Critical Cases from the Supreme Court of the United States
for the 2020-2021 Term
https://www.scotusblog.com/

Affordable Care Act

Texas v. California
California v. Texas
Argued November 10, 2020
Decided June 17, 2021

Holding: Plaintiffs lack standing to challenge the Patient Protection and Affordable Care Act's minimum essential coverage provision.
Judgment: **Reversed and remanded**, 7-2, in an opinion by Justice Breyer on June 17, 2021. Justice Thomas filed a concurring opinion. Justice Alito filed a dissenting opinion, in which Justice Gorsuch joined.

Van Buren v. United States
Argued November 30, 2020
Decided June 3, 2021

Holding: An individual "exceeds authorized access" under the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030(a)(2), when he accesses a computer with authorization but then obtains information located in particular areas of the computer — such as files, folders or databases — that are off-limits to him.
Judgment: **Reversed and remanded**, 6-3, in an opinion by Justice Barrett on June 3, 2021. Justice Thomas filed a dissenting opinion, in which Chief Justice Roberts and Justice Alito joined.

The question in *Van Buren* was whether users violate that statute by accessing information for improper purposes or instead whether users violate the statute only if they access the information they were not entitled to obtain. For example, in this case, a Georgia police officer named Nathan Van Buren took a bribe to run a license-plate check. He was entitled to run license-plate checks, but not for illicit purposes. The lower courts upheld a conviction under the CFAA (he could not check license-plate records for private purposes). The Supreme Court disagreed, adopting the narrower reading of the CFAA, under which it is a crime only if users access the information they were not entitled to obtain.

Barrett wrote that the key to understanding the statute is that the user exceeds authorized access only by obtaining information "that the accesser is not entitled ***so*** to obtain" (my emphasis). She wholeheartedly accepts Van Buren's view, quoting Black's Law Dictionary, among others, for the proposition that the word "so" is "a term of reference that recalls 'the same manner as has been stated.'" Under that reading, the critical question under the statute is "whether one has the right, in 'the same manner as has been stated,' to obtain the relevant information." Barrett finds the answer to that question in the immediately preceding phrase in the statute: "the only manner of obtaining information already stated in the definitional provision is 'via a computer [one] is otherwise authorized to access.'" In Barrett's words, what the statute prohibits is obtaining

"information one is not allowed to obtain *by using a computer that he is authorized to access*" (Barrett's emphasis).

Barrett gives content to "so" by pointing to a hypothetical case in which a person is entitled to obtain hard copies of files but is not entitled to get them from the computer. In that case, the crime would be obtaining from computer information that the user was not entitled "so to obtain." It would not be a crime to obtain the files by walking down the hall to them. But it would be a crime, under Barrett's reading, to use a computer to get them. Barrett emphasizes that her reading "underscores that one kind of entitlement to information counts: the right to access the information by using a computer."

Antitrust

National Collegiate Athletic Association v. Alston
American Athletic Conference v. Alston
Argued March 31, 2021
Decided June 21, 2021

Holding: The district court's injunction of specific NCAA rules limiting the education-related benefits schools may make available to student-athletes is consistent with established antitrust principles.
Judgment: **Affirmed**, 9-0, in an opinion by Justice Gorsuch on June 21, 2021. Justice Kavanaugh filed a concurring opinion.

In **an opinion by Justice Neil Gorsuch**, the justices unanimously ruled that the National Collegiate Athletic Association cannot prohibit its member schools from providing athletes with certain forms of education-related benefits. Examples are paid post-graduate internships, scholarships for graduate school, or free laptops or musical instruments. Although the decision did not involve cash payments to college athletes, it paves the way for future Supreme Court rulings on whether college athletes should earn money for playing sports either directly, from their universities, or through lucrative endorsement deals.

Article III Standing

TransUnion LLC v. Ramirez
Argued March 30, 2021
Decided June 25, 2021

Holding: Only a plaintiff concretely harmed by a defendant's violation of the Fair Credit Reporting Act has Article III standing to seek damages against that private defendant in federal court.
Judgment: **Reversed and remanded**, 5-4, in an opinion by Justice Kavanaugh. Justice Thomas filed a dissenting opinion, in which Justices Breyer, Sotomayor, and Kagan joined. Justice Kagan filed a dissenting opinion, in which Justices Breyer and Sotomayor joined.

The ruling in ***TransUnion v. Ramirez*** grew out of a dispute that arose when Sergio Ramirez attempted to buy a car. The car dealership ran a credit check, which wrongly suggested that

Ramirez was on a list of suspected terrorists with whom U.S. companies are barred from doing business. When Ramirez later followed up with TransUnion, which had provided the credit report, TransUnion sent Ramirez two mailings once again indicating that his name was a "potential match" for two names on the terrorist watch list. Ramirez contended that those mailings did not comply with the Fair Credit Reporting Act.

Ramirez sued TransUnion in federal court on behalf of approximately 8,000 other consumers who had received a similar set of mailings over six months in 2011. A jury sided with the consumers and ordered TransUnion to pay more than $60 million in damages. The Court of Appeals reduced the verdict to $40 million. TransUnion argued that the case should not have been allowed to go forward as a class action because there was no guarantee that each class member had suffered the kind of injury required by the Constitution to be able to sue. Still, the lower courts rejected that argument, and the Supreme Court agreed to hear the case.
Writing for the majority, Justice Brett Kavanaugh emphasized that the Constitution requires plaintiffs suing in federal court to have a "personal stake" in the case. To demonstrate such a stake, he explained, plaintiffs must show an injury "that the defendant caused and the court can remedy." Such a requirement guarantees that a court only deals with "a real controversy with real impact on real persons." Different injuries can qualify as the kind of concrete harm needed for "standing" – that is, the legal right to sue. Physical and financial injuries are the most common and obvious ones. Still, intangible injuries, such as an injury to a plaintiff's reputation or the disclosure of private information, can also qualify, Kavanaugh observed. "Only those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that private defendant over that violation in federal court."

The court concluded that no plaintiffs other than Ramirez had a right to sue to recover damages for two different claims. This determination stems from their contention that TransUnion's mailings were formatted incorrectly and therefore violated federal law. None of the plaintiffs other than Ramirez, Kavanaugh emphasized, had shown that they had even opened the mailings, much less harmed by them.

The court sent the case back to the lower court for new proceedings in light of its ruling. Among other things, Kavanaugh suggested, the lower court may consider whether it is appropriate for the case to go forward as a class action "in light of our conclusion about standing."

Criminal Law

Collateral Review

United States v. Gary
Greer v. United States
Argued April 20, 2021
Decided June 14, 2021

Holding: In felon-in-possession cases under ***18 U.S.C. § 922(g)(1)***, an error under ***Rehaif v. United States*** is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not know he was a felon.

Judgment: **Reversed**, 8-1, in an opinion by Justice Kavanaugh on June 14, 2021. Justice Sotomayor filed an opinion concurring in part and dissenting in part.

In *Rehaif,* the Court held for the first time that, under ***18 U.S.C. § 922(g),*** the federal statute barring people with prior felony convictions from possessing firearms, the government must prove that the defendant knew he was a felon at the time he possessed a gun.

Greer and *Gary* involved the standard for appellate courts to order new trials or plea hearings for people convicted under Section 922(g) who initially failed to invoke *Rehaif*. That group of people includes defendants who were convicted before *Rehaif* was decided but still had appeals pending at the time of the decision. Federal felon-in-possession defendants who fail in the trial court to assert their rights under *Rehaif v. United States* face an "uphill climb" to get a new trial or plea proceeding.

Kavanaugh's opinion clarifies that when a defendant has failed to assert *Rehaif* at his trial or plea hearing, the burden is on him to show the appellate court that there is a "substantial possibility" that he could produce enough evidence on remand. On remand, he must show that he did *not* know of his felon status, such that he would not be convicted again. "The bottom line of these two cases is straightforward. In felon-in-possession cases, a *Rehaif* error is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not; in fact, know he was a felon."

