

## Supreme Court Review

17 Annual D. Brook Bartlett Lectures  
Western District of Missouri  
Kansas City, Kansas  
June 23, 2017

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### **I. Criminal procedure**

#### **A. Sixth Amendment right to fair trial**

Pena-Rodriguez v. Colorado, 137 S.Ct. 855 (2017). When a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

#### **B. Ineffective assistance of counsel**

Buck v. Davis, 137 S.Ct. 759 (2017). (1) The U.S. Court of Appeals for the 5th Circuit exceeded the limited scope of analysis for a certificate of appealability, which, by statute, follows a two-step process: an initial determination whether a claim is reasonably debatable, and, if so, an appeal in the normal course; and (2) petitioner Duane Buck has demonstrated ineffective assistance of counsel under Strickland v. Washington; and (3) the district court's denial of Buck's motion under Federal Rule of Civil Procedure 60(b)(6) was an abuse of discretion.

#### **C. Vagueness and the Armed Career Criminal Act**

Beckles v. United States, 137 S.Ct. 886 (2017). The Federal Sentencing Guidelines, including Section 4B1.2(a)'s residual clause, are not subject to vagueness challenges under the due process clause.

Sessions v. DiMaya, 803 F.3d 1110 (9<sup>th</sup> Cir. 2015), *cert. granted*, 136 S.Ct. 31 (2016). Whether 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States, is unconstitutionally vague.

## II. Constitutional rights

### A. First Amendment

#### 1. Speech

Lee v. Tam, 137 S.Ct. \_\_\_\_ (June 19, 2017). The disparagement provision of the Lanham Act, 15 U.S.C. 1052(a), which provides that no trademark shall be refused registration on account of its nature unless, *inter alia*, it “[c]onsists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute” is facially invalid under the Free Speech Clause of the First Amendment.

Expressions Hair Design v. Schniederman, 137 S.Ct. 1144 (2017). State no-surcharge laws restrict speech conveying price information; case is remanded to determine constitutionality.

Packingham v. North Carolina, 137 S.Ct. \_\_\_\_ (June 19, 2017). Under the court’s First Amendment precedents, a law that makes it a felony for any person on the state’s registry of former sex offenders to “access” a wide array of websites – including Facebook, YouTube, and nytimes.com – that enable communication, expression, and the exchange of information among their users, if the site is “know[n]” to allow minors to have accounts, is unconstitutional.

#### 2. Religion

*Trinity Lutheran Church of Columbia v. Pauley*, 788 F.3d 779 (8<sup>th</sup> Cir. 2015), *cert. granted*, 136 S.Ct. 691 (2016). Whether the exclusion of churches from an otherwise neutral and secular aid program violates the Free Exercise and Equal Protection Clauses when the state has no valid Establishment Clause concern.

### B. Voting rights

Cooper v. Harris, 137 S.Ct. 1455 (2017). (1) North Carolina’s victory in a similar state-court lawsuit does not dictate the disposition of this case or alter the applicable standard of review; (2) the district court did not err in concluding that race furnished the predominant rationale for District 1’s redesign and that the state’s interest in complying with the Voting Rights Act of 1965 could not justify that consideration of race; and (3) the district court also did not clearly err by finding that race predominated in the redrawing of District 12.

### C. Takings

*Murr v. Wisconsin*, 859 N.W.2d 628 (Wis. 2015), *cert. granted*, 136 S.Ct. 890 (2016). Whether, in a regulatory taking case, the “parcel as a whole” concept as described in *Penn Central Transportation Company v. City of New York*, establishes a rule that two legally distinct but commonly owned contiguous parcels must be combined for takings analysis purposes.

### **III. Civil rights**

#### **A. Malicious prosecution**

Manuel v. City of Joliet, 137 S.Ct. 911 (2017). An individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.

#### **B. Housing Discrimination**

Bank of American v. City of Miami, 137 S.Ct. 1296 (2017). (1) A city is an "aggrieved person," under the Fair Housing Act and has standing to sue based on its economic losses; and (2) proximate cause requires more than just the possibility that a defendant could have foreseen that the plaintiff might ultimately lose money. *Immigration*

#### **C. Immigration**

*Jennings v. Rodriguez*, 804 F.3d 1060 (9<sup>th</sup> Cir. 2015), *cert. granted* 136 S.Ct. 2489 (2016). (1) Whether aliens seeking admission to the United States who are subject to mandatory detention under 8 U.S.C. § 1225(b) must be afforded bond hearings, with the possibility of release into the United States, if detention lasts six months; (2) whether criminal or terrorist aliens who are subject to mandatory detention under Section 1226(c) must be afforded bond hearings, with the possibility of release, if detention lasts six months; and (3) whether, in bond hearings for aliens detained for six months under Sections 1225(b), 1226(c), or 1226(a), the alien is entitled to release unless the government demonstrates by clear and convincing evidence that the alien is a flight risk or a danger to the community, whether the length of the alien's detention must be weighed in favor of release, and whether new bond hearings must be afforded automatically every six months.

#### **D. Availability of suits**

Ziglar v. Abassi, 137 S.Ct. \_\_\_\_ (June 19, 2017). The judicially inferred damages remedy under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, should not be extended to the context of this case, which seeks to hold the former Attorney General and Director of the Federal Bureau of Investigation (FBI) personally liable for policy decisions made about national-security and immigration in the aftermath of the September 11, 2001 terrorist attacks.

*Hernandez v. Mesa*, 785 F.3d 117 (5<sup>th</sup> Cir. 2015), *cert. granted*, 137 S.Ct. 535 (2016). (1) Whether a formalist or functionalist analysis governs the extraterritorial application of the Fourth Amendment's prohibition on unjustified deadly force, as applied to a cross-border shooting of an unarmed Mexican citizen in an enclosed area controlled by the United States; (2) whether qualified immunity may be granted or denied based on facts – such as the victim's legal status – unknown to the officer at the time of the incident; and (3) whether the claim in this case may be asserted under *Bivens v. Six Unknown Federal Narcotics Agents*

#### **IV. Court jurisdiction and procedure**

Goodyear Tire and Rubber v. Haeger, 137 S.Ct. 1178 (2017). Federal courts have inherent authority to impose sanctions for misconduct, the order is limited to the fees the innocent party incurs solely because of the misconduct.

TC Heartland LLC v. Kraft Food Group Brands LLC, 137 S.Ct. 1514 (2017). The patent venue statute, 28 U.S.C. § 1400(b), provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." As applied to domestic corporations, "reside[nce]" in Section 1400(b) refers only to the state of incorporation; the amendments to Section 1391 did not modify the meaning of Section 1400(b) as interpreted in *Fourco Glass Co. v. Transmirra Products*.

Bristol-Myers Squibb Co. v. Superior Court of California, 137 S.Ct. \_\_\_\_ (June 19, 2017). There is not personal jurisdiction over a plaintiff's that claims arise out of or relate to a defendant's forum activities when there is no causal link between the defendant's forum contacts and the plaintiff's claims.