(ORDER LIST: 598 U.S.)

TUESDAY, OCTOBER 11, 2022

CERTIORARI -- SUMMARY DISPOSITIONS

21-1123 HARRINGTON, WILLIAM K. V. CLINTON NURSERIES, INC., ET AL.

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 Second Circuit for further consideration in light of *Siegel* v. *Fitzgerald*, 596 U. S. ___ (2022).

22-30 RITTER, DAVID V. MIGLIORI, LINDA, ET AL.

The motion of Speaker of the Pennsylvania House of Representatives, Bryan Cutler, et al. for leave to file a brief as *amici curiae* is granted. The motion of Doctor Oz for Senate, et al. for leave to file a brief as *amici curiae* is granted. 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 Third Circuit with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Justice Sotomayor and Justice Jackson would deny the petition for a writ of certiorari.

22-84 SAKKAL, SAAD 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 Sixth Circuit for further consideration in light of *Xiulu Ruan* v. *United States*, 597 U. S. ___ (2022).

ORDERS IN PENDING CASES

22A178 MARCIANO, ANTHONY V. ADAMS, MAYOR, ET AL.

The application for injunction addressed to Justice Thomas and referred to the Court is denied.

22A181 KNOCHEL, JAMES J. V. FACKRELL, AMY, ET AL.

22A200 FETZER, JAMES V. POZNER, LEONARD

The applications for stay addressed to Justice Gorsuch and referred to the Court are denied.

22M15 MOORE, PAUL V. NEAL, SUPT., IN

22M16 RILEY'S AM. HERITAGE, ET AL. V. ELSASSER, JAMES, ET AL.

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

22M17 PARSONS, GREGORY K. V. COPELAND PARSONS, CONNIE, ET AL.

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

22M18 ANDREWS, ANTHONY V. USDC ED NC

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

22M19 LEDET, CANDELLA M. V. PERRY HOMES

22M20 PRESCOTT, ANTHONY V. DOE, JOHN, ET AL.

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

22M21 WESTINE, JOHN G. V. UNITED STATES

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

21-806 HEALTH AND HOSPITAL CORP., ET AL. V. TALEVSKI, IVANKA

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for enlargement of time for oral argument is granted. The motion of Indiana, et al. for leave to participate in oral argument as

amici curiae and for divided argument is granted.

21-857 JONES, MARCUS D. V. HENDRIX, WARDEN

The motion of the Solicitor General for divided argument is granted.

21-908 BARTENWERFER, KATE M. V. BUCKLEY, KIERAN

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

21-1448 WELLS, DUSTIN J. V. McCALLISTER, KATHLEEN A.

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

22-5322 SWAHILI EL, PERNELL V. SAN DIEGO UNIFIED SCH. DIST.

22-5541 PAWLOWSKI, EDWIN V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until November 1, 2022, 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

21-599 KINNEY, MARGARET L. V. HSBC BANK USA, N.A.

21-1304 HOLLINGSWORTH, DENNIS, ET AL. V. PERRY, KRISTIN M., ET AL.

21-1403 MORSE, TRAVIS, ET AL. V. FRENCH, CHRISTOPHER

21-1492 ELHADY, ANAS V. BRADLEY, BLAKE

21-1540 GORDON, NITA V. BIERENGA, KEITH

21-1608 McKINSEY & CO., INC., ET AL. V. ALIX, JAY

21-7234 ROOF, DYLANN S. V. UNITED STATES

21-8033 FERNANDEZ, JESUS F. V. UNITED STATES

21-8063 WRIGHT, WILLIAM L. V. CALIFORNIA

21-8253 SNEED, SILAS L. V. UNITED STATES

22-8 MOMPHARD, ANTHONY, ET AL. V. KNIBBS, MELISSA B.

22-67 KING, ROBERT V. SPECIALTY HOSPITAL, ET AL.

22-103 CLARKSON, GAVIN V. BD. OF REGENTS NM UNIV., ET AL.

22-104 RUGAMBA, MARTIN V. CRST INC., ET AL.

22-112 SUTTON, SIMONETTA V. V. MOUNTAIN HIGH INV., LLC, ET AL.

22-114 BLOMMER, MARK A. V. CIR

22-119 CHRISTIAN ACTION LEAGUE OF MN V. FREEMAN, ATT'Y, HENNEPIN CTY.

22-120 SUNTREE PHARMACY, ET AL. V. DEA

22-127 FISCH, ABRAHAM M. V. UNITED STATES

22-129 ORIAKHI, DANIEL V. GARLAND, ATT'Y GEN.

22-137 BYD CO. V. ALLIANCE FOR AM. MFG., ET AL.

22-139 ALQSOUS, SARI V. UNITED STATES

22-140 BEAULIEU, YVETTE B. V. GARLAND, ATT'Y GEN., ET AL.

22-147 ARMSTRONG, RESHAWN V. GARLAND, ATT'Y GEN.

22-150 MANIVANNAN, AYYAKKANNU V. DEPT. OF ENERGY

22-152 DUNN, THOMAS E. V. POST, ELIZABETH, ET AL.

22-154 YANG, SIYU, ET AL. V. EASTMAN SCH. OF MUSIC, ET AL.

