

(ORDER LIST: 586 U.S.)

MONDAY, OCTOBER 29, 2018

ORDERS IN PENDING CASES

18M56 COTNER, ROBERT E. V. USCA 10

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

18M57 IN RE SEALED PETITIONER

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

18M58 CRAFT, LEE V. NATIONAL LABOR RELATIONS BOARD

18M59 THOMPSON, PHILLIP T. V. BANK OF NY MELLON TRUST, ET AL.

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

18M60 BULLOCK, MARSA D. V. DISTRICT OF COLUMBIA, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

17-9484 JASON K. V. ME DEPT. OF HEALTH, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until November 19, 2018, 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.

18-109 ARIOSIA DIAGNOSTICS, INC. V. ILLUMINA, INC.

18-309 SWARTZ, LONNIE V. RODRIGUEZ, ARACELI

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

18-5843 CHANTHUNYA, ALEXANDER M. V. MARYLAND ATT'Y GRIEVANCE COMM'N
18-6128 DIAMOND, NORMAN D. V. CIR

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until November 19, 2018, 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

17-1544 FATHER V. ME DEPT. OF HEALTH, ET AL.
17-1568 PADILLA-RAMIREZ, RAUL V. CULLEY, ROBERT M., ET AL.
17-1572 PETERSON, LUCAS, ET AL. V. FRANKLIN, WALTER
17-1604 BROWN, JULIAN V. UNITED STATES
17-1636 CA SEA URCHIN COMM'N, ET AL. V. COMBS, SUSAN, ET AL.
17-1654) WISE, MATTHEW, ET AL. V. HURT, WILLIAM, ET AL.
)
17-1655) VANTLIN, JEFFREY, ET AL. V. HURT, WILLIAM, ET AL.
17-1673 AVIATION AND GEN. INS., ET AL. V. UNITED STATES
17-1700 TURZAI, MICHAEL C., ET AL. V. BRANDT, GRETCHEN, ET AL.
17-1701 SUN, WEI V. SESSIONS, ATT'Y GEN.
17-8844 COOPER, DESHA V. UNITED STATES
17-8960 HASKIN, TIM V. US AIRWAYS, ET AL.
17-9171 SANDOVAL, JONATHAN V. UNITED STATES
17-9310 LARA, ENRIQUE L. V. UNITED STATES
17-9377 DESILLEN, JOE J. V. UNITED STATES
17-9474 GREENWAY, RICHARD H. V. ARIZONA
17-9535 KING, JOHN W. V. DAVIS, DIR., TX DCJ
18-67 HURST, JAMES T. V. CALDWELL, JAMES, ET AL.
18-77 ADVANCED VIDEO TECHNOLOGIES LLC V. HTC CORPORATION, ET AL.
18-182 AIDS HEALTHCARE FOUNDATION, INC. V. GILEAD SCIENCES, INC., ET AL.

