(ORDER LIST: 562 U.S.)

MONDAY, DECEMBER 13, 2010

APPEAL -- SUMMARY DISPOSITION

10-291 CLEMONS, JOHN T., ET AL. V. DEPT. OF COMMERCE, ET AL.

The judgment of the United States District Court for the Northern District of Mississippi is vacated, and the case is remanded with instructions to dismiss the complaint for lack of jurisdiction.

ORDERS IN PENDING CASES

10M54 SADIQ K. V. ME DEPT. OF HEALTH

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

09-11419 IN RE ALLEN G. THOMAS

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

10-10 TURNER, MICHAEL D. V. ROGERS, REBECCA L., ET AL.

The motion of respondents for appointment of counsel is denied.

10-330 SCHWARZENEGGER, GOV. OF CA V. RINCON BAND OF LUISENO, ET AL.

10-426 APPLERA CORP., ET AL. V. ENZO BIOCHEM, INC., ET AL.

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

10-5710 BISHOP, WINFORD K. V. GRIEVANCE COMM., USDC ED NY

10-5813 HA, HUNG V. McGUINESS, WILLIAM

10-6031 MATTHEWS, FELTON L. V. McDANIELS, WARDEN, ET AL.

10-6059 RILEY, LAKENYA T. V. UNION PARISH SCHOOL BD., ET AL.

10-6135 COHEN, LESLIE C. V. TERRELL, WARDEN, ET AL.

10-6170 FARRIS, TYRONE L. V. OKLAHOMA

10-6314 BERRYHILL, LaVERN V. SEAY, JUDGE, USDC ED OK, ET AL.

10-6545 BERRYHILL, LaVERN V. WHITE, JUDGE, USDC ED OK, ET AL.

10-6551 BERRYHILL, LaVERN V. PAYNE, JUDGE, USDC ND OK, ET AL.

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

10-7134 JILES, CYNTHIA V. SHINSEKI, SEC. OF VA

10-7223 YOUNG, DONALD, ET UX. V. DI FERRANTE, CHRIS

10-7236 CALHOUN, GARY S. V. CALIFORNIA

10-7397 SCURLOCK-FERGUSON, VESTER K. V. DURHAM, NC

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until January 3, 2011, 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

09-11234 MAZARIEGOS, ANGEL V. UNITED STATES

09-11376 GUIDRY, DONALD R. V. UNITED STATES

09-11480 DAY, ROGER J. V. MINNESOTA, ET AL.

10-122 NORTH STAR ALASKA HOUSING CORP. V. UNITED STATES

10-149 BAJALA, LEOPOLDO V. HOLDER, ATT'Y GEN.

10-233 PORCH, WILLIAM V. GARRISON, MICHAEL

10-240 NILSEN, JOHN S. V. CALIFORNIA

10-332 McGUAN, MICHAEL J., ET AL. V. ENDOVASCULAR TECHNOLOGIES, ET AL.

10-337 FAYUS ENTERPRISES, ET AL. V. BNSF RAILWAY CO., ET AL.

10-402 TUCK-IT-AWAY, INC., ET AL. V. NY STATE URBAN DEVELOPMENT CORP.

10-451 ROSS, ROBERT M. V. ORANGE COUNTY BAR ASSN., ET AL.

10-470 RUSTON, LAWRENCE, ET UX. V. TOWN BD. FOR SKANEATELES, ET AL.

10-474 HARRELSON, JANET V. SWAN, STEVE, ET AL.

10-477 LUTZ, JEFFREY, ET AL. V. SAMPAIR, ANTHONY E., ET AL.

10-479 HINDLE, KARL E. V. FUITH, SHEILA K.

10-482 SHERMAN, DANIEL V. LaMOTHE, WILLIAM, ET AL.

10-483 MIKKILINENI, M. R. V. GIBSON-THOMAS ENG'G CO., ET AL.

10-484 SITZES, BRANT, ET AL. V. WEST MEMPHIS, AR, ET AL.

10-486 BENUN, JACK C., ET AL. V. FUJIFILM CORPORATION

10-492 LEE, YOUA V., ETC. V. ANDERSEN, JASON, ET AL.

10-496 WHITE, ROBERT V. MINTZ, LEVIN, ETC.

10-504 SINGH, JOGINDER V. HOLDER, ATT'Y GEN.

10-506 CRUZ, JOSEFINA V. NEW YORK CITY DEPT OF ED.

