Supreme Court Review

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I. Criminal procedure

A. Fourth Amendment

United States v. Jones, 132 S.Ct. 945 (2012). The warrantless use of a GPS tracking device on a person's car is a search under the Fourth Amendment.

Florence v. Board of Chosen Freeholders of County of Burlington, 132 S.Ct. 1510 (2012). The Fourth Amendment is not violated when a jail conducts a suspicionless strip search of every individual arrested for any minor offense, no matter under what circumstances.

Florida v. Jardines, 73 So.3d 34 (Fla. 2011), *cert. granted*, 132 S.Ct. 995 (2012), Whether it was a search requiring probable cause to have a dog sniff at the front door of a house where it was suspected that marijuana was being grown.

Florida v. Harris, 71 So.3d 756 (Fla. 2011), *cert. granted*, 132 S.Ct. 1796 (2012). Whether an alert by a well-trained narcotics detection dog certified to detect illegal contraband is sufficient to establish probable cause for the search of a vehicle.

Missouri v. McNeely, 358 S.W.3d 65 (Mo. 2012), *cert. granted* (September 25, 2012). Whether a law enforcement officer may obtain a nonconsensual and warrantless blood sample from a drunk driver under the exigent circumstances exception to the Fourth Amendment warrant requirement based upon the natural dissipation of alcohol in the bloodstream.

B. Ineffective assistance of counsel

Missouri v. Frye, 132 S.Ct. 1399 (2012). The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected and that that right applies to "all 'critical' stages of the criminal proceedings."

Lafler v. Cooper, 132 S.Ct. 1376 (2012). Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed.

Chaidez v. United States, 655 F.3d 684 (7th Cir. 2011), *cert. granted*, 132 S.Ct. 2101 (2012). Does *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), apply retroactively? In *Padilla*, the Court ruled that it was ineffective assistance of counsel for a defense lawyer to accurately inform a client about the deportation consequences of a guilty plea.

C. Sixth Amendment – Confrontation Clause

Williams v. Illinois, 132 S. Ct. 2221 (2012). The admission of expert testimony about the results of DNA testing performed by non-testifying analysts did not violate the Confrontation Clause, even when the defendant has no opportunity to confront the actual analysts, because the laboratory report here was deemed to be non-testimonial.

D. Cruel and unusual punishment

Miller v. Alabama, 132 S.Ct. 2455 (2012). It is cruel and unusual punishment in violation of the Eighth Amendment to impose a mandatory sentence of life without parole for homicide crimes committed by juveniles.

E. Due process – eyewitness identification

Perry v. New Hampshire, 132 S.Ct. 716 (2012). The Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness

identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. The need for a preliminary judicial inquiry into reliability applies only when the police are responsible for the suggestive circumstances.

F. Habeas corpus

Maples v. Thomas, 132 S.Ct. 912 (2012). Death row inmate Cory Maples has shown the requisite "cause" to excuse his procedural default, which occurred when his lawyer missed a filing deadline in state court.

Martinez v. Ryan, 132 S.Ct. 1309 (2012). Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial. Antiterrorism and Effective Death Penalty Act (AEDPA) did not bar petitioner from using ineffectiveness of his postconviction attorney to establish "cause" for his procedural default. Remand was required to determine whether petitioner's attorney in his first state collateral proceeding was ineffective, whether underlying ineffective assistance of trial counsel claim was substantial, and whether petitioner was prejudiced.

II. First Amendment

A. Religion clauses

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S.Ct. 694 (2012). The teacher of secular subjects at a religious school, but who also teaches daily religion classes, is a commissioned minister, and regularly leads students in prayer and worship is deemed to be within the religious exception to federal discrimination laws. It would violate both the Establishment Clause and the Free Exercise Clause to create liability for a religious institution for choices it makes as to who will be ministers.

B. Speech clauses

F.C.C. v. Fox Television Studios, 132 S.Ct. 2307 (2012). Due process is violated by a government policy punishing prohibiting fleeting expletives and fleeting

nudity over television and radio. Whether this violates the First Amendment is left unresolved.