22-157 KEY FINANCE, INC., ET AL. V. KOON, DJ

22-158 EDWARDS, JEREMIAH D. V. UNITED STATES

22-167 VAN LINN, DANIEL J. V. WISCONSIN

22-176 BURKHART, JAMES V. UNITED STATES

22-178 CUSHING, ROBERT R., ET AL. V. PACKARD, SHERMAN

22-195 DART, THOMAS J., ET AL. V. ZICCARELLI, SALVATORE

22-201 DOE, JANE, ET AL. V. McKEE, GOV. OF RI, ET AL.

22-205 STAVRAKIS, DEMETRIOS V. UNITED STATES

22-207 KVASHUK, VOLODYMYR V. UNITED STATES

22-233 CHRETIEN, PAUL V. UNITED STATES

22-239 MAHARAJ, KRISHNA V. DIXON, SEC., FL DOC, ET AL.

22-240 JUSTICE, GOV. OF WV, ET AL. V. JONATHAN R., ET AL.

22-255 WILFORD, SCOTT, ET AL. V. NAT. EDUC. ASSN, ET AL.

22-5119 HASSON, CHRISTOPHER P. V. UNITED STATES

22-5220 KARUPAIYAN, PALANI V. SINGH, JATINDER, ET AL.

22-5229 WILSON, GWENDOLYN V. HILLSBOROUGH TWP., ET AL.

22-5230 SESSION, TUJUAN E. V. WARE, CHARLES, ET AL.

22-5233 CONERLY, CARINA V. YANG, YEE, ET AL.

22-5238 MINIX, M. STEPHEN V. STONE, CHARITY, ET AL.

22-5240 DEL CID, ROBERT C. V. LUMPKIN, DIR., TX DCJ

22-5246 SINGMAN, BRUCE H. V. IMDB.COM, INC.

22-5248 HOGLAN, DOUGLAS A. V. VIRGINIA

22-5254 BURCH, WILLIAM P. V. MULLEN, MARK X.

22-5257 STEPHEN, DARYL V. NEW YORK

22-5258 LAFITTE, JEREMY V. USCA 9

22-5267 MURRAY, JOHN E. V. FLORIDA

22-5272 J. R. V. NORTH DAKOTA

22-5273 BEAUCHAMP, BRADLEY V. UNITED STATES

22-5275 BOLES, RUSSELL M. V. LONG, WARDEN, ET AL.

22-5276 NAFTALOVICH, DANIEL V. COURT OF APPEAL OF CA, ET AL.

22-5277 ASR, LEILA N. V. EADY-WILLIAMS, KAREN, ET AL.

22-5278 JENKINS, JORDAN V. UNITED STATES

22-5283 FUNK, GERALD V. LITTLE, SEC., PA DOC, ET AL.

22-5284 FAGANS, MICHAEL D. V. LUMPKIN, DIR., TX DCJ

22-5287 DUNN, GREGORY E. V. COUNTY OF SANTA CRUZ, CA

22-5289 BROWN, PHILLIP A. V. CURTIN, WARDEN, ET AL.

22-5291 GAINES, BARTON R. V. LUMPKIN, DIR., TX DCJ

22-5294 WARNER, GARY W. V. LUMPKIN, DIR., TX DCJ

22-5297 DARBOUZE, JEAN M. V. CALIFORNIA

22-5307 WILLIAMS, RONALD C. V. HUTCHINGS, WILLIAM, ET AL.

22-5310 SHALLOW, SEAN V. UNITED STATES, ET AL.

22-5311 KEY, WILLIE A. V. MEDICAL UNIV. OF SC, ET AL.

22-5312 NELSON, CARL A. V. OH PAROLE BD., ET AL.

22-5315 BONNER, RYAN R. V. TEXAS

22-5320 THOMAS, RONNY V. CADDO PARISH SEX OFFENDER

22-5323 STEPHENSON, DOUGLAS V. ZAKEN, SUPT., GREENE, ET AL.

22-5324 BRUMIT, DANIEL D. V. OKLAHOMA

22-5325 BENSON, MALCOLM B. V. REWERTS, WARDEN

22-5328 TYSON, JUSTIN M. V. NORTH CAROLINA

22-5331 WILLIAMS, MARK A. V. MICHIGAN

22-5332 MELLION, JEROME V. LOUISIANA

22-5333 PARKS, EDWARD F. V. SMITH, MATTHEW, ET AL.

