Brinkmann*, *Barbara L. Herwig*, and *Matthew M. Collette*.

Burt Neuborne argued the cause for respondents in both cases. With him on the brief were *Laura K. Abel*, *Kimani*

Paul-Emile, Paul K. Sonn, David S. Udell, Peter M. Fishbein, and *Alan E. Rothman.*†

JUSTICE KENNEDY delivered the opinion of the Court.

In 1974, Congress enacted the Legal Services Corporation Act, 88 Stat. 378, 42 U. S. C. § 2996 *et seq.* The Act establishes the Legal Services Corporation (LSC) as a District of Columbia nonprofit corporation. LSC's mission is to distribute funds appropriated by Congress to eligible local grantee organizations "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." § 2996b(a).

LSC grantees consist of hundreds of local organizations governed, in the typical case, by local boards of directors. In many instances the grantees are funded by a combination of LSC funds and other public or private sources. The grantee organizations hire and supervise lawyers to provide free legal assistance to indigent clients. Each year LSC appropriates funds to grantees or recipients that hire and supervise lawyers for various professional activities, including representation of indigent clients seeking welfare benefits.

This suit requires us to decide whether one of the conditions imposed by Congress on the use of LSC funds violates the First Amendment rights of LSC grantees and their clients. For purposes of our decision, the restriction, to be quoted in further detail, prohibits legal representation

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†Briefs of *amici curiae* urging reversal were filed for the Pacific Legal Foundation by *John H. Findley;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *R. Shawn Gunnarson.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Arthur N. Eisenberg* and *Steven R. Shapiro;* and for the New York State Bar Association et al. by *Bruce A. Green* and *Lawrence S. Lustberg.*

Frederick A. O. Schwarz, Jr., filed a brief for the American Judicature Society as *amicus curiae.*

funded by recipients of LSC moneys if the representation involves an effort to amend or otherwise challenge existing welfare law. As interpreted by the LSC and by the Government, the restriction prevents an attorney from arguing to a court that a state statute conflicts with a federal statute or that either a state or federal statute by its terms or in its application is violative of the United States Constitution.

Lawyers employed by New York City LSC grantees, together with private LSC contributors, LSC indigent clients, and various state and local public officials whose governments contribute to LSC grantees, brought suit in the United States District Court for the Eastern District of New York to declare the restriction, among other provisions of the Act, invalid. The United States Court of Appeals for the Second Circuit approved an injunction against enforcement of the provision as an impermissible viewpoint-based discrimination in violation of the First Amendment, 164 F. 3d 757 (1999). We granted certiorari, and the parties who commenced the suit in the District Court are here as respondents. The LSC as petitioner is joined by the Government of the United States, which had intervened in the District Court. We agree that the restriction violates the First Amendment, and we affirm the judgment of the Court of Appeals.

I

From the inception of the LSC, Congress has placed restrictions on its use of funds. For instance, the LSC Act prohibits recipients from making available LSC funds, program personnel, or equipment to any political party, to any political campaign, or for use in "advocating or opposing any ballot measures." 42 U. S. C. § 2996e(d)(4). See § 2996e(d)(3). The Act further proscribes use of funds in most criminal proceedings and in litigation involving nontherapeutic abortions, secondary school desegregation, military desertion, or violations of the Selective Service statute. §§ 2996f(b)(8)–(10) (1994 ed. and Supp. IV). Fund recipients

are barred from bringing class-action suits unless express approval is obtained from LSC. § 2996e(d)(5).

The restrictions at issue were part of a compromise set of restrictions enacted in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (1996 Act), § 504, 110 Stat. 1321–53, and continued in each subsequent annual appropriations Act. The relevant portion of § 504(a)(16) prohibits funding of any organization

> "that initiates legal representation or participates in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude a recipient from representing an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation."

The prohibitions apply to all of the activities of an LSC grantee, including those paid for by non-LSC funds. §§ 504(d)(1) and (2). We are concerned with the statutory provision which excludes LSC representation in cases which "involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation."

In 1997, LSC adopted final regulations clarifying § 504(a)(16). 45 CFR pt. 1639 (1999). LSC interpreted the statutory provision to allow indigent clients to challenge welfare agency determinations of benefit ineligibility under interpretations of existing law. For example, an LSC grantee could represent a welfare claimant who argued that an agency made an erroneous factual determination or that an agency misread or misapplied a term contained in an existing welfare statute. According to LSC, a grantee in that position could argue as well that an agency policy violated existing law. § 1639.4. Under LSC's interpretation, however,

grantees could not accept representations designed to change welfare laws, much less argue against the constitutionality or statutory validity of those laws. Brief for Petitioner in No. 99–603, p. 7. Even in cases where constitutional or statutory challenges became apparent after representation was well under way, LSC advised that its attorneys must withdraw. *Ibid.*

After the instant suit was filed in the District Court alleging the restrictions on the use of LSC funds violated the First Amendment, see 985 F. Supp. 323 (1997), the court denied a preliminary injunction, finding no probability of success on the merits. *Id.*, at 344.

On appeal, the Court of Appeals for the Second Circuit affirmed in part and reversed in part. 164 F. 3d 757 (1999). As relevant for our purposes, the court addressed respondents' challenges to the restrictions in § 504(a)(16). It concluded the section specified four categories of prohibited activities, of which "three appear[ed] to prohibit the type of activity named regardless of viewpoint, while one might be read to prohibit the activity only when it seeks reform." *Id.*, at 768. The court upheld the restrictions on litigation, lobbying, and rulemaking "involving an effort to reform a Federal or State welfare system," since all three prohibited grantees' involvement in these activities regardless of the side of the issue. *Id.*, at 768–769.

The court next considered the exception to § 504(a)(16) that allows representation of "'an individual eligible client who is seeking specific relief from a welfare agency.'" The court invalidated, as impermissible viewpoint discrimination, the qualification that representation could "not involve an effort to amend or otherwise challenge existing law," because it "clearly seeks to discourage challenges to the status quo." *Id.*, at 769–770.

Left to decide what part of the 1996 Act to strike as invalid, the court concluded that congressional intent regarding severability was unclear. It decided to "invalidate the

smallest possible portion of the statute, excising only the viewpoint-based proviso rather than the entire exception of which it is a part." *Id.*, at 773.

Dissenting in part, Judge Jacobs agreed with the majority except for its holding that the proviso banning challenges to existing welfare laws effected impermissible viewpoint-based discrimination. The provision, in his view, was permissible because it merely defined the scope of services to be funded. *Id.*, at 773–778 (opinion concurring in part and dissenting in part).

LSC filed a petition for certiorari challenging the Court of Appeals' conclusion that the § 504(a)(16) suits-for-benefits proviso was unconstitutional. We granted certiorari, 529 U. S. 1052 (2000).

II

The United States and LSC rely on *Rust* v. *Sullivan*, 500 U. S. 173 (1991), as support for the LSC program restrictions. In *Rust*, Congress established program clinics to provide subsidies for doctors to advise patients on a variety of family planning topics. Congress did not consider abortion to be within its family planning objectives, however, and it forbade doctors employed by the program from discussing abortion with their patients. *Id.*, at 179–180. Recipients of funds under Title X of the Public Health Service Act, §§ 1002, 1008, as added, 84 Stat. 1506, 1508, 42 U. S. C. §§ 300a, 300a–6, challenged the Act's restriction that provided that none of the Title X funds appropriated for family planning services could "be used in programs where abortion is a method of family planning." § 300a–6. The recipients argued that the regulations constituted impermissible viewpoint discrimination favoring an antiabortion position over a proabortion approach in the sphere of family planning. 500 U. S., at 192. They asserted as well that Congress had imposed an unconstitutional condition on recipients of federal funds by requiring them to relinquish their right to engage

in abortion advocacy and counseling in exchange for the subsidy. *Id.*, at 196.

We upheld the law, reasoning that Congress had not discriminated against viewpoints on abortion, but had "merely chosen to fund one activity to the exclusion of the other." *Id.*, at 193. The restrictions were considered necessary "to ensure that the limits of the federal program [were] observed." *Ibid.* Title X did not single out a particular idea for suppression because it was dangerous or disfavored; rather, Congress prohibited Title X doctors from counseling that was outside the scope of the project. *Id.*, at 194–195.

The Court in *Rust* did not place explicit reliance on the rationale that the counseling activities of the doctors under Title X amounted to governmental speech; when interpreting the holding in later cases, however, we have explained *Rust* on this understanding. We have said that viewpoint-based funding decisions can be sustained in instances in which the government is itself the speaker, see *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 229, 235 (2000), or instances, like *Rust*, in which the government "used private speakers to transmit specific information pertaining to its own program." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833 (1995). As we said in *Rosenberger*, "[w]hen the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Ibid.* The latitude which may exist for restrictions on speech where the government's own message is being delivered flows in part from our observation that, "[w]hen the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy. If the citizenry objects, newly elected officials later could espouse some different or con-

trary position." *Board of Regents of Univ. of Wis. System* v. *Southworth*, *supra*, at 235.

Neither the latitude for government speech nor its rationale applies to subsidies for private speech in every instance, however. As we have pointed out, "[i]t does not follow . . . that viewpoint-based restrictions are proper when the [government] does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers." *Rosenberger*, *supra*, at 834.

Although the LSC program differs from the program at issue in *Rosenberger* in that its purpose is not to "encourage a diversity of views," the salient point is that, like the program in *Rosenberger*, the LSC program was designed to facilitate private speech, not to promote a governmental message. Congress funded LSC grantees to provide attorneys to represent the interests of indigent clients. In the specific context of § 504(a)(16) suits for benefits, an LSC-funded attorney speaks on the behalf of the client in a claim against the government for welfare benefits. The lawyer is not the government's speaker. The attorney defending the decision to deny benefits will deliver the government's message in the litigation. The LSC lawyer, however, speaks on the behalf of his or her private, indigent client. Cf. *Polk County* v. *Dodson*, 454 U. S. 312, 321–322 (1981) (holding that a public defender does not act "under color of state law" because he "works under canons of professional responsibility that mandate his exercise of independent judgment on behalf of the client" and because there is an "assumption that counsel will be free of state control").

The Government has designed this program to use the legal profession and the established Judiciary of the States and the Federal Government to accomplish its end of assisting welfare claimants in determination or receipt of their benefits. The advice from the attorney to the client and the advocacy by the attorney to the courts cannot be classified

as governmental speech even under a generous understanding of the concept. In this vital respect this suit is distinguishable from *Rust*.

The private nature of the speech involved here, and the extent of LSC's regulation of private expression, are indicated further by the circumstance that the Government seeks to use an existing medium of expression and to control it, in a class of cases, in ways which distort its usual functioning. Where the government uses or attempts to regulate a particular medium, we have been informed by its accepted usage in determining whether a particular restriction on speech is necessary for the program's purposes and limitations. In *FCC* v. *League of Women Voters of Cal.*, 468 U. S. 364 (1984), the Court was instructed by its understanding of the dynamics of the broadcast industry in holding that prohibitions against editorializing by public radio networks were an impermissible restriction, even though the Government enacted the restriction to control the use of public funds. The First Amendment forbade the Government from using the forum in an unconventional way to suppress speech inherent in the nature of the medium. See *id.*, at 396–397. In *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666, 676 (1998), the dynamics of the broadcasting system gave station programmers the right to use editorial judgment to exclude certain speech so that the broadcast message could be more effective. And in *Rosenberger*, the fact that student newspapers expressed many different points of view was an important foundation for the Court's decision to invalidate viewpoint-based restrictions. 515 U. S., at 836.

When the government creates a limited forum for speech, certain restrictions may be necessary to define the limits and purposes of the program. *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37 (1983); see also *Lamb's Chapel* v. *Center Moriches Union Free School Dist.*, 508 U. S. 384 (1993). The same is true when the government establishes a subsidy for specified ends. *Rust* v. *Sullivan*, 500 U. S. 173

(1991). As this suit involves a subsidy, limited forum cases such as *Perry*, *Lamb's Chapel*, and *Rosenberger* may not be controlling in a strict sense, yet they do provide some instruction. Here the program presumes that private, nongovernmental speech is necessary, and a substantial restriction is placed upon that speech. At oral argument and in its briefs the LSC advised us that lawyers funded in the Government program may not undertake representation in suits for benefits if they must advise clients respecting the questionable validity of a statute which defines benefit eligibility and the payment structure. The limitation forecloses advice or legal assistance to question the validity of statutes under the Constitution of the United States. It extends further, it must be noted, so that state statutes inconsistent with federal law under the Supremacy Clause may be neither challenged nor questioned.

By providing subsidies to LSC, the Government seeks to facilitate suits for benefits by using the state and federal courts and the independent bar on which those courts depend for the proper performance of their duties and responsibilities. Restricting LSC attorneys in advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the traditional role of the attorneys in much the same way broadcast systems or student publication networks were changed in the limited forum cases we have cited. Just as government in those cases could not elect to use a broadcasting network or a college publication structure in a regime which prohibits speech necessary to the proper functioning of those systems, see *Arkansas Ed. Television Comm'n*, *supra*, and *Rosenberger*, *supra*, it may not design a subsidy to effect this serious and fundamental restriction on advocacy of attorneys and the functioning of the judiciary.

LSC has advised us, furthermore, that upon determining a question of statutory validity is present in any anticipated or pending case or controversy, the LSC-funded attorney

must cease the representation at once. This is true whether the validity issue becomes apparent during initial attorney-client consultations or in the midst of litigation proceedings. A disturbing example of the restriction was discussed during oral argument before the Court. It is well understood that when there are two reasonable constructions for a statute, yet one raises a constitutional question, the Court should prefer the interpretation which avoids the constitutional issue. *Gomez* v. *United States*, 490 U. S. 858, 864 (1989); *Ashwander* v. *TVA*, 297 U. S. 288, 346–348 (1936) (Brandeis, J., concurring). Yet, as the LSC advised the Court, if, during litigation, a judge were to ask an LSC attorney whether there was a constitutional concern, the LSC attorney simply could not answer. Tr. of Oral Arg. 8–9.

Interpretation of the law and the Constitution is the primary mission of the judiciary when it acts within the sphere of its authority to resolve a case or controversy. *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803) ("It is emphatically the province and the duty of the judicial department to say what the law is"). An informed, independent judiciary presumes an informed, independent bar. Under § 504(a)(16), however, cases would be presented by LSC attorneys who could not advise the courts of serious questions of statutory validity. The disability is inconsistent with the proposition that attorneys should present all the reasonable and well-grounded arguments necessary for proper resolution of the case. By seeking to prohibit the analysis of certain legal issues and to truncate presentation to the courts, the enactment under review prohibits speech and expression upon which courts must depend for the proper exercise of the judicial power. Congress cannot wrest the law from the Constitution which is its source. "Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law." *Id.*, at 178.

The restriction imposed by the statute here threatens severe impairment of the judicial function. Section 504(a)(16) sifts out cases presenting constitutional challenges in order to insulate the Government's laws from judicial inquiry. If the restriction on speech and legal advice were to stand, the result would be two tiers of cases. In cases where LSC counsel were attorneys of record, there would be lingering doubt whether the truncated representation had resulted in complete analysis of the case, full advice to the client, and proper presentation to the court. The courts and the public would come to question the adequacy and fairness of professional representations when the attorney, either consciously to comply with this statute or unconsciously to continue the representation despite the statute, avoided all reference to questions of statutory validity and constitutional authority. A scheme so inconsistent with accepted separation-of-powers principles is an insufficient basis to sustain or uphold the restriction on speech.

It is no answer to say the restriction on speech is harmless because, under LSC's interpretation of the Act, its attorneys can withdraw. This misses the point. The statute is an attempt to draw lines around the LSC program to exclude from litigation those arguments and theories Congress finds unacceptable but which by their nature are within the province of the courts to consider.

The restriction on speech is even more problematic because in cases where the attorney withdraws from a representation, the client is unlikely to find other counsel. The explicit premise for providing LSC attorneys is the necessity to make available representation "to persons financially unable to afford legal assistance." 42 U. S. C. § 2996(a)(3). There often will be no alternative source for the client to receive vital information respecting constitutional and statutory rights bearing upon claimed benefits. Thus, with respect to the litigation services Congress has funded, there is no alternative channel for expression of the advocacy Con-

gress seeks to restrict. This is in stark contrast to *Rust*. There, a patient could receive the approved Title X family planning counseling funded by the Government and later could consult an affiliate or independent organization to receive abortion counseling. Unlike indigent clients who seek LSC representation, the patient in *Rust* was not required to forfeit the Government-funded advice when she also received abortion counseling through alternative channels. Because LSC attorneys must withdraw whenever a question of a welfare statute's validity arises, an individual could not obtain joint representation so that the constitutional challenge would be presented by a non-LSC attorney, and other, permitted, arguments advanced by LSC counsel.

Finally, LSC and the Government maintain that § 504(a)(16) is necessary to define the scope and contours of the federal program, a condition that ensures funds can be spent for those cases most immediate to congressional concern. In support of this contention, they suggest the challenged limitation takes into account the nature of the grantees' activities and provides limited congressional funds for the provision of simple suits for benefits. In petitioners' view, the restriction operates neither to maintain the current welfare system nor insulate it from attack; rather, it helps the current welfare system function in a more efficient and fair manner by removing from the program complex challenges to existing welfare laws.

The effect of the restriction, however, is to prohibit advice or argumentation that existing welfare laws are unconstitutional or unlawful. Congress cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise. Here, notwithstanding Congress' purpose to confine and limit its program, the restriction operates to insulate current welfare laws from constitutional scrutiny and certain other legal challenges, a condition implicating central First Amendment concerns. In no lawsuit funded by the Govern-

ment can the LSC attorney, speaking on behalf of a private client, challenge existing welfare laws. As a result, arguments by indigent clients that a welfare statute is unlawful or unconstitutional cannot be expressed in this Government-funded program for petitioning the courts, even though the program was created for litigation involving welfare benefits, and even though the ordinary course of litigation involves the expression of theories and postulates on both, or multiple, sides of an issue.

It is fundamental that the First Amendment "'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 269 (1964) (quoting *Roth* v. *United States*, 354 U. S. 476, 484 (1957)). There can be little doubt that the LSC Act funds constitutionally protected expression; and in the context of this statute there is no programmatic message of the kind recognized in *Rust* and which sufficed there to allow the Government to specify the advice deemed necessary for its legitimate objectives. This serves to distinguish § 504(a)(16) from any of the Title X program restrictions upheld in *Rust*, and to place it beyond any congressional funding condition approved in the past by this Court.

Congress was not required to fund an LSC attorney to represent indigent clients; and when it did so, it was not required to fund the whole range of legal representations or relationships. The LSC and the United States, however, in effect ask us to permit Congress to define the scope of the litigation it funds to exclude certain vital theories and ideas. The attempted restriction is designed to insulate the Government's interpretation of the Constitution from judicial challenge. The Constitution does not permit the Government to confine litigants and their attorneys in this manner. We must be vigilant when Congress imposes rules and conditions which in effect insulate its own laws from legitimate judicial challenge. Where private speech is involved, even

Congress' antecedent funding decision cannot be aimed at the suppression of ideas thought inimical to the Government's own interest. *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 548 (1983); *Speiser* v. *Randall*, 357 U. S. 513, 519 (1958).

For the reasons we have set forth, the funding condition is invalid. The Court of Appeals considered whether the language restricting LSC attorneys could be severed from the statute so that the remaining portions would remain operative. It reached the reasoned conclusion to invalidate the fragment of § 504(a)(16) found contrary to the First Amendment, leaving the balance of the statute operative and in place. That determination was not discussed in the briefs of either party or otherwise contested here, and in the exercise of our discretion and prudential judgment we decline to address it.

The judgment of the Court of Appeals is

Affirmed.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE THOMAS join, dissenting.

Section 504(a)(16) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Appropriations Act) defines the scope of a federal spending program. It does not directly regulate speech, and it neither establishes a public forum nor discriminates on the basis of viewpoint. The Court agrees with all this, yet applies a novel and unsupportable interpretation of our public-forum precedents to declare § 504(a)(16) facially unconstitutional. This holding not only has no foundation in our jurisprudence; it is flatly contradicted by a recent decision that is on all fours with the present cases. Having found the limitation upon the spending program unconstitutional, the Court then declines to consider the question of severability, allowing a judgment to stand that lets the program go forward under a version of

the statute Congress never enacted. I respectfully dissent from both aspects of the judgment.

I

The Legal Services Corporation Act of 1974 (LSC Act), 42 U. S. C. § 2996 *et seq.*, is a federal subsidy program, the stated purpose of which is to "provid[e] financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." § 2996b(a). Congress, recognizing that the program could not serve its purpose unless it was "kept free from the influence of or use by it of political pressures," § 2996(5), has from the program's inception tightly regulated the use of its funds. See *ante*, at 537–538. No Legal Services Corporation (LSC) funds may be used, for example, for "encouraging . . . labor or anti-labor activities," § 2996f(b)(6), for "litigation relating to the desegregation of any elementary or secondary school or school system," § 2996f(b)(9), or for "litigation which seeks to procure a nontherapeutic abortion," § 2996f(b)(8). Congress discovered through experience, however, that these restrictions did not exhaust the politically controversial uses to which LSC funds could be put.

Accordingly, in 1996 Congress added new restrictions to the LSC Act and strengthened existing restrictions. Among the new restrictions is the one at issue here. Section 504(a)(16) of the Appropriations Act, 110 Stat. 1321–55 to 1321–56, withholds LSC funds from every entity that "participates in any . . . way . . . in litigation, lobbying, or rulemaking . . . involving an effort to reform a Federal or State welfare system." It thus bans LSC-funded entities from participating on either side of litigation involving such statutes, from participating in rulemaking relating to the implementation of such legislation, and from lobbying Congress itself regarding any proposed changes to such legislation. See 45 CFR § 1639.3 (2000).

The restrictions relating to rulemaking and lobbying are superfluous; they duplicate general prohibitions on the use of LSC funds for those activities found elsewhere in the Appropriations Act. See §§ 504(a)(2), (3), (4). The restriction on litigation, however, is unique, and it contains a proviso specifying what the restriction does not cover. Funding recipients may "represen[t] an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation." The LSC declares in its brief, and respondents do not deny, that under these provisions the LSC can sponsor neither challenges to *nor* defenses of existing welfare reform law, Brief for Petitioner in No. 99–603, p. 29. The litigation ban is symmetrical: Litigants challenging the covered statutes or regulations do not receive LSC funding, and neither do litigants defending those laws against challenge.

If a suit for benefits raises a claim outside the scope of the LSC program, the LSC-funded lawyer may not participate in the suit. As the Court explains, if LSC-funded lawyers anticipate that a forbidden claim will arise in a prospective client's suit, they "may not undertake [the] representation," *ante*, at 544. Likewise, if a forbidden claim arises unexpectedly at trial, "LSC-funded attorney[s] must cease the representation at once," *ante*, at 544–545. See also Brief for Petitioner in No. 99–603, at 7, n. 4 (if the issue arises at trial, "the lawyer should discontinue the representation 'consistent with the applicable rules of professional responsibility' "). The lawyers may, however, and indeed *must* explain to the client why they cannot represent him. See 164 F. 3d 757, 765 (CA2 1999). They are also free to express their views of the legality of the welfare law to the client, and they may refer the client to another attorney who can accept the representation, *ibid.* See 985 F. Supp. 323, 335–336 (EDNY 1997).

II

The LSC Act is a federal subsidy program, not a federal regulatory program, and "[t]here is a basic difference between [the two]." *Maher* v. *Roe*, 432 U. S. 464, 475 (1977). Regulations directly restrict speech; subsidies do not. Subsidies, it is true, may *indirectly* abridge speech, but only if the funding scheme is "'manipulated' to have a 'coercive effect'" on those who do not hold the subsidized position. *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 587 (1998) (quoting *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 237 (1987) (SCALIA, J., dissenting)). Proving unconstitutional coercion is difficult enough when the spending program has universal coverage and excludes only certain speech—such as a tax exemption scheme excluding lobbying expenses. The Court has found such programs unconstitutional only when the exclusion was "aimed at the suppression of dangerous ideas." *Speiser* v. *Randall*, 357 U. S. 513, 519 (1958) (internal quotation marks omitted); see also *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 550 (1983). Proving the requisite coercion is harder still when a spending program is not universal but limited, providing benefits to a restricted number of recipients, see *Rust* v. *Sullivan*, 500 U. S. 173, 194–195 (1991). The Court has found such selective spending unconstitutionally coercive only once, when the government created a public forum with the spending program but then discriminated in distributing funding within the forum on the basis of viewpoint. See *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829–830 (1995). When the limited spending program does not create a public forum, proving coercion is virtually impossible, because simply denying a subsidy "does not 'coerce' belief," *Lyng* v. *Automobile Workers*, 485 U. S. 360, 369 (1988), and because the criterion of unconstitutionality is whether denial of the subsidy threatens "to drive certain ideas or viewpoints from the marketplace," *National Endowment for Arts* v. *Finley*, *supra*, at 587 (internal quota-

tion marks omitted). Absent such a threat, "the Government may allocate . . . funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake." 524 U. S., at 587–588.

In *Rust* v. *Sullivan*, *supra*, the Court applied these principles to a statutory scheme that is in all relevant respects indistinguishable from § 504(a)(16). The statute in *Rust* authorized grants for the provision of family planning services, but provided that "[n]one of the funds . . . shall be used in programs where abortion is a method of family planning." *Id.*, at 178. Valid regulations implementing the statute required funding recipients to refer pregnant clients "for appropriate prenatal . . . services by furnishing a list of available providers that promote the welfare of mother and unborn child," but forbade them to refer a pregnant woman specifically to an abortion provider, even upon request. *Id.*, at 180. We rejected a First Amendment free-speech challenge to the funding scheme, explaining that "[t]he Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem another way." *Id.*, at 193. This was not, we said, the type of "discriminat[ion] on the basis of viewpoint" that triggers strict scrutiny, *ibid.*, because the "'decision not to subsidize the exercise of a fundamental right does not infringe the right,'" *ibid.* (quoting *Regan* v. *Taxation With Representation of Wash.*, *supra*, at 549).

The same is true here. The LSC Act, like the scheme in *Rust*, see 500 U. S., at 200, does not create a public forum. Far from encouraging a diversity of views, it has always, as the Court accurately states, "placed restrictions on its use of funds," *ante,* at 537. Nor does § 504(a)(16) discriminate on the basis of viewpoint, since it funds neither challenges to nor defenses of existing welfare law. The provision simply declines to subsidize a certain class of litigation, and under

Rust that decision "does not infringe the right" to bring such litigation. Cf. *Ortwein* v. *Schwab*, 410 U. S. 656, 658–660, and n. 5 (1973) *(per curiam)* (government not required by First Amendment or Due Process Clause to waive filing fee for welfare benefits litigation). The Court's repeated claims that § 504(a)(16) "restricts" and "prohibits" speech, see, *e. g.*, *ante*, at 545, 546, and "insulates" laws from judicial review, see, *e. g.*, *ante*, at 547, are simply baseless. No litigant who, in the absence of LSC funding, would bring a suit challenging existing welfare law is deterred from doing so by § 504(a)(16). *Rust* thus controls these cases and compels the conclusion that § 504(a)(16) is constitutional.

The Court contends that *Rust* is different because the program at issue subsidized government speech, while the LSC funds private speech. See *ante*, at 541–542. This is so unpersuasive it hardly needs response. If the private doctors' confidential advice to their patients at issue in *Rust* constituted "government speech," it is hard to imagine what subsidized speech would *not* be government speech. Moreover, the majority's contention that the subsidized speech in these cases is not government speech because the lawyers have a professional obligation to represent the interests of their clients founders on the reality that the doctors in *Rust* had a professional obligation to serve the interests of their patients, see 500 U. S., at 214 (Blackmun, J., dissenting) ("ethical responsibilities of the medical profession")—which at the time of *Rust* we had held to be highly relevant to the permissible scope of federal regulation, see *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 763 (1986) ("professional responsibilities" of physicians), overruled in part on other grounds, *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992). Even respondents agree that "the true speaker in *Rust* was not the government, but a doctor." Brief for Respondents 19, n. 17.

The Court further asserts that these cases are different from *Rust* because the welfare funding restriction "seeks to

use an existing medium of expression and to control it . . . in ways which distort its usual functioning," *ante*, at 543. This is wrong on both the facts and the law. It is wrong on the law because there is utterly no precedent for the novel and facially implausible proposition that the First Amendment has anything to do with government funding that—though it does not actually abridge anyone's speech—"distorts an existing medium of expression." None of the three cases cited by the Court mentions such an odd principle. In *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, the point critical to the Court's analysis was not, as the Court would have it, that it is part of the "usual functioning" of student newspapers to "expres[s] many different points of view," *ante*, at 543 (it surely is not), but rather *that the spending program itself* had been created "to encourage a diversity of views from private speakers," 515 U. S., at 834. What could not be distorted was *the public forum* that the spending program had created. As for *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666 (1998), that case discussed the nature of television broadcasting, not to determine whether government regulation would alter its "usual functioning" and thus violate the First Amendment (no government regulation was even at issue in the case), but rather to determine whether state-owned television is a "public forum" under our First Amendment jurisprudence. *Id.*, at 673–674. And finally, the passage the Court cites from *FCC* v. *League of Women Voters of Cal.*, 468 U. S. 364, 396–397 (1984), says *nothing whatever* about "using the forum [of public radio] in an unconventional way to suppress speech inherent in the nature of the medium," *ante*, at 543. It discusses why the Government's asserted interest in "preventing [public radio] stations from becoming a privileged outlet for the political and ideological opinions of station owners and managers," 468 U. S., at 396 (internal quotation marks omitted), was insubstantial and thus could not justify the statute's restriction on editorializing. Even worse for the Court, after invalidat-

ing the restriction on this conventional First Amendment ground, *League of Women Voters* goes on to say that "[o]f course," the restriction on editorializing "would plainly be valid" if "Congress were to adopt a revised version of [the statute] that permitted [public radio] stations to establish 'affiliate' organizations which could then use the station's facilities to editorialize with nonfederal funds." *Id.*, at 400. But of course that is the case here. Regulations permit funding recipients to establish affiliate organizations to conduct litigation and other activities that fall outside the scope of the LSC program. See 45 CFR pt. 1610 (2000). Far from supporting the Court's nondistortion analysis, *League of Women Voters* dooms the Court's case.

The Court's "nondistortion" principle is also wrong on the facts, since there is no basis for believing that § 504(a)(16), by causing "cases [to] be presented by LSC attorneys who [can]not advise the courts of serious questions of statutory validity," *ante,* at 545, will distort the operation of the courts. It may well be that the bar of § 504(a)(16) will cause LSC-funded attorneys to decline or to withdraw from cases that involve statutory validity. But that means at most that fewer statutory challenges to welfare laws will be presented to the courts because of the unavailability of free legal services for that purpose. So what? The same result would ensue from excluding LSC-funded lawyers from welfare litigation entirely. It is not the mandated, nondistortable function of the courts to inquire into all "serious questions of statutory validity" in all cases. Courts must consider only those questions of statutory validity *that are presented by litigants,* and if the Government chooses not to subsidize the presentation of some such questions, that in no way "distorts" the courts' role. It is remarkable that a Court that has so studiously avoided deciding whether Congress could entirely eliminate federal *jurisdiction* over certain matters, see, *e. g., Webster* v. *Doe,* 486 U. S. 592, 603 (1988); *Bowen* v. *Michigan Academy of Family Physicians,* 476 U. S. 667,

681, n. 12 (1986), would be so eager to hold the much lesser step of declining to subsidize the litigation unconstitutional under the First Amendment.

Nor will the judicial opinions produced by LSC cases systematically distort the interpretation of welfare laws. Judicial decisions do not stand as binding "precedent" for points that were not raised, not argued, and hence not analyzed. See, *e. g.*, *United States* v. *Verdugo-Urquidez*, 494 U. S. 259, 272 (1990); *Hagans* v. *Lavine*, 415 U. S. 528, 533, n. 5 (1974); *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 37–38 (1952); *United States* v. *More*, 3 Cranch 159, 172 (1805) (Marshall, C. J.). The statutory validity that courts assume in LSC cases will remain open for full determination in later cases.

Finally, the Court is troubled "because in cases where the attorney withdraws from a representation, the client is unlikely to find other counsel." *Ante*, at 546. That is surely irrelevant, since it leaves the welfare recipient in no *worse* condition than he would have been in had the LSC program never been enacted. Respondents properly concede that even if welfare claimants cannot obtain a lawyer anywhere else, the Government is not required to provide one. Brief for Respondents 16; accord, *Goldberg* v. *Kelly*, 397 U. S. 254, 270 (1970) (government not required to provide counsel at hearing regarding termination of welfare benefits). It is hard to see how providing free legal services to some welfare claimants (those whose claims do not challenge the applicable statutes) while not providing it to others is beyond the range of legitimate legislative choice. *Rust* rejected a similar argument:

> "Petitioners contend, however, that most Title X clients are effectively precluded by indigency and poverty from seeing a health-care provider who will provide abortion-related services. But once again, even these Title X clients are in no worse position than if Congress had never enacted Title X. The financial constraints

> that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortion, but rather of her indigency." 500 U. S., at 203 (internal quotation marks omitted).

The only conceivable argument that can be made for distinguishing *Rust* is that there even patients who wished to receive abortion counseling could receive the nonabortion services that the Government-funded clinic offered, whereas here some potential LSC clients who wish to receive representation on a benefits claim that does not challenge the statutes will be unable to do so because their cases raise a reform claim that an LSC lawyer may not present. This difference, of course, is required by the same ethical canons that the Court elsewhere does not wish to distort. Rather than sponsor "truncated representation," *ante*, at 546, Congress chose to subsidize only those cases in which the attorneys it subsidized could work freely. See, *e. g.*, 42 U. S. C. § 2996(6) ("[A]ttorneys providing legal assistance must have full freedom to protect the best interests of their clients"). And it is impossible to see how this difference from *Rust* has any bearing upon the First Amendment question, which, to repeat, is whether the funding scheme is "'manipulated' to have a 'coercive effect'" on those who do not hold the subsidized position. *National Endowment for Arts* v. *Finley*, 524 U. S., at 587 (quoting *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S., at 237 (SCALIA, J., dissenting)). It could be claimed to have such an effect if the client in a case ineligible for LSC representation could eliminate the ineligibility by waiving the claim that the statute is invalid; but he cannot. No *conceivable* coercive effect exists.

This has been a very long discussion to make a point that is embarrassingly simple: The LSC subsidy neither prevents anyone from speaking nor coerces anyone to change speech, and is indistinguishable in all relevant respects from the sub-

sidy upheld in *Rust* v. *Sullivan*, *supra*. There is no legitimate basis for declaring § 504(a)(16) facially unconstitutional.

III

Even were I to accept the Court's First Amendment analysis, I could not join its decision to conclude this litigation without reaching the issue of severability. That issue, although decided by the Second Circuit, was not included within the question on which certiorari was granted, and, as the Court points out, was not briefed or argued here. I nonetheless think it an abuse of discretion to ignore it.

The Court has said that "[w]e may consider questions outside the scope of the limited order [granting certiorari] when resolution of those questions is necessary for the proper disposition of the case." *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 246–247, n. 12 (1981). I think it necessary to a "proper disposition" here because the statute concocted by the Court of Appeals bears little resemblance to what Congress enacted, funding without restriction welfare-benefits litigation that Congress funded only under the limitations of § 504(a)(16). Although no party briefed severability in *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727 (1996), the Justices finding partial unconstitutionality considered it necessary to address the issue. *Id.*, at 767 (plurality opinion) ("[W]e must ask whether § 10(a) is severable"); accord, *New York* v. *United States*, 505 U. S. 144, 186 (1992). I think we have that same obligation here. Moreover, by exercising our "discretion" to leave the severability question open, we fail to resolve the basic, real-world dispute at issue: whether LSC attorneys may represent welfare claimants who challenge the applicable welfare laws. Indeed, we leave the LSC program subject to even a greater uncertainty than the one we purport to have eliminated, since other circuits may conclude (as I do) that if the limitation upon welfare representation is unconstitutional, LSC attorneys cannot engage in welfare litigation at all.

"The inquiry into whether a statute is severable is essentially an inquiry into legislative intent." *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 191 (1999). If Congress "would not have enacted those provisions which are within its power, independently of that which is not," then courts must strike the provisions as a piece. *Alaska Airlines, Inc.* v. *Brock*, 480 U. S. 678, 684 (1987) (internal quotation marks omitted). One determines what Congress would have done by examining what it did. Perhaps the most that can be said on the subject is contained in a passage written by Chief Justice Shaw of the Supreme Judicial Court of Massachusetts that we have often quoted:

> "[I]f [a statute's provisions] are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which as thus dependent, conditional or connected, must fall with them." *Warren* v. *Mayor and Aldermen of Charlestown*, 68 Mass. 84, 99 (1854).

It is clear to me that the LSC Act's funding of welfare benefits suits and its prohibition on suits challenging or defending the validity of existing law are "conditions, considerations [and] compensations for each other" that cannot be severed. Congress through the LSC Act intended "to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel," 42 U. S. C. § 2996(2), but only if the program could at the same time "be kept free from the influence of or use by it of political pressures," § 2996(5). More than a dozen times in § 504(a) Congress made the decision that certain activities could not be funded *at all* without crippling the LSC program with political pressures. See, *e. g.*, § 504(a)(1) (reapportionment

litigation); § 504(a)(4) (local, state, and federal lobbying); § 504(a)(7) (class-action lawsuits); § 504(a)(12) (training programs for, *inter alia,* boycotts, picketing, and demonstrations); § 504(a)(14) (litigation with respect to abortion). The severability question here is, essentially, whether, without the restriction that the Court today invalidates, the permission for conducting welfare litigation would have been accorded. As far as appears from the best evidence (which is the structure of the statute), I think the answer must be no.

We have in some cases stated that when an "excepting proviso is found unconstitutional the substantive provisions which it qualifies cannot stand," for "to hold otherwise would be to extend the scope of the law . . . so as to embrace [situations] which the legislature passing the statute had, by its very terms, expressly excluded." *Frost* v. *Corporation Comm'n of Okla.*, 278 U. S. 515, 525 (1929); see also *Davis* v. *Wallace*, 257 U. S. 478, 484 (1922) ("Where an excepting provision in a statute is found unconstitutional, courts very generally hold that this does not work an enlargement of the scope or operation of other provisions with which that provision was enacted, and which it was intended to qualify or restrain"). I frankly doubt whether this approach has been followed consistently enough to be called the "general" rule, but if there were ever an instance in which it is appropriate it is here. To strike the restriction on welfare benefits suits is to void § 504(a)(16) altogether. Subsection (a)(16) prohibits involvement in three types of activities with respect to welfare reform: lobbying, rulemaking, and litigation. But the proscriptions against using LSC funds to participate in welfare lobbying and rulemaking are superfluous, since as described above subsections (a)(2), (a)(3), and (a)(4) of § 504 withhold LSC funds from those activities generally. What is unique about subsection (a)(16)—the only thing it achieves—is its limit on litigation. To remove that limit is to repeal subsection (a)(16) altogether, and thus to eliminate a significant *quid pro quo* of the legislative compromise. We

have no authority to "rewrite [the] statute and give it an effect altogether different" from what Congress agreed to. *Railroad Retirement Bd.* v. *Alton R. Co.*, 295 U. S. 330, 362 (1935) (quoted in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 313 (1936)).

* * *

It is illuminating to speculate how these cases would have been decided if Congress had enacted § 504(a)(16) without its proviso (prescribing only the general ban against "litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system"), and if the positions of the parties before us here were reversed. If the LSC-funded lawyers were here arguing that the statute permitted representation of individual welfare claimants who did not challenge existing law, I venture to say that the Court would endorse their argument—perhaps with stirring language about the importance of aid to welfare applicants and the Court's unwillingness to presume without clear indication that Congress would want to eliminate it. And I have little doubt that in that context the Court would find its current First Amendment musings as unpersuasive as I find them today.

Today's decision is quite simply inexplicable on the basis of our prior law. The only difference between *Rust* and the present cases is that the former involved "distortion" of (that is to say, refusal to subsidize) the normal work of doctors, and the latter involves "distortion" of (that is to say, refusal to subsidize) the normal work of lawyers. The Court's decision displays not only an improper special solicitude for our own profession; it also displays, I think, the very fondness for "reform through the courts"—the making of innumerable social judgments through judge-pronounced constitutional imperatives—that prompted Congress to restrict publicly funded litigation of this sort. The Court says today, through an unprecedented (and indeed previously rejected) interpretation of the First Amendment, that we will not allow this

restriction—and then, to add insult to injury, permits to stand a judgment that awards the general litigation funding that the statute does not contain. I respectfully dissent.

Reporter's Note

The next page is purposely numbered 801. The numbers between 563 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 2, 2000, THROUGH MARCH 1, 2001

OCTOBER 2, 2000

Certiorari Granted—Vacated and Remanded

No. 99–1870. ADLER ET AL. *v.* DUVAL COUNTY SCHOOL BOARD ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Santa Fe Independent School Dist.* v. *Doe*, 530 U. S. 290 (2000). Reported below: 206 F. 3d 1070.

No. 99–6775. BLUE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 187 F. 3d 631.

No. 99–7351. GIBSON, AKA WILLIS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 187 F. 3d 631.

No. 99–8958. WIMS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 207 F. 3d 661.

No. 99–9902. BURTON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 211 F. 3d 125.

No. 99–9924. MARTIN *v.* CAIN, WARDEN. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for fur-

ther consideration in light of *Williams* v. *Taylor*, 529 U. S. 362 (2000). Reported below: 206 F. 3d 450.

Certiorari Dismissed. (See also No. 99–10160, *infra.*)

No. 99–9550. COTNER *v.* OKLAHOMA ET AL. Sup. Ct. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–9775. FICA *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–9821. DONALDSON *v.* CHAMBERLAIN, JUDGE, CIRCUIT COURT OF MICHIGAN, 21ST CIRCUIT. Sup. Ct. Mich. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 461 Mich. 874, 603 N. W. 2d 266.

No. 99–9866. AMIRI *v.* QURESHI. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–9874. COCHRAN *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 250 F. 3d 754.

No. 99–9878. COTNER *v.* DISTRICT COURT OF OKLAHOMA, CREEK COUNTY, ET AL. Sup. Ct. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–9888. CRAIG *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 221 F. 3d 195.

No. 99–9920. BIERLEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–9925. RICHARDSON *v.* MARYLAND. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 215 F. 3d 1320.

No. 99–9950. COTNER *v.* FIELDS, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–10104. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–10194. PRENZLER *v.* PRENZLER. Ct. App. Cal., 4th App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–10249. COCHRAN *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 210 F. 3d 362.

No. 00–5016. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–5251. ROBINSON *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 230 F. 3d 1382.

No. 00–5310. ATRAQCHI ET UX. *v.* UNKNOWN NAMED OFFICERS OF DISTRICT OF COLUMBIA POLICE DEPARTMENT ET AL. C. A. D. C. Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–5418. ATRAQCHI ET UX. *v.* WILLIAMS, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 99–9633. BURGESS *v.* COOK, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from peti-

tioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 99–9947. MIKKILINENI *v.* GALLITZIN BOROUGH ET AL.; MIKKILINENI *v.* AMWEST SURETY INSURANCE CO. ET AL.; MIKKILINENI *v.* GIBSON-THOMAS ENGINEERING ET AL.; MIKKILINENI *v.* GIBSON-THOMAS ENGINEERING ET AL.; MIKKILINENI *v.* INDIANA COUNTY TRANSIT AUTHORITY ET AL.; MIKKILINENI *v.* BOROUGH OF FOREST HILLS ET AL.; and MIKKILINENI *v.* MALLORY ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 216 F. 3d 1076 (second, third, sixth, and seventh judgments); 215 F. 3d 1315 (fourth and fifth judgments).

Miscellaneous Orders

No. D–2167. IN RE DISBARMENT OF JACOBS. Disbarment entered. [For earlier order herein, see 530 U. S. 1258.]

No. D–2169. IN RE DISBARMENT OF BOOKER. Disbarment entered. [For earlier order herein, see 530 U. S. 1258.]

No. D–2174. IN RE DISBARMENT OF KIERPIEC. Disbarment entered. [For earlier order herein, see 530 U. S. 1258.]

No. D–2182. IN RE DISBARMENT OF SANDS. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2183. IN RE DISBARMENT OF VINING. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2191. IN RE DISBARMENT OF GARCIA. Due to mistaken identity, the order entered August 28, 2000 [530 U. S. 1294], is vacated, and the rule to show cause is discharged.

No. D–2196. IN RE DISBARMENT OF PINGEL. James F. Pingel, Jr., of Tampa, Fla., 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.

No. D–2197. IN RE DISBARMENT OF CHILINGIRIAN. Jack Chilingirian, of St. Clair Shores, Mich., 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.

No. D–2198. IN RE DISBARMENT OF GRADDOCK. Richard A. Graddock, of West Palm Beach, Fla., 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.

No. D–2199. IN RE DISBARMENT OF ADAMS. John V. Adams, Jr., of Pittsburgh, Pa., 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.

No. D–2200. IN RE DISBARMENT OF FEIGENBAUM. Franklin Feigenbaum, of North Hills, Cal., 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.

No. D–2201. IN RE DISBARMENT OF HUBERT. Douglass Edward Hubert, of Monterey, Cal., 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.

No. 00M1. GODWIN *v.* BROWN ET AL.;
No. 00M2. LEE *v.* DRESSER INDUSTRIES, INC.;
No. 00M3. FAUST *v.* UNITED STATES;
No. 00M4. BULLOCK *v.* UNITED STATES;
No. 00M5. ROBINSON *v.* WELBORN, WARDEN;
No. 00M8. NEELY *v.* DEPARTMENT OF FAMILY AND CHILDREN SERVICES;

No. 00M10. SARTORIUS ET VIR *v.* SAPIR, CHAPTER 13 TRUSTEE;
No. 00M12. SMITH *v.* SPIVEY ET AL.;
No. 00M14. SIMMONS *v.* OFFICE OF PERSONNEL MANAGEMENT;
No. 00M16. BROWN *v.* INDIANA DEPARTMENT OF CORRECTIONS ET AL.;
No. 00M17. ALEXANDER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;
No. 00M18. SHARP *v.* DARE COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL.;
No. 00M19. STROM *v.* MITCHELL ET AL.;
No. 00M20. VINCENT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;
No. 00M21. SIMS, PERSONAL REPRESENTATIVE FOR THE ESTATE OF RADCLIFF *v.* GREENVILLE COUNTY, SOUTH CAROLINA;
No. 00M22. PHILIP *v.* DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, ET AL.;
No. 00M23. SANCHEZ *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY; and
No. 00M24. ODUS *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 00M6. IN RE CLANCY. Motion to direct the Clerk to file motion for leave to intervene in No. 99–830, *Stenberg, Attorney General of Nebraska, et al.* v. *Carhart* [530 U. S. 914], and other relief denied.

No. 00M7. IN RE CLANCY. Motion for leave to file declaration and other relief denied.

No. 00M11. BUCHANAN *v.* DOE. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 00M13. SEALED PETITIONER *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 00M15. D. S. *v.* DISTRICT OF COLUMBIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion of Nebraska for leave to file first amended answer, counterclaim, and

cross-claim referred to the Special Master. Motion of the Special Master for allowance of fee and disbursements granted, and the Special Master is awarded a total of $111,631.38 to be paid equally by Kansas, Nebraska, and Colorado. [For earlier order herein, see, *e. g.*, 530 U. S. 1272.]

No. 98–942. FIORE *v.* WHITE, WARDEN, ET AL. C. A. 3d Cir. [Certiorari granted, 526 U. S. 1038; Question certified, 528 U. S. 23.] Certified question answered by the Supreme Court of Pennsylvania. The parties are invited to file supplemental briefs addressing the opinion of the Supreme Court of Pennsylvania entered August 21, 2000 [562 Pa. 634, 757 A. 2d 842]. Brief of respondents, not to exceed 25 pages, is to be filed with the Clerk and served upon petitioner on or before Monday, October 23, 2000. Brief of petitioner, not to exceed 25 pages, is to be filed with the Clerk and served upon respondent on or before Monday, November 13, 2000. A reply brief, if any, not to exceed 10 pages, is to be filed with the Clerk and served upon petitioner on or before Wednesday, November 22, 2000.

No. 99–1702. TEXAS *v.* COBB. Ct. Crim. App. Tex. [Certiorari granted, 530 U. S. 1260.] Motion for appointment of counsel granted, and it is ordered that Roy E. Greenwood, Esq., of Austin, Tex., be appointed to serve as counsel for respondent in this case.

No. 99–1996. J. E. M. AG SUPPLY, INC., DBA FARM ADVANTAGE, INC., ET AL. *v.* PIONEER HI-BRED INTERNATIONAL, INC. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE O'CONNOR took no part in the consideration or decision of this order.

No. 99–8696. BUCHANAN *v.* DOE. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [529 U. S. 1126] denied.

No. 99–8810. MIKKILINENI *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [530 U. S. 1201] denied.

No. 99–8814. PATTERSON *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [530 U. S. 1201] denied.

No. 99–8943. OKORO *v.* SCIBANA, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [530 U. S. 1227] denied.

No. 99–9052. SAMUEL *v.* NATHAN'S FAMOUS OPERATING CORP. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [529 U. S. 1128] denied.

No. 99–9144. DENARDO *v.* CUNNINGHAM ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [530 U. S. 1241] denied.

No. 99–9517. KARIM-PANAHI *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [530 U. S. 1241] denied.

No. 99–9912. NEIL *v.* ALLSTATE INSURANCE CO. ET AL. App. Ct. Ill., 1st Dist.;

No. 99–9941. ABDALLAH *v.* PILEGGI ET AL. C. A. Fed. Cir.;

No. 99–9995. BAUTISTA RIVERA *v.* GREENE. Ct. App. Cal., 1st App. Dist.;

No. 99–10132. LICHTER *v.* FLORIDA. C. A. 11th Cir.;

No. 00–5120. MORTON *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir.;

No. 00–5313. SIMPSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 00–5325. COTTON *v.* UNITED STATES. C. A. 9th Cir.;

No. 00–5330. FULLER *v.* BARRETT ET AL. C. A. 4th Cir.; and

No. 00–5415. MURRAY *v.* UNITED STATES. C. A. Armed Forces. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 23, 2000, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 99–10221. GRIER ET AL. *v.* HOOD, WARDEN. C. A. 9th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 99–10045. IN RE PERRY. C. A. 9th Cir. Petition for writ of common-law certiorari denied.

No. 99–10160. IN RE RETTIG. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of common-law certiorari dismissed. See this Court's Rule 39.8.

No. 99–2003. IN RE HAWKINS;
No. 99–2087. IN RE BULLARD;
No. 99–10030. IN RE TATLIS;
No. 99–10095. IN RE WESTINE;
No. 99–10152. IN RE FORD;
No. 99–10197. IN RE MCELHANEY;
No. 99–10264. IN RE COMER;
No. 00–5003. IN RE GRAFFIA;
No. 00–5046. IN RE ROBINSON;
No. 00–5105. IN RE VILELLA;
No. 00–5156. IN RE BARKETT;
No. 00–5186. IN RE WITHERS;
No. 00–5279. IN RE MUA;
No. 00–5449. IN RE LOPEZ;
No. 00–5468. IN RE STEPHENS;
No. 00–5548. IN RE JERRY-EL;
No. 00–5566. IN RE SESARIO DEPINEDA;
No. 00–5578. IN RE KADE;
No. 00–5682. IN RE LUDWIG;
No. 00–5784. IN RE DOOLITTLE;
No. 00–5794. IN RE HAYMES;
No. 00–5812. IN RE BOYER;
No. 00–5839. IN RE HARRIS;
No. 00–5859. IN RE GIBSON;
No. 00–5895. IN RE AVILA-TORRES;
No. 00–5902. IN RE CALLEROS;
No. 00–5921. IN RE BOYD; and
No. 00–5983. IN RE WALTON. Petitions for writs of habeas corpus denied.

No. 99–10127. IN RE COTNER. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 00–5469. IN RE REEVES. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 00–5382. IN RE VENERI. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 99–9280. IN RE COLLINS;
No. 99–9668. IN RE CAGLE;
No. 99–9864. IN RE THOMAS;
No. 99–9876. IN RE BRYANT;
No. 99–9915. IN RE SCARBOROUGH;
No. 99–9978. IN RE WILLIAMS LEWIS;
No. 99–9996. IN RE JENNINGS;
No. 99–10033. IN RE THOMAS;
No. 99–10094. IN RE VAUGHN;
No. 99–10190. IN RE WESTINE;
No. 00–5004. IN RE MORRISON;
No. 00–5060. IN RE REYNA;
No. 00–5137. IN RE KALWAY;
No. 00–5218. IN RE THIBODEAUX;
No. 00–5219. IN RE THIBODEAUX;
No. 00–5222. IN RE JENNINGS;
No. 00–5256. IN RE STEELE;
No. 00–5291. IN RE WILSON;
No. 00–5301. IN RE RODRIGUEZ;
No. 00–5354. IN RE MILTON;
No. 00–5497. IN RE PETREYKOV ET AL.;
No. 00–5787. IN RE HOPE; and
No. 00–5867. IN RE HEFFINGTON. Petitions for writs of mandamus denied.

No. 99–2040. IN RE VEY;
No. 99–10188. IN RE GRISSO; and

No. 00–5344. IN RE MCGEE ET AL. Petitions for writs of mandamus and/or prohibition denied.

No. 99–9381. IN RE SURLES; and

No. 00–5163. IN RE LACHANCE. Petitions for writs of prohibition denied.

Certiorari Denied. (See also No. 99–10045, *supra.*)

No. 99–1471. DESAI ET AL. *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 232 Mich. App. 128, 591 N. W. 2d 44.

No. 99–1496. JANAKAKIS-KOSTUN *v.* JANAKAKIS. Ct. App. Ky. Certiorari denied. Reported below: 6 S. W. 3d 843.

No. 99–1501. FORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 461.

No. 99–1520. TRIBAL GOVERNING BOARD OF THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS *v.* THOMAS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 189 F. 3d 662.

No. 99–1544. UNITED STATES *v.* TEXAS SOUTHERN UNIVERSITY ET AL.;

No. 99–1566. UNITED STATES EX REL. MITTAL *v.* TEXAS SOUTHERN UNIVERSITY ET AL.; and

No. 99–1705. TEXAS SOUTHERN UNIVERSITY ET AL. *v.* UNITED STATES EX REL. MITTAL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 1337.

No. 99–1554. ARENA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 180 F. 3d 380.

No. 99–1567. PARAMOUNT PICTURES CORP. ET AL. *v.* WENDT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 806.

No. 99–1627. BOTEZATU ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 195 F. 3d 311.

No. 99–1647. AMERICAN TARGET ADVERTISING, INC. *v.* GIANI, DIRECTOR, UTAH DIVISION OF CONSUMER PROTECTION; and

No. 99–1829. GIANI, DIRECTOR, UTAH DIVISION OF CONSUMER PROTECTION *v.* AMERICAN TARGET ADVERTISING, INC. C. A. 10th Cir. Certiorari denied. Reported below: 199 F. 3d 1241.

No. 99–1663. District Intown Properties Limited Partnership et al. *v.* District of Columbia et al. C. A. D. C. Cir. Certiorari denied. Reported below: 198 F. 3d 874.

No. 99–1671. Brewer, Personal Representative of the Estate of Brewer, Deceased *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 381.

No. 99–1694. Hass *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 749.

No. 99–1722. Thomas Truck Lease, Inc., et al. *v.* Lee County, Mississippi, By and Through Its Tax Collector, Belk. Sup. Ct. Miss. Certiorari denied. Reported below: 768 So. 2d 870.

No. 99–1723. Klamath Drainage District et al. *v.* Patterson, Regional Director, Mid-Pacific Region, United States Bureau of Reclamation, et al. C. A. 9th Cir. Certiorari denied. Reported below: 204 F. 3d 1206.

No. 99–1726. Battista et al. *v.* Federal Deposit Insurance Corporation, Appointed Receiver of Bank of Newport. C. A. 9th Cir. Certiorari denied. Reported below: 195 F. 3d 1113.

No. 99–1731. Nahey et ux. *v.* Commissioner of Internal Revenue. C. A. 7th Cir. Certiorari denied. Reported below: 196 F. 3d 866.

No. 99–1746. Waterman Steamship Corp. *v.* Anderson. Ct. App. La., 4th Cir. Certiorari denied.

No. 99–1747. O'Connell et ux., Legal Representatives of Their Daughter, O'Connell *v.* Shalala, Secretary of Health and Human Services; and

No. 99–1749. Terran, as Legal Representative of Terran, a Minor *v.* Shalala, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: No. 99–1747, 217 F. 3d 857; No. 99–1749, 195 F. 3d 1302.

No. 99–1750. Munoz et al. *v.* Orr et al. C. A. 5th Cir. Certiorari denied. Reported below: 200 F. 3d 291.

No. 99–1756. Great Western Casinos, Inc. *v.* Morongo Band of Mission Indians et al. Ct. App. Cal., 2d App. Dist.

Certiorari denied. Reported below: 74 Cal. App. 4th 1407, 88 Cal. Rptr. 2d 828.

No. 99–1760. SMITHFIELD FOODS, INC., ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 516.

No. 99–1777. WESTOVER, AKA BINDLOSS *v.* RENO, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 202 F. 3d 475.

No. 99–1783. FREDERICK *v.* KIRBY TANKSHIPS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1277.

No. 99–1789. ALFARACHE *v.* CRAVENER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 203 F. 3d 381.

No. 99–1790. VOLENTINE ET AL. *v.* BECHTEL, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 719.

No. 99–1796. WHITEHEAD ASSOCIATES, INC., ET AL. *v.* MONTGOMERY COUNTY COUNCIL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 825.

No. 99–1798. COUNTY OF SCHENECTADY *v.* JEFFES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 49.

No. 99–1800. THEIS RESEARCH, INC. *v.* NORTHERN TELECOM, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 217 F. 3d 860.

No. 99–1801. MICHAEL C., A MINOR, BY HIS PARENT AND NEXT FRIEND, STEPHEN C., ET AL. *v.* RADNOR TOWNSHIP SCHOOL DISTRICT, PENNSYLVANIA DEPARTMENT OF EDUCATION. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 642.

No. 99–1804. HOLDEN *v.* KENT COUNTY. Ct. Sp. App. Md. Certiorari denied. Reported below: 127 Md. App. 784.

No. 99–1805. CITY OF NEW ORLEANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 719.

No. 99–1807. TINELLI *v.* REDL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 603.

No. 99–1811. CAFE EROTICA, INC. *v.* PEACH COUNTY ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 47, 526 S. E. 2d 56.

No. 99–1813. KOKKONEN *v.* HAGMAIER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–1814. COMMITTEE FOR ENVIRONMENTALLY SOUND DEVELOPMENT, INC., ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 430.

No. 99–1819. NICKERSON ET AL. *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 718.

No. 99–1820. FRYE *v.* SLATER, SECRETARY OF TRANSPORTATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1332.

No. 99–1821. BURNS, ON BEHALF OF HIMSELF AND THE BARNETT EMPLOYEE SAVINGS & THRIFT PLAN *v.* RICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 393.

No. 99–1826. OYE *v.* RAILROAD RETIREMENT BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1347.

No. 99–1827. STARKMAN *v.* EVANS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 198 F. 3d 173.

No. 99–1834. KENCO RESTAURANTS, INC., ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 206 F. 3d 588.

No. 99–1836. PEREZ *v.* AETNA LIFE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1341.

No. 99–1838. KNIGHTS OF THE KU KLUX KLAN ET AL. *v.* CURATORS OF THE UNIVERSITY OF MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 1085.

No. 99–1840. LEVINE *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–1841. SEPUYA ET AL. *v.* COMMUNITY HEALTH SYSTEMS OF SAN BERNARDINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1352.

No. 99–1842. BANKS ET UX. *v.* VIRGINIA ELECTRIC & POWER CO. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1332.

No. 99–1843. CAMPBELL, MEMBER, UNITED STATES HOUSE OF REPRESENTATIVES, ET AL. *v.* CLINTON, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 203 F. 3d 19.

No. 99–1844. HAHNAMAN ALBRECHT, INC., ET AL. *v.* POTASH CORPORATION OF SASKATCHEWAN, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 1028.

No. 99–1845. THO VAN HUYNH *v.* KING. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 663.

No. 99–1847. DEWBERRY *v.* TEXAS UTILITIES ELECTRIC CO. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 368.

