

United States  
Supreme Court Review  
2019-20 Terms

Presented by Paul M. Rashkind

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**Case Summaries**  
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**U.S. SUPREME COURT  
PREVIEW  
REVIEW  
OVERVIEW™**

Criminal Cases Decided During The  
October 2019-20 Terms  
Thru September 24, 2020

Paul M. Rashkind, Esq.

PRELIMINARY PROCEEDINGS





## TRIBAL LANDS

*Oklahoma*

### Sharp [Carpenter] v. Murphy

*Whether the 1866 territorial boundaries of the Creek Nation within the former Indian Territory of eastern Oklahoma constitute an “Indian reservation” today under the Federal Major Crimes Act, 18 USC 1151(a)?*

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**CERT GRANTED**  
**2018 TERM**



## TRIBAL LANDS

*Oklahoma*

### McGirt v. Oklahoma

*Whether the 1866 territorial boundaries of the Creek Nation within the former Indian Territory of eastern Oklahoma constitute an “Indian reservation” today under the Federal Major Crimes Act, 18 USC 1151(a)?*

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**CERT GRANTED  
2019 TERM**





## TRIBAL LANDS

*Oklahoma*

### McGirt v. Oklahoma

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*“On the far end of the Trail of Tears was a promise ...”*





## TRIBAL LANDS

*Oklahoma*

### McGirt v. Oklahoma

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*For purposes of the Federal Major Crimes Act, the land reserved for the Creek Nation during the 19th century in Eastern Oklahoma remains “Indian Country”*







## BILL OF RIGHTS

*Selective Incorporation*



### Ramos v. Louisiana



*Whether Fourteenth Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict?*

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## BILL OF RIGHTS

*Selective Incorporation*

### Ramos v. Louisiana

*The Fourteenth Amendment fully incorporates to state courts the Sixth Amendment guarantee of a unanimous verdict in criminal cases*

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# UNANIMOUS JURY VERDICTS

*Retroactivity*

## Edwards v. Vannoy

*Whether Ramos v. Louisiana is retroactively applicable in cases on federal habeas corpus review?*

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## BILL OF RIGHTS *Mental Capacity Defenses*

### Kahler v. Kansas

*Whether the Eighth and Fourteenth Amendments prohibit a state from abolishing the insanity defense?*

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**CERT GRANTED**





# BILL OF RIGHTS

## *Mental Capacity Defenses*

### Kahler v. Kansas

*Due Process does not prohibit a state from abolishing the insanity defense from the guilt phase of a criminal trial*

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## SEARCH & SEIZURE

*Fourth Amendment Warrant Clause*



### Kansas v. Glover

*Is it reasonable for an officer to make an investigative stop of a vehicle because the owner's license was revoked, without any information to support a suspicion that the owner is the driver?*

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## SEARCH & SEIZURE

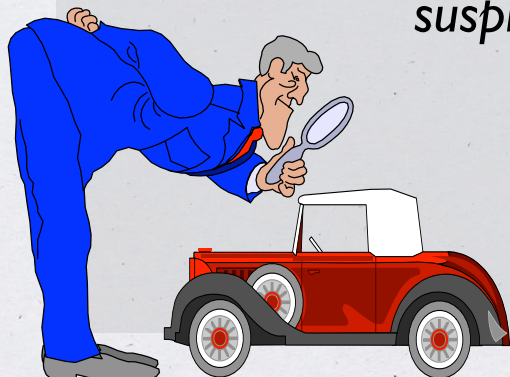
### *Fourth Amendment Warrant Clause*

### Kansas v. Glover

*It is reasonable for an officer to make an investigative stop of a vehicle solely because the owner's license was revoked, without any information to support a suspicion that the owner is the driver.*

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## SEARCH & SEIZURE

*Excessive Force Civil Suit*

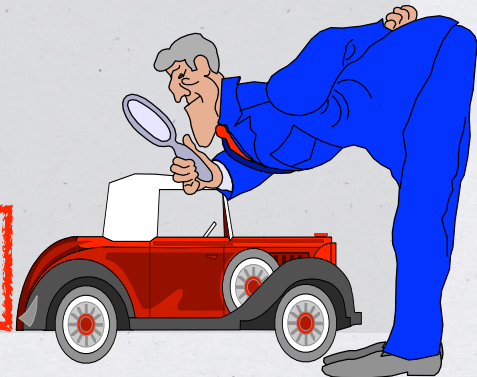
### Torres v. Madrid

*Is an unsuccessful attempt to detain a suspect by the use of physical force a “seizure” within the meaning of the Fourth Amendment?*

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**CERT GRANTED**







## FEDERAL FRAUD

*Bridgewater*

### Kelly v. United States

*Does a public official defraud the government of property by advancing a “public policy reason” for an official decision that is not her subjective “real reason” for making the decision.*



**CERT GRANTED**

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## FEDERAL FRAUD

*Bridgagate*

### Kelly v. United States

*A public official does not defraud the government of property by advancing a “public policy reason” for an official decision that is not her subjective “real reason” for making the decision.*



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## FEDERAL COMPUTER FRAUD

*Law Enforcement Exception?*

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### Van Buren v. United States