22-5334 CROSBY, NICOLE R. V. IDAHO

22-5339 NAVARRO-MARTIN, MARIA V. USDC ND FL

22-5341 AMPARAN, TED V. SPEARMAN, WARDEN

22-5349 PACHECO-APODACA, LEOPOLDO V. UNITED STATES

22-5350 NORWOOD, RANDOLPH J. V. FLORIDA

22-5352 THOMAS, TRAVIS V. UNITED STATES

22-5353 SALAZAR-MUNOZ, RICARDO V. UNITED STATES

22-5355 SLIM, CARLOCITO V. UNITED STATES

22-5360 CHIN, WAYNE V. NOETH, SUPT., ATTICA

22-5363 FLUCAS, RODNEY V. UNITED STATES

22-5365 ELIAS, DAVID S. V. UNITED STATES

22-5366 FIELDS, WILLIAM M. V. UNITED STATES

22-5367 HINTON, DERRICK L. V. UNITED STATES

22-5368 GORAYA, KULTAR S. V. DIXON, SEC., FL DOC

22-5371 HARRIS, DARRELL V. HUDGINS, WARDEN

22-5372 FOSTER, TONY L. V. KANSAS

22-5373 DEL ANGEL, BERENICE V. UNITED STATES

22-5376 CRUZ, JERICO M. V. UNITED STATES

22-5378 COLLAZO, ROBERT, ET AL. V. UNITED STATES

22-5381 HARRIS, WALTER V. OHIO

22-5387 ISLAS-MACIAS, ULISES E. V. UNITED STATES

22-5389 MOLINA-RODRIGUEZ, ANTONIO V. UNITED STATES

22-5393 MITCHELL, SETH V. DEPT. OF VA, ET AL.

22-5394 FALKOWSKI, ERIC C. V. UNITED STATES

22-5397 MILLER, TRENTON J. V. UNITED STATES

22-5399 AFRIYIE, JOHN V. UNITED STATES

22-5400 BELL, MAURICE D. V. UNITED STATES

22-5401 BEGAY, IVAN R. V. UNITED STATES

22-5410 KOERBER, CLAUD R. V. UNITED STATES

22-5415 MEDINA, DELANO M. V. UNITED STATES

22-5417 WILLIAMS, CHARLES E. V. UNITED STATES

22-5418 RODRIGUEZ-VILLANUEVA, MIGUEL J. V. UNITED STATES

22-5421 EILDERS, HENRY W. V. UNITED STATES

22-5427 NICHOLS, JADE C. V. UNITED STATES

22-5429 CASH, OMAR S. V. LITTLE, SEC., PA DOC, ET AL.

22-5431 TURNER, DAVANTE V. UNITED STATES

22-5437 HARRIS, JUSTIN C. V. UNITED STATES

22-5440 GRIEGO, JOSEPH V. UNITED STATES

22-5441 MATA-BENAVIDEZ, FELIPE V. UNITED STATES

22-5445 LUJAN-MADRID, EREBY V. UNITED STATES

22-5446 MALDONADO-ROSA, JOSE F. V. UNITED STATES

22-5449 RODRIGUEZ, ANTONIO V. UNITED STATES

22-5450 CRUMP, JERMAINE V. ERRINGTON, WARDEN

22-5452 CROCKETT, CAMERON P. V. CLARKE, DIR., VA DOC

22-5454 CARREON-GRIMALDO, JESUS V. UNITED STATES

22-5455 WOOLASTON, TYRONE V. UNITED STATES

22-5456 KIM, MIN J. V. U.S. CITIZENSHIP & IMMIGRATION

22-5459 GONZALEZ-RUIZ, JOSE S. V. UNITED STATES

22-5461 RUSSEY, JAMES K. V. UNITED STATES

22-5466 ANDREW, LEONARD V. UNITED STATES

22-5469 BEARD, JEFFREY V. UNITED STATES

22-5471 BRAXTON, TREMAIN L., ET AL. V. UNITED STATES

22-5472 SHAMO, AARON M. V. UNITED STATES

22-5473 BEGAREN, NUZZIO V. ALLISON, SEC., CA DOC

22-5474 ELLIS, ROMNEY C. V. UNITED STATES

22-5477 BROWN, TRACEY L. V. UNITED STATES

22-5480 RALIOS-CHAJAL, MANUEL V. UNITED STATES

22-5482 BURCH, WILLIAM P. V. HOMEWARD RESIDENTIAL INC.

22-5484 PEREZ-GARCIA, ERIKA V. UNITED STATES

22-5489 UNDER SEAL V. UNITED STATES

22-5490 WUKOSON, NICHOLAS V. UNITED STATES

22-5491 WARD, JOHN M. V. UNITED STATES

22-5492 WALLACE, WILLIAM V. FL COMM'N ON OFFENDER REVIEW

22-5494 TALLEY, MICHAEL D. V. UNITED STATES

22-5504 VILLANUEVA, RAFAEL V. UNITED STATES

22-5506 LEWIS, KACEY V. QUIROS, COMM'R, CT DOC

22-5508 CHIU, HANFORD V. UNITED STATES

22-5511 PORTILLO-RODRIGUEZ, EDMUNDO V. UNITED STATES

22-5514 SCOTT, ROLAND V. UNITED STATES

22-5515 SALAS, JOSE A. V. UNITED STATES

22-5516 LEWIS, ANTRELL D. V. UNITED STATES

22-5519 STANSBURY, KAREEM J. V. COURLEY, ACTING SUPT., CAMP HILL

22-5521 GONZALEZ, JESUS J. V. TEXAS

22-5522 CAZARES, FERNANDO V. UNITED STATES

22-5523 GAINES, LAWRENCE V. HOUSER, SUPT., BENNER, ET AL.

22-5526 BURCH, WILLIAM P. V. HOMEWARD RESIDENTIAL INC.