18-187 SIMPSON, KEITH A. V. BANK OF NEW YORK MELLON
18-194 NUNN, CRAIG R. V. TN DOC, ET AL.
18-206 CUNNINGHAM, CRAIG V. GENERAL DYNAMICS INFO. TECH.
18-209 MEHTA, RAM V. CALIFORNIA
18-213 AUSTIN, H. R. V. HANOVER INSURANCE CO.
18-214 BAZARGANI, TAWOOS V. LATCH'S LANE OWNERS, ET AL.
18-215 AUBUCHON, LISA M., ET AL. V. MARICOPA COUNTY, AZ, ET AL.
18-218 BEAM, TREY V. ABERCROMBIE, ROBERT F.
18-220 CARRILLO, JAVIER A., ET AL. V. U.S. BANK NAT. ASSOC., ET AL.
18-222 EMED TECHNOLOGIES CORP. V. REPRO-MED SYSTEMS, INC.
18-228 WESTERN RADIO SERVICES CO., INC. V. ALLEN, JOHN, ET AL.
18-230 RICHARDS, ROBERT A. V. LOS ANGELES, CA, ET AL.
18-233 INDIEZONE, INC., ET AL. V. ROOKE, TODD, ET AL.
18-235 VENTURA CONTENT, LTD. V. MOTHERLESS, INC., ET AL.
18-239 RINALDO, ARICK J. V. MAHAN, BRYAN, ET AL.
18-241 PARMAR, PAMINDER S., ET AL. V. MADIGAN, LISA, ET AL.
18-242 GICHARU, SAMUEL, ET AL. V. SESSIONS, ATT'Y GEN.
18-243 FOX, ANTHONY V. POWELL, JOHN, ET AL.
18-245 PENN, MARLON V. NY METHODIST HOSPITAL, ET AL.
18-248 AHMED, MOHAMED I. V. UNITED STATES
18-251 SCHWARTZ, SHELDON V. HRI HOSPITAL, INC., ET AL.
18-255 BRISCOE, GEORGE V. TEXAS
18-263 FAUST, SHERYL V. IL WORKERS COMMISSION, ET AL.
18-284 GESSLER, SCOTT V. SMITH, MATT, ET AL.
18-297 WHITE, ERIC, ET AL. V. UNDERWOOD, ATT'Y GEN. OF NY
18-298 BEATY, MICHAEL V. V. SOUTH CAROLINA
18-313 DIAMOND, ALBON C. V. FLORIDA
18-332 SINGSON, KEVIN V. REYES, ATT'Y GEN. OF UT

18-335 TEAMER, NATHANIEL V. LEWIS, WARDEN
18-341 KEYES, BILLIE F., ET AL. V. GUNN, PHILIP, ET AL.
18-343 ANDREWS, RAIDEN J. V. UNITED STATES
18-356 ORTH, ROBERT E. V. CIR
18-357 TASKOV, DRAGOMIR V. UNITED STATES
18-360 BERGRIN, RONALD V. UNITED STATES
18-381 MARRO, DONALD C. V. NY TEACHERS' RETIREMENT
18-387 TRIESTMAN, BEN G. V. UNDERWOOD, ATT'Y GEN. OF NY
18-396 HOLLAND, BRITTAN, ET AL. V. ROSEN, KELLY, ET AL.
18-397 CLOWDIS, WILLIAM G. V. VIRGINIA BOARD OF MEDICINE
18-407 STICKLE, MATTHEW J. V. VIRGINIA
18-5004 MITCHELL, TREMAYNE A. V. UNITED STATES
18-5230 MURPHY, JOHN P. V. UNITED STATES
18-5263 MCGEE, BOBBY R. V. UNITED STATES
18-5268 SAILOR, JEREMIAH T. V. UNITED STATES
18-5271 MURRAY, ROGER W. V. RYAN, DIR., AZ DOC
18-5298 STEWART, REUBEN V. UNITED STATES
18-5331 JEREMIAS, RALPH S. V. NEVADA
18-5391 SEXTON, DANIEL V. UNITED STATES
18-5399 PEREZ, JOSEPH A. V. CALIFORNIA
18-5618 CHON, TAE H. V. OBAMA, BARACK H., ET AL.
18-5641 ALSTON, PRESSLEY B. V. FLORIDA, ET AL.
18-5648 LAMARCA, ANTHONY V. FLORIDA
18-5649 RICHARDSON, CHARLES V. KENT, WARDEN
18-5650 ROSS, CARL J. V. MARYLAND
18-5652 SPRINGER, GLEN V. CAPLE, BENJAMIN D., ET AL.
18-5656 METAYER, VENISE V. FLORIDA
18-5659 CAVALIERI, DAVID E. V. VIRGINIA

