(ORDER LIST: 586 U.S.)

MONDAY, JANUARY 7, 2019

CERTIORARI -- SUMMARY DISPOSITIONS

18-195 POFF, WILLIAM S. V. UNITED STATES

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Lagos* v. *United States*, 584 U. S. ___ (2018).

18-227 WOLFE, JUSTIN M. V. VIRGINIA

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the Supreme Court of Virginia for further consideration in light of *Class* v. *United States*, 583 U. S. ___ (2018).

ORDERS IN PENDING CASES

18A511 ZODHIATES, PHILIP V. UNITED STATES

The application for stay addressed to Justice Gorsuch and referred to the Court is denied.

18M76 FURMINGER, IAN V. UNITED STATES

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied. Justice Breyer took no part in the consideration or decision of this motion.

18M77 HIRAMANEK, RODA V. CLARK, L. MICHAEL, ET AL.

18M78 BARBER, KENNETH R. V. SHERMAN, WARDEN

18M79 WEBB-EL, KEITH B. V. KANE, THOMAS R., ET AL.

18M80 DRIVAS, GUSTAVE S. V. UNITED STATES

18M81 DOUGHERTY, ROBERT W. V. GILMORE, WARDEN

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

18M82 BUSH, JASON E. V. ARIZONA

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

18M83 DOE, JOHN V. UNITED STATES

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

18M84 WILSON, JOHN D. V. JONES, SEC., FL DOC

18M85 MARSHALL, RONALD V. ASH, ANN, ET AL.

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

18M86 WESTERNGECO LLC V. ION GEOPHYSICAL CORP.

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

18M87 ABDUR-RAHIIM, MUHSIN H. V. UNITED STATES

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

148, ORIG. STATE OF MISSOURI, ET AL. V. STATE OF CALIFORNIA

149, ORIG. STATE OF INDIANA, ET AL. V. COMMONWEALTH OF MASSACHUSETTS

The motions for leave to file the bills of complaint are denied. Justice Thomas would grant the motions.

17-1672 UNITED STATES V. HAYMOND, ANDRE R.

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

17-8926 HARPER, DARRELL J. V. TEXAS, ET AL.

17-9269 IN RE OTIS L. RODGERS

17-9538 HARPER, DARRELL J. V. JIM CROW

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

18-252 REAL ESTATE ALLIANCE LTD. V. MOVE, INC., ET AL.

The motion of Mark Tornetta for leave to intervene to file a petition for rehearing is denied.

18-415 HP INC. V. BERKHEIMER, STEVEN E.

18-575) YPF S.A. V. PETERSEN ENERGIA, ET AL.
)
18-581) ARGENTINE REPUBLIC V. PETERSEN ENERGIA, ET AL.

18-600 TEXAS ADVANCED OPTOELECTRONIC V. RENESAS ELECTRONICS AMERICA

The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

18-5863 JOHNSON, COREY E. V. BUTLER LAW FIRM

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

18-6410 McKINZY, MICHAEL V. GASTON, CARLETHA

18-6781 FARR, JOAN E. V. CIR

18-6792 FILLMORE, CHRISTOPHER W. V. IN BELL TELEPHONE CO.

18-6813 GHOSH, RASH B. V. BERKELEY, CA

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until January 28, 2019, 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.

18-6949 KLEIN, ERIC A. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma*

pauperis is denied. Petitioner is allowed until January 28, 2019, 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. Justice Sotomayor and Justice Kagan took no part in the consideration or decision of this motion.

18-7063 IN RE CHARLES A. DREAD

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until January 28, 2019, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

17-936 GILEAD SCIENCES, INC. V. U.S., EX REL. CAMPIE, ET AL.

17-1149 UNITED STATES, EX REL. HARMAN V. TRINITY INDUSTRIES, INC., ET AL.

17-1285 ASSN. DES ELEVEURS, ET AL. V. BECERRA, ATT'Y GEN. OF CA

17-1301 HARVEY, RYAN, ET AL. V. UTE INDIAN TRIBE, ET AL.

17-1404 GORDON, JIMMIE V. LAFLER, WARDEN

17-1704 KERR, HOPE V. BERRYHILL, NANCY A.

17-7517 SMITH, MICHAEL V. UNITED STATES

17-8160 KHOURY, MICHAEL J. V. UNITED STATES

17-8282 NEBINGER, JASON J. V. UNITED STATES

17-9259 COLLINS, CHASE L. V. CALIFORNIA

18-16 ELIJAH, LARONE F. V. UNITED STATES

18-36 BRICE, GREGORY V. UNITED STATES

18-98 COOK, JERRARD T. V. MISSISSIPPI

18-110 BURNINGHAM, ANDREW, ET AL. V. RAINES, JOHN M.

18-122 SINEGAL, MICHAEL V. POLK, DAWN

18-127 AMGEN INC., ET AL. V. SANOFI, ET AL.

18-168 NICHOLS, BILL G. V. CHESAPEAKE OPERATING, ET AL.

18-177 DAWSON, KENNETH J. V. BD. OF CTY. COMM'R, ET AL.

18-185 CONNECTICUT V. SKAKEL, MICHAEL

18-203 CHANDLER, JOEY M. V. MISSISSIPPI

18-229 CURRY, RALPH V. UNITED STATES

18-238 SOUTH CAROLINA V. SAMUEL, LAMONT A.

18-261 CEBREROS, JOSE G. V. UNITED STATES

18-273 WILLIAMS, RAMON A. V. WHITAKER, ACTING ATT'Y GEN.

18-274 STEWART, MICHAEL J. V. UNITED STATES

18-288 MEARING, PHILIP A. V. UNITED STATES

18-308 BETHEA, ANTHONY R. V. NORTH CAROLINA

18-311 EXXON MOBIL CORP. V. HEALEY, ATT'Y GEN. OF MA

18-331 PABON ORTEGA, RAFAEL V. LLOMPART ZENO, ISABEL, ET AL.

18-333 OLD DOMINION ELECTRIC V. FERC

18-337 COUNTY OF ORANGE, CA, ET AL. V. GORDON, MARY

18-339 HARPER, JUNE V. LEAHY, ARTHUR, ET AL.

18-348 WEISLER, ROBERT V. JEFFERSON PARISH SHERIFF, ET AL.

18-355 PRISON LEGAL NEWS V. JONES, SEC., FL DOC

18-359 ST. BERNARD PARISH, ET AL. V. UNITED STATES

18-373 ROSE, FLOYD V. UNITED STATES

18-374 CASTILLO, WUILSON E. L. V. UNITED STATES

18-375 ALEXANDER, DANIEL H. V. BAYVIEW LOAN SERVICING, LLC

18-378 MERCK & CO., INC., ET AL. V. GILEAD SCIENCES, INC.

18-386 VASQUEZ, JOSHUA, ET AL. V. FOXX, KIMBERLY M.

18-418 U. S., EX REL. HARPER, ET AL. V. MUSKINGUM WATERSHED CONSERVANCY

18-445 RAMIREZ, TANYA V. TEXAS

18-453 DE HAVILLAND, OLIVIA V. FX NETWORKS, LLC, ET AL.

18-458 PELLEGRINI, LILLIAN V. FRESNO COUNTY, CA, ET AL.

18-470 STOKES, BRANDI K. V. CORSBIE, CHRISTOPHER L., ET AL.

18-473 DAVIS, JOHN V. DEUTSCHE BANK NAT. TRUST, ET AL.

18-474 LYON, LeFLORIS V. CANADIAN NAT. RAILWAY, ET AL.

18-476 COWLITZ COUNTY, WA, ET AL. V. CROWELL, JULE, ET AL.

18-477 MARTIN, HUGH, ET AL. V. UNITED STATES

18-478 MALNES, BRIAN E. V. FLAGSTAFF, AZ, ET AL.

18-479 SCHENKEL, MARC V. XYNGULAR CORPORATION, ET AL.

18-482 HILL, PAUL V. ACCOUNTS RECEIVABLE SERVICES

18-487 D. A. V. D. P.

18-490 WATTS, JAEL V. ALLEN, MICHAEL K.

18-491 RAY, CAMERON H. V. OKLAHOMA

18-493 SPANO, ROSE J. V. FLORIDA BAR

18-495 MORRIS & ASSOCIATES, INC. V. JOHN BEAN TECHNOLOGIES CORP.

18-502 KINNEY, WILLIAM, ET UX. V. ANDERSON LUMBER CO., INC.

18-504 KINNEY, CHARLES G. V. BOREN, ROGER, ET AL.

18-507 McDONALD, JESSIE D. V. USDC MD TN

18-508 KINNEY, CHARLES G. V. TAKEUCHI, TYSON, ET AL.

18-510 KINNEY, CHARLES G. V. CLARK, MICHELE R., ET AL.

18-511 GATES, AUSTIN V. KHOKHAR, HASSAN, ET AL.

18-512 SIMMONS, LEE V. SMITH, PAUL D., ET AL.

18-514 DRAKE, OLA L., ET VIR V. DEUTSCHE BANK NATIONAL TRUST CO.

18-515 KINNEY, CHARLES G. V. CLARK, MICHELE R., ET AL.

18-516 KINNEY, CHARLES G. V. GUTIERREZ, PHILIP, ET AL.

18-517 KINNEY, CHARLES G. V. GUTIERREZ, PHILIP

18-518 KINNEY, CHARLES G. V. CLERK, COURT OF APPEAL OF CA

18-519 JENNINGS, JOSEPH A. V. JENNINGS, SUSAN W.

18-520 WeCONNECT, INC. V. GOPLIN, BROOKS

18-521 JUAN, SIMPSON V. JNESO DISTRICT COUNCIL 1, ET AL.

18-523 GRIFFIN, W. A. V. VERIZON COMMUNICATIONS, ET AL.

18-526 CHOIZILME, WALING V. WHITAKER, ACTING ATT'Y GEN.

18-527 STRAUB, FRANK V. SPOKANE, WA, ET AL.

18-528 KIFLE, ELIAS, ET AL. V. AHMED, JEMAL

18-529 LUO, JENN-CHING V. OWEN J. ROBERTS SCHOOL, ET AL.

18-536 TAYLOR, HARMON L. V. TEXAS

18-537 JAMES, BOOTH V. MONTGOMERY REG. AIRPORT, ET AL.

18-549 VOTER VERIFIED, INC. V. ELECTION SYSTEMS & SOFTWARE LLC

18-550 STOKES, BRANDI K. V. CORSBIE, CHRISTOPHER L.

18-558 GUTIERREZ, MIRIAM V. WHITAKER, ACTING ATT'Y GEN.

18-559 NEGATU, METEKU V. WELLS FARGO BANK, N.A.

18-564 DECOSIMO, ROSEMARY L. V. TENNESSEE

18-567 SNAPP, DANNY V. BURLINGTON NO. & SANTA FE R. CO.

18-569 SHAO, LINDA V. WANG, TSAN-KUEN

18-570 TUNAC, FELISA V. UNITED STATES

18-571 WILLIAMS, JAMES L. V. UNITED STATES

18-577 NETZER, DAVID V. SHELL OIL CO., ET AL.