22-5529 LETT, ANTHONY H. V. UNITED STATES

22-5530 JORDAN, JOSEPH R. V. UNITED STATES

22-5532 WILLIAMS, JOHNNY J. V. UNITED STATES

22-5533 PINSON, DARIO V. UNITED STATES

22-5534 CHIN, GLENN A. V. UNITED STATES

22-5539 PICKETT, SEAN D. V. UNITED STATES

22-5547 NEAL, SENECA L. V. UNITED STATES

22-5550 BAILEY, COREY V. UNITED STATES

22-5551 BARAJAS-SALVADOR, JOSE C. V. UNITED STATES

22-5553 VILLAGOMEZ-TROCHE, RAFAEL V. UNITED STATES

22-5558 LaSANE, VINCE E. V. UNITED STATES

22-5562 ALEXANDER, CHRISTOPHER V. UNITED STATES

22-5566 BEGAY, RANDLY I. V. UNITED STATES

22-5567 HARRIS, LAMAR V. UNITED STATES

22-5568 GORDON, DOUGLAS V. UNITED STATES

22-5569 SCOTT, DYLAN D. V. UNITED STATES

22-5575 MICKEL, RONALD V. UNITED STATES

22-5580 INGRAM, DERRICK D. V. UNITED STATES

22-5586 ROBLES, LORI A. V. UNITED STATES

22-5587 BASEY, KALEB L. V. USDC AK

22-5590 HENSLEY, ROBERT N. V. UNITED STATES

22-5596 BELL, ROBERTA R. V. WARDEN, FCI DUBLIN

22-5597 VENZOR-ORTEGA, BERNARDINO A. V. UNITED STATES

22-5598 MONTOYA-DE LA CRUZ, RAMIRO V. UNITED STATES

The petitions for writs of certiorari are denied.

21-1193 OKLAHOMA V. WADKINS, ROBERT E.

21-1214 OKLAHOMA V. SAM, EMMITT G.

The motions of respondents for leave to proceed *in forma pauperis* are granted. The petitions for writs of certiorari are denied.

22-87 ARMSTRONG, ARTHUR O. V. USDC ED NC

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

22-161 NIETO, ROBERT, ET AL. V. UNITED STATES

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

22-5249 GALLUZZO, MICHAEL A. V. ST. PARIS, OH

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.

22-5281 MORALES, LEONARDO T. V. DIXON, SEC., FL DOC

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

22-5295 TRABELSI, NIZAR V. UNITED STATES

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

22-5299 PETERS, MICHAEL G. V. HANEN, ANDREW S.

22-5300 PETERS, MICHAEL G. V. HANEN, ANDREW S.

22-5301 PETERS, MICHAEL G. V. MICHALK, LISA B.

22-5302 PETERS, MICHAEL G. V. ACTUAL INNOCENT CLINIC

22-5317 ADKINS, DORA L. V. MERRIFIELD HOTEL ASSOC., LP

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. As the petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fees required by Rule 38(a) are paid and the petitions are submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

22-5379 POWERS, THOMAS V. WILCOXEN, KRISTA, ET AL.

22-5419 JACOBS, ERIKA V. GEISINGER WYOMING MEDICAL CENTER

22-5420 MATTISON, LAWRENCE E. V. CLARKE, DIR., VA DOC

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.

22-5430 BROWN, DERRICK L. V. UNITED STATES

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

HABEAS CORPUS DENIED

22-5548 IN RE DAVID MOORE

22-5554 IN RE MELVIN T. BELL

22-5616 IN RE DEONTE JENKINS

22-5630 IN RE WILLIAM H. WRIGHT

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

22-5290 IN RE PHILLIP A. BROWN

The petition for a writ of mandamus is denied.

REHEARINGS DENIED

21-7022 GIL, PATRICK N. V. VIRGINIA

21-7858 LEWIS, LARRY V. MISSISSIPPI

The petitions for rehearing are denied.

ATTORNEY DISCIPLINE

D-3087 IN THE MATTER OF DISCIPLINE OF KELLY DOUGLAS TALCOTT

Kelly Douglas Talcott, of Sea Cliff, 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-3088 IN THE MATTER OF DISCIPLINE OF JENNIFER LYNN LEATHERMAN

Jennifer Lynn Leatherman, of Middletown, 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-3089 IN THE MATTER OF DISCIPLINE OF ATHANASIOS T. TSIMPEDES

Athanasios T. Tsimpedes, 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-3090 IN THE MATTER OF DISCIPLINE OF JAMES LEE LINDON

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

D-3091 IN THE MATTER OF DISCIPLINE OF GERALD W. DIBBLE

Gerald W. Dibble, of Rochester, 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-3092 IN THE MATTER OF DISCIPLINE OF EDWARD EMAD MOAWAD

Edward Emad Moawad, of Chevy Chase, 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.

SUPREME COURT OF THE UNITED STATES

ANDRE LEE THOMAS *v.* BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

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

No. 21–444. Decided October 11, 2022

The petition for a writ of certiorari is denied.

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

Petitioner Andre Thomas was sentenced to death for the murder of his estranged wife, their son, and her daughter from a previous relationship. Thomas is Black, his wife was white, and their son was biracial. Thomas was convicted and sentenced to death by an all-white jury, three of whom expressed firm opposition to interracial marriage and procreation in their written juror questionnaires. Among other reasons, these jurors opined that such relationships were against God's will and that people "should stay with [their] Blood Line." App. to Pet. for Cert. 395a. Despite their declarations of bias, Thomas' counsel not only failed to exercise peremptory strikes on these individuals or move to strike them for cause, but failed even to question two of the three jurors about their stated bias and whether it could affect their deliberations. Without objection from Thomas' counsel or the State's attorney, the three jurors were seated. Together with nine other white jurors, they convicted and sentenced Thomas to death.