Terry v. United States
Argued May 4, 2021
Decided June 14, 2021

Holding: A sentence reduction under the First Step Act is available only if an offender's prior conviction of a crack cocaine offense triggered a mandatory minimum sentence.
Judgment: **Affirmed**, 9-0, in an opinion by ***Justice Thomas*** on June 14, 2021. Justice Sotomayor filed an opinion concurring in part and concurring in the judgment.

In 2008, Tarahrick Terry, then in his early 20s, was arrested in Florida for carrying just under 4 grams of crack cocaine. He was charged under ***21 U.S.C. § 841(a)(1),*** which outlaws possession with intent to distribute crack cocaine, and sentenced under 21 U.S.C. § 841(b)(1)(C), a provision of the 1986 Anti-Drug Abuse Act that created a 100:1 disparity in the punishment of crack cocaine compared to powder cocaine. Section 841(b) sets forth three tiers of penalties, with Tier 3 offenses typically involving smaller amounts of drugs than Tiers 1 or 2. Terry was sentenced under Tier 3. Further, because he had two prior minor convictions as a teenager, he was punished as a "career criminal" and sentenced to just over 15 1/2 years imprisonment under the U.S. Sentencing Guidelines' career offender provisions.

In a unanimous decision, the Court held that The First Step Act did not apply retroactively to people sentenced for a "covered offense," which is defined as any offense whose statutory penalties were "modified by section 2 or 3 of the Fair Sentencing Act of 2010." The explicit language of the Fair Sentencing Act increased the amount of crack punished as a Tier 1 offense from 50 grams and above to 280 grams and above and changed Tier 2 offenses from between 5 and 50 grams to between 28 and 280 grams. Though a natural reading would be that Tier 3 sentences, which punished "an unspecified amount of crack," would now be those between 0 and

28 grams (rather than between 0 and 5 grams before the Fair Sentencing Act), the language of the Tier 3 provision was left unchanged

The court reasoned that the sentencing-reform statutes did not modify the language under which Terry was sentenced. Although the change to levels above Tier 3 offenses would naturally invite one to think that the punishment of lower amounts of drugs should also be read differently, if the low-level provisions were not changed, they were not "modified."

Further, the court held that even though Terry was prosecuted for violating the federal law for intent to distribute crack cocaine, he was sentenced under the "career criminal" penalty regime in the Sentencing Guidelines, which remained untouched by the Fair Sentencing Act and the subsequent First Step Act.

The court ultimately held that the only question proposed by the First Step Act was whether Terry's sentence was a covered offense, defined by violations modified by the Fair Sentencing Act. Since there was no penalty change for the minor offenders in Tier 3, they are simply not covered.

Collateral Review, Death Penalty, Federalism

Shinn v. Kayer
Not Argued
Decided December 14, 2020

Holding: A decision by the U.S. Court of Appeals for the 9th Circuit granting post-conviction relief to a man on Arizona's death row for his claim of ineffective assistance of counsel violated the Antiterrorism and Effective Death Penalty Act of 1996.
Judgment: **Vacated and remanded** in a per curiam opinion on December 14, 2020. Justices Breyer, Sotomayor, and Kagan dissent.

George Kayer was convicted and sentenced to death for the 1994 shooting death of Delbert Haas. The U.S. Court of Appeals for the 9th Circuit threw out Kayer's death sentence, holding that his lawyers' investigation and presentation of mitigating evidence at the sentencing phase of his trial violated his Sixth Amendment right to have an effective lawyer. The state argued that under the federal laws governing post-conviction proceedings, the 9th Circuit should have been more deferential to the state court's ruling rejecting Kayer's claim for post-conviction relief.

By a vote of 6-3, the Supreme Court agreed with Arizona. In an unsigned summary opinion, the justices explained that, as an initial matter, the standard for showing that a lawyer was constitutionally ineffective in a death penalty case is a stringent one. But when a state inmate is seeking federal post-conviction relief, they continued, an additional burden is layered on top of that already high bar: The inmate can prevail only if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." It is not, in other words, enough that the state court's decision was wrong.

United States v. Palomar-Santiago
Argued April 27, 2021
Decided May 24, 2021

Holding: Each of **8 U.S.C. § 1326(d)**'s statutory requirements for bringing a collateral attack on a prior deportation order is mandatory.
Judgment: **Reversed and remanded**, 9-0, in an opinion by Justice Sotomayor on May 24, 2021.

The Supreme Court **unanimously ruled** against a non-U.S. citizen contesting his indictment for criminal re-entry into the country.

Refugio Palomar-Santiago, a Mexican citizen, became a lawful permanent resident in 1990. Eight years later, an immigration judge found that his California conviction for driving under the influence was an aggravated felony under the federal immigration laws. Palomar-Santiago waived his right to appeal and was deported. But six years after his deportation, the Supreme Court ruled in ***Leocal v. Ashcroft*** that DUI convictions like Palomar-Santiago's are not aggravated felonies. As Justice Sonia Sotomayor's opinion acknowledged, "Palomar-Santiago's removal order thus never should have issued."

In 2018, Palomar-Santiago was found living in the United States, and he was indicted for illegally re-entering the country after removal. Palomar-Santiago sought to dismiss the indictment on the ground that his original removal order was invalid under *Leocal*. The federal statute criminalizing re-entry requires a defendant who wants to bring a collateral attack on his underlying removal order to show that three conditions have been met: (1) He exhausted any administrative remedies "that may have been available"; (2) he was deprived of "the opportunity for judicial review"; and (3) the removal order was fundamentally unfair. Because the U.S. Court of Appeals for the 9th Circuit had ruled that defendants like Palomar-Santiago, whose removal orders lacked a legal basis, did not have to satisfy the first two conditions, the district court dismissed the indictment, and the 9th Circuit affirmed. In an eight-page opinion by Sotomayor, the Supreme Court disagreed. The court anchored its decision in the statutory text, finding that all three conditions are mandatory.

Custody

Alaska v. Wright
Not Argued
Decided April 26, 2021

Holding: The requirement under **28 U.S.C. § 2254(a)** that a habeas petitioner be "in custody pursuant to the judgment of a State court" is not met if the state judgment is simply a necessary predicate to a federal conviction.
Judgment: **Vacated and remanded** in a per curiam opinion on April 26, 2021.

In ***Alaska v. Wright***, the justices summarily reversed a ruling by the U.S. Court of Appeals for the 9th Circuit that allowed an inmate's federal post-conviction challenge to his state conviction even after completing his state sentence. The court of appeals reasoned that because the inmate was in custody for federal convictions that were based on his state convictions, specifically, a failure to register after being convicted in state court of being a sex offender, could continue to challenge his Alaska state convictions even if he was not in custody for them. Alaska appealed that decision to the Supreme Court.

Explaining that the 9th Circuit "clearly erred," the Supreme Court reversed, in an unsigned three-page decision. Federal law allows federal courts to review a request for post-conviction relief

only from someone who is "in custody pursuant to the judgment of a State court," the justices explained. In 1989, the court ruled that an inmate seeking post-conviction relief is not "in custody" for a conviction once the sentence for that conviction has expired. The fact that Wright's federal conviction rested on his state conviction did not mean that he was "in custody pursuant to the judgment of a State court."

Death Penalty

Mays v. Hines
Not Argued
Decided March 29, 2021

Holding: The U.S. Court of Appeals for the 6th Circuit erred in revisiting on federal habeas review the decision of a Tennessee court supported by ample evidence that did not exceed the possibility of fair-minded disagreement supporting that court's conclusion.
Judgment: **Reversed** in a per curiam opinion on March 29, 2021. Justice Sotomayor dissents.

