(ORDER LIST: 580 U.S.)

MONDAY, MARCH 6, 2017

CERTIORARI -- SUMMARY DISPOSITION

16-273 GLOUCESTER COUNTY SCH. BD. V. G. G.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of the guidance document issued by the Department of Education and Department of Justice on February 22, 2017.

ORDERS IN PENDING CASES

16M88 CUYLER STEVENSON, RUBY V. HALL, ERNESTINE

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

16M89 MELVIN, PAMELA V. NAYLOR, TRACY, ET AL.

The motion for leave to proceed as a veteran is denied.

16M90 PILCHESKY, JOSEPH W. V. WELLS FARGO BANK, ET AL.

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

15-1031 HOWELL, JOHN V. HOWELL, SANDRA

The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

15-1189 IMPRESSION PRODUCTS, INC. V. LEXMARK INTERNATIONAL, INC.

The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted in part, and the time is to be divided as

follows: 25 minutes for petitioner, 10 minutes for the Acting Solicitor General, and 30 minutes for respondent.

16-254 WATER SPLASH, INC. V. MENON, TARA

The motion of petitioner Water Splash, Inc. for divided argument is denied. The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

16-369 COUNTY OF LOS ANGELES, ET AL. V. MENDEZ, ANGEL, ET AL.

The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

16-5294 McWILLIAMS, JAMES E. V. DUNN, COMM'R, AL DOC, ET AL.

The motion of petitioner for appointment of counsel is granted, and Stephen B. Bright, Esquire, of Atlanta, Georgia, is appointed to serve as counsel for the petitioner in this case.

16-6387 LOOMIS, ERIC L. V. WISCONSIN

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

16-6461 PIANKA, VICTOR V. ARIZONA

16-6495 CLARK, SEAN A. V. DEPT. OF EDUCATION, ET AL.

16-6741 ASPELMEIER, ANDREW M. V. ILLINOIS

16-6846 WALKER, FRANK S. V. BERRYHILL, ACTING COMM'R, SSA

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

16-7386 CHANG, WEIH S. V. DELAWARE

16-7472 NURRIDDIN, AHMAD B. V. BOLDEN, ADM'R, NASA

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until March 27,

2017, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

16-508 VILOSKI, BENJAMIN V. UNITED STATES

16-531 AMEREN SERVICES COMPANY, ET AL. V. FERC

16-564 DARIN, ROGER V. UNITED STATES

16-692 INDIAN INSTITUTE OF TECHNOLOGY V. FARHANG, MANDANA D., ET AL.

16-709 DANIELS, THOMAS C. V. MSPB

16-725 JEDA CAPITAL-56, LLC V. POTSDAM, NY

16-816 HAMILTON, GERTRUDE C. V. MURRAY, SUSANNA H., ET AL.

16-831 WOLDESELASSIE, ELENI V. AMERICAN EAGLE AIRLINES, ET AL.

16-836 FELDT, LEONA V. HERITAGE HOMES OF NE, INC.

16-854 McKINNEY, PAMELA V. KELLY, SEC. OF HOMELAND

16-862 REGENCY HERITAGE NURSING V. NLRB

16-878 McKAY, ROBERT V. FEDERSPIEL, WILLIAM L., ET AL.

16-885 AARON BROTHERS, ET AL. V. ZOSS, NATHAN J., ET AL.

16-890 TDE PETROLEUM DATA SOLUTIONS V. AKM ENTERPRISE, INC.

16-891 BELL, DAWAIN, ET AL. V. CHICAGO, IL

16-895 VOSSE, BRIGITTE V. NEW YORK, ET AL.

16-899 MYR, TERRY V. UNITED STATES

16-909 M2 SOFTWARE V. M2 TECHNOLOGY

16-941 SNIDER, JOSHUA W. V. VIRGINIA

16-959 FINANCIAL EDUCATION SERVICES V. GEORGIA

16-960 WU, MICHAEL H., ET UX. V. UNITED STATES

16-963 TITO, HUGH V. MATTIS, SEC. OF DEFENSE

16-968 MEIDINGER, ROY J. V. CIR

16-6313 PETERSON, DENARD V. KLEE, WARDEN

16-6872 VALDEZ, ECTOR V. UNITED STATES

16-6953 HOWELL, MARLON L. V. MISSISSIPPI

16-6989 FOX, GLENN J. V. UNITED STATES

16-6995 WILLIS, HOWARD H. V. TENNESSEE

16-7032 YOUNG, CHRISTOPHER V. DAVIS, DIR., TX DCJ

16-7080 TYREE, ELIZABETH V. CHAO, SEC. OF TRANSP.

16-7110 HARROD, JAMES C. V. ARIZONA

16-7392 ROMERO-LUNA, SAUL V. MADDEN, WARDEN

16-7394 SMITH, JAMES J. V. DICKHAUT, SUPT., SOUZA

16-7399 RODRIGUEZ, VERONICA V. ADAMS, WARDEN

16-7400 TAYLOR, SAUNDRA V. DC DEPT. OF EMPLOYMENT, ET AL.

16-7402 SHEPARD, PATRICIA V. MI DEPT. OF H&HS

16-7405 STOUFFER, BIGLER J. V. ROYAL, WARDEN

16-7408 STEELE, TERRANCE V. HARRINGTON, WARDEN

16-7411 CLARK, ROBERT V. ILLINOIS

16-7413 CLARK, WILLIAM C. V. CALIFORNIA

16-7414 DAKER, WASEEM V. BRYSON, COMM'R, GA DOC, ET AL.

