

Supreme Court, U.S.  
FILED

06-70 JUL 14 2006

No.

OFFICE OF THE CLERK

IN THE

**Supreme Court of the United States**

**WILLIAM DAVIS,**

*Petitioner*

v.

**UNUM LIFE INSURANCE COMPANY OF AMERICA,  
AND REGAL-BELOIT CORPORATION LONG TERM  
DISABILITY PLAN**

*Respondents*

**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Three interrelated questions are presented in this petition:

1) Whether courts adjudicating ERISA civil actions may substitute administrative law procedures for the discovery, pre-trial and trial procedures set forth in the Federal Rules of Civil Procedure?

2) Whether *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989) and *Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003), require courts to perform a threshold inquiry into the reliability of the evidence utilized by a conflicted ERISA plan administrator?

3) Whether an insurer that both funds and administers an employee benefit program satisfies the “full and fair review” requirement of 29 U.S.C. § 1133(2) when it denies a claim solely in reliance on conclusory findings made by its own employees while disregarding all other evidence?

FILED

06-71 JUL 14 2006

No. \_\_\_\_\_ OFFICE OF THE CLERK

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IN THE  
**Supreme Court of the United States**

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DANTONE, INC. t/a CARRIAGE  
TRADE AUTO AUCTION,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Third Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTIONS PRESENTED

1. Whether the bank fraud statute, 18 U.S.C. § 1344, requires only an act that could put the bank at risk of loss (as a divided panel of the Third Circuit, noting a “disagreement in the circuits as to whether an ‘intent to harm’ is required under § 1344,” held below), or requires proof of intent to harm the bank (as a prior Third Circuit panel and the Second, Fifth, and Seventh Circuits have held).
2. Whether this Court’s ruling in *Libretti v. United States*, 516 U.S. 29 (1995), that criminal forfeiture does not trigger Sixth Amendment protections because a “defendant does not enjoy a constitutional right to a jury determination as to the appropriate sentence to be imposed,” which the Third Circuit (sitting *en banc* on this issue below) noted is in “tension” with *United States v. Booker*, 543 U.S. 220 (2005), *Blakely v. Washington*, 542 U.S. 296 (2004), *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), can be reconciled with these recent decisions, a question the Third Circuit held must be left to this Court to decide.
3. Whether restitution, which the Third Circuit sitting *en banc* below unanimously held was a criminal penalty (joining the Fifth, Eighth, Ninth, Eleventh, and D.C. Circuits, but in direct conflict with the Seventh and Tenth Circuits), nonetheless falls outside the ambit of *Booker*, *Blakely*, *Ring*, and *Apprendi* (as a fractured 7-to-5 majority of the Third Circuit *en banc* held below).
4. Whether it was error for the Third Circuit to affirm petitioner’s conviction based on a jury instruction incorporating a standard of lack of “moral uprightness” to define fraud.

U.S. SUPREME COURT, U.S.  
FILED

No. \_\_\_\_\_ 06-72 JUL 14 2006

OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

HERMAN APPEL,

*Petitioner,*

v.

ALBERTO R. GONZALES, ATTORNEY  
GENERAL OF THE UNITED STATES,

*Respondent.*

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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### QUESTION PRESENTED

Petitioner Herman Appel (“Petitioner”), a lawful permanent resident of the United States for over 25 years, is subject to a final order of removal based solely on a 1992 aggravated felony conviction. This conviction was the result of Petitioner’s decision to decline a plea offer and instead exercise his right to a jury trial. The court and agency decisions below all held that Petitioner is statutorily ineligible to apply for relief from removal under former 8 U.S.C. § 1182(c), which was repealed in 1996. The lower court held that, pursuant to this Court’s decision in *INS v. St. Cyr*, 533 U.S. 289 (2001), as well as other Ninth Circuit decisions, only aliens who entered a plea of guilty or no contest prior to the repeal’s enactment remain eligible to apply for that relief. To date, eight circuits have considered this issue, and have reached three conflicting results.

The question presented is whether a lawful permanent resident, who is removable based on a conviction by jury trial sustained after declining a plea offer, and who remained, even after the conviction, statutorily eligible for relief from removal under then-existing 8 U.S.C. § 1182(c), and who now faces removal proceedings initiated after the repeal of that statute, continues to remain eligible for that relief, where he unquestionably would be so eligible had he originally been convicted through a plea?

06-73 JUL 14 2006

No. OFFICE OF THE CLERK

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IN THE  
**Supreme Court of the United States**

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STEPHEN C. HILBERT; the THOMAS C. HILBERT  
IRREVOCABLE TRUST; the THOMAS C. HILBERT  
IRREVOCABLE TRUST II; the STEPHEN C. HILBERT  
AND STEPHEN C. HILBERT AUGUST 1998 TRUST; the  
TODD S. HILBERT IRREVOCABLE TRUST; the  
CHRISTOPHER L. MYERS IRREVOCABLE TRUST; and  
the HEATHER DAWN HILBERT IRREVOCABLE TRUST,  
PETITIONERS

v.