In a capital case, the justices reversed a ruling by the 6th Circuit that granted a new trial to **Anthony Hines**, who is on death row in Tennessee for the 1985 murder of Katherine Jenkins. The 6th Circuit threw out Hines' conviction and death sentence last year, reasoning that Hines should prevail on his claims that his original trial lawyer was so bad that his constitutional rights were violated.

In an unsigned opinion, the justices explained that the 6th Circuit's decision "disregarded the overwhelming evidence of guilt that supported the contrary conclusion of a Tennessee court." And in so doing, the justices continued, the court of appeals "plainly violated Congress' prohibition on disturbing state-court judgments on federal habeas review absent an error that lies beyond any possibility for fair-minded disagreement."

Dunn v. Reeves
Not Argued
Decided July 2, 2021

Holding: The U.S. Court of Appeals for the 11th Circuit erred in characterizing the Alabama court's case-specific analysis as a "categorical rule" that any prisoner will always lose an ineffective-assistance-of-trial-counsel claim if he fails to call and question trial counsel concerning their actions and reasoning; the Alabama court did not violate established federal law when it rejected Reeves' ineffective-assistance-of-trial-counsel claim.
Judgment: **Reversed and remanded** in a per curiam opinion on July 2, 2021. Justice Breyer dissented. Justices Sotomayor filed a dissenting opinion, in which Justice Kagan joined.

Matthew Reeves was sentenced to death for the 1996 murder of Willie Johnson, who had offered to help Reeves when the car in which Reeves and his companions were riding broke down. After the U.S. Court of Appeals for the 11th Circuit ruled that Reeves' trial lawyers should have hired an expert to evaluate him for an intellectual disability and that the jury might not have sentenced him to death if they had, Alabama appealed to the Supreme Court.

In an unsigned **opinion**, the justices reversed. Because the case came to them as part of Reeves' quest for federal post-conviction relief, rather than as a direct appeal of Reeves' state-court conviction, the Supreme Court framed the question before it as whether the Alabama state court violated clearly established federal law when it rejected Reeves' claim that his lawyers should have hired an expert? The Supreme Court reasoned that Reeves had alleged many errors in his lawyers' choices. Still, he didn't provide testimony from those lawyers, so there is no way to know with any certainty why the lawyers made the decisions that they did. Therefore, the Alabama court "reasonably concluded that the incomplete evidentiary record" "doomed Reeves' belated efforts to second-guess his attorneys." The 11th Circuit's ruling in favor of Reeves mischaracterized that decision, the court concluded, so the majority reversed that ruling.

Justice Sonia Sotomayor also dissented, in an opinion joined by Justice Elena Kagan. Arguing that the Alabama court applied exactly the kind of blanket rule that the majority says it did not, Sotomayor complained that Friday's decision "rescues the state court's decision" through "linguistic contortion." "The lengths to which this Court goes to ensure that Reeves remains on death row are," she concluded, "extraordinary."

Eighth Amendment

Taylor v. Riojas
Not Argued
Decided November 2, 2020

Holding: Because any reasonable correctional officer should have realized that Trent Taylor's conditions of confinement offended the Eighth Amendment, the U.S. Court of Appeals for the 5th Circuit erred in granting the officers qualified immunity.
Judgment: **Granted, vacated, and remanded** in a per curiam opinion on November 2, 2020. Justice Alito filed an opinion concurring in the judgment. Justice Thomas dissented. Justice Barrett took no part in the consideration of the decision in this case.

The justices struck down a ruling by the U.S. Court of Appeals for the 5th Circuit that had blocked a Texas inmate's lawsuit against prison officials. The inmate, Trent Taylor, was forced to spend six days naked in cells that contained feces from previous occupants and overflowing sewage. Taylor alleged that prison officials' conduct violated the Eighth Amendment's ban on cruel and unusual punishment. Still, the 5th Circuit, invoking a doctrine known as qualified immunity, ruled that the officials could not be sued because it was not "clearly established" that their conduct violated Taylor's constitutional rights. In April, Taylor went to the Supreme Court, asking the justices to clarify what it means for a constitutional violation to be clearly established.

In an unsigned opinion, the Supreme Court invalidated the 5th Circuit's decision without calling for briefing on the merits or oral argument. The justices acknowledged that qualified immunity protects an official who makes a decision that, "even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted." But in this case, the justices emphasized, "no reasonable correctional officer could have concluded that, under the

extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time."

Lombardo v. City of St. Louis, Missouri
Not Argued
Decided June 28, 2021

Holding: It is unclear in this excessive force case whether the Eighth Circuit incorrectly thought the use of a prone restraint is per se constitutional so long as an individual appears to resist officers' efforts to subdue him, the U.S. Court of Appeals for the 8th Circuit's judgment is vacated, and the case is remanded to allow the lower court in the first instance to employ the careful, context-specific analysis required by this court's excessive force precedent.
Judgment: **Vacated and remanded** in a per curiam opinion on June 28, 2021. Justice Alito filed a dissenting opinion, in which Justices Thomas and Gorsuch joined.

In an unsigned opinion and over the dissents of three justices, the Supreme Court sent the case of a homeless man who died in police custody back to the lower court for another look. The lawsuit at the center of ***Lombardo v. City of St. Louis*** arose from the 2015 death of Nicholas Gilbert, who was arrested on charges that included trespassing and failure to appear in court for a traffic violation. For 15 minutes, six police officers applied pressure to Gilbert while he lay face down on the floor of his cell, with his hands cuffed behind his back and his legs shackled. Gilbert tried to lift his body to breathe and pleaded with the officers to stop, saying, "It hurts." Gilbert was taken to a hospital, where he was pronounced dead.

Gilbert's parents sued the city and the officers, alleging that the officers used excessive force against Gilbert in violation of his constitutional rights. The U.S. Court of Appeals for the 8th Circuit dismissed the claims, holding that no reasonable jury could find that officers had used excessive force and therefore the officers could not be held liable. In the Supreme Court, the parents argued that the 8th Circuit's ruling had "already been invoked by one officer charged by state prosecutors" in the death of George Floyd. They argued that the appellate court's ruling and could "also hamper any attempt" by the U.S. Department of Justice "to prosecute the officers responsible for Floyd's death."

After rescheduling the case 13 times and then considering the case at several conferences, the court issued a four-page decision. The court emphasized that the question of whether police officers have used excessive force "requires careful attention to the facts and circumstances of each particular case," including factors such as "the relationship between the need for the use of force and the amount of force used" and "the threat reasonably perceived by the officer" and "whether the plaintiff was actively resisting."

Fourth Amendment

Caniglia v. Strom
Argued March 24, 2021
Decided May 17, 2021

Holding: Neither the holding nor logic of ***Cady v. Dombrowski*** justifies removing Edward Caniglia's firearms from his home by police officers under a "community caretaking exception" to the Fourth Amendment's warrant requirement.
Judgment: **Vacated and remanded**, 9-0, in an opinion by Justice Thomas on May 17, 2021. Chief Justice Roberts filed a concurring opinion, in which Justice Breyer joined. Justices Alito and Kavanaugh also filed concurring opinions.

During an August 2015 argument with his wife, Edward Caniglia offered her one of his unloaded guns and requested that she put him out of his misery. Instead, she threatened to call 911. After the couple's argument continued, she left the marital home and spent the night at a hotel. When she returned the next day, she enlisted Cranston, Rhode Island's police department, to perform a wellness check on her husband. They did. They also arranged transportation for Edward to obtain a psychiatric evaluation at a local hospital. He agreed to go, but only after officers purportedly agreed not to confiscate his weapons. However, as soon as he left, officers, apparently deceiving his wife, entered the Caniglia home and seized Caniglia's handguns and ammunition. Caniglia sued, alleging that the officers violated his Fourth Amendment rights. The U.S. Court of Appeals for the 1st Circuit sided with the officers by relying on *Cady*, a 1973 decision that upheld the warrantless "caretaking" search of a car that had been in an accident.