No. 99–1849. TSU ET UX. *v.* VOS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–1850. HAWES ET AL. *v.* JOHNSON & JOHNSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 254.

No. 99–1851. MAYES *v.* LOCAL 106, INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 431.

No. 99–1853. LANSING *v.* STATE FARM AUTO INSURANCE CO. ET AL. Ct. App. D. C. Certiorari denied.

No. 99–1855. VIEHWEG *v.* MELLO. C. A. 8th Cir. Certiorari denied. Reported below: 198 F. 3d 252.

No. 99–1856. MIAMI-DADE COUNTY, THROUGH ITS MANAGER AND BOARD OF COUNTY COMMISSIONERS *v.* AGRIPOST, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 195 F. 3d 1225.

No. 99–1857. SMITH COGENERATION INTERNATIONAL, INC. *v.* SMITH/ENRON COGENERATION LIMITED PARTNERSHIP, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 88.

No. 99–1858. FRATERNAL ORDER OF POLICE, LODGE NO. 20 *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 195 F. 3d 1292.

No. 99–1859. ROMERO *v.* LOPEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 222.

No. 99–1860. BROWN *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 26 Kan. App. 2d —, 983 P. 2d 289.

No. 99–1861. KENDRICK *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 768 So. 2d 1029.

No. 99–1862. KIPPS ET AL. *v.* CAILLIER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 197 F. 3d 765.

No. 99–1863. BREAUX ET AL. *v.* CITY OF GARLAND ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 150.

No. 99–1867. GREENE *v.* HACKETT, GENERAL SESSIONS COURT JUDGE OF SHELBY COUNTY, TENNESSEE, DIVISION II, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 268.

No. 99–1869. WEST *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 99–1874. NAVEGAR, INC., DBA INTRATEC, ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 192 F. 3d 1050.

No. 99–1875. ST. ROMAIN ET AL. *v.* SUPERIOR WELL SERVICE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 203 F. 3d 376.

No. 99–1876. KOTERBA *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING. Commw. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 761.

No. 99–1877. LINDA W. ET AL. *v.* INDIANA DEPARTMENT OF EDUCATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 200 F. 3d 504.

No. 99–1878. STRAND ET AL. *v.* MICHIGAN BELL TELEPHONE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 862.

No. 99–1881. KRAMER ET AL. *v.* PRICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 200 F. 3d 1237.

No. 99–1882. GEORGIA-PACIFIC CORP. *v.* UNITED STATES GYPSUM CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 195 F. 3d 1322 and 204 F. 3d 1359.

No. 99–1883. R&W Technical Services, Ltd., et al. *v.* Commodity Futures Trading Commission. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 165.

No. 99–1887. Fox *v.* Florida Bar. Sup. Ct. Fla. Certiorari denied. Reported below: 753 So. 2d 566.

No. 99–1890. Ludger et al. *v.* Helm AG et al. C. A. 11th Cir. Certiorari denied. Reported below: 202 F. 3d 287.

No. 99–1891. Keane *v.* IBM Pension Plan. Ct. App. Mich. Certiorari denied.

No. 99–1892. Keane *v.* Keane. Ct. App. Mich. Certiorari denied.

No. 99–1893. Cooperativa Multiactiva de Empleados de Distribuidores de Drogas et al. *v.* Newcomb et al. C. A. D. C. Cir. Certiorari denied. Reported below: 221 F. 3d 195.

No. 99–1894. Pennsylvania *v.* Balodis. Sup. Ct. Pa. Certiorari denied. Reported below: 560 Pa. 567, 747 A. 2d 341.

No. 99–1897. Bobby R. et al. *v.* Houston Independent School District. C. A. 5th Cir. Certiorari denied. Reported below: 200 F. 3d 341.

No. 99–1899. Wells *v.* Lee County, Florida. C. A. 11th Cir. Certiorari denied. Reported below: 204 F. 3d 1120.

No. 99–1900. Kempker-Cloyd *v.* Reno, Attorney General. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 246.

No. 99–1901. Hatchigian *v.* Cruzado. Super. Ct. Pa. Certiorari denied. Reported below: 747 A. 2d 424.

No. 99–1903. Moore *v.* Federal Deposit Insurance Corporation. C. A. 5th Cir. Certiorari denied. Reported below: 193 F. 3d 519.

No. 99–1906. Lowery et al. *v.* Burgess et al. C. A. 7th Cir. Certiorari denied. Reported below: 201 F. 3d 942.

No. 99–1907. J. D. Behles & Associates *v.* Angel Project I, Ltd., et al. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 834.

No. 99–1909. MAGIC RESTAURANTS, INC., ET AL. *v.* BOWIE PRODUCE CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 108.

No. 99–1910. DEZAIO *v.* PORT AUTHORITY OF NEW YORK AND NEW JERSEY. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 62.

No. 99–1911. CHI-MING CHOW *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION (two judgments). Sup. Ct. Mich. Certiorari denied.

No. 99–1912. FRITO-LAY, INC. *v.* HUNTLEY ET AL. Ct. App. Wash. Certiorari denied. Reported below: 96 Wash. App. 398, 979 P. 2d 488.

No. 99–1913. TOWN OF NORWOOD *v.* NEW ENGLAND POWER CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 202 F. 3d 408.

No. 99–1914. TOWN OF NORWOOD *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 1st Cir. Certiorari denied. Reported below: 202 F. 3d 392.

No. 99–1915. MESSENGER *v.* GRUNER + JAHR PRINTING AND PUBLISHING, AKA GRUNER + JAHR, USA. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 122.

No. 99–1919. KRUGER ET AL. *v.* GARDEN DISTRICT ASSN. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1006.

No. 99–1920. BALANAY *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 92 Haw. 687, 994 P. 2d 619.

No. 99–1922. FRIEDMAN *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–1923. YOUGHIOGHENY & OHIO COAL CO. *v.* MILLIKEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 200 F. 3d 942.

No. 99–1924. OJI PAPER CO., LTD. *v.* EXECU-TECH BUSINESS SYSTEMS, INC. Sup. Ct. Fla. Certiorari denied. Reported below: 752 So. 2d 582.

No. 99–1925. McKinney *v.* Robinson, Warden. C. A. 6th Cir. Certiorari denied.

No. 99–1927. Target Corp. *v.* Hollister et al.; and
No. 00–37. Hollister *v.* Target Corp. et al. C. A. 6th Cir. Certiorari denied. Reported below: 201 F. 3d 731.

No. 99–1929. Morgan *v.* Bennett, Superintendent, Elmira Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 204 F. 3d 360.

No. 99–1933. Ahrens *v.* Perot Systems Corp. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 831.

No. 99–1934. Illinois et al. *v.* McDonnell. Sup. Ct. N. J. Certiorari denied. Reported below: 163 N. J. 298, 748 A. 2d 1105.

No. 99–1937. American Manufacturers Mutual Insurance Co. *v.* Irvin et al.; and
No. 00–36. Gainesville Livestock Market, Inc., et al. *v.* American Manufacturers Mutual Insurance Co. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 1284.

No. 99–1938. Milligan *v.* North Carolina et al. Ct. App. N. C. Certiorari denied. Reported below: 135 N. C. App. 781, 522 S. E. 2d 330.

No. 99–1939. Federal Labor Relations Authority *v.* Luke Air Force Base, Arizona. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 99–1940. Carroll *v.* Calderon, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 202 F. 3d 277.

No. 99–1942. Dunham *v.* Wadley et al. C. A. 8th Cir. Certiorari denied. Reported below: 195 F. 3d 1007.

No. 99–1943. Hackbarth *v.* Immigration and Naturalization Service. C. A. 9th Cir. Certiorari denied.

No. 99–1944. Bloom *v.* Jewish Home for the Elderly of Fairfield County. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1321.

No. 99–1945. Kuhnel, Individually and on Behalf of All Other Workers' Compensation Lien Payers Similarly

SITUATED *v.* CNA INSURANCE COS. ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 322 N. J. Super. 568, 731 A. 2d 564.

No. 99–1947. ALEXANDRIA HISTORICAL RESTORATION AND PRESERVATION COMMISSION ET AL. *v.* FEDERAL HIGHWAY ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 198 F. 3d 862.

No. 99–1950. NICHOLSON *v.* BODNEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1352.

No. 99–1951. BROWN ET AL. *v.* PAYDAY CHECK ADVANCE, INC., ET AL.; SHABAS *v.* LIGHTHOUSE FINANCIAL GROUP OF ILLINOIS, INC., ET AL.; and SMITH *v.* CASH STORE MANAGEMENT INC. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 987 (first judgment).

No. 99–1955. BRACKETT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–1956. CITY OF SIOUX CENTER *v.* RURAL WATER SYSTEM #1. C. A. 8th Cir. Certiorari denied. Reported below: 202 F. 3d 1035.

No. 99–1958. YUKON RECOVERY, L. L. C. *v.* OCEAN MAR, INC. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1189.

No. 99–1959. NORWEGIAN CRUISE LINE LTD., DBA NORWEGIAN CRUISE LINE *v.* STOBAUGH ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 5 S. W. 3d 232.

No. 99–1960. MARUGAN GIRO *v.* BANCO ESPANOL DE CREDITO, S. A. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 203.

No. 99–1961. LOCAL 227, UNITED FOOD & COMMERCIAL WORKERS UNION *v.* WYANDOT, INC. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 922.

No. 99–1962. COLLINS ENTERTAINMENT, INC., ET AL. *v.* SOUTH CAROLINA LAW ENFORCEMENT DIVISION ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 338 S. C. 176, 525 S. E. 2d 872.

No. 99–1965. TOWNES *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 275.

No. 99–1966. KAGAN *v.* ROTH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–1968. VANMOOR *v.* WAL-MART STORES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 201 F. 3d 1363.

No. 99–1969. XACUR ET AL. *v.* BANCO NACIONAL DE MEXICO, S. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 125.

No. 99–1970. FUENTES *v.* WAGNER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 206 F. 3d 335.

No. 99–1972. DOLLAR *v.* HOLYFIELD. Sup. Ct. Ga. Certiorari denied.

No. 99–1973. FESSLER ET UX. *v.* BAYSHORE REALTY, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 642.

No. 99–1974. WEINS ET AL. *v.* SPORLEDER ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 605 N. W. 2d 488.

No. 99–1979. MILLER, ADMINISTRATOR OF THE ESTATE OF WILLIAMS, DECEASED *v.* ARCO MARINE, INC., ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 767 So. 2d 339.

No. 99–1981. SHIRLEY ET AL. *v.* CHRISTIAN EPISCOPAL METHODIST CHURCH. Sup. Ct. Miss. Certiorari denied. Reported below: 748 So. 2d 672.

No. 99–1982. HYNES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 129 Md. App. 709.

No. 99–1983. HAILEY *v.* HAND, SHERIFF OF YAMHILL COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 383.

No. 99–1984. SANK *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 99–1985. BRYANT ET AL. *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 200 F. 3d 1092.

No. 99–1986. CARINI *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–1987. CSX TRANSPORTATION, INC. *v.* PALANK, PERSONAL REPRESENTATIVE OF THE ESTATE OF PALANK, DECEASED, AND AS MOTHER, NATURAL GUARDIAN, AND NEXT FRIEND OF PALANK ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 743 So. 2d 556.

No. 99–1989. PROVOST *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 251 Conn. 252, 741 A. 2d 295.

No. 99–1990. NATHAN R., BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, RICHARD R. ET UX. *v.* BOARD OF EDUCATION OF OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200. C. A. 7th Cir. Certiorari denied. Reported below: 199 F. 3d 377.

No. 99–1991. MAHARISHI VEDIC UNIVERSITY *v.* WASHINGTON UNIVERSITY MEDICAL CENTER REDEVELOPMENT CORP. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 15 S. W. 3d 15.

No. 99–1992. CYPRIAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 197 F. 3d 736.

No. 99–1993. MASTER FINANCIAL, INC. *v.* MCDONALD ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 606.

No. 99–1997. JOOS *v.* JOOS. Ct. App. Utah. Certiorari denied.

No. 99–1998. LOWERY ET AL. *v.* CIRCUIT CITY STORES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 206 F. 3d 431.

No. 99–1999. EVERETT *v.* DEPARTMENT OF VETERANS AFFAIRS (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 236.

No. 99–2000. VIDEO TRAX, INC. *v.* NATIONSBANK, N. A. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1358.

No. 99–2001. DEW *v.* HEALTH INSURANCE PLAN OF GREATER NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 202.

No. 99–2002. BNL Equity Corp., fka United Arkansas Corp., et al. *v.* Pearson et al. Sup. Ct. Ark. Certiorari denied. Reported below: 340 Ark. 351, 10 S. W. 3d 838.

No. 99–2004. Velastegui et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 590.

No. 99–2005. Hardaway *v.* Kansas. Ct. App. Kan. Certiorari denied. Reported below: 26 Kan. App. 2d —, 992 P. 2d 823.

No. 99–2006. Sklar *v.* Pennsylvania Department of Transportation, Bureau of Driver Licensing. Commw. Ct. Pa. Certiorari denied. Reported below: 739 A. 2d 1178.

No. 99–2007. Gray *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 99–2009. Martin *v.* Walmer et al. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1329.

No. 99–2011. Saboff et ux. *v.* St. Johns River Water Management District. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 1356.

No. 99–2012. A. M. Capen's Co., Inc. *v.* American Trading & Production Corp. et al. C. A. 1st Cir. Certiorari denied. Reported below: 202 F. 3d 469.

No. 99–2013. Sharwell *v.* United States et al. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 215.

No. 99–2014. Ramirez *v.* Texas. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 635.

No. 99–2015. Campbell et al. *v.* Davidson, Colorado Secretary of State and as a Member of the Colorado State Initiative and Referendum Title Board, et al. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 738.

No. 99–2016. Gonzalez *v.* Page. C. A. 7th Cir. Certiorari denied.

No. 99–2017. H. P. Y., Inc. *v.* Puerto Rico et al. Sup. Ct. P. R. Certiorari denied.

No. 99–2018. SONGBYRD, INC. *v.* ESTATE OF GROSSMAN, DBA BEARSVILLE RECORDS. C. A. 2d Cir. Certiorari denied. Reported below: 206 F. 3d 172.

No. 99–2019. LUIS ESCALERA *v.* TIERCO WATER PARK, INC., DBA WHITE WATER BAY THEME PARK, ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 99–2020. BEN EZRA, WEINSTEIN & CO., INC. *v.* AMERICA ONLINE, INC. C. A. 10th Cir. Certiorari denied. Reported below: 206 F. 3d 980.

No. 99–2021. KOSKO *v.* ASHWORTH, JUDGE, SUPERIOR COURT OF CALIFORNIA, FAMILY COURT DIVISION, COUNTY OF SAN DIEGO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 513.

No. 99–2022. HOOD, WARDEN, ET AL. *v.* KEATING. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 1053.

No. 99–2023. HORNER, BY AND THROUGH HER FATHER AND NEXT FRIEND, HORNER, ET AL. *v.* KENTUCKY HIGH SCHOOL ATHLETIC ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 206 F. 3d 685.

No. 99–2024. MITCHELL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–2025. EDWARDS *v.* WALTER JONES CONSTRUCTION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 213.

No. 99–2026. MANISCALCO *v.* HARRINGTON ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 735 So. 2d 510.

No. 99–2027. BOARD OF EDUCATION OF OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT NO. 200 *v.* ILLINOIS STATE BOARD OF EDUCATION. C. A. 7th Cir. Certiorari denied. Reported below: 207 F. 3d 931.

No. 99–2028. DOE, A MINOR, BY HER PARENTS AND NEXT FRIENDS, DOE ET UX. *v.* ARLINGTON COUNTY SCHOOL BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 361.

No. 99–2029. BLUE SPRINGS FORD SALES, INC., ET AL. *v.* GRABINSKI. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 1024.

No. 99–2030. GREENBERG ET AL. *v.* STATE BAR OF CALIFORNIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 78 Cal. App. 4th 39, 92 Cal. Rptr. 2d 493.

No. 99–2031. NME HOSPITALS, INC., DBA LUTHERAN MEDICAL CENTER, ET AL. *v.* MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF MEDICAL SERVICES. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 11 S. W. 3d 776.

No. 99–2033. CHRYSLER ET AL. *v.* COTTER CORP. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 1190.

No. 99–2034. SENECHAL *v.* DOE. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 431 Mass. 78, 725 N. E. 2d 225.

No. 99–2038. NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISERS ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 199 F. 3d 424.

No. 99–2039. WEST, INDIVIDUALLY AND AS GUARDIAN OF A MINOR, T. W., ET AL. *v.* DERBY UNIFIED SCHOOL DISTRICT NO. 260. C. A. 10th Cir. Certiorari denied. Reported below: 206 F. 3d 1358.

No. 99–2041. VALLONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 261.

No. 99–2042. HENSLEY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 391.

No. 99–2043. DUFRENE ET AL. *v.* BROWNING-FERRIS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 264.

No. 99–2044. OLSEN *v.* SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY (HOLLANDER ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–2045. EL SHAHAWY *v.* SARASOTA COUNTY PUBLIC HOSPITAL BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1009.

No. 99–2046. PACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 1116.

No. 99–2048. NATIONAL ASSOCIATION OF THE REMODELING INDUSTRY-HOUSTON CHAPTER, INC. *v.* ROOMS WITH A VIEW, INC., ET AL. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 7 S. W. 3d 840.

No. 99–2049. BRAUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 177.

No. 99–2050. AZIZ *v.* SAINT MARTIN'S COLLEGE. C. A. 9th Cir. Certiorari denied.

No. 99–2051. DAVIS ET AL. *v.* FUNKE. Mass. Trial Ct., Land Ct. Dept. Certiorari denied.

No. 99–2052. GRIFFITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 206 F. 3d 1389.

No. 99–2053. HERN *v.* INTERMEDICS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 383.

No. 99–2054. SAAVEDRA, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF HJALMARSSON, DECEASED, ET AL. *v.* KOREAN AIR LINES CO., LTD. C. A. D. C. Cir. Certiorari denied. Reported below: 221 F. 3d 196.

No. 99–2055. SHEA *v.* FLORIDA JUDICIAL QUALIFICATIONS COMMISSION. Sup. Ct. Fla. Certiorari denied. Reported below: 759 So. 2d 631.

No. 99–2056. SCHOFIELD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–2057. COLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1075.

No. 99–2058. LAGUNA ET AL. *v.* CALIFORNIA BOARD OF EDUCATION ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–2060. WESTERN ATLAS, INC. *v.* PENNINGTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 902.

No. 99–2061. IBRAHIM *v.* WAL-MART STORES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 259.

No. 99–2063. VOGT *v.* CHURCHILL; and VOGT *v.* COMMISSIONER, MAINE DEPARTMENT OF HUMAN RESOURCES. Sup. Jud. Ct. Me. Certiorari denied.

No. 99–2064. ARMENDARIZ *v.* CITY AND COUNTY OF DENVER. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 225.

No. 99–2065. LEON GUERRERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 223.

No. 99–2066. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1331.

No. 99–2069. KLINE *v.* DOW JONES & CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 664.

No. 99–2070. STERN *v.* SIEGEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 1318.

No. 99–2073. BAYLISS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 99–2074. AZIZ *v.* GROVE CITY COLLEGE. C. A. 3d Cir. Certiorari denied. Reported below: 210 F. 3d 357.

No. 99–2075. PASSMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 394.

No. 99–2076. ROSCOE ET UX. *v.* FEDERAL HOME LOAN MORTGAGE ASSOCIATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 201 F. 3d 449.

No. 99–2080. GILLMAN KNITWEAR CO., INC. *v.* SEGRETS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 207 F. 3d 56.

No. 99–2081. SHAHID *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 5th Cir. Certiorari denied.

No. 99–2083. MORENO GALLEGOS *v.* MT. SINAI MEDICAL CENTER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 803.

No. 99–2084. CITY OF LOS ANGELES *v.* ALI. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 77 Cal. App. 4th 246, 91 Cal. Rptr. 2d 458.

No. 99–2086. CHMURA, JUDGE, 37TH DISTRICT COURT OF MICHIGAN *v.* MICHIGAN JUDICIAL TENURE COMMISSION. Sup. Ct. Mich. Certiorari denied. Reported below: 461 Mich. 517, 608 N. W. 2d 31.

No. 99–2088. NEW HAMPSHIRE HEMP COUNCIL, INC., ET AL. *v.* MARSHALL, ACTING ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION. C. A. 1st Cir. Certiorari denied. Reported below: 203 F. 3d 1.

No. 99–2089. HOWARD ET AL. *v.* AMERICA ONLINE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 741.

No. 99–2091. NATIONAL LOAN INVESTORS, L. P. *v.* TOWN OF ORANGE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 204 F. 3d 407.

No. 99–2092. DICTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 1284.

No. 99–6681. GIBSON *v.* UNITED STATES; and
No. 99–7169. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–8243. PETTY *v.* CARD, SUPERINTENDENT, TIPTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 195 F. 3d 399.

No. 99–8572. ESTRADA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–8618. KAPLAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 1116.

No. 99–8634. DELGADO-CUEVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 475.

No. 99–8667. ABERNATHY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 1116.

No. 99–8701. MAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 270.

No. 99–8794. RUBI IBARRA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 11 S. W. 3d 189.

No. 99–8797. KOEHLER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 558 Pa. 334, 737 A. 2d 225.

No. 99–8817. THOMPSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 559 Pa. 229, 739 A. 2d 1023.

No. 99–8841. PUKSAR *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 559 Pa. 358, 740 A. 2d 219.

No. 99–8865. DANIEL *v.* WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 447.

No. 99–8895. STOGNER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–8896. STANLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 657.

No. 99–8912. CARRANZA-CHAVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1355.

No. 99–8914. IKO *v.* SIZER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 236.

No. 99–8945. BOBROWSKY *v.* TOYOTA MOTOR CORP. ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 261 App. Div. 2d 349, 689 N. Y. S. 2d 183.

No. 99–8968. SMALL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 559 Pa. 423, 741 A. 2d 666.

No. 99–8989. CONNER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 711 N. E. 2d 1238.

No. 99–8992. LITTLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 207.

No. 99–9013. FISHER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 559 Pa. 558, 741 A. 2d 1234.

No. 99–9048. KINGSBERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 202 F. 3d 1030.

No. 99–9067. MASON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 559 Pa. 500, 741 A. 2d 708.

No. 99–9096. SMITH *v.* RENO, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 99–9097. SHAVER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–9112. EVANS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1330.

No. 99–9140. DE HORTA-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 386.

No. 99–9162. SCRUGGS *v.* LEONARD. C. A. 6th Cir. Certiorari denied.

No. 99–9176. CORRALES-BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 192 F. 3d 1311.

No. 99–9182. SMITH *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 756 So. 2d 957.

No. 99–9188. BROOMFIELD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 201 F. 3d 1270.

No. 99–9202. BROWN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 75 Cal. App. 4th 916, 89 Cal. Rptr. 2d 589.

No. 99–9214. ALMON *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 192 F. 3d 28.

No. 99–9224. MATTHEW *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 201 F. 3d 353.

No. 99–9244. HAWKINS *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 200 F. 3d 1279.

No. 99–9245. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 199 F. 3d 1143.

No. 99–9249. GILL *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 7 S. W. 3d 365.

No. 99–9264. BENEFIEL *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 716 N. E. 2d 906.

No. 99–9271. MAPLES *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 758 So. 2d 81.

No. 99–9272. TALLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 262.

No. 99–9279. WATERS *v.* BUTLER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 388.

No. 99–9281. CUNNINGHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 F. 3d 1186.

No. 99–9320. LAYTON *v.* TRENT, WARDEN. Cir. Ct. Jefferson County, W. Va. Certiorari denied.

No. 99–9323. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 1118.

No. 99–9327. CLARK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 202 F. 3d 760.

No. 99–9358. SIMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 99–9363. NASON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 96 Wash. App. 686, 981 P. 2d 866.

No. 99–9365. PETERSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 264 App. Div. 2d 574, 695 N. Y. S. 2d 550.

No. 99–9377. PETERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 739 So. 2d 561.

No. 99–9378. STANCIL *v.* CHAPMAN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9383. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–9385. RHYNES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9389. COVINGTON *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9390. CAMPBELL *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 268 Kan. 529, 997 P. 2d 726.

No. 99–9396. MOORE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9397. CABRERA *v.* HORGAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 201 F. 3d 447.

No. 99–9399. PADILLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 203 F. 3d 156.

No. 99–9403. BOLES *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1344.

No. 99–9406. CHAMBERS *v.* WILLIAMS, JUDGE, CIRCUIT COURT OF MISSOURI, JEFFERSON COUNTY. Sup. Ct. Mo. Certiorari denied.

No. 99–9410. JOLLY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 753 So. 2d 564.

No. 99–9412. SOSA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–9418. MCKINNEY *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 375.

No. 99–9420. SARMIENTO *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 99–9422. WHITE *v.* CHAVIS, SUPERINTENDENT, LUMBERTON CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 262.

No. 99–9423. WOODBURY *v.* STEIN MART, INC. C. A. 11th Cir. Certiorari denied.

No. 99–9425. ATKINSON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 99–9429. STUBBS *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 189 F. 3d 1099.

No. 99–9430. GREENBERG *v.* CARROLL ET AL. App. Ct. Mass. Certiorari denied. Reported below: 48 Mass. App. 1107, 718 N. E. 2d 1270.

No. 99–9435. JOHNSON *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9443. CAMERON *v.* GIAMMITTORIO, JUDGE, GENERAL DISTRICT COURT OF THE CITY OF ALEXANDRIA, ET AL. Sup. Ct. Va. Certiorari denied.

No. 99–9444. CRAWFORD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9445. SMALLWOOD *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 191 F. 3d 1257.

No. 99–9446. HEIM *v.* NEBRASKA ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–9456. GOODEN *v.* HENDRICKS ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–9461. DAVIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9462. REED *v.* GILL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1341.

No. 99–9466. MUELLER *v.* SCHNICK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 375.

No. 99–9470. BROWN *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 188 F. 3d 501.

No. 99–9471. BARRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 429.

No. 99–9475. SMITH *v.* RAY, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9476. SPERO *v.* UNITED STATES; and
No. 99–9908. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1354.

No. 99–9480. ANCRUM *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–9481. ARMAND *v.* STRACK, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9482. ABNEY *v.* CITY AND COUNTY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 205.

No. 99–9485. SYLVESTER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–9486. STARKS *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9490. ROCQUEMORE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 306 Ill. App. 3d 1195, 757 N. E. 2d 137.

No. 99–9491. BURGE *v.* COLORADO. Dist. Ct. Colo., Jefferson County. Certiorari denied.

No. 99–9492. NEGRON *v.* UNITED STATES; and
No. 99–9752. GREEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 869.

No. 99–9495. BANKS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 220.

No. 99–9496. CLICK *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 768 So. 2d 417.

No. 99–9497. BERNAY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 989 P. 2d 998.

No. 99–9498. CORDOVA *v.* BOLTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 1338.

No. 99–9504. CHRONISTER *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 820.

No. 99–9505. MCFADDEN *v.* CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–9508. LOFTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9511. WALSH *v.* FIRST UNUM LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1327.

No. 99–9513. SHAW *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 832.

No. 99–9518. TRICE *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 196 F. 3d 1151.

No. 99–9519. WEBB *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 252 Conn. 128, 750 A. 2d 448.

No. 99–9520. LONG *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 744 So. 2d 143.

No. 99–9521. LAWHORN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 756 So. 2d 971.

No. 99–9523. MEYER *v.* MONSANTO EMPLOYEES BENEFIT PLAN. Sup. Ct. Fla. Certiorari denied.

No. 99–9526. BATES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 750 So. 2d 6.

No. 99–9528. MEADOR *v.* ESTATE OF MCFADDEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 172 F. 3d 869.

No. 99–9531. SHULL *v.* UNITED PARCEL SERVICE. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 4 S. W. 3d 46.

No. 99–9532. PRICE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–9534. SLAUGHTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9535. SATCHELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9536. WRIGHT *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 189 Ill. 2d 1, 723 N. E. 2d 230.

No. 99–9537. WILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 99–9539. YOUNG *v.* WINE, JUDGE, CIRCUIT COURT OF KENTUCKY, JEFFERSON COUNTY. Sup. Ct. Ky. Certiorari denied.

No. 99–9540. JONES *v.* HENNESSEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 383.

No. 99–9542. LANCASTER *v.* CALBONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 478.

No. 99–9543. MMAHAT *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 369.

No. 99–9544. LOZON *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9551. CLARK *v.* ENRIGHT ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–9554. KOPER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 99–9556. LUPARELLO *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1332.

No. 99–9557. PLAYER *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–9560. MARTINEZ VACCA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9561. WEST *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–9562. JOHNSON *v.* BRAXTON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 99–9569. MORROW *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–9570. JONES *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 199 F. 3d 1327.

No. 99–9572. WATTS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 76 Cal. App. 4th 1250, 91 Cal. Rptr. 2d 1.

No. 99–9573. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 F. 3d 1322.

No. 99–9575. PHILLIPS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 989 P. 2d 1017.

No. 99–9582. SANCHEZ *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1274.

No. 99–9583. SAAHIR *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9585. SIDNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 367.

No. 99–9587. ELMORE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 139 Wash. 2d 250, 985 P. 2d 289.

No. 99–9589. HALL *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 8 S. W. 3d 593.

No. 99–9593. GUIDRY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 9 S. W. 3d 133.

No. 99–9595. DORENBOS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 99–9598. ESTRADA, AKA ESPARZA *v.* LAMARQUE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–9599. EL-MOSALAMY *v.* SHARP HEALTHCARE; EL-MOSALAMY *v.* SANTA BARBARA COTTAGE HOSPITAL; EL-MOSALAMY *v.* MERCY HEALTHCARE, SAN DIEGO; EL-MOSALAMY *v.* COMMUNITY HOSPITAL FAMILY PRACTICE; and EL-MOSALAMY *v.* CALIFORNIA HOSPITAL MEDICAL CENTER. C. A. 9th Cir. Cer-

tiorari denied. Reported below: 210 F. 3d 382 (first, second, and third judgments); 215 F. 3d 1332 (fourth and fifth judgments).

No. 99–9602. MORRIS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 99–9603. MATKINS *v.* GRAY ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9605. MADRIGAL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 87 Ohio St. 3d 378, 721 N. E. 2d 52.

No. 99–9610. SETTS *v.* P. R. I. D. E. ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9612. WILSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 811, 525 S. E. 2d 339.

No. 99–9619. LINDSEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 87 Ohio St. 3d 479, 721 N. E. 2d 995.

No. 99–9621. JOSEPH *v.* ATHERTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 835.

No. 99–9625. CARPENTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 21 Cal. 4th 1016, 988 P. 2d 531.

No. 99–9628. ATRAQCHI ET UX. *v.* GOLD'S GYM ENTERPRISES, INC., ET AL. C. A. D. C. Cir. Certiorari denied.

No. 99–9629. COX *v.* MORGAN, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 830.

No. 99–9630. CLAYTON *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 199 F. 3d 1162.

No. 99–9634. COLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9635. HOLGUIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–9636. GRAY *v.* GILLEN. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 254.

No. 99–9637. HOLLOWAY *v.* INDIANA DEPARTMENT OF TRANSPORTATION. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 375.

No. 99–9638. TUNG MINH HUYNH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–9639. TAYLOR *v.* KELSEY. C. A. 2d Cir. Certiorari denied.

No. 99–9641. PETERS *v.* POPE. Ct. Civ. App. Ala. Certiorari denied. Reported below: 777 So. 2d 332.

No. 99–9644. PACE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 829, 524 S. E. 2d 490.

No. 99–9645. THOMAS *v.* GARRAGHTY, CHIEF WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 362.

No. 99–9646. WRIGHT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9648. PETTAWAY *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 99–9649. RILEY *v.* TAYLOR ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 750 A. 2d 530.

No. 99–9652. SMITH *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 197 F. 3d 454.

No. 99–9654. EAGLE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 196 Ariz. 188, 994 P. 2d 395.

No. 99–9655. HOBLEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 752 So. 2d 771.

No. 99–9657. KOLB *v.* WYOMING DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 226.

No. 99–9661. DUNLAP *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–9664. COLLIER *v.* NELSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 202 F. 3d 281.

No. 99–9665. COOK *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 257.

No. 99–9666. COOPER *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 201 F. 3d 447.

No. 99–9676. SHEHEE *v.* PICKETT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1333.

No. 99–9677. BOSSETTE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9679. PERRY *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 99–9681. WILCOX *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1011.

No. 99–9683. PRUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 223.

No. 99–9684. STARCHER *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 99–9686. CASEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 775 So. 2d 1022.

No. 99–9688. KELLEY *v.* CARR ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–9690. KATHERINE L. *v.* SONOMA COUNTY SOCIAL SERVICES DEPARTMENT. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–9694. JOHNSON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 338 S. C. 114, 525 S. E. 2d 519.

No. 99–9695. SMITH *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 13.

No. 99–9697. ZIMMERMAN *v.* MELOY ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–9698. BASSETT *v.* NEVADA ET AL. Sup. Ct. Nev. Certiorari denied.

No. 99–9699. ALLEN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 76 Cal. App. 4th 999, 90 Cal. Rptr. 2d 662.

No. 99–9701. MOORE *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–9702. JOHNSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9705. MILTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–9706. NEELY *v.* ADAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9707. CHAVIES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 234 Mich. App. 274, 593 N. W. 2d 655.

No. 99–9708. COBB *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 251 Conn. 285, 743 A. 2d 1.

No. 99–9710. CHOICE *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–9713. POSHEPNY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–9715. FLOHS *v.* DOW CORNING CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–9719. UKENI *v.* GAITHER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–9720. TANCEMORE *v.* BYRD ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–9721. GAYE *v.* KRAMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–9722. ESPARZA-PONCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 193 F. 3d 1133.

No. 99–9723. EDSALL *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 213.

No. 99–9724. ERVIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 48, 990 P. 2d 506.

No. 99–9729. HOWARD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–9731. HOUSTON *v.* WESTERFIELD. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 268.

No. 99–9732. HUSS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 747 A. 2d 413.

No. 99–9735. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–9737. EVANS *v.* FILLON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–9738. EVANS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9739. GAUNTT *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9740. EVANS BEY *v.* PIERSON ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 307 Ill. App. 3d 1095, 760 N. E. 2d 1072.

No. 99–9741. HENCE *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9745. GARCIA ESTRADA *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 99–9746. HOWARD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9748. TURNER *v.* CAMPBELL. Ct. App. Tenn. Certiorari denied. Reported below: 15 S. W. 3d 466.

No. 99–9750. WILLIAMS *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 99–9751. FRAZIER *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 758 So. 2d 611.

No. 99–9753. STEVENSON *v.* SUGGS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 385.

No. 99–9754. CARTER *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 257.

No. 99–9755. BJORKLUND *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 258 Neb. 432, 604 N. W. 2d 169.

No. 99–9756. ATTIA *v.* SOCIETY OF NEW YORK HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 50.

No. 99–9760. YONG-HO HAN *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9761. FOX *v.* STOTTS. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 834.

No. 99–9763. MURRAY *v.* CANAL INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1006.

No. 99–9766. MULDER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 116 Nev. ——, 992 P. 2d 845.

No. 99–9767. MORGAN *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 202 F. 3d 278.

No. 99–9771. GOEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–9773. ENGLISH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9774. HART *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 265.

No. 99–9776. GROGAN *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9777. DUNCAN *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9778. GYADU *v.* CONNECTICUT WORKERS' COMPENSATION COMMISSION. App. Ct. Conn. Certiorari denied.

No. 99–9779. DEEMER *v.* GOYNES-CLARK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 719.

No. 99–9780. FIELDS *v.* WALTER. C. A. 6th Cir. Certiorari denied.

No. 99–9781. RAYESS *v.* UNIVERSITY OF CINCINNATI. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1313.

No. 99–9782. ROBERSON *v.* HOUSING AUTHORITY OF BALTIMORE CITY. Cir. Ct. Baltimore City, Md. Certiorari denied.

No. 99–9783. SILVELS *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9784. SMITH *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9788. WALLEN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–9789. THRASHER *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied.

No. 99–9793. MOYNIHAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–9794. FRAZIER *v.* PENITENTIARY OF NEW MEXICO MAIN FACILITY ET AL. Ct. App. N. M. Certiorari denied.

No. 99–9795. HENDERSON *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–9797. HAMILTON *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 99–9798. DANIEL *v.* SCHEINER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 1118.

No. 99–9799. JOHNSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–9801. HAGER *v.* MILLER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 819.

No. 99–9802. HERSEY *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 99–9804. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 735.

No. 99–9806. WOLFE *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 13 S. W. 3d 248.

No. 99–9807. CELESTINE *v.* FEDERAL EMERGENCY MANAGEMENT AGENCY. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 99–9809. DAVIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9810. HUDSON *v.* ATTORNEY GENERAL OF NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 259.

No. 99–9811. GREENWOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 189 F. 3d 479.

No. 99–9812. FOSTER *v.* DOE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 268.

No. 99–9813. ENGLE *v.* SEIDNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9815. HENDRICKS *v.* RIVERA, SUPERINTENDENT, WASHINGTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9817. TERIO *v.* PUTNAM COUNTY HOUSING CORP. C. A. 2d Cir. Certiorari denied.

No. 99–9818. HOWE *v.* BRIGANO, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 182 F. 3d 917.

No. 99–9819. FLORES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9823. GREEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9824. FOSTER *v.* PAWLOSKI ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–9825. HOLLOWAY *v.* MASSEY. C. A. 5th Cir. Certiorari denied. Reported below: 184 F. 3d 816.

No. 99–9826. GIBBS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 192 F. 3d 1173.

No. 99–9827. EVANS *v.* COWAN, WARDEN, ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 306 Ill. App. 3d 1193, 757 N. E. 2d 136.

No. 99–9830. MAY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 99–9831. OWENS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 13 S. W. 3d 742.

No. 99–9832. TAI VAN NGUYEN *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9833. WILLIS *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–9836. DANGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 261.

No. 99–9837. DONNELL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1345.

No. 99–9841. HOWARD *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–9842. HILL *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–9843. DULLEN *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 721 N. E. 2d 241.

No. 99–9844. DEAN *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 99–9845. FUHRMAN *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–9847. SOWERS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 724 N. E. 2d 588.

No. 99–9848. OLIVER *v.* TAYLOR, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 99–9849. ROACH *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–9850. RODRIGUEZ ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1353.

No. 99–9852. SCARBERRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 228.

No. 99–9853. CLARK *v.* UNITED STATES; and
No. 99–10237. FLOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 212.

No. 99–9854. BEAMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1334.

No. 99–9856. SHELVIN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 99–9857. SETTS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 760 So. 2d 948.

No. 99–9858. SELF *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9862. LANGADINOS *v.* TRUSTEES OF TOURO COLLEGE ET AL. C. A. 2d Cir. Certiorari denied.

No. 99–9863. COLEMAN *v.* RYAN, ATTORNEY GENERAL OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 196 F. 3d 793.

No. 99–9865. BROWN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 99–9867. ANDREWS *v.* BELL. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 435.

No. 99–9868. CHAMBERS *v.* WELBORN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–9869. ACIERTO *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1383.

No. 99–9870. SOAPES *v.* PAYNE, SUPERINTENDENT, MCNEIL ISLAND CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1275.

No. 99–9871. CARTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1348.

No. 99–9872. THOMAS, AKA ALLAH *v.* SIKES, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 99–9873. WILLIAMS *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9875. ALLEN *v.* MILLER, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 99–9877. COLEMAN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 99–9879. BLACKWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 210.

No. 99–9880. BELL *v.* VALDEZ, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 657.

No. 99–9881. WHITAKER *v.* MARYLAND. Ct. App. Md. Certiorari denied.

No. 99–9882. WILSON *v.* MILLER, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9885. TAYLOR *v.* TUCKER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1007.

No. 99–9887. CHAN *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 430.

No. 99–9891. MILLER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 200 F. 3d 274.

No. 99–9892. BARAJAS-MONTIEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 947.

No. 99–9893. MELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–9895. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 F. 3d 319.

No. 99–9896. NORRIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 99–9897. SPEARMAN *v.* ATLAS, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 368.

No. 99–9898. REGISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 820.

No. 99–9899. OUTTEN *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–9900. CARROLL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 207 F. 3d 465.

No. 99–9901. BOZEMAN *v.* ROCHESTER TELEPHONE CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1321.

No. 99–9903. ANDERSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 992 P. 2d 409.

No. 99–9904. STEPHENS *v.* SELSKY ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 260 App. Div. 2d 739, 688 N. Y. S. 2d 725.

No. 99–9906. PAGE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 99–9907. URIBE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1327.

No. 99–9909. NEWSOME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 639.

No. 99–9910. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 185 F. 3d 459.

No. 99–9913. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–9914. JAMES *v.* CITY OF ROCK HILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 209.

No. 99–9916. SPARKS *v.* MONTANA. Sup. Ct. Mont. Certiorari denied.

No. 99–9918. CANNADY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 11 S. W. 3d 205.

No. 99–9919. ASHMAN *v.* MINNESOTA DEPARTMENT OF CORRECTIONS. Sup. Ct. Minn. Certiorari denied. Reported below: 608 N. W. 2d 853.

No. 99–9921. SEGINES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 201 F. 3d 441.

No. 99–9922. PONCE-BRAN *v.* TRUSTEES OF CALIFORNIA STATE UNIVERSITY ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 99–9923. RICHARDSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 210.

No. 99–9926. MCVEAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 216.

No. 99–9928. MERCER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–9929. JAMES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–9930. WILSON *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied.

No. 99–9931. WALKER *v.* NEAL, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–9932. MCDOWALL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 99–9933. RECKER *v.* LEONARD, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 223, 724 N. E. 2d 805.

No. 99–9934. RENOIR *v.* WILSON, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied.

No. 99–9935. SHARMA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 207.

No. 99–9936. KHUN *v.* POWELL. C. A. 9th Cir. Certiorari denied.

No. 99–9937. MERCER *v.* SCIBANA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9938. MOILANEN *v.* SONDALLE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–9939. MANESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 211.

No. 99–9940. BURGESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–9942. ARTOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 222.

No. 99–9943. ALLEN *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 267.

No. 99–9944. CLARK *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–9945. BIBBS ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1378.

No. 99–9946. BUCKOM *v.* O'KONEK. C. A. 4th Cir. Certiorari denied.

No. 99–9948. WELKY *v.* MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 99–9949. BALSAM *v.* UNITED STATES; and
No. 00–5328. MEUSE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 203 F. 3d 72.

No. 99–9952. BURKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1305.

No. 99–9953. BRADSHAW *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 194 F. 3d 1311.

No. 99–9954. COLLINS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–9955. BASHORE *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9956. ANTLE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 53 M. J. 12.

No. 99–9957. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 216.

No. 99–9958. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 219.

No. 99–9959. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 211.

No. 99–9960. Ross *v.* Chapman, Warden. C. A. 11th Cir. Certiorari denied.

No. 99–9961. Salb *v.* Parks, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1354.

No. 99–9962. Chambers *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 742 A. 2d 201.

No. 99–9963. Drane *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 271 Ga. 849, 523 S. E. 2d 301.

No. 99–9964. Biggs *v.* Yukins, Warden. C. A. 6th Cir. Certiorari denied.

No. 99–9966. Anty *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 305.

No. 99–9967. Bradshaw *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 215.

No. 99–9968. Acevedo-Toscano *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 222.

No. 99–9969. Shultz *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1347.

No. 99–9970. Peoples *v.* Michigan Department of Corrections. C. A. 6th Cir. Certiorari denied.

No. 99–9971. Torres *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 99–9972. Morris *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–9975. Kinermon *v.* Garcia, Warden. C. A. 9th Cir. Certiorari denied.

No. 99–9976. Mosseri *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 912.

No. 99–9977. Murry *v.* Murray, Superintendent, Groveland Correctional Facility, et al. C. A. 2d Cir. Certiorari denied.

No. 99–9979. WILLIAMS *v.* EPPS. C. A. 6th Cir. Certiorari denied.

No. 99–9980. VARGAS *v.* SIKES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 746.

No. 99–9981. SORTO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 438.

No. 99–9982. PAPPAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1324.

No. 99–9983. R. M. C. *v.* GEORGIA BOARD TO DETERMINE FITNESS OF BAR APPLICANTS. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 99, 525 S. E. 2d 100.

No. 99–9984. ROBLES-MENDIOLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 99–9985. SANDERS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–9986. SALAZAR *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–9987. HOLLIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 227.

No. 99–9988. IBN-SADIIKA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 745 A. 2d 40.

No. 99–9989. MCCLAIN *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 99–9991. WETCHIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 F. 3d 632.

No. 99–9992. SMITH *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1376.

No. 99–9993. LEON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 756 So. 2d 1009.

No. 99–9994. QUIROZ ARVISO *v.* KRAMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1272.

No. 99–9997. JOHNSON *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–9998. RICO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–9999. PRIDE *v.* LAMBDIN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 599.

No. 99–10000. ALLEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 592.

No. 99–10002. CHANDLER *v.* DEKALB COUNTY BOARD OF COMMUNITY SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1011.

No. 99–10003. BURCHILL *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1328.

No. 99–10004. MINOR *v.* WETHERINGTON ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–10005. HERMUNDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 386.

No. 99–10006. GONZALES-LEMUS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 99–10007. HAFFORD *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 252 Conn. 274, 746 A. 2d 150.

No. 99–10008. DAVIS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 268 Kan. 661, 998 P. 2d 1127.

No. 99–10009. DEANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 362.

No. 99–10010. ESCARINO-CARRILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 227.

No. 99–10011. HURLEY *v.* IDAHO ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–10012. DUNBAR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 307 Ill. App. 3d 1067, 760 N. E. 2d 1059.

No. 99–10013. GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 445.

No. 99–10014. FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–10015. DENSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10016. DANDURAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 644.

No. 99–10017. HARRIS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1273.

No. 99–10018. HUGHES *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 233 Wis. 2d 280, 607 N. W. 2d 621.

No. 99–10019. GAINES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 116 Nev. ——, 998 P. 2d 166.

No. 99–10020. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 445.

No. 99–10021. GABRIEL GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1182.

No. 99–10022. ELLIOTT *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 1433, 724 N. E. 2d 810.

No. 99–10025. LOVERA *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 99–10026. MOORE *v.* PHELPS DODGE WIRE MAGNET CO. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 375.

No. 99–10027. JOHNSON *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 99–10029. KOLLYNS *v.* BEASLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 821.

No. 99–10031. WALCZAK *v.* MULLEN ET AL. Ct. App. Wis. Certiorari denied.

No. 99–10032. ZAKKI *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1324.

No. 99–10035. HERNANDO RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–10036. RENOIR *v.* GILMORE, GOVERNOR OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied.

No. 99–10037. STEWART *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 99–10038. OUTLAW *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 99–10039. APPIAH *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 704.

No. 99–10040. JONES *v.* TANNER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 631.

No. 99–10041. MUHANNAD, AKA AUSTIN *v.* TRUE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 390.

No. 99–10043. BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 196 F. 3d 1262.

No. 99–10044. BLANCO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–10046. O'NEAL *v.* UNITED STATES; and
No. 00–5650. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 644.

No. 99–10047. REILLY *v.* STRATTON VETERANS ADMINISTRATION MEDICAL CENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 355.

No. 99–10050. BROWN *v.* UNITED STATES; and
No. 00–5011. SMITH ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1325.

No. 99–10051. ATRAQCHI ET UX. *v.* WILLIAMS, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 99–10052. CANDELARIA *v.* BENNETT, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–10056. KREPS *v.* CHRISTIANSEN, JUDGE, COURT OF COMMON PLEAS OF OHIO, LUCAS COUNTY, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 313, 725 N. E. 2d 663.

No. 99–10057. LUIS NAVARRO *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–10058. MOORE *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–10059. JARGES *v.* ADAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–10060. WEBB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 645.

No. 99–10061. TRUEBLOOD *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 715 N. E. 2d 1242.

No. 99–10062. ZACK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 753 So. 2d 9.

No. 99–10063. TILLITZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 1319.

No. 99–10064. UTTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 599.

No. 99–10065. WILLIAMSON *v.* DALLAS INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1007.

No. 99–10066. SHERMAN *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–10067. SMITH *v.* CHAPMAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–10068. PITTS *v.* GEARINGER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–10069. YOUNG JOON PARK *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied.

No. 99–10070. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–10072. BURKS *v.* UNITED STATES; and
No. 99–10096. REDDICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–10073. MEJIA-VELEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–10074. WILBURN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10075. VISHEVNIK *v.* SUPREME COURT OF NEW YORK, NEW YORK COUNTY. C. A. 2d Cir. Certiorari denied.

No. 99–10076. MOYE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10077. MAYS *v.* YUSUFF, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 99–10078. SCHREY *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–10079. ANTONIO RODRIGUEZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 753 So. 2d 29.

No. 99–10080. SALAZAR-ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 F. 3d 648.

No. 99–10081. REED *v.* LEONARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–10082. BLICKLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1262.

No. 99–10083. COX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1342.

No. 99–10084. COIT *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1261.

No. 99–10086. POTZER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1262.

No. 99–10087. SAMB *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 822.

No. 99–10088. SCHROEDEL *v.* LABUDA ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 264 App. Div. 2d 136, 707 N. Y. S. 2d 252.

No. 99–10092. LAMB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 99–10093. TREAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 228.

No. 99–10097. O'BRYAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 636.

No. 99–10099. HAYES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 99–10100. BRADFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 643.

No. 99–10101. CHANG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 207 F. 3d 1169.

No. 99–10102. CHASE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 260.

No. 99–10103. AARON, AKA BAZILE *v.* BALTIMORE RAVENS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 360.

No. 99–10105. CURRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 664.

No. 99–10106. LEWIS *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 99–10107. MINAJA-THED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–10108. MOORE *v.* MCGINNIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–10109. MEDLEY *v.* CITY OF AMARILLO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 198 F. 3d 241.

No. 99–10110. SIMPSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 822.

No. 99–10111. SYKES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–10112. ABDUS-SALAAM *v.* GLICKMAN, SECRETARY OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 907.

No. 99–10113. TOMPKINS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 193 F. 3d 1327.

No. 99–10114. URIBE-GOMEZ, AKA MOLINA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1335.

No. 99–10115. VAN DE CRUIZE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–10116. DOAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 598.

No. 99–10117. WHITECOTTON *v.* HILL, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 99–10118. BEST *v.* PEPSI-COLA BOTTLING COMPANY OF DURHAM, INC. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1264.

No. 99–10119. WHITE *v.* PEOPLES BANK & TRUST CO. C. A. 5th Cir. Certiorari denied.

No. 99–10121. PASTRANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 432.

No. 99–10122. ROSCO ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1335.

No. 99–10123. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–10125. SMITH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 251, 524 S. E. 2d 28.

No. 99–10126. CRANFILL *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 720 N. E. 2d 1279.

No. 99–10128. BENNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 598.

No. 99–10129. LUIS ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 128.

No. 99–10130. COLOMA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 181 F. 3d 84.

No. 99–10131. MAINVILLE *v.* HALLAHAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–10133. KENT, AKA WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 99–10134. KENNY ET AL. *v.* LAWSETH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 254.

No. 99–10135. TRAPPIER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 99–10136. WILSON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 99–10137. YURTIS *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied.

No. 99–10138. DUNN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 99–10139. DOBBINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 461.

No. 99–10140. Fuster-Escalona *v.* Florida Department of Corrections et al. C. A. 11th Cir. Certiorari denied.

No. 99–10141. Feinberg *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 99–10142. El-Amin *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 270.

No. 99–10143. Foye *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 362.

No. 99–10144. Glover *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 99–10146. Glavis *v.* Garcia, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 99–10147. Hunter *v.* United States. Ct. App. D. C. Certiorari denied.

No. 99–10148. Postell *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 819.

No. 99–10149. Antonio Soto *v.* United States; and
No. 00–5252. Soto *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 598.

No. 99–10150. Smith *v.* Booker, Superintendent, Mississippi State Penitentiary, et al. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 658.

No. 99–10151. Smith *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 664.

No. 99–10153. Gibson *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 702 N. E. 2d 707.

No. 99–10154. Garside *v.* Wilkinson, Director, Ohio Department of Rehabilitation and Correction, et al. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 371.

No. 99–10155. Gedeon *v.* Immigration and Naturalization Service. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 436.

No. 99–10156. DAWSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 193 F. 3d 1107.

No. 99–10157. HARRIS *v.* GRAVES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 99–10158. FINCHAM *v.* TRENT, WARDEN. Cir. Ct. Berkeley County, W. Va. Certiorari denied.

No. 99–10161. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 198 F. 3d 377.

No. 99–10162. RENDON *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–10163. RODRIGUEZ ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 197 F. 3d 611.

No. 99–10165. YOUNG *v.* OHIO. Ct. App. Ohio, Belmont County. Certiorari denied.

No. 99–10166. ESTRADA-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 179 F. 3d 776.

No. 99–10167. TORRES, AKA BOYD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 209 F. 3d 308.

No. 99–10168. WHALEY *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 388.

No. 99–10169. THOMPSON *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 431 Mass. 108, 725 N. E. 2d 556.

No. 99–10170. NWENE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 99–10171. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 99–10172. MCNEAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 99–10173. MEDINA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 99–10174. JACKSON *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–10175. JOHNSON *v.* CITY OF PHILADELPHIA. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 1314.

No. 99–10176. ASPELMEIER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 99–10177. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 99–10178. WALTON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 207 F. 3d 694.

No. 99–10179. GIBSON *v.* PRUITT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–10180. GREEN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 912.

No. 99–10181. HOGG *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10182. HORSLEY *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 99–10183. HARRIS *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 439.

No. 99–10184. GARRETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 99–10185. ALBERTO GARCIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–10186. HARRIS *v.* HOLT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 389.

No. 99–10187. FISHER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10189. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 393.

No. 99–10192. WILLIS *v.* GOODWILL INDUSTRIES OF KENTUCKY, INC. Sup. Ct. Ky. Certiorari denied.

No. 99–10193. SINCLAIR *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 760 So. 2d 1191.

No. 99–10195. JEMBER *v.* SANTA CLARA COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 894.

No. 99–10196. NEWMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 700.

No. 99–10199. DUFRENE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10200. FORNEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 99–10201. EAMES *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 367.

No. 99–10203. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 238.

No. 99–10204. FLOWERS *v.* LEEAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1331.

No. 99–10206. DICKINSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 126.

No. 99–10207. DAVIS *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–10208. HETT *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–10209. CHEN *v.* MOTOROLA, INC. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 594.

No. 99–10210. CORNELIUS *v.* RODATUS ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–10211. CLOUD *v.* COMMUNITY WORKS, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 99–10212. BARNETT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–10213. CALDWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 99–10214. SETLIFF *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 99–10216. ACEVEDO *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 208.

No. 99–10217. CORDOVA-GONZALEZ *v.* UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT. C. A. 1st Cir. Certiorari denied.

No. 99–10218. BELL *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 608 N. W. 2d 232.

No. 99–10219. BALL *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 600 N. W. 2d 602.

No. 99–10220. COX *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 99–10222. GELL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 192, 524 S. E. 2d 332.

No. 99–10223. DEERE *v.* LINDSEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 99–10224. MYERS *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 99–10225. GARCIA *v.* UNITED STATES; and
No. 99–10266. URIBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 99–10226. HAMILTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 1165.

No. 99–10227. TAYLOR *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 99–10228. YOUNG *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 750.

No. 99–10229. BOWMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–10230. BIBBS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10231. REED *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 99–10232. HAIRSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1342.

No. 99–10233. HARRIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–10234. TAI TAN DUONG ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 189 F. 3d 469.

No. 99–10235. GOODRICH *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied.

No. 99–10236. HALE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 99–10238. HOLLOMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 763 So. 2d 1043.

No. 99–10239. GALLO *v.* GILMORE. C. A. 7th Cir. Certiorari denied.

No. 99–10240. HANKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 307 Ill. App. 3d 1069, 760 N. E. 2d 1060.

No. 99–10241. HUSBAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–10244. HOLMES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10245. DRUMMOND, AKA YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 184 F. 3d 824.

No. 99–10246. DENNIS *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1332.

No. 99–10247. BAEZ *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 99–10248. COOK *v.* FAULKNER. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1349.

No. 99–10252. HALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–10253. HOKOM *v.* GOODMAN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 99–10254. HARDY *v.* ATTORNEY GENERAL OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 204 F. 3d 1121.

No. 99–10255. GINES *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 99–10256. EUBANKS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 99–10257. LEWIS *v.* BOONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 202 F. 3d 282.

No. 99–10258. PRESCOTT *v.* GUNJA, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1265.

No. 99–10259. SMILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–10260. LAURIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1324.

No. 99–10261. AGUIRRE *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 99–10262. BILLEMEYER *v.* NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 99–10263. CROSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 99–10267. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–10269. ALFORD *v.* JARVIS, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1332.

No. 99–10270. BAKRI *v.* NOONAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 844.

No. 99–10271. BARRIOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 355.

No. 99–10272. CROSS *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 99–10273. ANDERSON *v.* GENERAL MOTORS CORP. Sup. Ct. Del. Certiorari denied. Reported below: 748 A. 2d 406.

No. 99–10274. BAGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 193 F. 3d 522.

No. 99–10275. BOTTONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 99–10276. BROWN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1344.

No. 99–10277. BARTLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 99–10278. BARNETT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 99–10279. GRIFFIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–10281. OLUTAYO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 376.

No. 99–10282. RICHARDSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 189 Ill. 2d 401, 727 N. E. 2d 362.

No. 00–1. MCCRARY *v.* OHIO DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1341.

No. 00–2. AMELKIN ET AL. *v.* MCCLURE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 293.

No. 00–3. BECK *v.* TEXAS BOARD OF DENTAL EXAMINERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 629.

No. 00–4. TRENT, AKA WINEBARGER *v.* VALLEY ELECTRIC ASSN., INC. C. A. 9th Cir. Certiorari denied. Reported below: 195 F. 3d 534.

No. 00–5. YERKOVICH ET AL. *v.* MCA, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1276.

No. 00–6. CICORIA *v.* CUSHWA, CHAIRPERSON, MARYLAND PAROLE COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 360.

No. 00–8. ASA INVESTERINGS PARTNERSHIP *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. Reported below: 201 F. 3d 505.

No. 00–9. GEMINI, INC. *v.* THORSON. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 370.

No. 00–10. NGC SETTLEMENT TRUST ET AL. *v.* CENTURY INDEMNITY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 498.

No. 00–11. SONY COMPUTER ENTERTAINMENT INC. ET AL. *v.* CONNECTIX CORP. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 596.

No. 00–12. ESENSTEN ET AL. *v.* SHEA. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 712.

No. 00–13. QUINLAN ET AL. *v.* KIMBERLIN. C. A. D. C. Cir. Certiorari denied. Reported below: 199 F. 3d 496.

No. 00–14. PENO ET UX. *v.* STATE FARM FIRE & CASUALTY CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1329.

No. 00–15. PAYNE-ALI ET UX. *v.* ST. JAMES MUTUAL HOMES, INC. Ct. App. D. C. Certiorari denied.

No. 00–16. MICHAEL MULLETT *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. Super. Ct. Pa. Certiorari denied.

No. 00–17. ARABIAN SHIELD DEVELOPMENT CO. *v.* CENTRAL INTELLIGENCE AGENCY. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1007.

No. 00–19. SMITHKLINE BEECHAM CONSUMER HEALTHCARE, L. P. *v.* WATSON PHARMACEUTICALS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 211 F. 3d 21.

No. 00–20. VOLOCHTCHOUK *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 00–21. ROSS *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 361.

No. 00–22. SIGN-A-WAY, INC. *v.* MECHTRONICS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 911.

No. 00–23. SEREDY ET AL. *v.* RACANSKY. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 743 So. 2d 1127.

No. 00–25. LITTLETON *v.* PRANGE. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 9 S. W. 3d 223.

No. 00–26. JOHNSON *v.* MT. AIRY BAPTIST CHURCH ET AL. Ct. App. D. C. Certiorari denied.

No. 00–27. MATASSARIN *v.* LYNCH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 124.

No. 00–30. MOODY, AKA LAM *v.* MOODY ET AL. Int. Ct. App. Haw. Certiorari denied. Reported below: 92 Haw. 689, 994 P. 2d 621.

No. 00–32. ILLINOIS *v.* QUICK. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 308 Ill. App. 3d 474, 720 N. E. 2d 1137.

No. 00–33. INTERNATIONAL STAR CLASS YACHT RACING ASSN. *v.* TOMMY HILFIGER U. S. A., INC. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1323.