Thomas' conviction and death sentence clearly violate the constitutional right to the effective assistance of counsel.

The contrary judgment of the Fifth Circuit should be summarily reversed.

I

A

Thomas was charged with capital murder in 2005 for the killing of his estranged wife, their child, and his wife's child from a previous relationship. The facts of Thomas' offense were gruesome: Thomas attempted to remove the victims' hearts because he believed that would "set them free from evil." See 995 F. 3d 432, 438 (CA5 2021) (internal quotation marks omitted). Thomas also stabbed himself during the course of his offense; later that day, he turned himself in and confessed. *Id.,* at 438–439. While Thomas was incarcerated awaiting trial, he removed one of his own eyeballs; years later, he removed the other one. *Id.,* at 439. Thomas pleaded not guilty by reason of insanity, and while the State agreed that Thomas was psychotic at the time of his offense, it prevailed in arguing that "his psychosis was voluntarily induced just before the killings through ingestion of . . . cough medicine." *Ibid.*

Because of the interracial nature of Thomas' offense, his counsel[1] and the State questioned prospective jurors about their attitudes toward interracial marriage and procreation. Prospective jurors were required to answer a written questionnaire that asked:

> "105. The Defendant in this case, Andre Thomas, and his ex-wife, Laura Boren Thomas, are of different racial backgrounds. Which of the following best reflects your feelings or opinions about people of different racial backgrounds marrying and/or having children:
>
> (__) I vigorously oppose people of different racial

[1]At trial, Thomas was represented by two attorneys: a lead counsel and a second chair. References to counsel are in the singular, except where noted, because only one attorney conducted *voir dire* at a time.

> backgrounds marrying and/or having children and am not afraid to say so.
> (__) I oppose people of different racial backgrounds marrying and/or having children, but I try to keep my feelings to myself.
> (__) I do not oppose people of different racial backgrounds marrying or being together, but I do oppose them having children.
> (__) I think people should be able to marry or be with anyone they wish.
> PLEASE TELL US WHY YOU FEEL THIS WAY: [blank provided]." App. to Pet. for Cert. 391a–392a (boldface deleted).

At issue in this case are the responses of three white jurors.

First, juror number four indicated that he "vigorously oppose[d]" interracial marriage and that he was "not afraid to say so." *Id.*, at 392a. In the additional space provided, he wrote: "I don't believe God intended for this." *Ibid.*

During individual *voir dire*, defense counsel engaged in the following colloquy with this juror:

> "[Q.] Well, how would—how do you feel about, if you are sitting on a case where the defendant or a defendant accused of capital murder was a black male, and the victim, his wife, was a white female.
> [A.] Well, I think—I think it's wrong to have those relationships, my view, but we are all human beings and God made every one of us. And, you know, as far as—I don't care if it is white/white, black/black, that don't matter to me. If you've done it, you are a human being, you have got to own up to your responsibility.
> [Q.] So, the color of anyone's skin would not have any impact or bearing upon your deliberations?
> [A.] No, not according to that, no.
> [Q.] Okay.
> [A.] Not whether they were guilty or innocent.

> [Q.] Would the race of either the defendant or the victim be something that you would take into consideration in determining, or considering, answering these special issues, or considering either the death penalty or life imprisonment?
> [A.] No, I wouldn't judge a man for murder or something like that according to something like that, no, I would not." *Thomas* v. *Director*, No. 4:09–CV–644 (ED Tex., Sept. 19, 2016), App. to Pet. for Cert. 115a–116a, 2016 WL 4988257, *23.

Juror number four also expressed the view that appeals in death penalty cases should be eliminated or restricted, and that the death penalty was not applied in enough cases, Record 1099, though he did state during *voir dire* that the death penalty should not be imposed when a defendant is insane, 16 Reporter's Record 53 (Tex. Crim. App.).[2] Although Thomas' counsel had peremptory strikes available, counsel neither exercised one on this juror nor otherwise objected to him being seated.

Second, juror number five responded by indicating that she opposed interracial marriage and tried to keep those feelings to herself. She explained in the additional space: "I think it is harmful for the children involved because they do not have a specific race to belong to." App. to Pet. for Cert. 394a. During the individual *voir dire* of juror number five, neither defense counsel nor the State asked any questions about race or interracial marriage. Nor did either

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[2] This remark on the insanity defense is one of only very few remarks offered by the three jurors at issue that might have seemed favorable to the defense. Somewhat similarly, juror number five recounted a news report that Thomas had committed his crime "because he was insane," Record 1051, and juror six expressed admiration in her questionnaire for one of Thomas' attorneys. *Id.* at 1070. These passing comments cannot excuse defense counsel's failure to take the steps necessary to address the serious impartiality concerns raised by these jurors' remarks on interracial marriage.

party inquire as to whether the juror's views on those topics could affect her deliberations or her decision whether to impose the death penalty. Again, although defense counsel had peremptory strikes available, counsel did not exercise one or seek to strike juror number five for cause.