16-7418) TAYLOR, VERSIAH M. V. UNITED STATES
)
16-7624) COLLIER, TRACY L. V. UNITED STATES

16-7419 GUNCHES, AARON B. V. ARIZONA

16-7424 ANDERSON, PAUL D. V. KERNAN, SEC., CA DOC

16-7431 HICKSON, McARTHUR F. V. DELBAISO, SUPT., MAHANOY

16-7451 HILL, JESSIE V. KELLEY, DIR., AR DOC, ET AL.

16-7458 DORR, KRISTOPHER V. MICHIGAN, ET AL.

16-7465 WILLIAMS, DONNELL V. BURT, WARDEN

16-7479 LAND, SEAN V. MISSISSIPPI

16-7498 WEISCHMAN, DOUG V. BERRYHILL, ACTING COMM'R, SSA

16-7516 JIMENEZ, DIEGO J. V. FLORIDA

16-7525 JONES, WENDALL E. V. MARYLAND

16-7530 MOAT, TERRY V. FLORIDA

16-7551 NAVARETTE-DURAN, PEDRO V. VANNOY, WARDEN

16-7552 CANERDY, GREG V. MONTGOMERY, DON

16-7565 WANLAND, DONALD M. V. UNITED STATES

16-7620 WATTS, ANDREW L. V. GRIFFIN, WARDEN

16-7626 HEFFERNAN, ROBERT V. KELLEY, DIR., AR DOC

16-7650 KNORR, DEREK V. SEC

16-7655 MANZANO, MATHEW R. V. MONTGOMERY, WARDEN

16-7660 DECKER, DAVID M. V. PERSSON, SUPT., COFFEE CREEK

16-7711 MUNOZ, GILBERTO G. V. BERRYHILL, ACTING COMM'R OF SSA

16-7718 REDD, RALPH D. V. UNITED STATES

16-7729 WATKINS, JERMAINE D. V. BAUM, CATHERINE, ET AL.

16-7731 DAVIS, CHAKAKHAN V. WALMART STORES EAST, ET AL.

16-7733 SPEIGHT-BEY, MORRIS V. SAAD, WARDEN

16-7743 RICHARDSON, COREY V. UNITED STATES

16-7747 YOUNG, DAVID V. UNITED STATES

16-7758 COLTON, LAWRENCE L. V. USDC MN

16-7761 DOE, JOHN V. UNITED STATES

16-7764 BENSON, MICHAEL D. V. TAYLOR, SUPT., EASTERN OR

16-7766) OLGIN, RAYMOND H. V. UNITED STATES
)
16-7805) GONZALES, ANTHONY R. V. UNITED STATES

16-7769 YOUNG, WILLIAM V. UNITED STATES

16-7772 RAMIREZ, FELIPE M. V. UNITED STATES

16-7774 CRAIG, SCOTT, ET AL. V. UNITED STATES

16-7778 ROYSTON, MARCUS J. V. UNITED STATES

16-7787 HAYMER, GLENN E. V. GEORGIA

16-7788 MARCANTONI, ANTHONY J. V. UNITED STATES

16-7789 KOFALT, PATRICK J. V. UNITED STATES

16-7793 ESTRADA, FRANCISCO J. V. UNITED STATES

16-7795 BOHN, JEFFREY F. V. UNITED STATES

16-7799 MOREFIELD, KAREEM V. TICE, SUPT., HUNTINGDON, ET AL.

16-7808 CARTER, JeCARLOS M. V. UNITED STATES

16-7813 PORCAYO-CARBAJAL, MARIA V. UNITED STATES

16-7823 ALDERMAN, MICHAEL J. V. UNITED STATES

16-7824 BAIN, THOMAS A. V. UNITED STATES

16-7826 DUREN, GLADYS V. HOME PROPERTIES COVE

16-7827 LOCKWOOD, LLOYD B. V. UNITED STATES

16-7828 MARTINEZ-VEGA, JUAN J. V. UNITED STATES

16-7829 JACKSON, CHRISTOPHER V. UNITED STATES

16-7834 CARDONA-VICENTY, JOSE D. V. UNITED STATES

16-7844 ZARECK, RAYMOND V. UNITED STATES

16-7845 WILLIAMS, SANJAY V. UNITED STATES

The petitions for writs of certiorari are denied.

16-704 SOO LINE RAILROAD CO. V. WERNER ENTERPRISES

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

16-6814 ASHE, KEITH A. V. PNC FINANCIAL SERVICES GROUP

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

16-7403 MORALES, LEONARDO T. V. FLORIDA

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

16-7404 MODRALL, ROBERT G. V. FREY, MELISSA, ET AL.

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

16-7423 MITCHELL, BLONDELL V. SANCHEZ, RICK, ET AL.

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

16-7466 HAZELQUIST, HEIDI V. KLEWIN, OFFICER, ET AL.

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

16-7748 VAUGHN, TRACY V. UNITED STATES

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

16-7803 LAI, DENNIS C. V. BELL, WARDEN

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

HABEAS CORPUS DENIED

16-7878 IN RE JAMES MITCHELL

16-7886 IN RE TYRONE L. ROBINSON

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

16-7391 IN RE TELVON TAYLOR

The petition for a writ of mandamus is denied.