18-582 YAGMAN, STEPHEN V. COLELLO, MICHAEL J.

18-583 MAYLE, KENNETH V. UNITED STATES, ET AL.

18-584 HORNE, ANGELA E. V. WTVR, LLC

18-586 KOCH, JACK R. V. ESTRELLA, A., ET AL.

18-590 CAVE CONSULTING GROUP, LLC V. OPTUMINSIGHT, INC.

18-591 DRESSLER, GARY V. RICE, BRADFORD, ET AL.

18-592 FERGUSON FLORISSANT SCHOOL DIST. V. MO CONFERENCE OF NAACP, ET AL.

18-594 SNYDER, ROBERT R. V. CALIFORNIA

18-595 TATTEN, JAMES P. V. DENVER, CO, ET AL.

18-598 CHIEN, ANDREW V. CLARK, ANDREW K., ET AL.

18-599 WI-FI ONE, LLC V. BROADCOM CORP., ET AL.

18-602 SMITH, JODI A. V. LAKEWOOD RANCH GYMNASTICS LLC

18-603 SIEGEL, MARTIN, ET AL. V. DELTA AIR LINES, INC., ET AL.

18-605 STEIN, MITCHELL J. V. CALIFORNIA

18-611 TATAR, JOHN J. V. UNITED STATES

18-613 GRIFFIN, W. A. V. AETNA HEALTH INC., ET AL.

18-616 NEPAL, ROGER V. UNITED STATES

18-619 HUSSEIN, GAMADA A. V. WHITAKER, ACTING ATT'Y GEN.

18-623 WALKER, KATRINA V. WEATHERSPOON, CARL, ET AL.

18-624 RASKO, JINAE V. NY ADMIN. FOR CHILDREN'S SERV.

18-627 STARRETT, WILLIAM H. V. LOCKHEED MARTIN CORP., ET AL.

18-629) CODY, JACK V. CALIFORNIA AIR RESOURCES BOARD
)
18-666) ALLIANCE FOR CALIFORNIA BUSINESS V. CALIFORNIA AIR RESOURCES BOARD

18-632 LeROUX, SHERILYN J. V. NCL

18-633 BYRD, GARY J. V. UNITED STATES

18-637 MARRO, DONALD C. V. CAESAR'S ENTERTAINMENT

18-639 BISZCZANIK, MAREK V. NATIONSTAR MORTGAGE, LLC, ET AL.

18-667 WILLIAMS, LONNIE C. V. TEXAS

18-675 WEST, LISA M. V. MISSOURI

18-683 STARK, BRADLEY C. V. UNITED STATES

18-685 ROBINSON, LYNN, ET AL. V. AMERICAN AIRLINES, INC., ET AL.

18-688 MANN, MARK V. UNITED STATES

18-698 REYNOLDS, CLEMENT V. MARYLAND

18-702 YADAV, RAJESHWAR S., ET UX. V. NJ DEPT. OF ENVTL. PROTECTION

18-706 KIOBEL, ESTHER V. CRAVATH, SWAINE & MOORE LLP

18-708 BERTRAM, ROBERT L., ET AL. V. UNITED STATES

18-714 LIM, CHHAY V. UNITED STATES

18-737 AIME, GREGORY, ET AL. V. JTH TAX, INC., ET AL.

18-5008 CANADATE, AUTREY V. UNITED STATES

18-5090 MASON, QUONSHA D. V. BURTON, WARDEN

18-5118 FLOYD, SHANE K. V. UNITED STATES

18-5147 WING, EDWARD N. V. UNITED STATES

18-5209 BARRETT, MICHAEL V. UNITED STATES

18-5251 DAMBELLY, SARJO V. UNITED STATES

18-5314 SMITH, SHANNON D. V. UNITED STATES

18-5398 PRUTTING, KENNETH F. V. UNITED STATES

18-5418 GREEN, KENNETH V. COLORADO

18-5464 BENITEZ, JOSE V. UNITED STATES

18-5504 POSEY, WILLIAM L. V. UNITED STATES

18-5505 MORRIS, FARRIS G. V. MAYS, WARDEN

18-5549 KENNER, PHILLIP A. V. UNITED STATES

18-5594 WASHINGTON, CORY D. V. UNITED STATES

18-5626 WISHNEFSKY, BRUCE V. SALAMEH, JAWAD, ET AL.

18-5634 KINKEL, KIPLAND P. V. LANEY, SUPT., OR

18-5655 FOSTER, CORY D. V. UNITED STATES

18-5664 CHEESEBORO, CHAN V. LITTLE RICHIE BUS SERVICE, INC.

18-5691 BAKER, DARRYL J. V. CHEATHAM, WARDEN

18-5730 DENMARK, TERRENCE V. UNITED STATES

18-5762 GARCIA, PEDRO V. UNITED STATES

18-5770 ROUSE, JOHN D. V. UNITED STATES

18-5771 QUALLS, JIM W. V. UNITED STATES

18-5821 FARMER, THOMAS L. V. UNITED STATES

18-5853 BINNS, DOROTHY V. MARIETTA, GA

18-5880 CAUDILL, VIRGINIA S. V. CONOVER, WARDEN

18-5898 VALERIO, ARMANDO C. V. UNITED STATES

18-5923 SANCHEZ, BRENT V. UNITED STATES

18-5939 ALLEN, GARY M. V. UNITED STATES

18-5945 CHIDDO, DAVID V. UNITED STATES

18-5960 GHARIB, KENNETH V. CASEY, THOMAS H.

18-5980 JONES, SHELTON D. V. DAVIS, DIR., TX DCJ

18-6005 WILLIAMS, TRAYON L. V. UNITED STATES

18-6013 WYATT, RICHARD C. V. UNITED STATES

18-6044 BEASLEY, RICHARD J. V. OHIO

18-6070 CORNWELL, CARLOS V. TENNESSEE

18-6071 NAYSHTUT, SERGE V. COMERCIALIZADORA TRAVEL, ET AL.

18-6137 BURTON, STEVEN D. V. UNITED STATES

18-6160 CARMODY, KEVIN R. V. BD. OF TRUSTEES, ET AL.

18-6174 LANG, EDWARD V. BOBBY, WARDEN

18-6214 SANDERS, RICARDO R. V. DAVIS, WARDEN

18-6233 SCHUERMANN, STEPHAN V. ANQUI, JUBILIE

18-6236 SWAN, THOMAS L, V. DAVIS, DIR., TX DCJ

18-6239 REILLY, SEAN P. V. HERRERA, GUELSY M., ET AL.

18-6243 JACKSON, CHRISTOPHER V. FLORIDA

18-6244 MARTIN, DENNIS V. OKLAHOMA, ET AL.

18-6245 KIRKLAND, JOHNNY V. PROGRESSIVE INS. CO., ET AL.

18-6247 PARKER, ROY V. CAIN, WARDEN

18-6261 VARGAS, ILICH V. McMAHON, JOHN

18-6263 VARGAS, ILICH V. McMAHON, JOHN, ET AL.

18-6264 REQUENA, ADRIAN M. V. ROBERTS, RAY, ET AL.

18-6272 STESHENKO, GREGORY V. McKAY, THOMAS, ET AL.

18-6274 KLEIN, ROBERT V. CRAMRA

18-6276 TERRELL, MARCUS A. V. BERRY, WARDEN

18-6278 MARTIN, JOHN V. DAVIS, DIR, TX DCJ

18-6287 CRUTSINGER, BILLY J. V. DAVIS, DIR., TX DCJ

18-6290 SOLGADO, DAMON J. V. BRAUN, WARDEN

18-6294 WALCOTT, STEVEN A. V. TERREBONNE PARISH JAIL, ET AL.

18-6296 JACOME, ALEXANDER R. V. CALIFORNIA

18-6298 FRATTA, ROBERT A. V. DAVIS, DIR., TX DCJ

18-6307 LATIMER, LORENZO M. V. MACOMBER, WARDEN

18-6311 WALTERS, WINSTON R. V. OKLAHOMA

18-6315 IVY, DAVID V. TENNESSEE

18-6318 WARE, JEFFREY A. V. JONES, SEC., FL DOC, ET AL.

18-6323 HUNTER, ASHLEY K. V. NORTH DAKOTA

18-6332 STROBLE, RICKY L. V. DAVIS, DIR. TX DCJ

18-6334 WIGGINS, AKHEEM V. TANNER, WARDEN

18-6340 WILLIAMS, KEVIN V. SAFIRE, ERIC, ET AL.

18-6344 LACY, BRANDON E. V. ARKANSAS

18-6354 JOSSIE, CHERYL L. V. CVS PHARMACY

18-6356 REYES, EARL V. ARTUS, DALE

18-6365 BARTLETT, ANGEL V. MICHIGAN, ET AL.

18-6367 CARTER, JOEL V. AYALA, JAMIE, ET AL.

18-6368 CALHOUN, DEAN E. V. TEXAS

18-6382 CHAVEZ, KELLY J. V. BERRYHILL, NANCY A.

18-6383 KULICK, ROBERT J. V. REIN, STEVEN

18-6384 LANTERI, MICHAEL A. V. CONNECTICUT

18-6388 BLACKMON, RUBY V. EATON CORPORATION

18-6390 WHITE, VALIANT V. MICHIGAN

18-6392 KHOSHMOOD, MOHSEN V. EASTERN MARKET

18-6402 ROBINSON, ELROY W. V. CALIFORNIA

18-6403 STARNES, CHESTER L. V. JACKSON, WARDEN

18-6407 VUE, ONG V. HENKE, FRANK X., ET AL.

18-6412 BEY, JAIYANAH V. ELMWOOD POLICE DEPT., ET AL.

18-6418 WILSON, DENVER I. V. FLORIDA

18-6419 WHIPPLE, WILLIAM L. V. FL DOC

18-6420 NESSELRODE, GREGORY P. V. DeVOS, SEC. OF EDUCATION

18-6426 BRUNSON, JONATHAN E. V. NORTH CAROLINA, ET AL.

18-6427 VALLE, JESUS V. ROGERS, RUSTY, ET AL.

18-6428 DELACRUZ, ROBERTO G. V. DAVIS, DIR., TXDCJ

18-6433 SMITHBACK, ROBERT N. V. TEXAS

18-6435 ROGERS, JOHN V. VANNOY, WARDEN

18-6437 HOLDER, COREY V. SEPANEK, WARDEN

18-6438 MORENO, OSCAR K. V. BUTLER, ALANA

18-6439 ORTEGA LARA, JUAN V. MADDEN, WARDEN

18-6440 MEEKS, DANNY R. V. TN DOC

18-6441 McKISSICK, RODERICK V. DEAL, GOV. OF GA, ET AL.

18-6442 MERRITT, PHILLIP T. V. ILLINOIS

18-6443 ADAMS, BOBBIE L. V. NETFLIX, INC.

18-6446 FAIRLEY, JULIETTE V. PM MANAGEMENT

18-6452 BARTLETT, ALAN V. STATE BAR OF CA, ET AL.