10-523 ZAHN, BRIAN S. V. McHUGH, SEC. OF ARMY

10-524 MORGAN, RONALD D. V. MINERAL, VA

10-530 HAQ, NAWAB M. V. HOLDER, ATT'Y GEN.

10-534 CERTAIN UNDERWRITERS AT LLOYD'S V. LAGSTEIN, ZEV

10-536 McGUIRE, DONALD J. V. WISCONSIN

10-538 WINLOCK, SCOT V. DEPT. OF HOMELAND SECURITY

10-556 BADRINAUTH, SURESH V. METLIFE CORPORATION, ET AL.

10-563 NEEL, CLAYTON V. OHIO

10-571 ROTTE, HAROLD B. V. IRS, ET AL.

10-579 JANIGA, ALFRED V. QUESTAR CAPITAL CORP., ET AL.

10-595 ZARRO, FRANCIS A. V. NEW YORK

10-597 LaCOUR, DAISY M. V. KILCEASE, ANNIE, ET AL.

10-611 LOGAN, STANLEY V. NAPOLITANO, SEC. OF HOMELAND

10-615 LUXPRO CORP. V. APPLE, INC.

10-636 ALLEN, LESLIE D. V. UNITED STATES

10-5119 CARROLL, LESTER E. V. THALER, DIR., TX DCJ

10-5165 SPARKS, DUSTIN V. CALIFORNIA

10-5208 MARSHALL, JERRY V. BEARD, SEC., PA DOC, ET AL.

10-5371 BROWN, MANUEL V. UNITED STATES

10-5490 MERCHANT, DEREK V. UNITED STATES

10-5512 JONES, STEVEN R. V. UNITED STATES

10-5859 TURNER, CHRIS L. V. UNITED STATES

10-5923 ALSTON, ANTHONY T. V. UNITED STATES

10-6015 JOELSON, MAXWELL V. DEPT. OF JUSTICE, ET AL.

10-6185 HICKS, BRADY V. LINGLE, CORY

10-6208 STONE, JOSIAH V. ELOHIM, INC.

10-6268 TALADA, CHAD V. UNITED STATES

10-6499 ELEY, JOHN V. HOUK, WARDEN

10-6595 FOSTER, CLEVE V. THALER, DIR., TX DCJ

10-6844 ALLEN, JACK E. V. BRITTON, SUPT., HOUTZDALE

10-6846 BITTICK, LARRY V. NIXON, ATT'Y GEN. OF MO, ET AL.

10-6847 BAINES, DEXTER V. CHICAGO BD. OF ED., ET AL.

10-6851 SKAINS, RANDY J. V. HEDGPETH, WARDEN

10-6859 WILSON, GERALD V. CALIFORNIA

10-6861 SMITH, TERRY V. CAIN, WARDEN

10-6867 HADDAD, RONALD V. RIVER FOREST POLICE, ET AL.

10-6869 MANNING, HAROLD V. THALER, DIR., TX DCJ

10-6874 FRANKLIN, TOM V. U.S. BANK NATIONAL ASSN.

10-6880 RITON, JUDITH G. V. THALER, DIR., TX DCJ

10-6881 RAY, JEREMY V. BURNETTE, WARDEN

10-6888 MOORE, SURF V. NEW JERSEY

10-6889 NEWMAN, LIONEL V. THALER, DIR., TX DCJ

10-6890 SMITH, DWAYNE V. CASH, ACTING WARDEN

10-6892 ASBURY, WILLIE J. V. DRISKELL, DONALD, ET AL.

10-6902 GREEN, JAMES L. V. NELSON, WARDEN

10-6903 GARNETT, ANTHONY A. V. WINONA COUNTY SOCIAL SERVICES

10-6905 HARMON, SONNY L. V. KEITH, WARDEN, ET AL.

10-6913 MAGER, MAXINE V. PRAIRIE CENTER DEVELOPMENT, LLC

10-6915 GREENE, CEDRIC V. CA STATE PRISON, ET AL.

10-6919 GREEN, MARKUS A. V. VU, LISA

10-6927 ALSTON, PRESSLEY V. McNEIL, SEC., FL DOC, ET AL.

10-6931 PIERCE, JAMES C. V. CAIN, WARDEN

10-6940 LEWIS, ANTHONY E. V. VAIL, SEC., WA DOC, ET AL.