18-5660 GARTON, TODD J. V. CALIFORNIA
18-5662 DIAZ, MYRNA V. NEW JERSEY
18-5672 RENCHENSKI, CHARLES S. V. McGINLEY, SUPT., COAL TOWNSHIP
18-5676 MORRIS, ERNEST V. PENNSYLVANIA
18-5681 JOHNSON, DEXTER L. V. OKLAHOMA
18-5687 O'KEEFE, BRIAN K. V. BAKER, WARDEN, ET AL.
18-5690 TAYLOR, DARREN V. SCHWEITZER, WARDEN
18-5695 ANNABEL, ROBERT W. V. MI DOC, ET AL.
18-5697 REECE, JAMES R. V. WHITLEY, L. RAY, ET AL.
18-5700 DOCAJ, JERRY V. JOHNSON, ADM'R, NJ, ET AL.
18-5703 BLAIR, JOSHUA D. V. VA DOC
18-5705 EASTERLY, GEORGE V. FLORIDA
18-5711 COLEMAN, EDWIN C. V. WARD, CARRIE M.
18-5712 CHRISTMON, JEROME A. V. B&B AIRPARTS, INC.
18-5714 RIVERA-QUINONES, JOSE A. V. PENNSYLVANIA
18-5716 RAY, RICHARD B. V. DAVIS, DIR., TX DCJ
18-5718 CAMPBELL, JAMES W. V. VIRGINIA
18-5719 BARTLETT, ALAN V. PINEDA, JUDGE, ETC., ET AL.
18-5720 BARTLETT, ALAN V. PINEDA, JUDGE, ETC., ET AL.
18-5722 LUGO, KEITH R. V. CALIFORNIA
18-5723 KUSHNER, LARRY J. V. GREWAL, ATT'Y GEN. OF NJ, ET AL.
18-5724 CONCEPCION, JUAN V. McGINLEY, SUPT., COAL TOWNSHIP
18-5726 CAZARES, RUBEN V. TEXAS
18-5727 CLARKE, ANDRE K. V. JONES, SEC., FL DOC
18-5733 PINDER, STEVEN V. McDOWELL, ALVA, ET AL.
18-5734 MARTIN, ROBERT D. V. OKLAHOMA
18-5735 ERVIN, HARRY L. V. MICHIGAN
18-5737 KYLES, RICHARD D. V. DAVIS, DIR., TX DCJ

18-5738 MARQUARDT, BILL P. V. JONES, SEC., FL DOC, ET AL.
18-5741 RILEY, GEORGE O. V. WELLS FARGO BANK, N.A., ET AL.
18-5742 ROBERTS, SOLOMON D. V. FLORIDA
18-5746 NIX, KENNETH E. V. FLORIDA
18-5755 ALLEN, DWIGHT L. V. SUPERIOR COURT OF GA
18-5758 ANNAMALAI, ANNAMALAI V. SIVANADIYAN, PARVATHI
18-5761 HERMAN, KOURTNEY V. YOUNG, CRYSTAL, ET AL.
18-5764 CRANE, RICHARD J. V. KERNAN, ACTING SEC., CA DOC
18-5767 SALERNO, FOX J. V. GENTRY, JUDGE, ET AL.
18-5768 RAYFORD, ERCIL K. V. LEIBACH, WARDEN
18-5772 SALDIVAR, AURELIO F. V. LEWIS, WARDEN
18-5777 PEDERSON, RODNEY S. V. ARCTIC SLOPE REG. CORP.
18-5779 COBIA, RAY V. OHIO, ET AL.
18-5782 COOK, MICHAEL L. V. RYAN, DIR., AZ DOC, ET AL.
18-5783 COTTON, ROBERT A. V. SAN BERNARDINO, CA, ET AL.
18-5784 WABUYABO, BONIFACE W. V. CORRECT CARE SOLUTIONS
18-5787 TUBBS, DANYALE S. V. MICHIGAN
18-5792 WATFORD, MARLON V. LaFOND, THOMAS, ET AL.
18-5798 C. B. V. FISCHGRUND, THOMAS N.
18-5802 DOE, JOHN V. KAWEAH DELTA HOSPITAL, ET AL.
18-5805 COBB, GEORGE C. V. JONES, SEC., FL DOC
18-5806 CORBETT, EDWIN D. V. WASHINGTON
18-5807 RUBENS, PETER R. V. VANNOY, WARDEN
18-5815 PUENTES, JOSE F. V. RYAN, DIR., AZ DOC, ET AL.
18-5829 MATELYAN, ARIKA V. ATLANTIC RECORDS WMG, ET AL.
18-5830 A. L. V. FL DEPT. OF CHILDREN & FAMILIES
18-5832 DIXON, WILLIAM V. LEE, SUPT., EASTERN NY
18-5837 ROBERTS, DAVID L. V. ALABAMA