REHEARINGS DENIED

16-645 SUN, LINGFEI V. NEW YORK, NY, ET AL.

16-6056 TAYLOR, DANIEL V. BERRY, WARDEN

16-6131 FALANA, MICHAEL A. V. JONES, SEC., FL DOC

16-6564 ARMISTEAD, JAMES G. V. CLAY, WARDEN

16-6716 GRIMES, JEFFREY N. V. McFADDEN, WARDEN

16-6785 WILLIAMS, RICHARD L. V. CLARKE, DIR., VA DOC

16-6833 FEREBEE, RENEE V. INT'L HOUSE OF PANCAKES

16-6967 BAKER, MICHAEL V. PFISTER, WARDEN

16-6974 BRYANT, LAKESHA V. USPS

16-7128 OKEAYAINNEH, JULIAN V. UNITED STATES

16-7262 IN RE SHAWN K. WILLIAMS

The petitions for rehearing are denied.

ATTORNEY DISCIPLINE

D-2917 IN THE MATTER OF DISBARMENT OF GARY L. BRODER

Gary L. Broder, of Waterbury, Connecticut, having been suspended from the practice of law in this Court by order of August 8, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Gary L. Broder is disbarred from the practice of law in this Court.

D-2919 IN THE MATTER OF WARREN JAY BRONSNICK

Warren Jay Bronsnick, of Short Hills, New Jersey, 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 8, 2016, is discharged.

D-2921 IN THE MATTER OF DISBARMENT OF WILLIAM E. GAHWYLER, JR.

William E. Gahwyler, Jr., of Wyckoff, New Jersey, having been suspended from the practice of law in this Court by order of August 8, 2016; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that William E. Gahwyler, Jr. is disbarred from the practice of law in this Court.

D-2922 IN THE MATTER OF DISBARMENT OF STANLEE EARL CULBREATH

Stanlee Earl Culbreath, of Columbus, Ohio, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Stanlee Earl Culbreath is disbarred from the practice of law in this Court.

D-2923 IN THE MATTER OF DISBARMENT OF D. SEELEY HUBBARD

D. Seeley Hubbard, of Darien, Connecticut, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that D. Seeley Hubbard is disbarred from the practice of law in this Court.

D-2925 IN THE MATTER OF DISBARMENT OF NICHOLAS HRANT LAMBAJIAN

Nicholas Hrant Lambajian, of Pasadena, California, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Nicholas Hrant Lambajian is disbarred from the practice of law in this Court.

D-2926 IN THE MATTER OF DISBARMENT OF DANIEL PERI LUCID

Daniel Peri Lucid, of Los Angeles, California, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Daniel Peri Lucid is disbarred from the practice of law in this Court.

D-2927 IN THE MATTER OF DISBARMENT OF DOUGLAS CARROL RHOADS

Douglas Carrol Rhoads, of Phoenix, Arizona, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Douglas Carrol Rhoads is disbarred from the practice of law in this Court.

D-2928 IN THE MATTER OF DISBARMENT OF STANFORD E. LERCH

Stanford E. Lerch, of Phoenix, Arizona, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued him requiring

him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Stanford E. Lerch is disbarred from the practice of law in this Court.

D-2929 IN THE MATTER OF DISBARMENT OF JOSEPH A. CARAMADRE

Joseph A. Caramadre, of Cranston, Rhode Island, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Joseph A. Caramadre is disbarred from the practice of law in this Court.

D-2930 IN THE MATTER OF DISBARMENT OF RICHARD I. GOLDMAN

Richard I. Goldman, of Springfield, Massachusetts, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Richard I. Goldman is disbarred from the practice of law in this Court.

D-2931 IN THE MATTER OF DISBARMENT OF BARTON NACHAMIE

Barton Nachamie, of New York, New York, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that is disbarred from the practice of law in this Court.

D-2932 IN THE MATTER OF DISBARMENT OF PAUL G. VESNAVER

Paul G. Vesnaver, of Rockville Centre, New York, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that Paul G. Vesnaver is disbarred from the practice of law in this Court.

D-2933 IN THE MATTER OF DISBARMENT OF WILLIAM I. DIGGS

William I. Diggs, of Myrtle Beach, South Carolina, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued requiring him to show cause why he should not be disbarred; and the time to file a response having expired;

It is ordered that William I. Diggs is disbarred from the practice of law in this Court.

D-2934 IN THE MATTER OF DISBARMENT OF JULIE ANN FUSILIER

Julie Ann Fusilier, of Baton Rouge, Louisiana, having been suspended from the practice of law in this Court by order of October 11, 2016; and a rule having been issued and served upon her requiring her to show cause why she should not be disbarred; and the time to file a response having expired;

It is ordered that Julie Ann Fusilier is disbarred from the practice of law in this Court.

Per Curiam

SUPREME COURT OF THE UNITED STATES

MICHAEL DAMON RIPPO, PETITIONER *v.*
RENEE BAKER, WARDEN

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

No. 16–6316. Decided March 6, 2017

PER CURIAM.

