Supreme Court Update
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District of Idaho Conference

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I. Criminal Procedure

A. Fourth Amendment

Virginia v. Moore, 128 S. Ct. 1598 (2008). The police do not violate the Fourth Amendment when they make an arrest that is based on probable cause but is prohibited by state law, or when they perform a search incident to the arrest.

Arizona v. Gant, 216 Ariz. 1 (2007), *cert. granted*, 128 S.Ct. 2897 (2008). May the police search a car incident to the arrest of its occupants if the occupants are away from the car and restrained?

Herring v. United States, 492 F.3d 1212 (11th Cir. 2008), 128 S.Ct. 1221 (2008). Must evidence be excluded when police rely in good faith on erroneous information from another jurisdiction in conducting an arrest?

B. Confrontation Clause

Giles v. California, 128 S.Ct. 2678 (2008). A criminal defendant does not "forfeit" his or her Sixth Amendment Confrontation Clause claims upon a showing that the defendant has caused the unavailability of a witness. Rather, there must also be a showing that the defendant's actions were undertaken for the purpose of preventing the witness from testifying.

Melendez-Diaz v. Massachusetts, 69 Mass.App.Ct. 1114 (2007), *cert. granted*, 128 S.Ct. 1647 (2008). Does *Crawford v. Washington* apply to laboratory reports?

C. Sentencing

Gall v. United States, 128 S. Ct. 586 (2007). In reviewing the reasonableness of a sentence outside the advisory U.S. Sentencing Guidelines range, an appellate court may take the degree of variance into account, but there is no rule that requires "extraordinary" circumstances in order to justify a sentence outside the Guidelines range. Under the post-*Booker* advisory Guidelines regime, an appellate court must review the sentence imposed under an abuse-of-discretion standard regardless of whether that sentence is inside or outside the Guidelines range.

Kimbrough v. United States, 128 S. Ct. 558 (2007). The Anti-Drug Abuse Act does not require that the 100-to-one ratio of crack cocaine to powder cocaine prevail throughout the Sentencing Guidelines. District-court deviations from the 100-to-one ratio do not violate the sentencing statute's provision regarding "unwarranted sentence disparities." A district court may conclude that the Guidelines' crack/powder disparity yields a sentence "greater than necessary."

Greenlaw v. United States,128 S.Ct. 2559 (2008). Absent a government appeal or cross-appeal, a court of appeals may not, on its own initiative, order an increase in a defendant's sentence.

D. Right to self-representation

Indiana v. Edwards, 128 S.Ct. 2379 (2008). The Constitution does not forbid courts from insisting upon representation by counsel for criminal defendants who are competent enough to stand trial but who suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

E. Eighth Amendment – Death Penalty

Kennedy v. Louisiana, 128 S.Ct. 2641 (2008). The Constitution bars states from imposing the death penalty for the rape of a child where the crime did not result, and was not intended to result, in the death of the victim.

Baze v. Rees, 128 S. Ct. 1520 (2008). To constitute cruel and unusual punishment, a method of execution must present a "substantial" or "objectively intolerable" risk of serious harm. A state's refusal to adopt an alternative procedure is unconstitutional only where the procedure is feasible, readily implemented, and significantly reduces a substantial risk of severe pain.

II. Second Amendment

District of Columbia v. Heller,128 S.Ct. 2783 (2008). The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home.

III. Fourteenth Amendment – Fundamental Rights and Equal Protection

A. Voting Rights

Crawford v. Marion County Election Board, 128 S. Ct. 1610 (2008). On its face, an Indiana law requiring those voting in person at the polls to produce a government-issued, current photo identification does not violate the fundamental right to vote.

B. Equal Protection

Engquist v. Oregon Department of Agriculture,128 S.Ct. 2146 (2008). The "class-of-one" theory of equal protection does not apply in the context of public employment.

IV. First Amendment

Davis v. Federal Election Commission, 128 S.Ct. 2759 (2008). The "Millionaire's Amendment" to the 2002 federal campaign finance law violates the free-speech rights of wealthy self-funded candidates by allowing their opponents to accept larger contributions.

United States v. Williams, 128 S.Ct. 1830 (2008). Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act provision criminalizing the pandering or solicitation of child pornography is not overbroad under the First Amendment and not impermissibly vague under the Due Process Clause. The government may punish solicitation of child pornography even when the material does not actually meet the definition of child pornography.

*F.C.C. v. Fox Television Stations***,** 489 F.3d 444 (2d Cir. 2007), *cert. granted*,128 S.Ct. 1647 (2008). May the Federal Communications Commission impose sanctions on broadcast stations for the use of "fleeting expletives"?

Pleasant Grove v. Summum, 483 F.3d 1044 (10th Cir. 2007), *cert. granted*, 127 S.Ct. 1737 (2008). If a local government places a religious symbol on government property, must it allow other religions to place their symbols on government property?

V. Preemption

Riegel v. Medtronic, Inc., 128 S. Ct. 999 (2008). The preemption clause in the Medical Device Act bars common-law claims challenging the safety or effectiveness of a medical device marketed in a form that received pre-market approval from the FDA.

Chamber of Commerce of United States v. Brown,128 S.Ct. 2408 (2008). The National Labor Relations Act preempts a California law that prohibits employers that receive state grants or more than $10,000 in state program funds per year from using the funds "to assist, promote, or deter union organizing."

Wyeth v. Levine, 2006 WL 3041078 (Vt. 2006), *cert. granted*, 128 S.Ct. 1118 (2008). Does the approval of a warning label on a prescription drug preempt state tort liability for failure to adequately warn of the risks of a prescription drug?