18-5848 DARBY, DARRELL D. V. TEXAS
18-5851 SALINAS, MARTIN V. TEXAS
18-5855 KNIGHT, DERRICK V. JONES, SEC., FL DOC
18-5860 AMIN, FAISAL V. SESSIONS, ATT'Y GEN.
18-5867 PRESTON, HARVEY V. SMITH, WARDEN
18-5869 MONTGOMERY, DUANE V. UNITED STATES
18-5870 PROW, MATTHEW V. ROY, TOM, ET AL.
18-5883 LOWE, BURDETTE V. DELTA AIR LINES, INC.
18-5887 MORTON, CECIL L. V. HAYNES, SUPT., STAFFORD CREEK
18-5911 LAMPON-PAZ, MANUEL V. DEPT. OF JUSTICE, ET AL.
18-5918 LOZANO, JOSE G. V. FLORIDA
18-5942 BYLER, DARREN K. V. UNITED STATES
18-5943 TRAN, LINH T. V. PHAM, KATHY H., ET AL.
18-5946 PARRISH, WILLIAM A. V. WAINWRIGHT, WARDEN
18-5951 CASSADY, DAVID D. V. HALL, STEVEN D.
18-5959 INGEBRETSEN, JOHN V. PALMER, WARDEN, ET AL.
18-5975 SINGH, JATINDER V. SESSIONS, ATT'Y GEN.
18-6000 BARREIRO, ANGEL V. JONES, SEC., FL DOC
18-6001 CARMAN, DEMARIO V. GEORGIA
18-6015 TORRES-MEDEL, GUSTAVO V. LASHBROOK, WARDEN
18-6017 ROBEY, WILLIAM V. WASHINGTON
18-6035 CHAMBERS, ZACHARY V. UNITED STATES
18-6057 SOSA-GONZALEZ, OMAR V. UNITED STATES
18-6066 VASQUEZ, MELVIN N. V. UNITED STATES
18-6067 LEWIS, EDWARD L. V. UNITED STATES
18-6068 JONES, RODNEY L. V. KELLEY, DIR., AR DOC
18-6069 CADENA, JOEL V. UNITED STATES
18-6072 MENDEZ, CRISTIAN G. V. UNITED STATES

18-6073 PRICE, TRAMAIN D. V. UNITED STATES
18-6076 SANDIFER, WILTON E. V. FLORIDA
18-6078 SPRINGER, CARLTON B. V. OHIO
18-6079 BROOKS, ROWAN V. FRAUNHEIM, WARDEN
18-6080 BONOWITZ, ABRAHAM J., ET AL. V. UNITED STATES
18-6083 LAUREANO-PEREZ, JESUS M. V. UNITED STATES
18-6084 LEE, SHARON V. FLORIDA
18-6087 JOHNSON, SAMUEL R. V. UNITED STATES
18-6090 WILLIAMS, ERIC V. PENNSYLVANIA
18-6095 BUENROSTRO, JOSE L. V. UNITED STATES
18-6100 PLIEGO-HERNANDEZ, HUGO V. UNITED STATES
18-6102 MAYES, ANTHONY V. UNITED STATES
18-6103 VALDEZ-CEJAS, FERNANDO V. UNITED STATES
18-6104 THOMAS, WAYNE V. UNITED STATES
18-6107 STONE, JACOB L. V. UNITED STATES
18-6108 SMOTHERMAN, SONTAY T. V. UNITED STATES
18-6109 SINGH, KRISHNA V. USPS
18-6111 MANDRELL, THOMPSON C. V. UNITED STATES
18-6112 JONES, OPHERRO G V. UNITED STATES
18-6113 BALLESTEROS, FRANK J. V. UNITED STATES
18-6116 JEAN, ANTHONY A. V. UNITED STATES
18-6117 BUENDIA, JOSETTE V. UNITED STATES
18-6119 LONG, GARY V. UNITED STATES
18-6120 PULIDO-NOLAZCO, JOSE R. V. UNITED STATES
18-6121 VEGA-GARCIA, BENJAMIN V. UNITED STATES
18-6122 KAPAHU, SHERI L. V. UNITED STATES
18-6123 GREEN, AMEEN V. UNITED STATES
18-6127 VALLIER, TIMOTHY W. V. UNITED STATES