A Nevada jury convicted petitioner Michael Damon Rippo of first-degree murder and other offenses and sentenced him to death. During his trial, Rippo received information that the judge was the target of a federal bribery probe, and he surmised that the Clark County District Attorney's Office—which was prosecuting him—was playing a role in that investigation. Rippo moved for the judge's disqualification under the Due Process Clause of the Fourteenth Amendment, contending that a judge could not impartially adjudicate a case in which one of the parties was criminally investigating him. But the trial judge declined to recuse himself, and (after that judge's indictment on federal charges) a different judge later denied Rippo's motion for a new trial. The Nevada Supreme Court affirmed on direct appeal, reasoning in part that Rippo had not introduced evidence that state authorities were involved in the federal investigation. *Rippo* v. *State*, 113 Nev. 1239, 1246–1250, 946 P. 2d 1017, 1023–1024 (1997) (*per curiam*).

In a later application for state postconviction relief, Rippo advanced his bias claim once more, this time pointing to documents from the judge's criminal trial indicating that the district attorney's office had participated in the investigation of the trial judge. See, *e.g.,* App. to Pet. for Cert. 236–237, 397. The state postconviction court denied relief, and the Nevada Supreme Court affirmed. *Rippo* v. *State*, 132 Nev. ___, ___, 368 P. 3d 729, 743–745 (2016). It

likened Rippo's claim to the "camouflaging bias" theory that this Court discussed in *Bracy* v. *Gramley*, 520 U. S. 899 (1997). The *Bracy* petitioner argued that a judge who accepts bribes to rule in favor of some defendants would seek to disguise that favorable treatment by ruling *against* defendants who did not bribe him. *Id.,* at 905. We explained that despite the "speculative" nature of that theory, the petitioner was entitled to discovery because he had also alleged specific facts suggesting that the judge may have colluded with defense counsel to rush the petitioner's case to trial. See *id.,* at 905–909. The Nevada Supreme Court reasoned that, in contrast, Rippo was not entitled to discovery or an evidentiary hearing because his allegations "d[id] not support the assertion that the trial judge was actually biased in this case." 132 Nev., at ___, 368 P. 3d, at 744.*

We vacate the Nevada Supreme Court's judgment because it applied the wrong legal standard. Under our precedents, the Due Process Clause may sometimes demand recusal even when a judge " 'ha[s] no actual bias.' " *Aetna Life Ins. Co.* v. *Lavoie*, 475 U. S. 813, 825 (1986). Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975); see *Williams* v. *Pennsylvania*, 579 U. S. ___, ___ (2016) (slip op., at 6) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neu-

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*The court further relied on its bias holding to determine that Rippo had not established cause and prejudice to overcome various state procedural bars. 132 Nev., at ___, 368 P. 3d, at 745. Because the court below did not invoke any state-law grounds "independent of the merits of [Rippo's] federal constitutional challenge," we have jurisdiction to review its resolution of federal law. *Foster* v. *Chatman*, 578 U. S. ___, ___ (2016) (slip op., at 8).

tral, or whether there is an unconstitutional potential for bias" (internal quotation marks omitted)). Our decision in *Bracy* is not to the contrary: Although we explained that the petitioner there *had* pointed to facts suggesting actual, subjective bias, we did not hold that a litigant must show as a matter of course that a judge was "actually biased in [the litigant's] case," 132 Nev., at ___, 368 P. 3d, at 744—much less that he must do so when, as here, he does not allege a theory of "camouflaging bias." The Nevada Supreme Court did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable. As a result, we grant the petition for writ of certiorari and the motion for leave to proceed *in forma pauperis*, and we vacate the judgment below and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

LISA OLIVIA LEONARD *v.* TEXAS

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, NINTH DISTRICT

No. 16–122. Decided March 6, 2017

The petition for a writ of certiorari is denied.

Statement of JUSTICE THOMAS respecting the denial of certiorari.

This petition asks an important question: whether modern civil-forfeiture statutes can be squared with the Due Process Clause and our Nation's history.

I

Early in the morning on April 1, 2013, a police officer stopped James Leonard for a traffic infraction along a known drug corridor. During a search of the vehicle, the officer found a safe in the trunk. Leonard and his passenger, Nicosa Kane, gave conflicting stories about the contents of the safe, with Leonard at one point indicating that it belonged to his mother, who is the petitioner here. The officer obtained a search warrant and discovered that the safe contained $201,100 and a bill of sale for a Pennsylvania home.

The State initiated civil forfeiture proceedings against the $201,100 on the ground that it was substantially connected to criminal activity, namely, narcotics sales. See Tex. Code Crim. Proc. Ann., Art. 59.01 (Vernon Cum. Supp. 2016). The trial court issued a forfeiture order, and petitioner appealed. Citing the suspicious circumstances of the stop and the contradictory stories provided by Leonard and Kane, the Court of Appeals affirmed the trial court's conclusion that the government had shown by a preponderance of the evidence that the money was either the proceeds of a drug sale or intended to be used in such a

sale. It also affirmed the trial court's rejection of petitioner's innocent-owner defense. Petitioner had asserted that the money was not related to a drug sale at all, but was instead from a home she had recently sold in Pennsylvania. The court deemed this testimony insufficient to establish that she was in fact an innocent owner.

Petitioner now challenges the constitutionality of the procedures used to adjudicate the seizure of her property. In particular, she argues that the Due Process Clause required the State to carry its burden by clear and convincing evidence rather than by a preponderance of the evidence.