18-6454 NASH, CHARLES V. PHILLIPS, WARDEN

18-6455 McGEE, RONNIE V. BONDI, ATT'Y GEN. OF FL

18-6458 WILLIAMS, EDDIE V. TENNESSEE

18-6465 YANEZ, JOSE R. V. DIAZ, ACTING SEC., CA DOC

18-6466 ORTEGA, WILSON C. V. DIAZ, ACTING SEC., CA DOC

18-6467 PULLEY, TYRONE V. CALIFORNIA

18-6469 MORANT, TYRONE D. V. LEWIS, SUPT., SOUTHEAST

18-6476 WHITE, JOSEPH V. DETROIT E. COM. MENTAL, ET AL.

18-6477 ACKELS, DELMER M. V. OLSEN, RANDY M., ET AL.

18-6485 CAIN, RICHARD E. V. WASHINGTON

18-6487 HOWELL, ALICE V. NuCAR CONNECTION, INC.

18-6488 COLEMAN, ALONZO D. V. HAKALA, MICHAEL C., ET AL.

18-6489 FIKROU, GUETATCHEW V. MONTGOMERY COUNTY, ET AL.

18-6490 HOPKINS, LYMAN S. V. LANGUAGE TESTING INTERNATIONAL

18-6492 RENTAS, PASCUAL V. JONES, SEC., FL DOC

18-6493 BURKE, STEVEN D. V. TURNER, WARDEN

18-6501 ROBERTSON, CARL A. V. INTERACTIVE COLLEGE OF TECH.

18-6506 BOUDREAUX, GUY V. HOOPER, WARDEN

18-6507 BROWN, ALICE V. DEL NORTE COUNTY, CA, ET AL.

18-6508 WILLIAMS, DUAN L. V. VIRGINIA

18-6509 TEDESCO, JOHN V. MONROE COUNTY, PA, ET AL.

18-6510 PRUITT, FRANK V. NEW YORK

18-6513 CHINCHILLA, BYRON C. V. LEWIS, WARDEN

18-6516 TRAN, LINH T. V. HAPPY VALLEY MUNICIPAL CT.

18-6517 BROWN, ARETHA D. V. ELITE MODELING AGENCY

18-6520 ARNETT, JESUS L. V. COVELLO, ACTING WARDEN

18-6521 PORTO, LEONARD V. LAGUNA BEACH, CA, ET AL.

18-6522 PRUNTY, ROBERT V. DeSOTO COUNTY SCHOOL BD., ET AL.

18-6527 JEDEDIAH C. V. WEST VIRGINIA

18-6528 CABBAGESTALK, SHAHEEN V. STERLING, BRYAN P., ET AL.

18-6529 KOZICH, DON V. DEIBERT, ANN, ET AL.

18-6532 MYERS, AUSTIN V. OHIO

18-6535 WILLIAMS, RODNEY V. MICHIGAN

18-6538 SYDNOR, STEVEN B. V. HAMPTON, WARDEN

18-6539 RENCOUNTRE, ALLAN W. V. BRAUN, WARDEN

18-6540 RAYAN, MAHA Z. V. GEORGIA

18-6541 STOLLER, MICHAEL V. WILMINGTON TRUST

18-6543 KORESKO, JOHN J. V. ACOSTA, SEC. OF LABOR

18-6544 McNEMAR, ROBERT J. V. TERRY, ACTING WARDEN

18-6545 LOPEZ, FRANKIE C. V. CALIFORNIA

18-6555 BARNETT, LESTER V. GASTONIA, NC

18-6556 McALISTER, DAVID V. WISCONSIN

18-6558 MERRICK, ANTHONY J. V. ARIZONA

18-6562 PIERCE, JASON V. GEORGIA

18-6568 POMPEE, HAROLD V. JONES, SEC., FL DOC, ET AL.

18-6571 JERVIS, MARK V. BROWN, WARDEN

18-6572 THOMPSON, DOUGLAS W. V. MO BD. OF PROBATION AND PAROLE

18-6575 STOKES, FINESS E. V. DAVIS, DIR., TX DCJ

18-6577 GODOY, ERNESTO W. V. CLARKE, DIR., VA DOC

18-6578 FOX, ELEBERT V. ILLINOIS

18-6580 FITTS, WILIIAM S. V. GOODRICH, WARDEN, ET AL.

18-6590 MOHAMED, SALAH V. UNITED STATES

18-6592 PAVON, ANDRES V. JONES, SEC., FL DOC

18-6594 SAFFORD, WILLIE V. FLORIDA

18-6595 SMITH, JOHN V. FL DOC

18-6603 JOHNSON, DAVID V. INDIANA

18-6607 PETERS, SCOTT V. BALDWIN, JOHN

18-6609 LAMPON-PAZ, MANUEL V. OPM

18-6610 JOHNSON, MARK V. ILLINOIS

18-6613 DeJESUS, HECTOR R. V. GODINEZ, SALVADOR A., ET AL.

18-6614 ROSE, WILLIE V. HORTON, WARDEN

18-6619 ROBINSON, DOMINIC C. V. MISSISSIPPI

18-6620 ARMENTA, JOE L. V. DIAZ, ACTING SEC., CA DOC

18-6623 COSME, CARLOS V. UNITED STATES

18-6627 CURRY, DAVID T. V. FLORIDA

18-6628 CLEMONS, CORNELIUS V. KASICH, GOV. OF OH

18-6629 HARLOFF, WILLIAM R. V. KOENIG, WARDEN

18-6637 GRIST, HAROLD E. V. CARLIN, WARDEN

18-6639 DIZAK, STUART V. SMITH, SUPT., MID-STATE

18-6642 IBEABUCHI, IKEMEFULA C. V. ARIZONA

18-6647 SHARMA, KIRAN V. UNITED STATES

18-6652 LOWE, MICHAEL C. V. ROY, COMM'R, MN DOC

18-6653 CALDERIN, ROLANDO V. ILLINOIS

18-6659 RODWELL, JAMES V. MASSACHUSETTS

18-6660 ARIF, MUSTAFA H. V. UNITED STATES

18-6661 SAMUEL, BRYAN C. V. UNITED STATES

18-6664 GARZA, DANIEL D. V. UNITED STATES

18-6665 SMITH, MAURICE T. V. UNITED STATES

18-6666 SOSA, OSCAR V. UNITED STATES

18-6673 VICK, TRACY L. V. TENNESSEE

18-6676 WILMORE, HERVE V. UNITED STATES

18-6677 MARSHALL, CLARENCE D. V. UNITED STATES

18-6678 WHITE, JERMEAL V. BRACY, WARDEN, ET AL.

18-6681 RIOS, MARK A., ET AL. V. UNITED STATES

18-6683 SAKOMAN, CODY V. CALIFORNIA

18-6687 KENNEDY, HILDA T. V. POLLOCK, FREDERIC A.

18-6689 SANCHEZ, ISRAEL V. PFEIFFER, WARDEN

18-6691 McCURTIS, DELILAH V. BURKE, WARDEN

18-6692 WATERSON, RICHARD D. V. UNITED STATES

18-6693 MANGUAL-ROSADO, VICTOR M. V. UNITED STATES

18-6694 WEAKLEY, TIMOTHY V. EAGLE LOGISTICS, ET AL.

18-6695 MEHMOOD, ZAFAR V. UNITED STATES

18-6697 BELLINGER, KEVIN M. V. UNITED STATES

18-6700 DePIETRO, MICHAEL V. ALLSTATE INSURANCE CO., ET AL.

18-6703 TRIMBLE, DAVID R. V. VANNOY, WARDEN

18-6705 JILES, RICHARD A. V. UNITED STATES

18-6707 PROA-DOMINGUEZ, ALBERTO J. V. UNITED STATES

18-6711 COLON, RICARDO D. V. UNITED STATES

18-6712 GILSTRAP, BRYAN M. V. UNITED STATES

18-6714 PLASENCIA, MAIKEL S. V. UNITED STATES

18-6718 EDWARDS, TIMOTHY V. UNITED STATES

18-6719 WILLIAMSON, BOBBY K. V. LUTHER, SUPT., SMITHFIELD

18-6720 WITCHARD, JOSEPH V. ANTONELLI, WARDEN

18-6721 CULLENS, GAVIN V. CURTIN, WARDEN

18-6723 NOEL, ROBERT V. UNITED STATES

18-6725 BUSSELL, CHARLES W. V. KENTUCKY

18-6726 BRANTLEY, BILLY V. INDIANA

18-6729 SANTIAGO, JESUS V. UNITED STATES

18-6732 STEVENS, MYRON G. V. UNITED STATES

18-6733 SHAUGER, LAURA V. UNITED STATES

18-6737 LOPEZ-CASTILLO, JOSE V. UNITED STATES

18-6738 JOHNSON, JONATHONE J. V. UNITED STATES

18-6742 MATHIS, ALBERT U. V. NORTH CAROLINA

18-6746 HAYMORE, JOSEPH, ET AL. V. UNITED STATES

18-6748 GLASS, MALACHI M. V. UNITED STATES

18-6753 MENDEZ, JESSE V. SWARTHOUT, WARDEN, ET AL.