18-6132 OLIVER, MARLON V. UNITED STATES
18-6133 OLIVARES-CEPEDA, BERNARDO V. UNITED STATES
18-6143 RODRIGUEZ, OSCAR V. UNITED STATES
18-6145 NICHOLS, MAURICE V. UNITED STATES
18-6146 NEUMAN, CHARLES V. UNITED STATES
18-6148 NANDA, ATUL V. UNITED STATES
18-6150 AQUINO-FLORENCIANI, NOEL V. UNITED STATES
18-6151 THELEMAQUE, CLAUDE V. UNITED STATES
18-6171 TAYLOR, DION T. V. UNITED STATES
18-6173 TIZNADO-VALENZUELA, CARLOS V. UNITED STATES

The petitions for writs of certiorari are denied.

17-9340 METCALF, RANDY J. V. UNITED STATES

The motion of Gail Heriot, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

18-48 MINNESOTA V. CHUTE, QUENTIN T.

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

18-232 GRIFFIN, W. A. V. TEAMCARE, ET AL.

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

18-254 SUN, XIU J. V. TRUMP, PRESIDENT OF U.S.

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

18-277 BHAGAT, URVASHI V. IANCU, ANDREI

The motion of Independent Inventors, et al. for leave to file out of time a brief as *amici curiae* is denied. The petition for a writ of certiorari is denied.

18-5645 JOHNSON, ERIC E. V. DIAZ, ACTING SEC., CA DOC

18-5774 DRIESSEN, ROCHELLE V. ROYAL BANK OF SCOTLAND

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.

18-5801 LARSON, HARVEY E. V. MOORE, DOUG, ET AL.

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

18-5836 SHEKHEM EL-BEY, YA'SHUA A. V. UNITED STATES, ET AL.

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

(*per curiam*). Justice Kavanaugh took no part in the consideration or decision of this motion and this petition.

18-5856 JEEP, DAVID G. V. UNITED STATES

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*).

18-5974 SPAULDING, LEVON V. USDC DC

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.

18-6118 JONASSEN, MARTIN V. SHARTLE, 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*).

MANDAMUS DENIED

18-6099 IN RE TERRY MARGHEIM

The petition for a writ of mandamus is denied.

18-5850 IN RE CHRISTOPHER D. SCHNEIDER

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

REHEARING DENIED

17-8407 MINCEY, BRYAN J. V. DAVIS, WARDEN

The petition for rehearing is denied.

ATTORNEY DISCIPLINE

D-3029 IN THE MATTER OF DISCIPLINE OF NATHANIEL H. SPEIGHTS

Nathaniel H. Speights, of Washington, District of Columbia, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3030 IN THE MATTER OF DISCIPLINE OF MARTIN BARNETT REINER

Martin Barnett Reiner, of Beverly Hills, California, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3031 IN THE MATTER OF DISCIPLINE OF RICHARD ALLEN ROBERTS

Richard Allen Roberts, of White Plains, New York, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3032

IN THE MATTER OF DISCIPLINE OF ROGER N. POWELL

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

D-3033

IN THE MATTER OF DISCIPLINE OF MICHAEL J. CASALE, JR.

