

SCOTUS DOCKET UPDATE

Impact Lit Project

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Below you will find the first of the Impact Lit Project's SCOTUS Docket Update. The Update will provide a bi-annual summary of the Supreme Court's docket. My source here is SCOTUSBlog. I included a list of currently docketed cases and cert petitions that are relevant to our criminal-appellate practice. Particularly relevant cases are highlighted.

Although it is obvious that pending SCOTUS cases/petitions matter because they could directly implicate one of our cases, cert petitions can be very helpful for a less-obvious reason: **they can provide valuable research assistance**. If a cert petition touches on an issue that you are currently briefing, it can be a research goldmine.

If you realize that I missed something, please let me know.

CURRENT SCOTUS DOCKET

1. [Cruz v. Arizona](#), No. [21-846](#) [Arg: 11.1.2022]

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

2. [Jones v. Hendrix](#), No. [21-857](#) [Arg: 11.1.2022]

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

3. [In re Grand Jury](#), No. [21-1397](#) [Arg: 1.9.2023]

Issue(s): Whether a communication involving both legal and non-legal advice is protected by attorney-client privilege when obtaining or providing legal advice was one of the significant purposes behind the communication.

4. [Santos-Zacaria v. Garland](#), No. [21-1436](#) [Arg: 1.17.2023]

Issue(s): Whether the court of appeals correctly determined that [8 U.S.C. 1252\(d\)\(1\)](#) prevented the court from reviewing petitioner's claim that the Board

of Immigration Appeals engaged in impermissible factfinding because petitioner had not exhausted that claim through a motion to reconsider.

5. [Smith v. U.S.](#), No. [21-1576](#)

Issue(s): Whether the proper remedy for the government’s failure to prove venue is an acquittal barring re-prosecution of the offense, as the U.S. Courts of Appeals for the 5th and 8th Circuits have held, or whether instead the government may re-try the defendant for the same offense in a different venue, as the U.S. Courts of Appeals for the 6th, 9th, 10th and 11th Circuits have held.

6. [U.S. v. Hansen](#), No. [22-179](#)

Issue(s): Whether the federal criminal prohibition against encouraging or inducing unlawful immigration for commercial advantage or private financial gain, in violation of [8 U.S.C. § 1324\(a\)\(1\)\(A\)\(iv\) and \(B\)\(i\)](#), is facially unconstitutional on First Amendment overbreadth grounds.

7. [Samia v. U.S.](#), No. [22-196](#)

Issue(s): Whether admitting a codefendant’s redacted out-of-court confession that immediately inculpatates a defendant based on the surrounding context violates the defendant’s rights under the confrontation clause of the Sixth Amendment.

CERT PETITIONS

NEW YORK CASES

Hemphill v. New York	Whether the improper admission of the out-of-court statement by the alternative suspect in Hemphill v. New York was “so unimportant and insignificant” as to be harmless under Chapman v. California .
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EXECUTION AND COMPASSION

Fratta v. Texas	Whether to stay the execution of Robert Fratta (pro se filing)
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APPELLATE PROCEDURE AND HARMLESS ERROR

<u>Deveraux v. Montana</u>	Whether a trial court commits structural error, requiring automatic reversal under the Sixth Amendment, when it seats a biased juror after erroneously denying a for-cause challenge to that juror.
<u>Dupree v. Younger</u>	Whether to preserve the issue for appellate review a party must reassert in a post-trial motion a purely legal issue rejected at summary judgment.
<u>Kimberlin v. U.S.</u>	Whether a petitioner must show he suffers from a “civil disability”—that is, a collateral consequence that causes a substantial and present harm, is specific to the criminal context, and arises solely from the erroneous conviction—before a court can grant a writ of error coram nobis, or whether a court may instead presume that every conviction has collateral consequences that provide adequate standing to seek relief.
<u>U.S. v. Hakim</u>	Whether a defendant’s erroneous pretrial self-representation categorically constitutes structural error, thereby requiring automatic vacatur of the convictions, where the defendant had counsel at trial and did not irretrievably lose any rights or defenses in the interim.
<u>Irons v. U.S.</u>	Whether errors in calculating the Sentencing Guidelines are rendered categorically harmless by the district court’s assertion that the guidelines would make no difference to the choice of sentence.

THE FIRST

Counterman v. Colorado	<p>Whether, to establish that a statement is a “true threat” unprotected by the First Amendment, the government must show that the speaker subjectively knew or intended the threatening nature of the statement, or whether it is enough to show that an objective “reasonable person” would regard the statement as a threat of violence.</p> <p>**This case implicates the constitutionality of the New York aggravated harassment statute, which does not require a subjective intent to intimidate. Penal Law § 240.30(1)(a).</p>
Chen v. Texas	<p>(1) Whether a law that criminalizes expressive speech is immunized from any First Amendment scrutiny if it also criminalizes non-expressive conduct; and (2) whether a law that punishes the repeated sending of electronic communications with intent and likely result to “harass, annoy, alarm, abuse, torment, embarrass, or offend” another is unconstitutionally overbroad.</p>
Moore v. Texas	<p>(1) Whether a law that criminalizes expressive speech is immunized from any First Amendment scrutiny if it also criminalizes non-expressive conduct; and (2) whether a law that punishes the repeated sending of electronic communications with intent and likely result to “harass, annoy, alarm, abuse, torment, embarrass, or offend” another is unconstitutionally overbroad.</p>
Barton v. Texas	<p>(1) Whether the criminalization of expressive electronic communications in Texas Penal Code § 42.07(a)(7) implicates the First Amendment; and (2) whether Texas Penal Code § 42.07(a)(7) is unconstitutionally overbroad.</p>