No. 00–34. GAMBLERS SUPPLY MANAGEMENT CO. ET AL. *v.* CLEMENTS ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 610 N. W. 2d 847.

No. 00–35. WILDE *v.* DEPARTMENT OF THE AIR FORCE ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–39. MAJOR LEAGUE BASEBALL PLAYERS ASSN. *v.* CARDTOONS, L. C. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 885.

No. 00–40. LUCIDORE *v.* NEW YORK STATE DIVISION OF PAROLE. C. A. 2d Cir. Certiorari denied. Reported below: 209 F. 3d 107.

No. 00–42. L. R. S. C., CO. *v.* RICKEL HOME CENTERS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 209 F. 3d 291.

No. 00–43. MALOOF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 819.

No. 00–45. MCARTHUR *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 1 S. W. 3d 323.

No. 00–47. HOPKINS *v.* SAUNDERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 199 F. 3d 968.

No. 00–48. JONES ET UX. *v.* AMERICAN SAVINGS BANK ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–49. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 213.

No. 00–51. MENDONCA *v.* WINTERSEN. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 427.

No. 00–53. TUCKER *v.* WOLTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 125.

No. 00–54. YSLETA DEL SUR PUEBLO *v.* EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1. C. A. 5th Cir. Certiorari denied. Reported below: 222 F. 3d 208.

No. 00–55. ESCOBEDO ET AL. *v.* CONOCO, INC. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 803.

No. 00–56. CAZALAS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 912.

No. 00–57. ROBBINS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 52 M. J. 455.

No. 00–58. SAPP ET UX. *v.* RAIN AND HAIL INSURANCE SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 636.

No. 00–59. STOCK *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 00–63. AYERS ET AL. *v.* OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL–CIO. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–64. MARYLAND *v.* REYNOLDS. Ct. Sp. App. Md. Certiorari denied. Reported below: 130 Md. App. 304, 746 A. 2d 422.

No. 00–65. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 125.

No. 00–68. MENDONCA *v.* MEDEIROS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 427.

No. 00–69. SANDERS *v.* EXXON CORP., DBA EXXON CO., U. S. A. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 369.

No. 00–72. SIMMONS *v.* WETHERALL ET AL. Sup. Ct. Conn. Certiorari denied.

No. 00–73. ANDERSON *v.* NIAGARA MOHAWK POWER CORP. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 265 App. Div. 2d 817, 696 N. Y. S. 2d 736.

No. 00–74. SCOTT *v.* CLAY COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 867.

No. 00–76. TAYLOR *v.* RANCHO SANTA BARBARA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 206 F. 3d 932.

No. 00–77. Loudon County et al. *v.* Sowards. C. A. 6th Cir. Certiorari denied. Reported below: 203 F. 3d 426.

No. 00–78. Lara *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 258 Neb. 996, 607 N. W. 2d 487.

No. 00–79. Godfrey *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 737 A. 2d 1273.

No. 00–80. Drake Oil Technology Partners et al. *v.* Commissioner of Internal Revenue. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1277.

No. 00–81. Pangburn *v.* Northern Kentucky University. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 372.

No. 00–82. Chabafy *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 227.

No. 00–83. Contini et al. *v.* Smith. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 597.

No. 00–84. Burroughs, as Father, Next Friend, and Guardian of His Minor Children, Burroughs et al. *v.* Domestic Violence Project et al. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 1314.

No. 00–85. Manson *v.* Little Rock Newspapers, Inc., dba Arkansas Democrat-Gazette. C. A. 8th Cir. Certiorari denied. Reported below: 200 F. 3d 1172.

No. 00–87. Jackson *v.* Lachance, Director, Office of Personnel Management, et al. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1354.

No. 00–88. Foley *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 94 N. Y. 2d 668, 731 N. E. 2d 123.

No. 00–91. Bennett et al. *v.* Barnett et al. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 272.

No. 00–92. Hawkins *v.* PepsiCo, Inc., dba Pepsi-Cola North America et al. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 274.

No. 00–94. Paris, Natural Father of Paris, et al. *v.* Iron Workers Trust Fund, Local No. 5. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1265.

No. 00–95. STONE *v.* AUTOLIV ASP, INC. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 1132.

No. 00–96. GREGORY *v.* CINCINNATI INC. ET AL. Ct. App. Mich. Certiorari denied.

No. 00–98. BICKFORD ET AL. *v.* ANCHORAGE SCHOOL DISTRICT BOARD OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 220.

No. 00–99. IN RE MICHIGAN HIGH SCHOOL ATHLETIC ASSN. ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–100. SMITH *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 992 P. 2d 605.

No. 00–102. ADAMS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 252 Conn. 752, 748 A. 2d 872.

No. 00–103. DORWART *v.* SICKING ET AL. Ct. Civ. App. Okla. Certiorari denied. Reported below: 996 P. 2d 471.

No. 00–104. CUSTOM FOOD MACHINERY, INC., ET AL. *v.* TERESA DE SARACHO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 206 F. 3d 874.

No. 00–105. CUELLAR *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–106. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 823.

No. 00–107. SILVERMAN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 159 Ore. App. 524, 977 P. 2d 1186.

No. 00–108. LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT *v.* DOWELL ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 750 So. 2d 498.

No. 00–109. LEONARD *v.* NORTHWEST AIRLINES, INC. Ct. App. Minn. Certiorari denied. Reported below: 605 N. W. 2d 425.

No. 00–114. KALLEMBACH *v.* ZEUSKE ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–115. DEICHMANN ET AL. *v.* BOEING CO. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 907.

No. 00–116. ZAMVIL *v.* PETALUMA JOINT UNION HIGH SCHOOL DISTRICT ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–117. SPRINGER *v.* ALABAMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 227.

No. 00–118. AGUILLARD *v.* MCGOWEN ET AL.; and
No. 00–136. HARRISON ET AL. *v.* MCGOWEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 226.

No. 00–119. WHEAT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 271.

No. 00–120. CUETO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–123. SALMAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 00–125. CHAPLAIN *v.* CHARLOTTE TIMBER CO., INC. Sup. Ct. Va. Certiorari denied.

No. 00–126. PARRISH *v.* COOPER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 203 F. 3d 937.

No. 00–128. BEEHIVE TELEPHONE CO., INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–134. GREER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 999 S. W. 2d 484.

No. 00–135. HUNTER, A MINOR, BY BRANDT, HER MOTHER AND NEXT FRIEND *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 190 F. 3d 1061.

No. 00–137. HENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–140. UNIVERSAL BANCARD SYSTEMS, INC. *v.* BANKCARD AMERICA, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 203 F. 3d 477.

No. 00–141. WADIBIA *v.* AUBURN UNIVERSITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1013.

No. 00–142. TILLEY, INDIVIDUALLY AND AS TRUSTEE FOR TILLEY SIX TRUST AND T. T. FARMS TRUST, ET AL. *v.* NORTH CAROLINA DEPARTMENT OF TRANSPORTATION. Ct. App. N. C. Certiorari denied. Reported below: 136 N. C. App. 370, 524 S. E. 2d 83.

No. 00–143. AZIZ *v.* TRI-STATE UNIVERSITY. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 374.

No. 00–144. DIGGS *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 00–145. MULTI RESOURCE USA, INC., ET AL. *v.* MAO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 125.

No. 00–146. LAMON *v.* CONNER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1355.

No. 00–148. SOLEM *v.* COURTER, COMMISSIONER OF AGRICULTURE AND CONSUMER SERVICES OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 362.

No. 00–153. MITCHELL *v.* KATZ ET AL. C. A. 1st Cir. Certiorari denied.

No. 00–154. DAWAHARE *v.* SPENCER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 666.

No. 00–155. WHITEHORN *v.* TURNER ET AL., CO-EXECUTORS OF THE ESTATE OF TURNER. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1342.

No. 00–158. BROWN *v.* ADIDAS USA, INC., AKA ADIDAS AMERICA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1350.

No. 00–159. MARCELLO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 212 F. 3d 1005.

No. 00–161. NEGRON-RIVERA *v.* MADERAS TRATADAS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 204 F. 3d 287.

No. 00–162. PRATHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1265.

No. 00–170. OXENDINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–172. BURNS *v.* UNINET, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1264.

No. 00–174. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 363.

No. 00–177. STANLEY ET AL. *v.* TOWNSHIP OF CLAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1270.

No. 00–178. AZIZ *v.* SLATER, SECRETARY OF TRANSPORTATION. C. A. D. C. Cir. Certiorari denied. Reported below: 203 F. 3d 51.

No. 00–188. BRZOZOWSKI *v.* DELAWARE. C. A. 3d Cir. Certiorari denied. Reported below: 203 F. 3d 816.

No. 00–193. HOFFMAN, AKA ALAMO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–199. SLOAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 00–202. SYLVIE M. ET AL. *v.* BOARD OF EDUCATION OF DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1351.

No. 00–204. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–206. KENDALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 840.

No. 00–211. GRIMES ET UX. *v.* NORTHWEST AIRLINES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1076.

No. 00–224. MANDANICI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 519.

No. 00–225. MACK *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 375.

No. 00–227. MORGAN *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 217 F. 3d 858.

No. 00–230. HOLMAN ET UX. *v.* INDIANA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 211 F. 3d 399.

No. 00–233. FRAZIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1326.

No. 00–236. BLAIR ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 214 F. 3d 690.

No. 00–237. ARMSTRONG ET UX. *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 131.

No. 00–245. CORREDOR *v.* FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 00–247. TAMBERELLA *v.* NEVADA EMPLOYMENT SECURITY DIVISION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 385.

No. 00–253. MARTINEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 750, 996 P. 2d 32.

No. 00–282. UNITED STATES EX REL. CANTEKIN *v.* UNIVERSITY OF PITTSBURGH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 192 F. 3d 402.

No. 00–286. MEYER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 910.

No. 00–288. SMITH *v.* HOLTZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 210 F. 3d 186.

No. 00–303. OCANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 585.

No. 00–5005. MANNING *v.* ROE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 642.

No. 00–5007. MOSLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–5008. EL-HAGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 74.

No. 00–5009. WALDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 206 F. 3d 597.

No. 00–5010. VIARS *v.* FLORIDA PAROLE COMMISSION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 766 So. 2d 1051.

No. 00–5012. YBANEZ ET AL. *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 645.

No. 00–5013. WHITE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied.

No. 00–5014. LAFLAMME *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 663.

No. 00–5015. PRESLEY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 770 So. 2d 114.

No. 00–5017. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 363.

No. 00–5018. SMULLS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 10 S. W. 3d 497.

No. 00–5019. FINK *v.* MONTES. C. A. 9th Cir. Certiorari denied.

No. 00–5020. PRATT *v.* GRASSO. Ct. App. Wash. Certiorari denied.

No. 00–5021. PEERENBOOM *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5022. THOMAS *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 841.

No. 00–5023. BAYON *v.* STATE UNIVERSITY OF NEW YORK AT BUFFALO ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5024. BAYON *v.* STATE UNIVERSITY OF NEW YORK AT BUFFALO ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5025. M. G., A JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–5026. JOHNSON *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5027. MARKS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 577.

No. 00–5028. JONES *v.* HUTCHINSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 601.

No. 00–5030. PAGE-SIMS *v.* TSW FOODS, INC., DBA POPEYE'S. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 841.

No. 00–5031. SMITH *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 203.

No. 00–5032. ANDERSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 603 N. W. 2d 354.

No. 00–5033. RILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–5034. PIERCE *v.* NEW HAMPSHIRE. C. A. 1st Cir. Certiorari denied.

No. 00–5035. MIKKILINENI *v.* CITY OF HOUSTON ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–5036. MEDLOCK *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 200 F. 3d 1314.

No. 00–5038. TERRY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 339 S. C. 352, 529 S. E. 2d 274.

No. 00–5039. WEBBER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 545.

No. 00–5040. ATRAQCHI ET UX. *v.* FRED A. SMITH CO. ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–5041. TAYLOR *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5042. YAPP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5043. VASQUEZ *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5044. YUSKO *v.* TRUGREEN-CHEMLAWN ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–5045. MOSER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5047. VALDEZ *v.* KRANNING, SUPERINTENDENT, BRANCHVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 00–5049. MCCOLM *v.* CARTER HAWLEY HALE, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–5050. LEVARIO *v.* STATE BAR OF TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 00–5051. LOPEZ, AKA HERNANDEZ *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 202 F. 3d 1110.

No. 00–5052. LANDRY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5054. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 202 F. 3d 1060.

No. 00–5055. CAUSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 598.

No. 00–5056. CASTRO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–5057. GIBSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–5058. PATEL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5059. SIAS *v.* LEBLANC, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5061. BOURGEOIS *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied.

No. 00–5062. MCEVOY *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 384.

No. 00–5063. REITER *v.* O'BRIEN ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–5064. RIGGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 828.

No. 00–5065. BUSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 601.

No. 00–5066. GORHAM *v.* TRANSIT WORKERS UNION OF AMERICA, AFL–CIO, LOCAL 100, NYCTA. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1322.

No. 00–5070. HEARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 00–5071. HARRIS *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 608 N. W. 2d 330.

No. 00–5072. GILLIANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–5074. HUDSPETH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 537.

No. 00–5075. DANIELS *v.* WOOTEN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 598.

No. 00–5076. GROCE *v.* CRAWFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5078. BARRON-ROBERTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1334.

No. 00–5079. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1349.

No. 00–5080. COLLIER *v.* MYERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5082. WEEKES *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 00–5083. WHITEHEAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 200 F. 3d 634.

No. 00–5085. BROWN *v.* LYTLE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 389.

No. 00–5086. PERKINS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 308 Ill. App. 3d 1112, 764 N. E. 2d 198.

No. 00–5087. MONROE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 00–5088. AUSTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 750.

No. 00–5091. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 00–5092. BOBBITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 822.

No. 00–5093. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 23.

No. 00–5094. MCCLOUD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 767 So. 2d 458.

No. 00–5095. TERIO *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 204.

No. 00–5096. PEREZ-MONTANEZ ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 202 F. 3d 434.

No. 00–5097. REUTTER *v.* CAROTHERS, SUPERINTENDENT, LEMON CREEK CORRECTIONAL CENTER, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5098. RAWSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5100. POSEY *v.* GEORGIA BUREAU OF PRISONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 209 F. 3d 723.

No. 00–5101. SANCHEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 363.

No. 00–5103. TOKAR *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 198 F. 3d 1039.

No. 00–5104. VINCZE *v.* HICKMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5106. WOODS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356.

No. 00–5108. JACKSON *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5109. LARSON *v.* COYLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5110. KEOUGH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 18 S. W. 3d 175.

No. 00–5111. LEDBETTER *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 00–5112. JOHNSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 207 F. 3d 515.

No. 00–5114. REESE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 210 F. 3d 359.

No. 00–5117. RODRIGUEZ *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5118. NAVA-RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 1128.

No. 00–5119. AKBAR *v.* UNITED STATES PAROLE COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 837.

No. 00–5121. WALKER *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 837.

No. 00–5122. THAMMAVONG *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5124. MCINTYRE *v.* DELAWARE COUNTY COURT OF COMMON PLEAS ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–5125. NGUYEN *v.* MCKINNA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 390.

No. 00–5127. RAMIREZ-SOBERANES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 391.

No. 00–5128. BRADY *v.* EDELSTEIN ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5129. RICHARD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–5130. CONNOLLY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5131. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–5132. TURNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 209 F. 3d 1198.

No. 00–5133. WOODROW *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 743 A. 2d 458.

No. 00–5134. BOYD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–5135. MATTAROLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 F. 3d 1153.

No. 00–5136. MALICOAT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 992 P. 2d 383.

No. 00–5138. KEENAN *v.* MICHIGAN. Cir. Ct. Muskegon County, Mich. Certiorari denied.

No. 00–5139. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–5140. LUCKETT *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 1052.

No. 00–5141. RUBALCAVA-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1335.

No. 00–5142. WARMSLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5143. WELLS *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 00–5144. BIERI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–5145. MORAN *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5146. PHILLIPS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–5147. BAKER *v.* DAWLEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5148. BENT *v.* DUVAL. C. A. 1st Cir. Certiorari denied.

No. 00–5149. MCKNIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5150. DORSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 209 F. 3d 965.

No. 00–5151. Romeo Cazaco *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5152. Contreras-Muratalla *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 227.

No. 00–5153. Simmons *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1085.

No. 00–5154. Sanchez-Guillen *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 1122.

No. 00–5155. Robertson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 847.

No. 00–5157. Segoviano *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 189 Ill. 2d 228, 725 N. E. 2d 1275.

No. 00–5158. Sledge *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 15 S. W. 3d 93.

No. 00–5159. Derrow *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–5161. Luong *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 00–5162. Johnson *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 95, 723 N. E. 2d 1054.

No. 00–5164. Johnson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 761 So. 2d 318.

No. 00–5165. Yarbrough *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 00–5166. Campbell *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356.

No. 00–5167. Coppedge *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1084.

No. 00–5169. Hamilton *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1376.

No. 00–5170. HAUGLAND *v.* CHASE MORTGAGE SERVICES, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–5172. HUDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 130.

No. 00–5173. FRITSCH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 373, 526 S. E. 2d 451.

No. 00–5174. GLOCK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 195 F. 3d 625.

No. 00–5175. HOLLOWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1269.

No. 00–5176. ENRIQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 345.

No. 00–5177. HUDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 207 F. 3d 852.

No. 00–5178. HANES *v.* LEONARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5179. GIDA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–5180. FRANDSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1334.

No. 00–5181. FOSTER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 69, 525 S. E. 2d 78.

No. 00–5182. HUFF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–5183. REYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5184. ROBERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5185. BATTEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5187. SCRUGGS *v.* HOWIE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 00–5189. SETZLER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 756 So. 2d 1001.

No. 00–5190. GARCIA QUINTERO *v.* CREECY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 437.

No. 00–5191. LUCKETT *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 642.

No. 00–5192. LOWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1331.

No. 00–5193. ABDULLAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–5194. BLACKWELL *v.* LARKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–5196. NELSON *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–5200. SAITTA *v.* MORGAN STATE UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–5201. CLEVELAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–5202. HUTCHINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1355.

No. 00–5203. JOHNSON *v.* HERTZ CORP. ET AL. Ct. App. Mich. Certiorari denied.

No. 00–5205. MAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 214 F. 3d 900.

No. 00–5206. LADOUCEUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5207. NEIVES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356.

No. 00–5208. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1271.

No. 00–5209. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1332.

No. 00–5210. MOSBY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 00–5211. HARRIS *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5212. HATCHER *v.* STEWART, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 00–5213. RAMIREZ-VALENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 202 F. 3d 1106.

No. 00–5214. MILLS *v.* BRICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 632.

No. 00–5216. WILSON *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 204 F. 3d 33.

No. 00–5217. TRAPP *v.* SANDERS, JUSTICE, SUPREME COURT OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1275.

No. 00–5220. MONACO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1085.

No. 00–5221. MUNOZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1262.

No. 00–5223. JUDA *v.* NERNEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1278.

No. 00–5224. JONES *v.* KERNAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1083.

No. 00–5225. DAMPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 592.

No. 00–5227. PRUITT *v.* UNITED STATES; and
No. 00–5266. LILES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1270.

No. 00–5228. LAWSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1326.

No. 00–5229. VIRAY *v.* UNITED STATES BANK NATIONAL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–5232. MINGO *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5235. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–5236. KULAS *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5237. LATHAN *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–5238. KOPLITZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5239. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 209 F. 3d 724.

No. 00–5240. JONES *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5241. DILLINGHAM *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 639.

No. 00–5242. MCMANUS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–5243. THROWER *v.* MENGEL, CLERK, SUPREME COURT OF OHIO, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 1478, 727 N. E. 2d 129.

No. 00–5244. LOVETT *v.* TYSZKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1269.

No. 00–5245. MAYNARD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–5246. MATHEWS *v.* FARCAS, SUPERINTENDENT, MARTIN CORRECTIONAL INSTITUTION. C. A. 11th Cir. Certiorari denied.

No. 00–5248. JACKSON *v.* PHILLIPS. Sup. Ct. Fla. Certiorari denied. Reported below: 767 So. 2d 457.

No. 00–5249. SCHEIDLY *v.* ST. PAUL MERCURY INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 1315.

No. 00–5253. MEEK *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5254. BOWENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5255. NOEL *v.* CARUSO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5257. JOSE D. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–5259. KASI *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–5260. MAUNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5261. BROUGHTON *v.* GRAMLEY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–5262. BOOKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–5264. BRANTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 767 So. 2d 454.

No. 00–5265. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5267. GUADALUPE ARELLANO *v.* WALKER, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1317.

No. 00–5268. PUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 131.

No. 00–5269. BROCKWAY *v.* DEPARTMENT OF MENTAL HEALTH OF CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–5270. BAINES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 00–5271. THORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1336.

No. 00–5272. BOWEN *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1303.

No. 00–5273. NOLAN *v.* POPPELL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 00–5275. LYTLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5276. OPOKU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–5277. LE *v.* QUISMORIO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 384.

No. 00–5278. ROISE *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 7 S. W. 3d 225.

No. 00–5280. SANDERS *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5281. SEAWORTH *v.* PEARSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 1056.

No. 00–5282. SIMMONS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5283. BLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1279.

No. 00–5284. KREPS *v.* TOLEDO BAR ASSN. Sup. Ct. Ohio. Certiorari denied.

No. 00–5285. JOHNSON *v.* INTERNAL REVENUE SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1265.

No. 00–5286. SANES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 1315.

No. 00–5287. D. M., A JUVENILE *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 00–5288. DUNKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 635.

No. 00–5289. SCHIFFER *v.* GREENPOINT BANK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 266 App. Div. 2d 262, 698 N. Y. S. 2d 279.

No. 00–5290. BURGESS *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1272.

No. 00–5292. VOTTA *v.* SECREST ET AL. C. A. 1st Cir. Certiorari denied.

No. 00–5293. CUNDIFF *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 00–5294. BUSH *v.* CARDULLO ET AL.; BUSH *v.* TEMPLE ET AL.; BUSH *v.* CARDULLO ET AL.; BUSH *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA; and BUSH *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 00–5295. STRONG *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1334.

No. 00–5297. CASIMIR *v.* ILLINOIS DEPARTMENT OF PUBLIC AID ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 272.

No. 00–5298. DEAN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 00–5299. WATSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–5300. SUH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 308 Ill. App. 3d 1092, 764 N. E. 2d 189.

No. 00–5302. ROSADO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5303. KIRCHNER *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied.

No. 00–5304. BROWN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 00–5305. CARVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 212.

No. 00–5306. ROSQUIST *v.* CONSOLIDATED EDISON COMPANY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 203.

No. 00–5307. BISHOP *v.* RENO, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 1295.

No. 00–5308. DONEGAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 663.

No. 00–5309. ABED *v.* ARMSTRONG, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. C. A. 2d Cir. Certiorari denied. Reported below: 209 F. 3d 63.

No. 00–5311. BREDY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 209 F. 3d 1193.

No. 00–5312. QUARTERMAN *v.* LEWIS. Sup. Ct. Ga. Certiorari denied.

No. 00–5314. SCHONSCHACK *v.* TESSMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5315. LASTER *v.* BOOHER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 390.

No. 00–5317. LAWRENCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–5318. MATTHIAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5319. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1358.

No. 00–5320. OLIVO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1351.

No. 00–5321. DELOACH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 210.

No. 00–5322. ESCALERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 215 F. 3d 1312.

No. 00–5323. CORONA-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 973.

No. 00–5324. BROWN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 748 A. 2d 913.

No. 00–5326. COOPER *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1277.

No. 00–5327. BURTON *v.* SICKLER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 267.

No. 00–5329. SEARCY *v.* DONELSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 204 F. 3d 797.

No. 00–5331. HARMS *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1382.

No. 00–5332. GOMEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–5335. HAMILTON *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–5336. FLOREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 F. 3d 286.

No. 00–5337. FAROOQ, AKA GRINNELL *v.* RUSSELL. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1326.

No. 00–5338. FUENTES *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5339. HAYDEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–5340. O'NEAL *v.* SCHOFIELD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 664.

No. 00–5341. PETERSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 98 Wash. App. 1054.

No. 00–5342. PRENDERGAST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1085.

No. 00–5343. BRADSHAW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356.

No. 00–5345. ROMERO-AVILA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 1017.

No. 00–5346. DONATO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 202.

No. 00–5347. SWANSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 788.

No. 00–5348. ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–5349. BRYANT *v.* MI-DALE ENTERPRISES ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 754 So. 2d 27.

No. 00–5350. NITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–5351. PEARSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 524.

No. 00–5352. PINET *v.* GUARINI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 650.

No. 00–5353. MCLEOD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5355. JUNKINS *v.* RANDLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5356. LEWIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 376.

No. 00–5357. JONES *v.* SEAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 213.

No. 00–5358. PANGBURN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5359. CRAMER *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1082.

No. 00–5360. DEBLASIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–5361. GRINOLS *v.* BROWN ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5363. GRAHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1084.

No. 00–5364. GRULLON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–5366. GARCIA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5367. EATMON, AKA WILSON *v.* PORT AUTHORITY MASS TRANSPORTATION OF ALLEGHENY COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 210 F. 3d 357.

No. 00–5368. DAVIS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 820.

No. 00–5369. FRANCIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–5370. GUZMAN-SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–5371. BLACK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5372. BENTLEY *v.* GARRAGHTY, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 00–5373. BRIMMER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 6th Cir. Certiorari denied.

No. 00–5374. BATY *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–5376. WALDEN ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 99.

No. 00–5377. TAYLOR *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 18 S. W. 3d 366.

No. 00–5378. TOMLINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–5379. WILSON *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 00–5383. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 00–5384. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5385. WHEELOCK *v.* HERBERT, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5386. MANUEL SOUZA *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5387. DAVIS *v.* MADRID, ATTORNEY GENERAL OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 194 F. 3d 1320.

No. 00–5388. FREEMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5389. EALEY *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 217.

No. 00–5390. HEWITT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5391. FORD *v.* UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1261.

No. 00–5392. GRIFFIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5393. HOLMAN *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5394. HAMPTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5396. DEBRUIN *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5397. STEVENS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 461 Mich. 655, 610 N. W. 2d 881.

No. 00–5398. SPERRY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 00–5399. WHITE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5400. BARNES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 218.

No. 00–5401. CEBALLOS-MUNOZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356.

No. 00–5403. REDMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1085.

No. 00–5404. LOPEZ RELLS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 860, 996 P. 2d 1184.

No. 00–5405. SUFFECOOL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 513, 728 N. E. 2d 342.

No. 00–5406. KESZENHEIMER *v.* USAA LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 719.

No. 00–5407. ANTONIO JAVIER ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 199 F. 3d 552.

No. 00–5408. NOVOSAD *v.* REPUBLIC BANK FOR SAVINGS, FKA MANHATTAN SAVINGS BANK. Ct. App. N. M. Certiorari denied.

No. 00–5409. MCLEAN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–5410. O'SHAUGHNESSY *v.* HOOD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–5411. BLACHARSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 792.

No. 00–5412. AVERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 848.

No. 00–5413. BENAVIDEZ-BENAVIDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 720.

No. 00–5414. MURDOCK *v.* JAMES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 269.

No. 00–5416. ABREU *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–5417. WILLIAMS *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Wake County, N. C. Certiorari denied.

No. 00–5419. WATTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–5420. XINHUA WANG *v.* SHANGHAI MONTRAL FOODSTUFF CO., LTD. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 260.

No. 00–5421. JOSEPH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 648.

No. 00–5422. PRIVETT *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5423. ALLEN *v.* MASSIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 202 F. 3d 281.

No. 00–5424. BRADLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 670.

No. 00–5425. BAILEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1270.

No. 00–5426. BECERRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1084.

No. 00–5429. BARNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1270.

No. 00–5430. BAYON *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5431. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1357.

No. 00–5432. DIXON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 595.

No. 00–5433. BOATENG *v.* INTERAMERICAN UNIVERSITY, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 210 F. 3d 56.

No. 00–5434. SCOTT *v.* SIKES, WARDEN. Super. Ct. Tattnall County, Ga. Certiorari denied.

No. 00–5435. SHABAZZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–5436. RANSOM *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–5437. MITLEIDER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–5438. WILLIAMS *v.* KLINGER, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 00–5439. DOPP *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–5441. MADDEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–5442. NAPIER *v.* BARON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 246.

No. 00–5443. MOORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 411.

No. 00–5444. NOLAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–5445. MATTHEWS *v.* BROWN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1320.

No. 00–5447. MARQUEZ-GALLEGOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 217 F. 3d 1267.

No. 00–5450. LEGNINE *v.* FRANK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 00–5453. ARANDA-TERCERO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. D. C. Cir. Certiorari denied.

No. 00–5454. STEMPLE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 994 P. 2d 61.

No. 00–5455. TIDWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–5457. ARANGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–5458. CLARKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–5459. TREVINO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 363.

No. 00–5460. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–5461. CHILDS *v.* SUTHERS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 225.

No. 00–5462. LOPEZ *v.* WARDEN, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 354.

No. 00–5464. MACKOVICH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 209 F. 3d 1227.

No. 00–5465. RANDALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–5466. NEIGHBORS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 00–5467. PORTER *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5470. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5471. SWEETING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 95.

No. 00–5472. RIVERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5475. RELIFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 209 F. 3d 722.

No. 00–5476. SANGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1351.

No. 00–5477. BLACKWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 362.

No. 00–5478. MCGILL *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 234 Wis. 2d 560, 609 N. W. 2d 795.

No. 00–5480. CARNEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5481. RESTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1328.

No. 00–5482. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–5483. NICHOLSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–5484. DUARTE-MONTANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–5486. CHAVEZ-CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 145.

No. 00–5487. DENNIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5489. DENNY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–5501. ALLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 970.

No. 00–5502. TUELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 642.

No. 00–5503. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 211.

No. 00–5505. WILSON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 241 Ga. App. 426, 526 S. E. 2d 381.

No. 00–5506. COCHRAN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 749 A. 2d 1274.

No. 00–5507. DELAPP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–5508. BAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 244.

No. 00–5510. KELSEY, AKA TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–5511. LAWUARY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 211 F. 3d 372.

No. 00–5512. JUVENILE MALE (E. W. E.) *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1169.

No. 00–5513. LAYNE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 00–5514. LUIS LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 847.

No. 00–5518. BIRD *v.* EVERETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1336.

No. 00–5519. BERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 212 F. 3d 391.

No. 00–5525. VALDIVIA-SAINZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5526. DOWS *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 480.

No. 00–5527. BURGOS, AKA GALLO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–5528. ACOSTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1079.

No. 00–5530. ALVARADO-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 846.

No. 00–5534. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 168 F. 3d 483.

No. 00–5535. GARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 211 F. 3d 1075.

No. 00–5536. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–5537. SCHELL *v.* RICHARDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 846.

No. 00–5538. ROYER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 748 A. 2d 1254 and 1261.

No. 00–5541. ALMANZAR *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5542. APONTE-VELAZQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–5544. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 211.

No. 00–5545. ROSAS LEON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–5546. MAGOON *v.* BARNETT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1080.

No. 00–5547. LANDRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 390.

No. 00–5552. RIVERA-ALICEA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 205 F. 3d 480.

No. 00–5553. RUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 417.

No. 00–5562. HEINE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1355.

No. 00–5564. AUSTIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5568. LIEBZEIT *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 230 Wis. 2d 745, 604 N. W. 2d 33.

No. 00–5569. WALTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 645.

No. 00–5572. COFFEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5574. BELL *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 00–5575. ACOSTA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1342.

No. 00–5581. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–5582. GRAVES *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 00–5584. FATO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 210.

No. 00–5586. HENDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 214 F. 3d 361 and 216 F. 3d 1074.

No. 00–5588. FERGUSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 878.

No. 00–5589. MORRIS *v.* TENNESSEE. Ct. App. Tenn. Certiorari denied. Reported below: 21 S. W. 3d 196.

No. 00–5590. TERIO *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 759.

No. 00–5592. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 932.

No. 00–5594. DEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–5595. CHAE WAN CHON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 990.

No. 00–5596. CIROTTO *v.* OHIO STATE UNEMPLOYMENT COMPENSATION BOARD ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 00–5600. LEGASPI *v.* FIRST AMERICA BANK OF ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 306 Ill. App. 3d 1190, 757 N. E. 2d 135.

No. 00–5603. RICHARDSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 626.

No. 00–5604. SCOTT *v.* JOHNSON, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–5605. MATTHEWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 F. 3d 338.

No. 00–5606. SULLIVAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 824.

No. 00–5610. REGUEIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1090.

No. 00–5614. CANNON *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 00–5616. TAPPIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 536.

No. 00–5617. BOYD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 214 F. 3d 1052.

No. 00–5620. DAVIS *v.* QUICK ET AL. Ct. App. D. C. Certiorari denied.

No. 00–5622. LIMEHOUSE *v.* RED LOBSTER. C. A. 11th Cir. Certiorari denied.

No. 00–5624. JEFFERSON *v.* UNITED STATES; and
No. 00–5936. JEFFERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 215 F. 3d 820.

No. 00–5627. BONNET-GRULLON, AKA BOWMET, ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 212 F. 3d 692.

No. 00–5631. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1335.

No. 00–5634. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5637. HUNTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–5639. HOUSTON *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 00–5641. TRAVIS *v.* OHIO. C. A. 6th Cir. Certiorari denied.

No. 00–5642. KAKATIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 214 F. 3d 1049.

No. 00–5645. HARRISON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 204 F. 3d 236.

No. 00–5646. FULLER *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 56 Conn. App. 592, 744 A. 2d 931.

No. 00–5648. LUCIOUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–5651. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 1355.

No. 00–5654. MUSCHIK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–5655. FINK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 89 Ohio St. 3d 59, 728 N. E. 2d 1037.

No. 00–5656. HUNTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–5657. GUANIPA *v.* PARKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5663. MERCERY-BEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5668. MARIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5672. RIVERA-QUINTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 720.

No. 00–5676. WILLIAMS *v.* BUREAU OF PRISONS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–5683. STARKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1353.

No. 00–5690. CABRERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 215 F. 3d 1312.

No. 00–5691. CLARK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 00–5693. HUFF *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–5696. FALKIEWICZ *v.* CITY OF WESTLAND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 198 F. 3d 245.

No. 00–5698. GARRETT *v.* SNYDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1269.

No. 00–5700. FAULKIN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5705. HOWARTH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5707. FISHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–5711. SAYERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1345.

No. 00–5715. GREEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–5720. DOMINGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5723. CASTANO ET AL. *v.* NEBRASKA DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 201 F. 3d 1023.

No. 00–5725. CORNIEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1073.

No. 00–5729. KAHL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 128 Md. App. 708.

No. 00–5730. BAKER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–5737. MAKIA, AKA BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–5741. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–5744. CARMONA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5746. CANNON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5747. RODRIGUEZ-CERDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 743.

No. 00–5748. YOUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 645.

No. 00–5755. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 181 F. 3d 104.

No. 00–5756. CABEZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5762. BOYCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 414.

No. 00–5767. FARMER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1338.

No. 00–5779. CARDILLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 202.

No. 00–5788. FRAGOSO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–5796. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1007.

No. 00–5797. DERENAK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 00–5803. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5804. MAJOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 394.

No. 00–5805. OLAFSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 435.

No. 00–5811. SUGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–5813. MURRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 213 F. 3d 302.

No. 00–5817. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 644.

No. 00–5818. JAMES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 836.

No. 00–5819. SALGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1275.

No. 00–5828. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 822.

No. 00–5830. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 597.

No. 00–5832. FABRIZIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 F. 3d 288.

No. 00–5834. JONES *v.* UNITED STATES; and
No. 00–5899. ATKINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 213 F. 3d 302.

No. 00–5840. HAYS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 180 F. 3d 261.

No. 00–5851. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 681.

No. 00–5852. MURPHY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–5854. CARVAJAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5858. RONDON-TRINIDAD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 204 F. 3d 376 and 205 F. 3d 1326.

No. 00–5862. GRIGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 646.

No. 00–5863. FLYNN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5868. DAVENPORT *v.* WINGARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5872. CHARLES ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 213 F. 3d 10.

No. 00–5878. HENRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 823.

No. 00–5879. GONZALEZ *v.* UNITED STATES (two judgments). C. A. 9th Cir. Certiorari denied.

No. 00–5884. DELREAL-ORDONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 213 F. 3d 1263.

No. 00–5888. MAGGARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1345.

No. 00–5889. KREISEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 210 F. 3d 868.

No. 00–5894. VELEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–5900. BOCOOK *v.* HUFFMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5916. GEVEDON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 214 F. 3d 807.

No. 00–5919. GUITERREZ-ROJAS *v.* UNITED STATES; and
No. 00–5924. GONZALEZ-OCHOA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–5922. WRIGHT *v.* UNITED STATES; and
No. 00–5923. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 233.

No. 00–5927. TESSARI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–5940. NADAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 516.

No. 00–5941. BERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 99–1720. WOODFORD, ACTING WARDEN *v.* ASHMUS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 202 F. 3d 1160.

No. 99–1725. TENNESSEE *v.* BROWN. Sup. Ct. Tenn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 29 S. W. 3d 427.

No. 99–1896. TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* SHUAIBE, AKA GUILLORY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 198 F. 3d 255.

No. 00–130. LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* WHITE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 206 F. 3d 776.

No. 99–1788. PFIZER, INC. *v.* TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSN. C. A. 5th Cir. Motion of International Policyholders Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 209 F. 3d 720.

No. 99–1817. MCI TELECOMMUNICATIONS CORP. ET AL. *v.* ACCESS TELECOM, INC.;

No. 99–1822. SBC COMMUNICATIONS, INC., ET AL. *v.* ACCESS TELECOM, INC.; and

No. 99–1824. TELEFONOS DE MEXICO, S. A. DE C. V. *v.* ACCESS TELECOM, INC. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 197 F. 3d 694.

No. 99–9618. LICHTER *v.* MCI WORLDCOM COMMUNICATIONS, INC. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 00–71. MEAD JOHNSON & CO. *v.* ABBOTT LABORATORIES. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 201 F. 3d 883 and 209 F. 3d 1032.

No. 99–1852. SKLAROFF *v.* PENNSYLVANIA, BY FISHER, ATTORNEY GENERAL, ET AL. (two judgments). Commw. Ct. Pa. Motion of Jon D. Fox for leave to file a brief as *amicus curiae* denied. Motion of petitioner for sanctions denied. Certiorari denied. Reported below: 736 A. 2d 693 (first judgment) and 705 (second judgment).

No. 99–1880. FREEMAN ET AL. *v.* BURLINGTON BROADCASTERS, INC., DBA WIZN, ET AL. C. A. 2d Cir. Motion of James Jeffords et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 204 F. 3d 311.

No. 99–1904. I&M RAIL LINK *v.* NORTHSTAR NAVIGATION, INC. C. A. 7th Cir. Motion of Association of American Railroads for

leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 198 F. 3d 1012.

No. 99–1930. ALBERS *v.* SUPREME COURT OF MONTANA. Sup. Ct. Mont. Motion of Samuel Dash et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 297 Mont. 493, 995 P. 2d 923.

No. 99–1935. COLUMBUS-AMERICA DISCOVERY GROUP, INC. *v.* ATLANTIC MUTUAL INSURANCE CO. ET AL. C. A. 4th Cir. Motion of respondents for leave to file certain lodgings under seal granted. Motions of National Trust for Historic Preservation in the United States, National Association of Academies of Science, and National Maritime Historical Society for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 203 F. 3d 291.

No. 99–1957. HAVANA CLUB HOLDING, S. A., ET AL. *v.* BACARDI & CO. LTD. ET AL. C. A. 2d Cir. Motions of French National Committee of International Chamber of Commerce et al. and Organization for International Investment et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 203 F. 3d 116.

No. 99–1967. FRANCOLINO ET AL. *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of National Association of Criminal Defense Lawyers et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 267 App. Div. 2d 137, 701 N. Y. S. 2d 12.

No. 99–1971. CALIFORNIA ET AL. *v.* PARK. C. A. 9th Cir. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 202 F. 3d 1146.

No. 99–2010. BOSWELL *v.* TEXAS CHRISTIAN UNIVERSITY ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed as a veteran granted. Certiorari denied. Reported below: 204 F. 3d 1117.

No. 99–9417. KELLY *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 99–9951. ALFORD *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Cer-

tiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 00–149. MCKENZIE ET AL. *v.* REHNQUIST, CHIEF JUSTICE OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 203 F. 3d 52.

No. 99–10242. GLINSEY *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner to consolidate this case with No. 99–1687, *Bartnicki et al.* v. *Vopper, aka Williams, et al.* [certiorari granted, 530 U. S. 1260], and No. 99–1728, *United States* v. *Vopper, aka Williams, et al.* [certiorari granted, 530 U. S. 1260], denied. Certiorari denied. Reported below: 209 F. 3d 386.

No. 00–50. R. E. W. *v.* C. A. M. ET AL. App. Ct. Mass. Motion of petitioner for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 48 Mass. App. 1117, 722 N. E. 2d 1011.

No. 00–111. LOE *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted. Certiorari denied.

No. 00–86. KERSTETTER *v.* PACIFIC SCIENTIFIC CO. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 210 F. 3d 431.

No. 00–150. CALIFORNIA ET AL. *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 208 F. 3d 832.

No. 00–5395. FORDJOUR *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION. Ct. App. Ariz. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 00–90. EXXON MOBIL CORP. ET AL. *v.* BAKER ET AL. C. A. 9th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 206 F. 3d 900.

No. 00–113 (00A180). PIERSON *v.* WILSHIRE TERRACE CORP. Ct. App. Cal., 2d App. Dist. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. Certiorari denied.

No. 00–124. PARTIDO ACCION CIVIL *v.* PUERTO RICO ET AL. Sup. Ct. P. R. Motion of Partido Laboral Union Social for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 00–186. TOPPS CO., INC. *v.* MICHIGAN DEPARTMENT OF TREASURY, REVENUE DIVISION. Ct. App. Mich. Motion of Gillette Co. for leave to file a brief as *amicus curiae* granted. Certiorari denied.

Rehearing Denied

No. 99–1770. SIMPSON *v.* GALANOS ET AL., 530 U. S. 1276;

No. 99–8429. SUMPTER *v.* STEGALL, WARDEN, 530 U. S. 1206;

No. 99–9143. GOLLIVER *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, 530 U. S. 1247; and

No. 99–9884. WILLIAMS *v.* UNITED STATES, 530 U. S. 1283. Petitions for rehearing denied.

No. 99–8573. GONZALEZ *v.* ASKINS ET AL., 529 U. S. 1115. Motion for leave to file petition for rehearing denied.

OCTOBER 10, 2000

Certiorari Granted—Vacated and Remanded

No. 99–9107. BROWN *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 207 F. 3d 662.

No. 00–5068. GUIDRY *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Sims* v. *Apfel*, 530 U. S. 103 (2000). Reported below: 218 F. 3d 743.

No. 00–5123. CLINTON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 210 F. 3d 285.

Certiorari Dismissed

No. 00–5521. ATRAQCHI ET UX. *v.* UNIVERSITY OF THE DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–5598. RICHARDSON *v.* BROAD LANE INC., CO. Cir. Ct. Berkeley County, W. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–5556. RAWLINS *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders. (See also No. 8, Orig., *ante*, p. 1.)

No. 00A202. CAHILL *v.* TEXAS WORKFORCE COMMISSION ET AL. C. A. 5th Cir. Application for stay, addressed to JUSTICE BREYER and referred to the Court, denied.

No. 00M25. SKORNIAK *v.* UNITED STATES; and

No. 00M26. DORSEY *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for approval of fees and expenses granted, and the River Master is awarded a total of $2,885.93 for the period April 1 through June 30, 2000, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 530 U. S. 1212.]

No. 105, Orig. KANSAS *v.* COLORADO. Third Report of the Special Master received and ordered filed. Exceptions to the Re-

port, with supporting briefs, may be filed within 45 days. Replies, if any, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, 529 U. S. 1015.]

No. 129, Orig. VIRGINIA *v.* MARYLAND. Motion for appointment of a Special Master granted. It is ordered that Ralph I. Lancaster, Jr., Esq., of Portland, Me., be appointed as Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his reports, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier order herein, see 530 U. S. 1201.]

No. 99–1571. TRAFFIX DEVICES, INC. *v.* MARKETING DISPLAYS, INC. C. A. 6th Cir. [Certiorari granted, 530 U. S. 1260.] Motion of the parties for leave to file Volume II of the Joint Appendix under seal granted.

No. 00–62. CSU, L. L. C. *v.* XEROX CORP. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–5560. COLLIER *v.* ILLINOIS DEPARTMENT OF HUMAN RIGHTS. C. A. 7th Cir.;

No. 00–5608. DAVIDIAN *v.* O'MARA ET AL. C. A. 6th Cir.;

No. 00–5615. RAY *v.* HOUSTON COMMUNITY COLLEGE. C. A. 5th Cir.;

No. 00–5733. DO-NGUYEN *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir.; and

No. 00–5964. WEAVER *v.* SCHOOL BOARD OF LEON COUNTY, FLORIDA. Sup. Ct. Fla. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 31, 2000, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 00–6041. IN RE BROWN;
No. 00–6102. IN RE AVALOS; and
No. 00–6211. IN RE VEASEY. Petitions for writs of habeas corpus denied.

No. 00–5498. IN RE MEEKS;
No. 00–5550. IN RE PARKER; and
No. 00–5870. IN RE GROVER. Petitions for writs of mandamus denied.

No. 00–5609. IN RE DAVIS. Petition for writ of prohibition denied.

Certiorari Granted

No. 99–1994. NEVADA ET AL. *v.* HICKS ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 196 F. 3d 1020.

No. 99–2036. GOOD NEWS CLUB ET AL. *v.* MILFORD CENTRAL SCHOOL. C. A. 2d Cir. Certiorari granted. Reported below: 202 F. 3d 502.

No. 99–2047. PALAZZOLO *v.* RHODE ISLAND ET AL. Sup. Ct. R. I. Certiorari granted. Reported below: 746 A. 2d 707.

No. 00–191. FEDERAL ELECTION COMMISSION *v.* COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE. C. A. 10th Cir. Certiorari granted. Reported below: 213 F. 3d 1221.

No. 99–1884. LACKAWANNA COUNTY DISTRICT ATTORNEY ET AL. *v.* COSS. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 204 F. 3d 453.

No. 99–2035. COOPER INDUSTRIES, INC. *v.* LEATHERMAN TOOL GROUP, INC. C. A. 9th Cir. Certiorari granted limited to the following question: "What is the standard of review of a trial court's ruling on a challenge to the constitutionality of a punitive damage award?" Reported below: 205 F. 3d 1351.

No. 99–7791. ZADVYDAS *v.* DAVIS ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, case consolidated with No. 00–38, *Reno, Attorney General, et al.* v. *Kim Ho Ma*, immediately *infra*, and a total of one hour allotted for oral argument. Reported below: 185 F. 3d 279.

No. 00–38. RENO, ATTORNEY GENERAL, ET AL. *v.* KIM HO MA. C. A. 9th Cir. Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, case consolidated with No. 99–7791, *Zadvydas* v. *Davis et al.*, immediately *supra*, and a total of one hour allotted for oral argument. Reported below: 208 F. 3d 815.

No. 00–152. BRADSHAW, LABOR COMMISSIONER OF CALIFORNIA, ET AL. *v.* G & G FIRE SPRINKLERS, INC. C. A. 9th Cir. Motion of Port of Oakland et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 204 F. 3d 941.

Certiorari Denied

No. 99–1916. LANDRY *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Certiorari denied. Reported below: 204 F. 3d 1125.

No. 99–1932. SAUVAGE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 199 F. 3d 1333.

No. 99–1952. ALABAMA ET AL. *v.* DEPARTMENT OF ENERGY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 206 F. 3d 1345.

No. 99–1963. FLORIDA *v.* SHADLER. Sup. Ct. Fla. Certiorari denied. Reported below: 761 So. 2d 279.

No. 99–1975. CASEY *v.* RHOADES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 196 F. 3d 592.

No. 99–1980. NEXTWAVE PERSONAL COMMUNICATIONS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 200 F. 3d 43.

No. 99–1988. CONNECTICUT *v.* DONAHUE. Sup. Ct. Conn. Certiorari denied. Reported below: 251 Conn. 636, 742 A. 2d 775.

No. 99–2037. WOODHAWK CLUB CONDOMINIUM OWNERS ASSN. ET AL. *v.* CITY OF MAYFIELD HEIGHTS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1339.

No. 99–2068. COLLECTIBLES, INC., DBA COLLECTABLES RECORDS *v.* BROWN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 201 F. 3d 654.

No. 99–2082. LECHUGA *v.* PERRYMAN. C. A. 7th Cir. Certiorari denied.

No. 99–6774. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 187 F. 3d 631.

No. 99–9549. ARELLANO-BERUMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 368.

No. 99–9553. MUNIZ-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 367.

No. 99–9579. VILLARREAL-PALOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 366.

No. 99–9591. DURAN-GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 720.

No. 99–9609. CHAIDEZ-ORANTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 367.

No. 99–9626. CAMPOS-DE SANTIAGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 369.

No. 99–9674. THOMPSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 261.

No. 99–9747. MOODY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 206 F. 3d 609.

No. 99–9814. DUSENBERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 201 F. 3d 763.

No. 99–9890. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 124.

No. 99–9905. RIOS-QUINTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 214.

No. 99–9973. MOATES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 598.

No. 99–10048. MUELA SOLIS *v.* WYOMING. Dist. Ct. Wyo., Weston County. Certiorari denied.

No. 99–10098. PENA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 00–28. L. B. SIMMONS ENERGY, INC., DBA ROCKET OIL CO., ET AL. *v.* KOCH INDUSTRIES, INC., ET AL.; and
No. 00–175. KOCH ET AL. *v.* KOCH INDUSTRIES, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 1202.

No. 00–29. MARCUM *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1341.

No. 00–41. M. J. B. *v.* V. C. Sup. Ct. N. J. Certiorari denied. Reported below: 163 N. J. 200, 748 A. 2d 539.

No. 00–52. GOLD KIST INC. ET AL. *v.* HOOPER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 209 F. 3d 723.

No. 00–66. MADRAY ET AL. *v.* PUBLIX SUPERMARKETS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1290.

No. 00–67. MICHAELS, EXECUTOR OF THE ESTATES OF POPOWITZ ET AL., DECEASED *v.* AVITECH, INC., AKA HARGER AVIATION. C. A. 5th Cir. Certiorari denied. Reported below: 202 F. 3d 746.

No. 00–70. CAMPER *v.* FEDERAL EXPRESS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1268.

No. 00–147. AKINS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 00–163. TROY *v.* PIERCE COUNTY, WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 97 Wash. App. 1049.

No. 00–165. JAMES *v.* NEWSWEEK, INC. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–166. MCNASPY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 00–167. EMC CORP. *v.* BRAITSCH. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 360.

No. 00–168. CHEMICAL & ALLIED PRODUCT WORKERS UNION, LOCAL 20, AFL–CIO *v.* JAYS FOODS, L. L. C. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 610.

No. 00–169. DAVIS *v.* FLORIDA POWER & LIGHT CO. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1301.

No. 00–171. LAWRENCE *v.* CURATORS OF THE UNIVERSITY OF MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 204 F. 3d 807.

No. 00–173. LAFLAMME *v.* ESSEX JUNCTION SCHOOL DISTRICT. Sup. Ct. Vt. Certiorari denied. Reported below: 170 Vt. 475, 750 A. 2d 993.

No. 00–176. APEL ET AL. *v.* CANARY. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 324.

No. 00–179. SOUTHEASTERN FERTILITY CENTER *v.* AETNA CASUALTY & SURETY CO. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1334.

No. 00–181. WOOD *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 207 F. 3d 674.

No. 00–190. FLICK *v.* LIBERTY MUTUAL FIRE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 386.

No. 00–205. JOHNSON, COMMISSIONER OF REVENUE OF TENNESSEE *v.* J. C. PENNEY NATIONAL BANK. Ct. App. Tenn. Certiorari denied. Reported below: 19 S. W. 3d 831.

No. 00–207. WASSON *v.* SONOMA COUNTY JUNIOR COLLEGE DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 659.

No. 00–208. DEGENNARO *v.* FURR. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 840.

No. 00–210. BERG *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–212. SCHMITT INDUSTRIES, INC. *v.* BALANCE DYNAMICS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 204 F. 3d 683.

No. 00–213. SPARKES *v.* BICYCLE CLUB CASINO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 643.

No. 00–215. SUTTON *v.* SUTTON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–217. LIEBER *v.* CADDO LEVEE DISTRICT BOARD OF COMMISSIONERS ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 748 So. 2d 587.

No. 00–218. KLEIN ET AL., DBA VILLAGE EXPRESSMART *v.* CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–223. BURNETT *v.* TYCO CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 203 F. 3d 980.

No. 00–229. GNC FRANCHISING, INC. *v.* JONES. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 495.

No. 00–231. HANDICOMP, INC. *v.* UNITED STATES GOLF ASSN. C. A. 3d Cir. Certiorari denied.

No. 00–232. FELIS *v.* VERMONT. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 202.

No. 00–235. GIORDANO *v.* RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 562 Pa. 154, 753 A. 2d 1277.

No. 00–240. LANE ET AL. *v.* HUGHES AIRCRAFT CO. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 405, 993 P. 2d 388.

No. 00–241. PERRY *v.* BARNARD ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–244. RUSSO, DBA JAY BROKERS *v.* DEPARTMENT OF AGRICULTURE. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1323.

No. 00–250. SPRAGGINS-GULLY *v.* CHICAGO SCHOOL REFORM BOARD OF TRUSTEES. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 376.

No. 00–251. KILGROE *v.* PACIFIC MARITIME ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 00–257. McDonald *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied.

No. 00–266. Austin *v.* Hanover Insurance Co. et al. C. A. 2d Cir. Certiorari denied.

No. 00–271. General Dynamics Corp. *v.* Williamson et al. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 1144.

No. 00–272. Liverman *v.* Hyde et al. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–274. Lowry, Individually and as Guardian ad Litem of Lowry, a Minor *v.* McDonnell-Douglas Corp. C. A. 8th Cir. Certiorari denied. Reported below: 211 F. 3d 457.

No. 00–284. Alikhani *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 732.

No. 00–290. Wyshak *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 00–291. Small Business Assistance Corp. *v.* Clear Channel Broadcasting, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 278.

No. 00–293. Vinson et al. *v.* United States District Court for the Northern District of Mississippi. C. A. 5th Cir. Certiorari denied.

No. 00–294. Bonner *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–295. Siddiqui *v.* Northern Telecom, Inc. C. A. 4th Cir. Certiorari denied.

No. 00–296. Kallembach *v.* Bechtolt, dba President, Village of South Wayne, et al. C. A. 8th Cir. Certiorari denied.

No. 00–300. Soldiers of Jesus Christ, Inc. *v.* Labor and Industry Review Commission et al. Ct. App. Wis. Certiorari denied. Reported below: 231 Wis. 2d 721, 605 N. W. 2d 664.

No. 00–304. Cammarano *v.* Moore, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–311. SAUNDERS *v.* HASTERT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–315. RATELLE, WARDEN, ET AL. *v.* PROTOPAPPAS. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 663.

No. 00–319. SCHOTTLER *v.* WISCONSIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1339.

No. 00–321. TAO WANG *v.* WILLIAM BEAUMONT HOSPITAL. C. A. 6th Cir. Certiorari denied.

No. 00–332. HUGHLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1074.

No. 00–334. SOO LINE RAILROAD CO. *v.* WALKER. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 581.

No. 00–336. HICKMAN *v.* BAESEL ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–355. MCCRANIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 595.

No. 00–363. CERRATO SOLANO ET AL. *v.* GULF KING 55, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 902.

No. 00–369. LANIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 220 F. 3d 833.

No. 00–374. ABRAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1325.

No. 00–378. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–397. GROUP DATA SERVICES, INC. *v.* LINTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 601.

No. 00–5053. EMERSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 189 Ill. 2d 436, 727 N. E. 2d 302.

No. 00–5084. MOORE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 189 Ill. 2d 521, 727 N. E. 2d 348.

No. 00–5089. BELZEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 636.

No. 00–5113. PRESLEY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 770 So. 2d 143.

No. 00–5188. ANTHONY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 577.

No. 00–5247. PAYNE *v.* SHUMAKE ET AL. Ct. App. Tenn. Certiorari denied.

No. 00–5440. RHODES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–5448. JACKAN *v.* NEW YORK STATE DEPARTMENT OF LABOR. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 562.

No. 00–5451. JENNINGS *v.* PRICE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 649.

No. 00–5452. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 00–5456. WELLS *v.* ST. VINCENT'S HOSPITAL. Ct. App. N. Y. Certiorari denied. Reported below: 95 N. Y. 2d 825, 734 N. E. 2d 762.

No. 00–5463. MAHONEY *v.* SAUNDERS. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 209.

No. 00–5473. NEGRON *v.* RAY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1337.

No. 00–5474. REED *v.* BENNETT ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–5479. MCKENZIE *v.* HALL, SUPERINTENDENT, SANTIAM CORRECTIONAL INSTITUTION. Sup. Ct. Ore. Certiorari denied.

No. 00–5488. COLON *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5491. COTHRUM *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 225.

No. 00–5492. DHORUBA *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–5493. PETERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 00–5494. SYVERTSON *v.* CONMY, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–5495. SMITH ET AL. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 305 Ill. App. 3d 1108, 756 N. E. 2d 487.

No. 00–5496. ELLIS *v.* BAKER ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 00–5500. CREGGETT *v.* FORD MOTOR CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 212.

No. 00–5504. VASQUEZ *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–5515. JACKSON *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5517. MENILLO *v.* HOBBS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1013.

No. 00–5520. ALFORD *v.* JET-EBONY MAGAZINE ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5523. WILLIAMS *v.* WATERS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–5524. RODENBORN *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5531. THOMAS *v.* MILLER. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 263.

No. 00–5533. FOWLER *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 200 F. 3d 1302.

No. 00–5539. STARKS *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5543. HEARTLEY *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5549. ONIFER *v.* TYSZKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 214.

No. 00–5554. SAMRA *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 771 So. 2d 1122.

No. 00–5555. MAGEE *v.* AYERS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5557. RAMOS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5558. STEWART *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 632.

No. 00–5559. STANDARD *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5561. FREEMAN *v.* COUNTY OF BEXAR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 550.

No. 00–5563. ABDUL-MATEEN *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1325.

No. 00–5570. WEAVER *v.* SCHOOL BOARD OF LEON COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 600.

No. 00–5571. BARRASCOUT *v.* HARRIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5573. BROWN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 744.

No. 00–5576. AL-HAKIM, AKA HARRIS *v.* BUTNER ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5577. ALCINDOR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5579. BRICE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–5580. HARRISON *v.* PINELLAS COUNTY COMMISSIONERS ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5583. HOOD *v.* SHAW ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 366.

No. 00–5593. JOHNSON *v.* BURKE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5601. ALFORD *v.* EPIC RECORDS ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5602. ALFORD *v.* ROSS ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5607. OGILVIE *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5618. DENMAN *v.* TESSMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5621. WOOTTEN *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 170 Vt. 485, 756 A. 2d 1222.

No. 00–5623. SALGADO MARTINEZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 196 Ariz. 451, 999 P. 2d 795.

No. 00–5625. HENDERSON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 24 S. W. 3d 307.

No. 00–5626. ANTHONY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 776 So. 2d 376.

No. 00–5628. CLAIBORNE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5633. BANNISTER *v.* DEVILLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 00–5652. CARRUTHERS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 306, 528 S. E. 2d 217.

No. 00–5653. POWELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 995 P. 2d 510.

No. 00–5661. HAYNES ET VIR *v.* JOHNSON. Ct. App. N. Y. Certiorari denied. Reported below: 95 N. Y. 2d 790, 733 N. E. 2d 228.

No. 00–5667. KOGER *v.* BOWEN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–5669. SANDERS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5694. FLOURNOY *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5695. HARMAN *v.* TATE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5714. DANIELS *v.* CALLAHAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1268.

No. 00–5717. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 22 S. W. 3d 183.

No. 00–5718. MAYBERRY *v.* MASCHER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 00–5721. TORRES *v.* IRVIN, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5726. DINSIO *v.* JOHNS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 208.

No. 00–5732. EDMONDS *v.* CLARKSON, JUDGE, CIRCUIT COURT OF VIRGINIA, CITY OF NORFOLK, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 361.