Third, juror number six responded to the written questionnaire by reporting that he agreed that interracial marriage "[s]hould not [b]e," explaining: "I think we should stay with our Blood Line." *Id.*, at 395a. Juror number six also agreed that he opposed interracial marriage but that he tried to keep those feelings to himself. During juror number six's individual *voir dire*, the juror explained that state and federal criminal laws "are too lenient" and that "the judges' and everybody's hands are tied" with "the laws we have on the books." Record 1130. Neither defense counsel nor the State asked juror number six about his views on interracial marriage or biracial children, his views on race generally, or whether those views could have an impact on his deliberations at the guilt and penalty phases. Defense counsel once again had peremptory challenges available but did not use them or request that the court strike the juror for cause.

All three jurors were seated on the all-white jury. A fourth juror was seated as an alternate juror. She affirmed that she "oppose[d] people of different racial backgrounds marrying and/or having children," and added: "As I stated before I try not to judge what other people do. I oppose gay marriage but a man and woman have the right to choose." App. to Pet. for Cert. 397a–398a. During the alternate juror's *voir dire*, neither Thomas' counsel nor the State followed up about these answers, nor did counsel exercise any available peremptory strikes or move to strike the juror for cause. The juror was seated as the first alternate. Defense council concluded *voir dire* with unused peremptory challenges.

After the trial concluded, the court excused the alternate jurors. The remaining jurors ultimately convicted Thomas.

During the penalty phase, the State asked the jury to consider the risk that Thomas could pose to the community if he was not executed: "Are you going to take the risk about [Thomas] asking your daughter out, or your granddaughter out?" 995 F. 3d, at 443. The State then referenced five guilt-phase witnesses who had testified about their romantic relationships with Thomas, including one woman who became pregnant by Thomas. The State reminded the jury about "the string of girls that came up here and apparently . . . that he could talk [him] into being with him, are you going to take that chance?" *Ibid.* The jury sentenced Thomas to death.

B

Thomas filed a direct appeal of his conviction and sentence. While that appeal was pending, he filed an application for a writ of habeas corpus in Texas state court raising two arguments related to juror bias. First, he argued that his trial counsel was ineffective by failing to question or strike the biased jurors. Second, he claimed that seating jurors opposed to interracial marriage violated his Sixth and Fourteenth Amendment rights to trial by an impartial jury.

In support of his ineffective-assistance-of-counsel argument, Thomas' lead trial counsel filed an affidavit declaring that his failure to question jurors opposed to interracial marriage "was not intentional; [he] simply didn't do it." Record 327. Second-chair counsel explained that Thomas' case was her first capital trial, that she was "new at capital voir dire," and that "[v]oir dire in this case was a nightmare." *Id.*, at 422–423. In response, the State attached two new affidavits from the same two attorneys. Lead counsel explained that he "would never ask pointed questions regarding racial bias from a juror without a real basis to do so" because that might alienate a juror. *Id.*, at 1748.

Second-chair counsel gave substantively the same explanation. *Id.*, at 1764. Using identical language, both declared that "[f]or those jurors who expressed some problem with interracial relationships, either [co-counsel] or I questioned them to the extent necessary for us to request a strike for cause or make a decision to use a strike against them." *Id.*, at 1748, 1764–1765.

The state habeas court declined to hold an evidentiary hearing. It denied Thomas' impartial-jury argument on the merits because the state court saw "no evidence that the jury's decision was racially motivated." App. to Pet. for Cert. 329a. The court dismissed Thomas' ineffective-assistance claim because Thomas "failed to overcome the presumption that trial counsel was effective during voir dire questioning." *Id.,* at 373a. The Court of Criminal Appeals of Texas adopted the lower court's findings of fact and conclusions of law. *Id.*, at 292a.

Thomas then filed a federal habeas petition raising the same juror-bias and ineffective-assistance claims. The District Court denied the petition, deeming the juror-bias claim "speculative," and finding that defense counsel's "decision to forego questioning three of the four jurors about racial bias was simply a matter of trial strategy." *Id.*, at 121a, 125a. In a divided opinion, the Fifth Circuit affirmed. The panel agreed that the state habeas court's finding that there was "'no evidence that the jury's decision was racially motivated'" was "not directly on point as to whether any juror with a relevant bias that made him or her unable to be impartial was seated on the jury." 995 F. 3d, at 444. Nevertheless, the majority concluded that the state court made a "necessary implicit finding . . . that no juror would base his decision on race rather than the evidence presented." *Ibid.*

With respect to Thomas' ineffective-assistance claim, the panel determined that the state habeas court was not ob-

jectively unreasonable in finding trial counsel not ineffective, explaining that counsel's failure to probe juror number five's and juror number six's oppositions to interracial marriage or procreation likely was a tactical decision. *Id.,* at 450.

Judge Higginson dissented. He saw no evidence that juror number four retreated from his vigorous opposition to interracial marriage. He pointed out that juror number four had admitted to "racial animus" involving the "exact interracial circumstances of the offense" for which Thomas was sentenced to death. *Id.,* at 461 (emphasis deleted). In Judge Higginson's view, "clearly established Supreme Court law . . . forbid[s] persons from being privileged to participate in the judicial process to make life or death judgment about brutal murders involving interracial marriage and offspring those jurors openly confirm they have racial bias against." *Ibid.* Because Judge Higginson would have reversed on the basis of Thomas' juror bias claim, he did not reach the question whether Thomas' counsel rendered deficient performance.