II

Modern civil forfeiture statutes are plainly designed, at least in part, to punish the owner of property used for criminal purposes. See, *e.g., Austin* v. *United States*, 509 U. S. 602, 618–619 (1993). When a state wishes to punish one of its citizens, it ordinarily proceeds against the defendant personally (known as "*in personam*"), and in many cases it must provide the defendant with full criminal procedural protections. Nevertheless, for reasons discussed below, this Court permits prosecutors seeking forfeiture to proceed against the property (known as "*in rem*") and to do so civilly. See, *e.g., United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 56–57 (1993). *In rem* proceedings often enable the government to seize the property without any predeprivation judicial process and to obtain forfeiture of the property even when the owner is personally innocent (though some statutes, including the one here, provide for an innocent-owner defense). Civil proceedings often lack certain procedural protections that accompany criminal proceedings, such as the right to a jury trial and a heightened standard of proof.

Partially as a result of this distinct legal regime, civil

forfeiture has in recent decades become widespread and highly profitable. See, *e.g.,* Institute for Justice, D. Carpenter, L. Knepper, A. Erickson, & J. McDonald, Policing for Profit: The Abuse of Civil Asset Forfeiture 10 (2d ed. Nov. 2015) (Department of Justice Assets Forfeiture Fund took in $4.5 billion in 2014 alone), https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf (as last visited Feb. 27, 2017). And because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture. *Id.,* at 14 (noting that the Federal Government and many States permit 100 percent of forfeiture proceeds to flow directly to law enforcement); see also App. to Pet. for Cert. B–2 (directing that the money in this case be divided between the "Cleveland Police Department" and the "Liberty County District Attorney's Office").

This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses. According to one nationally publicized report, for example, police in the town of Tenaha, Texas, regularly seized the property of out-of-town drivers passing through and collaborated with the district attorney to coerce them into signing waivers of their property rights. Stillman, Taken, The New Yorker, Aug. 12 & 19, 2013, pp. 54–56. In one case, local officials threatened to file unsubstantiated felony charges against a Latino driver and his girlfriend and to place their children in foster care unless they signed a waiver. *Id.,* at 49. In another, they seized a black plant worker's car and all his property (including cash he planned to use for dental work), jailed him for a night, forced him to sign away his property, and then released him on the side of the road without a phone or money. *Id.,* at 51. He was forced to walk to a Wal-Mart, where he borrowed a stranger's phone to call his mother, who had to rent a car to pick him up. *Ibid.*

These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. *Id.*, at 53–54; Sallah, O'Harrow, & Rich, Stop and Seize, Washington Post, Sept. 7, 2014, pp. A1, A10. Perversely, these same groups are often the most burdened by forfeiture. They are more likely to use cash than alternative forms of payment, like credit cards, which may be less susceptible to forfeiture. And they are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home.

III

The Court has justified its unique constitutional treatment of civil forfeiture largely by reference to a discrete historical practice that existed at the time of the founding. See, *e.g., Bennis* v. *Michigan*, 516 U. S. 442, 446–448 (1996). "'English Law provided for statutory forfeitures of offending objects used in violation of the customs and revenue laws.'" *Austin*, *supra*, at 612 (quoting *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 682 (1974)). This practice "took hold in the United States," where the "First Congress passed laws subjecting ships and cargos involved in customs offenses to forfeiture." 509 U. S., at 613. Other early statutes also provided for the forfeiture of pirate ships. *United States* v. *Parcel of Rumson, N. J.*, *Land*, 507 U. S. 111, 119 (1993) (plurality opinion). These early statutes permitted the government to proceed *in rem* under the fiction that the thing itself, rather than the owner, was guilty of the crime. See *Calero-Toledo*, *supra*, at 684–685; Act of Aug. 4, 1790, §67, 1 Stat. 176–177. And, because these suits were *in rem* rather than *in personam*, they typically proceeded civilly rather than criminally. See *United States* v. *La Vengeance*, 3 Dall. 297, 301 (1796).

In the absence of this historical practice, the Constitu-

tion presumably would require the Court to align its distinct doctrine governing civil forfeiture with its doctrines governing other forms of punitive state action and property deprivation. See *Bennis*, *supra*, at 454 (THOMAS, J., concurring) ("One unaware of the history of forfeiture laws and 200 years of this Court's precedent regarding such laws might well assume that such a scheme is lawless—a violation of due process"). I am skeptical that this historical practice is capable of sustaining, as a constitutional matter, the contours of modern practice, for two reasons.

First, historical forfeiture laws were narrower in most respects than modern ones. Cf. *James Daniel Good*, 510 U. S., at 85 (THOMAS, J., concurring in part and dissenting in part) (noting that "ambitious modern statutes and prosecutorial practices have all but detached themselves from the ancient notion of civil forfeiture"). Most obviously, they were limited to a few specific subject matters, such as customs and piracy. Proceeding *in rem* in those cases was often justified by necessity, because the party responsible for the crime was frequently located overseas and thus beyond the personal jurisdiction of United States courts. See Herpel, Toward a Constitutional Kleptocracy: Civil Forfeiture in America, 96 Mich. L. Rev. 1910, 1918–1920 (1998); see also *id.,* at 1925–1926 (arguing that founding-era precedents do not support the use of forfeiture against purely domestic offenses where the owner is plainly within the personal jurisdiction of both state and federal courts). These laws were also narrower with respect to the type of property they encompassed. For example, they typically covered only the instrumentalities of the crime (such as the vessel used to transport the goods), not the derivative proceeds of the crime (such as property purchased with money from the sale of the illegal goods). See *Rumson*, *supra*, at 121–122, 125 (plurality opinion) (Forfeiture of criminal proceeds is a modern innovation).