The Court held that the lower court's interpretation of the "community caretaking" exception into the home defied the logic and holding of *Cady*, as well as violated the Fourth Amendment's warrant requirement. With the court's unanimity in *Caniglia*, the home remains the most sacred space under the Fourth Amendment; its sanctity literally houses its privilege. Sans warrant, exigency or consent, governmental search and seizure within it is unconstitutional.

Hot Pursuit

Lange v. California
Argued February 4, 2021
Decided June 23, 2021

Holding: Under the Fourth Amendment, the pursuit of a fleeing misdemeanor suspect does not always or categorically qualify as an exigent circumstance justifying a warrantless entry into a home.
Judgment: **Vacated and remanded**, 9-0, in an opinion by Justice Kagan on June 23, 2021. Justice Thomas joined the opinion as to all but Part II–A and filed an opinion concurring in part and concurring in the judgment, in which Justice Kavanaugh joined as to Part II. Justice Kavanaugh filed a concurring opinion. Chief Justice Roberts filed an opinion concurring in the judgment, in which Justice Alito joined.

The Supreme Court ruled that when police are pursuing someone for a misdemeanor, that pursuit does not automatically create the kind of emergency that allows the officer to follow the suspect into a home without a warrant. The court acknowledged that many cases would involve such

emergencies. Still, that determination, Justice Elena Kagan stressed in her **opinion for the court**, will depend on the facts of each case.

Arthur Lange is a California man convicted of driving under the influence of alcohol. In 2016, Lange was returning to his home in Sonoma when a police officer began to follow Lange's car. Aaron Weikert later testified that he wanted to stop Lange because he was "playing music very loudly" and honked his horn several times even though there weren't any cars in front of him. Shortly before Lange pulled into his driveway, Weikert turned on his overhead lights. But Lange – who later said that he had not seen Weikert – continued into his garage and began to close the door. Weikert, who had quickly parked in the driveway, followed Lange into the garage. Once there, Weikert said, he smelled alcohol. Lange was taken to a hospital, where testing determined his blood-alcohol level to be 0.245%, more than three times the legal limit.

Lange contested his conviction, arguing that Weikert violated the Fourth Amendment when entering the garage without a warrant. But a California appeals court rejected that argument. It ruled that Weikert had probable cause to arrest Lange when he pulled into the driveway and then entered the garage after Weikert turned on his lights. Therefore, Weikert's "hot pursuit" of Lange justified his entry into Lange's garage, even without a warrant.

Kagan acknowledged that when a suspect is fleeing, police officers may often need to act quickly, for example, to avoid the destruction of evidence or to make sure that the suspect does not flee again. Here, there is no reason to believe that police need to act quickly, without a warrant, in every case. Kagan concluded that when the officer has time to get a warrant, he should. The Court vacated the state court's decision and sent the case back for another look in light of its opinion.

Jurisdiction

United States v. Cooley
Argued March 23, 2021
Decided June 1, 2021

Holding: A tribal police officer has authority to detain temporarily and to search a non-Native American traveling on a public right-of-way running through a reservation for potential violations of state or federal law.
Judgment: **Vacated and remanded**, 9-0, in an opinion by Justice Breyer on June 1, 2021. Justice Alito filed a concurring opinion.

The defendant in the case, Joshua James Cooley, was arrested after a tribal police officer noticed his truck idling on the side of a highway that runs through the Crow Indian Reservation in Montana. While questioning Cooley to figure out if he needed any help, the officer suspected Cooley may have drugs and then suspected he might resort to violence, leading the officer to draw his weapon, detain Cooley, and search the vehicle for weapons. The officer found drugs and guns in the car, leading to a federal drug and firearms prosecution.

Cooley argued that the evidence was illegally obtained because the officer was a tribal officer, and therefore lacked the power to detain and search Cooley because Cooley is a non-Indian. The defense suggested that the officer should have assessed Cooley's Indian status and then let him go when it was clear that he was a non-Indian. Cooley could only be detained if the officer

actively witnessed him committing a crime, a framework the United States' prosecuting jurisdiction argued was unworkable and unsafe for officers and tribal communities.

The Court **held** that tribal governments and thus their police officers retain the power to stop temporarily, and if necessary, search non-Indians traveling on public rights-of-way (highways) through reservations for suspected violations of federal or state laws. Justice Stephen Breyer authored the unanimous opinion. The decision represents an important affirmation of tribal inherent sovereign power by the new court and the first time the court has ever found that a tribe's interest in addressing a threat to its political integrity, economic security, health, or welfare was strong enough for the tribe to exert government authority of any kind over a non-Indian.

Breyer's opinion begins by embracing the court's long history of describing and upholding tribal government powers as "retained inherent sovereign authority."

Juvenile Sentencing

Jones v. Mississippi
Argued November 3, 2020
Decided April 22, 2021

Holding: The Eighth Amendment does not require a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.
Judgment: **Affirmed**, 6-3, in an opinion by Justice Kavanaugh on April 22, 2021. Justice Thomas filed an opinion concurring in the judgment. Justice Sotomayor filed a dissenting opinion in which Justices Breyer and Kagan joined.

The Supreme Court declined to impose new restrictions on the ability of states to sentence juveniles to life without parole, rejecting a challenge from a Mississippi man, Brett Jones, who was convicted of the 2004 stabbing death of his grandfather, a crime committed when Jones was 15. Jones had argued that two recent Supreme Court decisions on mandatory life-without-parole decisions for juveniles. The court's 2012 decision in ***Miller v. Alabama*** and its 2016 ruling in ***Montgomery v. Louisiana*** required the judge who sentenced him to find that he was incapable of rehabilitation before imposing life without parole. By a vote of 6-3 in ***Jones v. Mississippi***, the justices disagreed, holding that it was enough that the judge considered his youth in sentencing him.

In an ***opinion*** by Justice Brett Kavanaugh, the majority explained that the Supreme Court's decisions in *Miller* and *Montgomery* "squarely rejected" any requirement that a judge or jury imposing a sentence make a separate finding that the defendant cannot be rehabilitated. Kavanaugh wrote that all that *Miller* required was that "a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence." Nothing in *Montgomery*, Kavanaugh continued, created any additional requirements beyond those outlined in *Miller*.

Sentence Enhancement

Borden v. United States
Argued November 3, 2020
Decided June 10, 2021

Holding: The decision of the U.S. Court of Appeals for the 6th Circuit — holding that an offense with a mental state of recklessness may qualify as a "violent felony" under the Armed Career Criminal Act's elements clause, ***18 U.S.C. § 924(e)(2)(B)(i)*** — is reversed, and the case is remanded.
Judgment: **Reversed and remanded**, Justice Kagan announced the court's judgment and delivered an opinion, in which Justices Breyer, Sotomayor, and Gorsuch joined. Justice Thomas filed an opinion concurring in the judgment. Justice Kavanaugh filed a dissenting opinion, in which Chief Justice Roberts and Justices Alito and Barrett joined.

Charles Borden Jr. pleaded guilty to violating a federal law barring people convicted of a felony from possessing a firearm. The government sought an enhancement under the ACCA; it claimed that three of Borden's prior felony convictions were violent felonies. Borden objected. He asserted that one of the felonies the government cited included recklessness and, therefore, was not a violent felony. The ACCA, in Borden's view, required a higher culpable state of mind, or *mens rea*, than recklessness. The district court ruled for the government, and the U.S. Court of Appeals for the 6th Circuit agreed.

Five justices agreed that a recklessness crime does not count as a "violent felony" under the ACCA, but they came to that decision using different reasoning. Justice Elena Kagan wrote a four-justice plurality opinion, joined by Justices Stephen Breyer, Sonia Sotomayor, and Neil Gorsuch. Justice Clarence Thomas wrote a solo opinion concurring in the judgment only. Justice Brett Kavanaugh wrote a dissenting opinion that Chief Justice John Roberts and Justices Samuel Alito and Amy Coney Barrett joined.

