

U.S. SUPREME COURT UPDATE

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The SCOTUS Bunch





JUDGE KETANJI BROWN JACKSON

CONFIRMED

TO THE SUPREME COURT

Roadmap

1. Sixth Amendment
2. Statutory Construction/Sentencing
3. Postconviction
4. Tribal Law
5. 1983 and others
6. Immigration
7. Issues to watch





Amendment

Accused
Accusation
Sixth
Public Trial
Confront
Right

Obtaining
Subpoena
Favor

Impartial Jury

Witnesses
Speedy
Criminal Prosecutions
Process

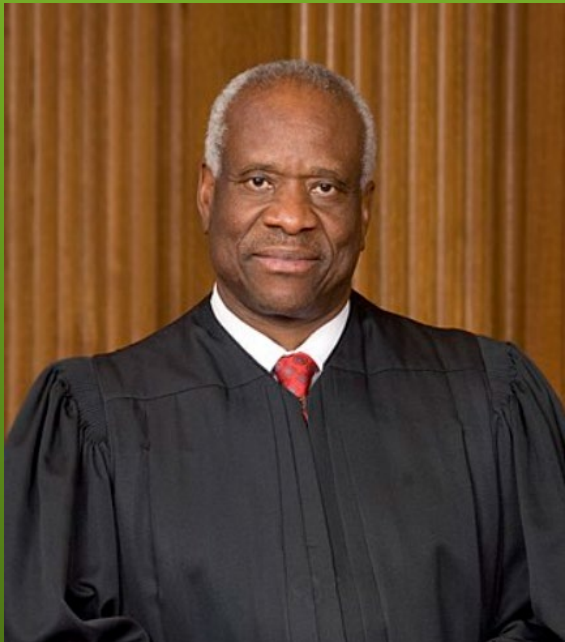
Defense
Counsel Assistance
Informed
Crime

*Hemphill v. New
York*, 122 S. Ct.681
(Jan. 20, 2022)



The Supreme Court, Justice Sotomayor, held that The trial court's admission—over Hemphill's objection—of the plea allocution transcript of an unavailable witness violated Hemphill's Sixth Amendment right to confront the witnesses against him.

U.S. v. Tsarnaev, (Mar. 4, 2022)



1. District Court did not abuse its discretion by declining to include specific media-content question in juror questionnaire
2. Court of appeals cannot use its discretionary supervisory powers, if any, to supplant a district court's broad discretion to manage voir dire by prescribing specific lines of questioning
3. District Court did not abuse its discretion by excluding certain allegedly mitigating evidence at capital sentencing; and
4. section of Federal Death Penalty Act that allowed exclusion of mitigating evidence if its probative value was outweighed by risk of unfair prejudice, confusing the issues, or misleading the jury did not violate 8th Amend.



STATUTORY CONSTRUCTION & SENTENCING

*Wooden v.
United States,*
142 S. Ct. 1063
(Mar. 7, 2022)




Held: Wooden's ten burglary offenses arising from a single criminal episode did not occur on different “occasions” and thus count as only one prior conviction for purposes of ACCA.

*Wooden v.
United States,*
142 S. Ct. 1063
(Mar. 7, 2022)

GVR

Christopher Williams v. United States,
142 S. Ct. 1439 (Apr. 4, 2022) (GVR to
the Eighth Circuit in light of
Wooden).

Issue: Whether sequential drug transactions over a short time frame are “committed on occasions different from one another” for purposes of the ACCA when the same undercover law enforcement officer repeatedly bought personal-use amounts of a controlled substance from a suspect.



Taylor v. US, 495
U.S. 575 (1990)

*Apprendi v. New
Jersey*, 530 U.S.
466 (2000)

Shepard v. US,
544 U.S. 13 (2005)

Justice Thomas' concurrence in part
in *Shepard v. United States*:

Apprendi v. New Jersey, and its
progeny prohibit judges from
“mak[ing] a finding that raises [a
defendant's] sentence beyond the
sentence that could have lawfully
been imposed by reference to facts
found by the jury or admitted by the
defendant.” Yet that is what the
Armed Career Criminal Act, 18 U.S.C.
§ 924(e), permits in this case.