Second, it is unclear whether courts historically permit-

ted forfeiture actions to proceed civilly in all respects. Some of this Court's early cases suggested that forfeiture actions were in the nature of criminal proceedings. See, *e.g., Boyd* v. *United States*, 116 U. S. 616, 633–634 (1886) ("We are . . . clearly of [the] opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal"); but see R. Waples, Treatise on Proceedings *In Rem* 29–30 (1882) (collecting contrary authorities). Whether forfeiture is characterized as civil or criminal carries important implications for a variety of procedural protections, including the right to a jury trial and the proper standard of proof. Indeed, as relevant in this case, there is some evidence that the government was historically required to prove its case beyond a reasonable doubt. See *United States* v. *Brig Burdett*, 9 Pet. 682, 690 (1835) ("The object of the prosecution against the Burdett is to enforce a forfeiture of the vessel, and all that pertains to it, for a violation of a revenue law. This prosecution then is a highly penal one, and the penalty should not be inflicted, unless the infractions of the law shall be established beyond reasonable doubt").

IV

Unfortunately, petitioner raises her due process arguments for the first time in this Court. As a result, the Texas Court of Appeals lacked the opportunity to address them in the first instance. I therefore concur in the denial of certiorari. Whether this Court's treatment of the broad modern forfeiture practice can be justified by the narrow historical one is certainly worthy of consideration in greater detail.

SUPREME COURT OF THE UNITED STATES

ROBERT PEREZ *v.* FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

No. 16–6250. Decided March 6, 2017

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, concurring in the denial of certiorari.

Robert Perez is serving more than 15 years in a Florida prison for what may have been nothing more than a drunken joke. The road to this unfortunate outcome began with Perez and his friends drinking a mixture of vodka and grapefruit juice at the beach. Sentencing Tr. 24, App. to Pet. for Cert. (Sentencing Tr.). As the group approached a nearby liquor store to purchase additional ingredients for the mixture, which Perez called a "Molly cocktail," *ibid.,* a store employee overheard the group's conversation, *id.*, at 25. The employee apparently believed he was referencing an incendiary "Molotov cocktail" and asked if it would "burn anything up." *Ibid.* Perez claims he responded that he did not have "that type" of cocktail, and that the whole group laughed at the apparent joke. *Ibid.* Imprudently, however, the inebriated Perez continued the banter, telling another employee that he had only "one Molotov cocktail" and could "blow the whole place up." App. C to Brief in Opposition 82. Perez later returned to the store and allegedly said, "'I'm going to blow up this whole [expletive] world.'" *Id.*, at 121. Store employees reported the incident to police the next day. Sentencing Tr. 15, 34.

The State prosecuted Perez for violating a Florida statute that makes it a felony "to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person." Fla. Stat. §790.162 (2007).

The trial court instructed the jury that they could return a guilty verdict if the State proved two elements. First, the State had to prove the *actus reus*; that is, the threat itself. The instruction defined a threat as "a communicated intent to inflict harm or loss on another when viewed and/or heard by an ordinary reasonable person." App. F to Brief in Opposition 350. Second, the State had to prove that Perez possessed the necessary *mens rea*; that is, that he intended to make the threat. Circularly, the instruction defined intent as "the stated intent to do bodily harm to any person or damage to the property of any person." *Ibid.* This instruction permitted the jury to convict Perez based on what he "stated" alone—irrespective of whether his words represented a joke, the ramblings of an intoxicated individual, or a credible threat. The jury found Perez guilty, and because he qualified as a habitual offender, the trial court sentenced him to 15 years and 1 day in prison. Sentencing Tr. 44.

In the courts below and in his petition for certiorari, Perez challenged the instruction primarily on the ground that it contravenes the traditional rule that criminal statutes be interpreted to require proof of *mens rea*, see *Elonis* v. *United States*, 575 U. S. ___, ___–___ (2015) (slip op., at 9–13). In my view, however, the jury instruction—and Perez's conviction—raise serious First Amendment concerns worthy of this Court's review. But because the lower courts did not reach the First Amendment question, I reluctantly concur in the Court's denial of certiorari in this case.

* * *

The First Amendment's protection of speech and expression does not extend to threats of physical violence. See *R.A.V.* v. *St. Paul*, 505 U. S. 377, 388 (1992). Statutes criminalizing threatening speech, however, "must be interpreted with the commands of the First Amendment

clearly in mind" in order to distinguish true threats from constitutionally protected speech. *Watts* v. *United States*, 394 U. S. 705, 707 (1969) (*per curiam*). Under our cases, this distinction turns in part on the speaker's intent.

We suggested as much in *Watts*. There, we faced a constitutional challenge to a criminal threat statute and expressed "grave doubts" that the First Amendment permitted a criminal conviction if the speaker merely "uttered the charged words with an apparent determination to carry them into execution." *Id.*, at 708, 707 (emphasis and internal quotation marks omitted).

Virginia v. *Black*, 538 U. S. 343 (2003), made the import of the speaker's intent plain. There, we considered a state statute that criminalized cross burning "'with the intent of intimidating any person.'" *Id.*, at 348 (quoting Va. Code. Ann. §18.2–423 (1996)). We defined a "true threat" as one "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." 538 U. S., at 359. We recognized that cross burning is not always such an expression and held the statute constitutional "insofar as it ban[ned] cross burning *with intent* to intimidate." *Id.*, at 362 (emphasis added); *id.,* at 365 (plurality opinion).