Writing for the plurality, Kagan defined the four mental states relevant to the elements clause analysis in the order of their decreasing culpability. A *mens rea* of purpose equates to a consciously desirable outcome. To show knowing conduct requires proof that the person was aware a particular result would occur because of their action. Recklessness means that a person consciously disregarded a substantial and unjustifiable risk in gross deviation from norms. Lastly, negligent conduct occurs when a person should have been, but was not, aware of a substantial and unjustifiable risk in gross deviation of accepted standards. Under the ACCA, a violent felony is a felony that "has as an element the use, attempted use, or threatened use of physical force against the person of another." Kagan explained that the language "against another" combined with the phrase "use of force" requires an act directed at another person. The two phrases together impose a higher degree of conduct than recklessness. Accordingly, reckless behavior does not fit the targeted conduct necessary to warrant a sentencing enhancement under the ACCA.

Kagan emphasized the context and purpose of the ACCA's elements clause. In enacting the law, Congress aimed to punish those who committed violent crimes and posed a danger to the public. The ACCA, Kagan posited, does not consider all crimes a person may commit as violent felonies. To find otherwise would result in imposing mandatory minimum sentences for conduct that was less dangerous than Congress sought to punish. Kagan warned that the court should not

define violent felonies broader than Congress intended, which would result if the court incorporated recklessness offenses into the elements clause.

Seizure

Torres v. Madrid
Argued October 14, 2020
Opinion March 25, 2021

Holding: The application of physical force to a person's body with the intent to restrain is a seizure even if the person does not submit and is not subdued.
Judgment: **Vacated and remanded**, 5-3, in an opinion by Chief Justice Roberts on March 25, 2021. Justice Gorsuch filed a dissenting opinion, in which Justices Thomas and Alito joined. Justice Barrett took no part in the consideration or decision of this case.

The court's **ruling** in ***Torres v. Madrid*** preserves a broad understanding of the term "seizure" and has important implications for regulating the use of force by police. The case concerned an attempt by two New Mexico police officers to stop a car driven by Roxanne Torres. Trying to execute an arrest warrant for another person, the officers approached Torres and her parked vehicle. When they attempted to speak with her, Torres began driving away. Claiming to fear for their safety, the officers shot at the car, injuring Torres, who drove off. The question the justices resolved on Thursday was whether this *unsuccessful* effort to stop Torres was a "seizure." The officers claimed that people are seized only when they are stopped, while Torres kept going. The U.S. Court of Appeals for the 10th Circuit agreed, dismissing Torres' civil rights claim against the officers for violating her Fourth Amendment rights.

In a 5-3 opinion written by Chief Justice John Roberts, the majority reversed the U.S. Court of Appeals for the Tenth Circuit, concluding that the officers seized Torres even though she subsequently fled. Relying on the 1991 case ***California v. Hodari D.***, the court explained that "[t]he word 'seizure' readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful."

Roberts writes that "the officers seized Torres *for the instant* that the bullets struck her." (Emphasis added.) Quoting Justice Antonin Scalia in *Hodari D.*, the majority explains that a seizure "is a single act, not a continuous fact." Thus, at the time the Constitution was adopted, "as now, an ordinary user of the English language could remark: 'She seized the purse-snatcher, but he broke out of her grasp.

Unanimous Jury Verdict

Edwards v. Vannoy
Argued December 2, 2020
Decided May 17, 2021

Holding: The jury-unanimity rule announced in ***Ramos v. Louisiana*** does not apply retroactively on federal collateral review.
Judgment: **Affirmed**, 6-3, in an opinion by Justice Kavanaugh on May 17, 2021. Justice Thomas filed a concurring opinion, in which Justice Gorsuch joined. Justice Gorsuch filed a concurring opinion, in which Justice Thomas joined. Justice Kagan filed a dissenting opinion, in which Justices Breyer and Sotomayor joined.

The Supreme Court **ruled by a vote of 6-3** that inmates whose convictions became final before last year's decision in ***Ramos v. Louisiana*** cannot take advantage of the decision federal collateral review. *Ramos* held that the Constitution's Sixth Amendment establishes a right to a unanimous jury that applies in both federal and state courts. The geographical impact of Monday's decision is limited to Louisiana and Oregon – the only two states that have allowed non-unanimous jury verdicts in recent years. The decision means that hundreds of people who were found guilty by non-unanimous juries in those two states before *Ramos* will not get to seek to have their convictions overturned. Monday's ruling, issued on the same day that the court **announced it would take up a challenge to a Mississippi ban on abortion** that could upend ***Roe v. Wade,*** also left the justices divided over the issue of respect for their prior precedent.

First Amendment

Thomas More Law Center v. Bonta
Americans for Prosperity Foundation v. Bonta
Argued April 26, 2021
Decided June 1, 2021

Holding: The U.S. Court of Appeals for the 9th Circuit's judgment, which vacated the district court's injunction of California's compelled disclosure of Schedule Bs as not narrowly tailored to the state's interest in investigating charitable misconduct, is reversed, and the cases are remanded.
Judgment: **Reversed and remanded**, 6-3, in an opinion by Chief Justice Roberts on July 1, 2021. Justices Kavanaugh and Barrett joined the court's opinion in full, Justices Alito and Gorsuch joined except as to Part II–B–1, and Justice Thomas joined except as to Parts II–B–1 and III–B. Justice Alito filed an opinion concurring in part and concurring in the judgment, in which Justice Gorsuch joined. Justice Thomas filed an opinion concurring in part and concurring in the judgment. Justice Sotomayor filed a dissenting opinion in which Justices Breyer and Kagan joined.

The Supreme Court **struck down** California's requirement that charities and nonprofits operating in the state provide the state attorney general's office with the names and addresses of their largest donors. The 6-3 ruling in ***Americans for Prosperity Foundation v. Bonta*** was a

significant victory for the two nonprofit challengers, which had argued that the rule violates the First Amendment by deterring their donors from making contributions.

The dispute before the court began in 2014 with two conservative advocacy groups. The Thomas More Law Center is a Christian public-interest law firm whose founders include Domino's Pizza founder Thomas Monaghan. Americans for Prosperity Foundation is a nonprofit group linked to the influential conservative billionaire Charles Koch. Both groups went to federal court to challenge the disclosure requirement. A federal district court agreed with the groups that the requirement violates the First Amendment, but a panel of the U.S. Court of Appeals for the 9th Circuit reversed. It concluded that the policy, which requires charities to provide the state with the same information they already gave to the IRS, was related to an important state interest in policing charitable fraud. The court of appeals acknowledged the groups' concern that their donors might face "substantial harassment" if their contributions became public, but the court of appeals stressed that the state collects the information only for its uses.

Free Exercise

Tanzin v. Tanvir
Argued October 6, 2020
Decided December 10, 2020

Holding: The Religious Freedom Restoration Act of 1993's express remedies provision, **42 U. S. C. §2000bb–1(c)**, permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities for violating litigants' right to free exercise of religion under the First Amendment.
Judgment: **Affirmed**, 8-0, in an opinion by Justice Thomas on December 10, 2020. Justice Barrett took no part in the consideration or decision of this case.

In a unanimous ruling, The Supreme Court decided that three Muslim men who say they were put on the "no fly" list after they refused to become FBI informants can sue the FBI agents who put them there for money damages. The three men. Muhammad Tanvir, Jameel Algibhah, and Naveed Shinwari are all U.S. citizens or green cardholders. They filed the lawsuit after they were placed on the "no-fly" list, which barred them from boarding commercial flights in the United States. They claimed that their placement on the list violated the Religious Freedom Restoration Act. This federal law prohibits the government from placing a "substantial burden" on an individual's exercise of religion unless the burden advances a compelling government interest, and it is the least restrictive way to achieve that interest. They asked the court to order the government to remove their names from the "no-fly" list, sought compensation for the violation of their rights, including money for airline tickets that they could not use, and income that they lost when they were unavailable to take advantage of job opportunities.