No. 00–5740. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–5750. COCKROFT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5753. Blas De La Cerda *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 00–5770. Houston *v.* Greiner, Superintendent, Sing Sing Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 174 F. 3d 287.

No. 00–5798. Storey *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 00–5814. Jackson *v.* Frank, Deputy Superintendent/Facility Management, State Correctional Institution at Cresson, et al. C. A. 3d Cir. Certiorari denied.

No. 00–5816. Ruiz-Alvarez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1181.

No. 00–5831. Elder *v.* Brigano, Warden. C. A. 6th Cir. Certiorari denied.

No. 00–5835. Marroquin *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1338.

No. 00–5837. Griffin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 823.

No. 00–5843. Jones *v.* Roe, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 00–5845. Trobaugh *v.* Hawk Sawyer, Director, Federal Bureau of Prisons, et al. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1344.

No. 00–5853. Estes *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 00–5857. Spence *v.* Husz et al. Ct. App. Wis. Certiorari denied. Reported below: 234 Wis. 2d 151, 610 N. W. 2d 512.

No. 00–5861. Houser *v.* Armstrong et al. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 636.

No. 00–5876. Harrison *v.* Dodrill, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1318.

No. 00–5877. HAYNES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 205 F. 3d 1346.

No. 00–5882. COUCH *v.* BOONE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–5885. DEREYNA *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 750 So. 2d 215.

No. 00–5901. ABU MEZER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 214 F. 3d 111.

No. 00–5903. SAUCEDO CALDERON *v.* DUGAN. C. A. 9th Cir. Certiorari denied.

No. 00–5908. PATTERSON *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5913. CERTAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1154.

No. 00–5914. CAPORASSO *v.* FRENCH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1317.

No. 00–5917. FOWLER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 199 F. 3d 1326.

No. 00–5918. FOWLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1080.

No. 00–5925. MOON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5928. ALLEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5933. CONINE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 752 So. 2d 4.

No. 00–5951. RAMOS-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 665.

No. 00–5952. STILES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–5959. NEVAREZ *v.* NEVADA SUPREME COURT ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5974. REAVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 207.

No. 00–5981. POLLANI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 743.

No. 00–5986. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 843.

No. 00–5987. LAHENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5990. MILLER *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 207 F. 3d 1096.

No. 00–5991. PIERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–5994. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–5995. FOX *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 200 F. 3d 1286.

No. 00–6006. PFEIFERLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 219.

No. 00–6008. SHEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 848.

No. 00–6012. VERDUZCO-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–6014. ROUDEBUSH *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6021. KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1338.

No. 00–6022. CHAVEZ-NUNEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 168 F. 3d 502.

No. 00–6023. ESCOBEDO-ROMERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 214 F. 3d 967.

No. 00–6028. RANTIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–6035. ALVAREZ-ROMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6039. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 393.

No. 00–6043. TSE *v.* GUNJA, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–6053. PEREZ-SUASO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 363.

No. 00–6060. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 386.

No. 00–6064. PROBEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1285.

No. 00–6071. EVANS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–6072. FUREDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6075. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1355.

No. 00–6087. IBARRA-SANDOVAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1079.

No. 00–6110. STRONG *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 235 Wis. 2d 379, 611 N. W. 2d 457.

No. 00–6122. ALBANESE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–6135. GIBSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 218.

No. 00–6148. ORANGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1338.

No. 99–1976. GIBSON, WARDEN, ET AL. *v.* HOGAN. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 197 F. 3d 1297.

No. 00–228. BAGLEY, WARDEN *v.* WHITE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 201 F. 3d 743.

No. 00–197. TSU ET UX. *v.* VOS ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 217 F. 3d 846.

No. 00–209. VOLKSWAGEN OF AMERICA, INC. *v.* SPERLING ET AL. Sup. Ct. Tex. Motion of Product Liability Advisory Council, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 22 S. W. 3d 462.

No. 00–5686. JACKSON *v.* BOOKER ET AL. C. A. 5th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 99–8422. MILLER *v.* DAVIS-MORRELL, WARDEN, 529 U. S. 1076;

No. 99–8751. IN RE HARRIS, 529 U. S. 1129; and

No. 99–9538. WATSON *v.* SOUTHWESTERN BELL TELEPHONE CO., 530 U. S. 1280. Petitions for rehearing denied.

No. 99–339. HOLLANDER *v.* AMERICAN CYANAMID CO., 528 U. S. 965 and 1107. Motion of petitioner for leave to file second petition for rehearing denied.

No. 99–8339. RAJKOVIC *v.* IMMIGRATION AND NATURALIZATION SERVICE, 529 U. S. 1075. Motion of petitioner for leave to file petition for rehearing denied.

OCTOBER 16, 2000

Affirmed on Appeal

No. 99–2062. ALEXANDER ET AL. *v.* MINETA, SECRETARY OF COMMERCE, ET AL. Affirmed on appeal from D. C. D. C. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 90 F. Supp. 2d 35.

No. 00–97. ADAMS ET AL. *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. Affirmed on appeal from D. C. D. C. JUSTICE STEVENS would dismiss the appeal. Reported below: 90 F. Supp. 2d 35.

Certiorari Granted—Vacated and Remanded

No. 99–9743. GARROTT *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Slack* v. *McDaniel*, 529 U. S. 473 (2000).

No. 99–10024. HESTER *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 199 F. 3d 1287.

No. 00–5198. SMITH *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 215 F. 3d 1331.

Certiorari Dismissed

No. 00–5613. RENOIR *v.* CHRIS ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–5765. VARGAS *v.* RAY, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. Super. Ct. Fulton County, Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 00M27. BAKER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION; and

No. 00M28. MCGLONE *v.* OUTGAMIE COUNTY, WISCONSIN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 128, Orig. ALASKA *v.* UNITED STATES. It is ordered that Gregory E. Maggs, Esq., of Washington, D. C., be appointed as

Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his reports, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier order herein, see 530 U. S. 1228.]

No. 131, Orig. SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION *v.* NORTH CAROLINA. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 99–1257. BROWNER, ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY, ET AL. *v.* AMERICAN TRUCKING ASSNS., INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 529 U. S. 1129.] Motion of respondents Ohio et al. for divided argument granted.

No. 99–1379. CIRCUIT CITY STORES, INC. *v.* ADAMS. C. A. 9th Cir. [Certiorari granted, 529 U. S. 1129.] Motion of the Solicitor General to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 99–1529. EGELHOFF *v.* EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT, BREINER, ET AL. Sup. Ct. Wash. [Certiorari granted, 530 U. S. 1242.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–249. ATLANTIC RICHFIELD CO. ET AL. *v.* UNION OIL COMPANY OF CALIFORNIA. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–6245. IN RE ALEXANDER; and

No. 00–6263. IN RE MOUZON. Petitions for writs of habeas corpus denied.

No. 00–283. IN RE MEREDITH;

No. 00–5679. IN RE HARMON ET AL.; and

No. 00–5764. IN RE LIVSHITS. Petitions for writs of mandamus denied.

Certiorari Granted

No. 00–203. UNITED STATES *v.* CLEVELAND INDIANS BASEBALL CO. C. A. 6th Cir. Certiorari granted. Reported below: 215 F. 3d 1325.

No. 99–1978. UNITED STATES *v.* HATTER, JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL. C. A. Fed. Cir. Certiorari granted. JUSTICE STEVENS and JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 203 F. 3d 795.

Certiorari Denied

No. 99–9003. HARRISON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 99–9614. WARD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 99–9627. COOK *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 5 S. W. 3d 572.

No. 99–9712. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 99–9840. HOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 183 F. 3d 744.

No. 99–10028. MARSHALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 662.

No. 99–10054. MANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 599.

No. 00–61. T. E. G./L. V. I. ENVIRONMENTAL SERVICES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 221 F. 3d 196.

No. 00–93. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12 *v.* CALMAT CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1272.

No. 00–219. CONCHO RESIDENTIAL SERVICE, INC. *v.* MHMR SERVICES FOR THE CONCHO VALLEY, AKA CONCHO VALLEY CENTER FOR HUMAN ADVANCEMENT, ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 00–226. BONDS *v.* MILWAUKEE COUNTY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 207 F. 3d 969.

No. 00–252. EXXON MOBIL CORP. *v.* KELLOGG CO. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 562.

No. 00–254. SUNDQUIST, GOVERNOR OF TENNESSEE, ET AL. *v.* RURAL WEST TENNESSEE AFRICAN-AMERICAN AFFAIRS COUNCIL, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 835.

No. 00–255. TUAN VAN TRAN *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 212 F. 3d 1143.

No. 00–264. LEVINE *v.* HAUPPAUGE PUBLIC SCHOOLS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 203.

No. 00–267. ASHLEY *v.* BLUE CROSS AND BLUE SHIELD OF MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 658.

No. 00–269. THRIFT *v.* THRIFT ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 760 So. 2d 732.

No. 00–273. MACDONALD ET AL. *v.* PLEMPEL ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–275. LARA ET AL. *v.* CINEMARK USA, INC. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 783.

No. 00–280. ALIKHANI ET AL. *v.* UNITED TECHNOLOGIES CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1010.

No. 00–308. VINSON *v.* MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD. Sup. Ct. Miss. Certiorari denied.

No. 00–324. AZIZ *v.* RAMBO, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1328.

No. 00–340. WHITE *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–350. MING-CHIANG LI *v.* MONTGOMERY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 221 F. 3d 196.

No. 00–351. MING-CHIANG LI *v.* DANZIG, SECRETARY OF THE NAVY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1319.

No. 00–357. REYNOLDS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 269 App. Div. 2d 735, 704 N. Y. S. 2d 398.

No. 00–385. STUBER *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 27 Kan. App. 2d 160, 1 P. 3d 333.

No. 00–388. FOKKER SERVICES B. V. *v.* NORTHROP GRUMMAN CORP. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–410. HENSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 131.

No. 00–414. WILSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1074.

No. 00–435. OSPINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–439. AQUINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1073.

No. 00–5006. MURRAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–5067. HUNT *v.* MCDADE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1333.

No. 00–5226. ETHERIDGE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 718.

No. 00–5597. RODRIGUEZ REYNA *v.* STEWART ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–5611. RICHARDSON *v.* STALDER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–5612. RODRIGUEZ *v.* IRVIN, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5629. PATTERSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 265 App. Div. 2d 843, 696 N. Y. S. 2d 720.

No. 00–5632. HOFFMAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 768 So. 2d 542.

No. 00–5635. HUGHEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 339 S. C. 439, 529 S. E. 2d 721.

No. 00–5636. HARRIS *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–5640. SMITH *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–5643. FELS *v.* IRETON ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–5647. FREEMAN *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 572.

No. 00–5649. RETZLAFF *v.* TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 00–5658. GODDARD *v.* KENTUCKY DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1340.

No. 00–5659. ELLIOTT *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 202 F. 3d 268.

No. 00–5660. GREEN *v.* SUTHERS, DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 226.

No. 00–5662. GLAZE *v.* SANDERS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 129.

No. 00–5664. IN RE BONNER. Sup. Ct. Cal. Certiorari denied.

No. 00–5665. NONAHAL *v.* MARQUETTE UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–5670. STRAUGHTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–5671. SAKARIAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 596, 995 P. 2d 152.

No. 00–5674. WASH *v.* ROUT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1328.

No. 00–5675. MCCORMICK, AKA WRIGHT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–5678. WALSH *v.* GLASS, SHERIFF, LEVY COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 392.

No. 00–5680. ESTRADA *v.* ROWLAND ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5681. BEY *v.* KEATING, GOVERNOR OF OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1336.

No. 00–5684. HOOD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 753 So. 2d 101.

No. 00–5687. THOMAS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–5688. ORTIZ CAMERON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO. C. A. 1st Cir. Certiorari denied.

No. 00–5689. HYNARD *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5692. FIELDS *v.* MACOMB COUNTY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1326.

No. 00–5697. DOWDELL *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5699. GARZA *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–5702. FRANSAW *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5704. GRAHAM *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 560 Pa. 740, 747 A. 2d 365.

No. 00–5706. FENNELL *v.* MULLER, SUPERINTENDENT, SAMPSON CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 198 F. 3d 236.

No. 00–5708. FOXWORTH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–5709. GANIOUS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–5710. CHAMPION *v.* RIVERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 201 F. 3d 440.

No. 00–5712. CRANE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 308 Ill. App. 3d 675, 721 N. E. 2d 657.

No. 00–5716. HAMILTON *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1157.

No. 00–5724. CARMICHAEL *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5727. CARTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5728. MIKOLAITIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5731. BROWN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5736. SHIPMAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 684, 531 S. E. 2d 84.

No. 00–5739. JOHNSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5743. PHILPOT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5745. DOTSON *v.* DOW. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 00–5749. WISHNEFSKY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 750 A. 2d 379.

No. 00–5752. CARLSON *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5754. BROWN *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 00–5757. MOODY *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–5761. WILLIAMS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–5763. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5766. INMAN *v.* GALLESE. Sup. Ct. Fla. Certiorari denied. Reported below: 763 So. 2d 1043.

No. 00–5768. GUNZL *v.* NEW CASTLE COUNTY ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 757 A. 2d 1277.

No. 00–5769. POTEETE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5771. FIELDS *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5772. HENRIQUEZ *v.* LUGO ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5773. MORGAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–5775. SIMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5776. CORDER *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5777. ENNIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–5780. CLEFF *v.* BROYLES, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–5802. SAILLE *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5822. DIGGS *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 49 Mass. App. 1105, 726 N. E. 2d 992.

No. 00–5846. TURNER *v.* NEWLAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5850. NANCE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 217, 526 S. E. 2d 560.

No. 00–5892. KOYNOK *v.* FIRST UNION MANAGEMENT. Super. Ct. Pa. Certiorari denied. Reported below: 747 A. 2d 426.

No. 00–5911. DUNCAN *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 00–5953. SHERIDAN *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1379.

No. 00–5962. SHARP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–5972. JAVIER PIMENTEL *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5975. STINER *v.* POULAN WEEDEATER. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 218.

No. 00–5979. HERNANDEZ-RAMIREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–5988. LASKO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 23 Cal. 4th 101, 999 P. 2d 666.

No. 00–5993. WOODS *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–6015. ANTONIO-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–6018. LEGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1356.

No. 00–6030. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 206 F. 3d 812.

No. 00–6032. SMITH *v.* MCCULLOUGH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 650.

No. 00–6052. LARA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 664.

No. 00–6055. FRANKLIN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 24 S. W. 3d 686.

No. 00–6058. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1206.

No. 00–6059. GALLAGHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 511.

No. 00–6063. HOBBS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 00–6066. FUQUA *v.* MUELLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6068. GIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 F. 3d 1347.

No. 00–6081. SWAIN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–6089. MAZZOTTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–6100. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–6103. COOPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–6104. CAMPOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 707.

No. 00–6120. SPIRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 205 F. 3d 1354.

No. 00–6136. ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1074.

No. 00–6157. JOWERS *v.* GREEN CHIMNEYS CHILDREN'S SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1072.

No. 00–6159. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–6178. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 843.

No. 00–110. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SMITH. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 189 F. 3d 1004.

No. 00–243. MCMATH *v.* MONTGOMERY ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 206 F. 3d 821.

No. 00–5734. DO-NGUYEN *v.* MESA VIEW HOMEOWNERS ASSN. ET AL. C. A. 9th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 99–5313. MESA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 528 U. S. 897; and

No. 99–9506. MATHIS *v.* HENDERSON, POSTMASTER GENERAL, 530 U. S. 1267. Petitions for rehearing denied.

OCTOBER 30, 2000

Certiorari Granted—Vacated and Remanded

No. 99–1489. RAQUEL *v.* EDUCATION MANAGEMENT CORP. ET AL. C. A. 3d Cir. Certiorari granted, judgment vacated, and

case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States, as *amicus curiae*, filed September 20, 2000, and the Copyright Office's July 5, 2000, Statement of Policy, 65 Fed. Reg. 41508. Reported below: 196 F. 3d 171.

No. 99–10265. CURRY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 211 F. 3d 129.

No. 99–10055. JACKSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari as to Harold Jackson granted. Judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Certiorari as to Kevin Williams, Dion Lewis, Jathel Garrett, Derrick Mallett, Richard Wash, Scott Davis, James Doty, Michelle Gaines, Clarence Haywood, Cedric Parks, and James Yates denied. Reported below: 207 F. 3d 910.

Certiorari Dismissed

No. 00–5865. MACIEL *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–5985. TERIO *v.* PIAZZA, COMMISSIONER, PUTNAM COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2177. IN RE DISBARMENT OF DINGMAN. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2178. IN RE DISBARMENT OF PHILLIPS. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2180. IN RE DISBARMENT OF CLARK. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2181. IN RE DISBARMENT OF POTTERS. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2184. IN RE DISBARMENT OF AULAKH. Disbarment entered. [For earlier order herein, see 530 U. S. 1289.]

No. D–2186. IN RE DISBARMENT OF FREMONT. Disbarment entered. [For earlier order herein, see 530 U. S. 1294.]

No. D–2189. IN RE DISBARMENT OF SEPE. Disbarment entered. [For earlier order herein, see 530 U. S. 1294.]

No. D–2190. IN RE DISBARMENT OF FERGUSON. Disbarment entered. [For earlier order herein, see 530 U. S. 1294.]

No. D–2195. IN RE DISBARMENT OF VOGEL. Disbarment entered. [For earlier order herein, see 530 U. S. 1295.]

No. D–2202. IN RE DISBARMENT OF CONWAY. Michael Anthony Conway, of Bloomfield Hills, Mich., 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.

No. D–2203. IN RE DISBARMENT OF LECK. Lawrence W. Leck, of Chicago, Ill., 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.

No. D–2204. IN RE DISBARMENT OF MINTZ. Lincoln N. Mintz, of Oakland, Cal., 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.

No. D–2205. IN RE DISBARMENT OF FREDENBERGER. William Erwin Fredenberger, Jr., of Stafford, Va., 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.

No. D–2206. IN RE DISBARMENT OF GASKINS. Oscar Norman Gaskins, of Philadelphia, Pa., 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.

No. 00M29. FORNARO *v.* STATE FARM INSURANCE CO. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 99–8508. KYLLO *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 530 U. S. 1305.] Motion for appointment of counsel granted, and it is ordered that Kenneth Lerner, Esq., of Portland, Ore., be appointed to serve as counsel for petitioner in this case.

No. 00–289. YARNELL, CHIEF ENGINEER, MISSOURI DEPARTMENT OF TRANSPORTATION, ET AL. *v.* CUFFLEY ET AL. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–6016. SAMUEL ET UX. *v.* HEPWORTH, NUNGESTER & LEZAMIZ ET AL. Sup. Ct. Idaho. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 20, 2000, 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.

No. 00–6254. IN RE KOST; and

No. 00–6295. IN RE ELIAS LOERA. Petitions for writs of habeas corpus denied.

No. 00–6397. IN RE MONTGOMERY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 00–5820. IN RE CHALMERS;

No. 00–5967. IN RE WEBB;

No. 00–6010. IN RE BROOKS; and

No. 00–6371. IN RE MATHISON. Petitions for writs of mandamus denied.

Certiorari Granted

No. 99–1964. BOOTH *v.* CHURNER ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 206 F. 3d 289.

No. 00–292. C & L ENTERPRISES, INC. *v.* CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA. Ct. Civ. App. Okla. Certiorari granted.

Certiorari Denied. (See also No. 99–10055, *supra.*)

No. 99–1995. ENVIROCARE OF TEXAS, INC., ET AL. *v.* WASTE CONTROL SPECIALISTS, LLC. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 781 and 207 F. 3d 225.

No. 99–2032. MOLNAR ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 372.

No. 99–2067. MAY *v.* HAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 384.

No. 99–2072. HEALY TIBBITTS BUILDERS, INC. *v.* CABRAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 1090.

No. 99–2078. PROSPERI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 201 F. 3d 1335.

No. 99–9703. TRIANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 36.

No. 99–9762. HAWKINS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 99–9768. MAO BING MU *v.* UNITED STATES;
No. 99–9769. SANG LI *v.* UNITED STATES;
No. 99–9770. BEN LIN *v.* UNITED STATES; and
No. 99–9792. NAI FOOK LI ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: Nos. 99–9768, 99–9769, and 99–9770, 206 F. 3d 56; No. 99–9792, 206 F. 3d 78.

No. 99–9829. ULLOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 99–10085. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 261.

No. 99–10145. DYE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 717 N. E. 2d 5.

No. 99–10198. IRULA *v.* RENO, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 99–10268. MURPHY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 809.

No. 00–31. CHEVY CHASE LAND COMPANY OF MONTGOMERY COUNTY, MARYLAND *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1375.

No. 00–101. STRAND ET AL. *v.* VERIZON NORTH INC. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 909.

No. 00–160. BRAZOS ELECTRIC POWER COOPERATIVE, INC. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 235.

No. 00–180. BURILOVICH ET UX., AS NEXT FRIENDS ON BEHALF OF THEIR SON, BURILOVICH *v.* BOARD OF EDUCATION OF THE LINCOLN CONSOLIDATED SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 560.

No. 00–185. TORRENCE, INDIVIDUALLY AND AS LEGAL GUARDIAN FOR THE USE AND BENEFIT OF MINOR DAUGHTER, TORRENCE, AND AS ADMINISTRATRIX AT LAW OF THE ESTATE OF DECEASED HUSBAND, TORRENCE, ET AL. *v.* ORYX ENERGY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–187. DORAN *v.* CARNIVAL CORP. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–238. TREECE *v.* HOCHSTETLER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 213 F. 3d 360.

No. 00–246. COHEN *v.* OFFICE DEPOT, INC. C. A. 11th Cir. Certiorari denied. Reported below: 204 F. 3d 1069.

No. 00–278. CHANG *v.* FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 00–279. ARCHDIOCESE OF OKLAHOMA CITY ET AL. *v.* BALLARD ET AL. Sup. Ct. Okla. Certiorari denied.

No. 00–298. BIGHAM *v.* HUFFMAN, SHERIFF OF CLAY COUNTY, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 744.

No. 00–301. REYES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–302. SCHMIER *v.* SUPREME COURT OF CALIFORNIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 78 Cal. App. 4th 703, 93 Cal. Rptr. 2d 580.

No. 00–305. CHILDREN'S WORLD LEARNING CENTERS, INC. *v.* RIZZO. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 209.

No. 00–306. DENNO, AS PARENT, LEGAL GUARDIAN, AND NEXT FRIEND FOR DENNO *v.* SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 1267.

No. 00–310. KHALIL *v.* BCCI HOLDINGS (LUXEMBOURG) S. A. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 214 F. 3d 168.

No. 00–314. AHUJA *v.* UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–316. SCHEIDING ET AL. *v.* GENERAL MOTORS CORP. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 471, 993 P. 2d 996.

No. 00–317. NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. C. A. 8th Cir. Certiorari denied. Reported below: 210 F. 3d 814.

No. 00–318. BOARD OF EDUCATION OF RICH TOWNSHIP HIGH SCHOOL DISTRICT 227 ET AL. *v.* BROWN ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 311 Ill. App. 3d 478, 724 N. E. 2d 956.

No. 00–325. WENDT *v.* UNIVERSITY OF ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1331.

No. 00–328. KIRKLAND *v.* BAKER-HUGHES OILFIELD OPERATIONS, INC., DBA CENTRILIFT. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1278.

No. 00–330. COX *v.* SUSAN E. LOGGANS & ASSOCIATES, LTD., ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 307 Ill. App. 3d 1060, 760 N. E. 2d 1055.

No. 00–331. HOFHERR *v.* VISTA IRRIGATION DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1348.

No. 00–333. HUTCHINSON ET AL. *v.* PFEIL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 515.

No. 00–335. HAINZE *v.* RICHARDS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 795.

No. 00–337. HISE ET AL. *v.* PHILIP MORRIS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 226.

No. 00–338. SABAY ET AL. *v.* GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 261.

No. 00–341. DUNN ET UX. *v.* MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS. App. Ct. Mass. Certiorari denied. Reported below: 49 Mass. App. 1102, 725 N. E. 2d 1087.

No. 00–343. ANNENBERG, AS SOLE TRUSTEE OF THE TRUST UNDER WILL OF ANNENBERG, ET AL. *v.* BOARD OF COMMISSIONERS OF MONTGOMERY COUNTY, PENNSYLVANIA, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 562 Pa. 581, 757 A. 2d 338.

No. 00–344. FINANCIAL SERVICES MARKETING CORP. *v.* WORDPERFECT CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 584.

No. 00–358. KALLEMBACH *v.* ANCHOR BANK ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–364. STEPANSKY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 761 So. 2d 1027.

No. 00–368. KISSI *v.* SMALL BUSINESS ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 821.

No. 00–371. LEBLANC *v.* SALEM. C. A. 1st Cir. Certiorari denied. Reported below: 212 F. 3d 632.

No. 00–372. LAL *v.* GOUERT. Super. Ct. Pa. Certiorari denied. Reported below: 748 A. 2d 782.

No. 00–380. BURNS *v.* ADA S. MCKINLEY COMMUNITY SERVICE ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 308 Ill. App. 3d 1086, 764 N. E. 2d 186.

No. 00–413. YATES *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 213 F. 3d 1372.

No. 00–420. SAMPSON *v.* YELLOW CAB CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–424. SIMPSON *v.* COLUMBUS SOUTHERN POWER CO. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1270.

No. 00–430. FORD MOTOR CO. ET AL. *v.* KING, ADMINISTRATOR OF THE ESTATE OF KING, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 886.

No. 00–431. KINROSS COPPER CORP. *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 160 Ore. App. 513, 981 P. 2d 833.

No. 00–437. KEITH, AS REPRESENTATIVE PLAINTIFF FOR KEITH ET UX. *v.* RIZZUTO. C. A. 10th Cir. Certiorari denied. Reported below: 212 F. 3d 1190.

No. 00–450. CHUN HUA MUI ET AL. *v.* UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL–CIO, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–460. FOWLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 459.

No. 00–465. MURRAY *v.* GREYHOUND LINES, INC. (GLI). C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1092.

No. 00–471. KENRICK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 221 F. 3d 19.

No. 00–473. SELLERS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–478. VIVIT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 214 F. 3d 908.

No. 00–5081. MITCHELL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 189 Ill. 2d 312, 727 N. E. 2d 254.

No. 00–5099. BRUGAL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 209 F. 3d 353.

No. 00–5365. FLORES-BAUTISTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 647.

No. 00–5375. ADENIJI *v.* PERRYMAN. C. A. 7th Cir. Certiorari denied.

No. 00–5427. BORDEN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 769 So. 2d 950.

No. 00–5428. RICH *v.* COOPERVISION, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5599. PINSON *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 916.

No. 00–5619. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 194 F. 3d 1322.

No. 00–5685. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1080.

No. 00–5751. QUEVEDO *v.* MEAKER. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–5781. EVANS *v.* PRICE. C. A. 5th Cir. Certiorari denied.

No. 00–5782. DONTIGNEY *v.* ARMSTRONG, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. Sup. Ct. Conn. Certiorari denied. Reported below: 252 Conn. 909, 743 A. 2d 618.

No. 00–5783. GAVIN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 461 Mich. 944, 606 N. W. 2d 26.

No. 00–5785. HARPER *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–5786. GONZALEZ *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5789. FISHER *v.* MCGEE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 202 F. 3d 277.

No. 00–5791. POSEY *v.* SMITH, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 369.

No. 00–5793. GARNER *v.* MCDONNELL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5795. HINES *v.* HUBBARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 00–5799. SLAUGHTER *v.* GREINER, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 00–5800. CHAMBERS *v.* COLORADO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 205 F. 3d 1237.

No. 00–5801. RIETH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5806. PASCHAL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5808. PONCE-BRAN *v.* SACRAMENTO NATURAL FOODS COOPERATIVE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1348.

No. 00–5809. JONES *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5821. CONLEY *v.* HARKENRIDER ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5823. DAVIES *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1329.

No. 00–5824. COOPER ET AL. *v.* WHITE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 552.

No. 00–5825. CODDINGTON *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5827. MORA *v.* CHICAGO TRIBUNE CO. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1330.

No. 00–5829. BOLES *v.* TUCKER. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 744.

No. 00–5833. DAVIS *v.* NUSBAUM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 191 F. 3d 447.

No. 00–5836. HESS *v.* KIRBY, JUDGE, COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–5838. HEADRICK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5841. HALPIN *v.* BEDNAR, JUDGE, FIRST JUDICIAL DISTRICT, LEAVENWORTH COUNTY, KANSAS. Sup. Ct. Kan. Certiorari denied.

No. 00–5842. LEWIS *v.* MARSHALL COUNTY CORRECTIONAL CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–5847. ATKINS *v.* TESSMER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1333.

No. 00–5848. TERRENCE, AKA SANFORD *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5849. WHITFIELD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5855. CARTER *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 00–5856. ROJO *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5860. GABRIEL *v.* THERIOT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 438.

No. 00–5864. PENA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5866. WALKER *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5869. HILL *v.* WALLACE. C. A. 9th Cir. Certiorari denied.

No. 00–5871. BROWN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 131.

No. 00–5873. HARDY *v.* SMITH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 181 F. 3d 88.

No. 00–5874. GRIFFITH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–5875. GOINS *v.* GAITHER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5880. BOLDEN *v.* VILLAGE OF BELLWOOD. C. A. 7th Cir. Certiorari denied.

No. 00–5881. DYSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–5883. CHAPMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 124.

No. 00–5886. DIAZ *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 202.

No. 00–5887. CLIFTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5890. PERKINS *v.* GOMEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–5891. METCALF *v.* MONROE COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–5893. JONES *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5896. WERTZ *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–5897. TURNER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–5898. WAGNOON *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5904. SHAW *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–5905. JUDA *v.* CURRAN. Ct. App. N. M. Certiorari denied.

No. 00–5906. JONES-EL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 796 So. 2d 460.

No. 00–5907. MOODY *v.* OKORIE. C. A. 11th Cir. Certiorari denied.

No. 00–5909. CHAPMAN *v.* VIRGINIA ET AL. Sup. Ct. Va. Certiorari denied.

No. 00–5910. DONAHUE *v.* PHILIPUS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1079.

No. 00–5912. DEBRUCE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 796 So. 2d 462.

No. 00–5926. WATTS *v.* TURNER, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL INSTITUTION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–5929. ARCHER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5931. MIMMS *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5932. SHEPARD *v.* HOPKINS, ASSISTANT DIRECTOR, ADULT INSTITUTIONS, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 00–5935. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1262.

No. 00–5938. LIU *v.* NAOMI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 203.

No. 00–5943. AFRIKA *v.* KIRKLAND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1075.

No. 00–5944. BERRY-GURULE *v.* LUCERO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1336.

No. 00–5945. HERNANDEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 243.

No. 00–5948. FREEMAN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 776 So. 2d 203.

No. 00–5955. O'NEAL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–5956. BAPTIST *v.* WELBORN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–5957. DEEMER *v.* WARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–5958. PLATER *v.* MCCOY, SUPERINTENDENT, CAYUGA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5960. CHILDRESS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 191 Ill. 2d 168, 730 N. E. 2d 32.

No. 00–5965. VENEGAS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–5966. WHATLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–5968. TALBOT *v.* ALAMEIDA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5969. BARONE *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–5973. SUTTLES *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 00–5977. GOLDSTEIN *v.* DEPARTMENT OF INSURANCE. Commw. Ct. Pa. Certiorari denied. Reported below: 745 A. 2d 1271.

No. 00–5978. GENINS *v.* HERZOG, HEINE, GEDULD, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–5980. CORNELIUS *v.* CORNELIUS. Super. Ct. Gwinnett County, Ga. Certiorari denied.

No. 00–5984. VALENTI *v.* ECONOMY COLOR CARD CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–5997. MCGRUDER *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–5998. THOMAS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 699.

No. 00–6000. JONES *v.* SALEBY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 209.

No. 00–6002. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6004. JACKSON *v.* RAMSEY COUNTY. Sup. Ct. Minn. Certiorari denied. Reported below: 614 N. W. 2d 718.

No. 00–6009. ROBINSON *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 584.

No. 00–6011. BROWN *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1332.

No. 00–6013. TOWNSEND *v.* CRIST, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–6017. MAYS *v.* HICKMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–6047. BUTLER *v.* CRAWFORD, WARDEN. Sup. Ct. Nev. Certiorari denied.

No. 00–6054. JACKSON *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied.

No. 00–6056. HAGER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6065. GONZALEZ *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6067. HALBLEIB *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 7 P. 3d 45.

No. 00–6069. HAMMOND *v.* LUCAS COUNTY CHILDREN SERVICES BOARD. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 1479, 727 N. E. 2d 131.

No. 00–6074. WARREN *v.* GARVIN, SUPERINTENDENT, MID-ORANGE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 219 F. 3d 111.

No. 00–6085. BARNES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 204.

No. 00–6092. SULT *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–6095. SCHOENBOHM *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 204 F. 3d 243.

No. 00–6096. LINEBERGER *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1319.

No. 00–6101. MCLEGGAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 1315.

No. 00–6111. ROSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 210 F. 3d 916.

No. 00–6116. TOLLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 256.

No. 00–6118. SCOTT *v.* KENNEDY, DISTRICT COURT JUDGE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 00–6125. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 377.

No. 00–6128. WRIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1020.

No. 00–6129. BORROTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1291.

No. 00–6132. RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–6133. ABSALON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 369.

No. 00–6138. HENDERSON *v.* UNITED STATES; and
No. 00–6174. CARPENTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1074.

No. 00–6140. FALETI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–6141. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–6143. HOLLOMAN *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 00–6146. SAMPSON *v.* CITIBANK, F. S. B., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 221 F. 3d 196.

No. 00–6149. MARCUS *v.* MIDDLETON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6155. SAUNDERS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–6158. MAYDAK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–6160. AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 214 F. 3d 1122.

No. 00–6161. BELARDO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 650.

No. 00–6163. POLLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–6164. ROUNSAVALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–6165. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–6173. NORRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–6176. DOHAWK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–6189. MONDAINE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–6190. POWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–6198. KHATER ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 205 F. 3d 1330.

No. 00–6201. JOHNSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 216 F. 3d 1099.

No. 00–6203. LEWIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–6206. AKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 204 F. 3d 1086.

No. 00–6208. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–6209. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 215.

No. 00–6213. BALTODANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1334.

No. 00–6219. WICKER *v.* ILLINOIS DEPARTMENT OF PUBLIC AID. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1331.

No. 00–6222. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–6228. SUGGS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6229. PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 F. 3d 575.

No. 00–6230. OWENS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–6234. DOUGLAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–6235. SPENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 214.

No. 00–6236. EVANS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 216 F. 3d 80.

No. 00–6238. POSEY *v.* DEWALT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1320.

No. 00–6239. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6240. RICHARDSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1338.

No. 00–6244. KIMBROUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6248. MCCOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6249. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6253. PUCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6258. ZAPATA-IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 877.

No. 00–6259. VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1350.

No. 00–6260. VILLARIEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–6262. PERKINS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–6266. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6267. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–6274. HERNANDEZ ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 00–6276. NICKLAUS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–6279. HAWKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 215 F. 3d 858.

No. 00–6282. CONTRERAS VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 456.

No. 00–6287. BENDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–6297. MATHIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 216 F. 3d 18.

No. 00–6304. CAMPBELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6305. PALMER, AKA BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–6313. BRANSTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1073.

No. 00–6317. MALDONADO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1089.

No. 00–6318. LEACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1345.

No. 00–6321. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 217 F. 3d 247.

No. 00–6322. WASHPUN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 213 F. 3d 302.

No. 00–6327. OKORO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–6329. TYREE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6342. PEREZ, AKA PEREZ-CHAIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 217 F. 3d 323.

No. 00–6346. PANZERO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–6353. LANGLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6355. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 633.

No. 00–6356. KRATZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–6363. REYES PENA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1204.

No. 00–6372. BIXLER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 761 So. 2d 1103.

No. 00–6375. SAINTVILLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 218 F. 3d 246.

No. 00–6376. MEJIA-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–6377. BURNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6378. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 214 F. 3d 740.

No. 00–6379. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–6385. DECKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 220 F. 3d 589.

No. 00–6387. PEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–6391. SOTO-RACANAC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–6401. WALLACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 1216.

No. 00–6405. YACOUB *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1331.

No. 00–6410. REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6415. WHERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–112. COLORADO DEPARTMENT OF CORRECTIONS ET AL. *v.* CHAMBERS. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 F. 3d 1237.

No. 00–377. MARTINEZ *v.* AMERICAN OIL & SUPPLY CO. ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 216 F. 3d 1087.

No. 00–5810. PARKER *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 10th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 99–9978. IN RE WILLIAMS LEWIS, *ante*, p. 810. Petition for rehearing denied.

No. 99–8275. IN RE ADIO-MOWO, 529 U. S. 1016. Motion for leave to file petition for rehearing denied.

NOVEMBER 1, 2000

Dismissal Under Rule 46

No. 00–405. LOUISIANA PUBLIC SERVICE COMMISSION *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.2.

NOVEMBER 2, 2000

Dismissal Under Rule 46

No. 99–1244. GTE SERVICE CORP. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 5th Cir. [Certiorari granted, 530 U. S. 1213.] Writ of certiorari dismissed under this Court's Rule 46.2.

NOVEMBER 3, 2000

Certiorari Denied

No. 00–6854 (00A399). YOUNG *v.* SOUTH CAROLINA. Sup. Ct. S. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 6, 2000

Certiorari Granted—Vacated and Remanded

No. 00–183. WHITT *v.* UNITED STATES. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 211 F. 3d 1022.

No. 00–192. HUGHES *v.* UNITED STATES. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further

consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 213 F. 3d 323.

Certiorari Dismissed

No. 00–6024. BROWN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA (LEVI, REAL PARTY IN INTEREST); BROWN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA (UNITED STATES ET AL., REAL PARTIES IN INTEREST); and BROWN *v.* GOMEZ. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–6108. ROSENBERG *v.* UNITED STATES MINT. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 00–6233. WHITEHEAD *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2207. IN RE DISBARMENT OF THOMAS. William Harold Thomas, of Beverly Hills, Cal., 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.

No. D–2208. IN RE DISBARMENT OF FRIEDMAN. Bruce J. Friedman, of San Anselmo, Cal., 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.

No. D–2209. IN RE DISBARMENT OF GOLDSTEIN. Morton B. Goldstein, of Havre, Mont., 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.

No. D–2210. IN RE DISBARMENT OF SIMMONS. Thomas M. Simmons, of Boston, Mass., 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.

No. 00M31. WALDEN *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 00M32. EVANS *v.* ROCKFORD SCHOOL DISTRICT ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 99–1571. TRAFFIX DEVICES, INC. *v.* MARKETING DISPLAYS, INC. C. A. 6th Cir. [Certiorari granted, 530 U. S. 1260.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1702. TEXAS *v.* COBB. Ct. Crim. App. Tex. [Certiorari granted, 530 U. S. 1260.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1792. DIRECTOR OF REVENUE OF MISSOURI *v.* COBANK ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES. Sup. Ct. Mo. [Certiorari granted, 530 U. S. 1260.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1864. HUNT, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* CROMARTIE ET AL.; and

No. 99–1865. SMALLWOOD ET AL. *v.* CROMARTIE ET AL. D. C. E. D. N. C. [Probable jurisdiction noted, 530 U. S. 1260.] Motion of the Smallwood appellants for divided argument granted.

No. 99–9866. AMIRI *v.* QURESHI. Ct. App. D. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 00–5382. IN RE VENERI. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 00–6528. IN RE FRANZA. Petition for writ of habeas corpus denied.

No. 00–411. IN RE RITCHIE. Petition for writ of mandamus denied.

Certiorari Granted

No. 00–201. NEW YORK TIMES CO., INC., ET AL. *v.* TASINI ET AL. C. A. 2d Cir. Motion of Northern Light Technology, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 206 F. 3d 161.

No. 00–347. THE WHARF (HOLDINGS) LTD. ET AL. *v.* UNITED INTERNATIONAL HOLDINGS, INC., ET AL. C. A. 10th Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 210 F. 3d 1207.

Certiorari Denied

No. 99–10124. SALAZAR *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 191 F. 3d 453.

No. 99–10202. DEAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–44. MOBIL MINING & MINERALS *v.* NIXSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 719.

No. 00–216. MOORE *v.* VALDER. C. A. D. C. Cir. Certiorari denied. Reported below: 213 F. 3d 705.

No. 00–220. HENRY E. & NANCY HORTON BARTELS TRUST FOR THE BENEFIT OF THE UNIVERSITY OF NEW HAVEN ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 209 F. 3d 147.

No. 00–221. BUCHIGNANI *v.* VINING-SPARKS, IBG, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 212.

No. 00–320. SMITH ET UX. *v.* CITY OF CUMMING ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 1332.

No. 00–322. COATES *v.* VIRGINIA POWER CO. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 630.

No. 00–339. KELLY ET AL. *v.* AL FURAT PETROLEUM CO. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 841.

No. 00–342. TAIWAN ET AL. *v.* TEI YAN SUN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 1105.

No. 00–348. ADVANCE LEASING & DEVELOPMENT, INC., ET AL. *v.* HART ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1090.

No. 00–352. MAURINO *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 638.

No. 00–365. AHEART *v.* SODEXHO MARRIOTT SERVICES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1332.

No. 00–367. DARIA *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1332.

No. 00–373. COMMANDER OIL CORP. *v.* BARLO EQUIPMENT CORP. C. A. 2d Cir. Certiorari denied. Reported below: 215 F. 3d 321.

No. 00–379. CONCORD BOAT CORP. ET AL. *v.* BRUNSWICK CORP. C. A. 8th Cir. Certiorari denied. Reported below: 207 F. 3d 1039.

No. 00–382. WILLMAR ELECTRIC SERVICE, INC. *v.* COOKE, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF REGULATORY AGENCIES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 212 F. 3d 533.

No. 00–383. BEY *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 647.

No. 00–389. GRANITI *v.* BUENA VISTA HOME VIDEO, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–390. HEIRS OF GUERRA, DECEASED *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 763.

No. 00–395. GAYLOR *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 00–396. FLORIDA *v.* NIXON. Sup. Ct. Fla. Certiorari denied. Reported below: 758 So. 2d 618.

No. 00–399. NELSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–401. 865 CENTENNIAL AVENUE ASSOCIATES LIMITED PARTNERSHIP *v.* MAZDA MOTOR OF AMERICA, INC. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 648.

No. 00–403. DI TULLIO *v.* ASSOCIATION OF APARTMENT OWNERS OF PUUONE TERRACE. Sup. Ct. Haw. Certiorari denied. Reported below: 93 Haw. 223, 998 P. 2d 1114.

No. 00–416. HAEGER *v.* EDMOND ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 198 F. 3d 263.

No. 00–464. GEE *v.* 3900 CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1351.

No. 00–521. PLEAS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–548. KARARA *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1358.

No. 00–557. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–5168. HUGHES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 24 S. W. 3d 833.

No. 00–5171. GREGG *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 754 A. 2d 265.

No. 00–5195. RAMON-SALDIVAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–5199. RODRIGUEZ-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–5333. HAYES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 21 Cal. 4th 1211, 989 P. 2d 645.

No. 00–5540. BAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–5565. RUIZ-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 848.

No. 00–5735. DOMINGUEZ-ZAMUDIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1275.

No. 00–5742. PANTOJA-LEAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–5939. PENADO-RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 744.

No. 00–5996. DELGADO-CHACON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–6003. JOHNSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 259 Va. 654, 529 S. E. 2d 769.

No. 00–6019. NUNN *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 1341.

No. 00–6025. BRUTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6031. BURNS-BEY *v.* COMMISSIONER, DEPARTMENT OF CORRECTIONS OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 00–6044. YANEZ-HUERTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 746.

No. 00–6046. ROBLYER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 00–6076. TURNER *v.* BRAXTON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 00–6083. STEWART *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6088. LUCERO-SANDOVAL, AKA LOZANO-ALANIZ, AKA RODRIGUEZ-SANDOVAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–6094. RICHARDS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–6097. KINGS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6113. ROBERTS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6126. WOOTTON *v.* LEONETTE ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6127. TOWNSEND *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1334.

No. 00–6147. ZAVALA-SUSTAITA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 601.

No. 00–6150. ROMERO *v.* FURLONG, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1107.

No. 00–6156. ANDERSON *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 837.

No. 00–6162. EZEIRUAKU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 1316.

No. 00–6166. RAMIREZ-ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 210.

No. 00–6179. CEBREROS-VALLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–6180. WOODS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 17 S. W. 3d 858.

No. 00–6181. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6191. BASDEN *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Duplin County, N. C. Certiorari denied.

No. 00–6195. CRUZ-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–6197. ARANDA-LUGO, AKA LUGO-ARANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–6199. LOPEZ-ALVARADO, AKA CARIAS-RUANO, AKA LOPEZ-SALVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–6202. LUCERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–6204. MOORE *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6207. CRESPIN-PALACIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–6210. VALLE-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–6216. GARCIA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–6221. ORTIZ-BECERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–6223. SHUMATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 632.

No. 00–6231. DE LA PENA-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 594.

No. 00–6242. PONS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1072.

No. 00–6265. MATEO-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1039.

No. 00–6278. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–6285. McDonald *v.* Carlton, Warden. C. A. 6th Cir. Certiorari denied.

No. 00–6319. Santiago *v.* Barbo, Administrator, Northern State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 00–6331. Nunn *v.* Mitchell, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1327.

No. 00–6332. Chapman *v.* Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 140 Wash. 2d 436, 998 P. 2d 282.

No. 00–6341. Ferdinand *v.* Dormire, Superintendent, Jefferson City Correctional Center, et al. C. A. 8th Cir. Certiorari denied. Reported below: 212 F. 3d 473.

No. 00–6344. DeJesus-Mejia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6362. Morris *v.* Dormire, Superintendent, Jefferson City Correctional Center. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 556.

No. 00–6388. Meranda *v.* Moore, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 00–6434. Carr *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 00–6435. Aponte *v.* United States Parole Commission. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 766.

No. 00–6450. Horner *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6454. Bolden *v.* Moore, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 00–6470. Patterson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–6473. Standifur *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 213.

No. 00–6475. KYE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–6482. LONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6487. WHITE *v.* FISHMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1140.

No. 99–1730. HUERTA GARCIA, CHIEF DEPUTY WARDEN *v.* JONES. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 208 F. 3d 221.

No. 00–354. GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, ET AL. *v.* SMITH. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 F. 3d 1045.

No. 99–2090. VESSEL MY GIRLS ET AL. *v.* MARINA MANAGEMENT SERVICES, INC., DBA JAMES CREEK MARINA, AS AGENT FOR MIF REALTY, ET AL. C. A. D. C. Cir. Motion of MIF Realty to substitute itself as respondent in place of Marina Management Services, Inc. denied. Certiorari denied. Reported below: 202 F. 3d 315.

No. 00–353. OMNIPOINT COMMUNICATIONS ENTERPRISES, L. P. *v.* NEWTOWN TOWNSHIP ET AL. C. A. 3d Cir. Motions of AT&T Wireless Services, Inc., et al., Dobson Communications Corp., and Sprint Spectrum for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 219 F. 3d 240.

No. 00–386. WAL-MART STORES, INC., ASSOCIATES' HEALTH AND WELFARE PLAN ET AL. *v.* WELLS. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 213 F. 3d 398.

No. 00–487. GILLETTE CO. *v.* REVENUE DIVISION OF THE DEPARTMENT OF TREASURY OF MICHIGAN. Ct. App. Mich. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 00–485. FAULKNER ET AL. *v.* BRISTER ET AL. C. A. 5th Cir. Motion of American Council on Education for leave to file a

brief as *amicus curiae* granted. Certiorari denied. Reported below: 214 F. 3d 675.

Rehearing Denied

No. 99–8830. BOWIE *v.* GIBSON, WARDEN, ET AL., 530 U. S. 1208;

No. 99–9466. MUELLER *v.* SCHNICK ET AL., *ante*, p. 833;

No. 99–9906. PAGE *v.* CALIFORNIA, *ante*, p. 850;

No. 99–9937. MERCER *v.* SCIBANA, WARDEN, *ante*, p. 851;

No. 99–10063. TILLITZ *v.* UNITED STATES, *ante*, p. 858; and

No. 00–5203. JOHNSON *v.* HERTZ CORP. ET AL., *ante*, p. 891. Petitions for rehearing denied.

NOVEMBER 8, 2000

Miscellaneous Orders

No. 00A415. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MILLER, BY AND THROUGH JONES. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Ninth Circuit on November 7, 2000, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted. JUSTICE STEVENS and JUSTICE BREYER would deny the application to vacate the stay of execution.

No. 00A418. HORN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* SARANCHAK, BY HIS NEXT FRIENDS, TROUP ET AL. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Third Circuit on November 8, 2000, presented to JUSTICE SOUTER, and by him referred to the Court, denied.

No. 00M37 (00A378). MILLER *v.* ARIZONA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. JUSTICE STEVENS would grant the application for stay of execution.

Certiorari Denied

No. 00–6818 (00A395). SEXTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Application for stay of execution of sentence of death,

presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 353 N. C. 276, 545 S. E. 2d 732.

No. 00–6861 (00A400). SEXTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 9, 2000

Certiorari Denied

No. 00–6114 (00A233). ANGEL FLORES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS would grant the application for stay of execution. JUSTICE SOUTER and JUSTICE GINSBURG would grant the application for stay of execution and the petition for writ of certiorari, vacate the judgment, and remand the case for further consideration in light of *Williams* v. *Taylor*, 529 U. S. 362 (2000). JUSTICE BREYER would grant the application for stay of execution and the petition for writ of certiorari. Reported below: 210 F. 3d 456.

NOVEMBER 13, 2000

Dismissal Under Rule 46

No. 00–443. RISSMAN *v.* RISSMAN ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 213 F. 3d 381.

Certiorari Granted—Remanded

No. 99–939. GOODSON *v.* UNITED STATES; and

No. 99–1393. GOODSON ET AL. *v.* UNITED STATES. C. A. 5th Cir. The Court reversed the judgment below in *Cleveland* v. *United States*, *ante*, p. 12. Therefore, certiorari granted, and cases remanded for further proceedings. Reported below: 182 F. 3d 296.

Certiorari Granted—Vacated and Remanded

No. 99–7682. TINKER *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Motion of

petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4. Reported below: 172 F. 3d 990.

No. 99–8961. BLACKMON *v.* MONEY, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4.

No. 99–9455. GARCIA GUERRERO *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4. Reported below: 199 F. 3d 1332.

No. 99–10001. COHEN *v.* GRANT, WARDEN, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4.

No. 00–5381. WEATHERSPOON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4. Reported below: 220 F. 3d 591.

No. 00–5490. MORELAND *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4. Reported below: 205 F. 3d 1341.

No. 00–5644. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 210 F. 3d 373.

No. 00–5719. KNIGHT *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 216 F. 3d 1077.

Certiorari Dismissed

No. 00–6086. ALFORD *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA (AYERS, WARDEN, REAL PARTY IN INTEREST). C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–6099. SOUTHERLAND *v.* HEINE ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 212 F. 3d 598.

No. 00–6112. RENOIR *v.* HOLLIFIELD ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–6151. DENARDO *v.* BARRANS ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 230 F. 3d 1366.

Miscellaneous Orders

No. D–2202. IN RE DISBARMENT OF CONWAY. Michael Anthony Conway, of Bloomfield Hills, Mich., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 30, 2000 [*ante*, p. 954], is discharged.

No. 00M33. THOMAS *v.* JOHNSON, WARDEN;
No. 00M34. STEFANKO *v.* UNITED STATES;
No. 00M35. WINTERS *v.* WINTERS ET AL.; and
No. 00M36. SMITH *v.* HUGHES AIRCRAFT. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 98–1768. BUCKMAN CO. *v.* PLAINTIFFS' LEGAL COMMITTEE. C. A. 3d Cir. [Certiorari granted, 530 U. S. 1273.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1680. CITY NEWS & NOVELTY, INC. *v.* CITY OF WAUKESHA. Ct. App. Wis. [Certiorari granted, 530 U. S. 1242.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1408. ATWATER ET AL. *v.* CITY OF LAGO VISTA ET AL. C. A. 5th Cir. [Certiorari granted, 530 U. S. 1260.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 99–1687. BARTNICKI ET AL. *v.* VOPPER, AKA WILLIAMS, ET AL.; and
No. 99–1728. UNITED STATES *v.* VOPPER, AKA WILLIAMS, ET AL. C. A. 3d Cir. [Certiorari granted, 530 U. S. 1260.] Motion of the Solicitor General for divided argument granted. Motion of respondents for divided argument granted.

No. 99–9633. BURGESS *v.* COOK, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 99–9821. DONALDSON *v.* CHAMBERLAIN, JUDGE, CIRCUIT COURT OF MICHIGAN, 21ST CIRCUIT. Sup. Ct. Mich. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 00–5325. COTTON *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 00–5733. DO-NGUYEN *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Motion of petitioner for

reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 922] denied.

No. 00–6029. RAGSDALE ET AL. *v.* WOLVERINE WORLD WIDE, INC. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–6420. CHUTE *v.* EQUIFAX CREDIT INFORMATION SERVICES, INC. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 4, 2000, 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.

No. 00–6623. IN RE AUCOIN. Petition for writ of habeas corpus denied.

Certiorari Granted

No. 99–1977. SAUCIER *v.* KATZ ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 194 F. 3d 962.

No. 00–121. DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY *v.* WALKER. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 208 F. 3d 357.

Certiorari Denied

No. 99–2059. WALLACE, DBA VIDEO LIQUIDATORS *v.* SHEPPARD, DEPARTMENT OF PUBLIC SAFETY AGENT, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 165.

No. 99–8819. WEBSTER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 199 F. 3d 1256.

No. 99–9368. BARNWELL *v.* COWAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 99–9460. HINSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 208 F. 3d 1009.

No. 99–9927. LOMBERA-CAMORLINGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 F. 3d 882.

No. 99–9941. ABDALLAH *v.* PILEGGI ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 230 F. 3d 1377.

No. 99–9995. BAUTISTA RIVERA *v.* GREENE. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–196. CENTURY IMPORTERS, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 205 F. 3d 1308.

No. 00–239. KRILICH ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 209 F. 3d 968.

No. 00–349. DOUGALL ET AL. *v.* RECTOR AND VISITORS OF GEORGE MASON UNIVERSITY ET AL. Sup. Ct. Va. Certiorari denied.

No. 00–356. RUTLEDGE, AN INDIVIDUAL ON HIS OWN BEHALF AND ON BEHALF OF THE BENEFICIARIES OF THE HOTEL UNION AND HOTEL INDUSTRY OF HAWAII PENSION TRUST, ET AL. *v.* SEYFARTH, SHAW, FAIRWEATHER & GERALDSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 1212 and 208 F. 3d 1170.

No. 00–384. MARTIN *v.* BARNESVILLE EXEMPTED VILLAGE SCHOOL DISTRICT BOARD OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 931.

No. 00–392. TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 98 PENSION PLAN *v.* AETNA CASUALTY & SURETY CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 650.

No. 00–394. CAMPBELL *v.* CANTOR FITZGERALD & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1321.

No. 00–402. DVORAK *v.* DISCIPLINARY BOARD OF THE SUPREME COURT OF NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 611 N. W. 2d 147.

No. 00–408. FISHER *v.* UNITED FEATURE SYNDICATE, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 203 F. 3d 834.

No. 00–409. HOPKINS *v.* UNITED PARCEL SERVICE, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 89 Ohio St. 3d 1426, 729 N. E. 2d 1196.

No. 00–412. PURDY *v.* PURDY. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 214.

No. 00–421. RANDALL ET AL. *v.* DELLWOOD FARMS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 216 F. 3d 621.

No. 00–428. CIRAOLO *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 236.

No. 00–436. KROUNER *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 748 A. 2d 924.

No. 00–440. BAYER AG ET AL. *v.* ELAN PHARMACEUTICAL RESEARCH CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 212 F. 3d 1241.

No. 00–441. COPENHAVER *v.* SOURCE ONE MORTGAGE SERVICES CORP. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–469. CITIZENS FOR UNIFORM TAXATION *v.* NORTHPORT PUBLIC SCHOOL DISTRICT ET AL. Ct. App. Mich. Certiorari denied. Reported below: 239 Mich. App. 284, 608 N. W. 2d 480.

No. 00–486. FRICKE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 53 M. J. 149.

No. 00–494. OLSON *v.* UNITED STATES; and
No. 00–6436. NEAL ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 219 F. 3d 698.

No. 00–498. WADKINS *v.* ARNOLD. C. A. 4th Cir. Certiorari denied. Reported below: 214 F. 3d 535.

No. 00–534. HARPER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 00–562. CONNOR *v.* HENDERSON, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 369.

No. 00–579. FOXX *v.* DANZIG, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 631.

No. 00–605. SANDERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–5160. CAMILO BRAVO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 778.

No. 00–5204. LUNA-DOMINGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–5313. SIMPSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 600.

No. 00–5330. FULLER *v.* BARRETT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 436.

No. 00–5334. GUZMAN-RANGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 639.

No. 00–5499. BULGER *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 462 Mich. 495, 614 N. W. 2d 103.

No. 00–5567. MASON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 768 So. 2d 1008.

No. 00–5585. FRAZIER-EL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 204 F. 3d 553.

No. 00–5630. WIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 599.

No. 00–5638. FROGGE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 576, 528 S. E. 2d 893.

No. 00–5673. SANCHEZ-PACHECO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–5701. MORRIS *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied.

No. 00–6027. RAMIREZ *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6036. BELASCO *v.* SNYDER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 217.

No. 00–6040. WHITLEY *v.* HALL ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 760 So. 2d 949.

No. 00–6042. UNDERWOOD *v.* GIBSON ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–6045. BAILEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 259 Va. 723, 529 S. E. 2d 570.

No. 00–6049. SIMMONS *v.* SCHOMIG, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–6050. SPIVEY *v.* ROCHA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 194 F. 3d 971.

No. 00–6062. FULLER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 202 F. 3d 1053.

No. 00–6073. JENNINGS *v.* PAROLE BOARD OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 209.

No. 00–6077. REID *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 719 N. E. 2d 451.

No. 00–6078. WALLACE *v.* BROYLES, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–6079. WHITE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 637.

No. 00–6080. BENNETT *v.* LAKE HAVASU CITY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 844.

No. 00–6082. RANES *v.* OVERTON, DEPUTY DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 00–6084. BIRDWELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6091. DAVIS *v.* BUTLER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1336.

No. 00–6093. SUGAR *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6098. MASON *v.* NORWEST BANK ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–6105. COOMBS *v.* SPRINT COMMUNICATIONS CO. ET AL. Sup. Ct. N. C. Certiorari denied.

No. 00–6107. ROBERTS *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1083.

No. 00–6109. SHEARIN *v.* MOTHER AUMP CHURCH ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 755 A. 2d 390.

No. 00–6115. TURNER *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1159.

No. 00–6117. MARTIN *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 361.

No. 00–6121. SMITH *v.* HOOPER ET AL. Ct. App. Ky. Certiorari denied.

No. 00–6123. VISHEVNIK *v.* BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL. Sup. Ct. N. Y., New York County. Certiorari denied.

No. 00–6130. MARSHALL *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6131. ROBINSON *v.* DIRECTOR OF CORRECTIONS OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 00–6134. GRANT *v.* LEE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 646.

No. 00–6144. SHAW *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–6145. SMITH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6154. BRYANT *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6167. SPANN *v.* PARKS ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6168. STEWART *v.* MONIETTE. C. A. 5th Cir. Certiorari denied.

No. 00–6169. FLYNN *v.* BERLAND, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–6170. HERMANSEN *v.* CHANDLER, ATTORNEY GENERAL OF KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1269.

No. 00–6171. GETZ *v.* SNYDER, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 00–6172. MIRANDA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 23 Cal. 4th 340, 1 P. 3d 73.

No. 00–6182. TROSCLAIR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6183. WHITE *v.* PORTER. C. A. 5th Cir. Certiorari denied.

No. 00–6188. ORTIZ *v.* GATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 895.

No. 00–6194. AYON *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1351.

No. 00–6220. TEACHERSON *v.* PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 907.

No. 00–6250. LYON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–6284. COTTRELL *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 765 So. 2d 708.

No. 00–6291. CHAVEZ ROMERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6296. KIMBERLIN *v.* DEWALT, WARDEN (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 839 (first judgment); 215 F. 3d 1319 (second judgment).

No. 00–6306. MORGAN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 00–6309. CARDENAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 491.