United States v. Alvarez, 132 S.Ct. 2537 (2012). The federal Stolen Valor Act, which prohibits falsely representing one as having received military honors or decorations, violates the First Amendment.

Knox v. SEIU, 132 S. Ct. 2277 (2012). Under the First Amendment, when a union imposes a special assessment or dues increase levied to meet expenses that were not disclosed when the regular assessment was set, it must provide a fresh notice and may not exact any funds from nonmembers without their affirmative consent.

III. Civil rights litigation

A. *Bivens* suits

Minneci v. Pollard, 132 S.Ct. 617 (2012). Prison guards at private prisons cannot be sued in a *Bivens* action when there are state tort law remedies available.

B. Individual officer immunities

Ryburn v. Huff, 131 S.Ct. 987 (2012). Court found qualified immunity was appropriate when police entered home without a warrant because "no decision of this Court has found a Fourth Amendment violation on facts even roughly comparable to those present in this case."

Filarsky v. Delia, 132 S.Ct. 1657 (2012). A private contractor operating under a contract with the government may claim qualified immunity when sued under §1983.

Rehberg v. Paulk, 132 S.Ct. 1497 (2012). Investigator had absolute immunity from malicious prosecution claim for investigator's act of testifying to grand jury.

C. Sovereign immunity

Coleman v. Maryland Court of Appeals, 132 S.Ct. (2012). Suits against the states under the self-care provision of the Family and Medical Leave Act are barred by sovereign immunity.

IV. Preemption

Arizona v. United States, 132 S.Ct. 2492 (2012). Federal immigration law impliedly preempts three provisions of Arizona's S.B. 1070 on their face—those that (i) make it a crime for someone to be in the state without valid immigration papers; (ii) make it a crime to apply for or hold a job in Arizona without being lawfully in the United States; and (iii) authorize the police to arrest without a warrant any individual otherwise lawfully in the country, if the police have probable cause to believe the individual has committed a deportable offense. However, Section 2(B) of the law, which requires the police to check the immigration status of persons whom they arrest and allows the police to stop and arrest anyone suspected of being an undocumented immigrant, may go into effect while its lawfulness is being litigated. It is not now sufficiently clear that the provision will be held preempted, but the provision could eventually be invalidated after trial.

V. Constitutionality of Affordable Care Act

National Federation of Independent Businesses v. Sebelius, 132 S.Ct. 2566 (2012). The minimum coverage provision is within the scope of Congress's tax power. Additionally, the ACA's Medicaid expansion unconstitutionally coerces the states, thereby exceeding the scope of Congress's conditional spending power. But the proper remedy for this constitutional violation is not to invalidate the ACA's Medicaid expansion; rather, it is to prohibit the federal government from withdrawing all pre-ACA Medicaid funding if a state declines to participate in the expansion.

VI. The Term Ahead

Kiobel v. Royal Dutch Petroleum, 621 F.3d 111 (2d Cir. 2010), *rehearing ordered*, 132 S.Ct. 1738 (2012). Whether the Alien Tort Statute can be used to sue for human rights violations that occur outside of the United States.

Fisher v. University of Texas, Austin, 631 F.3d 213 (5th Cir. 2011), *cert. granted*, 132 S.Ct. 1536 (2012. May colleges and universities continue to use race as a factor in admissions decisions to benefit minorities and enhance diversity?

United States Department of Health and Human Services v. Massachusetts, 682 F.3d 1 (1st Cir. 2012), *cert. petition pending.* The federal court of appeals declared unconstitutional section 3 of the federal Defense of Marriage Act, which provides that for purposes of federal law "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

Hollingsworth v. Perry, 671 F.3d 1052 (9th Cir. 2012), *cert. petition pending.* The federal court of appeals declared unconstitutional California's Proposition 8, which amended the California Constitution to declare that marriage in the State must be between a man and a woman.