CONSECO SERVICES, L.L.C.,

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*PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEALS OF INDIANA,  
SECOND DISTRICT*

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED :**

There exists a split in the lower federal courts on two issues surrounding § 29(b) of the Securities and Exchange Act of 1934, and the split on both issues rests directly on language in this Court's decisions in Mills v. Electric Auto Lite, 396 U.S. 375 (1970) and Transamerica Mortgage v. Lewis, 444 U.S. 11 (1979). Does § 29(b), along with the present regulatory environment, permit a borrower to (1) defensively assert a violation of Regulation U and/or (2) provide a borrower with a private right of action?

06-74 JUL 14 2006

No. 05-

OFFICE OF THE CLERK

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IN THE  
**Supreme Court of the United States**

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ALEX GHEORGHIU,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTIONS PRESENTED FOR REVIEW**

Whether the Appeals Court erred in upholding the Trial Court's Denial of Safety Valve Consideration upon the findings made.

SUPREME COURT, U.S.  
FILED

06-75 JUL 19 2006

No. OFFICE OF THE CLERK

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In the  
**Supreme Court of the United States**

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LUIS GONZALEZ-CORTEZ,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

**On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Fifth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**I. QUESTIONS PRESENTED FOR REVIEW**

- A. Whether the Appellate Waiver Bars an Appeal of a Sentence In Excess of the Statutory Maximum, an Issue Raised by Gonzalez-Cortez on Direct Appeal.**
- B. Whether the Appellate Waiver also Waived Gonzalez-Cortez's Right to Receive Effective Assistance of Counsel at Sentencing, Barring his Appeal Based on a Violation of That Right.**

06-77 JUL 17 2006

No. OFFICE OF THE CLERK

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**In the Supreme Court of the United States**

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NORTHWEST AIRLINES, INC.,

*Petitioner,*

v.

SPIRIT AIRLINES, INC.,

*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

*Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), requires a plaintiff in a predatory-pricing case to prove that the defendant suffered short-term losses by charging prices below an appropriate measure of costs. The questions presented are:

1. Whether a plaintiff satisfies that requirement by proving that the defendant charged prices to one group of customers that were lower than its costs to serve a different group of customers.
2. Whether a jury, rather than the court, should determine the appropriate measure of costs to be used to satisfy that requirement.
3. Whether a plaintiff is excused from that requirement when it claims that the defendant expanded its capacity, in addition to reducing its prices.

Supreme Court, U.S.  
FILED

06-78 JUL 17 2006

No. OFFICE OF THE CLERK

IN THE  
**Supreme Court of the United States**

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OMAR,

Petitioner,

-vs.-

GLORIDA BABCOCK, CINDY  
MORALES, BRUCE ROWLEY,  
and RAUL MORINGLANE, JR.,

Respondents.

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

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**PETITION FOR WRIT OF CERTIORARI**

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*Attorneys for Petitioner*

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The Petitioner, Omar<sup>1</sup> by and through his next friend James P. Kelaher, petitions the Court to review a judgment of the Eleventh Circuit Court of Appeals and to answer the following questions in the affirmative:

### QUESTIONS PRESENTED

- I. Whether the express conflict between the circuits and several of the states' highest courts on the standard for imposing liability under section 1983 in child abuse cases merits this Court's acceptance of jurisdiction to resolve that conflict in favor of the more protective "professional judgment" standard, or the "deliberate indifference" standard used for prisoner cases?
- II. Whether—if the Court applies the professional judgment standard to section 1983 cases brought by abused foster children—the evidence in the light most favorable to Omar satisfied that standard in this case?
- III. Whether—if the Court adopts the deliberate indifference standard in section 1983 actions brought by abused foster children—the Eleventh Circuit's application of a purely subjective intent test for meeting the deliberate indifference threshold was erroneous as a matter of law?

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<sup>1</sup> Because the Petitioner Omar was an abused foster child (now age 19), he is identified in the style only by his first name to promote confidentiality. His full name appears in the "Parties to the Proceeding" section of this petition.

06-79 JUL 14 2006

No. OFFICE OF THE CLERK

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IN THE  
**Supreme Court of the United States**

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PAUL LEAHY,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Third Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTIONS PRESENTED

1. The Petitioner was found guilty by a jury of ten counts of bank fraud under 18 U.S.C. Section 1344.
  - A. Was it error for the district court to instruct the jury that the measure of fraud is whether the “scheme shows a departure from moral uprightness, fundamental honesty, fair play and candid dealings”?
  - B. Was it error for the district court to refuse the defendant’s proposed jury instruction that good faith was a defense to the charges in the indictment and that the burden was on the government to prove the lack of good faith where the defendant produced evidence to support the requested instruction?
  - C. Whether the bank fraud statute, 18 U.S.C. § 1344, requires only an act that could put the bank at risk of loss (as a divided panel of the Third Circuit, noting a “disagreement in the circuits as to whether an ‘intent to harm’ is required under § 1344,” held below), or requires proof of intent to harm the bank (as a prior Third Circuit panel and the Second, Fifth, and Seventh Circuits have held). Petitioner incorporates the discussion of this question in the Petition for Writ of Certiorari submitted to this Court filed on behalf of co-defendant and co-appellant Dantone, Inc.
2. Whether this Court’s ruling in *Libretti v. United States*, 516 U.S. 29 (1995), that criminal forfeiture does not trigger Sixth Amendment protections because a “defendant does not enjoy a constitutional right to a jury determination as to the appropriate