Altria v. Good, 501 F.3d 29 (1st Cir. 2007), *cert. granted*,128 S.Ct. 1119 (2008). Does the Federal Cigarette Labeling and Advertising Act preempt deceptive practice lawsuits against cigarette manufacturers in state court?

VI. Environmental

Winter v. Natural Resources Defense Council, 518 F.3d 658 (9th Cir. 2008), *cert. granted*, 128 S.Ct. 2964 (2008). Is the Navy exempt under the NEPA "emergency circumstances" provision from preparing an Environmental Impact Statement before it conducts sonar exercises that may harm marine mammals?

Summers v. Earth Island, 490 F.3d 687 (9th Cir. 2008), *cert. granted*, 128 S.Ct. 1118 (2008). Can the U.S. Forest Service exempt small projects from public comment and appeals proceedings, and is it proper for a court to enjoin the regulations making such exemptions before they are applied to specific projects?

VII. Employment Discrimination

Meacham v. Knolls Atomic Power Laboratory, 128 S.Ct. 2359 (2008) An employer defending a disparate-impact claim under the Age Discrimination in Employment Act of 1967 (ADEA) bears both the burden of production and the burden of persuasion for the "reasonable factors other than age" (RFOA) affirmative defense under the law.

CBOCS West, Inc. v. Humphries, 128 S. Ct. 1951 (2008). 42 U.S.C. § 1981, which gives "[a]ll persons . . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens," encompasses retaliation claims.

Gomez-Perez v. Potter, 128 S. Ct. 1931 (2008). The federal-sector provision of the ADEA prohibits retaliation against a federal employee who complains of age discrimination.

VIII. Federal jurisdiction

Taylor v. Sturgell, 128 S.Ct. 2161 (2008). A party's claim is not blocked from being considered in federal court by res judicata because someone else brought the same claim in a previous lawsuit. A "close relationship" between the two parties is not sufficient for preclusion. The theory of preclusion by "virtual representation" is disapproved. The preclusive effect of a federal-court judgment is determined by federal common law, subject to due process limitations.

Hall St. Assoc., LLC v. Mattel, 128 S.Ct. 1398 (2008). Grounds stated in the Federal Arbitration Act (FAA) either for vacating, or for modifying or correcting, arbitration award constitute the exclusive grounds for expedited vacatur and modification of arbitration award pursuant to provisions of the FAA. A federal court cannot enforce an arbitration agreement that provides for more expansive judicial review of an arbitration award than the narrow standard of review provided for in the Federal Arbitration Act.

Preston v. Ferrer, 128 S.Ct. 928 (2008). When parties agree to arbitrate all questions arising under a contract, the Federal Arbitration Act supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative.

IX. Business litigation

Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, 128 S.Ct. 761(2008). Securities and Exchange Commission rule 10(b) does not allow a plaintiff class of investors to maintain a civil cause of action against vendors who participated in a scheme to inflate a public corporation's stock price where the vendors made no public statements upon which the plaintiff relied.

X. Punitive damages

Exxon Shipping v. Baker, 128 S.Ct. 2805 (2008). In maritime law, punitive damages must have a 1:1 relationship with compensatory damages.

Phillip Morris USA v. Williams, 344 Or. 45, 176 P.3d 1255, *cert. gramted*, 128 S.Ct. 2904 (2008). Whether the Oregon Supreme Court's affirmance of a punitive damage award that was 90 times the size of the compensatory damages should be reversed?

XI. Civil rights

*Van De Kamp v. Goldstein***,** 481 F.3d 1170 (9th Cir. 2007), *cert. granted,* 128 S.Ct. 1872 (2008). May supervisors in a prosecutor's office be held liable for failure to develop adequate procedures to ensure that impeachment evidence is turned over to the defendant as is constitutionally required?

Pearson v. Callahan, 494 F.3d 891 (10th Cir. 2007), *cert. granted*, 128 S.Ct. 1702 (2008). When a court is considering qualified immunity, must it always determine if there is a constitutional violation before deciding whether there is clearly established law that the reasonable officer should know?

Ashcroft v. Iqbal, 490 F.3d 143 (2d Cir. 2007), *cert. granted*, 128 S.Ct. 2931 (2008). May a person detained after 9/11 and allegedly mistreated sue the Attorney General and other government officials for money damages?

XII. War on Terrorism

Boumediene v. Bush,128 S.Ct. 2229 (2008). Aliens designated as enemy combatants and detained at the United States Naval Station at Guantanamo Bay, Cuba, possess the constitutional privilege of habeas corpus, a privilege that may not be withdrawn except in conformance with the Suspension Clause, Art. I, § 9, cl. 2. In addition, the procedures for review of the status of the detainees that are provided in the Detainee Treatment Act of 2005 (DTA) are not an adequate and effective substitute for habeas corpus. Accordingly, § 7 of the Military Commissions Act of 2006 (MCA), which denies the federal courts jurisdiction to hear habeas corpus actions pending at the time of its enactment, operates as an unconstitutional suspension of the writ.

Munaf v. Geren, 128 S.Ct. 2207 (2008). United States courts had jurisdiction over habeas corpus petitions filed on behalf of American citizens held overseas in detainee camp operated by the Multinational Force-Iraq (MNF-I). However, federal district courts may not exercise their habeas jurisdiction to enjoin the United States from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that sovereign for criminal prosecution.