10-6942 PATTERSON, PATRICIA T. V. BENSON, DAVID, ET AL.

10-6957 HODGE, GARY D. V. CALIFORNIA

10-6978 CHAVEZ, HECTOR V. UNITED STATES

10-6993 ALLEN, JOSEPH D. V. DEPT. OF AIR FORCE

10-6996 NEWMAN, CLEMENTINE V. MEMPHIS LIGHT, GAS & WATER

10-7001 BROWDER, RUBY S. V. CBE GROUP INC., ET AL.

10-7021 COSTLEY, CHARLOTTE D. V. SSA

10-7031 WOMBLE, BRIAN A. V. ARIZONA

10-7032 MOORE, DEMETRICY V. JONES, FORMER WARDEN, ET AL.

10-7033 PORDASH, DARRIN A. V. BEIGHTLER, WARDEN

10-7044 WEBB, RICKY V. PALMER, WARDEN, ET AL.

10-7068 MAHLER, ROBERTA J., ET VIR V. COUNTY OF HAWAII, REAL PROPERTY

10-7099 EDWARDS, RICHARD L. V. HILL, ACTING WARDEN

10-7136 WELLS, DONALD R. V. CAMPBELL, WARDEN, ET AL.

10-7153 HARRIS, GUY T. V. VIRGINIA

10-7185 O'NEAL, BUSTER V. BUCKNER, L. GALE, ET AL.

10-7194 PINSON, JEREMY V. PACHECO, ROBERT, ET AL.

10-7198 MORSE, KEVIN J. V. UNITED STATES

10-7227 BARKLEY, RASHAUN V. GLOVER, ADM'R, NORTHERN, ET AL.

10-7230 SMITH, GREGORY A. V. HARRISON, WARDEN

10-7246 BARRY, WARREN T., ET UX. V. UNITED STATES

10-7251 ARUANNO, JOSEPH V. HAYMAN, GEORGE, ET AL.

10-7270 MUSGROVE, DANIEL R. V. FRANKE, SUPT., TWO RIVERS

10-7311 WARE, DAVID S. V. WISCONSIN

10-7314 BOYLE, JOHN C. V. UNITED STATES, ET AL.

10-7315 COOPER, AUSTIN V. HOBBS, DIR., AR DOC

10-7346 GOMEZ, ANDREW E. V. WYOMING

10-7357 WILLIAMS, KATHERINE V. POTTER, POSTMASTER GEN.

10-7365 COLLINS, MICHAEL J. V. WA DEPT. OF LABOR & INDUSTRIES

10-7380 NARVIOS, PAUL V. LAMARQUE, WARDEN

10-7388 DYKES, HAROLD S. V. MURPHY, BRIAN, ET AL.

10-7399 SANDERS, LAMONT A. V. UNITED STATES

10-7401 JOHNSON, ANDREW V. UNITED STATES

10-7403 LOPEZ, JOHN E. V. ZENON, WARDEN, ET AL.

10-7406 MICHTAVI, SHEMTOV V. UNITED STATES

10-7408 PORTLEY-EL, PATRICK D. V. BRILL, WARDEN, ET AL.

10-7411 STOWE, ANTEDIOUS V. UNITED STATES

10-7412 RIOS-PEREZ, RICARDO V. UNITED STATES

10-7413 SILVA, VICTOR E. V. UNITED STATES

10-7415 McDOUGALD, GLENN B. V. UNITED STATES

10-7416 BOOTH, MAJOR H. V. UNITED STATES

10-7422 ORTEGA, KEVIN T. V. UNITED STATES

10-7423 VENEGAS-MARTIN DEL CAMPO, SERGIO V. UNITED STATES

10-7425 VISERTO, ANTHONY V. UNITED STATES

10-7427 WALLACE, WAQUITA V. UNITED STATES

10-7428 WAHID, ABDUL V. UNITED STATES

10-7429 QUINONES, NORBERTO V. UNITED STATES

10-7430 ANGELES-TREJO, HERMELINDO V. UNITED STATES

10-7437 POLK, JAMES L. V. UNITED STATES

10-7440 SHAKIR, NAIM N. V. UNITED STATES

10-7449 VALENZUELA-LOPEZ, ROGELIO L. V. UNITED STATES

10-7456) WILSON, GEORGE V. UNITED STATES
)
10-7478) BLACKSON, JOSEPH V. UNITED STATES

10-7458 BROWN, GEORGE V. LIRIOS, WILESKA, ET AL.