After the lawsuit was filed, the Department of Homeland Security told the men that they could fly. A federal district court dismissed their remaining claims for financial relief, holding that RFRA did not allow the men to sue the FBI agents in their personal capacity for money damages.

But the U.S. Court of Appeals for the 2nd Circuit reversed that ruling, prompting the federal government, which represented the FBI agents, to go to the Supreme Court.

In a unanimous opinion by Justice Clarence Thomas, the Supreme Court upheld the 2nd Circuit's ruling. Thomas pointed to the text of RFRA, which allows an individual whose exercise of religion has been burdened to "obtain appropriate relief against a government." That phrase, Thomas explained, permits someone who has been injured to sue government officials in their personal capacities.

If government officials can be sued in their personal capacity, Thomas continued, the next question is whether money damages are "appropriate relief." After surveying a variety of different lawsuits against government officials, at both the federal and state and local levels, Thomas concluded that money damages "have long been awarded as appropriate relief." Indeed, Thomas noted, there will be some cases – like this one, involving plane tickets, or a 1990 case involving an autopsy that violated the plaintiffs' religious beliefs, in which money damages will be the only way to provide the plaintiffs with a remedy. In light of the text, Thomas emphasized, "it would be odd to construe RFRA in a manner that prevents courts from awarding such relief."

Amy Coney Barrett did not participate in the case, which was argued before she was confirmed to fill the vacancy left open by the death of Justice Ruth Bader Ginsburg.

Fulton v. City of Philadelphia, Pennsylvania
Argued November 4, 2020
Decided June 17, 2021

Holding: Philadelphia's refusal to contract with Catholic Social Services to provide foster care services unless CSS agrees to certify same-sex couples as foster parents violate the free exercise clause of the First Amendment.
Judgment: **Reversed and remanded**, 9-0, in an opinion by Chief Justice Roberts on June 17, 2021. Chief Justice Roberts delivered the opinion of the court, in which Justices Breyer, Sotomayor, Kagan, Kavanaugh, and Barrett joined. Justice Barrett filed a concurring opinion, in which Justice Kavanaugh joined, and Justice Breyer joined as to all but the first paragraph. Justice Alito filed an opinion concurring in the judgment, in which Justices Thomas and Gorsuch joined. Justice Gorsuch filed an opinion concurring in the judgment, in which Justices Thomas and Alito joined.

In a unanimous result, the court ruled that Philadelphia violated Catholic Social Services' free exercise rights by denying it a contract based on the agency's refusal to comply with the city's nondiscrimination policy. Roberts focused on a contract provision allowing the city's Department of Human Services commissioner to grant exemptions in her "sole discretion." The requirement was presumably designed to help ensure that the placement of a child with a particular foster parent is in the best interest of the child. The city had never exempted a contractor from its nondiscrimination requirement for certifying potential foster parents. The court, however, found that because of the government's discretion, the city's nondiscrimination policy was not "generally applicable," and thus not subject to the ***Employment Division v. Smith*** rule that would deny exemptions from neutral laws of general applicability. Instead, the

court held that this contract language triggered strict scrutiny of the city's denial of a religious exemption to CSS. As Roberts explained: "A government policy can survive strict scrutiny only if it advances 'interests of the highest order' and is narrowly tailored to achieve those interests. The court held that Philadelphia must exempt CSS from working with same-sex couples in the government function of certifying potential foster parents.

Student Speech

Mahanoy Area School District v. B.L.
Argued April 28, 2021
Decided June 23, 2021

Holding: The school district's decision to suspend student Brandi Levy from the cheerleading team for posting to social media (outside of school hours and away from the school's campus) vulgar language and gestures critical of the school violates the First Amendment.
Judgment: **Affirmed**, 8-1, in an opinion by Justice Breyer on June 23, 2021. Justice Alito filed a concurring opinion, in which Justice Gorsuch joined. Justice Thomas filed a dissenting opinion.

The case, ***Mahanoy Area School District v. B.L.*****,** began in 2017 when 14-year-old Brandi Levy did not make her public school's varsity cheerleading team. Levy expressed her disappointment on the app Snapchat by posting a photo in which she had her middle finger raised, with the caption "Fuck school fuck softball fuck cheer fuck everything." Although Levy's snap was only visible for 24 hours to 250 of her friends, coaches saw screenshots of the post, and she was suspended from the junior varsity team for a year on the ground that the post violated team and school rules. Levy argued that the suspension violated the First Amendment. The lower courts agreed, and the school district appealed.
Justice Stephen Breyer wrote that unlike the U.S. Court of Appeals for the 3rd Circuit, the majority did not believe that "the special characteristics that give schools additional license to regulate speech always disappear when a school regulates speech that takes place off campus." The school may have a substantial interest in regulating, Breyer suggested, a variety of different kinds of off-campus conduct, for example, severe bullying, threats aimed at teachers or students, participation in online school activities, or hacking into school computers.

However, Breyer identified three features of off-campus speech that schools have less interest in regulating. First, a student's off-campus speech will generally be the responsibility of that student's parents. Second, any regulation of off-campus speech would cover virtually everything that a student says or does outside of school. And third, the school has an interest in protecting unpopular speech and ideas by its students. Breyer explained that the court left "for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference" in determining whether speech can be regulated.

But even if schools can in some circumstances regulate students' off-campus speech, Breyer continued, the decision to suspend Levy for her snap still violated the First Amendment. If she had been an adult, Levy's speech would typically be protected by the First Amendment. Moreover, she created the snap off school grounds on a weekend, and there is no evidence that it caused the kind of substantial disruption that would justify her suspension. Breyer acknowledged that some people might regard the substance of Levy's snap as so trivial that it is not the kind of

speech worthy of the First Amendment's protection. "But sometimes it is necessary to protect the superfluous to preserve the necessary," he wrote.

Immigration

Pereida v. Wilkinson
Argued October 14, 2020
Opinion March 4, 2021
Clemente Pereida entered the United States without authorization nearly 25 years ago. He and his wife have three children, a U.S. citizen and another recipient of the Deferred Action for Childhood Arrivals program, known as DACA. To obtain employment at a cleaning company, Pereida allegedly presented a false Social Security card. He was subsequently convicted of a misdemeanor for attempting to commit the Nebraska crime labeled "criminal impersonation." Pereida was sentenced to a fine of $100 and no jail time.

Immigrants like Pereida, who have a long history in the United States and close relatives who are U.S. citizens or lawful permanent residents, are eligible to apply for a benefit that would cancel their deportation based on hardship to these relatives. This benefit, however, is not available to individuals without lawful immigration status who have been convicted of a "crime of moral turpitude" under Section 240A(b)(1)(C) of the Immigration and Nationality Act. Nebraska's criminal-impersonation law includes several distinct offenses. Those versions that require intent to deceive are considered crimes involving moral turpitude under federal law and trigger immigration consequences. The other versions do not. However, Pereida's criminal record does not make clear which version of the offense his conviction met.

The Court ruled 5-3 that because the noncitizen bears the burden to prove he is eligible for relief, he cannot carry that burden when his criminal record is unclear as to whether he was convicted of a crime that disqualifies him from relief. Justice Neil Gorsuch wrote the **opinion for the court**. Justice Stephen Breyer wrote a dissent in which Justices Sonia Sotomayor and Elena Kagan joined. Justice Amy Coney Barrett did not participate because the oral argument occurred before she joined the court.