THE FOURTH

Moore v. U.S.	<p>Whether long-term police use of a surveillance camera targeted at a person’s home and curtilage is a Fourth Amendment search.</p>
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THE SIXTH WITH A LITTLE BIT OF FIFTH/FOURTEENTH

<p>Shaw v. U.S.</p>	<p>(1) Whether the jury [right] or [] due process clause . . . bar a court from imposing a more severe criminal sentence on the basis of conduct that a jury necessarily rejected, given its verdicts of acquittal on other counts at the same trial; (2) whether . . . United States v. Watts should be overruled; and (3) whether, in avoidance of the constitutional question, the rules of issue preclusion, as applied in federal criminal cases, bar imposition of an aggravated sentence on a factual predicate necessarily rejected by the jury at trial in the same case.</p>
<p>Shields v. Kentucky</p>	<p>When, if ever, a preliminary hearing provides an “adequate opportunity” for cross-examination under the Sixth Amendment’s confrontation clause.</p>
<p>Reed v. U.S.</p>	<p>Whether the Constitution requires an indictment, jury trial and proof beyond a reasonable doubt to find that a defendant’s prior convictions were “committed on occasions different from one another,” as is necessary to impose an enhanced sentence under the Armed Career Criminal Act.</p>
<p>Randel v. Rabun County School District</p>	<p>Whether the existence of a state post-deprivation process precludes a procedural due process claim only where a pre-deprivation process that satisfied constitutional standards would be impracticable, such as because the deprivation was a random or unauthorized act of an errant state official, or in any case in which, even though compliance with constitutional standards in a pre-deprivation process was practicable, the state post-deprivation process provides some form of remedy for the constitutional deficiency of the pre-deprivation process.</p>
<p>Ruiz v. Massachusetts</p>	<p>Whether the Fifth and 14th Amendments forbid judges (or prosecutors) from instructing (or inviting) the jury to take into account a non-testifying criminal defendant’s courtroom demeanor as a basis for finding guilt.</p>
<p>Harness v. Watson</p>	<p>Whether any amendment to a law originally adopted for an impermissible racially discriminatory purpose, no matter how minor the amendment and no matter the historical context, cleanses the law of its racist origins for 14th Amendment purposes unless the party challenging the law can prove that the amendment itself was motivated by racial discrimination.</p>

DNA

<p>Escobar v. Texas</p>	<p>Whether the Texas Court of Criminal Appeals erred in holding that the prosecution’s reliance on admittedly false DNA evidence to secure petitioner’s conviction and death sentence is consistent with the due process clause of the 5th Amendment because there is no reasonable likelihood that the false DNA evidence could have affected the judgment of the jury.</p>
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THE GREAT WRIT

<p>Jordan v. Lamanna</p>	<p>Whether a federal habeas petitioner seeking relief on the basis of a violation of the public trial clause of the Sixth Amendment can demonstrate an “unreasonable application of clearly established Federal law” within the meaning of 28 U.S.C. § 2254(d)(1) in the absence of a Supreme Court precedent involving analytically indistinguishable facts.</p>
<p>Fratton v. Texas</p>	<p>(1) Under the ruling in Shinn v. Ramirez, whether state courts are required to accept and rule on the merits of claims presented in writs of habeas corpus by prisoners who lawfully dismiss their attorneys to be in compliance with state procedures and file the claims pro se because the attorneys neglected or refused to do so; (2) whether unindicted actors can be added into an accused’s jury charge when his indictment charges him as the only actor to commit the offense; and (3) whether it is constitutional for a grand jury to sign off on an indictment when the elements of the offense sought are not satisfied or could not have been satisfied by the government to begin with.</p>
<p>Chestnut v. Allen</p>	<p>Whether the U.S. Court of Appeals for the 4th Circuit violated 28 U.S.C. § 2254(d) limitations and needlessly overturned a state death sentence on an insubstantial premise that respondent’s mental health evidence was not afforded “meaningful consideration and effect” when the judge stated at sentencing that he had considered all the mental health evidence but did not explicitly reference respondent’s eating disorder.</p>

Marshal v. Texas	<p>(1) Whether the Texas Court of Criminal Appeals' application of the equitable doctrine of laches constitutes an independent and adequate state-law ground that bars review of petitioner's constitutional claims; (2) whether the court's application of laches violated petitioner's right to due process of law; and (3) whether the prosecution is estopped from relying on the doctrine of laches when its misconduct caused the delay in filing the habeas corpus application.</p>
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PRISON CONDITIONS

Huffman v. Harris	<p>(1) Whether [CA5] erred in finding that [due process] imposes an obligation on county sheriffs to release a dangerous schizophrenic inmate whose criminal charges remained pending and whose court proceedings were stalled, and then denying qualified immunity in the absence of clearly established law; and (2) whether [CA5] erred in imposing an obligation on jailers to inquire as to the status of an inmate's court proceedings without providing any guidance or parameters for compliance.</p>
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IMMIGRATION

Daye v. Garland	<p>Whether the court should overturn Jordan v. De George and hold that the phrase "crime involving moral turpitude" is unconstitutionally vague as it is used in 8 U.S.C. § 1227(a)(2)(A).</p>
He v. Garland	<p>(1) Whether courts of appeals review de novo - as a question of law - or for substantial evidence - as a question of fact - a Board of Immigration Appeals' determination that established facts do not rise to the level of persecution; and (2) whether being prohibited by government officials from freely and openly practicing one's religion constitutes persecution as a matter of law.</p>