*Does a law enforcement officer who is authorized to access computer information violate the federal Computer Fraud and Abuse Act if he does so for an improper purpose?*



**CERT GRANTED**



## ACCA

*“Serious Drug Offenses”*

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### Shular v. United States

*The methodology to determine a “serious drug offense” under ACCA is different from the determination of a “violent felony” — as to drugs the categorical approach does not compare generic offenses.*



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## ACCA

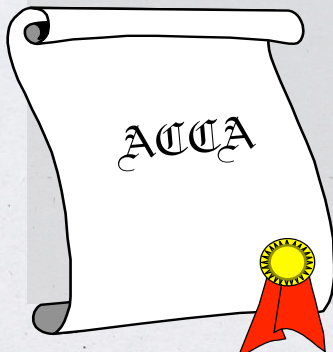
Recklessness

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### Walker v. United States

*Whether a criminal offense that can be committed with a mens rea of recklessness can qualify as a “violent felony” under the Armed Career Criminal Act, 18 U.S.C. § 924(e)?*



**CERT DISMISSED**



## ACCA

Recklessness

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### Borden v. United States

*Whether the “use of force clause” in 924(e)(2)(B)(1) encompasses crimes with a mens rea of recklessness?*



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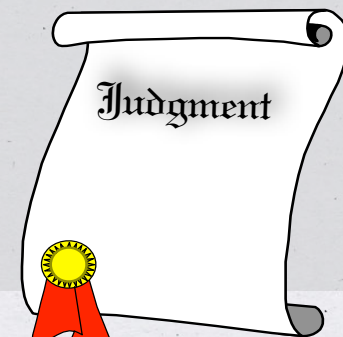
## IMMIGRATION

### *Relief from Removal*

### Pereida v. Barr

*Whether a criminal conviction bars a noncitizen from applying for relief from removal when the record of conviction is merely ambiguous as to whether it corresponds to an offense listed in the INA?*

**CERT GRANTED**





# IMMIGRATION

## Preemption

# Kansas v. Garcia

*IRCA does not preempt States from using information on federal Form I-9 (name, date of birth, and social security number) of any person (citizen or alien) when that same, commonly used information also appears in non-IRCA documents, such as state tax forms, leases, and credit applications*

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Employment Eligibility Verification				USCIS	
Department of Homeland Security				Form I-9	
U.S. Citizenship and Immigration Services				OMB No. 1625-0047	
				Expires 10/31/2022	
<p>► <b>START HERE:</b> Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.</p> <p><b>ANTI-DISCRIMINATION NOTICE:</b> It is illegal to discriminate against work-authorized individuals. Employers <b>CANNOT</b> specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.</p>					
<p><b>Section 1. Employee Information and Attestation</b> (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer)</p>					
Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)
Address (Street Number and Name)		Apt. Number	City or Town	State	ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	Employee's E-mail Address		Employee's Telephone Number	
<p>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</p> <p>I attest, under penalty of perjury, that I am (check one of the following boxes):</p>					

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## APPEALS

*Preserving Unreasonableness Issues*

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### Holguin-Hernandez v. United States

*No need to re-object to substantive unreasonableness after pronouncement of sentence if sentencing hearing argument made clear that sentence was higher than counsel argued was reasonable*





## APPEALS

*Plain Error Review*

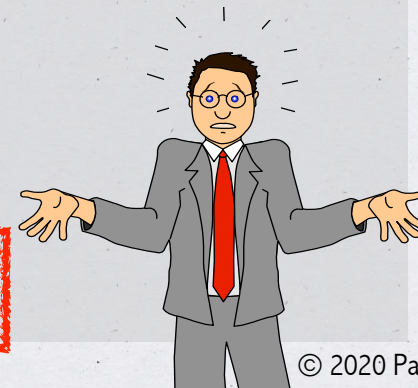
### Davis v. United States

*Rule 52(b) — allowing plain error review of matters not brought to the trial court's attention — means what it says and does not immunize factual errors from appellate review*

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**PER CURIAM**



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## APPEALS

*Role of Federal Courts of Appeals*

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### United States v. Sineneng-Smith

*Whether the federal criminal prohibition against encouraging or inducing illegal immigration for commercial advantage or private financial gain in violation of 8 USC 1324(a)(1)(A)(IV) and (B)(i) is facially unconstitutional under the First Amendment*



**CERT GRANTED**



## APPEALS

*Role of Federal Courts of Appeals*

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### United States v. Sineneng-Smith

*The court of appeals improperly raised and decided an issue not raised by the parties.*







## AEDPA

*Second and Successive Petitions*

### Banister v. Davis

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*A timely Rule 59(e) motion should not be re-characterized as a second or successive habeas petition under Gonzalez v. Crosby, 545 U.S. 524 (2005) — rather, it is “part and parcel” of the first habeas proceeding*

#### Rule 59. New Trial; Altering or Amending a Judgment

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.



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## AEDPA

*Second and Successive Petitions*

### Avery v. United States

*Justice Kavanaugh invites cert petitions to challenge if AEDPA's limitation on second-or-successive applications applies in 2255 proceedings, or in only 2254 proceedings.*



**STATEMENT RE  
CERT DENIAL**





*That's All Folks*



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