Niz-Chavez v. Garland
Argued November 3, 2020
Decided June 10, 2021

Holding: A notice to appear is sufficient to trigger the Illegal Immigration Reform, and Immigrant Responsibility Act of 1996's stop-time rule is a single document containing all the information about an individual's removal hearing specified in ***8 U.S.C. § 1229(a)(1)***.
Judgment: **Reversed**, 6-3, in an opinion by Justice Gorsuch on April 29, 2021. Justice Kavanaugh filed a dissenting opinion, in which Chief Justice Roberts and Justice Alito joined.

The Supreme Court issued a 6-3 **decision** establishing a strict reading of an immigration statute that turns on whether the government has provided proper notice to a noncitizen to appear for removal proceedings. By holding the government to the plain language of the statute and by refusing to accommodate immigration agencies' desire for flexibility, the majority handed a win to noncitizens and their advocates, who have long criticized the government's piecemeal approach to providing notice of removal hearings. A provision known as the "stop-time rule"

service of the NTA upon the noncitizen stops both of these clocks. Therefore, for noncitizens seeking to accrue the required periods of time, issuance of the NTA can be fatal to eligibility.

Garland v. Dai
Garland v. Alcaraz-Enriquez
Argued February 23, 2020
Decided June 1, 2021

Holding: The U.S. Court of Appeals for the 9th Circuit's finding that in the absence of an explicit adverse credibility determination by an immigration judge or the Board of Immigration Appeals, a reviewing court must treat a petitioning noncitizen's testimony as credible and true cannot be reconciled with the terms of the Immigration and Nationality Act.
Judgment: **Vacated and remanded**, 9-0, in an opinion by Justice Gorsuch on June 1, 2021.

Reviewing courts cannot treat an asylum seeker's testimony as credible unless the agency first finds the applicant credible. The unanimous **opinion**, penned by Justice Neil Gorsuch, rejected the contrary approach of the U.S. Court of Appeals for the 9th Circuit.

In argument and briefing, the government contended that the 9th Circuit rule, which took asylum seekers' testimony as credible when faced with agency silence on credibility, violated standards of federal court review. Meanwhile, the asylum seekers argued that the rule properly flowed from the ***Chenery*** doctrine, which requires federal courts to review an agency's reasons as given rather than substituting their rationales.

In asylum cases, the immigration judge is responsible for making credibility determinations as trier-of-fact. The statute that covers asylum applications, Section 1158 of Title 8, **specifies** that "if no adverse credibility determination is explicitly made" by the immigration judge, "the applicant or witness shall have a rebuttable presumption of credibility on appeal" before the Board of Immigration Appeals. But the statute doesn't say what the federal courts should do if the BIA fails to find the presumption expressly rebutted.

In the cases of both Ming Dai and Cesar Alcaraz-Enriquez, the immigration judge didn't explicitly make a credibility finding, and the BIA didn't explicitly)apply the presumption or deem it rebutted. Accordingly, the 9th Circuit treated the asylum seekers' testimony as credible when conducting its review.

The unanimous Supreme Court rejected that approach. "Nothing in the [Immigration and Nationality Act] contemplates anything like the embellishment the Ninth Circuit has adopted," Gorsuch wrote. "And it is long since settled that a reviewing court is 'generally not free to impose' additional judge-made procedural requirements on agencies that Congress has not prescribed and the Constitution does not compel."

Sanchez v. Mayorkas
Argued April 19, 2021
Decided June 7, 2021

Holding: An individual who entered the United States unlawfully is not eligible to become a lawful permanent resident under ***8 U.S.C. § 1255*** even if the United States has granted the individual temporary protected status.
Judgment: **Affirmed**, 9-0, in an opinion by Justice Kagan on June 7, 2021.

The Supreme Court **unanimously ruled** that noncitizens who have been granted temporary humanitarian relief from deportation cannot use the process known as "adjustment of status" to obtain lawful permanent residency in the United States without leaving the country. The court ruled in ***Sanchez v. Mayorkas*** that adjustment of status is reserved for those who were inspected at the border and admitted to the United States by an immigration officer, thus disqualifying the majority of those granted Temporary Protected Status from the in-country process for obtaining green cards. Justice Elena Kagan wrote the opinion for the court.

Jose Sanchez and Sonia Gonzalez came to the United States from El Salvador without authorization in the 1990s. The U.S. government granted them temporary protection in 2001 when the United States designated El Salvador as part of the TPS program in the wake of devastating earthquakes in that country. Under the TPS program, foreign nationals living in the United States are permitted to remain here due to unsafe conditions in their home countries.

Sanchez and Gonzalez have maintained TPS status for 20 years, during which Sanchez's employer filed an immigration-visa petition for Sanchez as a skilled worker. Immigration officials approved this petition, authorizing Sanchez to be admitted to the United States as a lawful permanent resident. They simultaneously approved Gonzalez, his wife, for admission as a lawful permanent resident.

The government, however, denied the couple's subsequent application to use the adjustment-of-status process to transition from temporary to permanent residency without leaving the United States. Immigration officials ruled that the couple's original unauthorized entry disqualified them from an adjustment of status. The government relied on the text of Immigration and Nationality Act **Section 1255(a)**, which restricts the in-country adjustment-of-status process to noncitizens who were "inspected and admitted or paroled into the United States."

Sanchez and Gonzalez argued that the TPS statute includes a provision making TPS holders eligible for adjustment of status even if they had not been inspected and admitted or paroled when they initially entered the United States. Specifically, Section ***1254a(f)(4)*** states that "for purposes of adjustment of status under Section 1255, a TPS holder "shall be considered as being in, and maintaining, lawful status as a nonimmigrant." They asserted that the phrase "considered as being in … lawful status" makes the grant of TPS the equivalent of being inspected and admitted as a lawful nonimmigrant. Sanchez and Gonzalez argued the detailed vetting that accompanies applicants for TPS is equivalent to the vetting that accompanies inspection and admission at a port of entry.

Federal Tort Claims Act

Brownback v. King
Argued November 9, 2020
Decided February 25, 2021

Holding: The district court's dismissal of King's claims under the Federal Tort Claims Act triggered the "judgment bar" in ***28 U.S.C. § 2676*** that precludes him from raising separate claims under ***Bivens v. Six Unknown Federal Narcotics Agents*** on appeal.
Judgment: **Reversed**, 9-0, in an opinion by Justice Thomas on February 25, 2021.

In 2014, officers working with an FBI task force in Grand Rapids, Michigan, tackled, choked, and punched college student James King in the head after mistaking him for a fugitive. King sued the United States under the FTCA, allowing individuals to bring state law tort claims against the federal government. King also brought claims against the officers under ***Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics***, which allows individuals to sue federal officials for violating their constitutional rights.

The district court dismissed King's FTCA claims. The court held that a state tort claim was not viable because Michigan law provides immunity for officials who do not act with malice. The district court, therefore, concluded that it lacked jurisdiction over the FTCA claims. It dismissed the *Bivens* claims on qualified immunity grounds.

On appeal, King wanted to pursue only the *Bivens* claims. The U.S. Court of Appeals for the 6th Circuit had to decide whether the appeal could go forward in light of the FTCA judgment bar. The **judgment bar statute** provides that a "judgment" in an FTCA action "shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim." The 6th Circuit held that the district court's dismissal, in this case, did *not* trigger the judgment bar, reasoning that a dismissal for lack of subject-matter jurisdiction is not a ruling on the merits, and therefore not a final judgment.

The Supreme Court unanimously reversed. In an **opinion by Justice Clarence Thomas**, the court noted that the parties agreed that there "must have been a final judgment on the merits to trigger" the FTCA judgment bar. Thus, the court had to decide whether the district court's dismissal, in this case, was, in fact, a final judgment.

The court held that it was. Thomas explained that "the judgment bar was drafted against the backdrop doctrine of res judicata," and to trigger the doctrine of res judicata, a judgment must be "on the merits." As it was understood back when Congress passed the FTCA, "a judgment is 'on the merits' if the underlying decision 'actually passes directly on the substance of a particular claim before the court.'" Thomas reasoned that the district court's "summary judgment ruling hinged on a quintessential merits decision: whether the undisputed facts established all the elements of King's FTCA claims."