Thomas now petitions this Court for a writ of certiorari.

II

Thomas' trial counsel failed to object or to exercise available peremptory strikes for three jurors who expressed personal hostility to interracial marriage and procreation. Additionally, counsel entirely failed to inquire into the race-based views two of the jurors had expressed in their written questionnaire and the potential impact those views could have on their verdict and during the penalty phase. As a result, Thomas was convicted and sentenced to death by a jury that included three jurors who expressed bias against him.

The Sixth Amendment right to counsel includes "'the right to the effective assistance of counsel.'" *Strickland* v. *Washington*, 466 U. S. 668, 686 (1984) (quoting *McMann* v.

Richardson, 397 U. S. 759, 771, n. 14 (1970)). *Strickland* requires a defendant who claims ineffective assistance of counsel to prove (1) "that counsel's representation fell below an objective standard of reasonableness," and (2) that any deficiency was "prejudicial to the defense." 466 U. S., at 688, 692. Thomas has met both requirements.[3]

Thomas' counsel fell far below an objective standard of reasonableness. In a written questionnaire, four prospective jurors admitted that they either "oppose[d]" or "vigorously oppose[d]" interracial marriage and procreation. Yet counsel questioned only one of them (the third juror) about their views on race, and as Judge Higginson recognized in dissent below, that juror "never retreated from his 'beliefs about interracial marriage.'" 995 F. 3d, at 461.

Counsel asked no questions at all about race of the other three prospective jurors, each of whom had also expressed opposition to interracial marriage. This Court has recognized that specific questioning may be required where there is a "constitutionally significant likelihood that, absent questioning about racial prejudice," the State would not impanel an impartial jury. *Ristaino* v. *Ross*, 424 U. S. 589, 596 (1976). In *Turner* v. *Murray*, 476 U. S. 28 (1986), the Court specifically held that "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias." *Id.,* at 36–37. The Court based that decision in part on the broad discretion, and resulting potential for prejudice, given to a jury during the prejudice phase of a capital trial. *Id.,* at 35 (plurality opinion). The Court held, nevertheless, that the trial judge's "failure to question

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[3]Thomas also raised a fair trial claim under the Sixth Amendment. The State argues that Thomas has procedurally defaulted this claim because trial counsel did not strike the jurors or object to their seating. Thomas disagrees. I do not address the fair trial claim, however, because Thomas is entitled to relief on his ineffective-assistance-of-counsel claim, which all agree is properly before this Court.

the venire on racial prejudice" is not by itself erroneous unless the "defendant has specifically requested such an inquiry," effectively putting the burden on defendants' attorneys to protect this right. *Id.,* at 37.

There is no doubt that the facts of this case make out the "constitutionally significant likelihood" under which specific questioning is required. This is a capital case involving interracial violence where three seated jurors and an alternate expressed prejudicial views. Had defense counsel requested individual *voir dire* of the three prospective jurors, it would have been reversible error for the trial judge to deny that request. See *id.*, at 36 (plurality opinion); *id.,* at 36–37 (majority opinion). Counsel's failure to do so was constitutionally ineffective.

The state habeas court's unexplained contrary conclusion was objectively unreasonable. Although the challenged jurors gave general affirmations when the trial judge asked if they would "make up [their] mind based on the evidence," see, *e.g.*, App. to Pet. for Cert. 116a, those answers to general questioning do not absolve defense counsel of failing to question the jurors about racial bias and its potential impact on the verdict and penalty phase deliberations. As this Court has long explained, when a juror "admit[s] prejudice," general statements of impartiality "can be given little weight." *Irvin* v. *Dowd*, 366 U. S. 717, 728 (1961); see also *Ham* v. *South Carolina*, 409 U. S. 524, 526 (1973) ("three general questions as to bias, prejudice, or partiality" were insufficient where trial judge refused to examine jurors about racial prejudice).

Moreover, while trial counsel has wide latitude to make strategic decisions during *voir dire*, there was no excuse in this case for their failure to ask the three other jurors questions similar to those that counsel asked juror number four. Trial counsel initially admitted as much, swearing in affidavits that counsel's failure to probe the jurors' views "was not intentional" before subsequently attesting that counsel

"questioned [the jurors who expressed opposition to interracial marriage] to the extent necessary." Trial counsel's unusual, subsequently filed affidavits on behalf of the State are contradicted by the record: Trial counsel claims to have questioned the potential jurors who declared opposition to interracial marriage, but the record shows that counsel did not ask any questions at all related to interracial marriage of three of the four who expressed opposition. That alone demonstrates ineffectiveness. There are numerous ways to broach sensitive but necessary subjects during *voir dire* without invoking the ire of jurors.[4]

It is no doubt true that there may sometimes be strategic reasons not to examine jurors for racial bias, but counsel cited none here. To the contrary, the hostility the jurors expressed in their questionnaires strongly suggested that their presence would infect the proceedings with racial bias. Counsel's subsequent affidavits therefore "resembl[e] more a *post hoc* rationalization of counsel's conduct than an accurate description of their" strategic decisions during *voir dire*. *Wiggins* v. *Smith*, 539 U. S. 510, 526–527 (2003).