US v. Taylor, No.
20-1459 (Argued
Jan. 6, 2021)



Issue: Whether 18 U.S.C. §
924(c)(3)(A)'s definition of
“crime of violence”
excludes attempted Hobbs
Act robbery, in violation of
18 U.S.C. § 1951(a).

See United States v. Ingram, 947 F.3d 1021
(7th Cir. 2020) (attempted Hobbs Act is
a “crime of violence”)

Concepcion v. US,
No. 20-1650 (Arg.
Jan. 19, 2022)



Issue: whether, when deciding if it should “impose a reduced sentence” on an individual under Section 404(b) of the First Step Act of 2018, a district court must or may consider intervening legal and factual developments.

See U.S. v. Shaw 957 F.3d 734, 741-42 (7th Cir. 2020); *U.S. v. Harris*, 960 F.3d 1103, 1106 (8th Cir. 2020).

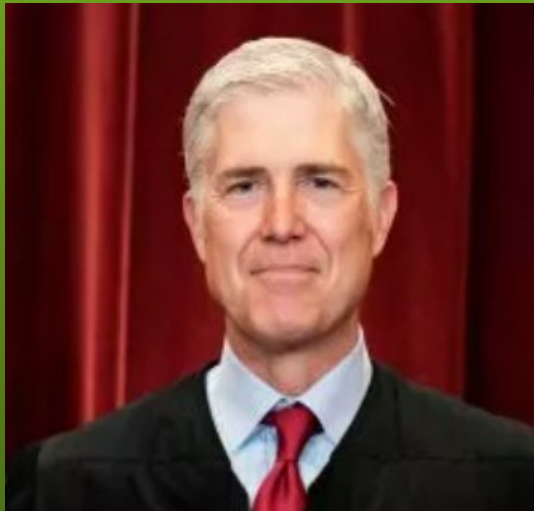
Ruan v. U.S., No.
201410 (Arg. Mar. 1,
2022)



Issue: Whether a physician alleged to have prescribed controlled substances outside the usual course of professional practice may be convicted of unlawful distribution under **21 U.S.C. § 841(a)(1)** without regard to whether, in good faith, he “reasonably believed” or “subjectively intended” that his prescriptions fall within that course of professional practice.

Postconviction

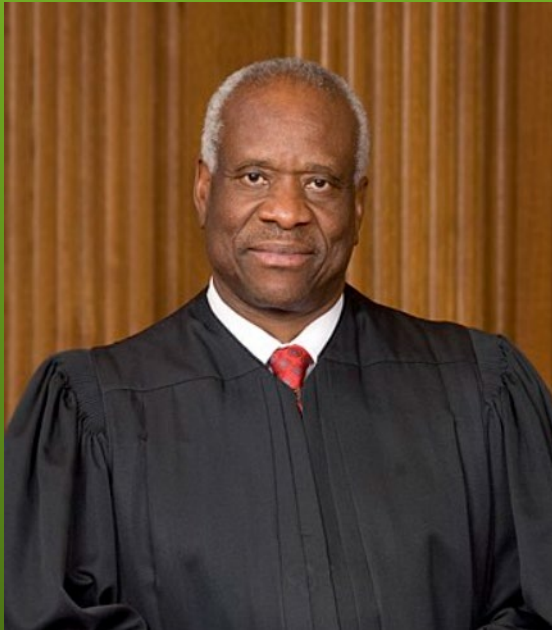
Brown v. Davenport, 142 S. Ct. 1510 (Apr. 21, 2022)



Held: When a state court has ruled on the merits of a state prisoner's claim, a federal court cannot grant habeas relief without applying both the test the Supreme Court outlined in *Brecht v.*

Abrahamson and the one Congress prescribed in the Antiterrorism and Effective Death Penalty Act of 1996.

