NDPP Fall Symposium

Erwin Chemerinsky
Dean and Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law

I. Abortion

Dobbs v. Jackson Women's Health Organization, 142 S.Ct. 2228 (2022). *Roe v. Wade* is overruled. Mississippi law prohibiting abortions after the fifteenth week of pregnancy is constitutional.

Whole Women's Health v. Jackson, 142 S.Ct. 522 (2021). State officials may be sued for injunctive relief only if they play a role in enforcing or implementing the law.

II. Admiministrative law

National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration, 142 S.Ct. 661 (2022). The Supreme Court issued a stay of OSHA's vaccine-or-testing regime for all businesses with 100 or more employees.

Biden v. Missouri, 142 S.Ct. 647 (2022). Supreme Court refused to issue a stay blocking a federal rule that requires all health care workers at facilities that participate in Medicare and Medicaid programs to be fully vaccinated against COVID-19 unless they are eligible for a medical or religious exemption.

West Virginia v. Environmental Protection Agency, 142 S.Ct. 2587 (2022). Congress did not grant the Environmental Protection Agency in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the agency took in the Clean Power Plan.

III. Bankruptcy

Siegel v. Fitzgerald, 142 S.Ct. 1770 (2022). Congress' enactment of a significant fee increase that exempted debtors in two states violated the uniformity requirement of the bankruptcy clause.

IV. Civil rights

Rivas-Villegas v. Cortesluna, 142 S.Ct. 4 (2021). Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983; the 9th Circuit's holding that circuit precedent "put him on notice that his conduct constituted excessive force" is reversed.

City of Tahlequah, Oklahoma v. Bond, 142 S.Ct. 9 (2021). Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under 42 U. S. C. §1983;

the 10th Circuit's contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances.

Thompson v. Clark, 142 S.Ct. 1332 (2022). To demonstrate the favorable termination of a criminal prosecution for purposes of a Fourth Amendment claim under § 1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction, and is not required to demonstrate that the prosecution ended with some affirmative indication of his innocence, such as an acquittal or a dismissal accompanied by a statement from the judge that the evidence was insufficient

Egbert v. Boule, 142 S.Ct. 1793 (2022). A cause of action does not exists under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* for First Amendment retaliation claims; A cause of action does not exist under *Bivens* for claims against federal officers engaged in immigration-related functions for allegedly violating a plaintiff's Fourth Amendment rights.

Vega v. Tekoh, 142 S.Ct. 2095 (2022). A plaintiff may not state a claim for relief against a law enforcement officer under 42 U.S.C. § 1983 based simply on an officer's failure to provide the warnings prescribed in *Miranda v. Arizona*.

V. Criminal law

A. Sixth Amendment

United States v. Tsarnaev, 142 S.Ct. 1024 (2022). District Court did not abuse its discretion by declining to include specific media-content question in juror questionnaire. Acourt of appeals cannot use its discretionary supervisory powers, if any, to supplant a district court's broad discretion to manage voir dire by prescribing specific lines of questioning. District Court did not abuse its discretion by excluding certain allegedly mitigating evidence at capital sentencing. Section of Federal Death Penalty Act that allowed exclusion of mitigating evidence if its probative value was outweighed by risk of unfair prejudice, confusing the issues, or misleading the jury did not violate Eighth Amendment.

Hemphill v. New York, 142 S.Ct. 681 (2022). The trial court's admission—over Hemphill's objection—of the plea allocution transcript of an unavailable witness violated Hemphill's Sixth Amendment right to confront the witnesses against him.

Denezpi v. U.S., 142 S.Ct. 1838 (2022). The double jeopardy clause does not bar successive prosecutions of distinct offenses arising from a single act, even if a single sovereign prosecutes them.

B. Habeas corpus

Brown v. Davenport, 142 S.Ct. 1510 (2022). When a state court has ruled on the merits of a state prisoner's claim, a federal court cannot grant habeas relief without applying both the test the Supreme Court outlined in *Brecht v. Abrahamson* and the one Congress prescribed in the Antiterrorism and Effective Death Penalty Act of 1996; the U.S. Court of Appeals for the 6th

Circuit erred in granting habeas relief to Ervine Davenport based solely on its assessment that he could satisfy the *Brecht* standard.

Shinn v. Ramirez, 142 S.Ct. 1718 (2022). Under 28 U.S.C. § 2254(e)(2), a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state court record based on the ineffective assistance of state postconviction counsel.

Nance v. Ward, 142 S.Ct. 2214 (2022). 42 U.S.C. § 1983 is the procedural vehicle appropriate for a prisoner's method-of-execution claim even if an order granting the relief requested would necessitate a change in state law.