No. 00–6325. ALVILLAR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–6339. HOLLOMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6343. ALVARADO, AKA DYKES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6359. REYNOLDS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–6361. SEALED PETITIONER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 221 F. 3d 196.

No. 00–6366. SERA *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 341 Ark. 415, 17 S. W. 3d 61.

No. 00–6383. JONES *v.* RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 752 A. 2d 421.

No. 00–6393. DANIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1091.

No. 00–6398. JONES *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 206 F. 3d 946.

No. 00–6399. MATHERS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 765 So. 2d 709.

No. 00–6406. SMITH *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–6412. CARRERA-CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 641.

No. 00–6414. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6416. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6426. WEBB *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 224 F. 3d 649.

No. 00–6428. JARAMILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 641.

No. 00–6441. PALETTA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–6453. ZAPATA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1091.

No. 00–6461. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–6462. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 560.

No. 00–6465. DAAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 198 F. 3d 1167.

No. 00–6466. CIOLI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 648.

No. 00–6468. POLLARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 643.

No. 00–6469. MCALEER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6471. PEMBERTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1089.

No. 00–6472. MUSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 F. 3d 1096.

No. 00–6480. DANIEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 F. 3d 1091 and 216 F. 3d 1201.

No. 00–6484. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1336.

No. 00–6485. REESE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 648.

No. 00–6488. TORRES-VEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 665.

No. 00–6489. VEGA-AGUILERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–6495. REEVES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 1041.

No. 00–6496. REYNOLDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 215 F. 3d 1210.

No. 00–6499. PAJOOH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 208 F. 3d 1007.

No. 00–6513. MATTHEWS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 222 F. 3d 305.

No. 00–6519. CHAMBERLAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 655.

No. 00–6523. BUTLER ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 218 F. 3d 835.

No. 00–6526. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 646.

No. 00–6530. FRIEDMANN *v.* UNITED STATES; and
No. 00–6540. FAZIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 647.

No. 00–6532. HARTWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 649.

No. 00–6533. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1355.

No. 00–6534. GALLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–6535. HUDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6536. HATTEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6537. GARCIA-BRAVO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6543. McMutuary et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 477.

No. 00–6545. DeJesus *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 219 F. 3d 117.

No. 00–6547. Jackson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1360.

No. 00–6549. Mercado-Orozco *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 00–6556. Young *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–6560. Minor *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 00–6566. Diaz *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 213 F. 3d 629.

No. 00–6569. Linietsky *v.* New York State Grievance Committee for the Second and Eleventh Judicial Districts. Ct. App. N. Y. Certiorari denied. Reported below: 95 N. Y. 2d 791, 733 N. E. 2d 229.

No. 00–6588. Simon *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–6591. Wilson *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 00–6605. Williams *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 751.

No. 00–6609. Morgan *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 00–214. Qwest Corp. *v.* MCI WORLDCOM Network Services, Inc., et al.; Qwest Corp. *v.* AT&T Communications of the Pacific Northwest, Inc., et al.; and Qwest Corp. *v.* Sprint Communications Co. L. P. et al. C. A. 9th Cir. Certiorari denied. Justice O'Connor took no part in the consideration or decision of this petition. Reported below: 204 F. 3d 1262 (first judgment); 211 F. 3d 1276 (second and third judgments).

No. 00–387. GERBER PRODUCTS CO. *v.* TYLKA ET AL. C. A. 7th Cir. Motion of Chamber of Commerce of the United States et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 211 F. 3d 445.

No. 00–6048. TROBAUGH *v.* KELLY ET AL. C. A. 8th Cir. Motion of petitioner to consolidate this case with No. 99–9136, *Daniels* v. *United States* [certiorari granted, 530 U. S. 1299], denied. Certiorari denied. Reported below: 221 F. 3d 1344.

No. 00–6765 (00A362). CHAMBERS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 218 F. 3d 360.

Rehearing Denied

No. 99–1818. RAMBACHER ET VIR *v.* COMMISSIONER OF INTERNAL REVENUE, 530 U. S. 1244;

No. 99–1826. OYE *v.* RAILROAD RETIREMENT BOARD, *ante*, p. 814;

No. 99–1903. MOORE *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, *ante*, p. 817;

No. 99–1911. CHI-MING CHOW *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION (two judgments), *ante*, p. 818;

No. 99–1928. TARAWALY *v.* FARREY, WARDEN, 530 U. S. 1277;

No. 99–9265. BURNETT *v.* GREEN, 530 U. S. 1266;

No. 99–9377. PETERSON *v.* FLORIDA, *ante*, p. 831;

No. 99–9423. WOODBURY *v.* STEIN MART, INC., *ante*, p. 832;

No. 99–9480. ANCRUM *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 834;

No. 99–9546. KEITH *v.* UNITED STATES, 530 U. S. 1249;

No. 99–9754. CARTER *v.* LEE, WARDEN, *ante*, p. 843;

No. 99–9871. CARTER *v.* UNITED STATES, *ante*, p. 848;

No. 99–9928. MERCER *v.* UNITED STATES, *ante*, p. 851;

No. 99–9963. DRANE *v.* GEORGIA, *ante*, p. 853;

No. 99–10068. PITTS *v.* GEARINGER, WARDEN, *ante*, p. 859;

No. 99–10081. REED *v.* LEONARD, WARDEN, *ante*, p. 859;

No. 00–87. JACKSON *v.* LACHANCE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ET AL., *ante*, p. 875;

No. 00–158. BROWN *v.* ADIDAS USA, INC., AKA ADIDAS AMERICA, INC., *ante*, p. 878;

No. 00–5104. VINCZE *v.* HICKMAN, WARDEN, *ante*, p. 886;

No. 00–5109. LARSON *v.* COYLE, WARDEN, *ante*, p. 886;

No. 00–5214. MILLS *v.* BRICE ET AL., *ante*, p. 892; and

No. 00–5657. GUANIPA *v.* PARKS, WARDEN, ET AL., *ante*, p. 912. Petitions for rehearing denied.

NOVEMBER 14, 2000

Miscellaneous Orders

No. 00A440. CHAMBERS *v.* SCHRIRO ET AL. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

No. 00–7004 (00A431). IN RE CHAMBERS. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 00–6925 (00A414). CHAMBERS *v.* MISSOURI. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 15, 2000

Miscellaneous Order

No. 00A432. SNYDER, WARDEN, ET AL. *v.* WEEKS. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Third Circuit on November 13, 2000, presented to JUSTICE SOUTER, and by him referred to the Court, granted. JUSTICE STEVENS and JUSTICE BREYER would deny the application to vacate the stay of execution.

Certiorari Denied

No. 00–6953. WEEKS *v.* SNYDER, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 219 F. 3d 245.

NOVEMBER 16, 2000

Miscellaneous Orders

No. 00A347 (00–6677). PENRY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVI-

SION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending the disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

No. 00A443. SNYDER, WARDEN *v.* WEEKS. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Third Circuit on November 15, 2000, presented to JUSTICE SOUTER, and by him referred to the Court, granted. JUSTICE STEVENS and JUSTICE BREYER would deny the application to vacate the stay of execution.

Certiorari Denied

No. 00–7028 (00A444). WEEKS *v.* DELAWARE. Sup. Ct. Del. Application for stay of execution of sentence of death, presented to JUSTICE SOUTER, and by him referred to the Court, denied. Certiorari denied. Reported below: 761 A. 2d 804.

NOVEMBER 21, 2000

Dismissal Under Rule 46

No. 99–1848. BUCKHANNON BOARD & CARE HOME, INC., ET AL. *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. C. A. 4th Cir. [Certiorari granted, 530 U. S. 1304.] Writ of certiorari as to Dorsey Pierce dismissed under this Court's Rule 46.1.

NOVEMBER 24, 2000

Miscellaneous Order

No. 99–1702. TEXAS *v.* COBB. Ct. Crim. App. Tex. [Certiorari granted, 530 U. S. 1260.] Case removed from argument calendar for Wednesday, December 6, 2000. Oral argument rescheduled for Tuesday, January 16, 2001.

Certiorari Granted

No. 00–836. BUSH *v.* PALM BEACH COUNTY CANVASSING BOARD ET AL. Sup. Ct. Fla. Motion of petitioner for leave to

file petition for writ of certiorari on 8½- by 11-inch page proofs granted. Motion of respondents for leave to file brief in opposition on 8½- by 11-inch page proofs granted. Motion of petitioner to expedite consideration of petition for writ of certiorari granted. Certiorari granted on Questions 1 and 2 as presented by the petition. In addition, the parties are directed to brief and argue the following question: "What would be the consequences of this Court's finding that the decision of the Supreme Court of Florida does not comply with 3 U. S. C. § 5?" Briefs of the parties, not to exceed 50 pages, are to be filed with the Clerk and served upon opposing counsel on or before 4 p.m., Tuesday, November 28, 2000. Reply briefs, if any, not to exceed 20 pages, are to be filed with the Clerk and served upon the parties on or before 4 p.m., Thursday, November 30, 2000. The parties are encouraged to agree on the contents of a joint appendix. This Court's Rule 29.2 is suspended in this case. Briefs may be filed in compliance with Rule 33.2 to be replaced as soon as possible with briefs prepared in compliance with Rule 33.1. Case set for oral argument on Friday, December 1, 2000, at 10:00 a.m., and a total of one and one-half hours allotted for oral argument. Reported below: 772 So. 2d 1220.

Certiorari Denied

No. 00–837. SIEGEL ET AL. *v.* LEPORE ET AL. C. A. 11th Cir. Motion of petitioners for leave to file petition for writ of certiorari before judgment on 8½- by 11-inch page proofs granted. Motion of respondents for leave to file brief in opposition on 8½- by 11-inch page proofs granted. Motion of petitioners to expedite consideration of petition for writ of certiorari before judgment granted. Certiorari before judgment denied without prejudice.

NOVEMBER 27, 2000

Vacated and Remanded on Appeal. (See Nos. 00–132 and 00–133, *ante*, p. 28.)

Certiorari Granted—Vacated and Remanded

No. 00–287. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 215 F. 3d 1331.

No. 00–5551. SHELLMON *v.* CAMBRA, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Slack* v. *McDaniel*, 529 U. S. 473 (2000). Reported below: 221 F. 3d 1349.

No. 00–5760. TWITTY *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 215 F. 3d 1323.

No. 00–5930. POTTS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 211 F. 3d 598.

No. 00–5942. MEAIS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 215 F. 3d 1322.

Certiorari Dismissed

No. 00–6299. YOUNGBEAR *v.* PLAYBOY ENTERPRISES, INC., ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–6311. AWOFOLU *v.* LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 230 F. 3d 1366.

No. 00–6407. ROSENBERG *v.* 177TH FIGHTER INTERCEPT WING. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–6653. DENARDO *v.* BARRANS. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 238 F. 3d 428.

Miscellaneous Orders

No. 00A336. JOHNSON *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Application for certificate of ap-

pealability, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–2192. IN RE DISBARMENT OF HINSON. Disbarment entered. [For earlier order herein, see 530 U. S. 1295.]

No. D–2193. IN RE DISBARMENT OF MOORE. Disbarment entered. [For earlier order herein, see 530 U. S. 1295.]

No. D–2194. IN RE DISBARMENT OF ALBANESE. Joseph P. Albanese, of New York, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on August 28, 2000 [530 U. S. 1295], is discharged.

No. D–2197. IN RE DISBARMENT OF CHILINGIRIAN. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2199. IN RE DISBARMENT OF ADAMS. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2211. IN RE DISBARMENT OF GAMBLE. Henry Donnell Gamble, of Durham, N. C., 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.

No. D–2212. IN RE DISBARMENT OF FENTON. Robert L. Fenton, of Monterey, Cal., 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.

No. D–2213. IN RE DISBARMENT OF GAILEY. James R. Gailey, of Miami, Fla., 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.

No. D–2214. IN RE DISBARMENT OF HENDERSHOT. Thomas R. Hendershot, of Greenbelt, Md., 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.

No. D–2215. IN RE DISBARMENT OF DAHLING. Alfred E. Dahling, of Warren, Ohio, 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.

No. D–2216. IN RE DISBARMENT OF SPRITZER. Henry M. Spritzer, of New Brunswick, N. J., 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.

No. D–2217. IN RE DISBARMENT OF DRYER. Glen John Dryer, of Mountain View, Haw., 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.

No. D–2218. IN RE DISBARMENT OF EZER. Jonathan James Ezer, of Bel Air, Tex., 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.

No. 00M38. WORKMAN *v.* PALM BEACH COUNTY SHERIFF ET AL.;
No. 00M39. CRAWFORD *v.* GRAMEX CORP. ET AL.;
No. 00M40. OTALVARO-RIOS *v.* UNITED STATES;
No. 00M41. MATHIS, AKA MATHIES, AKA CENAULT *v.* UNITED STATES;
No. 00M42. PEDRAZA *v.* UNITED STATES;
No. 00M43. MELVIN *v.* ESTATE OF SIMPSON;
No. 00M44. NORWOOD *v.* INGALLS SHIPBUILDING, INC.;
No. 00M45. SMITH *v.* HENRY, WARDEN; and
No. 00M46. NEVIUS *v.* MCDANIEL, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 00M47. FORTI *v.* PIERSON ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for fees and reimbursement of expenses granted, and the Special Master is awarded a total of $134,165.44 for the period February 1 through October 15, 2000, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 921.]

No. 99–10160. IN RE RETTIG. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 809] denied.

No. 00–5250. SHAFER *v.* SOUTH CAROLINA. Sup. Ct. S. C. [Certiorari granted, 530 U. S. 1306.] Motion for appointment of counsel granted, and it is ordered that David I. Bruck, Esq., of Columbia, S. C., be appointed to serve as counsel for petitioner in this case.

No. 00–6310. BALDEN ET UX. *v.* COTTEE ET AL. C. A. 6th Cir.; and

No. 00–6347. SIMPSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 18, 2000, 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.

No. 00–6754. IN RE GREGORY;

No. 00–6908. IN RE SUAREZ; and

No. 00–6931. IN RE CHARLES. Petitions for writs of habeas corpus denied.

No. 00–6824. IN RE JANIS. Petition for writ of mandamus denied.

Certiorari Granted

No. 00–157. UNITED DOMINION INDUSTRIES, INC. *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted. Reported below: 208 F. 3d 452.

No. 00–276. UNITED STATES ET AL. *v.* UNITED FOODS, INC. C. A. 6th Cir. Certiorari granted. Reported below: 197 F. 3d 221.

No. 00–454. ATKINSON TRADING CO., INC. *v.* SHIRLEY ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 210 F. 3d 1247.

No. 99–1787. REYNOLDS METALS CO. *v.* ELLIS. C. A. 9th Cir. Motion of Central States, Southeast and Southwest Areas Health and Welfare Fund for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 202 F. 3d 1246.

No. 00–151. UNITED STATES *v.* OAKLAND CANNABIS BUYERS' COOPERATIVE ET AL. C. A. 9th Cir. Certiorari granted. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 190 F. 3d 1109.

No. 00–6677. PENRY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 215 F. 3d 504.

Certiorari Denied

No. 99–2085. MEJIA RODRIGUEZ *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 178 F. 3d 1139.

No. 99–10049. COMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356.

No. 99–10053. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 211.

No. 00–129. LOCAL 1011, UNITED STEELWORKERS OF AMERICA, AFL–CIO, CLC *v.* HERMAN, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 207 F. 3d 924.

No. 00–131. K. D. M., A MINOR, BY AND THROUGH HIS FATHER AND NEXT FRIEND, W. J. M. *v.* REEDSPORT SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 196 F. 3d 1046.

No. 00–182. TAYLOR ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 212 F. 3d 395.

No. 00–200. SEGUROS LA REPUBLICA, S. A. *v.* BRITISH INTERNATIONAL INSURANCE CO. LTD. C. A. 2d Cir. Certiorari denied. Reported below: 212 F. 3d 138.

No. 00–248. WEST ET AL. *v.* CONGEMI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 00–256. MARIANI *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 212 F. 3d 761.

No. 00–259. ELLIOTT ET AL. *v.* COMMODITY FUTURES TRADING COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 202 F. 3d 926.

No. 00–260. AIR LINE PILOTS ASSN., INTERNATIONAL *v.* NORTHWEST AIRLINES, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 199 F. 3d 477.

No. 00–270. DALEY ET AL. *v.* CLUB MISTY, INC., DBA TEQUILA ROADHOUSE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 208 F. 3d 615.

No. 00–281. PATENAUDE ET AL. *v.* OWENS-ILLINOIS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 210 F. 3d 135.

No. 00–297. LIVINGSTON DOWNS RACING ASSN., INC. *v.* LOUISIANA STATE RACING COMMISSION. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 751 So. 2d 465.

No. 00–299. MITTEN *v.* LACHAPELLE ET AL. Ct. App. Minn. Certiorari denied. Reported below: 607 N. W. 2d 151.

No. 00–309. SYRACUSE EXPLORATION CO. *v.* NORTHBROOK PROPERTY & CASUALTY INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–313. ADKINS ET UX. *v.* UNCLE BART'S INC., DBA UNCLE BART'S CLUB, ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 1 P. 3d 528.

No. 00–323. CITY OF MCALESTER ET AL. *v.* PITTSBURG COUNTY RURAL WATER DISTRICT NO. 7 ET AL.; and

No. 00–490. PITTSBURG COUNTY RURAL WATER DISTRICT NO. 7 *v.* CITY OF MCALESTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1279.

No. 00–406. BOARD OF EDUCATION OF CENTRAL COMMUNITY UNIT SCHOOL DISTRICT 301 *v.* SCIONTI. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 309 Ill. App. 3d 1090, 764 N. E. 2d 607.

No. 00–418. WILDENSTEIN & CO., INC. *v.* MICHAELS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–419. BOYANOWSKI ET UX. *v.* CAPITAL AREA INTERMEDIATE UNIT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 396.

No. 00–423. POGUE ET UX. *v.* OGLETHORPE POWER CORP. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–432. KASAKS ET AL. *v.* NOVAK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 300.

No. 00–442. RIVERWOOD INTERNATIONAL CORP. *v.* MEAD CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 212 F. 3d 1365.

No. 00–446. RICE *v.* SUNRISE EXPRESS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 209 F. 3d 1008.

No. 00–451. BAYLOR UNIVERSITY *v.* JOHNSON. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 630.

No. 00–453. MILLER *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 00–456. LOUISIANA DEPARTMENT OF NATURAL RESOURCES *v.* AVENAL ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 757 So. 2d 1.

No. 00–457. ALLMERICA FINANCIAL LIFE INSURANCE & ANNUITY CO. *v.* MILLER. Sup. Ct. Ala. Certiorari denied. Reported below: 775 So. 2d 132.

No. 00–461. GREER *v.* AMESQUA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 212 F. 3d 358.

No. 00–467. BOGUE, AKA WOOD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 750 A. 2d 364.

No. 00–472. MICHAELIS *v.* ROLLINS. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 596.

No. 00–474. STOVE *v.* PHILADELPHIA SCHOOL DISTRICT. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–475. DORGAN *v.* SPRINT/UNITED MANAGEMENT CO. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1342.

No. 00–476. KELLY *v.* METHODIST HOSPITAL OF SOUTHERN CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 1108, 997 P. 2d 1169.

No. 00–477. RANGEL VELAZQUEZ ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1089.

No. 00–481. BATES *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 15 S. W. 3d 155.

No. 00–488. MUSIC SQUARE CHURCH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 218 F. 3d 1367.

No. 00–495. ALDERETTE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–501. LITWAK *v.* OSCAR PRODUCTIONS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–503. JATOI *v.* GUARANTY FEDERAL BANK, F. S. B. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1080.

No. 00–508. LINCOLN LOAN CO. *v.* CITY OF PORTLAND ET AL. Ct. App. Ore. Certiorari denied. Reported below: 158 Ore. App. 574, 976 P. 2d 60.

No. 00–510. SMITH *v.* OREGON STATE DEPARTMENT OF REVENUE ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 330 Ore. 227, 998 P. 2d 675.

No. 00–518. BICKFORD ET AL. *v.* ANCHORAGE SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1157.

No. 00–532. GRIGSON *v.* CREATIVE ARTISTS AGENCY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 524.

No. 00–533. HUBERTY *v.* SOETEBER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1348.

No. 00–536. HOLBROOK *v.* LOBDELL-EMERY MANUFACTURING CO. C. A. 7th Cir. Certiorari denied. Reported below: 219 F. 3d 598.

No. 00–541. PERKIN-ELMER CORP. *v.* TA INSTRUMENTS, INC. C. A. Fed. Cir. Certiorari denied.

No. 00–552. GARDNER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 913.

No. 00–564. THOMAS ET AL. *v.* DICKEL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 213 F. 3d 1023.

No. 00–567. MOSKOWITZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 215 F. 3d 265.

No. 00–569. SPRINGFIELD TERMINAL RAILWAY CO. ET AL. *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 210 F. 3d 18.

No. 00–570. SANDERS *v.* FREEMAN, DIRECTOR, SHELBY COUNTY DIVISION OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 846.

No. 00–572. HAWKINS *v.* LENSING, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–585. DINH TON THAT *v.* 3D SYSTEMS, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–588. SYDNOR *v.* LACHANCE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 362.

No. 00–603. RENGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 408.

No. 00–626. HILARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 218 F. 3d 19.

No. 00–636. BURNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 748.

No. 00–639. AHMAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 805.

No. 00–641. HAVEN ET AL. *v.* REPUBLIC OF POLAND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 727.

No. 00–644. GERHART *v.* HAYES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 201 F. 3d 646 and 217 F. 3d 320.

No. 00–648. COLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–654. ANDREAS *v.* UNITED STATES; and
No. 00–661. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 216 F. 3d 645.

No. 00–663. GOLDIN INDUSTRIES, INC., ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 219 F. 3d 1271.

No. 00–664. ESTATE OF HENDERSON ET AL. *v.* CITY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1076.

No. 00–667. GOAD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 243 F. 3d 553.

No. 00–673. SANDERS ET VIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 211 F. 3d 711.

No. 00–682. WALKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 213 F. 3d 409.

No. 00–685. LIDDANE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 206.

No. 00–690. MCCLATCHEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 217 F. 3d 823.

No. 00–5048. ABRAMS *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–5115. REID *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 721 A. 2d 945.

No. 00–5120. MORTON *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 911.

No. 00–5316. LOGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–5380. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 197 F. 3d 1214.

No. 00–5608. DAVIDIAN *v.* O'MARA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 371.

No. 00–5615. RAY *v.* HOUSTON COMMUNITY COLLEGE. C. A. 5th Cir. Certiorari denied.

No. 00–5677. WARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 216.

No. 00–5713. ROSALES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 4 S. W. 3d 228.

No. 00–5759. BYFORD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 116 Nev. ——, 994 P. 2d 700.

No. 00–5844. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 597.

No. 00–5982. BRAKEALL *v.* GURUCHARRI ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 763 So. 2d 322.

No. 00–5989. BRYANT *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 97 Wash. App. 479, 983 P. 2d 1181.

No. 00–6175. CORNELIUS *v.* MITCHUM ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6177. CRANDALL *v.* LOREY, SHERIFF, FULTON COUNTY, NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 00–6185. PHILLIPS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 17 S. W. 3d 870.

No. 00–6186. MCCRARY *v.* OHIO DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1153.

No. 00–6192. NEWMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 00–6193. BRAVO *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6196. JACOBS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 234 Wis. 2d 151, 610 N. W. 2d 512.

No. 00–6200. LEVERTON *v.* CITY OF HOUSTON POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 210 F. 3d 368.

No. 00–6205. PARK *v.* JENKINS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–6214. ARDIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6215. HOLLADAY *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 209 F. 3d 1243.

No. 00–6217. ABREU *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–6224. SIMPSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 632.

No. 00–6225. SMITH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6226. SARGENT *v.* MILLER, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied.

No. 00–6227. SULLIVAN *v.* JOHNSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–6232. MITCHELL *v.* MICHIGAN FAMILY INDEPENDENCE AGENCY. Ct. App. Mich. Certiorari denied.

No. 00–6237. ROBELEN *v.* GOMEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 648.

No. 00–6241. ARCHER *v.* VALLEY HEALTHCARE CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1347.

No. 00–6243. MCCAULEY *v.* COOK'S PEST CONTROL, INC., ET AL. Super. Ct. Gwinnett County, Ga. Certiorari denied.

No. 00–6246. JIMENEZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1356.

No. 00–6247. MESSA *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA ET AL. Commw. Ct. Pa. Certiorari denied.

No. 00–6251. ERVIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–6252. EALEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–6255. MARTIN *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 00–6256. MUHAMMAD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6257. WAIDLA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 690, 996 P. 2d 46.

No. 00–6261. WRIGHT *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6268. WELDON *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 00–6269. ODOM *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6271. PACHECO *v.* TRIPPETT. C. A. 6th Cir. Certiorari denied.

No. 00–6272. ZWARST *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6273. BAXTER *v.* UNITED PROTECTIVE SERVICE. Ct. App. Ind. Certiorari denied.

No. 00–6275. GERACI *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 211 F. 3d 6.

No. 00–6277. HODGE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 17 S. W. 3d 824.

No. 00–6281. WALLACE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 481, 528 S. E. 2d 326.

No. 00–6283. TURNER *v.* ARKANSAS MENTAL HEALTH DEPARTMENT. C. A. 8th Cir. Certiorari denied.

No. 00–6286. DENIAL *v.* MYERS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–6288. ORTIZ *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1153.

No. 00–6290. JEREZANO *v.* ZIMBERT. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1277.

No. 00–6292. ROSEBORO *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 536, 528 S. E. 2d 1.

No. 00–6293. SMITH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6294. FERGUSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 20 S. W. 3d 485.

No. 00–6300. SKAMFER *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 00–6301. MCCRAY *v.* RINGWOOD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1320.

No. 00–6307. DARBY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6308. DONALDSON *v.* WALTER. C. A. 9th Cir. Certiorari denied.

No. 00–6312. BRATHWAITE *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6314. ZEEMER *v.* ZEEMER. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 652.

No. 00–6315. WENGER *v.* CANASTOTA CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 204.

No. 00–6316. BEEDLE *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6320. PATTERSON *v.* CURTIS. C. A. 6th Cir. Certiorari denied.

No. 00–6323. MALEKZADEH *v.* TEXAS TECH UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–6326. MORAY *v.* CRUSE, FIRETAG & BOCK, P. C., ET AL. Ct. App. Ariz. Certiorari denied.

No. 00–6328. MUNIZ ACOSTA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–6334. FIFER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 00–6336. HETT *v.* WADE ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6337. NADAL *v.* R. P. B. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 663.

No. 00–6338. FUDGE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 341 Ark. 759, 20 S. W. 3d 315.

No. 00–6340. GRAHAM *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 431 Mass. 282, 727 N. E. 2d 51.

No. 00–6345. RYAN *v.* TRANS WORLD AIRLINES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1343.

No. 00–6357. SAPP *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 207 W. Va. 606, 535 S. E. 2d 205.

No. 00–6358. SANFORD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6365. MAYES *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 210 F. 3d 1284.

No. 00–6367. XUANMAI DANG *v.* PINKINS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6386. OSBORNE *v.* TURPIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 00–6394. OMENE *v.* MORRISON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 00–6411. DAWLEY *v.* MANGEL. Sup. Ct. N. J. Certiorari denied.

No. 00–6423. JONES *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6425. STOOTHOFF *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 204.

No. 00–6438. DAVIDSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6440. OSTERBACK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6442. HOLMAN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 212 F. 3d 413.

No. 00–6445. HUBBS *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6464. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 777.

No. 00–6497. RICARTE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1080.

No. 00–6500. SANTOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 784.

No. 00–6501. SOURA *v.* PEPE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION. C. A. 1st Cir. Certiorari denied.

No. 00–6502. SCOTT *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 854.

No. 00–6508. LAYTON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 00–6514. BUBECK *v.* WALTER. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1156.

No. 00–6516. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 642.

No. 00–6518. ASHBY *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 56 Conn. App. 908, 744 A. 2d 456.

No. 00–6529. GOLDEN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 341 Ark. 656, 21 S. W. 3d 801.

No. 00–6541. HOBBY *v.* DISTRICT OF COLUMBIA PUBLIC SCHOOLS. Ct. App. D. C. Certiorari denied.

No. 00–6551. TUZINOWSKI *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 271 App. Div. 2d 556, 706 N. Y. S. 2d 908.

No. 00–6558. SAAVEDRA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–6562. BOONE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–6565. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 207.

No. 00–6568. MUOIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6573. PETTYJOHN *v.* NEWBERRY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 659.

No. 00–6574. DEAN *v.* PIEDMONT NATURAL GAS CO. Ct. App. N. C. Certiorari denied.

No. 00–6577. KRANTZ *v.* WUTZER ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–6579. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6583. SMITH *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 765 So. 2d 718.

No. 00–6593. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–6595. YOUNG *v.* ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 00–6600. MARSHALL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–6607. PHILLIPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6608. MCPHERSON *v.* DELOACH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–6611. TAYLOR *v.* WATSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–6612. AKERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1089.

No. 00–6613. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6616. RAY *v.* HENDERSON, POSTMASTER GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1343.

No. 00–6618. JOHNSON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–6620. CHISHOLM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–6624. BRADLEY *v.* EVANS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1150.

No. 00–6627. CHILES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 841.

No. 00–6628. PROCTOR *v.* SACCHET, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 840.

No. 00–6630. TURNEY *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 00–6631. YEAGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 1315.

No. 00–6635. ALLISMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1020.

No. 00–6636. JOHNSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 F. 3d 349.

No. 00–6640. MEDINA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6644. CHANEY *v.* UNITED STATES POSTAL SERVICE. C. A. 7th Cir. Certiorari denied.

No. 00–6645. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–6646. PARTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–6647. MCHENRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6651. CORRIGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 841.

No. 00–6654. DITTRICH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 204 F. 3d 819.

No. 00–6655. DORROUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6656. SANDERS *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 7 P. 3d 891.

No. 00–6657. SIMPKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–6660. RUELAS-ARREGUIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 1056.

No. 00–6661. SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6663. RAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–6667. MEDINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 417.

No. 00–6669. MAHLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 412.

No. 00–6670. PIEDRAHITA-CANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1140.

No. 00–6672. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 200 F. 3d 820.

No. 00–6675. GWINN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 219 F. 3d 326.

No. 00–6682. GRANT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 218 F. 3d 72.

No. 00–6683. HAWKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–6685. FRANCIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6687. FLORES-ANGULO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1084.

No. 00–6692. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1328.

No. 00–6693. CARRIZALES JARAMILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 409.

No. 00–6694. JELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6695. SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6697. YEOMANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–6698. VALOIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–6701. WILLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–6702. MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6705. PINJUV *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 218 F. 3d 1125.

No. 00–6706. OCASIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 229 F. 3d 177.

No. 00–6710. GOMEZ-MONTELONGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 409.

No. 00–6711. HAMAMOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–6712. GBEMISOLA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 225 F. 3d 753.

No. 00–6713. GARCIA-PONCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1335.

No. 00–6715. RAMONE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 218 F. 3d 1229.

No. 00–6716. MILLER *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied.

No. 00–6717. OCHOA-HOLGUIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6723. COFFEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 192 F. 3d 129.

No. 00–6727. KRECIOCH *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 976.

No. 00–6734. EASTLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 124.

No. 00–6739. AGUIRRE-TIBRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 594.

No. 00–6744. CHAPARRO-ALCANTARA ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 226 F. 3d 616.

No. 00–6746. AGUAYO-DELGADO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 220 F. 3d 926.

No. 00–6748. FOWLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 194 F. 3d 1306.

No. 00–6749. HERRERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1073.

No. 00–6755. Fria Vazquez del Mercado *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 223 F. 3d 1213.

No. 00–6756. Greco *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 00–6757. Goodman *v.* Gober, Acting Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 761.

No. 00–6760. Yang *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 208.

No. 00–6761. Fitch *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1139.

No. 00–6762. Williams *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–6763. Thornton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 665.

No. 00–6764. West *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 598.

No. 00–6768. Bahe *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 201 F. 3d 1124.

No. 00–6769. Amezquito Acevedo, aka Rodriguez, aka Gelarza *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 229 F. 3d 350.

No. 00–6770. Whitehead *v.* Washington Metropolitan Area Transit Authority. Ct. App. D. C. Certiorari denied.

No. 00–6771. Whitted *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 665.

No. 00–6772. Atkinson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–6773. Aviles-Martin *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–6775. Cruthird *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 48 Mass. App. 1115, 721 N. E. 2d 944.

No. 00–6780. Brahms-Garcia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 550.

No. 00–6781. RANSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6783. KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6785. LEFEVER *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 659.

No. 00–6786. PHILLIPS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 219 F. 3d 721.

No. 00–6788. ESQUILIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1325.

No. 00–6790. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 899.

No. 00–6791. WINSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 899.

No. 00–6795. LAKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1139.

No. 00–6797. MCKINLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 227 F. 3d 716.

No. 00–6799. CULBERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–6801. CARRILLO MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6805. TIMBANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 F. 3d 688.

No. 00–6813. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–6815. MALONE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 222 F. 3d 1286.

No. 00–6822. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–6827. AGUILAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6828. NWAIGWE, AKA MAIGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6830. EDMONSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–7067. CARTER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 270, 545 S. E. 2d 739.

No. 00–400. KEANE, SUPERINTENDENT, WOODBURNE CORRECTIONAL FACILITY *v.* FLORES. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 215 F. 3d 293.

No. 00–462. FLORIDA *v.* PERKINS. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 760 So. 2d 85.

No. 00–483. HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY *v.* FINFROCK. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 216 F. 3d 626.

No. 00–433. WESTSIDE QUIK SHOP, INC., ET AL. *v.* STEWART ET AL. Sup. Ct. S. C. Motions of South Carolina Association of Convenience Stores, R. L. Jordan Oil Company of North Carolina, Inc., South Carolina Coin Operators' Association, Inc., and Ingram Investments, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 341 S. C. 297, 534 S. E. 2d 270.

No. 00–447. NEXTWAVE PERSONAL COMMUNICATIONS INC. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. 2d Cir. Motion of Urban Comm-North Carolina, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 217 F. 3d 125.

No. 00–531. NATER *v.* RILEY, SECRETARY OF EDUCATION. C. A. Fed. Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 232 F. 3d 916.

Rehearing Denied

No. 99–1847. DEWBERRY *v.* TEXAS UTILITIES ELECTRIC CO., *ante*, p. 815;

No. 99–1849. TSU ET UX. *v.* VOS ET AL., *ante*, p. 815;

No. 99–1891. KEANE *v.* IBM PENSION PLAN, *ante*, p. 817;

No. 99–1935. COLUMBUS-AMERICA DISCOVERY GROUP, INC. *v.* ATLANTIC MUTUAL INSURANCE CO. ET AL., *ante,* p. 918;

No. 99–1980. NEXTWAVE PERSONAL COMMUNICATIONS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION, *ante,* p. 924;

No. 99–2054. SAAVEDRA, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF HJALMARSSON, DECEASED, ET AL. *v.* KOREAN AIR LINES CO., LTD., *ante,* p. 826;

No. 99–8992. LITTLES *v.* UNITED STATES, *ante,* p. 829;

No. 99–9337. MATTATALL *v.* VOSE, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS, 530 U. S. 1221;

No. 99–9445. SMALLWOOD *v.* GIBSON, WARDEN, ET AL., *ante,* p. 833;

No. 99–9446. HEIM *v.* NEBRASKA ET AL., *ante,* p. 833;

No. 99–9468. SHABAZZ, FKA HURLEY *v.* NEW YORK, 530 U. S. 1280;

No. 99–9476. SPERO *v.* UNITED STATES, *ante,* p. 833;

No. 99–9526. BATES *v.* FLORIDA, *ante,* p. 835;

No. 99–9543. MMAHAT *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, *ante,* p. 836;

No. 99–9562. JOHNSON *v.* BRAXTON, WARDEN, *ante,* p. 836;

No. 99–9612. WILSON *v.* GEORGIA, *ante,* p. 838;

No. 99–9644. PACE *v.* GEORGIA, *ante,* p. 839;

No. 99–9668. IN RE CAGLE, *ante,* p. 810;

No. 99–9914. JAMES *v.* CITY OF ROCK HILL ET AL., *ante,* p. 850;

No. 99–9946. BUCKOM *v.* O'KONEK, *ante,* p. 852;

No. 99–9975. KINERMON *v.* GARCIA, WARDEN, *ante,* p. 853;

No. 99–9979. WILLIAMS *v.* EPPS, *ante,* p. 854;

No. 99–10002. CHANDLER *v.* DEKALB COUNTY BOARD OF COMMUNITY SERVICES, *ante,* p. 855;

No. 99–10004. MINOR *v.* WETHERINGTON ET AL., *ante,* p. 855;

No. 99–10026. MOORE *v.* PHELPS DODGE WIRE MAGNET CO., *ante,* p. 856;

No. 99–10065. WILLIAMSON *v.* DALLAS INDEPENDENT SCHOOL DISTRICT, *ante,* p. 858;

No. 99–10067. SMITH *v.* CHAPMAN, WARDEN, *ante,* p. 858;

No. 99–10113. TOMPKINS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante,* p. 861;

No. 99–10140. FUSTER-ESCALONA *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL., *ante,* p. 863;

No. 99–10146. GLAVIS *v.* GARCIA, WARDEN, ET AL., *ante,* p. 863;

No. 99–10150. SMITH *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL., *ante*, p. 863;

No. 99–10178. WALTON ET AL. *v.* UNITED STATES, *ante*, p. 865;

No. 99–10209. CHEN *v.* MOTOROLA, INC., *ante*, p. 866;

No. 99–10210. CORNELIUS *v.* RODATUS ET AL., *ante*, p. 866;

No. 99–10211. CLOUD *v.* COMMUNITY WORKS, INC., ET AL., *ante*, p. 866;

No. 99–10214. SETLIFF *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 867;

No. 99–10216. ACEVEDO *v.* GARRAGHTY, WARDEN, *ante*, p. 867;

No. 99–10231. REED *v.* OHIO, *ante*, p. 868;

No. 99–10235. GOODRICH *v.* FLORIDA ET AL., *ante*, p. 868;

No. 99–10247. BAEZ *v.* HALL, WARDEN, *ante*, p. 869;

No. 99–10262. BILLEMEYER *v.* NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL., *ante*, p. 870;

No. 00–92. HAWKINS *v.* PEPSICO, INC., DBA PEPSI-COLA NORTH AMERICA ET AL., *ante*, p. 875;

No. 00–114. KALLEMBACH *v.* ZEUSKE ET AL., *ante*, p. 876;

No. 00–115. DEICHMANN ET AL. *v.* BOEING CO., *ante*, p. 877;

No. 00–206. KENDALL *v.* UNITED STATES, *ante*, p. 879;

No. 00–267. ASHLEY *v.* BLUE CROSS AND BLUE SHIELD OF MICHIGAN, *ante*, p. 944;

No. 00–293. VINSON ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI, *ante*, p. 929;

No. 00–296. KALLEMBACH *v.* BECHTOLT, DBA PRESIDENT, VILLAGE OF SOUTH WAYNE, ET AL., *ante*, p. 929;

No. 00–308. VINSON *v.* MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD, *ante*, p. 944;

No. 00–5044. YUSKO *v.* TRUGREEN-CHEMLAWN ET AL., *ante*, p. 883;

No. 00–5100. POSEY *v.* GEORGIA BUREAU OF PRISONS ET AL., *ante*, p. 886;

No. 00–5103. TOKAR *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 886;

No. 00–5122. THAMMAVONG *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 887;

No. 00–5129. RICHARD *v.* VIRGINIA, *ante*, p. 887;

No. 00–5134. BOYD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 887;

No. 00–5249. SCHEIDLY *v.* ST. PAUL MERCURY INSURANCE CO., *ante,* p. 894;

No. 00–5279. IN RE MUA, *ante,* p. 809;

No. 00–5295. STRONG *v.* ROBINSON, WARDEN, *ante,* p. 896;

No. 00–5303. KIRCHNER *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, *ante,* p. 897;

No. 00–5360. DEBLASIO *v.* UNITED STATES, *ante,* p. 900;

No. 00–5368. DAVIS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante,* p. 900;

No. 00–5399. WHITE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 902;

No. 00–5408. NOVOSAD *v.* REPUBLIC BANK FOR SAVINGS, FKA MANHATTAN SAVINGS BANK, *ante,* p. 903;

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No. 00–5433. BOATENG *v.* INTERAMERICAN UNIVERSITY, INC., ET AL., *ante,* p. 904;

No. 00–5474. REED *v.* BENNETT ET AL., *ante,* p. 931;

No. 00–5491. COTHRUM *v.* HARGETT, WARDEN, *ante,* p. 932;

No. 00–5539. STARKS *v.* KAPTURE, WARDEN, *ante,* p. 933;

No. 00–5566. IN RE SESARIO DEPINEDA, *ante,* p. 809;

No. 00–5580. HARRISON *v.* PINELLAS COUNTY COMMISSIONERS ET AL., *ante,* p. 934;

No. 00–5600. LEGASPI *v.* FIRST AMERICA BANK OF ILLINOIS, *ante,* p. 910;

No. 00–5604. SCOTT *v.* JOHNSON, WARDEN, ET AL., *ante,* p. 910;

No. 00–5622. LIMEHOUSE *v.* RED LOBSTER, *ante,* p. 911;

No. 00–5626. ANTHONY *v.* LOUISIANA, *ante,* p. 934;

No. 00–5641. TRAVIS *v.* OHIO, *ante,* p. 911;

No. 00–5648. LUCIOUS *v.* UNITED STATES, *ante,* p. 911;

No. 00–5696. FALKIEWICZ *v.* CITY OF WESTLAND ET AL., *ante,* p. 912;

No. 00–5803. MOORE *v.* UNITED STATES, *ante,* p. 914; and

No. 00–5994. MOORE *v.* UNITED STATES, *ante,* p. 938. Petitions for rehearing denied.

No. 99–9353. MARCELLO *v.* MAINE DEPARTMENT OF HUMAN SERVICES, 530 U. S. 1279. Motion for leave to file petition for rehearing denied.

NOVEMBER 29, 2000

Miscellaneous Order

No. 00–836. BUSH *v.* PALM BEACH COUNTY CANVASSING BOARD ET AL. Sup. Ct. Fla. [Certiorari granted, *ante*, p. 1004.] Motion of respondents Katherine Harris et al. for divided argument granted. Motion of respondent Robert A. Butterworth, Attorney General of Florida, for divided argument granted. Motion of James J. Clancy for leave to file a brief as *amicus curiae* denied.

DECEMBER 4, 2000

Certiorari Granted—Vacated and Remanded

No. 00–345. TURNBULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 213 F. 3d 634.

No. 00–5738. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 213 F. 3d 1269.

No. 00–5992. PATTERSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari as to Andrew Patterson, Henry Patterson, Andrew L. Patterson, Tyrone Williams, Maurice Foster, and Odell Sumrell granted. Judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Certiorari as to Durwin Baker, Terry Clark, Willie Connor, Gregory Hubbard, Jerry Patterson, Lennell Patterson, Andre Williams, and Edgar Williams denied. Reported below: 215 F. 3d 776.

Certiorari Dismissed

No. 00–6419. WHITEHEAD *v.* PARAMOUNT PICTURES CORP. ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2179. IN RE DISBARMENT OF LEE. Disbarment entered. [For earlier order herein, see 530 U. S. 1288.]

No. D–2196. IN RE DISBARMENT OF PINGEL. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2198. IN RE DISBARMENT OF GRADDOCK. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2201. IN RE DISBARMENT OF HUBERT. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2219. IN RE DISBARMENT OF PETZ. Frederick A. Petz, of Grosse Pointe Woods, Mich., 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.

No. D–2220. IN RE DISBARMENT OF DRAGER. Paul Drager, of Peekskill, N. Y., 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.

No. D–2221. IN RE DISBARMENT OF WALLMAN. Jay A. Wallman, of New York, N. Y., 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.

No. 00–509. ARONS ET AL. *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF DELAWARE. Sup. Ct. Del. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–815. HERSCHAFT *v.* NEW YORK BOARD OF ELECTIONS. C. A. 2d Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 00–831. MAY *v.* HARRIS, SECRETARY OF STATE OF FLORIDA, ET AL. C. A. 11th Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari before judgment denied.

No. 00–836. BUSH *v.* PALM BEACH COUNTY CANVASSING BOARD ET AL., *ante*, p. 70. Pursuant to this Court's Rule 45.2, the Clerk is directed to issue the mandate in this case forthwith.

No. 99–10104. BROWN *v.* CALIFORNIA. Sup. Ct. Cal.; and

No. 00–5016. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Motions of petitioner for reconsideration of orders denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 00–5251. ROBINSON *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 00–6586. IN RE SIMMONS; and
No. 00–6998. IN RE WALKER. Petitions for writs of habeas corpus denied.

No. 00–6417. IN RE WHITE. Petition for writ of mandamus denied.

Certiorari Denied. (See also No. 00–5992, *supra.*)

No. 99–1268. KENNECOTT UTAH COPPER CORP. *v.* BECKER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 195 F. 3d 1201.

No. 99–10091. ISIENYI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 207 F. 3d 390.

No. 99–10243. FELDER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 204 F. 3d 168.

No. 00–60. WOODRUM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 202 F. 3d 1.

No. 00–184. MILLS ET AL. *v.* UNITED STATES; and
No. 00–5722. MILLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: No. 00–184, 204 F. 3d 669; No. 00–5722, 208 F. 3d 216.

No. 00–258. FLETCHER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 561 Pa. 266, 750 A. 2d 261.

No. 00–312. BAGLEY, WARDEN *v.* COMBS. C. A. 6th Cir. Certiorari denied. Reported below: 205 F. 3d 269.

No. 00–329. KANSAS *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 214 F. 3d 1196.

No. 00–370. MONAHAN ET AL. *v.* NEW YORK CITY DEPARTMENT OF CORRECTIONS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 214 F. 3d 275.

No. 00–398. COUNTY OF TEHAMA ET AL. *v.* DIRUZZA. C. A. 9th Cir. Certiorari denied. Reported below: 206 F. 3d 1304.

No. 00–415. UNITED STATES *v.* SWISHER INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 205 F. 3d 1358.

No. 00–480. AGRIBANK, FCB *v.* RAMSDEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 214 F. 3d 865.

No. 00–493. AUSTIN, NICHOLS & CO., INC., ET AL. *v.* GEORGIA ET AL. Sup. Ct. Ga. Certiorari denied.

No. 00–496. MESA AIRLINES, INC., ET AL. *v.* UNITED AIRLINES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 219 F. 3d 605.

No. 00–505. SRIVASTAVA *v.* TRUSTEES OF INDIANA UNIVERSITY. C. A. 7th Cir. Certiorari denied.

No. 00–506. KLIEBERT *v.* GENERAL ELECTRIC CO., INC., ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 268 App. Div. 2d 306, 700 N. Y. S. 2d 821.

No. 00–512. LARSEN ET AL. *v.* MAYO FOUNDATION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 218 F. 3d 863.

No. 00–513. LEVI STRAUSS & CO. *v.* TREVINO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 197 F. 3d 777.

No. 00–515. SHANSAB *v.* TOYOTA MOTOR SALES, U. S. A., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 650.

No. 00–520. DUNLAP *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–535. GEDDIE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 744 So. 2d 962.

No. 00–539. ALEXANDRU *v.* NORTHEAST UTILITIES SERVICE CO. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 1321.

No. 00–540. NEW YORK UNIVERSITY *v.* ROGERS. C. A. 2d Cir. Certiorari denied. Reported below: 220 F. 3d 73.

No. 00–545. MAIDEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF MAIDEN, DECEASED *v.* ROZWOOD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 1327.

No. 00–574. Fodor *v.* United States District Court for the Central District of California (Time Warner Inc. et al., Real Parties in Interest). C. A. 9th Cir. Certiorari denied.

No. 00–580. Members of the Florida First Coast Chapter, National Business League *v.* City of Jacksonville. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 600.

No. 00–609. Bethlehem Steel Corp. et al. *v.* Harte. C. A. 3d Cir. Certiorari denied. Reported below: 214 F. 3d 446.

No. 00–614. Brady *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 499.

No. 00–625. Bains *v.* Cambra, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 204 F. 3d 964.

No. 00–657. Mayers *v.* Tennessee Board of Regents et al. C. A. 6th Cir. Certiorari denied.

No. 00–672. Ristovski *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1271.

No. 00–681. Calhoun et ux. *v.* Yamaha Motor Corp., U. S. A., et al. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 338.

No. 00–698. Hicks *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 1038.

No. 00–710. Ransom *v.* CSC Consulting, Inc., dba CSC Index. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 467.

No. 00–715. Robertson *v.* Comptroller of the Treasury of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 840.

No. 00–729. Brothers Construction Company of Ohio, Inc., et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 219 F. 3d 300.

No. 00–5077. Buchanan *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–5362. HERNANDEZ-ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 215 F. 3d 483.

No. 00–5587. HARMAN *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1172.

No. 00–5999. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 213 F. 3d 1269.

No. 00–6038. HITTLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–6324. JOHNS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 203 F. 3d 538.

No. 00–6348. SCHMITZ *v.* CALIFORNIA. App. Div., Super. Ct. Cal., Humboldt County. Certiorari denied.

No. 00–6349. LOVE *v.* TESSMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6350. JACKSON *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 744 So. 2d 228.

No. 00–6351. JEFFERSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6352. LAWRENCE *v.* GREENVILLE POLICE DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1265.

No. 00–6360. RENDELMAN *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 00–6364. BROWN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied.

No. 00–6369. JOHNSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–6370. LITTLE *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 00–6373. SKILLICORN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 22 S. W. 3d 678.

No. 00–6380. TURNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6382. VERNON *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 208 F. 3d 228.

No. 00–6384. KING *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 196 F. 3d 1327.

No. 00–6390. MORENO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6395. MILLER *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6396. HERNANDEZ BELMONTES *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–6404. WILSON *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1350.

No. 00–6409. SMITH *v.* BOONE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–6413. LIVINGSTON *v.* GARCIA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1278.

No. 00–6418. WILSON *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6421. DENNIS *v.* PULASKI COUNTY, ARKANSAS, ET AL.; and DENNIS *v.* CORRECTIONAL MEDICAL SYSTEMS ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–6422. JOHNSON *v.* LOCKE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6424. MAYS *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6429. KALASHO *v.* CITY OF EASTPOINTE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 208 F. 3d 213.

No. 00–6430. LOFTON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 00–6437. RAYMOND *v.* NEAL, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 375.

No. 00–6439. COLE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6443. HOLMES *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 00–6446. HURTADO-BRAVO, AKA MIORIO HURTADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–6447. HITCHCOCK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 755 So. 2d 638.

No. 00–6451. HASON *v.* DAVIS. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 354.

No. 00–6452. PARRISH *v.* RAMIREZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1158.

No. 00–6455. FOLEY *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 642.

No. 00–6456. COOPER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1356.

No. 00–6460. SAUNDERS *v.* TORIAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–6542. FORD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–6553. KNUCKLES-EL ET AL. *v.* TOOMBS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 640.

No. 00–6575. LINK *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 25 S. W. 3d 136.

No. 00–6578. JAMES *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6582. ROSE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1355.

No. 00–6597. GARCIA PEREZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 00–6606. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1153.

No. 00–6684. GREENE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 351 N. C. 562, 528 S. E. 2d 575.

No. 00–6689. PATTERSON *v.* PIERSON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–6696. VALDEZ *v.* UNITED STATES;
No. 00–6738. RAMIREZ-CAPRISTO *v.* UNITED STATES;
No. 00–6742. DIAZ-RAMIREZ *v.* UNITED STATES;
No. 00–6759. TOVAR-ORTEGA *v.* UNITED STATES;
No. 00–6891. TORRES-MONTES *v.* UNITED STATES; and
No. 00–6913. GUZMAN-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–6703. KAMINSKY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 765 So. 2d 716.

No. 00–6714. CRANSHAW *v.* CHESNEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE. C. A. 3d Cir. Certiorari denied.

No. 00–6725. MCNEILL *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied. Reported below: 137 Ohio App. 3d 34, 738 N. E. 2d 23.

No. 00–6729. ROBERTS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–6776. CASTILLO *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6777. SARMIENTO *v.* UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 909.

No. 00–6798. ROMANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6802. ROMERO-VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 385.

No. 00–6804. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–6832. PRADO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 204 F. 3d 843.

No. 00–6833. LILLIBRIDGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–6835. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1361.

No. 00–6837. CRAWFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 1337.

No. 00–6840. READSHAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1365.

No. 00–6843. STEWART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6848. HIDALGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 647.

No. 00–6849. HARRISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 766.

No. 00–6850. GARCIA-CHAVARIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–6851. MADERA IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–6855. OBER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 221 F. 3d 19.

No. 00–6856. WELLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1354.

No. 00–6858. INES ESCOBAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1355.

No. 00–6863. MALGOZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1166.

No. 00–6867. EALEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1364.

No. 00–6868. SOTO-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1089.

No. 00–6870. NOVAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 566.

No. 00–6871. ROMERO-RENDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 F. 3d 1159.

No. 00–6872. WEST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6873. WARE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–6874. ZAMORA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 222 F. 3d 756.

No. 00–6877. MEDINA-CAMPOSANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–6878. RIVAS-SOMOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–6882. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–6888. CANDIES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1356.

No. 00–6889. CASTRO-CABRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1278.

No. 00–6890. FUENTES CARIAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 209 F. 3d 1140.

No. 00–6895. CEJA-CORTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1159.

No. 00–6896. CHAMBERLAIN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 655.

No. 00–6897. ALEXANDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 662.

No. 00–6898. PATTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–6899. MEJIA-PORTILLO, AKA MEDINA-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–6902. MENDOZA-HINOJOSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1085.

No. 00–6917. MARSHALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–6928. COCKRELL *v.* EDWARDS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1333.

No. 99–1440. NEW YORK *v.* BOSWELL; and

No. 99–1443. CORPORATION COUNSEL OF THE CITY OF NEW YORK *v.* MUHAMMAD F. Ct. App. N. Y. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 94 N. Y. 2d 136, 722 N. E. 2d 45.

No. 00–491. STEVENS CREEK QUARRY, INC. *v.* SANTA CLARA COUNTY PLANNING COMMISSION ET AL. C. A. 9th Cir. Motion of California Mining Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 217 F. 3d 846.

No. 00–497. FORD MOTOR CO. *v.* CLAY, ADMINISTRATRIX OF THE ESTATE OF CLAY, ET AL. C. A. 6th Cir. Motions of Washington Legal Foundation and Product Liability Advisory Council, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 215 F. 3d 663.

No. 00–5733. DO-NGUYEN *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 00–6408. REFFITT *v.* AK STEEL CORP. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 99–9162. SCRUGGS *v.* LEONARD, *ante*, p. 830;

No. 99–9403. BOLES *v.* CORRECTIONS CORPORATION OF AMERICA ET AL., *ante*, p. 832;

No. 99–9840. HOOD *v.* UNITED STATES, *ante,* p. 943;

No. 99–9843. DULLEN *v.* INDIANA, *ante,* p. 847;

No. 99–9877. COLEMAN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, *ante,* p. 848;

No. 99–9929. JAMES *v.* UNITED STATES, *ante,* p. 851;

No. 99–9977. MURRY *v.* MURRAY, SUPERINTENDENT, GROVELAND CORRECTIONAL FACILITY, ET AL., *ante,* p. 853;

No. 99–9982. PAPPAS *v.* UNITED STATES, *ante,* p. 854;

No. 99–10224. MYERS *v.* MICHIGAN, *ante,* p. 867;

No. 99–10260. LAURIA *v.* UNITED STATES, *ante,* p. 869;

No. 00–97. ADAMS ET AL. *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., *ante,* p. 941;

No. 00–5023. BAYON *v.* STATE UNIVERSITY OF NEW YORK AT BUFFALO ET AL., *ante,* p. 881;

No. 00–5024. BAYON *v.* STATE UNIVERSITY OF NEW YORK AT BUFFALO ET AL., *ante,* p. 882;

No. 00–5026. JOHNSON *v.* BRIGANO, WARDEN, *ante,* p. 882;

No. 00–5181. FOSTER *v.* GEORGIA, *ante,* p. 890;

No. 00–5272. BOWEN *v.* NORTH CAROLINA, *ante,* p. 895;

No. 00–5414. MURDOCK *v.* JAMES ET AL., *ante,* p. 903;

No. 00–5430. BAYON *v.* FLORIDA ET AL., *ante,* p. 904;

No. 00–5643. FELS *v.* IRETON ET AL., *ante,* p. 946; and

No. 00–6157. JOWERS *v.* GREEN CHIMNEYS CHILDREN'S SERVICE, *ante,* p. 952. Petitions for rehearing denied.

No. 99–9951. ALFORD *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, *ante,* p. 918. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 00–197. TSU ET UX. *v.* VOS ET AL., *ante,* p. 940. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

DECEMBER 5, 2000

Miscellaneous Order

No. 00–7012 (00A433). IN RE HITTLE. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

DECEMBER 6, 2000

Certiorari Denied

No. 00–7092 (00A458). GOINS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 226 F. 3d 312.

DECEMBER 9, 2000

Certiorari Granted

No. 00–949 (00A504). BUSH ET AL. *v.* GORE ET AL. Sup. Ct. Fla. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, granted, and it is ordered that the mandate of the Supreme Court of Florida, case No. SC00–2431, is hereby stayed pending further order of the Court. In addition, the application for stay is treated as a petition for writ of certiorari, and certiorari is granted. Briefs of the parties, not to exceed 50 pages, are to be filed with the Clerk and served upon opposing counsel on or before 4 p.m., Sunday, December 10, 2000. This Court's Rule 29.2 is suspended in this case. Briefs may be filed in compliance with Rule 33.2 to be replaced as soon as possible with briefs prepared in compliance with Rule 33.1. Case set for oral argument on Monday, December 11, 2000, at 11:00 a.m., and a total of one and one-half hours allotted for oral argument. Reported below: 772 So. 2d 1243.

JUSTICE SCALIA, concurring.

Though it is not customary for the Court to issue an opinion in connection with its grant of a stay, I believe a brief response is necessary to JUSTICE STEVENS' dissent. I will not address the merits of the case, since they will shortly be before us in the petition for certiorari that we have granted. It suffices to say that the issuance of the stay suggests that a majority of the Court, while not deciding the issues presented, believe that petitioners have a substantial probability of success.

On the question of irreparable harm, however, a few words are appropriate. The issue is not, as the dissent puts it, whether "[c]ounting every legally cast vote ca[n] constitute irreparable harm." One of the principal issues in the appeal we have ac-

cepted is precisely whether the votes that have been ordered to be counted are, under a reasonable interpretation of Florida law, "legally cast vote[s]." The counting of votes that are of questionable legality does in my view threaten irreparable harm to petitioner Bush, and to the country, by casting a cloud upon what he claims to be the legitimacy of his election. Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires. Another issue in the case, moreover, is the propriety, indeed the constitutionality, of letting the standard for determination of voters' intent—dimpled chads, hanging chads, etc.—vary from county to county, as the Florida Supreme Court opinion, as interpreted by the Circuit Court, permits. If petitioners are correct that counting in this fashion is unlawful, permitting the count to proceed on that erroneous basis will prevent an accurate recount from being conducted on a proper basis later, since it is generally agreed that each manual recount produces a degradation of the ballots, which renders a subsequent recount inaccurate.

For these reasons I have joined the Court's issuance of a stay, with a highly accelerated timetable for resolving this case on the merits.

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

To stop the counting of legal votes, the majority today departs from three venerable rules of judicial restraint that have guided the Court throughout its history. On questions of state law, we have consistently respected the opinions of the highest courts of the States. On questions whose resolution is committed at least in large measure to another branch of the Federal Government, we have construed our own jurisdiction narrowly and exercised it cautiously. On federal constitutional questions that were not fairly presented to the court whose judgment is being reviewed, we have prudently declined to express an opinion. The majority has acted unwisely.

Time does not permit a full discussion of the merits. It is clear, however, that a stay should not be granted unless an applicant makes a substantial showing of a likelihood of irreparable harm. In this case, petitioners have failed to carry that heavy burden. Counting every legally cast vote cannot constitute irreparable harm. On the other hand, there is a danger that a stay

may cause irreparable harm to respondents—and, more importantly, the public at large—because of the risk that "the entry of the stay would be tantamount to a decision on the merits in favor of the applicants." *National Socialist Party of America* v. *Skokie*, 434 U. S. 1327, 1328 (1977) (STEVENS, J., in chambers). Preventing the recount from being completed will inevitably cast a cloud on the legitimacy of the election.