10-7464 TALLEY, CLIFTON T. V. UNITED STATES

10-7467 SAENZ, EMILIO J. V. UNITED STATES

10-7472 ROSA-CARINO, ELIEZER V. UNITED STATES

10-7473 CRUZ-NEGRON, ARNALDO A. V. UNITED STATES

10-7474 CONTRERAS-VIERAS, LUCIO V. UNITED STATES

10-7475 COLLINS, ANTONIO V. UNITED STATES

10-7477 DIAZ-DUMENIGO, SAMUEL V. UNITED STATES

10-7480 McKOY, RANDELL L. V. UNITED STATES

10-7484 RUTHERFORD, DANIEL V. UNITED STATES

10-7486 ARISTONDO-MAGANA, JOSE V. UNITED STATES

10-7489 LYONS, ROBERT R. V. UNITED STATES

10-7491 LUPOVITZ, OFER V. UNITED STATES

10-7497 CHANNELLE, ROBERT V. UNITED STATES

10-7500 HAVING, GERALD T. V. UNITED STATES

10-7501 SOBERANES-FIERRO, RAMON G. V. UNITED STATES

10-7503 SEPULVEDA, ROBERTO V. UNITED STATES

10-7504 BLAZEK, MICHAEL D. V. UNITED STATES

10-7505 ALDANA-ORTIZ, MELECIO V. UNITED STATES

10-7508 ALLER, KEVIN V. UNITED STATES

10-7520 LOCKETT, ABRAHAM V. UNITED STATES

10-7521 MARTINEZ, SEREINO J. V. UNITED STATES

10-7522 MATTHIEU, EDWARD V. UNITED STATES

10-7523 FUENTES-MORENO, ALBERTO V. UNITED STATES

10-7524 HERNANDEZ, MICHAEL V. UNITED STATES

10-7525 GONZALEZ, RODOLFO V. UNITED STATES

10-7538 FLOOD, JAMES E. V. UNITED STATES

10-7544 WILLIAMS, JAYCEE V. UNITED STATES

The petitions for writs of certiorari are denied.

10-203 CAHILL, THOMAS J., ET AL. V. ALEXANDER, JAMES L., ET AL.

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

10-349 SHELL OIL CO., ET AL. V. HEBBLE, NANCY F., ET AL.

The motion of International Association of Defense Counsel, et al. for leave to file a brief as *amici curiae* is granted. The motion of Chamber of Commerce of the United States, et al. for leave to file a brief as *amici curiae* is granted. The motion of The American Petroleum Institute for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

10-467 WINKLER, MARC V. GRANT, MATTHEW, ET AL.

10-565 TIBBETTS, JEFFREY P. V. DITTES, JAMES, ET AL.

The petitions for writs of certiorari are denied. Justice Sotomayor took no part in the consideration or decision of these petitions.

10-6912 JONES, MARLIN E. V. BLUM, JONATHAN J.

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.

10-6920 HARMON, PHILLIP L. V. ANDERSON, SHERIFF, ET AL.

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

10-6924 BENJAMIN, ANTHONY V. MRS. BOOKER, ET AL.

10-7213 SJPAIN, CONNELL V. TX MEDICAL BD. DISCIPLINARY

10-7275 BENJAMIN, ANTHONY V. WALLACE, LORETTAN, ET AL.

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.

10-7348 LORENZANA, VICTOR V. UNITED STATES

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

10-7509 LIGHTY, RICHARD 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.

10-7539 HUNTER, TYRONE V. UNITED STATES

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

HABEAS CORPUS DENIED

10-7506 IN RE TYRONE MASON

10-7606 IN RE MAURICE HOLLOMAN

10-7620 IN RE STEVE WILHELM

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

10-525 IN RE WILLIAM E. ORCUTT

10-6835 IN RE ALLEN A. LOVE

The petitions for writs of mandamus are denied.

10-6855 IN RE HAROLD STAFFNEY

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

10-6894 IN RE ASKIA S. ASHANTI

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus 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*).

PROHIBITION DENIED

10-6863 IN RE CARLAYNE SIMS

The petition for a writ of prohibition is denied.