Michael J. Casale, Jr., of Montoursville, Pennsylvania, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3034

IN THE MATTER OF DISCIPLINE OF W. JAMES JONAS

W. James Jonas, of San Antonio, Texas, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3035

IN THE MATTER OF DISCIPLINE OF ANGELA M. BLYTHE

Angela M. Blythe, of Oakland, Maryland, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

D-3036

IN THE MATTER OF DISCIPLINE OF MICHAEL WILLIAM KWASNIK

Michael William Kwasnik, of Hollywood, Florida, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3037

IN THE MATTER OF DISCIPLINE OF JOHN EDWIN COOPER

John Edwin Cooper, of Erie, Pennsylvania, is suspended from

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

D-3038 IN THE MATTER OF DISCIPLINE OF THOMAS STEPHEN HICKS

Thomas Stephen Hicks, of Snow Hill, North Carolina, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3039 IN THE MATTER OF DISCIPLINE OF JOHN BERNARD MARCIN

John Bernard Marcin, of Las Vegas, Nevada, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3040 IN THE MATTER OF DISCIPLINE OF DAVID BEN MANDELBAUM

David Ben Mandelbaum, of Overland Park, Kansas, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-3041 IN THE MATTER OF DISCIPLINE OF FRAMPTON DURBAN, JR.

Frampton Durban, Jr., of Newberry, South Carolina, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

Statement of SOTOMAYOR, J.

SUPREME COURT OF THE UNITED STATES

TAWUAN TOWNES *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF ALABAMA

No. 17–7894. Decided October 29, 2018

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Today the Court denies review of Tawuan Townes’ capital murder conviction, the constitutionality of which hinges on whether the trial court instructed jurors that they “may” infer his intent to kill a victim or that they “must” do so. The former instruction is constitutional; the latter is not. There is no way to know for sure which instruction the trial court gave. Two court reporters certified two conflicting transcripts, and the trial court no longer has the original recording. Because Townes has not shown that the procedures below amount to constitutional error, I must vote to deny his petition for certiorari. I write separately because the trial court’s failure to preserve the original recording gives cause for deep concern.

Petitioner Tawuan Townes was convicted of capital murder committed in the course of a burglary and sentenced to death. At trial, the crucial question for the jury was whether Townes possessed the requisite intent for a capital murder conviction. According to the trial transcript prepared and certified by the court reporter after trial, the trial court instructed the jury on how to make that decision as follows:

“A specific intent to kill is an essential ingredient of capital murder as charged in this indictment, and may be inferred from the character of an assault, the

Statement of SOTOMAYOR, J.

use of a deadly weapon, or other attendant circumstances. Such intent *must be inferred* if the act was done deliberately and death was reasonably to be apprehended or expected as a natural and probable consequence of the act.” No. CR–10–1892 (Ala. Crim. App., June 13, 2014), App. to Pet. for Cert. A–5 (emphasis added), withdrawn, 2015 WL 9263802, ___ So. 3d ___ (Ala. Crim. App., Dec. 18, 2015).

Townes appealed, arguing that the trial court’s jury instructions violated his constitutional right to due process. The Alabama Court of Criminal Appeals agreed that the jury instruction, as reproduced above, plainly violated his due process rights. Instructing the jury that it “must” infer Townes’ specific intent removed the issue of intent from the jury’s consideration and relieved the State of its burden to prove each element of the crime beyond a reasonable doubt. See *Sandstrom v. Montana*, 442 U. S. 510, 523 (1979). Such presumptions, this Court has held, violate the Due Process Clause. *Francis v. Franklin*, 471 U. S. 307, 325 (1985).

Indeed, Townes’ intent was the only issue for the jury to resolve at trial. He was charged with shooting and killing Christopher Woods during a burglary. Townes admitted that he and an acquaintance had planned to rob Woods. But Townes adamantly disclaimed any intent to kill Woods, insisting that he shot at Woods only to scare him. At trial, Townes’ counsel focused the defense on this distinction. Under state law, if the jury found that Townes lacked specific intent to kill Woods, it could find Townes guilty of only felony murder. But if the jury found that Townes intended to kill Woods, it could convict Townes of capital murder, making him eligible to receive a death sentence. Because the trial court’s instructions took that pivotal question away from the jury, the Court of Criminal Appeals reversed Townes’ conviction.