Shinn v. Ramirez,
No. 20-1009
(May 23, 2022)



Held: Under 28 U.S.C. § 2254(e)(2), a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state court record based on the ineffective assistance of state postconviction counsel.

*Kemp v. U.S., No.
21-5726 (Arg. Apr.
19, 2022)*



Issue: Whether Federal Rule of Civil Procedure 60(b)(1) authorizes relief based on a district court's error of law.

*Shoop v.
Twyford*, No. 21-
511 (Arg. Apr. 26,
2022)



Issue(s): (1) Whether federal courts may use the All Writs Act to order the transportation of state prisoners for reasons not enumerated in **28 U.S.C. § 2241(c)**; and (2) whether, before a court grants an order allowing a habeas petitioner to develop new evidence, it must determine whether the evidence could aid the petitioner in proving his entitlement to habeas relief, and whether the evidence may permissibly be considered by a habeas court.

Nance v. Ward,
No. 21-439 (Arg.
Apr. 20, 2022)



Issues: (1) Whether an inmate's as-applied method-of-execution challenge must be raised in a habeas petition instead of through a 42 U.S.C. § 1983 action if the inmate pleads an alternative method of execution not currently authorized by state law; and (2) whether, if such a challenge must be raised in habeas, it constitutes a successive petition when the challenge would not have been ripe at the time of the inmate's first habeas petition.

Tribal Law

*Denezpi v. U.S.,
No. 20-7622 (Arg.
Feb. 22, 2022)*



Issue: whether the Court of Indian Offenses of Ute Mountain Ute Agency is a federal agency such that Merle Denezpi's conviction in that court barred his subsequent prosecution in a United States district court for a crime arising out of the same incident.

*Oklahoma v.
Castro-Heurta,*
No. 21-429 (Arg.
Apr. 27, 2022)



Issue: whether a state has authority to prosecute non-Indians who commit crimes against Indians in Indian country.

1983 and
miscellaneous

Ramirez v. Collier,
142 S. Ct. 1264
(Mar. 24, 2022)



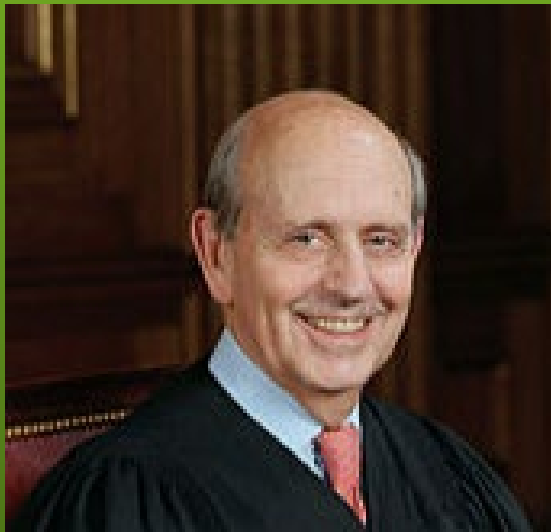
Held: Petitioner John Ramirez is likely to succeed on his claims under the Religious Land Use and Institutionalized Persons Act because Texas' restrictions on religious touch and audible prayer in the execution chamber burden religious exercise and are not the least restrictive means of furthering the state's compelling interests.

FBI v. Fazaga, 142
S. Ct. 1051 (Mar.
4, 2022)



Held: Section 1806 of Foreign Intelligence Surveillance Act establishing procedures to determine lawfulness and admissibility of electronic surveillance conducted under FISA does not displace the state secrets privilege.

US v. Zubaydah,
142 S. Ct. 959
(Mar. 3, 2022)



Held: The Ninth Circuit's judgment that the district court erred in dismissing Zubaydah's discovery request on the basis of the state secrets privilege is reversed, and the case is remanded with instructions to dismiss Zubaydah's current discovery application.