Shoop v. Twyford, 142 S.Ct. 2037 (2022). A transportation order that allows a prisoner to search for new evidence — in this case an order compelling the state to transport Raymond Twyford to a medical facility for neurological testing — is not "necessary or appropriate in aid of" a federal court's adjudication of a habeas corpus action when the prisoner has not shown that the desired evidence would be admissible in connection with a particular claim for relief.

C. Federal criminal laws

Wooden v. United States, 142 S.Ct. 1063 (2022). William Dale Wooden's ten burglary offenses arising from a single criminal episode did not occur on different "occasions" and thus count as only one prior conviction under the Armed Career Criminal Act.

Concepcion v. U.S., 142 S.Ct. 2389 (2022). Section 404(b) of the First Step Act of 2018 allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence.

Ruan v. U.S., 142 S.Ct. 2370 (2022). For the crime of prescribing controlled substances outside the usual course of professional practice in violation of 21 U.S.C. § 841, the mens rea "knowingly or intentionally" applies to the statute's "except as authorized" clause.

VI. Election law

Merrill v. Milligan, 142 S.Ct. 879 (2022). Court stayed a ruling by a three-court federal court enjoining districting in Alabama. Under *Purcell v. Gonzalez* federal courts should not change election rules soon before an election.

VII. Federal jurisdiction

Torres v. Texas Department of Public Safety, 142 S.Ct. 2455 (2022). Congress has the power to authorize suits against nonconsenting states pursuant to its constitutional war powers.

VIII. First Amendment – freedom of speech

Houston Community College System v. Wilson, 142 S.Ct. 1253 (2022). Respondent David Wilson does not possess an actionable First Amendment claim arising from his purely verbal censure by the Board of Trustees of the Houston Community College System.

City of Austin, Texas v. Reagan National Advertising of Texas, Inc., 142 S.Ct. 1464 (2022). The Austin city code's distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is not a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*.

Shurtleff v. Boston, 142 S.Ct. 1583 (2022). City violated the First Amendment in refusing to allow a flag from a private group after having allowed 284 other flags to be raised at City Hall.

IX. Immigration law

Patel v. Garland, 142 S.Ct. 1614 (2022). Federal courts lack jurisdiction to review facts found as part of any judgment relating to the granting of discretionary relief in immigration proceedings enumerated under 8 U.S.C. § 1252(a)(2).

Garland v. Gonzalez, 142 S.Ct. 2057 (2022). 8 U.S.C. § 1252(f)(1) — which generally strips lower courts of "jurisdiction or authority" to "enjoin or restrain the operation of" certain provisions of the Immigration and Nationality Act — deprived the district courts of jurisdiction in these cases to entertain respondents' requests for class-wide injunctive relief.

Johnson v. Arteaga-Martinez, 142 S.Ct. 1827 (2022). 8 U.S.C. § 1231(a)(6) does not require the government to provide noncitizens detained for six months with bond hearings in which the government bears the burden of proving, by clear and convincing evidence, that a noncitizen poses a flight risk or a danger to the community.

Biden v. Texas, 142 S.Ct. 2528 (2022). The government's rescission of Migrant Protection Protocols did not violate Section 1225 of the Immigration and Nationality Act, and the then-Secretary of Homeland Security's Oct. 29 memoranda constituted valid final agency action.

X. Indian law

Oklahoma v. Castro-Huerta, 142 S.Ct. 2486 (2022). The federal government and the state have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.

XI. Religious freedom

Ramirez v. Collier, 142 S.Ct. 1264 (2022). Petitioner John Ramirez is likely to succeed on his claims under the Religious Land Use and Institutionalized Persons Act because Texas' restrictions on religious touch and audible prayer in the execution chamber burden religious exercise and are not the least restrictive means of furthering the state's compelling interests.

Carson v. Makin, 142 S.Ct. 1987 (2022). A state violates the free exercise clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction.

Kennedy v. Bremerton School Dist., 142 S.Ct. 2407 (2022). The free exercise and free speech clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.

XII. Second Amendment

New York Rifle and Piston Association v. Bruen, 142 S.Ct. 2111 (2022). New York law requiring showing of "cause" for a permit to have a concealed weapon in public violates the Second Amendment. "To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"

XIII. State secrets doctrine

U.S. v. Zubaydah, 142 S.Ct. 959 (2022). State secrets doctrine applied to domestic discovery requests that could confirm Poland as location for enhanced interrogation by CIA's contractors.

Federal Bureau of Investigation v. Fazaga, 142 S.Ct. 1051 (2022). Foreign Intelligence Surveillance Act does not displace state secrets privilege against court-ordered disclosure of state and military secrets.