It is certainly not clear that the Florida decision violated federal law. The Florida Code provides elaborate procedures for ensuring that every eligible voter has a full and fair opportunity to cast a ballot and that every ballot so cast is counted. See, *e. g.*, Fla. Stat. Ann. §§ 101.5614(5), 102.166 (Supp. 2001). In fact, the statutory provision relating to damaged and defective ballots states that "[n]o vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board." § 101.5614(5). In its opinion, the Florida Supreme Court gave weight to that legislative command. Its ruling was consistent with earlier Florida cases that have repeatedly described the interest in correctly ascertaining the will of the voters as paramount. See *State ex rel. Chappell* v. *Martinez*, 536 So. 2d 1007 (1988); *Boardman* v. *Esteva*, 323 So. 2d 259 (1975); *McAlpin* v. *State ex rel. Avriett*, 155 Fla. 33, 19 So. 2d 420 (1944); *State ex rel. Peacock* v. *Latham*, 125 Fla. 69, 71, 169 So. 597, 598 (1936); *State ex rel. Carpenter* v. *Barber*, 144 Fla. 159, 198 So. 49 (1940). Its ruling also appears to be consistent with the prevailing view in other States. See, *e. g.*, *Pullen* v. *Mulligan*, 138 Ill. 2d 21, 79–80, 561 N. E. 2d 585, 611 (1990). As a more fundamental matter, the Florida court's ruling reflects the basic principle, inherent in our Constitution and our democracy, that every legal vote should be counted. See *Reynolds* v. *Sims*, 377 U. S. 533, 544–555 (1964); cf. *Hartke* v. *Roudebush*, 321 F. Supp. 1370, 1378–1379 (SD Ind. 1970) (Stevens, J., dissenting); accord, *Roudebush* v. *Hartke*, 405 U. S. 15 (1972).

Accordingly, I respectfully dissent.

DECEMBER 10, 2000

Miscellaneous Order

No. 00–949. BUSH ET AL. *v.* GORE ET AL. Sup. Ct. Fla. [Certiorari granted, *ante*, p. 1046.] Motion of Katherine Harris et al. for divided argument granted.

DECEMBER 11, 2000

Certiorari Granted—Vacated and Remanded

No. 00–6152. CALDWELL *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 221 F. 3d 1344.

Certiorari Dismissed

No. 00–6509. JAMES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 00A419. NEVIUS *v.* MCDANIEL, WARDEN, ET AL. Application for certificate of appealability, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. 99–1613. SHAW ET AL. *v.* MURPHY. C. A. 9th Cir. [Certiorari granted, 530 U. S. 1303.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–24. PGA TOUR, INC. *v.* MARTIN. C. A. 9th Cir. [Certiorari granted, 530 U. S. 1306.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–46. MURPHY *v.* BECK, SUCCESSOR AGENT FOR SOUTHEAST BANK, N. A. C. A. 11th Cir. [Certiorari granted, 530 U. S. 1306.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1908. ALEXANDER, DIRECTOR, ALABAMA DEPARTMENT OF PUBLIC SAFETY, ET AL. *v.* SANDOVAL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 11th Cir. [Certiorari granted, 530 U. S. 1305.] Motion of the Solicitor General for divided argument granted.

No. 00–157. UNITED DOMINION INDUSTRIES, INC. *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1009.] Mo-

tion of the Solicitor General to dispense with printing the joint appendix granted.

No. 00–836. BUSH *v.* PALM BEACH COUNTY CANVASSING BOARD ET AL., *ante*, p. 70. Motion of James J. Clancy for leave to file a brief as *amicus curiae* out of time and for other relief denied.

No. 00–862. VIRGINIA *v.* RENO, ATTORNEY GENERAL, ET AL. Appeal from D. C. D. C. Motion of appellant to expedite consideration of case denied.

No. 00–6397. IN RE MONTGOMERY. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 955] denied.

No. 00–6420. CHUTE *v.* EQUIFAX CREDIT INFORMATION SERVICES, INC. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 991] denied.

No. 00–6724. EKUNDAYO *v.* BRENHAM STATE SCHOOL ET AL. C. A. 5th Cir.; and

No. 00–6988. COX *v.* UNITED STATES. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 2, 2001, 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.

No. 00–6463. IN RE TUCKER;

No. 00–6490. IN RE WILLIAMS;

No. 00–6680. IN RE HAMILTON; and

No. 00–6920. IN RE MORRIS, AKA MCMASTER. Petitions for writs of mandamus denied.

Certiorari Granted

No. 00–189. IDAHO *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 210 F. 3d 1067.

No. 00–346. NORFOLK SHIPBUILDING & DRYDOCK CORP. *v.* GARRIS, ADMINISTRATRIX OF THE ESTATE OF GARRIS, DECEASED. C. A. 4th Cir. Certiorari granted. Reported below: 210 F. 3d 209.

No. 00–549. CEDRIC KUSHNER PROMOTIONS, LTD. *v.* KING ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 219 F. 3d 115.

No. 00–492. ALABAMA *v.* BOZEMAN. Sup. Ct. Ala. Certiorari granted limited to Question 1 presented by the petition. Reported below: 781 So. 2d 165.

No. 00–5961. TYLER *v.* CAIN, WARDEN. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 218 F. 3d 744.

Certiorari Denied

No. 99–10205. HOULIHAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 201 F. 3d 427.

No. 00–327. TANKLEFF *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.; and

No. 00–519. SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL. *v.* TANKLEFF. C. A. 2d Cir. Certiorari denied.

No. 00–359. LOCAL 702, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO, ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 215 F. 3d 11.

No. 00–516. UNITED STATES EX REL. STEVENS *v.* EAST ALABAMA HEALTHCARE AUTHORITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 601.

No. 00–528. TAYLOR FORGE STAINLESS, INC., ET AL. *v.* VIACOM INTERNATIONAL, INC. C. A. 2d Cir. Certiorari denied. Reported below: 212 F. 3d 721.

No. 00–529. MEDICAL MANAGEMENT SCIENCES, INC. *v.* MEDICAL BILLING, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 212 F. 3d 332.

No. 00–538. GRIEST ET VIR *v.* CANEPA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 211 F. 3d 1261.

No. 00–542. ABKCO MUSIC, INC. *v.* LAVERE, DBA KING OF SPADES MUSIC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 684.

No. 00–546. TORPHARM, INC. *v.* GENPHARM, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 754.

No. 00–547. WALLACE *v.* SKADDEN, ARPS, SLATE, MEAGHER & FLOM ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–559. MARTINI *v.* GEIER-LARBI. Ct. App. Wash. Certiorari denied.

No. 00–561. RUIZ CORONADO *v.* BANKATLANTIC BANCORP, INC. C. A. 11th Cir. Certiorari denied. Reported below: 222 F. 3d 1315.

No. 00–565. EXPRESS SERVICES, INC. *v.* CAREERS EXPRESS STAFFING SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1075.

No. 00–573. GIBSON ET AL. *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 758 So. 2d 782.

No. 00–575. MANCIK ET AL. *v.* WESTRIN ET AL. Ct. App. Mich. Certiorari denied. Reported below: 236 Mich. App. 423, 600 N. W. 2d 423.

No. 00–577. UNIVERSITY OF CINCINNATI ET AL. *v.* JOHNSON. C. A. 6th Cir. Certiorari denied. Reported below: 215 F. 3d 561.

No. 00–582. CERVONE *v.* CERVONE, NKA MATTEUCCI. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 00–591. BUCKLEY ET AL. *v.* TEAMSTERS LOCAL UNION NO. 764, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO–CLC. C. A. 3d Cir. Certiorari denied.

No. 00–610. BURNETTE ET VIR *v.* CAROTHERS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 192 F. 3d 52.

No. 00–613. BARRETT *v.* UNIVERSITY OF MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 208.

No. 00–624. MIRAVALLE *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 761 So. 2d 1049.

No. 00–676. MONTOYA *v.* ARIZONA DEPARTMENT OF TRANSPORTATION ET AL. Ct. App. Ariz. Certiorari denied.

No. 00–683. LUCAS *v.* CENTRAL INTELLIGENCE AGENCY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 654.

No. 00–731. BONTON *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 762.

No. 00–741. ABELLO-SILVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 00–762. METCALF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–778. SCISSELL *v.* COUNTY OF SAN DIEGO. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–790. BRICKNER *v.* VOINOVICH, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1333.

No. 00–5073. DIAZ-FABIAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 635.

No. 00–5215. WILSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–5274. LOGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 210 F. 3d 820.

No. 00–5790. GUNDERSON *v.* HETTGAR, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 201 F. 3d 447.

No. 00–5815. ROMERO-TAMAYO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 212 F. 3d 729.

No. 00–6037. SANTIAGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 220 F. 3d 591.

No. 00–6061. FORTUNE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 00–6389. SPIVEY *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 207 F. 3d 1263.

No. 00–6457. ATKINS *v.* BOONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1277.

No. 00–6458. DE SPENZA *v.* CAMBRA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6467. ANDERSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–6476. LLOYD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6477. LEE *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 00–6478. MARTINEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–6481. PALMORE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–6483. TUCKER *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 221 F. 3d 600.

No. 00–6492. TAYLOR *v.* SCHOFIELD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1092.

No. 00–6493. TURNER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6498. DELEON *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 00–6503. BILAL, AKA BURTON *v.* ESCAMBIA COUNTY DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 128.

No. 00–6504. DUPREE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–6505. BURDGESS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6506. JACKSON *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6510. MANLEY *v.* STRACK, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6511. KNOD *v.* CITY OF SEVEN POINTS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 643.

No. 00–6512. LAWLESS *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6517. BROWN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 600.

No. 00–6521. ANDERSON *v.* RIVERSIDE REGIONAL JAIL AUTHORITATIVE COMMITTEE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1317.

No. 00–6524. FOLEY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 17 S. W. 3d 878.

No. 00–6527. THOMPSON *v.* BRANCHES-DOMESTIC VIOLENCE SHELTER OF HUNTINGTON, WEST VIRGINIA, INC., ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 207 W. Va. 479, 534 S. E. 2d 33.

No. 00–6531. FORSYTH *v.* FEINSTEIN ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 89 Ohio St. 3d 1408, 729 N. E. 2d 381.

No. 00–6538. MCNEELY *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 330 Ore. 457, 8 P. 3d 212.

No. 00–6539. GORDON *v.* CITY OF NEW ORLEANS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 720.

No. 00–6546. STEVENS ET AL. *v.* STEARNS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–6548. PARKS *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6550. THOR *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6580. TILLMAN *v.* COOK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1116.

No. 00–6599. LA MAR *v.* OHIO. Ct. App. Ohio, Lawrence County. Certiorari denied.

No. 00–6601. BROOKS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 270 App. Div. 2d 282, 704 N. Y. S. 2d 854.

No. 00–6633. BRAGG *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS. C. A. 4th Cir. Certiorari denied.

No. 00–6634. STRASSBERG *v.* HILTON HOTELS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1073.

No. 00–6637. CATHY R. *v.* BARRIOS-PAOLI. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 268 App. Div. 2d 302, 702 N. Y. S. 2d 241.

No. 00–6641. LAWRENCE *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6648. WELCH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2 P. 3d 356.

No. 00–6658. SUVIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–6753. HARRISON *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1163.

No. 00–6779. LURIA *v.* LURIA. Ct. App. N. Y. Certiorari denied. Reported below: 94 N. Y. 2d 943, 731 N. E. 2d 157.

No. 00–6825. LANGWORTHY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 130 Md. App. 725.

No. 00–6907. RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6910. FRIAS-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 665.

No. 00–6919. REECE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6936. BATES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 1336.

No. 00–6937. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 212 F. 3d 1305.

No. 00–6938. BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 1117.

No. 00–6940. ROBERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–6941. REED *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 765 So. 2d 710.

No. 00–6947. MCCLAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 230 F. 3d 1349.

No. 00–6952. VARGAS-BUENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1148.

No. 00–6955. BULL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1275.

No. 00–6958. CHARLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–6960. ALVARADO-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–6967. OLDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 634.

No. 00–6970. VANDERGRIFF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 584.

No. 00–6972. CARRILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 847.

No. 00–6973. CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 218 F. 3d 1092.

No. 00–6981. LITTLEJOHN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 749 A. 2d 1253.

No. 00–6989. CHIPPS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 230 F. 3d 1349.

No. 00–6990. COLLIER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1144.

No. 00–6991. CASTELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–6992. LENNON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1168.

No. 00–6995. WOODWARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 229 F. 3d 1134.

No. 00–6996. WOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1146.

No. 00–6997. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–7000. MORTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 651.

No. 00–7001. PENA-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 F. 3d 1080.

No. 00–7007. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–7010. MERRITT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–7015. TOVIAS-MARROQUIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 455.

No. 00–404. NORTHWEST AIRLINES, INC. *v.* DUNCAN. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 1112.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

The petition for a writ of certiorari in this case presents an important issue that has divided the Courts of Appeals: the meaning of the term "service" in the portion of the Airline Deregulation Act of 1978 (ADA) that pre-empts any state law "related to a price, route, or service of an air carrier." 49 U. S. C. § 41713(b)(1). I would grant the petition to resolve this issue and bring needed certainty to this area of the law.

We have addressed the scope of the ADA's pre-emption provision on two prior occasions. In *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 383 (1992), we noted the "broad pre-emptive purpose" of the ADA. And while we have never directly addressed the definition of "service" within the meaning of § 41713(b)(1), we have suggested that this term encompasses "access to flights and class-of-service upgrades." *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219, 226 (1995). The Courts of Appeals, however, have taken directly conflicting positions on this question of statutory interpretation.

The Ninth Circuit below, adhering to its decision in *Charas* v. *TWA*, 160 F. 3d 1259 (1998) (en banc), held that the term "service" encompasses "'the prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or mail,'" but not the "'provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities.'" 208 F. 3d 1112, 1114–1115 (2000) (quoting *Charas*, *supra*, at 1261). The Third Circuit has expressly agreed with this approach. *Taj Mahal Travel, Inc.* v. *Delta Airlines Inc.*, 164 F. 3d 186, 194 (1998). In contrast, three Courts of Appeals have adopted a much broader definition. See *Hodges* v. *Delta Airlines, Inc.*, 44 F. 3d 334, 336 (CA5 1995) (en banc) (defining "service" in terms of the "'[contractual] features of air transportation,'" including "'ticketing, boarding procedures, provision of food and drink, and baggage handling'"); *Smith* v. *Comair, Inc.*, 134 F. 3d 254, 259 (CA4 1998) ("Undoubtedly, boarding procedures are a service rendered by an airline") (citing *Hodges*, *supra*, at 336); *Travel All Over The World, Inc.* v. *Kingdom of Saudi Arabia*, 73 F. 3d 1423,

1433 (CA7 1996) (adopting *Hodges* definition). See also *Chukwu* v. *Board of Directors British Airways*, 889 F. Supp. 12, 13 (Mass. 1995), aff'd mem., 101 F. 3d 106 (CA1 1996) (same).

Given these opposing interpretations, I believe we should hear this case. The legal issue is an important one, well suited for resolution by this Court. The two leading cases, *Charas* and *Hodges*, are both the product of en banc consideration. They have fully explored the relevant considerations, including the language and history of the ADA and its pre-emption clause, as well as the policies supporting the possible interpretations of the term "service." Compare *Charas*, *supra*, at 1262–1266, with *Hodges*, *supra*, at 336–339.

Resolution of this question would provide needed certainty to airline companies. While this case involves the potential pre-emption of a state law personal-injury claim based on an airline's smoking policy, the legal principle at stake has ramifications for a host of other tort actions against airlines. See, *e. g.*, *Smith*, *supra* (false imprisonment and intentional infliction of emotional distress); *Travel All Over The World*, *supra* (defamation). Because airline companies operate across state lines, the divergent pre-emption rules formulated by the Courts of Appeals currently operate to expose the airlines to inconsistent state regulations. Cf. *Morales*, *supra*, at 378 (the ADA's pre-emption provision is intended "[t]o ensure that the States would not undo federal deregulation with regulation of their own").

A decision from this Court would provide needed clarification on this discrete and important issue of statutory interpretation. Accordingly, I respectfully dissent from the denial of the petition for certiorari.

No. 00–527. WALKER COUNTY SCHOOL DISTRICT *v.* BENNETT ET AL. C. A. 11th Cir. Motion of National School Boards Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 203 F. 3d 1293.

No. 00–6491. YOUNG *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 225 F. 3d 666.

Rehearing Denied

No. 99–9712. JOSEPH *v.* UNITED STATES, *ante*, p. 943;

No. 99–9813. ENGLE *v.* SEIDNER, WARDEN, *ante*, p. 845;

No. 99–10229. BOWMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 868;

No. 00–358. KALLEMBACH *v.* ANCHOR BANK ET AL., *ante*, p. 959;

No. 00–5108. JACKSON *v.* GARCIA, WARDEN, ET AL., *ante*, p. 886;

No. 00–5111. LEDBETTER *v.* TEXAS, *ante*, p. 886;

No. 00–5187. SCRUGGS *v.* HOWIE ET AL., *ante*, p. 891;

No. 00–5277. LE *v.* QUISMORIO ET AL., *ante*, p. 895;

No. 00–5488. COLON *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, *ante*, p. 931;

No. 00–5662. GLAZE *v.* SANDERS, WARDEN, ET AL., *ante*, p. 946;

No. 00–5665. NONAHAL *v.* MARQUETTE UNIVERSITY ET AL., *ante*, p. 947;

No. 00–5684. HOOD *v.* FLORIDA, *ante*, p. 947;

No. 00–5986. YOUNG *v.* UNITED STATES, *ante*, p. 938;

No. 00–5990. MILLER *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL., *ante*, p. 938; and

No. 00–6236. EVANS *v.* UNITED STATES, *ante*, p. 971. Petitions for rehearing denied.

No. 99–1850. HAWES ET AL. *v.* JOHNSON & JOHNSON ET AL., *ante*, p. 815. Motion of petitioners to defer consideration of petition for rehearing denied. Petition for rehearing denied.

DECEMBER 12, 2000

Miscellaneous Order

No. 00–949. BUSH ET AL. *v.* GORE ET AL., *ante*, p. 98. Pursuant to this Court's Rule 45.2, the Clerk is directed to issue the mandate in this case forthwith.

DECEMBER 13, 2000

Miscellaneous Orders

No. 00–953. JONES ET AL. *v.* BUSH ET AL. C. A. 5th Cir. Motion to expedite consideration of petition for writ of certiorari denied.

No. 00–961. HARRIS ET AL. *v.* FLORIDA ELECTIONS CANVASSING COMMISSION ET AL. C. A. 11th Cir. Motion to expedite consideration of petition for writ of certiorari denied.

December 14, 2000

Miscellaneous Order

No. 00–942. Touchston et al. *v.* McDermott et al. C. A. 11th Cir. Motion to expedite consideration of petition for writ of certiorari denied.

December 28, 2000

Dismissal Under Rule 46

No. 00–808. All Underwriters Subscribing to Policy Number 03789600 Including Underwriters at Lloyds, London *v.* Weisberg et al. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 222 F. 3d 1309.

December 29, 2000

Dismissal Under Rule 46

No. 99–1787. Reynolds Metals Co. *v.* Ellis. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1009.] Writ of certiorari dismissed under this Court's Rule 46.1.

January 2, 2001

Dismissal Under Rule 46

No. 00–951. Bank of Boston et al. *v.* Esden, Individually and on Behalf of All Others Similarly Situated. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 229 F. 3d 154.

January 5, 2001

Miscellaneous Order

No. 00M57. In re Abramson. Motion to direct the Clerk to file motion for leave to file petition for writs of mandamus, prohibition, and declaratory judgment denied.

Certiorari Denied

No. 00–942. Touchston et al. *v.* McDermott et al. C. A. 11th Cir. Motion of petitioners for leave to file petition for writ of certiorari on 8½- by 11-inch page proofs granted. Motion of respondent Florida for leave to file brief in opposition on 8½- by

11-inch page proofs granted. Certiorari denied. Reported below: 234 F. 3d 1133.

No. 00–953. JONES ET AL. *v.* BUSH ET AL. C. A. 5th Cir. Motion of petitioners for leave to file petition for writ of certiorari on 8½- by 11-inch page proofs granted. Certiorari denied. Reported below: 244 F. 3d 134.

No. 00–961. HARRIS ET AL. *v.* FLORIDA ELECTIONS CANVASSING COMMISSION ET AL. C. A. 11th Cir. Motion of petitioners for leave to file petition for writ of certiorari on 8½- by 11-inch page proofs granted. Certiorari denied. Reported below: 235 F. 3d 578.

JANUARY 8, 2001

Affirmed on Appeal

No. 00–862. VIRGINIA *v.* RENO, ATTORNEY GENERAL, ET AL. Affirmed on appeal from D. C. D. C. Reported below: 117 F. Supp. 2d 46.

Certiorari Granted—Vacated and Remanded

No. 99–9541. THOMAS *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 204 F. 3d 381.

No. 99–9965. CLOUD *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 211 F. 3d 599.

No. 99–10250. CARRINGTON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 213 F. 3d 634.

No. 00–463. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 208 F. 3d 1258.

No. 00–5703. HAYES *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted.

Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 212 F. 3d 598.

No. 00–6187. ARDLEY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 202 F. 3d 287.

No. 00–6218. WEEKLY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Artuz* v. *Bennett*, *ante*, p. 4. Reported below: 204 F. 3d 1083.

No. 00–6289. MCCLOUD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 741 So. 2d 512.

No. 00–6427. BENITO CASTRO *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 229 F. 3d 1159.

No. 00–6474. GONZALES MAGANA *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 229 F. 3d 1160.

Certiorari Dismissed

No. 00–6722. MANGRUM *v.* ALABAMA COMMISSION ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance

with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 232 F. 3d 216.

No. 00–7066. IN RE PIZZO. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 00–7109. ASHIEGBU *v.* WILLIAMS. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 229 F. 3d 1150.

No. 00–6946. TRIPATI *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 00A420. CHILINGIRIAN *v.* UNITED STATES. Application for bail, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–2200. IN RE DISBARMENT OF FEIGENBAUM. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2203. IN RE DISBARMENT OF LECK. Disbarment entered. [For earlier order herein, see *ante*, p. 954.]

No. D–2204. IN RE DISBARMENT OF MINTZ. Disbarment entered. [For earlier order herein, see *ante*, p. 954.]

No. D–2206. IN RE DISBARMENT OF GASKINS. Disbarment entered. [For earlier order herein, see *ante*, p. 954.]

No. D–2222. IN RE DISBARMENT OF VIEHE. Karl William Viehe, of Washington, D. C., 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.

No. D–2223. IN RE DISBARMENT OF BLEDSOE. Michael Neal Bledsoe, of Chicago, Ill., 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.

No. D–2224. IN RE DISBARMENT OF COIA. Arthur A. Coia, of Providence, R. I., 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.

No. D–2225. IN RE DISBARMENT OF CICCONE. James Ciccone, of New York, N. Y., 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.

No. D–2226. IN RE DISBARMENT OF PARTEN. Stephen Chatfield Parten, of Dickinson, Tex., 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.

No. D–2227. IN RE DISBARMENT OF ERION. Charles Ticknor Erion, of Warner Robins, Ga., 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.

No. D–2228. IN RE DISBARMENT OF SEGRAVES. Darryl Bradley Segraves, of Atlanta, Ga., 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.

No. D–2229. In re Disbarment of Walsh. Robert Othniel Walsh, of Porterville, Cal., 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.

No. D–2230. In re Disbarment of Meneilly. James K. Meneilly, of Westbury, N. Y., 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.

No. 00M48. Holdampf *v.* Chevron Corp. et al.;

No. 00M49. Walker *v.* Moore, Secretary, Florida Department of Corrections;

No. 00M50. Markel et al. *v.* Payne, Superintendent, Washington Corrections Center for Women, Purdy, et al.;

No. 00M51. Richardson et al. *v.* South Carolina Supreme Court et al.;

No. 00M52. Duse *v.* Cohen, Secretary of Defense, et al.;

No. 00M53. Hall *v.* New Jersey Office of Attorney Ethics;

No. 00M54. McNeil *v.* Hawkins;

No. 00M55. Mazza *v.* City of New York et al.; and

No. 00M56. Leal *v.* Smith, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 128, Orig. Alaska *v.* United States. Motion of Alaska for leave to file an amended complaint granted, and the United States is allowed 30 days in which to file an answer. [For earlier order herein, see, *e. g.*, *ante*, p. 941.]

No. 130, Orig. New Hampshire *v.* Maine. Motion of Maine to dismiss the complaint set for oral argument in due course. Justice Souter took no part in the consideration or decision of this order. [For earlier order herein, see 530 U. S. 1272.]

No. 00–121. Duncan, Superintendent, Great Meadow Correctional Facility *v.* Walker. C. A. 2d Cir. [Certiorari granted, *ante*, p. 991.] Motion for appointment of counsel granted, and it is ordered that Deborah Wolikow Loewenberg, Esq., of New City, N. Y., be appointed to serve as counsel for respondent in this case.

No. 00–665. MONTEMAYOR, COMMISSIONER, TEXAS DEPARTMENT OF INSURANCE, ET AL. *v.* CORPORATE HEALTH INSURANCE ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–6233. WHITEHEAD *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 976] denied.

No. 00–6299. YOUNGBEAR *v.* PLAYBOY ENTERPRISES, INC., ET AL. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1006] denied.

No. 00–6311. AWOFOLU *v.* LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1006] denied.

No. 00–6831. FISH *v.* GAINESVILLE CITY SCHOOL DISTRICT ET AL. C. A. 11th Cir.;

No. 00–6887. VALDEZ ET UX. *v.* PROPERTY RESERVE, INC., ET AL. Sup. Ct. Haw.;

No. 00–7111. RUSSELL *v.* UNITED STATES. C. A. 11th Cir.;

No. 00–7136. THOMAS *v.* CALDERA, SECRETARY OF THE ARMY. C. A. 8th Cir.; and

No. 00–7326. HUNT *v.* UNITED STATES. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 29, 2001, 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.

No. 00–7594. IN RE BUCKNER. Motion of petitioner to expedite consideration of petition for writ of mandamus denied.

No. 00–7208. IN RE QUEZADA;

No. 00–7330. IN RE BRUZON ET AL.;

No. 00–7334. IN RE WILLIAMS;

No. 00–7335. IN RE WILLIAMS;

No. 00–7409. IN RE HINOJOSA; and

No. 00–7411. IN RE HOLSTON. Petitions for writs of habeas corpus denied.

No. 00–7215. IN RE WILKERSON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.,* at 4, and cases cited therein.

No. 00–7438. IN RE YOUNGBEAR. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.,* at 4, and cases cited therein

No. 00–7038. IN RE VONDETTE;
No. 00–7131. IN RE UFOM;
No. 00–7165. IN RE MARTINEZ;
No. 00–7225. IN RE RICH; and
No. 00–7381. IN RE BROWN. Petitions for writs of mandamus denied.

No. 00–719. IN RE KNOWLTON. Motion of petitioner for leave to file petition for writ of mandamus under seal with redacted copies for the public record granted. Petition for writ of mandamus denied.

No. 00–7035. IN RE TRASLAVINA. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 00–596. LORILLARD TOBACCO CO. ET AL. *v.* REILLY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.; and
No. 00–597. ALTADIS U. S. A. INC., AS SUCCESSOR TO CONSOLIDATED CIGAR CORP. AND HAVATAMPA, INC., ET AL. *v.* REILLY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. C. A. 1st Cir.

Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* in No. 00–596 granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 218 F. 3d 30.

No. 00–391. FLORIDA *v.* THOMAS. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 761 So. 2d 1010.

No. 00–763. POLLARD *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 6th Cir. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 213 F. 3d 933.

No. 00–6374. BECKER *v.* MONTGOMERY, ATTORNEY GENERAL OF OHIO, ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted.*

Certiorari Denied

No. 99–1285. DESIDERIO *v.* NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 191 F. 3d 198.

No. 99–8779. THOMAS *v.* UNITED STATES; and
No. 99–9600. THOMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 204 F. 3d 381.

No. 99–9552. BROWN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 264 App. Div. 2d 528, 695 N. Y. S. 2d 575.

No. 99–10251. EICHWEDEL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 303 Ill. App. 3d 1098, 747 N. E. 2d 1105.

No. 00–164. LOPEZ-ELIAS *v.* RENO, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 209 F. 3d 788.

No. 00–194. OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–195. RIGA ET UX. *v.* ALEXANDER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 419.

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*[REPORTER'S NOTE: For amendment of this order, see *post*, p. 1110.]

No. 00–198. LOUISIANA *v.* HADDAD. Sup. Ct. La. Certiorari denied. Reported below: 767 So. 2d 682.

No. 00–366. DEGROAT *v.* UNITED STATES; and
No. 00–649. DEGROAT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1270.

No. 00–376. PATTERSON *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 757.

No. 00–393. CITIZENS FOR THE APPROPRIATE PLACEMENT OF TELECOMMUNICATIONS FACILITIES ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;
No. 00–407. FICHTENBERG *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;
No. 00–417. WORSHAM *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and
No. 00–427. CELLULAR PHONE TASKFORCE *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 205 F. 3d 82.

No. 00–422. NATIONAL WHISTLEBLOWER CENTER *v.* NUCLEAR REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 208 F. 3d 256.

No. 00–429. PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. *v.* SINTEK. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–448. CAGUAS CENTRAL FEDERAL SAVINGS BANK ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 215 F. 3d 1304.

No. 00–449. BORNEMAN *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 819.

No. 00–452. BOYAJIAN ET AL. *v.* GATZUNIS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 212 F. 3d 1.

No. 00–458. PUCKETT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 636.

No. 00–466. UROFSKY ET AL. *v.* GILMORE, GOVERNOR OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 216 F. 3d 401.

No. 00–470. Las Vegas Sports News, L. L. C., dba Las Vegas Sporting News *v.* Times Mirror Magazine, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 212 F. 3d 157.

No. 00–479. Mendenhall *v.* Riser, Sheriff of Webster Parish, et al. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 226.

No. 00–489. Novello, Commissioner, New York State Department of Health, et al. *v.* Robbins, on Her Own Behalf and as Attorney-in-Fact for Robbins; and

No. 00–651. Robbins, on Her Own Behalf and as Attorney-in-Fact for Robbins *v.* Novello, Commissioner, New York State Department of Health, et al. C. A. 2d Cir. Certiorari denied. Reported below: 218 F. 3d 197.

No. 00–502. Joshua W. et al. *v.* USD 259 Board of Education, Wichita Public Schools, et al. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 1278.

No. 00–514. J. V. Peters & Co. et al. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–522. Pappas Telecasting of Southern California, L. L. C. *v.* Federal Communications Commission et al. C. A. D. C. Cir. Certiorari denied. Reported below: 216 F. 3d 1133.

No. 00–524. Barfus et al. *v.* City of Miami. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 130.

No. 00–530. Becton Dickinson & Co. *v.* Internal Revenue Service. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 340.

No. 00–537. Fried *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 207 F. 3d 458.

No. 00–543. American Imaging Services, Inc. *v.* Intergraph Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 757.

No. 00–544. Kidd *v.* District of Columbia et al. C. A. D. C. Cir. Certiorari denied. Reported below: 206 F. 3d 35.

No. 00–558. Shalala, Secretary of Health and Human Services *v.* Ohio Hospital Assn. et al. C. A. 6th Cir. Certiorari denied. Reported below: 201 F. 3d 418.

No. 00–563. COTTER ET AL. *v.* MASSACHUSETTS ASSOCIATION OF MINORITY LAW ENFORCEMENT OFFICERS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 219 F. 3d 31.

No. 00–566. WILLIS *v.* SCHOOL BOARD OF ST. LUCIE COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1358.

No. 00–578. JESSUP ET AL. *v.* AMERICAN KENNEL CLUB, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 111.

No. 00–583. WARD *v.* HERITAGE MEDIA CORP. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1346.

No. 00–589. BERG *v.* COUNTY OF ALLEGHENY ET AL.; and
No. 00–774. WOLFGANG *v.* BERG. C. A. 3d Cir. Certiorari denied. Reported below: 219 F. 3d 261.

No. 00–598. HELLWIG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 748 A. 2d 1251.

No. 00–600. RYAN'S FAMILY STEAK HOUSES, INC., ET AL. *v.* FLOSS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 306.

No. 00–601. SHARP ELECTRONICS CORP. *v.* DEUTSCHE FINANCIAL SERVICES CORP. C. A. 4th Cir. Certiorari denied. Reported below: 216 F. 3d 388.

No. 00–604. PUMMILL *v.* TEXAS, NEW MEXICO & OKLAHOMA COACHES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 584.

No. 00–608. DIAMOND *v.* CITY OF TAFT. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1052.

No. 00–612. VOLUNTEERS OF AMERICA OKLAHOMA, INC. *v.* JOHNSTON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 213 F. 3d 559.

No. 00–615. BROOKS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1341.

No. 00–618. WOODFORD, WARDEN *v.* JACKSON; and
No. 00–621. JACKSON *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1148.

No. 00–620. MANTALINE CORP. *v.* PPG INDUSTRIES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 659.

No. 00–622. PUGH, TRUSTEE FOR PUGH ET AL. *v.* HIGGENBOTHAM AUCTIONEERS INTERNATIONAL, LTD., INC., ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 758 So. 2d 679.

No. 00–627. EMERSON *v.* TUGGLE ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–628. TAYLOR *v.* CARMOUCHE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 214 F. 3d 788.

No. 00–630. TELFAIR *v.* FIRST UNION MORTGAGE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1333.

No. 00–631. YUJUICO ET AL. *v.* FIRST PACIFIC BANK LTD. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–634. JEANNE PIAUBERT, S. A., ET AL. *v.* SEFRIOUI. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 00–635. ANDERSON, SPECIAL ADMINISTRATOR OF THE ESTATE OF ANDERSON, DECEASED *v.* SIMON. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 472.

No. 00–637. BARTON-DOBENIN ET UX. *v.* KANSAS DEPARTMENT OF REVENUE. Sup. Ct. Kan. Certiorari denied. Reported below: 269 Kan. 851, 9 P. 3d 9.

No. 00–638. PHELPS *v.* ALAMEIDA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 643.

No. 00–640. MCGUIRE ET AL. *v.* ROCK COUNTY BOARD OF SUPERVISORS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 1330.

No. 00–642. HOBGOOD *v.* KOCH PIPELINE SOUTHEAST, INC. Ct. App. Miss. Certiorari denied. Reported below: 769 So. 2d 838.

No. 00–645. DOE ET AL. *v.* DALLAS INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 380.

No. 00–646. FEICHKO *v.* DENVER & RIO GRANDE WESTERN RAILROAD CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 213 F. 3d 586.

No. 00–647. SULLIVAN, DBA SULLIVAN MACHINE & TOOL CO. *v.* MAZAK CORP. Sup. Ct. Ala. Certiorari denied. Reported below: 805 So. 2d 674.

No. 00–655. KAMAL, ON BEHALF OF HIMSELF AND KAMAL *v.* CITY OF SANTA MONICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1348.

No. 00–658. AMERICAN CAST IRON PIPE CO. *v.* BURKS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 1333.

No. 00–659. AFFILIATED FM INSURANCE CO. *v.* CHASE MANHATTAN BANK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 196 F. 3d 373.

No. 00–662. FULK *v.* BILL HARBERT INTERNATIONAL CONSTRUCTION CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 600.

No. 00–666. CREGO, AKA SOCK *v.* COLEMAN. Sup. Ct. Mich. Certiorari denied. Reported below: 463 Mich. 248, 615 N. W. 2d 218.

No. 00–669. SOERING *v.* DEEDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 840.

No. 00–670. SHAWNEE TRAIL CONSERVANCY ET AL. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 222 F. 3d 383.

No. 00–671. REHBERG *v.* COCHRANE, FKA RYAN. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 744 So. 2d 1132.

No. 00–677. PLACE *v.* ABBOTT LABORATORIES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 803.

No. 00–678. POLYAK *v.* BURSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–680. THORPE HOLDING COMPANY PROFIT SHARING PLAN ET AL. *v.* STEWART. C. A. 9th Cir. Certiorari denied. Reported below: 207 F. 3d 1143.

No. 00–684. JANIK ET UX., ON BEHALF OF JANIK ET AL. *v.* CITY OF DALLAS. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 641.

No. 00–687. PURSLEY *v.* ROBERTS ET AL. Super. Ct. Pa. Certiorari denied.

No. 00–688. ALEXANDRIA RESIDENT COUNCIL, INC. *v.* ALEXANDRIA REDEVELOPMENT AND HOUSING AUTHORITY. C. A. 4th Cir. Certiorari denied. Reported below: 218 F. 3d 307.

No. 00–693. HAMZAVI *v.* COUNCIL OF UNIT OWNERS OF CARROUSEL CENTER CONDOMINIUMS, INC. Ct. Sp. App. Md. Certiorari denied. Reported below: 129 Md. App. 708.

No. 00–694. DOHERTY ET AL. *v.* AMERICAN HOME PRODUCTS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1071.

No. 00–695. MUSSER *v.* SALOMON/SMITH BARNEY, INC. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 00–696. FROEBEL *v.* MEYER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 928.

No. 00–697. TURNER *v.* WARNER BROTHERS STUDIO ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–699. GREENBERG *v.* BEAR, STEARNS & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 220 F. 3d 22.

No. 00–700. GRAY *v.* ST. MARTIN'S PRESS, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 221 F. 3d 243.

No. 00–702. JUDGE *v.* HATCH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 221.

No. 00–703. KATES *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 00–706. HOGAN MANAGEMENT SERVICES *v.* MARTINO, DBA NORTH GEORGIA ORTHOPAEDICS. Ct. App. Ga. Certiorari denied. Reported below: 242 Ga. App. 791, 530 S. E. 2d 508.

No. 00–708. HENDERSON ET AL. *v.* SIMMS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 223 F. 3d 267.

No. 00–712. STEINBERGER *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 00–713. SARNO ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–714. SL SERVICE, INC., FKA SEA-LAND SERVICE, INC., ET AL. *v.* OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL–CIO, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 566.

No. 00–716. LANG ET AL. *v.* KOHL'S FOOD STORES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 919.

No. 00–717. JEAN *v.* COLLINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 221 F. 3d 656.

No. 00–718. KNOWLTON *v.* BRANSFORD ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–721. COFFEE ET AL. *v.* GENERAL MOTORS ACCEPTANCE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 746.

No. 00–723. PARKER-BIGBACK *v.* ST. LABRE SCHOOL ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 301 Mont. 16, 7 P. 3d 361.

No. 00–724. VINSON *v.* MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD. Sup. Ct. Miss. Certiorari denied.

No. 00–726. GUPTA *v.* FLORIDA BOARD OF REGENTS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 571.

No. 00–727. FRIESE *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 598.

No. 00–728. MIECHOWICZ *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 165 N. J. 492, 758 A. 2d 651.

No. 00–733. NICHOLAS ET AL. *v.* SAUL STONE & CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 224 F. 3d 179.

No. 00–734. MCDUFFIE, DBA D&M CONTRACTING CO. *v.* CITY OF JACKSONVILLE. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 763 So. 2d 1201.

No. 00–737. Russell *v.* Capital One Bank. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–738. Nace *v.* Achievement & Guidance Centers of America, Inc./Medco Behavioral Care Systems. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–740. Aerovias de Mexico, S. A. de C. V., dba Aeromexico *v.* Prevoisin et al. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 766.

No. 00–743. Buettner *v.* Arch Coal Sales Co., Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 216 F. 3d 707.

No. 00–748. Dawson *v.* Terhune, Director, California Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1156.

No. 00–756. Stewart *v.* Adolph Coors Co. et al. C. A. 10th Cir. Certiorari denied. Reported below: 217 F. 3d 1285.

No. 00–757. Williams *v.* Houston Firefighters' Relief and Retirement Fund et al. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 408.

No. 00–764. Taylor, Administratrix of the Estate of Mason, Deceased *v.* Adams et al. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1254.

No. 00–766. Judge *v.* Superior Court of California. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–771. Edwards *v.* Gober, Acting Secretary of Veterans Affairs. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 643.

No. 00–772. Carter *v.* Rodgers et al. C. A. 11th Cir. Certiorari denied. Reported below: 220 F. 3d 1249.

No. 00–773. Collie *v.* Kendall, Judge, United States District Court for the Northern District of Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–775. Paciulan et al. *v.* George, Chief Justice, Supreme Court of California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1226.

No. 00–781. KRONISCH, EXECUTRIX OF THE ESTATE OF GLICKMAN *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–782. MORRIS ET AL. *v.* GROUP W, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–784. KEANU ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–787. HAYNES ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 789.

No. 00–793. CHICAGO AND NORTHEAST ILLINOIS DISTRICT COUNCIL OF CARPENTERS *v.* CONTEMPO DESIGN, INC. C. A. 7th Cir. Certiorari denied. Reported below: 226 F. 3d 535.

No. 00–794. AHUJA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–797. MCKIMM *v.* OHIO ELECTIONS COMMISSION. Sup. Ct. Ohio. Certiorari denied. Reported below: 89 Ohio St. 3d 139, 729 N. E. 2d 364.

No. 00–805. THORNHILL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 747.

No. 00–807. TUCKER ET VIR *v.* MTS, INC., T/A TOWER RECORDS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1139.

No. 00–810. POLSBY *v.* MIKULSKI ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–812. STOLT OFFSHORE INC. ET AL. *v.* SCIENCE APPLICATIONS INTERNATIONAL CORP. C. A. 5th Cir. Certiorari denied.

No. 00–815. HERSCHAFT *v.* NEW YORK BOARD OF ELECTIONS. C. A. 2d Cir. Certiorari denied. Reported below: 234 F. 3d 1262.

No. 00–817. PAUL *v.* FREDLEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1158.

No. 00–821. TUTMAN *v.* WBBM–TV, INC./CBS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 209 F. 3d 1044.

No. 00–822. KREMEN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 754 A. 2d 964.

No. 00–826. THOMPSON *v.* PETE'S BREWING CO. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–830. WIRTH *v.* COLLEGE OF THE OZARKS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 219.

No. 00–834. KINNEY *v.* UNITED STATES; and
No. 00–7097. KELLY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 211 F. 3d 13.

No. 00–835. MORSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 210 F. 3d 380.

No. 00–840. BROWN *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 00–841. MARKHAM ET AL. *v.* COMSTOCK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 95 N. Y. 2d 886, 738 N. E. 2d 781.

No. 00–847. JOHNSON ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1357.

No. 00–857. MAJESKE ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 816.

No. 00–859. ALLERHEILIGEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–865. DUNCAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 53 M. J. 494.

No. 00–875. PRITT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 47.

No. 00–877. KESSLER *v.* CRICHTON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1342.

No. 00–885. SANFORD ET AL. *v.* GARDENOUR. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 659.

No. 00–887. JACKSON *v.* COHEN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–890. REED *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 37.

No. 00–892. CORUGEDO PARTAGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 233 F. 3d 579.

No. 00–894. MCKINNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–897. GALAN, AKA PRADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–899. HAAS *v.* DAIMLERCHRYSLER CORP. ET AL. Ct. App. Minn. Certiorari denied. Reported below: 611 N. W. 2d 382.

No. 00–900. FULTZ *v.* ABB POWER T & D, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 374.

No. 00–901. HILTON *v.* CITY OF WHEELING ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 209 F. 3d 1005.

No. 00–903. BLITCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1357.

No. 00–912. FOWLKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–918. MANGIERI *v.* MANGIERI, EXECUTOR OF THE ESTATE OF MANGIERI. C. A. 1st Cir. Certiorari denied. Reported below: 226 F. 3d 1.

No. 00–5029. LEGREE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 724.

No. 00–5446. MARTINEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 743.

No. 00–5485. CORTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 847.

No. 00–5529. ALAHMAD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 538.

No. 00–5532. FELIPE GERMOSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1324.

No. 00–5591. VILLARREAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 645.

No. 00–5666. Perez Davila *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 00–5758. Broseh *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 594.

No. 00–5774. Stafford *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 00–5915. Engram *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 341 Ark. 196, 15 S. W. 3d 678.

No. 00–5937. Leonard *v.* Cornyn, Attorney General of Texas, et al. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 47 S. W. 3d 524.

No. 00–5946. Grimaldo *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 214 F. 3d 967.

No. 00–5976. Bell *v.* Reno, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 218 F. 3d 86.

No. 00–6020. Jones *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 191 Ill. 2d 354, 732 N. E. 2d 573.

No. 00–6051. Risley *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–6139. Hebert *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–6184. Soto *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 220 F. 3d 591.

No. 00–6298. Cosco et al. *v.* Uphoff et al. C. A. 10th Cir. Certiorari denied. Reported below: 195 F. 3d 1221.

No. 00–6302. Morales-Ramirez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–6330. Travis *v.* Alabama. Sup. Ct. Ala. Certiorari denied. Reported below: 776 So. 2d 874.

No. 00–6335. Hampton *v.* Madding, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 894.

No. 00–6347. SIMPSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1357.

No. 00–6392. LINES *v.* LARKINS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 208 F. 3d 153.

No. 00–6444. HUFF *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 762 So. 2d 476.

No. 00–6448. GRIFFITH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 236 Wis. 2d 48, 613 N. W. 2d 72.

No. 00–6459. RILEY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 00–6494. BYRD *v.* COLLINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 209 F. 3d 486.

No. 00–6559. STORBECK *v.* SAKS FIFTH AVENUE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 764.

No. 00–6563. LAU *v.* SULLIVAN COUNTY DISTRICT ATTORNEY ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 264 App. Div. 2d 912, 696 N. Y. S. 2d 248.

No. 00–6564. BLACKWELL *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 00–6570. PALACIO *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6572. MORRIS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 24 S. W. 3d 788.

No. 00–6576. JENKINS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6581. PIGGIE *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 00–6584. SUTTON *v.* HUTCHINSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 840.

No. 00–6585. SEIFERT *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–6587. RAEL *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 223 F. 3d 1153.

No. 00–6589. MENSAH *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA (NORRELL TEMP AGENCY). Commw. Ct. Pa. Certiorari denied. Reported below: 716 A. 2d 707.

No. 00–6590. ZAMBRANO *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–6592. G. W. *v.* EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES. Ct. App. Colo. Certiorari denied.

No. 00–6594. WALCK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 638.

No. 00–6596. VORA *v.* KOVACS ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–6598. LUMAN *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–6602. PRITCHETT *v.* SMITH. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–6603. NUBINE *v.* MARTIN. C. A. 10th Cir. Certiorari denied.

No. 00–6604. THOMAS *v.* JOHNSTON, JUDGE, SUPERIOR COURT OF GEORGIA, MUSCOGEE COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 417.

No. 00–6614. MARTINEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–6615. SEPEDA *v.* DENSFORD. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 584.

No. 00–6617. KEYES *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–6622. LAWRENCE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 1, 530 S. E. 2d 807.

No. 00–6625. MILLAN *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 203.

No. 00–6626. CAMPBELL *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 209 F. 3d 280.

No. 00–6629. BARRY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–6632. BARNETT *v.* FANELLO, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1137.

No. 00–6638. MOORE *v.* COUNTY OF COOK, DBA COOK COUNTY HOSPITAL. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1339.

No. 00–6642. ODOMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6643. PETERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 770 So. 2d 160.

No. 00–6649. RUSSELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–6652. EASTON *v.* SUTTER COAST HOSPITAL ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 80 Cal. App. 4th 485, 95 Cal. Rptr. 2d 316.

No. 00–6659. STEELE *v.* BEARY ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6662. BEEDLES *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1333.

No. 00–6664. COLEMAN *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 309 Ill. App. 3d 1095, 764 N. E. 2d 609.

No. 00–6666. EDMOND *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 653.

No. 00–6668. ADDLEMAN *v.* LEHMAN, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6678. STEELMAN *v.* ALAMEIDA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6679. HALL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 00–6681. GRIMES *v.* MUELLER. Ct. App. Colo. Certiorari denied.

No. 00–6688. HOWLE *v.* WARD, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 408.

No. 00–6690. MANLEY *v.* MARICOPA COUNTY SHERIFF'S OFFICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 663.

No. 00–6691. KELLEY *v.* WYANT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–6704. JONES *v.* ALLEN COUNTY, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–6708. HARRIS *v.* PRESTON SCHOOL OF INDUSTRY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 205 F. 3d 1351.

No. 00–6709. GRANTLAND *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 796 So. 2d 448.

No. 00–6718. NELSON *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–6719. PITRE *v.* JAMES ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–6726. WILLIAMS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 748 A. 2d 780.

No. 00–6728. KILLICK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6730. STANLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 754 A. 2d 23.

No. 00–6731. PITTMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6733. COLON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 747 A. 2d 410.

No. 00–6735. REYNOSO *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6737. BROWN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–6741. MITCHELL *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6747. DURAN *v.* WOODS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–6750. GOMEZ HERNANDEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 593.

No. 00–6751. HINTON *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–6752. GANDOLFO *v.* FOUNTAIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–6758. JACKSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6766. KIBLER *v.* WALTERS. C. A. 9th Cir. Certiorari denied. Reported below: 220 F. 3d 1151.

No. 00–6767. LAWRENCE *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1152.

No. 00–6778. STEPHENSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 840.

No. 00–6784. MARSHALL *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 649.

No. 00–6787. MOORE *v.* IOWA BEEF PROCESSORS, INC. Sup. Ct. Kan. Certiorari denied.

No. 00–6789. RIEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 1153, 998 P. 2d 969.

No. 00–6792. TOLLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6793. SOTOMAYOR *v.* MOORE, ACTING ADMINISTRATOR, EAST JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 00–6794. MACKEY *v.* DUTTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 217 F. 3d 399.

No. 00–6796. LAVENDER *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6803. SANTIAGO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 748 A. 2d 1254.

No. 00–6807. PACE *v.* HICKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–6809. TRAINER *v.* STILLS. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 645, 533 S. E. 2d 695.

No. 00–6810. VAUGHN *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6811. WILLIAMS *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 00–6812. WELLMAN *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 49 Mass. App. 1114, 735 N. E. 2d 1269.

No. 00–6814. WARE *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6816. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6817. BAILEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–6819. BAXTER *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1162.

No. 00–6820. MARTINEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–6821. PHILLIPS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–6823. LOZANO *v.* SUPREME COURT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6826. BOPPRE *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 00–6829. DESKOVIC *v.* MANN, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 354.

No. 00–6834. MCBRIDE *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–6836. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–6838. DAVIDSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6839. CARSON *v.* GOMEZ, WARDEN, ET AL. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 14 S. W. 3d 778.

No. 00–6841. SADLER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 00–6842. SASS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–6844. BURT *v.* TIME WARNER, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 213 F. 3d 641.

No. 00–6845. WRIGHT *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 769 So. 2d 387.

No. 00–6847. BUGGS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6852. FIELDS *v.* TYSON FOODS ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6853. MACHACEK *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 213 F. 3d 947.

No. 00–6857. GUIRGUIS *v.* CPC ALAHAMBRA HOSPITAL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–6860. MILANOVICH *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–6864. ARENCIBIA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–6865. CARSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6866. DE'OLIVEIRA *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6869. MCCARVER *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 221 F. 3d 583.

No. 00–6875. WATLEY *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 218 F. 3d 1156.

No. 00–6876. TAQWIIM, AKA ROPER *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1154.

No. 00–6879. SINAI *v.* MASSACHUSETTS DEPARTMENT OF SOCIAL SERVICES. App. Ct. Mass. Certiorari denied. Reported below: 49 Mass. App. 1114, 735 N. E. 2d 1269.

No. 00–6880. PALMER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–6881. JONES *v.* POWELL ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6883. ROSS *v.* FRAMINGHAM SCHOOL COMMITTEE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 229 F. 3d 1133.

No. 00–6884. SANCHEZ *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6885. REYNOLDS *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 00–6886. BABICK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 00–6892. TIDLUND *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–6893. THOMASON *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–6894. WASHINGTON *v.* LOUISIANA STATE BOARD OF PRIVATE SECURITY EXAMINERS. C. A. D. C. Cir. Certiorari denied.

No. 00–6901. JONES *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6903. MILLER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 1079.

No. 00–6904. RUDD *v.* POLSNER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1153.

No. 00–6905. SCHEXNAYDER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–6906. STOKES *v.* FONTENOT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 642.

No. 00–6909. GLASS *v.* DOUGLAS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1358.

No. 00–6914. HAMMON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 999 P. 2d 1082.

No. 00–6915. SMITH *v.* FRANK, DEPUTY SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON. C. A. 3d Cir. Certiorari denied.

No. 00–6918. JONES *v.* CATOE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 631.

No. 00–6921. ROBERTS *v.* WIGGINS ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–6922. KERNS *v.* GARNER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–6923. LUANHASA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 00–6924. PARKER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 584.

No. 00–6926. LEMONS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 87, 530 S. E. 2d 542.

No. 00–6927. JENKINS *v.* METROPOLITAN OPERA ASSN., INC. C. A. 2d Cir. Certiorari denied. Reported below: 213 F. 3d 626.

No. 00–6929. ERDHEIM *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6930. COOPER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6932. SORCE *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–6934. NOPPENBERGER *v.* NORTHROP GRUMMAN OCEANIC DIVISION. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1320.

No. 00–6935. BIRDSONG *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–6939. SPENCER *v.* CASTERLINE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 210.

No. 00–6942. SHIVAEE *v.* CUBE. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 655.

No. 00–6943. BARTELL *v.* FRANCIS MARION UNIVERSITY ET AL. Ct. App. S. C. Certiorari denied.

No. 00–6944. BAGBY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–6945. BUCHANAN *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. S. C. Certiorari denied.

No. 00–6948. AYERS *v.* SPARKMAN, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–6950. BANKS *v.* PIZZINGRILLI, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 564 Pa. 1, 764 A. 2d 1.

No. 00–6954. DUARTE-VESTAR *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 00–6956. CHAMBERS *v.* BLACKWELL, FORMER SENIOR JUDGE, CIRCUIT COURT OF MISSOURI, 23RD CIRCUIT. Sup. Ct. Mo. Certiorari denied.

No. 00–6957. CIPRIANI *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 267 App. Div. 2d 595, 701 N. Y. S. 2d 127.

No. 00–6959. DUNNING *v.* FAMILY INDEPENDENCE AGENCY. Ct. App. Mich. Certiorari denied.

No. 00–6961. BARWICK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 752 A. 2d 418.

No. 00–6962. DYER *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6964. CHESHIRE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6965. CARAIG *v.* DUNN ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–6966. EDWARDS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 805 So. 2d 796.

No. 00–6968. POMPA *v.* TAYLOR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–6971. OVERSON *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 895.

No. 00–6975. ANTONIO LOMAS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–6976. JONES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 839.

No. 00–6978. LOCKLAIR *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 341 S. C. 352, 535 S. E. 2d 420.

No. 00–6979. LOPEZ *v.* LYTLE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–6986. ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 848.

No. 00–6994. PAYNE-EL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 00–7002. ORGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1356.

No. 00–7005. ROMERO-GONZALEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–7013. BURKHARDT *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7016. SIEMSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–7017. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1340.

No. 00–7018. SORENSEN *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 6 P. 3d 657.

No. 00–7020. SMITH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 00–7023. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–7024. MACCADO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 225 F. 3d 766.

No. 00–7025. MARRIOTT, AKA LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–7027. WOODS *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA; and WOODS *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7030. ABE *v.* MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1150.

No. 00–7032. MCDEID *v.* O'KEEFE, MINNESOTA COMMISSIONER OF HUMAN SERVICES. Ct. App. Minn. Certiorari denied.

No. 00–7033. ZARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–7037. WADE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7039. BEELER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–7043. GREEN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–7044. HOWLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–7045. IGLESIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7046. HENRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1139.

No. 00–7047. HARRIS *v.* RADFORD STUDIO CENTERS, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–7048. CRUZ-PONCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 869.

No. 00–7049. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 224 F. 3d 530.

No. 00–7050. THEODORE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7051. WILLIAMS *v.* WIRTS. Sup. Ct. Ga. Certiorari denied.

No. 00–7053. MARSH *v.* NEWTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–7054. O'BRIEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–7058. NICKERSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 796 So. 2d 462.

No. 00–7059. SAGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 227 F. 3d 1138.

No. 00–7060. MALINOWSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–7061. MANTILLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 372.

No. 00–7062. SCALLIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1323.

No. 00–7064. MCDOW *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 207.

No. 00–7068. SALAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–7069. CARLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 986.

No. 00–7072. FISHER *v.* LEE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 438.

No. 00–7073. SHIFFLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–7075. STANSEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7076. RAMOS-PACHECO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 185 F. 3d 871.

No. 00–7077. RUDD *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1353.

No. 00–7080. MORENO-CERNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–7082. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1266.

No. 00–7084. OMOSEFUNMI *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 1st Cir. Certiorari denied. Reported below: 229 F. 3d 1133.

No. 00–7090. RAMIREZ-VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–7093. PERRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–7095. LEMMONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 230 F. 3d 263.

No. 00–7098. LOPEZ-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7105. PATINO-LULE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 208.

No. 00–7108. BENNETT *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–7110. SORTO-GUZMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 207.

No. 00–7113. ROMERO-FELIX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–7115. ADUSEI, AKA DANSO, ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–7116. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 215 F. 3d 820.

No. 00–7117. SIMMONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 692.

No. 00–7119. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7121. THOMAS *v.* BOARD OF EDUCATION FOR THE SCHOOL DISTRICT OF PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1077.

No. 00–7123. RHUDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 1480.

No. 00–7124. PETERSON *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 889.

No. 00–7125. NAJARZADEH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–7127. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 220 F. 3d 589.

No. 00–7129. WILSON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 777 So. 2d 935.

No. 00–7138. JONES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 00–7143. SCANGA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 225 F. 3d 780.

No. 00–7145. CAMARILLO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 211.

No. 00–7147. IZAGUIRRE-LOSOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 219 F. 3d 437.

No. 00–7151. SANCHEZ-ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 209.

No. 00–7152. BEMORE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 809, 996 P. 2d 1152.

No. 00–7155. MAXIM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 213.

No. 00–7156. MACKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 218 F. 3d 263.

No. 00–7161. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1299.

No. 00–7163. WISEMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 903.

No. 00–7164. AHANOTU *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7166. JOHNSTON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 25 S. W. 3d 58.

No. 00–7170. MAYNARD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 750 A. 2d 371.

No. 00–7172. LEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 F. 3d 939.

No. 00–7174. SEALED JUVENILE 1 *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 F. 3d 507.

No. 00–7175. PIERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–7176. PRICE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 230 F. 3d 1349.

No. 00–7182. STEPHENS *v.* ROBINSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–7184. DUNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1159.

No. 00–7185. CHAVARRIA-ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 211.

No. 00–7187. CENDEJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1278.

No. 00–7188. CHRISTMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 222 F. 3d 141.

No. 00–7192. ROBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–7194. SOTO-HERRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7197. SANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 587.

No. 00–7200. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 597.

No. 00–7204. MATHIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 216 F. 3d 18.

No. 00–7207. BROWN *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 00–7210. RAMIREZ-TOVAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 216 F. 3d 1085.

No. 00–7212. WARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 F. 3d 457.

No. 00–7213. TAPIA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 211.

No. 00–7214. WILSON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–7216. WOODEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 843.

No. 00–7219. AGUILAR-CABALLERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 F. 3d 574.

No. 00–7220. SOUTHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 221 F. 3d 626.

No. 00–7221. BOBB *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 758 A. 2d 958.

No. 00–7222. BLAND *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 4 P. 3d 702.

No. 00–7223. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 1243.

No. 00–7224. HAMBRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–7226. HUBERTY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 53 M. J. 369.

No. 00–7227. IZQUIERDO-SALAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 208.

No. 00–7228. HILL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 234 F. 3d 1274.

No. 00–7229. GARCIA-SEGURA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 208.

No. 00–7230. GULLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–7231. HELBLING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 209 F. 3d 226.

No. 00–7233. GALICIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–7234. FINITZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1278.

No. 00–7235. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 646.

No. 00–7236. EDWARDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 225 F. 3d 991.

No. 00–7237. BRASHARS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 25 S. W. 3d 58.

No. 00–7238. PLASCENCIA-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 550.

No. 00–7240. KENT *v.* OHIO. Ct. App. Ohio, Crawford County. Certiorari denied.

No. 00–7244. KYLE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 759 A. 2d 192.

No. 00–7246. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 F. 3d 556.

No. 00–7248. VALENCIA-BURGOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7250. HARVEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 664.