REHEARINGS DENIED

09-1450 LARIVIERE, RICHARD V. LARIVIERE, HELEN

09-10514 WALKER, DARNEL D. V. YATES, WARDEN

09-10758 FIELDS, MARCIA V. OHIO

09-10788 COLMAN, RAFAEL P. V. TEXAS

09-10859 MOSLIMANI, AHMAD V. MICHIGAN

09-10903 IN RE DEBORA TOWNSEND

09-11221 KANTE, AZEWEN-JIK V. NIKE, INC.

09-11394 MENNER, ROGER C. V. UNITED STATES

09-11522 INTROCASO, ALEXANDER M. V. MEEHAN, PATRICK L., ET AL.

09-11529 ORTIZ, JULIO E. V. BEARD, SEC., PA DOC, ET AL.

09-11546 IN RE JAMES MITCHELL, AKA WAMEL ALLAH

10-144 SCHNELLER, JAMES D. V. ABLE HOME CARE INC., ET AL.

10-190 TORAIN, BILLY V. AT&T MANAGEMENT SERVICES, ET AL.

10-5005 COYLE, DANIEL C. V. AQUILA, INC.

10-5338 HEFLEY, LEROY V. DELAWARE

10-5377 WILLARD, CHRISTOPHER V. NEW YORK

10-5386 REYNOLDS, MICHAEL C. V. UNITED STATES

10-5427 LEE, JAMES E. V. ISHEE, PATTY, ET AL.

10-5484 WHITE, MICHAEL T. V. GUZMAN, HENRY, ET AL.

10-5513 DRUMMOND, PHYLLIS V. RYAN, WARDEN, ET AL.

10-5545 CABRERA, ORESTES V. UNITED STATES

10-5622 RAUSER, HENRY V. UNITED STATES

10-5678 SINGH, SATROHAN V. HEATH, SUPT., SING SING

10-5749 RICHARD, JOHN W. V. ROCK, SUPT., UPSTATE

10-5759 KANTAMANTO, ABDUR R. V. NORTH, LORENZO

10-5826 VENEGAS, JUSTIN L. V. TEXAS

10-6063 PRATHER, JOHNNY I. V. LEE, CHIEF JUDGE, ETC.

10-6073 VILLANUEVA-MORAN, FREDY O. V. HOLDER, ATT'Y GEN.

10-6094 DINGLE, RONALD D. V. STEVENSON, WARDEN

10-6188 PREPETIT, RALPH J. V. VIRGINIA

10-6189 PREPETIT, RALPH J. V. VIRGINIA

10-6543 FOREMAN, JOSEPHINE, ET AL. V. LOUISIANA, ET AL.

10-6729 COHEN, LESLIE C. V. UNITED STATES

The petitions for rehearing are denied.

10-127 BAHRAMI, IRANDOKHT V. KETABCHI, MOHAMMAD A.

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

ATTORNEY DISCIPLINE

D-2474 IN THE MATTER OF DISBARMENT OF BRADLEY R. MARSHALL

Bradley R. Marshall, of Raleigh, North Carolina, having been suspended from the practice of law in this Court by order of July 26, 2010; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

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

D-2524 IN THE MATTER OF DISBARMENT OF MICHAEL HENRY DITTON

Michael Henry Ditton, of Bozeman, Montana, having been suspended from the practice of law in this Court by order of October 4, 2010; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

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

SUPREME COURT OF THE UNITED STATES

RICHARD F. ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* JAMES CHARLES LAWHORN

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

No. 10–24. Decided December 13, 2010

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

JUSTICE SCALIA, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting from denial of certiorari.

Respondent James Lawhorn was sentenced to death by an Alabama court in 1989. Nearly two decades later, the United States Court of Appeals for the Eleventh Circuit granted him habeas relief on the ground that his counsel had rendered ineffective assistance at the sentencing hearing by failing to make a closing argument. In my view that decision was patently wrong: The court had no basis in law for setting aside the state courts' judgment that respondent had failed to establish a probable effect of that failure upon the outcome. I dissent from the Court's decision not to grant certiorari and summarily reverse the Eleventh Circuit's judgment.

I

In March 1988, Altion Maxine Walker offered to pay her nephews, James Lawhorn and his brother Mac Lawhorn, $100 in exchange for murdering her boyfriend, William Berry. The Lawhorns accepted. After they ambushed Berry, Mac Lawhorn shot him, causing him to fall. James Lawhorn (hereinafter Lawhorn) then heard Berry making "'gurgling noises'" and shot him repeatedly "'to make sure he was dead.'" 519 F. 3d 1272, 1278 (CA11 2008).