Statement of SOTOMAYOR, J.

After the reversal, however, the trial court judge filed a “supplemental record” with the appellate court asserting that the certified trial transcript—or rather, a single word of that transcript—had been mistranscribed. The trial court judge insisted that he had properly instructed the jury that it “may,” rather than “must,” infer specific intent and that the audio recording of Townes’ trial confirmed as much. (The government, notably, had not contested the accuracy of the transcript.)

Upon receiving the trial court’s *sua sponte* filing, the Court of Criminal Appeals, citing Alabama law, remanded the case and directed the trial court to appoint a new court reporter to listen to the audio recording and retranscribe the trial court proceedings.¹ The second court reporter submitted a new 56-page transcript. It differed from the original transcript by exactly one word: The new transcript said “may” where the original had said “must.”²

On the basis of the new transcript, the Court of Criminal Appeals withdrew its reversal and affirmed Townes’ conviction and death sentence. The court explained that, according to the new transcript—which was now the official record—the trial judge properly instructed the jury.

¹Alabama Rule of Appellate Procedure 10(g) (1991) provides: “The appellate court may, on motion of a party or on its own initiative, order that a supplemental or corrected record be certified and transmitted to the appellate court if necessary to correct an omission or misstatement.”

²This was not the first time that the same trial court judge sought to correct a transcript while a case was pending review. In *Hammonds v. Commissioner, Ala. Dept. of Corrections*, 712 Fed. Appx. 841, 847–848 (2017), the Eleventh Circuit rejected the State’s attempt to amend the habeas record with a corrected transcript filed by a court reporter at the request of the same trial judge who presided over Townes’ trial. The court reporter—the same one who prepared the second transcript in Townes’ case—stated that she had reviewed her notes and the recording of the defendant’s trial and concluded that the judge had said “inference” instead of “innocence,” curing an allegedly erroneous instruction that the defendant challenged on collateral review. *Ibid.*

Statement of SOTOMAYOR, J.

There is no indication that the Court of Criminal Appeals itself reviewed the audio recording of the instructions.

Townes filed a petition for writ of certiorari. This Court called for the record and specifically requested that the trial court provide a copy of the audio recording. The trial court informed this Court's Clerk's Office that the recording no longer exists.

Without the recording, we cannot know what the judge actually said at trial. The second transcript is now the official record of the trial court proceedings, on which this Court must rely in evaluating Townes' challenge to his conviction. On that record, I am unable to conclude that Townes' conviction is unconstitutional.

But the absence of demonstrable constitutional error makes the doubts raised by the trial court's unusual handling of this matter no less troubling. In a matter of life and death, hinging on a single disputed word, all should take great care to protect the reviewing courts' opportunity to learn what was said to the jury before Townes was convicted of capital murder and sentenced to death. Yet the trial court, after its unilateral intervention in Townes' appeal resulted in dueling transcripts, failed to preserve the recording at issue—despite the fact that Townes' case was still pending direct review, and, consequently, his conviction was not yet final. As a result, the potential for this Court's full review of Townes' conviction has been frustrated.

The Constitution guarantees certain procedural protections when the government seeks to prove that a person should pay irreparably for a crime. A reliable, credible record is essential to ensure that a reviewing court—not to mention the defendant and the public at large—can say with confidence whether those fundamental rights have been respected. *Parker v. Dugger*, 498 U. S. 308, 321 (1991) (“It cannot be gainsaid that meaningful appellate review requires that the appellate court consider the

Statement of SOTOMAYOR, J.

defendant’s actual record”). By fostering uncertainty about the result here, the trial court’s actions in this case erode that confidence. That gives me—and should give us all—great pause.