NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ARAVE, WARDEN *v.* CREECH

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91–1160. Argued November 10, 1992—Decided March 30, 1993

After respondent Creech pleaded guilty to first-degree murder for the brutal slaying of a fellow Idaho prison inmate, the state trial judge sentenced him to death based, in part, on the statutory aggravating circumstance that ``[b]y the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.'' In affirming, the Idaho Supreme Court, among other things, rejected Creech's argument that this aggravating circumstance is unconstitutionally vague and reaffirmed the limiting construction it had placed on the statutory language in *State* v. *Osborn,* 102 Idaho 405, 418–419, 631 P. 2d 187, 200–201, whereby, *inter alia,* ```the phrase ``utter disregard'' . . . is meant to be reflective of . . . the cold-blooded, pitiless slayer.''' Although the Federal District Court denied habeas corpus relief, the Court of Appeals found the ``utter disregard'' circumstance facially invalid, holding, among other things, that the circumstance is unconstitutionally vague and that the *Osborn* narrowing construction is inadequate to cure the defect under this Court's precedents.

Held:

1. In light of the consistent narrowing definition given the ``utter disregard'' circumstance by the Idaho Supreme Court, the circumstance, on its face, meets constitutional standards. Pp. 6–14.

(a) To satisfy the Eighth and Fourteenth Amendments, a capital sentencing scheme must channel the sentencer's discretion by ```clear and objective standards''' that provide specific and detailed guidance and make rationally reviewable the death sentencing process. See, *e.g., Lewis* v. *Jeffers,* 497 U. S. 764, 774. In order to decide whether a particular

aggravating circumstance meets these requirements, a federal court must determine whether the statutory language defining the circumstance is itself too vague to guide the sentencer; if so, whether the state courts have further defined the vague terms; and, if so, whether those definitions are constitutionally sufficient, *i.e.,* whether they provide *some* guidance. *Walton* v. *Arizona,* 497 U. S. 639, 654. However, it is not necessary to decide here whether the statutory phrase ``utter disregard for human life'' itself passes constitutional muster. The Idaho Supreme Court has adopted a limiting construction, and that construction meets constitutional requirements. Pp. 6–7.

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(b) The *Osborn* construction is sufficiently ``clear and objective.'' In ordinary usage, the phrase ``cold-blooded, pitiless slayer'' refers to a killer who kills without feeling or sympathy. Thus, the phrase describes the defendant's state of mind: not his *mens rea,* but his attitude toward his conduct and his victim. The law has long recognized that such state of mind is not a ``subjective'' matter, but a *fact* to be inferred from the surrounding circumstances. Although determining whether a capital defendant killed without feeling or sympathy may be difficult, that does not mean that a State cannot, consistent with the Constitution, authorize sentencing judges to make the inquiry and to take their findings into account when deciding whether capital punishment is warranted. Cf. *Walton, supra,* at 655. Pp. 7–10.

(c) Although the question is close, the *Osborn* construction satisfies the requirement that a State's capital sentencing scheme ``genuinely narrow the class of defendants eligible for the death penalty.'' *Zant* v. *Stephens,* 462 U. S. 862, 877. The class of persons so eligible under Idaho law is defined broadly to include all first-degree murderers, a category which is itself broad because it includes a sizable number of second-degree murderers under specified circumstances. Even within these broad definitions, the word ``pitiless,'' standing alone, might not narrow the class of death eligible defendants, since a sentencing judge might conclude that every first-degree murderer is ``pitiless.'' Given the statutory scheme, however, a sentencing judge reasonably could find that not all Idaho capital defendants are ``cold-blooded,'' since some within the broad class of first-degree murderers *do* exhibit feeling, for example, anger, jealousy, or revenge. Pp. 10–12.

(d) This Court rejects the suggestion of the parties and the dissent that the facial constitutionality of the ``utter disregard'' circumstance, as construed in *Osborn,* should be determined by examining for consistency the applications of the circumstance by the state courts in other cases. Although the Court's facial challenge precedents authorize a federal court to consider state court *formulations* of a limiting construction to ensure that they are consistent, see, *e.g., Proffitt* v. *Florida,* 428 U. S. 242, 255, n. 12, those precedents have not authorized review of state court cases to determine whether a limiting construction has been *applied* consistently. A comparative analysis of state court cases, moreover, would be particularly inappropriate here. None of the cases on which Creech or the dissent relies influenced either his trial judge or the Idaho Supreme Court, which upheld his death sentence before it had applied *Osborn* to any other set of facts, and thereafter has repeatedly

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reaffirmed its *Osborn* interpretation. Pp. 12–14.

2. The Court decides only the foregoing question. The Court of Appeals had no occasion to reach the *Jeffers* issue—whether the state courts' application of the ``utter disregard'' circumstance to the facts of this case violated the Constitution. See 497 U. S., at 783. Because Creech is already entitled to resentencing in state court on the basis of another of the Court of Appeals' rulings, the posture of the case makes it unnecessary for this Court to reach his remaining arguments. Pp. 14–15.

947 F. 2d 873, reversed in part and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which STEVENS, J., joined.