18-6757 NORMAN, RONALD R. V. UNITED STATES

18-6759 BROWN, GREGORY L. V. HATTON, WARDEN

18-6760 UPSHAW, DAVID J. V. UNITED STATES

18-6761 WILLIAMS, TELLIS T. V. UNITED STATES

18-6763 BONILLA, LUIS A. V. UNITED STATES

18-6764 BORDERS, KENNETH R. V. UNITED STATES

18-6765 BAGDIS, BERNARD J. V. UNITED STATES

18-6767 GALBREATH, BRENT V. UNITED STATES

18-6768 PEREZ, MICHAEL V. UNITED STATES

18-6770 NINO-FLORES, DAVID V. UNITED STATES

18-6775 KEHOE, EDWARD J. V. UNITED STATES

18-6778 HORN, DeANGELO V. JONES, SEC., FL DOC

18-6791 BLAND, BENJAMIN V. UNITED STATES

18-6793 BOOTH, DERRICK L. V. KELLEY, DIR., AR DOC

18-6795 BROWN, DARRELL V. UNITED STATES

18-6797 GREENE, STEPHANIE I. V. SOUTH CAROLINA

18-6798 HILL, ELVIN V. UNITED STATES

18-6800 POWELL, ROBERT R. V. UNITED STATES

18-6801 McDUFFY, VAN V. UNITED STATES

18-6804 ROACH, SHANE V. UNITED STATES

18-6806 SARMIENTO, ELIANA V. UNITED STATES

18-6808 SUAREZ, HARLEM V. UNITED STATES

18-6809 CAMP, DESMOND V. UNITED STATES

18-6810 HICKMAN-SMITH, TIMOTHY V. UNITED STATES

18-6811 FONSECA, DAMASO R. V. UNITED STATES

18-6812 FERRANTI, JACK V. UNITED STATES

18-6814 GERALD, PATRICIA A., ET AL. V. VIRGINIA

18-6816 GARCIA, VICENTE V. UNITED STATES

18-6817 FOCIA, MICHAEL A. V. UNITED STATES

18-6820 LANGLEY, ROBERT P. V. PREMO, SUPT., OR

18-6821 KELLEY, MICHAEL B. V. ALABAMA

18-6824 KEYS, MARTAVIOUS D. V. UNITED STATES

18-6827 WILLIAMS, ERIC V. NEW YORK

18-6828 THOMAS, GREGG V. MARYLAND

18-6829 FUENTES, JIMMY W. V. UNITED STATES

18-6830 HEREDIA-SILVA, FRANCISCO V. UNITED STATES

18-6833 ZUNIGA, JOSE R. V. UNITED STATES

18-6838 ROUNDTREE, ALVIN L. V. UNITED STATES

18-6839 ROBIN, BILLY A. V. UNITED STATES

18-6841 STEWART, ROBERT K. V. NORTH CAROLINA

18-6842 DAVIS, MATTHEW V. UNITED STATES

18-6844 KERR, CHRISTOPHER J. V. WISCONSIN

18-6846 PENA, LUIS A. V. MARYLAND

18-6847 HARO, SERGIO A. V. UNITED STATES

18-6851 GOMEZ, STEVEN V. UNITED STATES

18-6853 GARCIA-LIMA, NOE V. UNITED STATES

18-6855 PEREZ-MARTINEZ, ANTONIO D. V. UNITED STATES

18-6856 MILLS, GEARY M. V. UNITED STATES

18-6858 PRITCHETT, MICAH G. V. UNITED STATES

18-6861 WILBORN, JOHN V. RYAN, WARDEN

18-6862 THOMAS, JOHN V. UNITED STATES

18-6863 LEWIS, ANTRELL D. V. UNITED STATES

18-6864 WHITLOW, THOMAS V. UNITED STATES

18-6865 NINA, ADONY V. UNITED STATES

18-6867 SILVA-IBARRA, ALBERTO J. V. UNITED STATES

18-6871 CABELLO, ARCHIE V. USDC OR

18-6873 ARMENTA, ANGELA V. UNITED STATES

18-6875 THRIFT, KENDALL V. UNITED STATES

18-6879 HOGUE, DARREN V. CAIN, SUPT., SNAKE RIVER

18-6894 CROSBY, DAVID V. UNITED STATES

18-6895 CLARK, MICHAEL V. UNITED STATES

18-6896 WINGATE, JEFFREY S. V. UNITED STATES

18-6897 TAVIA, VICTOR S. V. UNITED STATES

18-6900 WATTERS, JACOB S. V. UNITED STATES

18-6910 MUSA, ELSEDDIG E. V. UNITED STATES

18-6911 PINEDA-OROZCO, ADRIAN V. UNITED STATES

18-6912 MONIE, BRYANT L. V. UNITED STATES

18-6917 PORTELA, RODOLFO V. UNITED STATES

18-6918 VELAZQUEZ, SAMANTHA C. V. UNITED STATES

18-6920 RETIZ, CLYDE V. UNITED STATES

18-6923 SARRAS, DONATOS V. UNKNOWN PARTY

18-6924 WALDEN, LARRY E. V. KELLY, DIR., AR DOC

18-6926 VALENTINE, JAMES V. UNITED STATES

18-6934 EVANS, BOBBY V. UNITED STATES

18-6935 EWING, JOSHUA D. V. UNITED STATES

18-6937 MORRILL, STEVEN A. V. UNITED STATES

18-6948 GAVIDIA, WILLIAM V. UNITED STATES

18-6951 COOPER, JAMAL V. UNITED STATES

18-6952 LICON, ORTINO G. V. UNITED STATES

18-6963 CAMRAN, MUHAMMED T. V. UNITED STATES

18-6964 WALLACE, HENRY L. V. UNITED STATES

18-6967 DANILOVICH, MICHAEL V. UNITED STATES

18-6969 BIVINS, BRANDON V. UNITED STATES

18-6974 McINTOSH, DANNYE T. V. UNITED STATES

18-6981 SURRATT, DEXTER L. V. NORTH CAROLINA

18-7028 SIMPSON, JAMEEL V. ERKERD, JAMES, ET AL.

The petitions for writs of certiorari are denied.

17-938 CIBOLO, TX V. GREEN VALLEY SPECIAL UTIL. DIST.

The motion of Guadalupe Valley Development Corporation, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

17-1165 DE CSEPEL, DAVID L., ET AL. V. REPUBLIC OF HUNGARY, ET AL.

The motion of Ambassador Stuart E. Eizenstat for leave to file a brief as *amicus curiae* is granted. The motion of AJC, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of these motions and this petition.

17-1237 OSAGE WIND, LLC, ET AL. V. OSAGE MINERALS COUNCIL

The motion of American Wind Energy Association for leave to file a brief as *amicus curiae* is granted. The motion of Osage County Farm Bureau, Inc., et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

18-61 STAND UP FOR CALIFORNIA!, ET AL. V. DEPT. OF INTERIOR, ET AL.

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

18-64 LUCIO-RAYOS, JUAN A. V. WHITAKER, ACTING ATT'Y GEN.

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

18-267 ELECTRONIC PRIVACY INFO. CENTER V. PRESIDENTIAL ADVISORY, ET AL.

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

18-327 N. K. V. ABBOTT LABORATORIES

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

petition.

18-370 HAIGHT, MARLON V. UNITED STATES

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

18-398 FCA US LLC, ET AL. V. FLYNN, BRIAN, ET AL.

The motion of CTIA–The Wireless Association, et al. for leave to file a brief as *amici curiae* is granted. The motion of respondents for leave to file a brief in opposition under seal with redacted copies for the public record is granted. The petition for a writ of certiorari is denied.

18-480 RAGHAVENDRA, R. S. V. USDC SD NY

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

18-513 MULCAHY, LEE V. ASPEN PITKIN CTY. HOUSING AUTH.

The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. The petition for a writ of certiorari is denied.

18-544 CANUTO, TERESITA A. V. DEPT. OF DEFENSE, ET AL.

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

18-6289 SMALL, BRUCE L. V. FLORIDA

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.

18-6376 ALBRA, ADEM V. BD. OF TRUSTEES, ET AL.

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

18-6380 BARTLETT, ALAN M. V. PINEDA, JUDGE, ETC., ET AL.

18-6460 BYNUM, WADDELL V. DeKALB COUNTY SANITATION

18-6491 REEVES, MICHAEL V. LASHBROOK, WARDEN

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

18-6502 EPPERSON, CHRIS J. V. USDC ND AL

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

18-6503 RICHARD, THOMAS P. V. DIST. ATT'Y OF WESTMORELAND CTY.

18-6523 BELL, RENEE D. V. ORLANDO HEALTH, INC.

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

18-6717 YIN, LEI V. THERMO FISHER SCIENTIFIC

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

18-6783 SCOTT, GINO V. 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.

18-6854 DURHAM, MATTHEW L. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice

Gorsuch took no part in the consideration or decision of this petition.

18-6872 ABDUL-SALAAM, SEIFULLAH V. WETZEL, SEC., PA DOC, ET AL.

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

18-6915 ROBINSON, CARLTON V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

18-6922 SINGH, RAGHVENDRA V. WELLS FARGO BANK, N.A.

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

HABEAS CORPUS DENIED

18-6579 IN RE PATRICIA A. McQUARRY

18-6784 IN RE SAMUEL RIVERA

18-6787 IN RE WILLIAM M. BAILEY

18-6961 IN RE MICHAEL D. JOHNSON

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

18-488 IN RE PAMELA D. IDLETT

18-6357 IN RE RAJAMANI SENTHILNATHAN

18-6479 IN RE EVAN P. GALVAN

18-6526 IN RE MASAO YONAMINE

The petitions for writs of mandamus are denied.

18-6449 IN RE HAKEEM SULTAANA

18-6500 IN RE SANDRA RUMANEK

The petitions for writs of mandamus and/or prohibition are denied.

PROHIBITION DENIED

18-6478 IN RE INZEL GAITOR

The petition for a writ of prohibition is denied.

REHEARINGS DENIED

17-8502 AMBROSE, SAMUEL L. V. TRIERWEILER, WARDEN

17-8558 LONG, GILLMAN R. V. UNITED STATES

17-8688 ASSA'AD-FALTAS, MARIE-THERESE V. COLUMBIA, SC

17-8842 JACKSON, VALENTINO V. GEORGIA

17-8909 JARAMILLO, MIGUEL A. V. NEW YORK

17-9004 STURGES, DEANDRE A. V. CURTIN, WARDEN

17-9034 TAYLOR, ROBERT R. V. JONES, SEC., FL DOC

17-9292 STYLES, ARTHUR B. V. DEPT. OF VETERANS AFFAIRS

17-9306 TRINH, LAN TU V. TRINH, KATHLEEN LIEN

17-9363 McFARLIN, SHAWNDELL M. V. HARRIS, CLERK, USSC, ET AL.

17-9433 JUNOD, ERIC V. UNITED STATES

17-9461 BULOVIC, DANICA V. STOP & SHOP SUPERMARKET, ET AL.

18-79 KLEIN, TIBERIU, ET AL. V. O'BRIEN, DANIEL, ET AL.

18-209 MEHTA, RAM V. CALIFORNIA

18-220 CARRILLO, JAVIER A., ET AL. V. U.S. BANK NAT. ASSOC., ET AL.

18-233 INDIEZONE, INC., ET AL. V. ROOKE, TODD, ET AL.

18-239 RINALDO, ARICK J. V. MAHAN, BRYAN, ET AL.

18-271 TROST, ZACHARY N., ET UX. V. TROST, SHERRY

18-330 GREENE, DOUGLAS W. V. FROST BROWN TODD, LLC, ET AL.

18-382 RAB, RAJI V. SUPERIOR COURT OF CA, ET AL.

18-401 HOBSON, FAYE R. V. MATTIS, SEC. OF DEFENSE

18-427 BAMDAD, MASOUD V. UNITED STATES

18-5075 OKAFOR, FELIX A. V. UNITED STATES

18-5106 STEWART, SHIRLEY A. V. HOLDER, ERIC H., ET AL.

18-5139 RUNNELS, DONALD K. V. BORDELON, WARDEN

18-5161 WADDLETON, III, MARVIN V. DAVIS, DIR., TX DCJ

18-5325 LASHER, LENA V. UNITED STATES

18-5366 MARTIN, RONALD D. V. TRIERWEILER, WARDEN

18-5388 ROBERTS, ALBERT W. V. UNITED STATES

18-5403 DENNIS, LEROY D. V. OKLAHOMA

18-5413 LEWIS, CLARENCE D. V. HEDGEMON, JOHNNY, ET AL.

18-5452 REID, KENNETH R. V. USDC SC

18-5519 TEMPLETON, MARK V. AMSBERRY, SUPT., E. OR, ET AL.

18-5530 KALDAWI, VICTORIA E. V. KUWAIT, ET AL.

18-5599 CHI, ANSON V. UNITED STATES

18-5602 LEONARD, STEPHEN D. V. FLORIDA

18-5659 CAVALIERI, DAVID E. V. VIRGINIA

18-5689 BRIDGETTE, GEORGE V. ASUNCION, WARDEN, ET AL.

18-5719 BARTLETT, ALAN V. PINEDA, JUDGE, ETC., ET AL.

18-5720 BARTLETT, ALAN V. PINEDA, JUDGE, ETC., ET AL.