Notably, the court did not decide whether the judgment bar precludes King from pursuing his *Bivens* claims. Despite this question consuming much of the briefing, the court punted in a footnote, noting that the 6th Circuit did not address the arguments and that the Supreme Court is

"a court of review, not of first view." Thus, the court left it to the 6th Circuit to decide how the judgment bar would apply in this case.

Fifth Amendment – Takings

Cedar Point Nursery v. Hassid
Argued March 22, 2021
Decided July 23, 2021

Holding: A California regulation granting labor organizations a "right to take access" to an agricultural employer's property to solicit support for unionization constitutes a per se physical taking.
Judgment: **Reversed and remanded**, 6-3, in an opinion by Chief Justice Roberts on June 23, 2021. Justice Kavanaugh filed a concurring opinion. Justice Breyer filed a dissenting opinion, in which Justices Sotomayor and Kagan joined.

The **Supreme Court on Wednesday ruled** that a California regulation that permits union organizers to enter the property of agricultural businesses to talk with employees about supporting a union is unconstitutional. By a vote of 6-3, the court agreed with the two businesses challenging the regulation that the rule violates the Fifth Amendment, which bars the government from taking private property without compensation. The ruling was a significant victory for property-rights advocates and a setback for unions.

Landlord Tennant – Eviction Moratorium

Alabama Association of Realtors v. Department of Health and Human Services
Not Argued
Decided August 26, 2021

Holding: The district court's judgment – which vacated as unlawful the Centers for Disease Control and Prevention's imposition of a nationwide moratorium on evictions of any tenants who live in a county that is experiencing substantial or high levels of COVID-19 transmission and who make certain declarations of financial need, is enforceable. The stay of the judgment is vacated.

Judgment: **The application to vacate stay is granted** in a per curiam opinion on August 26, 2021.

The Supreme Court blocked the Biden administration from enforcing the latest federal moratorium on evictions imposed because of the COVID-19 pandemic. The justices divided along ideological lines, with the court's three liberal justices – Stephen Breyer, Sonia Sotomayor, and Elena Kagan – dissenting from the **unsigned eight-page decision**.

The ruling was the second defeat for the Biden administration on the so-called "shadow docket" in three days, following the court's refusal to block a lower court's order requiring the Biden administration to reinstate the Trump-era "remain in Mexico" policy.
The White House initially indicated that the CDC would not extend the moratorium when it expired. But when Congress failed to do so, the CDC issued a new version of the moratorium that applied to most, though not all, of the country and was slated to last until October 3.

Products Liability

Ford Motor Company v. Bandemer
Argued October 7, 2020
Decided March 25, 2021

Affirmed 8-0, in an opinion by Justice Kagan on March 25, 2021. Justice Alito filed an opinion concurring in the judgment. Justice Gorsuch filed an opinion concurring in the judgment, in which Justice Thomas joined. Justice Barrett took no part in the consideration or decision of this case.

The connection between plaintiffs' product-liability claims arising from car accidents occurring in each plaintiff's state of residence and Ford's activities in those states is sufficient to support specific jurisdiction in the respective state courts, even though the automobiles involved in the accidents were manufactured and sold elsewhere.

Social Security Disability

Davis v. Saul
Carr v. Saul
Argued March 3, 2021
Decided April 22, 2021

Holding: Principles of issue exhaustion do not require Social Security disability claimants to argue at the agency level that the administrative law judges hearing their disability claims were unconstitutionally appointed.

Judgment: **Reversed and remanded**, 9-0, in an opinion by Justice Sotomayor on April 22, 2021. Justice Thomas filed an opinion concurring in part and concurring in the judgment, in which Justices Gorsuch and Barrett joined. Justice Breyer filed an opinion concurring in part and concurring in the judgment.

The Supreme Court firmly rejected the government's request that the court impose an "issue-exhaustion" requirement on Social Security claimants. Sotomayor's opinion starts by noting that "[a]dministrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question," and emphasizes that those requirements "[t]ypically … are creatures of statute or regulation." Since there is no statute or regulation, in this case, the government was seeking a "judicially created issue-exhaustion requirement." Sotomayor explained that the courts typically assess the propriety of judicially created exhaustion requirements based "on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding." Prior cases have held that the "critical feature that distinguishes adversarial proceedings from inquisitorial ones is whether claimants bear the responsibility to develop issues for adjudicators' consideration."

Voting Rights

Brnovich v. Democratic National Committee
Arizona Republican Party v. Democratic National Committee
Argued March 2, 2021
Decided July 1, 2021

Holding: Arizona's out-of-precinct policy and H.B. 2023 do not violate Section 2 of the Voting Rights Act, and H.B. 2023 was not enacted with a racially discriminatory purpose.

Judgment: **Reversed and remanded**, 6-3, in an opinion by Justice Alito on July 1, 2021. Justice Gorsuch filed a concurring opinion, in which Justice Thomas joined. Justice Kagan filed a dissenting opinion, in which Justices Breyer and Sotomayor joined.
The Roberts court continues to issue rulings that harm our democracy. Once again, it struck a savage blow to our nation's best frontline defense against racial voter suppression.
The Voting Rights Act required jurisdictions with a long history of voting discrimination to seek preapproval for new voting changes. It established the results test, a broad nationwide prohibition on state electoral regulations, a ban that targets discriminatory results, not merely discriminatory intent.

Eight years ago, ***Shelby County v. Holder*** nullified the preclearance requirement by **ignoring the text and history of Congress' explicit power to enforce the 15th Amendment's promise of racial equality at the polls**. In *Brnovich v. Democratic National Committee*, the court's ruling guts the results test by construing away its **central mandate of equal voting opportunity**. Between these two rulings, the Supreme Court has converted the landmark statute that enforces the Constitution's promise of a vibrant, multiracial democracy into little more than a historical relic that sanctions modern forms of voter suppression.

Section 2 of the Voting Rights Act is known as the results test because it prohibits any state electoral regulation that "**results in a denial or abridgement of the right of any citizen of the United States to vote on account of race**."

Justice Samuel Alito's majority ignores this language. Alito relies exclusively on a portion of Section 2 that explains how a violation of the results test is established. That section establishes liability where "the political processes . . . are not equally open to participation" to citizens of color "in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Alito's opinion for the court insists that "equal openness" is the "touchstone" under Section 2 and slights the statute's explicit requirement that voters of color not be saddled with "less opportunity" than other voters. He insists that "equality of opportunity" is not a "separate requirement" under the act. It is enough, he suggests, if the political processes are equally open to voters of color. The majority's tortured, highly selective textualism turns a blind eye to virtually all of Section 2's critical safeguards of voter equality.

Alito's majority opinion devises a series of factors to guide lower courts, all of which, in essence, are tools to be utilized to throw voters out of court. If a law simply imposes what Alito calls the usual burdens of voting, it cannot be challenged. If a law conforms to standard practice existing in 1982, when the results test was added to the Voting Rights Act, it most likely cannot be challenged. If a voting rule imposes only small disparities for voters of color, it cannot be

challenged. If a voting rule challenged as discriminatory is offset by other voting opportunities, it cannot be challenged. If a voting rule serves legitimate government interests, it most likely cannot be challenged. As Alito writes, "[r]ules that are supported by strong state interests are less likely to violate §2." Alito gives special deference to the prevention of electoral fraud, calling it a "strong and entirely legitimate state interest" that can "undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome." The majority defers to state efforts to prevent fraud, ignoring the long history of fraud as a pretext for racial discrimination and the possibility that **lies about voter fraud** might be used, as they were in the 2020 elections, to undermine the legitimacy of the vote.