A four-Member plurality went further and found unconstitutional a provision of the statute that declared the speech itself "'prima facie evidence of an intent to intimidate.'" *Id.,* at 363–364. The plurality reached this conclusion because "a burning cross is not always intended to intimidate." *Id.,* at 365. Two separate opinions endorsed this view. See *id.*, at 372 (Scalia, J., joined by THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) ("The plurality is correct in all of this"); *id.*, at 386 (Souter, J., joined by KENNEDY and GINSBURG, JJ., concurring in judgment in part and dissenting in part).

Together, *Watts* and *Black* make clear that to sustain a threat conviction without encroaching upon the First Amendment, States must prove more than the mere utterance of threatening words—*some* level of intent is required. And these two cases strongly suggest that it is not enough that a reasonable person might have understood the words as a threat—a jury must find that the speaker actually intended to convey a threat.

* * *

The jury instruction in this case relieved the State of its burden of proving anything other than Perez's "stated" or "communicated" intent. This replicates the view we doubted in *Watts*, which permitted a criminal conviction based upon threatening words and only "'an *apparent* determination to carry them into execution.'" 394 U. S., at 707. And like the prima facie provision in *Black*, the trial court's jury instruction "ignore[d] all of the contextual factors that are necessary to decide whether a particular [expression] is intended to intimidate." 538 U. S., at 367 (plurality opinion).

Context in this case might have made a difference. Even as she argued for a 15-year sentence, the prosecutor acknowledged that Perez may have been "just a harmless drunk guy at the beach," Sentencing Tr. 35, and it appears that at least one witness testified that she did not find Perez threatening, Pet. for Cert. 8. Instead of being instructed to weigh this evidence to determine whether Perez actually intended to convey a threat—or even whether a reasonable person would have construed Perez's words as a threat—the jury was directed to convict solely on the basis of what Perez "stated."

In an appropriate case, the Court should affirm that "[t]he First Amendment does not permit such a shortcut." *Black*, 538 U. S., at 367 (plurality opinion). The Court should also decide precisely what level of intent suffices under the First Amendment—a question we avoided two Terms ago in *Elonis*.

SUPREME COURT OF THE UNITED STATES

DAMION ST. PATRICK BASTON *v.* UNITED STATES

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

No. 16–5454. Decided March 6, 2017

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, dissenting from the denial of certiorari.

The Constitution, through the Foreign Commerce Clause, grants Congress authority to "regulate Commerce with foreign Nations." Art. I, §8, cl. 3. Without guidance from this Court as to the proper scope of Congress' power under this Clause, the courts of appeals have construed it expansively, to permit Congress to regulate economic activity abroad if it has a substantial effect on this Nation's foreign commerce. In this case, the Court of Appeals declared constitutional a restitution award against a non-U. S. citizen based upon conduct that occurred in Australia. The facts are not sympathetic, but the principle involved is fundamental. We should grant certiorari and reaffirm that our Federal Government is one of limited and enumerated powers, not the world's lawgiver.

I

Petitioner Damion St. Patrick Baston is a citizen of Jamaica. He forced numerous women to prostitute for him through violence, threats, and humiliation. One of his victims, K. L., was a citizen of Australia. She prostituted for petitioner in Australia, the United States, and the United Arab Emirates before escaping from his control. While in the United States, petitioner was arrested and charged with the sex trafficking of K. L. by force, fraud, or coercion, 18 U. S. C. §1591(a), "'in the Southern District of Florida, Australia, the United Arab Emirates, and elsewhere.'" 818 F. 3d 651, 658 (CA11 2016). As relevant

here, §1591(a)(1) states that the sex trafficking must "affec[t] interstate or foreign commerce." Congress has granted federal courts "extra-territorial jurisdiction" over sex trafficking if the "alleged offender is present in the United States, irrespective of the nationality of the alleged offender." §1596(a)(2).

After a jury convicted petitioner, the District Court ordered him to pay K. L. $78,000 in restitution, which included the money she earned while prostituting for petitioner in the United States. See §1593 (requiring sentencing courts to order restitution in "the full amount of the victim's losses" for offenses under §1591). But the court refused to include in the restitution award the $400,000 that K. L. earned while prostituting in Australia. In the court's view, the Foreign Commerce Clause did not permit an award of restitution based on petitioner's extra-territorial conduct. 818 F. 3d, at 657, 660.

The Court of Appeals vacated the order of restitution and remanded with instructions to increase the award by $400,000 to account for K. L.'s prostitution in Australia. The court reasoned that whatever the outer bounds of the Foreign Commerce Clause might be, this Court has suggested that it has at least the same scope as the Interstate Commerce Clause. Relying on our Interstate Commerce Clause precedents, the Court of Appeals concluded that the Foreign Commerce Clause grants Congress power to regulate "activities that have a 'substantial effect' on commerce between the United States and other countries," including sex trafficking overseas. *Id.*, at 668 (citing *Gonzales* v. *Raich*, 545 U. S. 1, 16–17 (2005)).