18-5732 LaCONTE, JAMES V. UNITED STATES

18-5782 COOK, MICHAEL L. V. RYAN, DIR., AZ DOC, ET AL.

18-5793 JOHNSTON, RAY L. V. FLORIDA

18-5802 DOE, JOHN V. KAWEAH DELTA HOSPITAL, ET AL.

18-5829 MATELYAN, ARIKA V. ATLANTIC RECORDS WMG, ET AL.

18-5885 SHANNON, KENNETH K. V. UNITED STATES

18-5887 MORTON, CECIL L. V. HAYNES, SUPT., STAFFORD CREEK

18-5903 JONES, RUFUS V. BERRYHILL, NANCY A., ET AL.

18-5977 RAFI, SYED K. V. YALE UNIVERSITY

18-6017 ROBEY, WILLIAM V. WASHINGTON

18-6074 KURI, CRYSTAL N. V. KS DEPT. OF LABOR

18-6166 RAFI, SYED K. V. BRIGHAM & WOMEN'S HOSP., ET AL.

The petitions for rehearing are denied.

Per Curiam

SUPREME COURT OF THE UNITED STATES

CITY OF ESCONDIDO, CALIFORNIA, ET AL. *v.* MARTY EMMONS

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

No. 17–1660. Decided January 7, 2019

PER CURIAM.

The question in this qualified immunity case is whether two police officers violated clearly established law when they forcibly apprehended a man at the scene of a reported domestic violence incident.

The record, viewed in the light most favorable to the plaintiff, shows the following. In April 2013, Escondido police received a 911 call from Maggie Emmons about a domestic violence incident at her apartment. Emmons lived at the apartment with her husband, her two children, and a roommate, Ametria Douglas. Officer Jake Houchin responded to the scene and eventually helped take a domestic violence report from Emmons about injuries caused by her husband. The officers arrested her husband. He was later released.

A few weeks later, on May 27, 2013, at about 2:30 p.m., Escondido police received a 911 call about another possible domestic disturbance at Emmons' apartment. That 911 call came from Ametria Douglas' mother, Trina Douglas. Trina Douglas was not at the apartment, but she was on the phone with her daughter Ametria, who was at the apartment. Trina heard her daughter Ametria and Maggie Emmons yelling at each other and heard her daughter screaming for help. The call then disconnected, and Trina Douglas called 911.

Officer Houchin again responded, along with Officer Robert Craig. The dispatcher informed the officers that two children could be in the residence and that calls to the

apartment had gone unanswered.

Police body-camera video of the officers' actions at the apartment is in the record.

The officers knocked on the door of the apartment. No one answered. But a side window was open, and the officers spoke with Emmons through that window, attempting to convince her to open the door to the apartment so that they could conduct a welfare check. A man in the apartment also told Emmons to back away from the window, but the officers said they could not identify the man. At some point during this exchange, Sergeant Kevin Toth, Officer Joseph Leffingwell, and Officer Huy Quach arrived as backup.

A few minutes later, a man opened the apartment door and came outside. At that point, Officer Craig was standing alone just outside the door. Officer Craig told the man not to close the door, but the man closed the door and tried to brush past Officer Craig. Officer Craig stopped the man, took him quickly to the ground, and handcuffed him. Officer Craig did not hit the man or display any weapon. The video shows that the man was not in any visible or audible pain as a result of the takedown or while on the ground. Within a few minutes, officers helped the man up and arrested him for a misdemeanor offense of resisting and delaying a police officer.

The man turned out to be Maggie Emmons' father, Marty Emmons. Marty Emmons later sued Officer Craig and Sergeant Toth, among others, under Rev. Stat. §1979, 42 U. S. C. §1983. He raised several claims, including, as relevant here, a claim of excessive force in violation of the Fourth Amendment. The suit sought money damages for which Officer Craig and Sergeant Toth would be personally liable. The District Court held that the officers had probable cause to arrest Marty Emmons for the misdemeanor offense. The Ninth Circuit did not disturb that finding, and there is no claim presently before us that the officers

lacked probable cause to arrest Marty Emmons. The only claim before us is that the officers used excessive force in effectuating the arrest.

The District Court rejected the claim of excessive force. 168 F. Supp. 3d 1265, 1274 (SD Cal. 2016). The District Court stated that the "video shows that the officers acted professionally and respectfully in their encounter" at the apartment. *Id.*, at 1275. Because only Officer Craig used any force at all, the District Court granted summary judgment to Sergeant Toth on the excessive force claim.

Applying this Court's precedents on qualified immunity, the District Court also granted summary judgment to Officer Craig. According to the District Court, the law did not clearly establish that Officer Craig could not take down an arrestee in these circumstances. The court explained that the officers were responding to a domestic dispute, and that the encounter had escalated when the officers could not enter the apartment to conduct a welfare check. The District Court also noted that when Marty Emmons exited the apartment, none of the officers knew whether he was armed or dangerous, or whether he had injured any individuals inside the apartment.

The Court of Appeals reversed and remanded for trial on the excessive force claims against both Officer Craig and Sergeant Toth. 716 Fed. Appx. 724 (CA9 2018). The Ninth Circuit's entire relevant analysis of the qualified immunity question consisted of the following: "The right to be free of excessive force was clearly established at the time of the events in question. *Gravelet-Blondin* v. *Shelton*, 728 F. 3d 1086, 1093 (9th Cir. 2013)." *Id.*, at 726.

We reverse the judgment of the Court of Appeals as to Sergeant Toth, and vacate and remand as to Officer Craig.

With respect to Sergeant Toth, the Ninth Circuit offered no explanation for its decision. The court's unexplained reinstatement of the excessive force claim against Sergeant Toth was erroneous—and quite puzzling in light of

the District Court's conclusion that "only Defendant Craig was involved in the excessive force claim" and that Emmons "fail[ed] to identify contrary evidence." 168 F. Supp. 3d, at 1274, n. 4.

As to Officer Craig, the Ninth Circuit also erred. As we have explained many times: "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kisela* v. *Hughes*, 584 U. S. ___, ___ (2018) (*per curiam*) (slip op., at 4) (internal quotation marks omitted); see *District of Columbia* v. *Wesby*, 583 U. S. ___, ___–___ (2018); *White* v. *Pauly*, 580 U. S. ___, ___–___ (2017) (*per curiam*); *Mullenix* v. *Luna*, 577 U. S. ___, ___–___ (2015) (*per curiam*).

Under our cases, the clearly established right must be defined with specificity. "This Court has repeatedly told courts . . . not to define clearly established law at a high level of generality." *Kisela*, 584 U. S., at ___ (slip op., at 4) (internal quotation marks omitted). That is particularly important in excessive force cases, as we have explained:

> "Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. Use of excessive force is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue. . . .
>
> "[I]t does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness. An officer cannot be said to have violated a clearly estab-

> lished right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Id.*, at ___ (slip op., at 5) (quotation altered).

In this case, the Court of Appeals contravened those settled principles. The Court of Appeals should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances. Instead, the Court of Appeals defined the clearly established right at a high level of generality by saying only that the "right to be free of excessive force" was clearly established. With the right defined at that high level of generality, the Court of Appeals then denied qualified immunity to the officers and remanded the case for trial. 716 Fed. Appx., at 726.

Under our precedents, the Court of Appeals' formulation of the clearly established right was far too general. To be sure, the Court of Appeals cited the *Gravelet-Blondin* case from that Circuit, which described a right to be "free from the application of non-trivial force for engaging in mere passive resistance. . . ." 728 F. 3d, at 1093. Assuming without deciding that a court of appeals decision may constitute clearly established law for purposes of qualified immunity, see *City and County of San Francisco* v. *Sheehan*, 575 U. S. ___, ___ (2015), the Ninth Circuit's *Gravelet-Blondin* case law involved police force against individuals engaged in *passive* resistance. The Court of Appeals made no effort to explain how that case law prohibited Officer Craig's actions in this case. That is a problem under our precedents:

> "[W]e have stressed the need to identify a case where an officer acting under similar circumstances was held to have violated the Fourth Amendment. . . . While there does not have to be a case directly on

> point, existing precedent must place the lawfulness of the particular [action] beyond debate. . . . Of course, there can be the rare obvious case, where the unlawfulness of the officer's conduct is sufficiently clear even though existing precedent does not address similar circumstances. . . . But a body of relevant case law is usually necessary to clearly establish the answer . . . ." *Wesby*, 583 U. S., at ___ (slip op., at 15) (internal quotation marks omitted).

The Court of Appeals failed to properly analyze whether clearly established law barred Officer Craig from stopping and taking down Marty Emmons in this manner as Emmons exited the apartment. Therefore, we remand the case for the Court of Appeals to conduct the analysis required by our precedents with respect to whether Officer Craig is entitled to qualified immunity.

The petition for certiorari is granted, the judgment of the Court of Appeals is reversed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

SUPREME COURT OF THE UNITED STATES

TIM SHOOP, WARDEN *v.* DANNY HILL

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

No. 18–56. Decided January 7, 2019

PER CURIAM.

The United States Court of Appeals for the Sixth Circuit held that respondent Danny Hill, who has been sentenced to death in Ohio, is entitled to habeas relief under 28 U. S. C. §2254(d)(1) because the decisions of the Ohio courts concluding that he is not intellectually disabled were contrary to Supreme Court precedent that was clearly established at the time in question. In reaching this decision, the Court of Appeals relied repeatedly and extensively on our decision in *Moore* v. *Texas*, 581 U. S. ___ (2017), which was not handed down until long after the state-court decisions.

The Court of Appeals' reliance on *Moore* was plainly improper under §2254(d)(1), and we therefore vacate that decision and remand so that Hill's claim regarding intellectual disability can be evaluated based solely on holdings of this Court that were clearly established at the relevant time.

I

In September 1985, 12-year old Raymond Fife set out on his bicycle for a friend's home. When he did not arrive, his parents launched a search, and that evening his father found Raymond—naked, beaten, and burned—in a wooded field. Although alive, he had sustained horrific injuries

that we will not describe. He died two days later.

In 1986, respondent Danny Hill was convicted for torturing, raping, and murdering Raymond, and he was sentenced to death. An intermediate appellate court affirmed his conviction and sentence, as did the Ohio Supreme Court. We denied certiorari. *Hill* v. *Ohio*, 507 U. S. 1007 (1993).

After unsuccessful efforts to obtain postconviction relief in state and federal court, Hill filed a new petition in the Ohio courts contending that his death sentence is illegal under *Atkins* v. *Virginia*, 536 U. S. 304 (2002), which held that the Eighth Amendment prohibits the imposition of a death sentence on a defendant who is "mentally retarded." In 2006, the Ohio trial court denied this claim, App. to Pet. for Cert. 381a–493a, and in 2008, the Ohio Court of Appeals affirmed, *State* v. *Hill*, 177 Ohio App. 3d 171, 2008-Ohio-3509, 894 N. E. 2d 108. In 2009, the Ohio Supreme Court denied review. *State* v. *Hill*, 122 Ohio St. 3d 1502, 2009-Ohio-4233, 912 N. E. 2d 107.