No. 00–7251. LUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7254. PORTWOOD *v.* ARIZONA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 383.

No. 00–7266. LINDNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–7268. ACOSTA-GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 1266.

No. 00–7271. KITCHENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1355.

No. 00–7272. JACKSON *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–7274. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1335.

No. 00–7276. OROPEZA-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7277. OSORIO-ANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7278. AYTCH *v.* KUPEC ET AL. C. A. 4th Cir. Certiorari denied.

No. 00–7286. GALL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 356 and 211 F. 3d 1.

No. 00–7287. KING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1364.

No. 00–7299. MILES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–7300. NORRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 00–7302. BALTHAZAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1321.

No. 00–7307. GARCIA-ENRIQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–7308. HUNTER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 254 F. 3d 316.

No. 00–7309. IBARRA-GALINDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 206 F. 3d 1337.

No. 00–7313. HERNANDEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 F. 3d 782.

No. 00–7315. HUGHEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–7319. GOLDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–7320. GALVEZ-VILLALOBOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 209.

No. 00–7321. HARGROVE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–7322. GREENE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7325. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 211.

No. 00–7328. ROSENGARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 225 F. 3d 54.

No. 00–7331. MOODY *v.* ARIZONA. Super. Ct. Ariz., Pima County. Certiorari denied.

No. 00–7333. WESTCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7350. COLLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 502.

No. 00–7351. CEBALLOS-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 409.

No. 00–7354. MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–7356. GONZALEZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7357. DOE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 226 F. 3d 672.

No. 00–7364. RAMON HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 218 F. 3d 58.

No. 00–7368. BENTLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7372. ELLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 211 F. 3d 356.

No. 00–7374. NORWOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1138.

No. 00–7390. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1142.

No. 00–7398. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7403. FITZGERALD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–7404. HIPPOLYTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7416. FORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 207 F. 3d 658.

No. 00–7419. HUNTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1349.

No. 00–7428. MUMFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1355.

No. 00–7430. DUTTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1278.

No. 00–7433. REED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 220 F. 3d 476.

No. 00–7434. KALU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1322.

No. 00–7437. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–7440. WILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–500. KOENIG ET AL. *v.* FUGRO-MCCLELLAND (SOUTHWEST), INC., ET AL. C. A. Fed. Cir. Motion of petitioners for leave to lodge Magistrate's memorandum and recommendation under seal granted. Certiorari denied. Reported below: 250 F. 3d 756.

No. 00–553. SHINWARI *v.* RAYTHEON AIRCRAFT CO. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 215 F. 3d 1337.

No. 00–656. KAPLAN *v.* CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS) ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 221 F. 3d 1348.

No. 00–801. SIMON *v.* VALUE BEHAVIORAL HEALTH INC. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 208 F. 3d 1073.

No. 00–581. CBS, INC., ET AL. *v.* BELLAS. C. A. 3d Cir. Motion of ERISA Industry Committee et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 221 F. 3d 517.

No. 00–679. WASHINGTON *v.* KINZY. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 141 Wash. 2d 373, 5 P. 3d 668.

No. 00–692. TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS *v.* PATTERSON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 223 F. 3d 959.

No. 00–686. NEIDIG, DIRECTOR, OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES *v.* NATIONAL WARRANTY INSURANCE CO., RRG. C. A. 9th Cir. Motion of National Association of Insurance Commissioners for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 214 F. 3d 1073.

No. 00–701. CITY OF SIMI VALLEY *v.* YOUNG. C. A. 9th Cir. Motion of 211 Alpine Street, LLC, for leave to file a brief as *amicus curiae* out of time granted. Certiorari denied. Reported below: 216 F. 3d 807.

No. 00–707. GOLDHAMER *v.* COHEN. Sup. Ct. Va. Motion of Children's Rights Counsel for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 00–7102. SCHOPPER *v.* REHNQUIST, CHIEF JUSTICE OF THE UNITED STATES, ET AL. C. A. 7th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 99–2045. EL SHAHAWY *v.* SARASOTA COUNTY PUBLIC HOSPITAL BOARD, *ante*, p. 825;

No. 99–2087. IN RE BULLARD, *ante*, p. 809;

No. 99–9368. BARNWELL *v.* COWAN, WARDEN, *ante*, p. 991;

No. 99–9542. LANCASTER *v.* CALBONE, WARDEN, *ante*, p. 836;

No. 99–9923. RICHARDSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 851;

No. 99–9954. COLLINS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, *ante*, p. 852;

No. 99–9983. R. M. C. *v.* GEORGIA BOARD TO DETERMINE FITNESS OF BAR APPLICANTS, *ante*, p. 854;

No. 99–10183. HARRIS *v.* KAYLO, WARDEN, *ante*, p. 865;

No. 99–10199. DUFRENE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 866;

No. 00–140. UNIVERSAL BANCARD SYSTEMS, INC. *v.* BANKCARD AMERICA, INC., ET AL., *ante*, p. 877;

No. 00–155. WHITEHORN *v.* TURNER ET AL., CO-EXECUTORS OF THE ESTATE OF TURNER, *ante*, p. 878;

No. 00–579. FOXX *v.* DANZIG, SECRETARY OF THE NAVY, *ante*, p. 993;

No. 00–681. CALHOUN ET UX. *v.* YAMAHA MOTOR CORP., U. S. A., ET AL., *ante*, p. 1037;

No. 00–5221. MUNOZ *v.* UNITED STATES, *ante*, p. 892;

No. 00–5361. GRINOLS *v.* BROWN ET AL., *ante*, p. 900;

No. 00–5428. RICH *v.* COOPERVISION, INC., ET AL., *ante*, p. 961;

No. 00–5727. CARTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 948;

No. 00–5734. DO-NGUYEN *v.* MESA VIEW HOMEOWNERS ASSN. ET AL., *ante*, p. 952;

No. 00–5744. CARMONA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 913;

No. 00–5751. QUEVEDO *v.* MEAKER, *ante*, p. 961;

No. 00–5775. SIMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 950;

No. 00–5780. CLEFF *v.* BROYLES, WARDEN, *ante*, p. 950;

No. 00–5823. DAVIES *v.* MCCAUGHTRY, WARDEN, *ante*, p. 962;

No. 00–5849. WHITFIELD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 963;

No. 00–5881. DYSON *v.* CAIN, WARDEN, *ante*, p. 964;

No. 00–5891. METCALF *v.* MONROE COUNTY SHERIFF'S DEPARTMENT ET AL., *ante*, p. 965;

No. 00–5898. WAGNOON *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, *ante*, p. 965;

No. 00–6025. BRUTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 981;

No. 00–6040. WHITLEY *v.* HALL ET AL., *ante*, p. 995;

No. 00–6097. KINGS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 982;

No. 00–6098. MASON *v.* NORWEST BANK ET AL., *ante*, p. 996;

No. 00–6181. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 982;

No. 00–6220. TEACHERSON *v.* PATENT AND TRADEMARK OFFICE, *ante*, p. 997;

No. 00–6393. DANIEL *v.* UNITED STATES, *ante*, p. 998;

No. 00–6607. PHILLIPS *v.* UNITED STATES, *ante*, p. 1023;

No. 00–6770. WHITEHEAD *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, *ante*, p. 1027; and

No. 00–6775. CRUTHIRD *v.* MASSACHUSETTS, *ante*, p. 1027. Petitions for rehearing denied.

No. 00–149. MCKENZIE ET AL. *v.* REHNQUIST, CHIEF JUSTICE OF THE UNITED STATES, ET AL., *ante*, p. 919. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 00–278. CHANG *v.* FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK, *ante,* p. 957; and

No. 00–474. STOVE *v.* PHILADELPHIA SCHOOL DISTRICT, *ante,* p. 1012. Motions of petitioners for leave to proceed further herein *in forma pauperis* granted. Petitions for rehearing denied.

JANUARY 11, 2001

Miscellaneous Orders

No. 00A605. ALLEN *v.* OKLAHOMA PARDON AND PAROLE BOARD ET AL. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied.

No. 00–7866 (00A597). IN RE GLOCK. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 00–7843 (00A593). GLOCK *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 776 So. 2d 243.

JANUARY 12, 2001

Dismissal Under Rule 46

No. 00–46. MURPHY *v.* BECK, SUCCESSOR AGENT FOR SOUTHEAST BANK, N. A. C. A. 11th Cir. [Certiorari granted, 530 U. S. 1306.] Writ of certiorari dismissed under this Court's Rule 46.1.

Certiorari Granted

No. 00–767. IMMIGRATION AND NATURALIZATION SERVICE *v.* ST. CYR. C. A. 2d Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 26, 2001. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 28, 2001. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 16, 2001. This Court's Rule 29.2 is suspended in this case. Reported below: 229 F. 3d 406.

No. 00–1011. CALCANO-MARTINEZ ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 26, 2001. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 28, 2001. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 16, 2001. This Court's Rule 29.2 is suspended in this case. Reported below: 232 F. 3d 328.

JANUARY 16, 2001

Certiorari Granted—Vacated and Remanded

No. 99–1688. KLEVE *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Fiore* v. *White*, *ante*, p. 225. Reported below: 185 F. 3d 1009.

No. 99–1693. WITZEL ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gitlitz* v. *Commissioner*, *ante*, p. 206. Reported below: 200 F. 3d 496.

No. 99–2008. HOUSTON, WARDEN *v.* KILPATRICK. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lopez* v. *Davis*, *ante*, p. 230. Reported below: 197 F. 3d 1134.

No. 99–8840. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Glover* v. *United States*, *ante*, p. 198. Reported below: 196 F. 3d 748.

No. 00–18. BOOKER, WARDEN *v.* WARD ET AL. C. A. 10th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lopez* v. *Davis*, *ante*, p. 230. Reported below: 202 F. 3d 1249.

No. 00–459. GAUDIANO ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari granted, judgment va-

cated, and case remanded for further consideration in light of *Gitlitz* v. *Commissioner*, *ante*, p. 206. Reported below: 216 F. 3d 524.

No. 00–550. STEYSKAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 221 F. 3d 1345.

No. 00–5296. DORE *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 200 F. 3d 819.

No. 00–6515. GRIFFITHS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 194 F. 3d 1322.

No. 00–6520. COLE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari as to Rawle Anthony Cole granted. Judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Certiorari as to Stacy Lature Hayden and Shanreca Lashon Crawford denied. Reported below: 217 F. 3d 841.

No. 00–6571. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 216 F. 3d 1091.

Certiorari Dismissed

No. 00–7126. AMIRI *v.* SAFEWAY, INC. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule

33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. D–2205. IN RE DISBARMENT OF FREDENBERGER. William Erwin Fredenberger, Jr., of Stafford, Va., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 30, 2000 [*ante,* p. 954], is discharged.

No. D–2210. IN RE DISBARMENT OF SIMMONS. Disbarment entered. [For earlier order herein, see *ante,* p. 977.]

No. D–2231. IN RE DISBARMENT OF MCFLYNN. Timothy B. McFlynn, of Aspen, Colo., 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.

No. 00–6374. BECKER *v.* MONTGOMERY, ATTORNEY GENERAL OF OHIO, ET AL. C. A. 6th Cir. [Certiorari granted, *ante,* p. 1069.] The order granting the petition for writ of certiorari is amended to read as follows: Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?" Stewart A. Baker, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

No. 00–6419. WHITEHEAD *v.* PARAMOUNT PICTURES CORP. ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1033] denied.

No. 00–6507. LECHE *v.* TANOU, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 6, 2001, 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.

No. 00–7568. IN RE WIMBISH;
No. 00–7585. IN RE SCHIMBERG; and
No. 00–7595. IN RE PHILLIPS. Petitions for writs of habeas corpus denied.

No. 00–6984. IN RE COTHRUM;
No. 00–6999. IN RE WILLIAMS;
No. 00–7041. IN RE CORNELIUS; and
No. 00–7078. IN RE ROUX. Petitions for writs of mandamus denied.

No. 00–6974. IN RE MACIEL. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Certiorari Denied. (See also No. 00–6520, *supra.*)

No. 99–1675. UNITED STATES *v.* FARLEY ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 202 F. 3d 198.

No. 99–7558. WALKER *v.* DAVIS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 186 F. 3d 1092.

No. 99–10159. GAVIS ET AL. *v.* HOOD, WARDEN; and
No. 99–10221. GRIER ET AL. *v.* HOOD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 202 F. 3d 1211.

No. 00–242. COMMISSIONER OF INTERNAL REVENUE *v.* PUGH ET UX. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 1324.

No. 00–277. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 415.

No. 00–381. CITY OF BRIDGETON *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 212 F. 3d 448.

No. 00–551. RUSSELL *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 647.

No. 00–571. HUCKABY ET AL. *v.* PENNSYLVANIA GENERAL INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 641.

No. 00–576. NORFOLK SHIPBUILDING & DRYDOCK CORP. *v.* FAULK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 228 F. 3d 378.

No. 00–586. WARE ET AL. *v.* HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 10 P. 3d 226.

No. 00–592. BENCI-WOODWARD ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 941.

No. 00–594. WAYMIRE *v.* NORFOLK & WESTERN RAILWAY CO. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 773.

No. 00–595. MAIER, MCILNAY & KERKMAN, LTD. *v.* BODENSTEIN, UNITED STATES TRUSTEE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 219 F. 3d 635.

No. 00–643. GREEN ET AL. *v.* CITY OF PLANO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–742. D'ELEGANCE MANAGEMENT LTD., INC. *v.* UNITED STATES FOR THE USE AND BENEFIT OF S & D LAND CLEARING ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 843.

No. 00–747. ALSAEED *v.* THORPE. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–749. ALFAIR DEVELOPMENT CO., INC., ET AL. *v.* CITY OF JACKSONVILLE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1170.

No. 00–755. SAN FRANCISCO BASEBALL ASSOCIATES L. P., DBA SAN FRANCISCO GIANTS, ET AL. *v.* RAVELO MONEGRO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 509.

No. 00–761. INDIANAPOLIS BAPTIST TEMPLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 224 F. 3d 627.

No. 00–765. VINSON ET AL. *v.* COLOM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 409.

No. 00–779. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* POLSTON. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1158.

No. 00–780. BOERSIG *v.* UNION ELECTRIC CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 219 F. 3d 816.

No. 00–783. THE PITT NEWS *v.* FISHER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 354.

No. 00–785. HABR *v.* WORLD SAVINGS AND LOAN ASSN. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–786. GATENA *v.* COUNTY OF ORANGE. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 649.

No. 00–791. BASTROP COUNTY *v.* JANES. C. A. 5th Cir. Certiorari denied. Reported below: 215 F. 3d 541.

No. 00–796. BOON INSURANCE AGENCY *v.* AMERICAN AIRLINES, INC., ET AL. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 17 S. W. 3d 52.

No. 00–803. MEDLOCK *v.* WOOD. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1348.

No. 00–804. OSBORNE, ADMINISTRATRIX OF THE ESTATE OF OSBORNE, DECEASED *v.* CAMBRIDGE TOWNSHIP. Commw. Ct. Pa. Certiorari denied. Reported below: 736 A. 2d 715.

No. 00–806. VADIE *v.* MISSISSIPPI STATE UNIVERSITY. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 365.

No. 00–823. OGATA ET VIR *v.* J. G. CONSTRUCTION CO., INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–867. CLARK *v.* SLATER, SECRETARY OF TRANSPORTATION. C. A. D. C. Cir. Certiorari denied.

No. 00–898. HASKINS *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 231.

No. 00–905. ALBERS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 226 F. 3d 989.

No. 00–922. BARROW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–926. GARDNER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 211 F. 3d 1305.

No. 00–935. CONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 416.

No. 00–954. JOHNSON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 00–956. GEALER *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1348.

No. 00–970. LORENZO-PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 225 F. 3d 17.

No. 00–6137. HART *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 212 F. 3d 1067.

No. 00–6264. MALDONADO-RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 940.

No. 00–6400. LEAR *v.* COWAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 220 F. 3d 825.

No. 00–6486. MYNARCIK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 897.

No. 00–6522. BYRNE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 671.

No. 00–6544. CEPERO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 224 F. 3d 256.

No. 00–6639. KUENZEL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 805 So. 2d 783.

No. 00–6800. CHANDLER *v.* RAYTHEON EMPLOYEES DISABILITIES TRUST ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 229 F. 3d 1133.

No. 00–6911. HYDE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 37, 530 S. E. 2d 281.

No. 00–6983. TRICE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–6987. ALI *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–6993. LAZARD *v.* EAST LOUISIANA STATE HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1341.

No. 00–7003. PICO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–7008. O'NEAL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7009. NORELLI *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7019. SMITH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–7026. KIRKNER *v.* WILSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7029. BAILEY *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–7034. ZAWAADI *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1155.

No. 00–7042. HAYES *v.* MOUNTAIN COMPREHENSIVE CARE CENTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 659.

No. 00–7052. LOHEAC *v.* POOLE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1367.

No. 00–7055. WARE *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 360 Md. 650, 759 A. 2d 764.

No. 00–7056. PARROTT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–7057. YOUNG *v.* SAGER ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–7065. JEFFRIES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 510, 530 S. E. 2d 714.

No. 00–7074. RUFFIN *v.* CHAPMAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–7079. SPENCER *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–7081. PRIDE *v.* WARD, SUPERINTENDENT, AVON PARK CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7083. LABOY *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–7086. VICTORY *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–7087. WALKER *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7088. WRIGHT *v.* DEES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7091. CLARK *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 214 F. 3d 315.

No. 00–7094. PAREDES *v.* JOHNSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1359.

No. 00–7099. MILLER *v.* LOJAC ENTERPRISES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1153.

No. 00–7104. ROMINE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 00–7107. BARAHL *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7112. PADILLA *v.* DORSEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–7118. WATLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7120. WILKINS *v.* FRIES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1089.

No. 00–7122. POWELL *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7130. MANUEL VASQUEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7232. GEORGE *v.* HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1157.

No. 00–7261. ZAMARRIPA *v.* BUSALAKI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1365.

No. 00–7283. CHILDS *v.* DANZIG, SECRETARY OF THE NAVY. C. A. 3d Cir. Certiorari denied. Reported below: 230 F. 3d 1348.

No. 00–7314. GANGALE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–7358. HARRIS *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 00–7369. EDGAR *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7380. ENGLISH *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 00–7386. QUANG LY TRAN *v.* KONTEH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1360.

No. 00–7414. HENSON *v.* BROMFIELD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 205 F. 3d 1333.

No. 00–7421. HARVEY *v.* ROTH. C. A. 7th Cir. Certiorari denied.

No. 00–7432. REYES-PLATERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 224 F. 3d 1112.

No. 00–7488. BLAKENEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 287, 531 S. E. 2d 799.

No. 00–361. MICHAELS *v.* MCGRATH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 222 F. 3d 118.

JUSTICE THOMAS, dissenting.

Petitioner Margaret Michaels worked as a teacher's aide in a nursery school in Maplewood, New Jersey. Shortly after petitioner left the school, one of the children (then four years old) made a comment that a nurse in his pediatrician's office interpreted as an allegation of sexual abuse. See *State* v. *Michaels*, 264 N. J. Super. 579, 591, 625 A. 2d 489, 495 (1993). The physician examined the child but found no evidence of abuse. Nonetheless, based solely on the child's statements, a prosecutor and several investigators, respondents here, began an extensive investigation. Respondents interviewed virtually all of the children with whom petitioner could have had contact. Employing peer pressure, making threats, and asking leading or suggestive questions, they obtained stories of sexual abuse that "ranged from relatively minor accounts of touching to virtually incomprehensible heinous and bizarre acts." *Id.*, at 592, 625 A. 2d, at 495. After a 9-month trial petitioner was convicted of 115 counts and sentenced to 47 years in prison.

After petitioner had served five years of her sentence, a New Jersey appellate court reversed her conviction on the ground that respondents' investigative techniques were improper. See *id.*, at 620–635, 625 A. 2d, at 510–519. As the court noted, even respondents apparently realized that their interrogation techniques "caused certain children to use their imagination and stray from reality." *Id.*, at 621, 625 A. 2d, at 511. The New Jersey Supreme Court affirmed, holding that "the interviews of the children were highly improper and employed coercive and unduly suggestive methods." *State* v. *Michaels*, 136 N. J. 299, 315, 642 A. 2d 1372, 1380 (1994). It pointed out that "[t]he interrogations undertaken in the course of this case utilized most, if not all, of the practices that are disfavored or condemned by experts, law enforcement authorities and government agencies." *Id.*, at 313, 642 A. 2d, at 1379.

Petitioner then brought this action against respondents under Rev. Stat. § 1979, 42 U. S. C. § 1983. The District Court granted respondents' motion to dismiss, see *Michaels* v. *New Jersey*, 50 F. Supp. 2d 353 (NJ 1999), and the Third Circuit affirmed, 222 F. 3d 118 (2000). The Third Circuit held that recovery was

barred because the coercion of child witnesses was a violation only of the *witnesses'* rights, and not of any right held by petitioner. And although petitioner's due process rights were violated when the testimony was used at trial, the court held that the presentation of testimony fell squarely within the doctrine of absolute prosecutorial immunity. See *id.*, at 121–122, citing *Imbler* v. *Pachtman*, 424 U. S. 409 (1976).

This view accords with that of the Seventh Circuit, see *Buckley* v. *Fitzsimmons*, 20 F. 3d 789 (1994), but it is in tension with the approach taken by at least two other Circuits. See, *e. g.*, *Clanton* v. *Cooper*, 129 F. 3d 1147 (CA10 1997); *Zahrey* v. *Coffey*, 221 F. 3d 342 (CA2 2000). In *Zahrey*, the Second Circuit took the position that a plaintiff does state a claim under § 1983 when he shows that prosecutorial misconduct in gathering evidence has led to a deprivation of his liberty. The intervention of a subsequent immunized act by the same officer does not break the chain of causation necessary for liability.

I believe that the Second Circuit's approach is very likely correct, and that the decision below leaves victims of egregious prosecutorial misconduct without a remedy. In any event, even if I did not have serious doubt as to the correctness of the decision below, I would grant certiorari to resolve the conflict among the Courts of Appeals on this important issue. I respectfully dissent.

No. 00–776. MORGAN STANLEY DEAN WITTER & CO. *v.* ROSKIND. Ct. App. Cal., 1st App. Dist. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 80 Cal. App. 4th 345, 95 Cal. Rptr. 2d 258.

No. 00–831. MAY *v.* HARRIS, SECRETARY OF STATE OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari before judgment denied.

No. 00–7022. ALFORD *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 99–9995. BAUTISTA RIVERA *v.* GREENE, *ante*, p. 992;

No. 99–10273. ANDERSON *v.* GENERAL MOTORS CORP., *ante*, p. 870;

No. 00–244. Russo, dba Jay Brokers *v.* Department of Agriculture, *ante*, p. 928;

No. 00–313. Adkins et ux. *v.* Uncle Bart's Inc., dba Uncle Bart's Club, et al., *ante*, p. 1011;

No. 00–368. Kissi *v.* Small Business Administration et al., *ante*, p. 960;

No. 00–5468. In re Stephens, *ante*, p. 809;

No. 00–6031. Burns-Bey *v.* Commissioner, Department of Corrections of Minnesota, *ante*, p. 981;

No. 00–6094. Richards *v.* Angelone, Director, Virginia Department of Corrections, *ante*, p. 982;

No. 00–6146. Sampson *v.* Citibank, F. S. B., et al., *ante*, p. 970;

No. 00–6183. White *v.* Porter, *ante*, p. 997;

No. 00–6281. Wallace *v.* North Carolina, *ante*, p. 1018;

No. 00–6323. Malekzadeh *v.* Texas Tech University et al., *ante*, p. 1020;

No. 00–6423. Jones *v.* Hubbard, Warden, *ante*, p. 1021;

No. 00–6618. Johnson *v.* Kemna, Superintendent, Crossroads Correctional Center, *ante*, p. 1023; and

No. 00–6825. Langworthy *v.* Maryland, *ante*, p. 1056. Petitions for rehearing denied.

January 18, 2001

Miscellaneous Order

No. 00–8000 (00A610). In re Smallwood. Application for stay of execution of sentence of death, presented to Justice Breyer, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 00–7584 (00A549). Goodwin *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied. Certiorari denied. Justice Stevens, Justice Souter, Justice Ginsburg, and Justice Breyer would grant the application for stay of execution. Reported below: 224 F. 3d 450.

JANUARY 19, 2001

Dismissal Under Rule 46

No. 00–1075. MOTIENT SERVICES INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 216 F. 3d 1154.

JANUARY 22, 2001

Dismissal Under Rule 46

No. 00–307. ALAMEDA GATEWAY, LTD. *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 213 F. 3d 1161.

Certiorari Granted—Vacated and Remanded

No. 00–5949. SMITH *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 218 F. 3d 744.

Certiorari Dismissed

No. 00–7160. ATRAQCHI ET UX. *v.* WILLIAMS, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. D–2213. IN RE DISBARMENT OF GAILEY. Disbarment entered. [For earlier order herein, see *ante*, p. 1007.]

No. D–2214. IN RE DISBARMENT OF HENDERSHOT. Disbarment entered. [For earlier order herein, see *ante*, p. 1007.]

No. D–2232. IN RE DISBARMENT OF ADAMS. David Michael Adams, of Charleston, S. C., 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.

No. D–2233. IN RE DISBARMENT OF MANDEL. Stewart Irwin Mandel, of University Heights, Ohio, 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.

No. D–2234. IN RE DISBARMENT OF LITTLE. Frank Edward Little, of Mercer, Pa., 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.

No. 00M58. SHIREY ET AL. *v.* CITY OF ALEXANDRIA SCHOOL BOARD. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of Colorado for leave to file a reply to the brief of the United States granted, and the parties are allowed to and including February 2, 2001, within which to file replies. Exceptions to the Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, *ante*, p. 1008.]

No. 99–1815. NATIONAL LABOR RELATIONS BOARD *v.* KENTUCKY RIVER COMMUNITY CARE, INC., ET AL. C. A. 6th Cir. [Certiorari granted, 530 U. S. 1304.] Motions of Service Employees International Union et al. and American Nurses Association for leave to file briefs as *amici curiae* granted.

No. 99–1848. BUCKHANNON BOARD & CARE HOME, INC., ET AL. *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. C. A. 4th Cir. [Certiorari granted, 530 U. S. 1304.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–2047. PALAZZOLO *v.* RHODE ISLAND ET AL. Sup. Ct. R. I. [Certiorari granted, *ante*, p. 923.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–152. LUJAN, LABOR COMMISSIONER OF CALIFORNIA, ET AL. *v.* G & G FIRE SPRINKLERS, INC. C. A. 9th Cir. [Certiorari granted *sub nom. Bradshaw* v. *G & G Fire Sprinklers, Inc.*, *ante*, p. 924.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1884. LACKAWANNA COUNTY DISTRICT ATTORNEY ET AL. *v.* COSS. C. A. 3d Cir. [Certiorari granted, *ante*, p. 923.] Motion of Colorado for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1977. SAUCIER *v.* KATZ ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 991.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 99–7791. ZADVYDAS *v.* DAVIS ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 923]; and

No. 00–38. HOLDER, ACTING ATTORNEY GENERAL, ET AL. *v.* KIM HO MA. C. A. 9th Cir. [Certiorari granted *sub nom. Reno* v. *Kim Ho Ma*, *ante*, p. 924.] Motion of respondent Kim Ho Ma and petitioner Kestutis Zadvydas for additional time for oral argument and for divided argument granted.

No. 00–6374. BECKER *v.* MONTGOMERY, ATTORNEY GENERAL OF OHIO, ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1069 and 1110.] Motion for appointment of counsel granted, and it is ordered that Jeffrey S. Sutton, Esq., of Columbus, Ohio, be appointed to serve as counsel for petitioner in this case.

No. 00–7425. IN RE KING. C. A. 4th Cir. Petition for writ of common-law certiorari denied. Reported below: 213 F. 3d 631.

No. 00–7629. IN RE WILLIAMS;

No. 00–7648. IN RE ALMONTE-NUNEZ; and

No. 00–7661. IN RE THOMAS. Petitions for writs of habeas corpus denied.

No. 00–7139. IN RE PEPPER;

No. 00–7150. IN RE JONES; and

No. 00–7471. IN RE BRODERICK. Petitions for writs of mandamus denied.

No. 00–7137. IN RE PAGE. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 00–795. HOLDER, ACTING ATTORNEY GENERAL, ET AL. *v.* FREE SPEECH COALITION ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 198 F. 3d 1083.

No. 99–1786. GREAT-WEST LIFE & ANNUITY INSURANCE CO. ET AL. *v.* KNUDSON ET AL. C. A. 9th Cir. Motions of Central States, Southeast and Southwest Areas Health and Welfare Fund and Self-Insurance Institute of America, Inc., for leave to file briefs as *amici curiae* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 208 F. 3d 221.

No. 00–507. CHICKASAW NATION *v.* UNITED STATES; and CHOCTAW NATION OF OKLAHOMA *v.* UNITED STATES. C. A. 10th Cir. Motion of Shakopee Mdewakanton Sioux (Dakota) Community et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 208 F. 3d 871 (first judgment); 210 F. 3d 389 (second judgment).

No. 00–511. VERIZON COMMUNICATIONS INC. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 00–555. WORLDCOM, INC., ET AL. *v.* VERIZON COMMUNICATIONS INC. ET AL.;

No. 00–587. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL.;

No. 00–590. AT&T CORP. *v.* IOWA UTILITIES BOARD ET AL.; and

No. 00–602. GENERAL COMMUNICATIONS, INC. *v.* IOWA UTILITIES BOARD ET AL. C. A. 8th Cir. Certiorari granted limited to the following questions: "(1) Whether the Court of Appeals erred in holding that 47 U. S. C. § 252(d)(1) (Telecommunications Act of 1996) forecloses the cost methodology adopted by the Federal Communications Commission, which is based on the efficient replacement cost of existing technology, for determining the interconnection rates that new entrants into local telecommunications markets must pay incumbent local telephone companies. (2) Whether the Court of Appeals erred in holding that neither the Takings Clause nor the Telecommunications Act of 1996 requires the incorporation of an incumbent local exchange carrier's 'historical' costs into the rates that it may charge new entrants for access to its network elements. (3) Whether 47 U. S. C. § 251(c)(3)

prohibits regulators from requiring that incumbent local telephone companies combine certain previously uncombined network elements when a new entrant requests the combination and agrees to compensate the incumbent for performing that task." Cases consolidated, and a total of one hour allotted for oral argument. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 219 F. 3d 744.

No. 00–832. NATIONAL CABLE & TELECOMMUNICATIONS ASSN., INC. *v.* GULF POWER CO. ET AL.; and

No. 00–843. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* GULF POWER CO. ET AL. C. A. 11th Cir. Motion of AT&T Wireless Services, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to the following questions: "(1) Whether those provisions of the Pole Attachments Act apply to attachments by cable television systems that are simultaneously used to provide high-speed Internet access and conventional cable television programming. (2) Whether those provisions of the Pole Attachments Act apply to attachments by providers of wireless telecommunications services no less than to attachments by providers of wireline telecommunications services." Cases consolidated, and a total of one hour allotted for oral argument. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and these petitions. Reported below: 208 F. 3d 1263.

Certiorari Denied. (See also No. 00–7425, *supra.*)

No. 99–1548. TURAY *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 139 Wash. 2d 379, 986 P. 2d 790.

No. 99–8629. CAMPBELL *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 139 Wash. 2d 341, 986 P. 2d 771.

No. 99–9855. RILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 1207.

No. 00–375. GREENVILLE COUNTY, SOUTH CAROLINA *v.* HARKINS ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 340 S. C. 606, 533 S. E. 2d 886.

No. 00–619. REGAL CINEMAS, INC. *v.* CITY OF MAYFIELD HEIGHTS ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 137 Ohio App. 3d 61, 738 N. E. 2d 42.

No. 00–674. JONES *v.* BAYER CORP. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 415.

No. 00–689. BOLTON, INDIVIDUALLY AND DBA MR. BOLTON'S MUSIC, INC., ET AL. *v.* THREE BOYS MUSIC CORP. C. A. 9th Cir. Certiorari denied. Reported below: 212 F. 3d 477.

No. 00–705. KANG *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–735. DEXTER *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1336.

No. 00–813. SELF-REALIZATION FELLOWSHIP CHURCH *v.* ANANDA CHURCH OF SELF-REALIZATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 206 F. 3d 1322.

No. 00–816. MONTGOMERY COUNTY ET AL. *v.* WRIGHT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 367.

No. 00–818. CHESTNUT RIDGE VOLUNTEER FIRE CO. ET AL. *v.* GOLDSTEIN. C. A. 4th Cir. Certiorari denied. Reported below: 218 F. 3d 337.

No. 00–824. PALMER *v.* TRANSIT MANAGEMENT SOUTHEAST LOUISIANA (TMSEL) REGIONAL TRANSIT AUTHORITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 208.

No. 00–825. MINDGAMES, INC. *v.* WESTERN PUBLISHING CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 218 F. 3d 652.

No. 00–827. PAYNE *v.* HINDS. C. A. 10th Cir. Certiorari denied.

No. 00–833. LEHTO *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 00–839. RIVET ET AL. *v.* REGIONS BANK OF LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 483.

No. 00–851. MOORE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–855. ANSELMO *v.* COLORADO ET AL. Dist. Ct. Colo., Arapahoe County. Certiorari denied.

No. 00–858. BAREFOOT, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF BAREFOOT, DECEASED *v.* THERMO INDUSTRIES, INC., ET AL. Ct. App. N. C. Certiorari denied. Reported below: 137 N. C. App. 384, 533 S. E. 2d 305.

No. 00–864. COMMUNICATIONS WORKERS OF AMERICA, AFL–CIO, ET AL. *v.* AMERITECH BENEFIT PLAN COMMITTEE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 220 F. 3d 814.

No. 00–870. TITTUS *v.* NATIONSBANK OF TEXAS, N. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 643.

No. 00–871. CITY OF CHICAGO HEIGHTS ET AL. *v.* HARPER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 593.

No. 00–873. LIPKO *v.* CHRISTIE. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 354.

No. 00–889. SMITH *v.* WILLIAMS. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 648.

No. 00–893. MILTON *v.* JACKSON PUBLIC SCHOOLS. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 585.

No. 00–913. KERSEY *v.* CRANE ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 432 Mass. 1020, 733 N. E. 2d 545.

No. 00–920. SOLOMON ET UX. *v.* MILBANK. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–937. DOWNEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–990. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 225 F. 3d 955.

No. 00–5934. JONES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 191 Ill. 2d 194, 730 N. E. 2d 26.

No. 00–6007. STOECKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 215 F. 3d 788.

No. 00–6119. ROBERTS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1340.

No. 00–6142. GEORGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 744.

No. 00–6303. WRIGHT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 28 S. W. 3d 526.

No. 00–6673. DUPUY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 201 F. 3d 582.

No. 00–6699. WILLIAMS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 724 N. E. 2d 1070.

No. 00–6743. BRADLEY *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 559.

No. 00–7096. JAMES *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 543.

No. 00–7106. ARMSTRONG *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–7114. SUBLETT *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 598.

No. 00–7134. MARTINEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–7135. KENNEDY *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–7140. KECK *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–7141. LUCERO *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 901.

No. 00–7148. MAULDEN *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 895.

No. 00–7149. JONES *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 586.

No. 00–7153. JIMERSON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–7154. WELLS *v.* FLORIDA ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–7157. TWILLIE *v.* BRENNAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7158. TORRES *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7168. ANDERSON *v.* CHRANS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–7171. LEWIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1356.

No. 00–7178. BAUMER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–7183. D'AMBROSIO *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 00–7195. RAY *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7203. RAZOR *v.* CHANDLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7211. ALCALA-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7253. KEEN *v.* ENSTAR NATURAL GAS CO. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 845.

No. 00–7285. SILKMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 220 F. 3d 935.

No. 00–7288. OLIVER *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. Commw. Ct. Pa. Certiorari denied.

No. 00–7291. LAMBERT ET UX. *v.* WILLIAMS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 223 F. 3d 257.

No. 00–7296. LEONARD *v.* GARFUNKEL, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 223 F. 3d 1374.

No. 00–7301. DENNEY *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 27 Kan. App. 2d ——, 4 P. 3d 1186.

No. 00–7305. CANFIELD ET UX. *v.* AMERICAN EUROCOPTER CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 207.

No. 00–7316. SINGH *v.* COUNCIL/BUREAU FOR PRIVATE POSTSECONDARY & VOCATIONAL EDUCATION. C. A. 9th Cir. Certiorari denied.

No. 00–7327. ROMERO *v.* BATTLES, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 234 F. 3d 1273.

No. 00–7341. TILLI *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 650.

No. 00–7359. BRAXTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 158, 531 S. E. 2d 428.

No. 00–7361. PURDLE *v.* GROESCH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–7377. HAWKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–7395. FOSTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 210 F. 3d 387.

No. 00–7400. CARROZZI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–7408. GREEN *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7417. GASTON *v.* POWELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 201 F. 3d 436.

No. 00–7458. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–7462. GUERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7468. DE LA CRUZ *v.* LOWER RIO GRANDE VALLEY DEVELOPMENT COUNCIL. C. A. 5th Cir. Certiorari denied. Reported below: 233 F. 3d 574.

No. 00–7497. CARTER, AKA DEAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–7499. MITCHELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–7500. NYHUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 1340.

No. 00–7501. RODRIGUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1154.

No. 00–7503. WHITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1356.

No. 00–7504. WEBB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 218 F. 3d 877.

No. 00–7506. PETERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 225 F. 3d 1167.

No. 00–7507. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 225 F. 3d 955.

No. 00–7510. CRANDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 1266.

No. 00–7512. ARNULFO ZUNIGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 1194.

No. 00–7515. MCCULLOUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1160.

No. 00–7516. CONSOLVO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–7527. QUEENSBOROUGH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 227 F. 3d 149.

No. 00–7537. SELLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–7544. KINDER *v.* PURDY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 222 F. 3d 209.

No. 00–7551. MCLAUGHLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 216.

No. 00–7557. LORENZO-PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7561. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 33.

No. 00–7565. LAVENTURE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 763 So. 2d 1043.

No. 00–7571. CARANTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–7572. ESQUIVEL-MORELOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 711.

No. 00–7573. ECHEVARRIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 33.

No. 00–7575. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 425.

No. 00–7576. PIERCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 34.

No. 00–606. SUMMIT PROPERTIES, INC., ET AL. *v.* HOECHST-CELANESE CORP., FKA CELANESE CORP., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 214 F. 3d 556.

No. 00–653. PUBLIC SERVICE COMMISSION OF WISCONSIN ET AL. *v.* WISCONSIN BELL, INC., DBA AMERITECH WISCONSIN, ET AL.; and

No. 00–744. ILLINOIS COMMERCE COMMISSION ET AL. *v.* MCI TELECOMMUNICATIONS CORP. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 222 F. 3d 323.

No. 00–842. BRADNEY ET AL. *v.* E. I. DU PONT DE NEMOURS & COMPANY PENSION RETIREMENT PLAN ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 229 F. 3d 1150.

No. 00–819. CORPORATION COUNSEL OF THE CITY OF NEW YORK *v.* ERIK M. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 265 App. Div. 2d 256, 697 N. Y. S. 2d 35.

No. 00–874. MATTHEWS *v.* HOWARD COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Motion of Center for Equal Opportunity et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 217 F. 3d 839.

No. 00–880. BARNES *v.* MCDONALD'S CORP. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 230 F. 3d 1362.

No. 00–7146. LAU *v.* MEDDAUGH ET AL. C. A. 2d Cir. Certiorari before judgment denied.

Rehearing Denied

No. 00–295. SIDDIQUI *v.* NORTHERN TELECOM, INC., *ante*, p. 929;

No. 00–297. LIVINGSTON DOWNS RACING ASSN., INC. *v.* LOUISIANA STATE RACING COMMISSION, *ante*, p. 1011;

No. 00–510. SMITH *v.* OREGON STATE DEPARTMENT OF REVENUE ET AL., *ante*, p. 1013;

No. 00–585. DINH TON THAT *v.* 3D SYSTEMS, INC., ET AL., *ante*, p. 1014;

No. 00–715. ROBERTSON *v.* COMPTROLLER OF THE TREASURY OF MARYLAND, *ante*, p. 1037;

No. 00–762. METCALF *v.* UNITED STATES, *ante*, p. 1053;

No. 00–5313. SIMPSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 994;

No. 00–5938. LIU *v.* NAOMI ET AL., *ante*, p. 966;

No. 00–6175. CORNELIUS *v.* MITCHUM ET AL., *ante*, p. 1016;

No. 00–6241. ARCHER *v.* VALLEY HEALTHCARE CORP. ET AL., *ante*, p. 1017;

No. 00–6315. WENGER *v.* CANASTOTA CENTRAL SCHOOL DISTRICT ET AL., *ante*, p. 1019;

No. 00–6442. HOLMAN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, *ante*, p. 1021; and

No. 00–6698. VALOIS *v.* UNITED STATES, *ante*, p. 1025. Petitions for rehearing denied.

No. 00–5458. CLARKE *v.* UNITED STATES, *ante*, p. 905. Motion for leave to file petition for rehearing denied.

JANUARY 29, 2001

Dismissal Under Rule 46

No. 00–1047. MARICOPA COUNTY *v.* ISBELL ET AL. Sup. Ct. Ariz. Certiorari dismissed under this Court's Rule 46.1. Reported below: 198 Ariz. 280, 9 P. 3d 311.

JANUARY 30, 2001

Miscellaneous Order

No. 00A646. BELL, WARDEN *v.* WORKMAN. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Sixth Circuit on January 26, 2001, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

FEBRUARY 1, 2001

Certiorari Denied

No. 00–7717 (00A625). LINGAR *v.* MISSOURI. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 6, 2001

Miscellaneous Order

No. 00–8431 (00A669). IN RE LINGAR. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

FEBRUARY 7, 2001

Dismissal Under Rule 46

No. 00–7523. BARRIENTES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 221 F. 3d 741.

FEBRUARY 12, 2001

Dismissal Under Rule 46

No. 00–1014. MCDONNELL DOUGLAS CORP. *v.* VERDINE. Ct. App. Cal., 2d App. Dist. Certiorari dismissed under this Court's Rule 46.1.

FEBRUARY 20, 2001

Certiorari Granted—Vacated and Remanded

No. 99–10280. SALLIS *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 209 F. 3d 652.

No. 00–5233. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 209 F. 3d 652.

No. 00–6354. GONZALEZ LORA *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 211 F. 3d 1266.

No. 00–6433. WEATHERSPOON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 215 F. 3d 1323.

No. 00–6665. BAYONA *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 213 F. 3d 646.

No. 00–6674. BOYD ET AL. *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari as to Charles Green, Sammy Knox, Noah R. Robinson, and Melvin Mays granted. Judgment vacated, and case remanded for further consideration in light of *Apprendi* v.

New Jersey, 530 U. S. 466 (2000). Certiorari as to Jeff Boyd denied. Reported below: 208 F. 3d 638.

No. 00–6774. RANDLE *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 217 F. 3d 247.

No. 00–6846. BROWN *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 225 F. 3d 655.

No. 00–7089. TAPIA *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Reported below: 220 F. 3d 589.

Certiorari Dismissed

No. 00–7269. ASHIEGBU *v.* ANABA. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–7480. FAZZINI *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–7570. PARKER *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 232 F. 3d 902.

No. 00–7632. PEREZ *v.* TURK, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 230 F. 3d 1353.

Miscellaneous Orders

No. 00A531. JONAS *v.* TALLEY ET AL. C. A. 4th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–1997. IN RE DISBARMENT OF KRAMER. Disbarment entered. [For earlier order herein, see 525 U. S. 926.]

No. D–2185. IN RE DISBARMENT OF KOZEL. Disbarment entered. [For earlier order herein, see 530 U. S. 1289.]

No. D–2207. IN RE DISBARMENT OF THOMAS. Disbarment entered. [For earlier order herein, see *ante*, p. 976.]

No. D–2208. IN RE DISBARMENT OF FRIEDMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 976.]

No. D–2209. IN RE DISBARMENT OF GOLDSTEIN. Morton B. Goldstein, of Havre, Mont., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on November 6, 2000 [*ante*, p. 976], is discharged.

No. D–2211. IN RE DISBARMENT OF GAMBLE. Disbarment entered. [For earlier order herein, see *ante*, p. 1007.]

No. D–2215. IN RE DISBARMENT OF DAHLING. Disbarment entered. [For earlier order herein, see *ante*, p. 1007.]

No. D–2216. IN RE DISBARMENT OF SPRITZER. Disbarment entered. [For earlier order herein, see *ante*, p. 1008.]

No. D–2217. IN RE DISBARMENT OF DRYER. Disbarment entered. [For earlier order herein, see *ante*, p. 1008.]

No. D–2219. IN RE DISBARMENT OF PETZ. Disbarment entered. [For earlier order herein, see *ante*, p. 1034.]

No. D–2220. IN RE DISBARMENT OF DRAGER. Disbarment entered. [For earlier order herein, see *ante*, p. 1034.]

No. D–2221. IN RE DISBARMENT OF WALLMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 1034.]

No. D–2230. IN RE DISBARMENT OF MENEILLY. James K. Meneilly, of Westbury, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on January 8, 2001 [*ante*, p. 1066], is discharged.

No. D–2235. IN RE DISBARMENT OF HOLLINGSWORTH. Wayne B. Hollingsworth, of Naples, Fla., 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.

No. D–2236. IN RE DISBARMENT OF MUTTALIB. Kalam Muttalib, of Cleveland, Ohio, 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.

No. D–2237. IN RE DISBARMENT OF SCHACHLEITER. Kenneth Thomas Schachleiter, of Cincinnati, Ohio, 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.

No. D–2238. IN RE DISBARMENT OF ZDRAVKOVICH. Dushko S. Zdravkovich, of Riva, Md., 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.

No. D–2239. IN RE DISBARMENT OF ELKINS. Robert J. Elkins, of Sarasota, Fla., 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.

No. D–2240. IN RE DISBARMENT OF FREDERICK. Mark Evan Frederick, of Destin, Fla., 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.

No. D–2241. IN RE DISBARMENT OF GOMSRUD. Richard George Gomsrud, of St. Paul, Minn., 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.

No. D–2242. IN RE DISBARMENT OF FREEMAN. Robert A. Freeman, of Miami, Fla., 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.

No. D–2243. IN RE DISBARMENT OF MCKEE. Roger A. McKee, of Phoenix, Ariz., 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.

No. D–2244. IN RE DISBARMENT OF SEAGULL. Lewis Malamud Seagull, of Westfield, N. J., 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.

No. D–2245. IN RE DISBARMENT OF GREEN. Gary Kenneth Green, of San Diego, Cal., 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.

No. D–2246. IN RE DISBARMENT OF MAGUIRE. James J. Maguire, Jr., of Hamilton Square, N. J., 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.

No. D–2247. IN RE DISBARMENT OF EARLS. Donald E. Earls, of Norton, Va., 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.

No. D–2248. IN RE DISBARMENT OF MORRISSEY. Joseph Dee Morrissey, of Richmond, Va., 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.

No. D–2249. IN RE DISBARMENT OF RATHJEN. Stephen Paul Rathjen, of Hauppauge, N. Y., 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.

No. 00M59. KOEHLER *v.* MUELLER, WARDEN;
No. 00M60. CHANDRA *v.* MEDICAL COLLEGE OF VIRGINIA ET AL.;
No. 00M61. YADELL ET AL. *v.* UNITED STATES;
No. 00M62. BERNABEL *v.* UNITED STATES;
No. 00M63. WASHINGTON *v.* AMERICAN STORES CO., INC., ET AL.; and
No. 00M64. STAMPLEY *v.* CITY OF ST. PAUL ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 129, Orig. VIRGINIA *v.* MARYLAND. Motion of Audubon Naturalist Society for review of the Special Master's finding of subject matter jurisdiction denied. Motion of Virginia for costs denied without prejudice to refiling before the Special Master. [For earlier order herein, see, *e. g.*, *ante*, p. 922.]

No. 99–1964. BOOTH *v.* CHURNER ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 956.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 99–1994. NEVADA ET AL. *v.* HICKS ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 923.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–152. LUJAN, LABOR COMMISSIONER OF CALIFORNIA, ET AL. *v.* G & G FIRE SPRINKLERS, INC. C. A. 9th Cir. [Certiorari granted *sub nom. Bradshaw* v. *G & G Fire Sprinklers, Inc.*, *ante*, p. 924.] Motion of petitioners for order to disregard certain matters outside the certified record and to strike respondent's lodging denied.

No. 00–292. C & L ENTERPRISES, INC. *v.* CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA. Ct. Civ. App. Okla. [Certiorari granted, *ante*, p. 956.] Motion of San Manuel Band of Serrano Mission Indians for leave to file a brief as *amicus curiae*

granted. Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–492. ALABAMA *v.* BOZEMAN. Sup. Ct. Ala. [Certiorari granted, *ante*, p. 1051.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted. Motion for appointment of counsel granted, and it is ordered that Mark John Christensen, Esq., of Andalusia, Ala., be appointed to serve as counsel for respondent in this case.

No. 00–549. CEDRIC KUSHNER PROMOTIONS, LTD. *v.* KING ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1050.] Motion of National Association of Securities and Commercial Law Attorneys for leave to file a brief as *amicus curiae* granted.

No. 00–832. NATIONAL CABLE & TELECOMMUNICATIONS ASSN., INC. *v.* GULF POWER CO. ET AL.; and

No. 00–843. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* GULF POWER CO. ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1125.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 00–952. WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES *v.* BLUMER. Ct. App. Wis. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 00–6310. BALDEN ET UX. *v.* COTTEE ET AL. C. A. 6th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1009] denied.

No. 00–6507. LECHE *v.* TANOU, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1110] denied.

No. 00–6887. VALDEZ ET UX. *v.* PROPERTY RESERVE, INC., ET AL. Sup. Ct. Haw. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1067] denied.

No. 00–7292. PERRY *v.* UNITED PARCEL SERVICE. C. A. 11th Cir.;

No. 00–7538. SHULL *v.* BEXAR COUNTY ET AL. Ct. App. Tex., 4th Dist.; and

No. 00–7569. SZERLIP *v.* CITY OF MOUNT VERNON, OHIO. Ct. App. Ohio, Knox County. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 13, 2001, 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.

No. 00–1084. IN RE COUGHLIN;

No. 00–7713. IN RE BROWN;

No. 00–7732. IN RE BROWN;

No. 00–7884. IN RE TARVIN;

No. 00–7886. IN RE BRADLEY;

No. 00–7961. IN RE ATKINS;

No. 00–8027. IN RE CUMMINGS;

No. 00–8061. IN RE RIVERA;

No. 00–8090. IN RE DANIELS;

No. 00–8116. IN RE KUBWEZA;

No. 00–8173. IN RE DAVIS;

No. 00–8175. IN RE WELLS;

No. 00–8198. IN RE FULLER;

No. 00–8295. IN RE STERN;

No. 00–8342. IN RE MCGIRT; and

No. 00–8350. IN RE WASHINGTON. Petitions for writs of habeas corpus denied.

No. 00–7264. IN RE VILLARREAL;

No. 00–7279. IN RE OLIVIER-DIAZ;

No. 00–7348. IN RE MIMMS;

No. 00–7545. IN RE LANOUE; and

No. 00–7594. IN RE BUCKNER. Petitions for writs of mandamus denied.

No. 00–1085. IN RE MENDOZA; and

No. 00–1183. IN RE GARRISON. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 00–758. UNITED STATES POSTAL SERVICE *v.* GREGORY. C. A. Fed. Cir. Certiorari granted. Reported below: 212 F. 3d 1296.

No. 00–927. CHAO, SECRETARY OF LABOR *v.* MALLARD BAY DRILLING, INC. C. A. 5th Cir. Certiorari granted. Reported below: 212 F. 3d 898.

No. 99–1996. J. E. M. AG SUPPLY, INC., DBA FARM ADVANTAGE, INC., ET AL. *v.* PIONEER HI-BRED INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 200 F. 3d 1374.

Certiorari Denied. (See also No. 00–6674, *supra.*)

No. 00–62. CSU, L. L. C. *v.* XEROX CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 203 F. 3d 1322.

No. 00–326. TRUSTEES FOR THE MICHIGAN CARPENTERS COUNCIL PENSION FUND ET AL. *v.* W. W. A., INC. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 372.

No. 00–425. CRANE *v.* STERN; and
No. 00–444. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS ET AL. *v.* STERN. C. A. 1st Cir. Certiorari denied. Reported below: 214 F. 3d 4.

No. 00–438. LYSAGHT ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 208 F. 3d 72.

No. 00–468. DIONNE *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 209 F. 3d 705.

No. 00–499. THOMAS ET AL. *v.* ANCHORAGE EQUAL RIGHTS COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 220 F. 3d 1134.

No. 00–517. RISBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 211 F. 3d 124.

No. 00–526. TAWFIK *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 646.

No. 00–556. PIERCE, SECRETARY, KANSAS DEPARTMENT OF REVENUE *v.* SAC AND FOX NATION OF MISSOURI ET AL.; and
No. 00–599. SAC AND FOX NATION OF MISSOURI ET AL. *v.* PIERCE, SECRETARY, KANSAS DEPARTMENT OF REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 213 F. 3d 566.

No. 00–560. KOREAN AIR LINES CO., LTD. *v.* WALLACE. C. A. 2d Cir. Certiorari denied. Reported below: 214 F. 3d 293.

No. 00–616. MANNING *v.* MCGRAW-HILL, INC. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1087.

No. 00–617. INTERNATIONAL AIRCRAFT RECOVERY, LLC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 218 F. 3d 1255.

No. 00–629. VIRGINIA *v.* KINGDOM OF SPAIN; and
No. 00–652. SEA HUNT, INC. *v.* KINGDOM OF SPAIN. C. A. 4th Cir. Certiorari denied. Reported below: 221 F. 3d 634.

No. 00–709. B&G ENTERPRISES, LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 220 F. 3d 1318.

No. 00–722. MILLS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1201.

No. 00–732. YOUNG *v.* CITY OF SULPHUR, LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1148.

No. 00–736. SENTENN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–739. BELCHER *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 214 F. 3d 1335.

No. 00–754. SMITH *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 214 F. 3d 1331.

No. 00–759. NEW PULASKI COMPANY LIMITED PARTNERSHIP *v.* MAYOR AND CITY COUNCIL OF BALTIMORE. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 840.

No. 00–760. MCDANIEL *v.* DEPARTMENT OF THE INTERIOR. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 193.

No. 00–792. ELKINS *v.* PHARMACY CORPORATION OF AMERICA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 838.

No. 00–802. BRYAN *v.* CITY OF MADISON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 267.

No. 00–811. ALLEGHENY COUNTY ET AL. *v.* BERG ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 219 F. 3d 261.

No. 00–820. WYVILL ET AL. *v.* UNITED COMPANIES LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 212 F. 3d 296.

No. 00–844. GIBBS ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 214 F. 3d 483.

No. 00–846. JOHNSON *v.* TELE-CASH, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 366.

No. 00–850. NEAL, PERSONAL REPRESENTATIVE OF THE ESTATE OF NEAL, DECEASED, ET AL. *v.* ST. LOUIS COUNTY BOARD OF POLICE COMMISSIONERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 955.

No. 00–852. PATCH ET AL. *v.* CONNECTICUT VALLEY ELECTRIC CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 221 F. 3d 198.

No. 00–856. BEGALA ET AL. *v.* PNC BANK, OHIO, NATIONAL ASSN. C. A. 6th Cir. Certiorari denied. Reported below: 214 F. 3d 776.

No. 00–861. CLINGER *v.* NEW MEXICO HIGHLANDS UNIVERSITY BOARD OF REGENTS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 215 F. 3d 1162.

No. 00–863. DAY *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–868. TWEEDY *v.* OKLAHOMA BAR ASSN. Sup. Ct. Okla. Certiorari denied.

No. 00–872. CITY OF NEW YORK *v.* MOONEY. C. A. 2d Cir. Certiorari denied. Reported below: 219 F. 3d 123.

No. 00–879. CASO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 767 So. 2d 1213.

No. 00–881. ALVAREZ *v.* JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS. C. A. 11th Cir. Certiorari denied. Reported below: 224 F. 3d 1273.

No. 00–882. MCLEOD ET AL. *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 00–883. THORPE ET UX. *v.* REDEVELOPMENT AUTHORITY OF THE CITY OF ALLENTOWN. Commw. Ct. Pa. Certiorari denied. Reported below: 744 A. 2d 399.

No. 00–884. SCHNEIDER ET UX. *v.* SIMONINI ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 163 N. J. 336, 749 A. 2d 336.

No. 00–888. SEVEN PROVINCES INSURANCE CO., LTD. *v.* COMMERCIAL UNION INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 217 F. 3d 33.

No. 00–891. HICKS *v.* LEROY'S JEWELERS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 659.

No. 00–902. PAPRZYCKI ET AL. *v.* COUNTY OF SOMERSET ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1139.

No. 00–908. COUNTY OF SAN BERNARDINO ET AL. *v.* BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSN. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 78 Cal. App. 4th 1267, 93 Cal. Rptr. 2d 626.

No. 00–909. GARCIA *v.* COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–911. COX *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 233 F. 3d 577.

No. 00–915. DUPONT *v.* TANGUSSO ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1356.

No. 00–916. CITY OF SANTA ANA *v.* TOCHER, DBA PACIFIC COAST MOTORING, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 1040.

No. 00–917. LEE *v.* HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1157.

No. 00–923. MCGUFFAGE ET AL. *v.* KRISLOV ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 226 F. 3d 851.

No. 00–924. SIMMONS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 58 Conn. App. 903, 751 A. 2d 857.

No. 00–925. BARTH *v.* KAYE, CHIEF JUDGE, COURT OF APPEALS OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–930. WHELAN *v.* PALMER. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 00–931. VINSON ET AL. *v.* COLOM. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–932. WATSON *v.* OCEAN COUNTY COLLEGE BOARD OF TRUSTEES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 216 F. 3d 1078.

No. 00–933. WATSON *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY. C. A. 3d Cir. Certiorari denied. Reported below: 207 F. 3d 207.

No. 00–934. CARPENTER ET UX. *v.* PRODUCER SPORTFISHING, INC., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–936. CARLSON *v.* HYUNDAI MOTOR CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 222 F. 3d 1044.

No. 00–940. WOODS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–941. DCT, INC., ET AL. *v.* OLYMPIC STEEL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1358.

No. 00–943. HARRIS *v.* LADNER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–944. NESLO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 588.

No. 00–950. EVERETT INDUSTRIES, INC. *v.* PATEL ET AL. App. Ct. Mass. Certiorari denied. Reported below: 49 Mass. App. 1116, 735 N. E. 2d 1271.

No. 00–955. HURLEY ET UX. *v.* MOTOR COACH INDUSTRIES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 222 F. 3d 377.

No. 00–958. POWERSCREEN OF AMERICA, INC., ET AL. *v.* CONSTRUCTION EQUIPMENT CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 243 F. 3d 559.

No. 00–959. YOUNG ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1355.

No. 00–960. VIRGIN ET AL. *v.* SAN LUIS OBISPO COUNTY ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–964. STOUT ET AL. *v.* BYRIDER, AKA DOCHERTY MOTORS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 228 F. 3d 709.

No. 00–966. SYED *v.* HERCULES INC. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 214 F. 3d 155.

No. 00–968. SMITH *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 13 P. 3d 300.

No. 00–971. MORRIS *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 00–974. CADLEROCK PROPERTIES JOINT VENTURE, L. P. *v.* CONNECTICUT COMMISSIONER OF ENVIRONMENTAL PROTECTION ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 253 Conn. 661, 757 A. 2d 1.

No. 00–975. DUBRIA *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 224 F. 3d 995.

No. 00–976. JOHNSON, DIRECTOR, OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, ET AL. *v.* ASSOCIATED GENERAL CONTRACTORS OF OHIO, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 214 F. 3d 730.

No. 00–977. BARRETT *v.* BOROUGH OF CARLISLE. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 1264.

No. 00–978. BRASS *v.* GDQ CORP. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1148.

No. 00–979. VANDEVENTER BLACK *v.* BEAMAN, TRUSTEE. C. A. 4th Cir. Certiorari denied. Reported below: 224 F. 3d 353.

No. 00–980. THOMPSON *v.* MENGEL, CLERK, SUPREME COURT OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 88 Ohio St. 3d 1495, 727 N. E. 2d 920.

No. 00–981. KASLER ET AL. *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 23 Cal. 4th 472, 2 P. 3d 581.