II

The Court of Appeals correctly noted that this Court has never "thoroughly explored the scope of the Foreign Commerce Clause." 818 F. 3d, at 667; accord, *e.g.*, Goodno, When the Commerce Clause Goes International: A Pro-

posed Legal Framework for the Foreign Commerce Clause, 65 Fla. L. Rev. 1139, 1148–1149 (2013) ("The U. S. Supreme Court has not yet articulated the extent of Congress's power under the Foreign Commerce Clause to enact laws with extraterritorial reach. Because of this lack of guidance . . . lower courts are at a loss for how to analyze Foreign Commerce Clause issues"). The few decisions from this Court addressing the scope of the Clause have generally been confined to laws regulating conduct with a significant connection to the United States. See, *e.g.*, *Board of Trustees of Univ. of Ill.* v. *United States*, 289 U. S. 48, 57 (1933) ("The Congress may determine what articles may be imported into this country and the terms upon which importation is permitted"); *United States ex rel. Turner* v. *Williams*, 194 U. S. 279, 290 (1904) ("[T]he power to regulate commerce with foreign nations . . . includes the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States"). This Court has also articulated limits on the power of the States to regulate commerce with foreign nations under the so-called dormant Foreign Commerce Clause. See, *e.g.*, *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U. S. 434, 449–454 (1979). We have not, however, considered the limits of Congress' power under the Clause to regulate conduct occurring entirely within the jurisdiction of a foreign sovereign.

In the absence of specific guidance, the courts of appeals—including the court below—have understandably extended this Court's Interstate Commerce Clause precedents abroad. In *United States* v. *Lopez*, 514 U. S. 549, 558–559 (1995), we held that Congress is limited to regulating three categories of interstate activity: "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce," and "activities that substantially affect interstate commerce." Some courts of appeals "have imported the *Lopez* categories directly into the

foreign context," some "have applied *Lopez* generally but recognized that Congress has greater power to regulate foreign commerce," and others have gone further still, "holding that Congress has authority to legislate under the Foreign Commerce Clause when the text of a statute has a constitutionally tenable nexus with foreign commerce." *United States* v. *Bollinger*, 798 F. 3d 201, 215 (CA4 2015) (internal quotation marks omitted); see also *id.*, at 215–216 ("Instead of requiring that an activity have a substantial effect on foreign commerce, we hold that the Foreign Commerce Clause allows Congress to regulate activities that demonstrably affect such commerce").

III

I am concerned that language in some of this Court's precedents has led the courts of appeals into error. At the very least, the time has come for us to clarify the scope of Congress' power under the Foreign Commerce Clause to regulate extraterritorially.

A

The courts of appeals have relied upon statements by this Court comparing the foreign commerce power to the interstate commerce power, but have removed those statements from their context. In certain contexts, this Court has described the foreign commerce power as "exclusive and plenary," *Board of Trustees*, *supra*, at 56–57 (citing *Gibbons* v. *Ogden*, 9 Wheat. 1, 196–200 (1824)), explaining that Congress' commerce power "when exercised in respect of foreign commerce may be broader than when exercised as to interstate commerce," *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 434 (1932); see also *Brolan* v. *United States*, 236 U. S. 216, 218–220 (1915). None of these opinions, however, "involve[d] legislation of extraterritorial operation which purports to regulate conduct inside foreign nations."

Colangelo, The Foreign Commerce Clause, 96 Va. L. Rev. 949, 1001 (2010). This Court's statements about the comparative breadth of the Foreign Commerce Clause are of questionable relevance where the issue is Congress' power to regulate, or even criminalize, conduct within another nation's sovereign territory.

Moreover, this Court's comparative statements about the breadth of the Foreign Commerce Clause have relied on some "evidence that the Founders intended the scope of the foreign commerce power to be greater" than Congress' power to regulate commerce among the States. *Japan Line*, *supra*, at 448. Whatever the Founders' intentions might have been in this respect, they were grounded in the original understanding of the Interstate Commerce Clause. But this Court's modern doctrine has "drifted far from the original understanding." *Lopez*, *supra*, at 584 (THOMAS, J., concurring). For one thing, the "Clause's text, structure, and history all indicate that, at the time of the founding, the term '"commerce" consisted of selling, buying, and bartering, as well as transporting for these purposes.'" *Raich*, 545 U. S., at 58 (THOMAS, J., dissenting) (quoting *Lopez*, *supra*, at 585 (opinion of THOMAS, J.)). For another, "the very notion of a 'substantial effects' test under the Commerce Clause is inconsistent with the original understanding of Congress' powers and with this Court's early Commerce Clause cases." *United States* v. *Morrison*, 529 U. S. 598, 627 (2000) (THOMAS, J., concurring).

Thus, even if the foreign commerce power were broader than the interstate commerce power as understood at the founding, it would not follow that the foreign commerce power is broader than the interstate commerce power as this Court now construes it. But rather than interpreting the Foreign Commerce Clause as it was originally understood, the courts of appeals have taken this Court's modern interstate commerce doctrine and assumed that the

foreign commerce power is at least as broad. The result is a doctrine justified neither by our precedents nor by the original understanding.

B

Taken to the limits of its logic, the consequences of the Court of Appeals' reasoning are startling. The Foreign Commerce Clause would permit Congress to regulate any economic activity anywhere in the world, so long as Congress had a rational basis to conclude that the activity has a substantial effect on commerce between this Nation and any other. Congress would be able not only to criminalize prostitution in Australia, but also to regulate working conditions in factories in China, pollution from powerplants in India, or agricultural methods on farms in France. I am confident that whatever the correct interpretation of the foreign commerce power may be, it does not confer upon Congress a virtually plenary power over global economic activity.

* * *

We should grant certiorari in this case to consider the proper scope of Congress' Foreign Commerce Clause power.

I respectfully dissent.