Thompson v. Clark, 142 S. Ct. 1332 (Apr. 4, 2022)



Held: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under §1983 for malicious prosecution, a plaintiff need not show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that his prosecution ended without a conviction.

*Rivas-Villegas v.
Cortezluna*, 142 S.
Ct. 4 (Oct. 18,
2021) (per
curiam)

Held: Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U.S.C. § 1983; the U.S. Court of Appeals for the 9th Circuit's holding that circuit precedent "put him on notice that his conduct constituted excessive force" is reversed.

*City of
Tahlequah,
Oklahoma v.
Bond, 142 S. Ct. 9
(Oct. 18, 2021)
(per curiam)*

Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under **42 U.S.C. § 1983**; the U.S. Court of Appeals for the 10th Circuit's contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances

Vega v. Tekoh,
No. 21-499 (Apr.
20, 2022)



Issue: whether a plaintiff may state a claim for relief against a law enforcement officer under 42 U.S.C. § 1983 based simply on an officer's failure to provide the warnings prescribed in *Miranda v. Arizona*.

IMMIGRATION



We have a duty

Trial counsel's failure to correctly advise her client about immigration consequences of a criminal conviction may be considered ineffective assistance of counsel under the Sixth Amendment. *See Padilla v. Kentucky*, 559 U.S. 356 (2010)

Patel v. Garland,
No. 20-979 (May
16, 2022)



Held: Federal courts lack jurisdiction to review facts found as part of any judgment relating to the granting of discretionary relief in immigration proceedings enumerated under 8 U.S.C. § 1252(a)(2).

*Johnson v.
Artega-Martinez*,
No. 20-322
(Argued Jan. 11,
2022)




Issue:. Whether an alien who is detained under 8 U.S.C. § 1231 is entitled by statute, after six months of detention, to a bond hearing at which the government must prove to an immigration judge that the alien is a flight risk or a danger to the community; and (2) whether, under 8 U.S.C. § 1252(f)(1), the courts below had jurisdiction to grant classwide injunctive relief.

*Garland v.
Gonzalez*, No.
20-322 (Argued
Jan. 11, 2022)



Issue:. Whether an alien who is detained under 8 U.S.C. § 1231 is entitled by statute, after six months of detention, to a bond hearing at which the government must prove to an immigration judge that the alien is a flight risk or a danger to the community; and (2) whether, under 8 U.S.C. § 1252(f)(1), the courts below had jurisdiction to grant classwide injunctive relief.



Heartland Alliance's National Immigrant Justice Center (NIJC)

defenders @ heartlandalliance.org

or

312-660-1610

Issues to Watch October 2022 Term






Jones v. Hendrix, No.
21-857

(May 16, 2022) (cert.
granted) (October
term 2022)

Opinion below:

Deangelo v. Hendrix, 8
F.4th 683 (8th Cir.
2021)

Issue: Whether federal inmates who did not — because established circuit precedent stood firmly against them — challenge their convictions on the ground that the statute of conviction did not criminalize their activity may apply for habeas relief under 28 U.S.C § 2241 after the Supreme Court later makes clear in a retroactively applicable decision that the circuit precedent was wrong and that they are legally innocent of the crime of conviction.



Cruz v. Arizona, No.
21-846
(Mar. 28, 2022)
(cert. granted)
(October term
2022)

Issue: Whether the Arizona Supreme Court's holding that Arizona Rule of Criminal Procedure 32.1 (g) precluded post-conviction relief is an adequate and independent state-law ground for the judgment.

Acquitted Conduct

Asaro v. United States, 140 S. Ct. 1104 (Feb. 24, 2020) (cert. denied)

Whether the Fifth and Sixth Amendments prohibit a federal court from basing a criminal defendant's sentence on conduct underlying a charge of which the defendant was acquitted by a jury

Questions?





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