Because the Court of Appeals erred at the first *Strickland* prong, it did not reach the second. It is plain, however, that the state habeas court's perfunctory conclusion that "[petitioner] has not demonstrated that any alleged error prejudiced [the] defense," App. to Pet. for Cert. 373a, violated clearly established law. As we have often recognized, seating even one biased juror infringes on a criminal defendant's Sixth Amendment right. See *Parker* v. *Gladden*, 385

[4] For instance, defense counsel could have posed something like the following question: "Thank you for your honest response to the question about your feelings toward interracial marriage. Many people have strong feelings on the matter. For some people it can be hard to put those feelings aside in judging evidence for a verdict, or especially in determining an appropriate punishment. Is there any possibility that your personal feelings about interracial marriage could influence you in this case in any way? If there is, although you may be the perfect juror for many other cases, you may not be a great fit for this case."

U. S. 363, 366 (1966) (*per curiam*) (a defendant is "entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors"); *United States* v. *Martinez-Salazar*, 528 U. S. 304, 316 (2000) ("[T]he seating of any juror who should have been dismissed for cause . . . would require reversal"). These concerns are even greater in capital cases involving interracial violence. See *Turner*, 476 U. S., at 37.[5] As the Fifth Circuit has held, these (and other) precedents clearly establish that a defendant suffers prejudice when trial counsel fails to challenge biased jurors. See *Virgil* v. *Dretke*, 446 F. 3d 598, 613–614 (2006).

Thomas' offense involved not only interracial violence, but also interracial intimacy. Historians have long recognized that interracial marriage, sex, and procreation evoke some of the most invidious forms of prejudice and violence. "No other way of crossing the color line is so attended by the emotion commonly associated with violating a social taboo as intermarriage and extra-marital relations between a Negro man and a white woman." 2 G. Myrdal, An American Dilemma 606 (2009). Far from avoiding these incendiary topics, the State fanned the flames in urging the jury to sentence Thomas to death. The prosecutor asked the jury

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[5] The Court specifically observed in *Turner* that a racially biased juror might be more likely to find aggravating factors and less favorably inclined toward mitigation evidence, particularly in a case involving interracial violence. 476 U. S., at 35 (plurality opinion). Subsequent social science literature has underscored that concern. See generally M. Lynch & C. Haney, Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the "Empathic Divide," 45 Law & Soc. Rev. 69 (2011). The concern is as applicable here as it was in *Turner*: Much as Turner argued "mental disturbance as a mitigating circumstance" at the penalty phase, 476 U. S., at 35, Thomas' counsel argued that Thomas suffered acute psychosis from a lifelong mental illness, see 995 F. 3d 432, 439 (CA5 2021).

Social science evidence also confirms *Turner*'s teachings regarding the importance of questioning jurors about potential racial bias. See, *e.g.,* P. Joy, Race Matters in Jury Selection, 109 Nw. U. L. Rev. Online 180, 181–183 (2015) (summarizing studies).

whether they were "going to take the risk about [Thomas] asking your daughter out, or your granddaughter out?" and reminded the jury during the penalty phase about the "string of girls" who had testified during the guilt phase about their romantic relationship with Thomas. 995 F. 3d, at 443.[6]

By failing to challenge, or even question, jurors who were hostile to interracial marriage in a capital case involving that explosive topic, Thomas' counsel performed well below an objective standard of reasonableness. This deficient performance prejudiced Thomas by depriving him of a fair trial. The state court's contrary decision was an unreasonable application of clearly established Supreme Court law.

* * *

This case involves a heinous crime apparently committed by someone who suffered severe psychological trauma. Whether Thomas' psychological disturbances explain or in any way excuse his commission of murder, however, is beside the point. No jury deciding whether to recommend a death sentence should be tainted by potential racial biases that could infect its deliberations or decision, particularly where the case involved an interracial crime. Ignoring issues of racial bias in the jury system "damages 'both the fact and the perception' of the jury's role as 'a vital check against the wrongful exercise of power by the State.'" *Pena-Rodriguez* v. *Colorado*, 580 U. S. 206, 223 (2017).

This is not to impugn the individual jurors who served in this case, who may themselves have responded to questions

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[6]The Fifth Circuit declined to consider the prosecutor's comments in closing because a direct challenge to them fell beyond the scope of the certificate of appealability. 995 F. 3d, at 443. That confuses the issue. Separate from whether the closing argument itself was impermissible, the rhetoric and substance of the closing statement are part of the "totality of the evidence before the judge or jury" that a court must consider in assessing prejudice under *Strickland* v. *Washington*, 466 U. S. 668, 695 (1984).

honestly and with good intentions. It is ultimately the duty of the courts "to confront racial animus in the justice system." *Id.,* at 222. That responsibility requires courts, including this one, vigilantly to safeguard the fairness of criminal trials by ensuring that jurors do not harbor, or at the very least could put aside, racially biased sentiments. To address these "most grave and serious statements of racial bias" is "to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy." *Id.,* at 224.

The errors in this case render Thomas' death sentence not only unreliable, but unconstitutional. I would not permit the State to execute Andre Thomas in light of the ineffective assistance that he received, and would summarily reverse the Fifth Circuit.