In 2010, Hill filed a new federal habeas petition under 28 U. S. C. §2254, seeking review of the denial of his *Atkins* claim. The District Court denied the petition, App. to Pet. for Cert. 77a–210a, but the Sixth Circuit reversed and granted habeas relief under §2254(d)(1), which applies when a state-court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." See *Hill* v. *Anderson*, 881 F. 3d 483 (2018). The Sixth Circuit found two alleged deficiencies in the Ohio courts' decisions: First, they "overemphasized Hill's adaptive strengths"; and second, they "relied too heavily on adaptive strengths that Hill exhibited in the controlled environment of his death-row prison cell." *Id.*, at 492. In reaching these conclusions, the court relied repeatedly on our decision in *Moore* v. *Texas*, 581 U. S. ___. See 881 F. 3d, at 486, 487, 488,

n. 4, 489, 491, 492, 493, 495, 496, 498, 500. The court acknowledged that "[o]rdinarily, Supreme Court decisions that post-date a state court's determination cannot be 'clearly established law' for the purposes of [the federal habeas statute]," but the court argued "that *Moore*'s holding regarding adaptive strengths [was] merely an application of what was clearly established by *Atkins*." *Id.,* at 487.

The State filed a petition for a writ of certiorari, contending that the Sixth Circuit violated §2254(d)(1) because a fundamental underpinning of its decision was *Moore*, a case decided by this Court well after the Ohio courts' decisions. Against this, Hill echoes the Court of Appeals' argument that *Moore* merely spelled out what was clearly established by *Atkins* regarding the assessment of adaptive skills.

II

The federal habeas statute, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), imposes important limitations on the power of federal courts to overturn the judgments of state courts in criminal cases. The statute respects the authority and ability of state courts and their dedication to the protection of constitutional rights. Thus, under the statutory provision at issue here, 28 U. S. C. §2254(d)(1), habeas relief may be granted only if the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of," Supreme Court precedent that was "clearly established" at the time of the adjudication. *E.g., White* v. *Woodall*, 572 U. S. 415, 419–420 (2014); *Metrish* v. *Lancaster*, 569 U. S. 351, 357–358 (2013). This means that a state court's ruling must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington* v. *Richter*, 562 U. S. 86, 103

(2011). We therefore consider what was clearly established regarding the execution of the intellectually disabled in 2008, when the Ohio Court of Appeals rejected Hill's *Atkins* claim.

Of course, *Atkins* itself was on the books, but *Atkins* gave no comprehensive definition of "mental retardation" for Eighth Amendment purposes.[1] The opinion of the Court noted that the definitions of mental retardation adopted by the American Association on Mental Retardation and the American Psychiatric Association required both "subaverage intellectual functioning" and "significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18." 536 U. S., at 318; see also *id.,* at 308, n. 3 (quoting definitions). The Court also noted that state statutory definitions of mental retardation at the time "[were] not identical, but generally conform[ed] to the[se] clinical definitions." *Id.,* at 317, n. 22. The Court then left "'to the State[s] the task of developing appropriate ways to enforce the constitutional restriction'" that the Court adopted. *Id*., at 317 (quoting *Ford* v. *Wainwright*, 477 U. S. 399, 416 (1986) (plurality opinion)).

More than a decade later, we expounded on the definition of intellectual disability in two cases. In *Hall* v. *Florida*, 572 U. S. 701 (2014), we considered a rule restricting *Atkins* to defendants with "an IQ test score of 70 or less." 572 U. S., at 704. We held that this rule violated the Eighth Amendment because it treated an IQ score higher than 70 as conclusively disqualifying and thus prevented consideration of other evidence of intellectual disability, such as evidence of "deficits in adaptive functioning over [the defendant's] lifetime." *Id.,* at 724.

---

[1]The Court explained that it was "fair to say that a national consensus" had developed against the execution of "mentally retarded" offenders. *Atkins* v. *Virginia*, 536 U. S., 304, 316 (2002).

Three years later in *Moore*, we applied *Hall* and faulted the Texas Court of Criminal Appeals (CCA) for concluding that the petitioner's IQ scores, some of which were at or below 70, established that he was not intellectually disabled. *Moore*, 581 U. S., at ___–___. We also held that the CCA improperly evaluated the petitioner's adaptive functioning. It erred, we concluded, in "overemphasiz[ing] [petitioner's] perceived adaptive strengths," despite the medical community's focus on "adaptive *deficits*." *Id.,* at ___ (slip op., at 12). And we found that the CCA also went astray in "stress[ing] [petitioner's] improved behavior in prison," even though the medical community "caution[ed] against reliance on adaptive strengths developed in a controlled setting, as a prison surely is." *Id.,* at ___ (slip op., at 13) (internal quotation marks omitted).

III

In this case, no reader of the decision of the Court of Appeals can escape the conclusion that it is heavily based on *Moore*, which came years after the decisions of the Ohio courts. Indeed, the Court of Appeals, in finding an unreasonable application of clearly established law, drew almost word for word from the two statements in *Moore* quoted above. See 881 F. 3d, at 492 ("Contrary to *Atkins*, the Ohio courts overemphasized Hill's adaptive strengths and relied too heavily on adaptive strengths that Hill exhibited in the controlled environment of his death-row prison cell. In so doing, they unreasonably applied clearly established law"). Although the Court of Appeals asserted that the holding in *Moore* was "merely an application of what was clearly established by *Atkins*," 881 F. 3d, at 487, the court did not explain how the rule it applied can be teased out of the *Atkins* Court's brief comments about the meaning of what it termed "mental retardation." While *Atkins* noted that standard definitions of mental retardation included as a necessary element "significant limitations in adaptive

skills . . . that became manifest before age 18," 536 U. S., at 318, *Atkins* did not definitively resolve how that element was to be evaluated but instead left its application in the first instance to the States. *Id.*, at 317.

Moreover, the posture in which *Moore* reached this Court (it did not arise under AEDPA) and the *Moore* majority's primary reliance on medical literature that postdated the Ohio courts' decisions, 581 U. S., at ___, ___, provide additional reasons to question the Court of Appeals' analysis. Cf. *Cain* v. *Chappell*, 870 F. 3d 1003, 1024, n. 9 (CA9 2017) (because "*Moore* is not an AEDPA case" and was "decided just this spring," "*Moore* itself cannot serve as 'clearly established' law at the time the state court decided Cain's claim").

IV

The centrality of *Moore* in the Court of Appeals' analysis is reflected in the way in which the intellectual-disability issue was litigated below. The *Atkins* portion of Hill's habeas petition did not focus on §2254(d)(1), the provision on which the decision below is based.[2] Instead, it began and ended with appeals to a different provision of the habeas statute, §2254(d)(2), which supports relief based on a state court's "unreasonable determination of the facts." In particular, Hill opened with the claim that the Ohio courts' findings on "adaptive functioning" "were an unreasonable determination of the facts in light of the evidence," Amended Pet. for Habeas Corpus in No. 96–CV–795 (ND

---

[2] While Hill's petition argued at one point that certain unidentified "procedures" used by the state courts in making the relevant decisions "violated clearly established federal law of *Ford/Panetti/Atkins*," Amended Pet. for Habeas Corpus in No. 96–CV–795 (ND Ohio) (Doc. 94), p. 15, ¶45, the petition plainly did not encompass his current argument that the Ohio Court of Appeals unreasonably applied clearly established law under *Atkins* by overemphasizing adaptive strengths and improperly considering his prison behavior.

Ohio) (Doc. 94), p. 15, ¶44 (citing §2254(d)(2)), and he closed with the claim that the state trial court's assessment that he is "not mentally retarded" was based on "an unreasonable determination of the facts," *id.,* at 36–37, ¶101 (citing §2254(d)(2)). Indeed, Hill's reply to the State's answer to his petition explicitly "concur[red] . . . that it is proper to review [his *Atkins* claim] under §2254(d)(2)." Traverse in No. 96–CV–795 (ND Ohio) (Doc. 102), p. 47. And so, unsurprisingly, the District Court analyzed Hill's *Atkins* claim solely under §2254(d)(2), noting that "[a]s Hill concedes in his Traverse, his *Atkins* claim is more appropriately addressed as it relates to the Ohio appellate court's factual analysis under §2254(d)(2)." App. to Pet. for Cert. 121a.

Hill pressed the same §2254(d)(2) argument in his opening brief in the Sixth Circuit. There, he argued that the state courts' finding on "adaptive functioning . . . was an unreasonable determination of the facts." Brief for Petitioner–Appellant in No. 14–3718 (CA6), p. 34 (citing §2254(d)(2)); see also *id.,* at 65 ("As such, the state courts' findings of fact that [Hill] is not mentally retarded constitute an unreasonable determination of facts in light of the evidence presented. (§2254(d)(2))").

It appears that it was not until the Court of Appeals asked for supplemental briefing on *Moore* that Hill introduced the §2254(d)(1) argument that the Court of Appeals adopted. Although, as noted, the Court of Appeals ultimately disclaimed reliance on *Moore*, it explicitly asked the parties for supplemental briefing on how *Moore* "should be applied to this case." Because the reasoning of the Court of Appeals leans so heavily on *Moore*, its decision must be vacated. On remand, the court should determine whether its conclusions can be sustained based strictly on legal rules that were clearly established in the decisions of this Court at the relevant time.

Per Curiam

* * *

The petition for certiorari and Hill's motion for leave to proceed *in forma pauperis* are granted, the judgment of the United States Court of Appeals for the Sixth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

JOSHUA JOHN HESTER, ET AL. *v.* UNITED STATES

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

No. 17–9082. Decided January 7, 2019

The petition for a writ of certiorari is denied.

JUSTICE ALITO, concurring in the denial of certiorari.

The argument that the Sixth Amendment, as originally understood, requires a jury to find the facts supporting an order of restitution depends upon the proposition that the Sixth Amendment requires a jury to find the facts on which a sentence of imprisonment is based. That latter proposition is supported by decisions of this Court, see *United States* v. *Booker*, 543 U. S. 220, 230–232 (2005); *Apprendi* v. *New Jersey*, 530 U. S. 466, 478 (2000), but it represents a questionable interpretation of the original meaning of the Sixth Amendment, *Gall* v. *United States*, 552 U. S. 38, 64–66 (2007) (ALITO, J., dissenting). Unless the Court is willing to reconsider that interpretation, fidelity to original meaning counsels against further extension of these suspect precedents.

SUPREME COURT OF THE UNITED STATES

JOSHUA JOHN HESTER, ET AL. *v.* UNITED STATES

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

No. 17–9082. Decided January 7, 2019

JUSTICE GORSUCH, with whom JUSTICE SOTOMAYOR joins, dissenting from the denial of certiorari.

If you're charged with a crime, the Sixth Amendment guarantees you the right to a jury trial. From this, it follows that the prosecutor must prove to a jury all of the facts legally necessary to support your term of incarceration. *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Neither is this rule limited to prison time. If a court orders you to pay a fine to the government, a jury must also find all the facts necessary to justify that punishment too. *Southern Union Co.* v. *United States*, 567 U. S. 343 (2012).