No. 00–982. BIRNBAUM *v.* RAY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 410.

No. 00–983. YUASA, INC. *v.* INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL–CIO, LOCAL 175. C. A. 4th Cir. Certiorari denied. Reported below: 224 F. 3d 316.

No. 00–984. MOTEL 6 OPERATING L. P. ET AL. *v.* HUTTINGER ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–988. HANEY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 273.

No. 00–989. HANSEN ET AL. *v.* SNOHOMISH COUNTY ET AL. Ct. App. Wash. Certiorari denied. Reported below: 97 Wash. App. 1083.

No. 00–991. FORBES ET AL. *v.* SEMERENKO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 223 F. 3d 165.

No. 00–992. FARASH *v.* LIPEZ, JUDGE, UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 1264.

No. 00–993. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 826.

No. 00–994. MORALES *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–998. RAPOPORT ET AL. *v.* STATE FARM MUTUAL INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–999. WARD *v.* ORANGE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 217 F. 3d 1350.

No. 00–1004. BEARDSLEE *v.* WASHINGTON STATE DEPARTMENT OF HEALTH AND SOCIAL SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 893.

No. 00–1005. OSIJO *v.* WEINER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 895.

No. 00–1006. MCCOY ET AL. *v.* CHICAGO HEIGHTS PARK DISTRICT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 593.

No. 00–1007. MISSISSIPPI STATE UNIVERSITY *v.* VADIE. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 365.

No. 00–1008. TURNBOW-GARLINGTON *v.* ENGLISH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 34.

No. 00–1009. MCDONALD *v.* GRIFFIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 409.

No. 00–1010. NEW HAVEN PROJECTS LIMITED LIABILITY CO. *v.* CITY OF NEW HAVEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 283.

No. 00–1013. YAFFE *v.* ADAMS. Ct. Civ. App. Okla. Certiorari denied.

No. 00–1015. SWIFT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 53 M. J. 439.

No. 00–1017. BECKMAN INSTRUMENTS, INC., ET AL. *v.* CINCOM SYSTEMS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 893.

No. 00–1018. WERTH *v.* GARVEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 417.

No. 00–1019. ANCHOR *v.* HICKMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–1026. VINSON *v.* COLLUMS ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–1033. LENNIX *v.* HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–1034. PITTS *v.* DALLAS COUNTY BAIL BOND BOARD. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 23 S. W. 3d 407.

No. 00–1037. MANDANICI *v.* STARR. C. A. 8th Cir. Certiorari denied.

No. 00–1038. RODRIGUEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 156.

No. 00–1041. PANOS *v.* NEW YORK. County Ct., Warren County, N. Y. Certiorari denied.

No. 00–1042. TONN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 210 F. 3d 379.

No. 00–1048. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 227 F. 3d 955.

No. 00–1050. DRONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 218 F. 3d 496.

No. 00–1055. SPHERE DRAKE UNDERWRITING MANAGEMENT, LTD. *v.* ROYAL INSURANCE COMPANY OF AMERICA. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 997 S. W. 2d 432.

No. 00–1058. JADERANY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 989.

No. 00–1060. KONWINSKI *v.* PIRIE, ACTING SECRETARY OF THE NAVY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 707.

No. 00–1061. ORTIZ *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 00–1063. MISSOURI ON THE MAINLAND *v.* PIRIE, ACTING SECRETARY OF THE NAVY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1367.

No. 00–1064. ELLIS *v.* CITY OF CARROLLTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 213 F. 3d 636.

No. 00–1079. DOUGLASS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 409.

No. 00–1083. GOLDSTEIN *v.* CHESTNUT RIDGE VOLUNTEER FIRE COMPANY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 218 F. 3d 337.

No. 00–1088. LEMKE *v.* INTERNATIONAL TOTAL SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 225 F. 3d 649.

No. 00–1090. ALEMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 313 Ill. App. 3d 51, 729 N. E. 2d 20.

No. 00–1093. BRANDON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–1094. PALMER ET UX. *v.* DUFF ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1278.

No. 00–1096. BORDON ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 412.

No. 00–1097. BROOKS *v.* CITY OF OAK RIDGE. C. A. 6th Cir. Certiorari denied. Reported below: 222 F. 3d 259.

No. 00–1098. BEVERLEY *v.* OTO, EXECUTOR OF THE ESTATE OF OTO, DECEASED. C. A. 7th Cir. Certiorari denied. Reported below: 224 F. 3d 601.

No. 00–1101. MITCHELL *v.* CHAPMAN. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 10 S. W. 3d 810.

No. 00–1104. STEPHENSON *v.* RASKAS DAIRY, INC. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 26 S. W. 3d 209.

No. 00–1105. YOUNGBLOOD, INDIVIDUALLY AND ON BEHALF OF YOUNGBLOOD & ASSOCIATES P. L. L. C. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 28.

No. 00–1113. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 227 F. 3d 295.

No. 00–1114. CHAPMAN ET AL. *v.* PIRIE, ACTING SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 886.

No. 00–1120. KOUKIOS *v.* GANSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1152.

No. 00–1121. KOZEL *v.* ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 00–1127. STANLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 1117.

No. 00–1133. GARDNER *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 213 F. 3d 735.

No. 00–1138. PEREZ *v.* Z FRANK OLDSMOBILE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 617.

No. 00–1139. WALDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 29.

No. 00–1145. THORSTAD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 238 Wis. 2d 666, 618 N. W. 2d 240.

No. 00–1149. HOWELL ET AL. *v.* ALASKA AIRLINES, INC. Ct. App. Wash. Certiorari denied. Reported below: 99 Wash. App. 646, 994 P. 2d 901.

No. 00–1158. DECKER *v.* JAMES ET AL. Ct. Civ. App. Okla. Certiorari denied. Reported below: 16 P. 3d 1131.

No. 00–1160. SALMON *v.* WEST CLARK COMMUNITY SCHOOLS. C. A. 7th Cir. Certiorari denied.

No. 00–1165. NEGELE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 222 F. 3d 443.

No. 00–1173. HEADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1360.

No. 00–1185. DANGERFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–1193. PORRO ET UX. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 230 F. 3d 1349.

No. 00–5069. HARDIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 209 F. 3d 652.

No. 00–5090. CLEM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 210 F. 3d 373.

No. 00–5950. SHEA *v.* UNITED STATES;
No. 00–5963. BURKE *v.* UNITED STATES;
No. 00–6001. MCDONALD *v.* UNITED STATES;
No. 00–6005. MCGONAGLE *v.* UNITED STATES; and
No. 00–6057. O'HALLORAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 211 F. 3d 658.

No. 00–5954. NASWORTHY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–6090. MANSFIELD *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 202 F. 3d 1018.

No. 00–6124. VIEUX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–6270. MORGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 216 F. 3d 557.

No. 00–6402. WEAVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1356.

No. 00–6403. WILSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 191 Ill. 2d 363, 732 N. E. 2d 498.

No. 00–6431. WILEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 211 F. 3d 1271.

No. 00–6432. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–6449. HOLMAN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 191 Ill. 2d 204, 730 N. E. 2d 39.

No. 00–6555. HESSE *v.* DEPARTMENT OF STATE. C. A. Fed. Cir. Certiorari denied. Reported below: 217 F. 3d 1372.

No. 00–6557. HIEU PHAM *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–6621. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1170.

No. 00–6671. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 392.

No. 00–6676. BONNER *v.* UNITED STATES; and
No. 00–6736. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 217 F. 3d 247.

No. 00–6721. JENKINS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 4th 900, 997 P. 2d 1044.

No. 00–6951. WOODS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–6969. ATKINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–6982. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 210 F. 3d 392.

No. 00–6985. WAY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 760 So. 2d 903.

No. 00–7014. RAMON VEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 221 F. 3d 789.

No. 00–7036. WOODS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–7071. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–7103. ESKRIDGE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 765 So. 2d 508.

No. 00–7128. WARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 211 F. 3d 356.

No. 00–7144. PARSONS *v.* DELANEY, ACTING SECRETARY OF THE AIR FORCE. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1343.

No. 00–7162. THIBODEAUX *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 570, 532 S. E. 2d 797.

No. 00–7173. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 839.

No. 00–7179. ANDERSON *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 900.

No. 00–7180. MORELAND *v.* BARRY ET AL. Ct. App. D. C. Certiorari denied.

No. 00–7181. ROGERS *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1336.

No. 00–7190. CHELETTE *v.* HARRIS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 229 F. 3d 684.

No. 00–7193. REVERE *v.* FOSTER, GOVERNOR OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 630.

No. 00–7196. RAY *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7198. SOWELL *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–7199. RANDALL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7201. SHOFNER *v.* COMACHO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1359.

No. 00–7202. SACCO *v.* COOKSEY, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 214 F. 3d 270.

No. 00–7205. LAMBERT *v.* MCGINNIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 654.

No. 00–7206. PANOV *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 00–7209. MCMANUS *v.* ATLANTIC SUGAR ASSN. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 598.

No. 00–7217. TAJIDDIN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–7218. THOMAS *v.* CLEBURNE COUNTY COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1166.

No. 00–7239. MCCUNE *v.* BUTLER COUNTY CHILDREN AND YOUTH AGENCY. Super. Ct. Pa. Certiorari denied. Reported below: 757 A. 2d 1001.

No. 00–7241. JONES *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–7242. JOHNSON *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1363.

No. 00–7243. TAYLOR *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 998 P. 2d 1225.

No. 00–7247. PAUL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 415.

No. 00–7249. BAZE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 23 S. W. 3d 619.

No. 00–7252. JOE *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7258. WHITE-BEY *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied. Reported below: 239 Mich. App. 221, 608 N. W. 2d 833.

No. 00–7259. IN RE MIRANDA. Ct. Crim. App. Tex. Certiorari denied.

No. 00–7260. ANDERSON *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1141.

No. 00–7262. VILLEGAS *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7263. TULLIS *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7267. JACKSON *v.* CADDO CORRECTIONAL CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1340.

No. 00–7273. LAWSON *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7275. MINGO *v.* RATHMAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1092.

No. 00–7281. DIAZ ET AL. *v.* SNYDER ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 264 App. Div. 2d 27, 702 N. Y. S. 2d 5.

No. 00–7282. PERKINS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 598.

No. 00–7284. MARTINEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7289. ESTIPHANOS *v.* JOHNSON. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–7290. DUNN *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 23 S. W. 3d 853.

No. 00–7293. MCCOMAS *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7294. MIERITZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 902.

No. 00–7295. JACKSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7298. DICKINSON *v.* WILLIAM CAREY INTERNATIONAL UNIVERSITY ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–7303. STALLINGS *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 00–7304. CASTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–7306. GOFFNEY *v.* FAMILY SAVINGS AND LOAN ASSN. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–7318. HANSEN *v.* BARKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1277.

No. 00–7329. SEDGWICK *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 430.

No. 00–7332. LANDA TAPIA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 00–7336. WILLIAMS *v.* MCCORD. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1146.

No. 00–7337. WILSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–7338. WRIGHT *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7340. WEEKS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 00–7343. WALSH *v.* WALSH ET AL.; and
No. 00–7623. WALSH *v.* WALSH. C. A. 1st Cir. Certiorari denied. Reported below: 221 F. 3d 204.

No. 00–7344. LAY *v.* LITSCHER. C. A. 7th Cir. Certiorari denied.

No. 00–7345. MALLETT *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–7346. THORNTON *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7347. YOUNG *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 372.

No. 00–7349. NEGRON *v.* ADAMS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–7352. MEEKS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 951.

No. 00–7353. NEALY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–7355. THOMAS *v.* HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 233 F. 3d 575.

No. 00–7362. FLOYD *v.* HORN, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1137.

No. 00–7363. GRIGGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–7365. CHAPMAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 762 So. 2d 1115.

No. 00–7366. GECE *v.* ATLANTIC CITY MEDICAL CENTER. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–7367. HARRISON *v.* FORD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 210 F. 3d 361.

No. 00–7370. FOSTER *v.* DEPARTMENT OF JUSTICE. C. A. 8th Cir. Certiorari denied.

No. 00–7371. HANKINS *v.* BOONE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–7373. BEDFORD *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 837.

No. 00–7375. HAMILTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–7376. HORSLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7378. FARRAR *v.* BAYER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL. Sup. Ct. Nev. Certiorari denied.

No. 00–7379. GLASS *v.* COWLEY, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 00–7382. HOOKS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7383. HOOKS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7384. GYADU *v.* BELLA VISTA CONDOMINIUM ASSN., INC. Sup. Ct. Conn. Certiorari denied.

No. 00–7385. GONZALEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 00–7387. VAN WOUDENBERG *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 211 F. 3d 560.

No. 00–7388. CENICEROS *v.* YEARWOOD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 893.

No. 00–7389. CLAYTON *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–7392. EANES *v.* MONTGOMERY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1342.

No. 00–7393. FELIVERTY *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 00–7394. FORDJOUR *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 00–7396. HERSEY *v.* HANIFIN ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–7397. HAMER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7399. CAIN *v.* BOONE. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1351.

No. 00–7401. CORLISS *v.* WASHINGTON DEPARTMENT OF CORRECTIONS. Sup. Ct. Wash. Certiorari denied.

No. 00–7402. GUILLEN *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1157.

No. 00–7405. HUMPHREY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7406. INGRAM *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 631.

No. 00–7407. FEREBEE *v.* MCCABE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 258.

No. 00–7410. HALL *v.* COUNTY OF MARICOPA ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7412. GALLITON *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7413. FEATHERSTONE *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 258.

No. 00–7415. GRAHAM *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 11 S. W. 3d 807.

No. 00–7418. GREEN *v.* LARKINS ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7420. GUNDY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1354.

No. 00–7422. MATTHEWS *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 00–7426. BYRD *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7427. ANDAVAZO *v.* WILLIAMS, WARDEN, ET AL.; and No. 00–7485. ARMIJO *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7429. MCAFEE *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7431. DEES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 215 F. 3d 378.

No. 00–7435. T. C. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES; and L. B. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 746 So. 2d 1229 (first judgment) and 520 (second judgment).

No. 00–7436. ZISKIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 233 F. 3d 577.

No. 00–7439. WOLF *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1354.

No. 00–7441. HILTON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 839.

No. 00–7442. HART *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7443. HENDERSON *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 232 F. 3d 909.

No. 00–7444. GLAUNER *v.* GRIGAS. C. A. 9th Cir. Certiorari denied.

No. 00–7445. HURLEY *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 214 F. 3d 1355.

No. 00–7446. HERSEY *v.* ADORNI ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–7447. GOFF *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1366.

No. 00–7448. FISHER *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–7450. FARROW *v.* EASLEY, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 258.

No. 00–7451. SCHAPIRO *v.* SCHAPIRO. Sup. Ct. Pa. Certiorari denied.

No. 00–7452. QUINTANA *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7453. RICHARDSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 765.

No. 00–7454. SPENCER *v.* CASTERLINE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 210.

No. 00–7455. REED *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7456. LIBERMAN *v.* WEINBERG ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 646.

No. 00–7457. WILLIAMS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7459. FRIEND *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7460. FIELDS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7461. IRVING *v.* BRAXTON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 00–7463. FLETCHER *v.* ROCHA. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1332.

No. 00–7464. FISHER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 174 F. 3d 710.

No. 00–7465. GONZALEZ *v.* MCDANIEL. C. A. 9th Cir. Certiorari denied.

No. 00–7466. GROW *v.* ENGLISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG. C. A. 3d Cir. Certiorari denied.

No. 00–7467. POYSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 198 Ariz. 70, 7 P. 3d 79.

No. 00–7469. SMITH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 210.

No. 00–7470. SWEED *v.* COUNTY OF EL PASO ET AL. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 00–7473. NAVARRO *v.* OFFICE OF PERSONNEL MANAGEMENT; and

No. 00–7474. PAJE *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 243 F. 3d 554.

No. 00–7475. BREWINGTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 489, 532 S. E. 2d 496.

No. 00–7477. OKEN *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 220 F. 3d 259.

No. 00–7478. KASSAB *v.* SAN DIEGO STATE UNIVERSITY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–7479. COFER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 643.

No. 00–7481. CRABTREE *v.* FIGUEROA, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1151.

No. 00–7482. CARROLL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7484. TIFFER *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Sup. Ct. Cal. Certiorari denied.

No. 00–7486. GIANO *v.* PATAKI, GOVERNOR OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 00–7487. BRITT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 234 F. 3d 1274.

No. 00–7491. CAMPBELL *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1162.

No. 00–7492. DUKEMINIER *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1162.

No. 00–7493. ELLIS *v.* CARLTON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–7494. CLARK *v.* MUELLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7495. EDWARDS *v.* NEW JERSEY TRANSIT RAIL OPERATIONS. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1137.

No. 00–7496. NUBINE *v.* STRINGFELLOW ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 240 F. 3d 1074.

No. 00–7498. DERRITT *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1157.

No. 00–7502. VASQUEZ *v.* MAZZUCA, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 228 F. 3d 143.

No. 00–7505. SOSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 647.

No. 00–7508. POWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 226 F. 3d 1181.

No. 00–7509. GUERRA ZAVALA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–7514. ENCARNACION *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–7517. CHAVEZ *v.* MUELLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7518. COATES *v.* BYRD, ATTORNEY GENERAL OF GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 211 F. 3d 1225.

No. 00–7519. CLARK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 227 F. 3d 273.

No. 00–7520. COOK *v.* ALAMEIDA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 893.

No. 00–7521. ALIWOLI *v.* CARTER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 225 F. 3d 826.

No. 00–7524. BARON-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 187 F. 3d 1144.

No. 00–7525. BEST *v.* CAFE BRAVO. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 645.

No. 00–7526. PALERMO *v.* OLIVAREZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 896.

No. 00–7528. BOULINEAU *v.* TRIPP ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7529. BOLLING *v.* CONROY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 215 F. 3d 1317.

No. 00–7530. ALCAZAR *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 00–7531. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1355.

No. 00–7532. JACKSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1355.

No. 00–7534. STEEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 352 N. C. 227, 536 S. E. 2d 1.

No. 00–7535. SMITH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 89 Ohio St. 3d 323, 731 N. E. 2d 645.

No. 00–7536. REAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1356.

No. 00–7539. SLATER *v.* GENERAL SERVICES ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 762.

No. 00–7540. OLLIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–7541. POLICHEMI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 219 F. 3d 698.

No. 00–7543. MACON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–7546. JARAMILLO *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7547. MARTIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–7548. BRYANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 630.

No. 00–7549. JARRETT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1344.

No. 00–7552. BUSTAMONTE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7553. RAY *v.* SMITH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7554. RASTEN *v.* NORTHEASTERN UNIVERSITY. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 432 Mass. 1003, 731 N. E. 2d 1074.

No. 00–7555. SZALAY *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7556. SHEPHERD *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7559. SMITH *v.* MOODY, WARDEN. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 770 So. 2d 1233.

No. 00–7560. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 223 F. 3d 905.

No. 00–7562. WARREN *v.* CIRCUIT COURT OF WISCONSIN, RICHLAND COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 454.

No. 00–7563. MONGE VILLALTA *v.* DALY. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 433.

No. 00–7564. STEPHENS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 15 S. W. 3d 278.

No. 00–7566. WINNINGHAM *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–7567. WYRE *v.* SCHNEWEISS ET AL. Ct. App. La., 1st Cir. Certiorari denied.

No. 00–7574. VELEZ *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7577. SIEGEL *v.* COLUMBIA/PENTAGON CITY NATIONAL ORTHOPEDIC HOSPITAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 211 F. 3d 1265.

No. 00–7578. SIEGEL *v.* COLUMBIA/HCA HEALTHCARE CORP. ET AL. Sup. Ct. Va. Certiorari denied.

No. 00–7579. SMITH *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 00–7580. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–7581. SPANGLER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7582. SHADDEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 29.

No. 00–7583. SWIFT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 220 F. 3d 502.

No. 00–7586. SWIFT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1356.

No. 00–7588. YATES *v.* TADLOCK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 643.

No. 00–7589. WILSON *v.* OKLAHOMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 903.

No. 00–7590. THOMAS *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7591. TUCKER *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7593. PANICHAS *v.* TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–7596. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 29.

No. 00–7597. CABBERIZA *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 217 F. 3d 1329.

No. 00–7598. SHOEMAKE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–7599. RAYMER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–7600. SONDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 199 F. 3d 1324.

No. 00–7601. ROMO *v.* OKLAHOMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1202.

No. 00–7602. FLEMMI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 225 F. 3d 78.

No. 00–7604. FALK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 238 Wis. 2d 93, 617 N. W. 2d 676.

No. 00–7606. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 656.

No. 00–7607. HERD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1231.

No. 00–7609. HOPKINS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7610. HETT *v.* YOUNG ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7611. FINK *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7612. GRUBB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–7614. SILVA *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7615. RHODES *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1158.

No. 00–7616. SHAYESTEH *v.* CITY OF SOUTH SALT LAKE. C. A. 10th Cir. Certiorari denied. Reported below: 217 F. 3d 1281.

No. 00–7617. ROMERO *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7618. FLORES-VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 188 F. 3d 515.

No. 00–7619. WETENDORF *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 00–7622. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 892.

No. 00–7624. WOODSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7627. MORROW *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 21 S. W. 3d 819.

No. 00–7636. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7637. BEST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–7640. MOORE *v.* NEW YORK STATE OFFICE OF MENTAL HEALTH. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari

denied. Reported below: 270 App. Div. 2d 677, 705 N. Y. S. 2d 700.

No. 00–7643. BARASH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1150.

No. 00–7644. MALDONADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 215 F. 3d 1046.

No. 00–7645. LINDSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 135.

No. 00–7654. PERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–7656. MCKENZIE *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 430.

No. 00–7666. OLIVER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–7667. STORY *v.* DAIMLERCHRYSLER CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1339.

No. 00–7669. OSTERBACK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 414.

No. 00–7672. RUBENZER *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 00–7674. TWEED *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1167.

No. 00–7677. DAVEGGIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 432.

No. 00–7678. COLLINS *v.* BURGER, SUPERINTENDENT, MT. PLEASANT CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1362.

No. 00–7679. CASTILLO-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–7680. CERRANO-DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–7682. KAHL *v.* MCLAUGHLIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 654.

No. 00–7683. MAYFIELD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 221 F. 3d 1340.

No. 00–7685. ALANIS, AKA ALANIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 705.

No. 00–7689. WILSON *v.* SCHOMIG, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–7690. SAMUELSON *v.* IDAHO. Ct. App. Idaho. Certiorari denied.

No. 00–7693. LABLANCHE *v.* HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied.

No. 00–7695. ADAMS *v.* IOWA. Ct. App. Iowa. Certiorari denied.

No. 00–7696. ANDREWS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1356.

No. 00–7697. REYES-MARO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 433.

No. 00–7698. ROBLES-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 705.

No. 00–7705. MILLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 224 F. 3d 247.

No. 00–7707. NEAL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–7708. VILLAVICENCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 433.

No. 00–7715. JONES *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7716. MACON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 1266.

No. 00–7720. WESELA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 656.

No. 00–7721. TOKICH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 314 Ill. App. 3d 1070, 734 N. E. 2d 117.

No. 00–7722. VALDOVINO-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7723. THOMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 903.

No. 00–7724. UGARTE-CASTRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 230 F. 3d 1347.

No. 00–7726. CORMIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 220 F. 3d 1103.

No. 00–7727. RAMON DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 432.

No. 00–7730. JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 F. 3d 987.

No. 00–7731. WYKLE *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 208 W. Va. 369, 540 S. E. 2d 586.

No. 00–7735. ROJAS-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 385.

No. 00–7736. SARABIA-VILLANTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 706.

No. 00–7737. LITTLE *v.* MASSACHUSETTS DEPARTMENT OF CORRECTION ET AL. C. A. 1st Cir. Certiorari denied.

No. 00–7738. WILDCAT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 385.

No. 00–7740. CLARK *v.* WITEK, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7741. FINLEY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 312 Ill. App. 3d 892, 728 N. E. 2d 101.

No. 00–7742. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1360.

No. 00–7744. PEREIRA-MUNOZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–7746. MULDOON *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 1st Cir. Certiorari denied. Reported below: 229 F. 3d 1133.

No. 00–7747. PALLONE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 236 Wis. 2d 162, 613 N. W. 2d 568.

No. 00–7749. MASON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 211 F. 3d 1065.

No. 00–7755. SOWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 903.

No. 00–7756. PAZZI SALAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 383.

No. 00–7757. HOLMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 782.

No. 00–7758. ALFREDO FIGUEROA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1353.

No. 00–7765. GOLDMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 228 F. 3d 942.

No. 00–7766. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 28.

No. 00–7770. FALKNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 223 F. 3d 756.

No. 00–7771. GUERRERO, AKA MELENDEZ PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 134.

No. 00–7772. GALVAN-MENESES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 432.

No. 00–7773. HASKIN, AKA HASKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 228 F. 3d 151.

No. 00–7774. FEBO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 711.

No. 00–7775. GAITHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1144.

No. 00–7776. GOMEZ-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 30.

No. 00–7784. MUSSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 242 F. 3d 368.

No. 00–7791. BROWN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 139 N. C. App. 207, 536 S. E. 2d 865.

No. 00–7793. O'HAVER *v.* GEORGIA DEPARTMENT OF FAMILY AND CHILD SERVICES. Ct. App. Ga. Certiorari denied. Reported below: 243 Ga. App. 1, 530 S. E. 2d 261.

No. 00–7797. BEHR *v.* RAMSEY, SHERIFF, KANE COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 230 F. 3d 268.

No. 00–7799. KADONSKY *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 216 F. 3d 499.

No. 00–7800. MEDINA-EUSEBIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 432.

No. 00–7804. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 230 F. 3d 300.

No. 00–7808. SWANN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 F. 3d 1031.

No. 00–7809. RICE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7810. MUSE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–7815. J. M. *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 00–7816. MAGALLON-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 1109.

No. 00–7819. DOGGETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 F. 3d 160.

No. 00–7823. DALTON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 134 N. C. App. 499, 526 S. E. 2d 510.

No. 00–7824. CHACON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 383.

No. 00–7825. CRITTENDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 890.

No. 00–7827. WHITE *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–7833. ATKIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–7834. JONES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–7836. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–7840. BRAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 655.

No. 00–7845. DOISEY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 138 N. C. App. 620, 532 S. E. 2d 240.

No. 00–7847. PAGE-BEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–7853. DAVENPORT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–7854. KAMINSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 229 F. 3d 1136.

No. 00–7857. GOMEZ SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–7859. LAMPKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–7860. RUSSELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–7861. BAKER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 779 So. 2d 269.

No. 00–7865. PO CHIENG MA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–7867. STARR *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1270.

No. 00–7870. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 841.

No. 00–7871. SANDS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 753 So. 2d 630.

No. 00–7874. DAVAGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 841.

No. 00–7876. CARRILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7880. MOSQUERA-OLAVE, AKA RODRIGUEZ SANTOS, AKA SANTOS RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1341.

No. 00–7882. AMARILLE *v.* OFFICE OF PERSONNEL MANAGEMENT; and

No. 00–7883. DANAO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 243 F. 3d 554.

No. 00–7889. BAKER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 775 So. 2d 294.

No. 00–7890. BASTIDAS-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–7891. WILLIAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 194 F. 3d 100.

No. 00–7893. ADAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–7904. BAILEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1150.

No. 00–7906. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–7921. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–7922. SHULER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–7927. STEVENS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 223 F. 3d 239.

No. 00–7930. VENTURA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–7931. EDMISTEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 693.

No. 00–7932. COX *v.* BENIK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–7933. EASTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–7942. DUCKETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–7953. GARCIA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 228 F. 3d 956.

No. 00–7954. BOERS ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 243 F. 3d 561.

No. 00–7957. THORNTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1271.

No. 00–7962. ANTONIO ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–7964. RUDD *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 00–7965. WOLFRAM *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1074.

No. 00–7975. FISHER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 749 A. 2d 710.

No. 00–7976. GARZA-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 806.

No. 00–7982. SIMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1271.

No. 00–7984. RIDENOUR *v.* DAVIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 229 F. 3d 1153.

No. 00–7988. MONTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1343.

No. 00–7989. DOTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 391.

No. 00–7990. CLARK *v.* BROOKS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1357.

No. 00–7991. CHAVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1345.

No. 00–7992. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 630.

No. 00–7995. DIAMOND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 709.

No. 00–7999. SIMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 372.

No. 00–8003. SOROCHKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 433.

No. 00–8008. ROMERO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–8016. BECK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 372.

No. 00–8020. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 677.

No. 00–8024. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 226 F. 3d 346.

No. 00–8028. DALY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–8029. CALLOWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–8031. FRAZIER, AKA MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 372.

No. 00–8032. GUERRERO-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 203 F. 3d 833.

No. 00–8034. HANNIBAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1343.

No. 00–8035. HERNANDEZ-FAUSTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8042. CHAPMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 664.

No. 00–8046. SELBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 892.

No. 00–8053. EATON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1165.

No. 00–8054. COLEMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–8064. CHAVEZ-IBARRA *v.* UNITED STATES; MORALES-BARCENAS *v.* UNITED STATES; IBARRA-VEGA *v.* UNITED STATES; SEQUEIRA-RUEDA *v.* UNITED STATES; and MALDONADO-FERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8066. EADS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–8071. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 00–8072. VILLANEUVA MONROY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 223 F. 3d 797.

No. 00–8077. KEITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 230 F. 3d 784.

No. 00–8079. REYES-AGUILAR ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1341.

No. 00–8081. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 00–8083. PAZ-SEVILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1341.

No. 00–8085. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–8086. BRAUN *v.* POWELL, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 227 F. 3d 908.

No. 00–8088. WILKERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 208 F. 3d 794.

No. 00–8089. CLARKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 227 F. 3d 874.

No. 00–8093. CALDERON-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8099. OLVERA-CHAVARIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–8100. MEDINA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8102. MATTESON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 384.

No. 00–8105. LAWAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 231 F. 3d 1045.

No. 00–8122. BLACK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 238 Wis. 2d 203, 617 N. W. 2d 210.

No. 00–8123. BURRESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–8126. BRATCHER *v.* BOGAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 210.

No. 00–8130. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8135. FLORES-IGLESIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8143. CLABORN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–8164. PARKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1270.

No. 00–249. ATLANTIC RICHFIELD CO. ET AL. *v.* UNION OIL COMPANY OF CALIFORNIA. C. A. Fed. Cir. Motions of American Petroleum Institute et al., Dennis Kucinich et al., and General Motors Corp. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 208 F. 3d 989.

No. 00–482. INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 201 F. 3d 1367.

No. 00–593. PUBLIC SERVICE COMMISSION OF UTAH ET AL. *v.* QWEST COMMUNICATIONS INTERNATIONAL INC. ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 216 F. 3d 929.

No. 00–623. TIME WARNER ENTERTAINMENT CO., L. P. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 211 F. 3d 1313.

No. 00–1087. MCMANUS *v.* MCI COMMUNICATIONS CORP. ET AL. Ct. App. D. C. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 748 A. 2d 949.

No. 00–1002. ALABAMA *v.* SNEED. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 783 So. 2d 863.

No. 00–1023. HALBMAN *v.* ST. LOUIS COUNTY ET AL. C. A. 8th Cir. Motion of individual respondents to substitute Elaine

Otzenberger in place of Ritamarie Otzenberger, deceased, granted. Certiorari denied. Reported below: 222 F. 3d 488.

No. 00–1141. DVORAK *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to file a portion of the appendix under seal granted. Certiorari denied. Reported below: 232 F. 3d 890.

No. 00–6479. DURDEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

JUSTICE SOUTER, with whom JUSTICE BREYER joins, dissenting.

Two Terms ago this Court denied certiorari in *Riggs* v. *California*, 525 U. S. 1114 (1999). The issue was an Eighth Amendment challenge to California's statutory scheme that allows a petty theft (normally a misdemeanor) to be counted as a third felony for purposes of a three-strikes law, resulting in a sentence of 25 years to life. *Id.*, at 1115. This case raises the same issue; the value of the goods taken was $43. Pet. for Cert. 8.

JUSTICE BREYER dissented from the denial of certiorari in *Riggs*, while JUSTICE STEVENS filed an opinion respecting the denial, in which JUSTICE GINSBURG and I joined. A principal reason that the three of us were led to concur in the denial of review was the expectation that rulings by other courts on challenges to the California scheme would be valuable to us in any examination of the issue we might ultimately give it. I no longer think this a sufficient reason to postpone what I assume will inevitably be a decision at some point to examine the matter.

Two years after *Riggs*, the Supreme Court of California has not taken up the issue, and petitioner (like Riggs) seeks review of an intermediate appellate court decision. We are advised that Federal District Courts have uniformly denied relief to California petitioners like this one. See *Wallace* v. *Castro*, No. C 99–2270 CRB (PR), 2000 WL 1262662 (ND Cal., Aug. 30, 2000); *Gamble* v. *Pliler*, No. C 99–2133 WHA (PR), 2000 WL 126125 (ND Cal., Jan. 31, 2000). While it is not apparent (save in one instance) why the Ninth Circuit has not considered the issue, my inclination to wait until it has done so is checked by two considerations: the potential for disagreement over application of the habeas corpus review standards of *Teague* v. *Lane*, 489 U. S. 288 (1989), and the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, § 101 *et seq.*, 110 Stat. 1214, as amended, were we to

take up this question in the federal habeas context; and the uncontroverted representation of petitioner's counsel that some 319 California prisoners are now serving sentences of 25 years to life for what would otherwise be misdemeanor theft under the California scheme.

On these facts, I would wait no longer. The issue is serious, the state courts have had adequate opportunity to consider it, and the stakes are substantial. I respectfully dissent from denial of the petition for certiorari.

No. 00–7910. ENIGWE *v.* UNITED STATES. C. A. 3d Cir. Certiorari before judgment denied.

Rehearing Denied

No. 99–8356. GANN *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL., 529 U. S. 1090;

No. 99–8525. STEADMAN *v.* UNITED STATES, 529 U. S. 1076;

No. 99–9778. GYADU *v.* CONNECTICUT WORKERS' COMPENSATION COMMISSION, *ante*, p. 844;

No. 99–9868. CHAMBERS *v.* WELBORN, WARDEN, *ante*, p. 848;

No. 99–10014. FERNANDEZ *v.* UNITED STATES, *ante*, p. 856;

No. 99–10179. GIBSON *v.* PRUITT, WARDEN, ET AL., *ante*, p. 865;

No. 00–630. TELFAIR *v.* FIRST UNION MORTGAGE CORP., *ante*, p. 1073;

No. 00–678. POLYAK *v.* BURSON ET AL., *ante*, p. 1074;

No. 00–697. TURNER *v.* WARNER BROTHERS STUDIO ET AL., *ante*, p. 1075;

No. 00–731. BONTON *v.* MERIT SYSTEMS PROTECTION BOARD ET AL., *ante*, p. 1052;

No. 00–5059. SIAS *v.* LEBLANC, WARDEN, *ante*, p. 884;

No. 00–5060. IN RE REYNA, *ante*, p. 810;

No. 00–5160. CAMILO BRAVO *v.* UNITED STATES, *ante*, p. 994;

No. 00–5336. FLOREZ *v.* UNITED STATES, *ante*, p. 898;

No. 00–5461. CHILDS *v.* SUTHERS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 905;

No. 00–5508. BAKER *v.* UNITED STATES, *ante*, p. 907;

No. 00–5668. MARIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 912;

No. 00–5781. EVANS *v.* PRICE, *ante*, p. 961;

No. 00–5838. HEADRICK *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 963;

No. 00–5844. JACKSON *v.* UNITED STATES, *ante*, p. 1016;

No. 00–5880. BOLDEN *v.* VILLAGE OF BELLWOOD, *ante*, p. 964;

No. 00–5907. MOODY *v.* OKORIE, *ante*, p. 965;

No. 00–5982. BRAKEALL *v.* GURUCHARRI ET AL., *ante*, p. 1016;

No. 00–6046. ROBLYER *v.* PENNSYLVANIA, *ante*, p. 981;

No. 00–6080. BENNETT *v.* LAKE HAVASU CITY, ARIZONA, ET AL., *ante*, p. 995;

No. 00–6084. BIRDWELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 995;

No. 00–6193. BRAVO *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 1016;

No. 00–6243. MCCAULEY *v.* COOK'S PEST CONTROL, INC., ET AL., *ante*, p. 1017;

No. 00–6349. LOVE *v.* TESSMER, WARDEN, *ante*, p. 1038;

No. 00–6359. REYNOLDS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 998;

No. 00–6389. SPIVEY *v.* HEAD, WARDEN, *ante*, p. 1053;

No. 00–6418. WILSON *v.* PHILLIPS, WARDEN, *ante*, p. 1039;

No. 00–6458. DE SPENZA *v.* CAMBRA, WARDEN, ET AL., *ante*, p. 1053;

No. 00–6476. LLOYD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1053;

No. 00–6477. LEE *v.* DISTRICT OF COLUMBIA, *ante*, p. 1054;

No. 00–6484. SMITH *v.* UNITED STATES, *ante*, p. 999;

No. 00–6494. BYRD *v.* COLLINS, WARDEN, *ante*, p. 1082;

No. 00–6527. THOMPSON *v.* BRANCHES-DOMESTIC VIOLENCE SHELTER OF HUNTINGTON, WEST VIRGINIA, INC., ET AL., *ante*, p. 1055;

No. 00–6541. HOBBY *v.* DISTRICT OF COLUMBIA PUBLIC SCHOOLS, *ante*, p. 1022;

No. 00–6657. SIMPKINS *v.* UNITED STATES, *ante*, p. 1024;

No. 00–6690. MANLEY *v.* MARICOPA COUNTY SHERIFF'S OFFICE ET AL., *ante*, p. 1085;

No. 00–6753. HARRISON *v.* DEPARTMENT OF THE INTERIOR ET AL., *ante*, p. 1056;

No. 00–6837. CRAWFORD *v.* UNITED STATES, *ante*, p. 1042;

No. 00–6852. FIELDS *v.* TYSON FOODS ET AL., *ante*, p. 1089;

No. 00–6948. AYERS *v.* SPARKMAN, WARDEN, ET AL., *ante*, p. 1092;

No. 00–6997. TAYLOR *v.* UNITED STATES, *ante*, p. 1057;

No. 00–7030. ABE *v.* MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES, *ante*, p. 1094; and

No. 00–7123. RHUDY *v.* UNITED STATES, *ante*, p. 1097. Petitions for rehearing denied.

No. 99–10045. IN RE PERRY, *ante*, p. 808; and

No. 00–6343. ALVARADO, AKA DYKES *v.* UNITED STATES, *ante*, p. 998. Motions for leave to file petitions for rehearing denied.

No. 00–520. DUNLAP *v.* MICHIGAN ET AL., *ante*, p. 1036. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 00–6491. YOUNG *v.* CAREY, WARDEN, *ante*, p. 1059. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

FEBRUARY 26, 2001

Certiorari Granted—Vacated and Remanded

No. 00–1022. INTERACTIVE FLIGHT TECHNOLOGIES, INC. *v.* SWISSAIR SWISS AIR TRANSPORT CO. ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Green Tree Financial Corp.-Ala.* v. *Randolph*, *ante*, p. 79.

Certiorari Dismissed

No. 00–7929. WATKIS *v.* AMERICAN NATIONAL INSURANCE CO. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–8257. GANEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506

U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 00A616. CORDERO *v.* UNITED STATES. Application for bail, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–2250. IN RE DISBARMENT OF DEAN. Herbert Wm. Dean, Jr., of Pinole, Cal., 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.

No. D–2251. IN RE DISBARMENT OF BARRETT. Dennis Michael Barrett, of Murfreesboro, Tenn., 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.

No. D–2252. IN RE DISBARMENT OF MCGEE. Paul McGee, of Atlanta, Ga., 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.

No. D–2253. IN RE DISBARMENT OF SIEGFRIED. Stephen D. Siegfried, of Hampton Bays, N. Y., 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.

No. 00M65. YOU ZHONG PENG *v.* UNITED STATES;

No. 00M66. DUSON *v.* CITY OF SAN DIEGO, CALIFORNIA, ET AL.;

No. 00M67. CARLSON *v.* BARNES; and

No. 00M69. SALEMO *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 00–347. THE WHARF (HOLDINGS) LTD. ET AL. *v.* UNITED INTERNATIONAL HOLDINGS, INC., ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 978.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–767. IMMIGRATION AND NATURALIZATION SERVICE *v.* ST. CYR. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1107.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted.

No. 00–1011. CALCANO-MARTINEZ ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1108.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted.

No. 00–7621. IN RE WORKMAN; and

No. 00–8259. IN RE HORSLEY. Petitions for writs of habeas corpus denied.

No. 00–8212. IN RE BENNETT. Petition for writ of mandamus denied.

Certiorari Granted

No. 00–568. NEW YORK ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.; and

No. 00–809. ENRON POWER MARKETING, INC. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari in No. 00–568 granted limited to Question 1 presented by the petition. Certiorari in No. 00–809 granted. Cases consolidated, and a total of one hour allotted for oral argument. Reported below: 225 F. 3d 667.

No. 00–973. UNITED STATES *v.* VONN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 224 F. 3d 1152.

No. 00–6567. DUSENBERY *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 223 F. 3d 422.

No. 00–6933. LEE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 213 F. 3d 1037.

Certiorari Denied

No. 99–243. ZIMMERMAN *v.* OREGON DEPARTMENT OF JUSTICE. C. A. 9th Cir. Certiorari denied. Reported below: 170 F. 3d 1169.

No. 99–390. PAULK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 187 F. 3d 637.

No. 99–424. BROWN ET AL. *v.* NORTH CAROLINA DIVISION OF MOTOR VEHICLES. C. A. 4th Cir. Certiorari denied. Reported below: 166 F. 3d 698.

No. 99–940. DEBOSE ET AL. *v.* NEBRASKA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 207 F. 3d 1020.

No. 99–1417. CALIFORNIA DEPARTMENT OF MOTOR VEHICLES *v.* DARE ET AL., INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED. C. A. 9th Cir. Certiorari denied. Reported below: 191 F. 3d 1167.

No. 99–2077. UNITED STATES *v.* BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES FOR NORTHEASTERN ILLINOIS UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 207 F. 3d 945.

No. 00–7. STEVENS *v.* ILLINOIS DEPARTMENT OF TRANSPORTATION. C. A. 7th Cir. Certiorari denied. Reported below: 210 F. 3d 732.

No. 00–127. SEMICONDUCTOR ENERGY LABORATORY CO., LTD. *v.* SAMSUNG ELECTRONICS CO., LTD., ET AL.; and

No. 00–138. SAMSUNG ELECTRONICS CO., LTD., ET AL. *v.* SEMICONDUCTOR ENERGY LABORATORY CO., LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 204 F. 3d 1368.

No. 00–156. PRODUCTION CREDIT ASSOCIATION OF EASTERN NEW MEXICO *v.* TAXATION AND REVENUE DEPARTMENT OF NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 128 N. M. 799, 999 P. 2d 1031.

No. 00–263. NEINAST *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 217 F. 3d 275.

No. 00–554. UNITED STATES *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 213 F. 3d 344.

No. 00–611. WALKER *v.* MISSOURI DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 213 F. 3d 1035.

No. 00–660. Florida Sugar Marketing & Terminal Assn., Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 220 F. 3d 1331.

No. 00–798. Greenville Women's Clinic et al. *v.* Bryant, Commissioner, South Carolina Department of Health and Environmental Control, et al. C. A. 4th Cir. Certiorari denied. Reported below: 222 F. 3d 157.

No. 00–800. Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia *v.* Federal Energy Regulatory Commission et al. C. A. D. C. Cir. Certiorari denied. Reported below: 225 F. 3d 667.

No. 00–814. City of Long Beach *v.* Seung Chun Lim et al.; and

No. 00–1043. Seung Chun Lim et al. *v.* City of Long Beach. C. A. 9th Cir. Certiorari denied. Reported below: 217 F. 3d 1050.

No. 00–828. DuBose *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 00–829. Chris *v.* Tenet, Director of Central Intelligence. C. A. 4th Cir. Certiorari denied. Reported below: 221 F. 3d 648.

No. 00–838. South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada et al. *v.* Sixth Judicial District Court of Nevada et al. Sup. Ct. Nev. Certiorari denied. Reported below: 116 Nev. ——, 7 P. 3d 455.

No. 00–848. McNeil, Independent Executor and Representative of the Estate of McNeil, Deceased *v.* Time Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 205 F. 3d 179.

No. 00–876. Christo et al. *v.* Padgett. C. A. 11th Cir. Certiorari denied. Reported below: 223 F. 3d 1324.

No. 00–1016. Allied Pilots Assn. et al. *v.* American Airlines, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 228 F. 3d 574.

No. 00–1029. Braun *v.* Headley. Ct. Sp. App. Md. Certiorari denied. Reported below: 131 Md. App. 588, 750 A. 2d 624.

No. 00–1035. MINZER ET AL. *v.* KEEGAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 218 F. 3d 144.

No. 00–1036. LUCERO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 23 Cal. 4th 692, 3 P. 3d 248.

No. 00–1040. SURETY INVESTMENT RECOVERY SERVICES, INC. *v.* AMERICAN INSURANCE CO. ET AL. Ct. App. Wash. Certiorari denied. Reported below: 99 Wash. App. 1044.

No. 00–1044. VOSKUIL *v.* ENVIRONMENTAL HEALTH CENTER-DALLAS. C. A. 5th Cir. Certiorari denied. Reported below: 224 F. 3d 764.

No. 00–1046. ADAMS ET AL. *v.* AMERICAN EAGLE MARINE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 220 F. 3d 659.

No. 00–1051. COLEMAN CO., INC. *v.* BROWN. C. A. 10th Cir. Certiorari denied. Reported below: 220 F. 3d 1180.

No. 00–1053. SHEGA *v.* LEWIS, D'AMATO, BRISBOIS & BISGAARD ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–1070. CHERTKOVA *v.* CONNECTICUT GENERAL LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 210 F. 3d 354.

No. 00–1095. PABST BREWING CO., INC. *v.* ROSETTO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 217 F. 3d 539.

No. 00–1112. KEY *v.* HENDERSON, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 654.

No. 00–1118. RENZI ET AL. *v.* CONNELLY SCHOOL OF THE HOLY CHILD, INC. C. A. 4th Cir. Certiorari denied. Reported below: 224 F. 3d 283.

No. 00–1137. MIHN VAN BUI *v.* ALARCON, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1279.

No. 00–1186. ALVAREZ *v.* BOYD. C. A. 7th Cir. Certiorari denied. Reported below: 225 F. 3d 820.

No. 00–1199. RODRIGUEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 898.

No. 00–1203. CASSELL *v.* KURILY ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1357.

No. 00–1213. GOULD ET UX. *v.* UNITED STATES; and HOLYWELL CORP. & SUBSIDIARIES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1142.

No. 00–1243. LOVE *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–6720. BERRIO-CALLEJAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 219 F. 3d 1.

No. 00–6900. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 213 F. 3d 633.

No. 00–6916. SCHREIBER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1351.

No. 00–6963. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–7136. THOMAS *v.* DAHLBERG, ACTING SECRETARY OF THE ARMY. C. A. 8th Cir. Certiorari denied. Reported below: 221 F. 3d 1344.

No. 00–7310. INGRAM *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 779 So. 2d 1283.

No. 00–7326. HUNT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–7620. WORKMAN *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 227 F. 3d 331.

No. 00–7625. PLANTZ *v.* MASSIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 216 F. 3d 1088.

No. 00–7626. MCCOY *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7628. BAKER *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 220 F. 3d 276.

No. 00–7630. LOCKETT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7631. MARSH *v.* SOARES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 223 F. 3d 1217.

No. 00–7633. LYNCH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 273 App. Div. 2d 806, 708 N. Y. S. 2d 541.

No. 00–7634. MCKIBBEN *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–7638. JENNINGS-JONES *v.* CHILDREN'S HARBOR, INC. C. A. 11th Cir. Certiorari denied. Reported below: 209 F. 3d 723.

No. 00–7641. MACKEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 209.

No. 00–7646. MADSEN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 00–7647. JOHNSON *v.* CHOATE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 630.

No. 00–7650. MILLER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 776 So. 2d 396.

No. 00–7651. PERRY *v.* BLACKWELL, ADMINISTRATOR, EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–7652. JAMES *v.* HEARVY ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–7653. SALINAS MESTIZA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7655. MCCALLUP *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 00–7658. ZIEGLER *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1361.

No. 00–7659. METZENBAUM *v.* MARK GLASSMAN, INC., ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 00–7660. TAYLOR *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 00–7662. SONTAG *v.* MECHLING, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYNESBURG. C. A. 3d Cir. Certiorari denied.

No. 00–7663. RODRIGUEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7664. UNDERWOOD *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–7665. WHITE *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–7668. SUTTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 00–7670. WILLIS *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7671. WEBB *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7673. TWYMAN *v.* KING COUNTY, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7675. THOMPSON *v.* OKANAGAN HOUSE, INC., ET AL. Ct. App. Wash. Certiorari denied. Reported below: 100 Wash. App. 1002.

No. 00–7681. STONE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–7684. ADAMS *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 223 F. 3d 1177.

No. 00–7686. JACKSON *v.* HARGETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1352.

No. 00–7687. SIMS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 192 Ill. 2d 592, 736 N. E. 2d 1048.

No. 00–7691. CODDINGTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 23 Cal. 4th 529, 2 P. 3d 1081.

No. 00–7694. SMITH *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 21 S. W. 3d 830.

No. 00–7700. BUNNICH *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7701. BRYANT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–7702. LEE *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7703. DIAZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7704. METHENY ET AL. *v.* HAMMONDS. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1307.

No. 00–7709. VAUGHN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–7725. DAVIS *v.* HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 234 F. 3d 706.

No. 00–7748. TIPP *v.* AMSOUTH BANK, N. A. C. A. 11th Cir. Certiorari denied. Reported below: 229 F. 3d 1166.

No. 00–7750. LASITER *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7754. MARTINEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7760. AL-DIN, AKA PARKER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7762. FRANK *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 769 So. 2d 1219.

No. 00–7764. GISSENDANER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 272 Ga. 704, 532 S. E. 2d 677.

No. 00–7778. SHAFER *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7780. RICHARDS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–7781. RICHARDSON *v.* ALBERTSON'S, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 229 F. 3d 1164.

No. 00–7788. PACE *v.* DUKES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7792. VOSS *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–7795. RUFFIN *v.* MONROE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 414.

No. 00–7805. IN RE PIERCE. C. A. 3d Cir. Certiorari denied.

No. 00–7811. O'NEILL *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 220 F. 3d 1354.

No. 00–7817. JEFFERSON *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–7818. LUCEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–7821. DUCKER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 27 S. W. 3d 889.

No. 00–7832. FOSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1196.

No. 00–7838. IRVIN *v.* MICHIGAN PAROLE BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1334.

No. 00–7846. BURR *v.* GOORD, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 274 App. Div. 2d 980, 715 N. Y. S. 2d 205.

No. 00–7869. GOLDEN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–7875. DURBIN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–7879. BERRY *v.* FOLSOM STATE PRISON ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–7888. BROWN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 709.

No. 00–7896. ARCHULETA *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7897. ALBERT *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–7900. ALVES *v.* UNITED SERVICES AUTOMOBILE ASSN. ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–7908. RAHMAN *v.* PEASE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 229 F. 3d 1135.

No. 00–7919. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–7936. JONES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 821.

No. 00–7940. CLIFFORD *v.* TICE ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–7947. DEW *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 381.

No. 00–7966. WILSON *v.* JOHNSON, CIVIL COMMITMENT REFERRAL COORDINATOR, MINNESOTA DEPARTMENT OF CORRECTIONS. Ct. App. Minn. Certiorari denied.

No. 00–7969. SUEING *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 00–7974. MUHANNAD *v.* FEDERAL BUREAU OF PRISONS. C. A. D. C. Cir. Certiorari denied.

No. 00–7986. NAILS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7987. NAILS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–7994. COVILLION *v.* COVILLION. Sup. Jud. Ct. Me. Certiorari denied.

No. 00–7997. AVNAIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 211 F. 3d 1275.

No. 00–8018. BURR *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 276 App. Div. 2d 951, 715 N. Y. S. 2d 920.

No. 00–8025. DAWSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 00–8030. CHOATE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–8040. DURFLINGER *v.* RYDER, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied.

No. 00–8047. LESLIE *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 230 F. 3d 25.

No. 00–8074. STEPHENS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 342 Ark. 151, 28 S. W. 3d 260.

No. 00–8092. DURAN *v.* KIRTLAND & PACKARD, LLP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–8103. JARAMILLO-PONCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 00–8107. BALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–8109. QUINTANA-OROSCO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 232 F. 3d 903.

No. 00–8110. RUTLEDGE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 230 F. 3d 1041.

No. 00–8115. MALDONADO *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 548.

No. 00–8131. FERNANDEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1340.

No. 00–8132. FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1340.

No. 00–8134. GORDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 231 F. 3d 750.

No. 00–8137. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1341.

No. 00–8139. NOEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 231 F. 3d 833.

No. 00–8145. CRUZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–8160. SHEPPARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 219 F. 3d 766.

No. 00–8163. VANATTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 00–8165. ZAMORA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 F. 3d 1046.

No. 00–8166. WEBB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 1127.

No. 00–8168. ROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 225 F. 3d 665.

No. 00–8172. DUDLEY *v.* UNITED STATES SENTENCING COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 00–8176. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–8180. DODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 655.

No. 00–8181. HINTON, AKA BALDWIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 222 F. 3d 664.

No. 00–8182. FELICI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 208 F. 3d 667.

No. 00–8186. HADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 841.

No. 00–8189. FEASTER *v.* BESHEARS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 208.

No. 00–8190. HORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–8195. BURNETTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1270.

No. 00–8204. CALDERON-LEAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 F. 3d 636.

No. 00–8208. CURLEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1144.

No. 00–8211. MONTAGUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 234 F. 3d 1263.

No. 00–8213. BASTIAN *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied.

No. 00–8217. MORTIMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 888.

No. 00–8220. FELICIANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 228 F. 3d 413.

No. 00–8222. ISHAM *v.* RANDLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 226 F. 3d 691.

No. 00–8225. FRANCIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–8229. HERRERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–8230. HATCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 203 F. 3d 823.

No. 00–8237. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 00–8238. HICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1270.

No. 00–8244. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 213 F. 3d 302.

No. 00–8247. HOLMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 225 F. 3d 660.

No. 00–8252. HARRELL, AKA JOHNSON, ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 226 F. 3d 647.

No. 00–8253. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–8256. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–8263. BRAGG *v.* MORGAN, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 90 Ohio St. 3d 1479, 738 N. E. 2d 1253.

No. 00–8270. HOLMES *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 654.

No. 00–8274. RICHARDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 433.

No. 00–8279. GANEY *v.* CHESTER, SUPERINTENDENT, CRAVEN CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 225 F. 3d 654.

No. 00–8289. DOLENZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 1147.

No. 00–8291. CHAGUALA-CARRILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 710.

No. 00–8298. CANTY *v.* BOOKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 221 F. 3d 1351.

No. 00–8299. DABEIT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 231 F. 3d 979.

No. 00–8300. SANCHEZ-AVALOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 385.

No. 00–8303. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 216 F. 3d 1072.

No. 00–8308. HARRISON, AKA IORIZZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–8309. HART/CROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 1360.

No. 00–8311. ABRAHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 230 F. 3d 1349.

No. 00–8315. MCCLAREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–8320. CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–8322. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 00–8324. MCDONALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 842.

No. 00–8334. SAMBRANO VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–8335. RICHARDSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 225 F. 3d 46.

No. 00–8336. RAMOS REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 385.

No. 00–8338. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 631.

No. 00–8354. REYES-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 385.

No. 00–8357. MORRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1145.

No. 00–8359. LINDSAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 891.

No. 00–8396. STEELE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–8412. GRAY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–1024. GORDON, TRUSTEE *v.* ALCATEL CONTRACTING, INC. C. A. 11th Cir. Motion of National Association of Bankruptcy Trustees for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 219 F. 3d 1279.

No. 00–6745. CHANDLER *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to amend petition for writ of certiorari granted. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 218 F. 3d 1305.

Rehearing Denied

No. 00–640. MCGUIRE ET AL. *v.* ROCK COUNTY BOARD OF SUPERVISORS ET AL., *ante*, p. 1073;

No. 00–695. MUSSER *v.* SALOMON/SMITH BARNEY, INC., *ante*, p. 1075;

No. 00–702. JUDGE *v.* HATCH ET AL., *ante*, p. 1075;

No. 00–706. HOGAN MANAGEMENT SERVICES *v.* MARTINO, DBA NORTH GEORGIA ORTHOPAEDICS, *ante*, p. 1075;

No. 00–766. JUDGE *v.* SUPERIOR COURT OF CALIFORNIA, *ante*, p. 1077;

No. 00–5597. RODRIGUEZ REYNA *v.* STEWART ET AL., *ante*, p. 945;

No. 00–5693. HUFF *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 912;

No. 00–5758. BROSEH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1081;

No. 00–6004. JACKSON *v.* RAMSEY COUNTY, *ante*, p. 967;

No. 00–6200. LEVERTON *v.* CITY OF HOUSTON POLICE DEPARTMENT ET AL., *ante*, p. 1016;

No. 00–6683. HAWKINS *v.* UNITED STATES, *ante*, p. 1025;

No. 00–6779. LURIA *v.* LURIA, *ante*, p. 1056;

No. 00–6894. WASHINGTON *v.* LOUISIANA STATE BOARD OF PRIVATE SECURITY EXAMINERS, *ante*, p. 1090;

No. 00–6950. BANKS *v.* PIZZINGRILLI, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, *ante*, p. 1092;

No. 00–6981. LITTLEJOHN *v.* UNITED STATES, *ante*, p. 1057;

No. 00–7301. DENNEY *v.* KANSAS, *ante,* p. 1130;

No. 00–7341. TILLI *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL., *ante,* p. 1130;

No. 00–7372. ELLIS *v.* UNITED STATES, *ante,* p. 1103; and

No. 00–7374. NORWOOD *v.* UNITED STATES, *ante,* p. 1103. Petitions for rehearing denied.

MARCH 1, 2001

Miscellaneous Order

No. 00A746 (00–8727). MCCARVER *v.* NORTH CAROLINA. Sup. Ct. N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

Certiorari Denied

No. 00–8735 (00A755). AKERS, BY LEE, AS NEXT FRIEND *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS would grant the application for stay of execution.

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CONSTITUTIONAL LAW—Continued.

III. Elections Clause.

Congressional term limits—Ballot specifications.—Article VIII of Missouri Constitution—which instructs State's Congress Members to support a "Congressional Term Limits Amendment" to Federal Constitution and prescribes statements be printed on ballots by names of Members and candidates failing to take or support specified legislative acts in support of such an amendment—is not a permissible regulation of "manner" of electing federal legislators within States' authority under Elections Clause. Cook v. Gralike, p. 510.

IV. Equal Protection of the Laws.

Presidential election—Vote recount.—Because it is evident that any recount seeking to meet 3 U. S. C. § 5's December 12 safe-harbor date for selecting a State's Presidential electors will be unconstitutional under Equal Protection Clause, Florida Supreme Court's judgment ordering manual recounts to proceed in 2000 Presidential election is reversed. Bush v. Gore, p. 98.

V. *Ex Post Facto* Laws.

Civil commitment—Sexually violent predator.—Where Washington Supreme Court had previously found State's sexually violent predator commitment statute to be civil, respondent inmate could not obtain release through an "as applied" challenge on *ex post facto* grounds. Seling v. Young, p. 250.

VI. Freedom of Speech.

Legal Services Corporation Act—Funding restrictions.—A restriction prohibiting LSC Act funding of organizations representing clients seeking to challenge existing welfare law violates First Amendment. Legal Services Corporation v. Velazquez, p. 533.

VII. Legislative Powers.

Clean Air Act—Delegation to Environmental Protection Agency.—Section of Clean Air Act—which instructs EPA to set ambient air quality standards—did not delegate legislative power in contravention of Article I, § 1. Whitman v. American Trucking Assns., Inc., p. 457.

VIII. Right to Counsel.

Assistance of counsel—Prejudice standard.—Seventh Circuit erred in ruling that, even if performance of petitioner's counsel were ineffective, resulting additional 6-to-21-month sentence increase would not constitute prejudice under *Strickland* v. *Washington*, 466 U. S. 668. Glover v. United States, p. 198.