Lawhorn was arrested for the crime and made a full confession. An Alabama jury found him guilty of capital murder. During the sentencing phase, Lawhorn's lawyer gave an opening argument, detailing the mitigating factors that would be established by the forthcoming testimony. Lawhorn's mother, sister, junior high school principal, and juvenile probation officer then testified on the defendant's behalf. Lawhorn himself also gave a brief statement to the jury, saying that he knew his actions were wrong and asking them to "'please have mercy on me.'" *Id.,* at 1280. At the close of the testimony, Lawhorn's counsel waived his right to closing argument; his ensuing objection to the prosecutor's making closing argument was overruled.

The jury made a recommendation of death, which the trial judge accepted. The Alabama Court of Criminal Appeals and the Supreme Court of Alabama affirmed the conviction and sentence. See *Lawhorn* v. *State*, 581 So. 2d 1159 (1990); *Ex parte Lawhorn*, 581 So. 2d 1179 (1991). We denied Lawhorn's petition for certiorari. 502 U. S. 970 (1991).

Lawhorn moved in state court for postconviction relief. He contended, as relevant here, that his lawyer's failure to give a closing argument in the sentencing phase constituted ineffective assistance of counsel under *Strickland* v. *Washington*, 466 U. S. 668 (1984). The trial court—the same court that had imposed the death sentence—denied the motion, on dual grounds that counsel's waiver of closing argument was a reasonable strategic decision, and that Lawhorn had failed to establish prejudice from the waiver. The Alabama Court of Criminal Appeals affirmed, *Lawhorn* v. *State*, 756 So. 2d 971 (1999). The Supreme Court of Alabama denied certiorari, No. 1982018 (Jan. 7, 2000), as did we, 531 U. S. 835 (2000).

Lawhorn then sought federal habeas relief. The District Court set aside both the conviction and the sentence.

Lawhorn v. *Haley*, 323 F. Supp. 2d 1158 (ND Ala. 2004). A panel of the Eleventh Circuit reversed with regard to the conviction, but affirmed with regard to the sentence. 519 F. 3d 1272. With regard to the latter, it sustained the District Court's finding that counsel's failure to give a closing argument was not a reasonable strategic decision, but rested on the erroneous belief that that would preclude closing argument by the prosecutor; and it sustained the District Court's conclusion that Lawhorn had been prejudiced by counsel's failure. The Eleventh Circuit denied the State's petitions for panel rehearing, No. 04–11711 (Mar. 31, 2010) *(per curiam),* App. to Pet. for Cert. 197a, and rehearing en banc, No. 04–11711 (Mar. 29, 2010), App. to Pet. for Cert. 220a–221a—after, I may note, an unexplained delay of over two years.

The State now petitions for certiorari. It does not challenge the Eleventh Circuit's conclusion that counsel's performance was deficient; it contends only that it was error to find that Lawhorn had established prejudice.

II

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides in part as follows:

> "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim . . . 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." 28 U. S. C. §2254(d)(1).

The State contends that the Eleventh Circuit erroneously considered the claim of prejudice *de novo*, rather than granting the deference mandated by AEDPA to the

state court's conclusion. Lawhorn does not deny that the Eleventh Circuit was required to grant deference, but contends that it did so. He acknowledges that in its discussion of the prejudice claim the Court of Appeals did not so much as cite AEDPA, but argues that "[t]his Court has never required any magical incantation of the terms of §2254(d)(1) in habeas corpus appeals" and that "[i]t is unreasonable as a matter of law to suggest that [the Eleventh] Circuit . . . is unfamiliar with or did not apply §2254(d)." Brief in Opposition 25–26.

If indeed Lawhorn is correct that the Eleventh Circuit attempted to apply §2254(d), it is clear that the attempt failed. As we have repeatedly explained, AEDPA imposes a "highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt." *Renico* v. *Lett*, 559 U. S. ___, ___ (2010) (slip op., at 5) (citation and internal quotation marks omitted); accord, *Knowles* v. *Mirzayance*, 556 U. S. ___, ___ (2009) (slip op., at 10–11); *Schriro* v. *Landrigan*, 550 U. S. 465, 473 (2007); *Woodford* v. *Visciotti*, 537 U. S. 19, 24–25 (2002) *(per curiam); Williams* v. *Taylor*, 529 U. S. 362, 410–411 (2000). The doubt of which the Alabama Court of Criminal Appeals was to be given the benefit was particularly expansive in this case, since none of our cases has ever considered whether the failure to give a closing argument can be considered prejudicial under *Strickland*. Accordingly, only the standard for ineffective assistance set forth in *Strickland* itself could be applied; and as we have explained, "because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Knowles*, *supra,* at ___ (slip op., at 11). "[T]he more general the rule at issue—and thus the greater the potential for reasoned disagreement among fair-minded judges—the more leeway state courts have in reaching outcomes in case-by-case determina-

tions." *Renico*, *supra,* at ___ (slip op., at 8–9) (internal quotation marks omitted).