But what if instead the court orders you to pay restitution to victims? Must a jury find all the facts needed to justify a restitution order as well? That's the question presented in this case. After the defendants pleaded guilty to certain financial crimes, the district court held a hearing to determine their victims' losses. In the end and based on its own factual findings, the court ordered the defendants to pay $329,767 in restitution. The Ninth Circuit affirmed, agreeing with the government that the facts supporting a restitution order can be found by a judge rather than a jury.

Respectfully, I believe this case is worthy of our review. Restitution plays an increasing role in federal criminal sentencing today. Before the passage of the Victim and Witness Protection Act of 1982, 96 Stat. 1248, and the Mandatory Victims Restitution Act of 1996, 110 Stat. 1227, restitution orders were comparatively rare. But from 2014 to 2016 alone, federal courts sentenced 33,158

defendants to pay $33.9 billion in restitution. GAO, G. Goodwin, Federal Criminal Restitution 16 (GAO–18–203, 2018). And between 1996 and 2016, the amount of unpaid federal criminal restitution rose from less than $6 billion to more than $110 billion. GAO, G. Goodwin, Federal Criminal Restitution 14 (GAO–18–115, 2017); Dept. of Justice, C. DiBattiste, U. S. Attorneys Annual Statistical Report 79–80 (1996) (Tables 12A and 12B). The effects of restitution orders, too, can be profound. Failure or inability to pay restitution can result in suspension of the right to vote, continued court supervision, or even reincarceration. Lollar, What Is Criminal Restitution? 100 Iowa L. Rev. 93, 123–129 (2014).

The ruling before us is not only important, it seems doubtful. The Ninth Circuit itself has conceded that allowing judges, rather than juries, to decide the facts necessary to support restitution orders isn't "well-harmonized" with this Court's Sixth Amendment decisions. *United States* v. *Green*, 722 F. 3d 1146, 1151 (2013). Judges in other circuits have made the same point in similar cases. See *United States* v. *Leahy*, 438 F. 3d 328, 343–344 (CA3 2006) (en banc) (McKee, J., concurring in part and dissenting in part); *United States* v. *Carruth*, 418 F. 3d 900, 905–906 (CA8 2005) (Bye, J., dissenting).

Nor does the government's defense of the judgment below dispel these concerns. This Court has held that the Sixth Amendment requires a jury to find any fact that triggers an increase in a defendant's "statutory maximum" sentence. *Apprendi*, 530 U. S., at 490. Seizing on this language, the government argues that the Sixth Amendment doesn't apply to restitution orders because the amount of restitution is dictated only by the extent of the victim's loss and thus has no "statutory maximum." But the government's argument misunderstands the teaching of our cases. We've used the term "statutory maximum" to refer to the harshest sentence the law allows a court to

impose based on facts a jury has found or the defendant has admitted. *Blakely* v. *Washington*, 542 U. S. 296, 303 (2004). In that sense, the statutory maximum for restitution is usually *zero*, because a court can't award *any* restitution without finding additional facts about the victim's loss. And just as a jury must find any facts necessary to authorize a steeper prison sentence or fine, it would seem to follow that a jury must find any facts necessary to support a (nonzero) restitution order.

The government is not without a backup argument, but it appears to bear problems of its own. The government suggests that the Sixth Amendment doesn't apply to restitution orders because restitution isn't a criminal penalty, only a civil remedy that "compensates victims for [their] economic losses." Brief in Opposition 8 (internal quotation marks omitted). But the Sixth Amendment's jury trial right expressly applies "[i]n all criminal prosecutions," and the government concedes that "restitution is imposed as part of a defendant's criminal conviction." *Ibid.* Federal statutes, too, describe restitution as a "penalty" imposed on the defendant as part of his criminal sentence, as do our cases. 18 U. S. C. §§3663(a)(1)(A), 3663A(a)(1), 3572(d)(1); see *Paroline* v. *United States*, 572 U. S. 434, 456 (2014); *Pasquantino* v. *United States*, 544 U. S. 349, 365 (2005). Besides, if restitution really fell beyond the reach of the Sixth Amendment's protections in *criminal* prosecutions, we would then have to consider the Seventh Amendment and its independent protection of the right to a jury trial in *civil* cases.

If the government's arguments appear less than convincing, maybe it's because they're difficult to reconcile with the Constitution's original meaning. The Sixth Amendment was understood as preserving the "'historical role of the jury at common law.'" *Southern Union*, 567 U. S., at 353. And as long ago as the time of Henry VIII, an English statute entitling victims to the restitution of

stolen goods allowed courts to order the return only of those goods mentioned in the indictment and found stolen by a jury. 1 J. Chitty, Criminal Law 817–820 (2d ed. 1816); 1 M. Hale, Pleas of the Crown 545 (1736). In America, too, courts held that in prosecutions for larceny, the jury usually had to find the value of the stolen property before restitution to the victim could be ordered. See, *e.g.*, *Schoonover* v. *State*, 17 Ohio St. 294 (1867); *Jones* v. *State*, 13 Ala. 153 (1848); *State* v. *Somerville*, 21 Me. 20 (1842); *Commonwealth* v. *Smith*, 1 Mass. 245 (1804). See also Barta, Guarding the Rights of the Accused and Accuser: The Jury's Role in Awarding Criminal Restitution Under the Sixth Amendment, 51 Am. Crim. L. Rev. 463, 472–476 (2014). And it's hard to see why the right to a jury trial should mean less to the people today than it did to those at the time of the Sixth and Seventh Amendments' adoption.

Respectfully, I would grant the petition for review.

SUPREME COURT OF THE UNITED STATES

DONNIE CLEVELAND LANCE *v.* ERIC SELLERS, WARDEN

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

No. 17–1382. Decided January 7, 2019

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting from denial of certiorari.

Before deciding that petitioner Donnie Cleveland Lance should die as punishment for two murders he committed, a jury heard no evidence whatsoever to counterbalance the State's case for the death penalty. Lance's counsel bore responsibility for the one-sidedness of the sentencing proceedings; he inexcusably failed even to look into, much less to put on, a case for sparing Lance's life. And we have since learned that Lance suffers from significant cognitive impairments that the jury could have weighed in assessing his moral culpability. In other words, there is a meaningful case to be made for sparing Lance's life, but—because he lacked access to constitutionally adequate counsel—he has never had a chance to present it.

The Georgia Supreme Court concluded that this state of affairs was constitutionally tolerable because, in its view, Lance's untold story stood no chance of persuading even a single juror to favor life without parole over a death sentence. The U. S. Court of Appeals for the Eleventh Circuit held that its conclusion was not unreasonable. I cannot agree. Our precedents clearly establish that Lance was prejudiced by his inability to inform the jury about his impairments. I therefore would grant Lance's petition for review and summarily reverse.

I

A

The facts of Lance's crimes—murdering his ex-wife, Sabrina "Joy" Lance, and her boyfriend, Dwight "Butch" Wood, Jr., in 1997—admittedly inspire little sympathy. Lance went to Butch's home, kicked in the front door, shot Butch with a shotgun, then bludgeoned Joy to death with the gun. According to a fellow inmate, he later bragged about the killings. Lance also had an extensive prior history of domestic violence against Joy.[1]

Due to his counsel's ineffectiveness, however, those facts were all the jurors ever learned about Lance; they heard no evidence why his life was worth sparing. Lance was represented during both the guilt and penalty phases of his trial by a solo practitioner who became convinced of Lance's innocence—and his own ability to prove it—early in the representation. He thus prepared exclusively for the guilt-or-innocence phase of the trial. Counsel did not even broach the subject of possible penalty-phase evidence with Lance or his family, because he did not want them "thinking that [he] might be thinking in terms of losing the case." App. to Pet. for Cert. 232. So when the jury found Lance guilty and the question became whether Lance should be put to death,[2] Lance's counsel had no evidence whatsoever to present.

---

[1] Lance previously had kidnapped Joy, electrocuted her, beaten her, strangled her, and threatened her with various other harms. He also repeatedly had threatened to kill her if she left him or became involved with Butch. Four years earlier, Lance and a friend took a shotgun to Butch's home and kicked in the door, but fled when a child inside spoke to them.

[2] The jury found that two aggravating circumstances supported Lance's eligibility for the death penalty: that he committed a double murder and that Joy's killing was "outrageously or wantonly vile, horrible, or inhuman." App. to Pet. for Cert. 74; *Lance* v. *State*, 275 Ga. 11, 23, 560 S. E. 2d 663, 677 (2002); see also Ga. Code Ann. §§17–10–30(b)(2), (b)(7) (Supp. 2018).

The State did. It called six witnesses, including the victims' relatives, to explain why Lance deserved to die. The State's closing argument emphasized Lance's history of violence against Joy, the brutality of her killing, and Lance's apparent lack of remorse. The State urged the jury to perceive Lance as "'cold and calculating'" and repeatedly asked "'what kind of person'" would do these things. 1 App. in No. 16–15008 (CA11), pt. 1, pp. 68, 75, 77. Lance's counsel, by contrast, made no opening statement and presented no mitigating evidence. By his own admission, he "had nothing to put on." App. to Pet. for Cert. 273. His closing argument merely urged the jury to consider Lance's family and to resist the temptation to exact vengeance. About Lance, counsel said only that he was "'kind of a quiet person and a country boy'" who "'doesn't talk a lot.'" 1 App. in No. 16–15008, pt. 1, at 85.

The jury sentenced Lance to death.

B

In 2003, Lance filed a petition for postconviction relief in state court, asserting that his trial counsel's failure to investigate or present any mitigating evidence was ineffective assistance of counsel. Essentially, he argued that there was a meaningful case to be made for sparing his life, and that his counsel had forfeited his chance to do so through inattention.

The evidence showed that counsel could have found possible cognitive problems had he looked into Lance's personal history. That history included repeated serious head traumas caused by multiple car crashes, alcoholism, and—most seriously—Lance's once being shot in the head by unknown assailants while lying on his couch.[3] In the

[3] In addition to the history discussed by the court, Lance also ingested gasoline as a small child, was trampled by a horse as a teenager, and once was overcome by fumes while working to clean the interior of an oil tanker truck. 1 App. in No. 16–15008, pt. 2, pp. 202–203.

aftermath of the shooting, Lance had "terrible headaches," "dizziness," "difficulty working," and "became even more quiet than he had before." App. to Pet. for Cert. 171–172. The court found that any reasonable defense attorney would have had Lance's mental health evaluated and, in so doing, uncovered "significant mitigating evidence for the jury to consider." *Id.,* at 174.

Four mental health professionals testified at an evidentiary hearing.[4] They agreed on many points. First, Lance had permanent damage to his brain's frontal lobe. Second, his IQ placed him in the borderline range for intellectual disability. Third, his symptoms warranted a diagnosis of clinical dementia. The experts differed somewhat, however, over the extent and practical consequences of Lance's brain damage. Primarily, the experts seemed to disagree about the extent to which Lance's brain damage affected his impulse control.[5]

The Superior Court granted Lance's habeas petition and vacated his death sentence, holding that trial counsel's failure to investigate and present evidence of Lance's mental condition was deficient performance, and that his failure prejudiced Lance. The missing evidence could have

---

[4] Lance put on Thomas Hyde, an expert in behavioral neurology; Ricardo Weinstein, an expert in neuropsychology; and David Pickar, an expert in psychiatry and clinical neuroscience. The State called Daniel Martell, an expert in neuropsychology. (A fifth expert's unsworn report was ruled inadmissible by the Georgia Supreme Court. See *Hall* v. *Lance*, 286 Ga. 365, 371, n. 1, 687 S. E. 2d 809, 815, n. 1 (2010).)

[5] Hyde, Weinstein, and Pickar opined that the type and extent of damage reflected in Lance's test results would adversely affect his ability to suppress impulsive behavior. Weinstein and Hyde added that the damage could impair Lance's ability to conform his conduct to the law, and Hyde noted that the effects of Lance's impairments would be most acute in moments of emotional stress. Martell, in contrast, saw no direct evidence of impulse-control difficulties and opined that Lance's brain damage would not "'prevent him'" from conforming his conduct to the law. 1 App. in No. 16–15008, pt. 3, at 170.

prompted a different sentence, the court explained, because it went directly to the key issue before the jury: the assessment of Lance's character, culpability, and worth.

The Georgia Supreme Court, however, reversed and reinstated Lance's death sentence. *Hall* v. *Lance*, 286 Ga. 365, 687 S. E. 2d 809 (2010). It agreed that counsel's performance was deficient but held that Lance suffered no prejudice. As relevant here, it held that even if the jury had considered at trial all the neuropsychological evidence adduced at the postconviction hearing, there was no reasonable probability that Lance's sentence would have changed.[6] In the Georgia Supreme Court's view, the new evidence was only "somewhat mitigating" because it showed only "subtle neurological impairments," which would necessarily have been outweighed by Lance's prior threats and violence toward the victims, the nature of the crime, and Lance's statements and demeanor in its aftermath. *Id.,* at 373, 687 S. E. 2d, at 815–816.

C

Lance sought a federal writ of habeas corpus. The U. S. District Court for the Northern District of Georgia denied the petition but granted a certificate of appealability. Under the deferential review provisions of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U. S. C. §2254(d), the U. S. Court of Appeals for the Eleventh Circuit affirmed, holding that the Georgia Supreme Court's conclusion that the absence of the postconviction mental health evidence caused Lance no prejudice "was not unreasonable." *Lance* v. *Warden*, 706 Fed. Appx. 565, 573 (2017).

---

[6] As an alternative ground for finding no prejudice, the Georgia Supreme Court also hypothesized that even an adequate investigation would not have uncovered the evidence that Lance presented at the postconviction hearing. That conclusion is not implicated by Lance's petition because the Court of Appeals did not address it.

II

To prevail on a Sixth Amendment ineffective-assistance-of-counsel claim, a defendant must show both that his counsel's performance was deficient and that his counsel's errors caused him prejudice. In assessing deficiency, a court asks whether defense "counsel's representation fell below an objective standard of reasonableness." *Strickland* v. *Washington*, 466 U. S. 668, 688 (1984). To establish prejudice, a defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.,* at 694. When, as here, a petitioner seeks federal habeas review of a state court's rejection of his ineffective-assistance-of-counsel claim, he can prevail only if the decision was "contrary to, or involved an unreasonable application of," *Strickland* and its progeny, or rested "on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. §2254(d).

Because the Supreme Court of Georgia mischaracterized or omitted key facts and improperly weighed the evidence, I agree with Lance that its decision was an objectively "unreasonable application of" our precedents. §2254(d)(1); see *Wiggins* v. *Smith*, 539 U. S. 510, 528 (2003). I would therefore grant the petition and summarily reverse.

A

With regard to *Strickland*'s performance prong, the Georgia Supreme Court determined that trial counsel's failure to investigate possible mitigation was deficient. See *Lance*, 286 Ga., at 368, 687 S. E. 2d, at 812–813. That is plainly correct. Counsel in a death penalty case has an obligation at the very least to consider possible penalty-phase defenses. See *Wiggins*, 539 U. S., at 521–522. By his own admission, counsel here did not. Without any inquiry into what penalty-phase evidence he might be

forgoing, he succumbed to tunnel vision—and as a consequence left Lance defenseless. Because nothing here "obviate[d] the need for defense counsel to conduct *some* sort of mitigation investigation," Lance has satisfied *Strickland*'s deficient-performance requirement. *Porter* v. *McCollum*, 558 U. S. 30, 40 (2009) (*per curiam*); see also *Rompilla* v. *Beard*, 545 U. S. 374, 381 (2005); *Wiggins*, 539 U. S., at 534.

B

Turning to the prejudice prong, the Court of Appeals was wrong to conclude that Lance suffered no clearly established prejudice from his inability to make his case. Georgia law permits a death sentence only upon a unanimous jury recommendation, so Lance needed only to show "a reasonable probability that at least one juror would have struck a different balance" between the aggravating and the mitigating factors had he or she considered the missing evidence. *Wiggins*, 539 U. S., at 537; see Ga. Code Ann. §§17–10–31(a), (c).[7] The trial court, upon hearing Lance's proffered mitigation evidence, concluded that it was "extremely important for the jury to consider" and thus that its absence was prejudicial. App. to Pet. for Cert. 174. Under any reasonable application of *Strickland* and its progeny, that conclusion was correct. See 28 U. S. C. §2254(d); *Wiggins*, 539 U. S., at 528.

To determine whether a defendant reasonably might have been spared a death sentence but for his counsel's deficiency, courts take into account "the totality of the

---

[7] In Georgia, "a sentence of death shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance and a recommendation that such sentence be imposed." Ga. Code Ann. §17–10–31(a). "If the jury is unable to reach a unanimous verdict as to sentence, the judge shall dismiss the jury and shall impose a sentence of either life imprisonment or imprisonment for life without parole." §17–10–31(c).

available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding," then "reweigh it against the evidence in aggravation." *Williams* v. *Taylor*, 529 U. S. 362, 397–398 (2000). "We do not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome of his penalty proceeding, but rather that he establish a probability sufficient to undermine confidence in that outcome." *Porter*, 558 U. S., at 44 (internal quotation marks and alteration omitted).

The jurors who sentenced Lance determined whether he would live or die "knowing hardly anything about him other than the facts of his crimes." *Id.*, at 33. They heard nothing "that would humanize [Lance] or allow them to accurately gauge his moral culpability." *Id.,* at 41. Yet if counsel had performed his duties, the jurors would have heard that Lance's brain endured physical trauma throughout his life, resulting in frontal lobe damage and dementia. The jury further would have heard that Lance's IQ placed him within the borderline range for intellectual disability. The jury also would have heard that Lance's cognitive deficits could affect his impulse control and capacity to conform his behavior to the law, especially at moments of emotional distress. Taken together, those facts—with their accompanying explanatory potential to humanize Lance, or at least to render less incomprehensible his conduct—were significant mitigating evidence. See *id.*, at 36, 42–43 (noting the potentially mitigating effect of evidence that the defendant "suffered from brain damage that could manifest in impulsive, violent behavior" and was "substantially impaired in his ability to conform his conduct to the law").

To be sure, the evidence before the jury—the brutality of Joy's death, Lance's past violence toward her, and Lance's conduct thereafter—could have supported a death sentence. See Ga. Code Ann. §§17–10–30(b), 17–10–31(a).

But there is a stark contrast between no mitigation evidence whatsoever and the significant neuropsychological evidence that adequate counsel could have introduced as a potential counterweight. Lance's unintroduced case for leniency, even if not airtight, "adds up to a mitigation case that bears no relation to the few naked pleas for mercy actually put before the jury." *Rompilla*, 545 U. S., at 393; see also *Williams*, 529 U. S., at 398. Our precedents thus clearly establish Lance's right to a new sentencing at which a jury can, for the first time, weigh the evidence both for and against death.

The Georgia Supreme Court reached its contrary conclusion only by unreasonably disregarding or minimizing Lance's evidence. The state court acknowledged that experts would testify that "'significant damage'" to Lance's frontal lobe compromised his ability "'to conform his conduct to the requirements of the law.'" *Lance*, 286 Ga., at 370–371, 687 S. E. 2d, at 814. It failed, however, to allow for the possibility that the jury might credit that evidence. This Court previously has cautioned against prematurely resolving disputes or unreasonably discounting mitigating evidence in this context. See *Porter*, 558 U. S., at 43 ("While the State's experts identified perceived problems with the tests [showing brain damage and cognitive defects] and the conclusions [the defense expert] drew from them, it was not reasonable to discount entirely the effect that [the defense expert's] testimony might have had on the jury"). We should do so again here.

Further, the Georgia Supreme Court relied on characterizations of Lance's evidence that cannot be squared with the record, which "further highlights the unreasonableness of" the Georgia Supreme Court's decision. *Wiggins*, 539 U. S., at 528; see 28 U. S. C. §2254(d)(2). With regard to Lance's frontal lobe damage, the Georgia Supreme Court appears to have credited the testimony of the State's expert over Lance's experts' testimony, treating as

definitive Martell's assertion that "Lance's symptoms were so subtle that a typical court-ordered evaluation might not have given any indication of problems." *Lance*, 286 Ga., at 372, 687 S. E. 2d, at 815; see also *id.*, at 373, 687 S. E. 2d, at 816. Yet the other experts concluded that Lance's impairments and resulting behavioral distortions were "serious" and "significant."[8] *E.g.,* 1 App. in No. 16–15008, pt. 3, at 92; 2 *id.,* at 10. The Georgia Supreme Court also unreasonably dismissed the experts' consensus that Lance was in the borderline range for intellectual disability,[9] and never mentioned—much less discussed the significance of—Lance's dementia diagnosis.

These errors, taken together, make clear that the Georgia Supreme Court applied our *Strickland* precedents in an objectively unreasonable manner. The mental impairment evidence reasonably could have affected at least one juror's assessment of whether Lance deserved to die for his crimes, and Lance should have been given a chance to make the case for his life. The Georgia Supreme Court's conclusion that it would be futile to allow him to do so was unreasonable.

---

[8] Moreover, it is unclear even that Martell's milder characterizations genuinely contradicted the other experts' testimony. Unlike the other experts, Martell seems at least sometimes to have been characterizing Lance's impairments "relative to his overall borderline [intellectually disabled] baseline," 1 App. in No. 16–15008, pt. 3, at 151, not relative to the average person or to the level at which Lance might have functioned absent his head traumas. Compare 2 *id.,* at 34 (Weinstein: specific test results "vastly excee[d] the threshold for impairment" and "indicate significant organic impairment of the frontal lobe"), with 2 *id.*, at 152 (Martell: results on the same test were "at a level expected for [Lance's] IQ" or "showed mild impairment").

[9] See *Lance*, 286 Ga., at 372, 687 S. E. 2d, at 815 (describing Lance as merely "in the lower range of normal intelligence"). But see, *e.g.,* 1 App. in No. 16–15008, pt. 3, at 135 (Martell, describing Lance's intellectual functioning as "in the borderline range," which is "lower than low average").

III

Absent this Court's intervention, Lance may well be executed without any adequately informed jury having decided his fate. Because the Court's refusal to intervene permits an egregious breakdown of basic procedural safeguards to go unremedied, I respectfully dissent.