Strickland requires the defendant to show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. The trial judge, who witnessed the proceedings and imposed Lawhorn's death sentence, concluded that Lawhorn had not made that showing. He explained that "[t]rial counsel did not present a complicated case in mitigation that needed to be explained to the jury"; that counsel had "presented Lawhorn's family background and pleas for mercy in mitigation," making closing argument on those matters unnecessary; and that "this was a horrible crime and the jury would not have been swayed by a closing argument considering the facts of this case." 756 So. 2d, at 987 (internal quotation marks omitted). The Alabama Court of Criminal Appeals quoted those findings and agreed that "in this situation with these particular facts, closing argument by defense counsel would have had little impact." *Ibid.*

This was not an unreasonable application of *Strickland*. Counsel's closing statement is rhetorical argument, not evidence. Reconstructing what that argument might have been, and how the jury might have reacted to it—a jury that had already heard opening argument and a procession of mitigation witnesses—is an exercise in guesswork. The Eleventh Circuit's reasons for finding prejudice are unpersuasive.

The Eleventh Circuit observed that one juror had voted to recommend life; and because a vote of 10 to 2 was required to recommend a death sentence, counsel "needed only to convince two other jurors to alter the outcome of the proceedings." 519 F. 3d, at 1297. (Apart from the fact that the jury's recommendation is in any event not binding on the sentencing judge, a 9–to–3 vote would not have produced recommendation of a life sentence, but would

have resulted in a mistrial and empanelling of a new sentencing jury. See Ala. Code §§13A–5–46(f), (g), 13A–5–47(e) (2006).) But it cannot be deduced from the existence of a single dissenting juror that a closing argument would have persuaded other jurors not to recommend a death sentence. That there was one juror against a recommendation of death does not establish that this was a close mitigation case, much less that a closing argument would have made the difference for other jurors.

The Eleventh Circuit provided several examples of statements Lawhorn's counsel could have made. Closing argument might "have refreshed the jury's memory of the evidence of substantial domination presented during the guilt phase." 519 F. 3d, at 1297. Counsel "could have . . . argued for the mitigation of Lawhorn's age at the time of the offense and his troubled family background," and could have asked the jury for mercy. *Ibid.* But merely identifying statements counsel could have made (there will *always* be statements counsel could have made) does not establish what *Strickland* requires: that those statements would probably have made a difference. All the facts relevant to the Eleventh Circuit's hypothesized closing argument had already come out in the sentencing phase. And a plea for mercy had been made in the sentencing phase by Lawhorn himself.

The hypothesized closing argument falls even further short of establishing what AEDPA requires: that it was not merely incorrect but *unreasonable* for the Alabama courts to conclude that probability of a different outcome had not been shown. It was, to the contrary, well within the bounds of reasonable judgment for the Alabama Court of Criminal Appeals to conclude that "in this situation with these particular facts, closing argument by defense counsel would have had little impact." 756 So. 2d, at 987.

In sum, the outcome imposed upon the Alabama courts by the Eleventh Circuit is not remotely required by clearly established Supreme Court precedent.

* * *

It has been over 21 years since Lawhorn was sentenced to death. Alabama should be not barred from carrying out its judgment based on a federal court's lawless speculation. I would not dissent from denial of certiorari if what happened here were an isolated judicial error. It is not. With distressing frequency, especially in capital cases such as this, federal judges refuse to be governed by Congress's command that state criminal judgments must not be revised by federal courts unless they are "contrary to, or involv[e] an unreasonable application of, *clearly established Federal law, as determined by the Supreme Court of the United States*," 28 U. S. C. §2254(d)(1) (emphasis added). We invite continued lawlessness when we permit a patently improper interference with state justice such as that which occurred in this case to stand. We should grant Alabama's petition for certiorari and summarily reverse the Eleventh Circuit's judgment.