SUPREME COURT DECISIONS, 2019-2020 TERM

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CRIMINAL CASES

Fourth Amendment

1. *Kansas v. Glover*, 140 S.Ct. 1183 (2020) (Thomas) (8-1) (Sotomayor dissenting) (Kansas Supreme Court reversed) **(pro govt)**

An officer made a license check of a pick-up truck and discovered that the owner of the truck had had his driver's license revoked. The officer concluded that the driver in this case could be the owner and stopped the truck. He discovered incriminating evidence after the stop. The Supreme Court concludes that the stop was reasonable. Even if the officer did not have probable cause to stop the truck, he did have reasonable suspicion, a commonplace inference, that the owner of the truck was probably driving the vehicle.

Sixth Amendment

2. *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020) (Gorsuch) (6-3) (Thomas, Alito, Kagan, dissenting) (Louisiana Court of Appeals, reversed) **(pro indiv)**

The Supreme Court holds that the Sixth Amendment right to jury trial requires a unanimous jury verdict in both federal and state criminal trials. State courts are bound to follow the federal constitutional rule, jot for jot, **Apodaca v. Oregon, 406 U.S. 404 (1972) overruled.**

Habeas Corpus

3. *McKinney v. Arizona*, 140 S.Ct. 702 (2020) (Kavanaugh) (5-4) (Ginsburg, Breyer, Sotomayor, Kagan, dissenting) (9th Cir. reversed) **(pro govt)**

Arizona courts had affirmed the imposition of the death penalty on the defendant. On habeas corpus, the Ninth Circuit held that Arizona courts did not properly consider mitigating circumstances

and granted the writ. The State then returned the case to the Arizona Supreme Court which reconsidered all the factors and re-imposed the death penalty. The Supreme Court holds that a state court's reweighing of the death penalty factors is permissible, and the death penalty was warranted

4. *Banister v. Davis*, 140 S.Ct. 1698 (2020) (Kagan) (7-2) (Alito, Thomas, dissenting) (5th Cir. reversed) **(pro indiv)**
Fed. R. Civ. Proc. 59(c) allows a party to file a motion to alter or amend a district court decision, thereby preserving the case for further appeal. The Supreme Court holds that the rule applied to habeas corpus petitions filed under the AEDPA. Thus, when a prisoner filed a habeas corpus petition which was denied, his Rule 59(c) motion preserved the case for further appeal, according to the Supreme Court. It was not a new or successive habeas corpus petition.

Death Penalty

5. *Andrus v. Texas*, 140 S.Ct. 1875 (2020) (per curiam) (6-3) (Alito, Thomas, Gorsuch dissenting) (Texas Court of Criminal Appeals reversed) **(pro indiv.)**
In a death penalty case, the attorney for the prisoner was totally deficient in not presenting mitigating evidence of prisoner's terrible childhood which included his mother's addiction and prostitution and prisoner's drug habits. The Supreme Court holds that a remand was necessary for the state courts to consider those issues.

Statutory Interpretation

6. *Kelly v. United States*, 140 S.Ct. 1565 (2020) (Kagan) (9-0) (3d Cir. reversed) **(pro indiv)**
Deputy Chief of Staff to the New Jersey Governor, Bridget Anne Kelly, arranged to restrict traffic on the George Washington Bridge in order to embarrass a local mayor who did not support the governor. The Supreme Court holds that because none of the defendant's action involved the taking of property from a government entity, there was no federal crime committed.

7. *McGirt v. Oklahoma*, 140 S.Ct. (2020) (Gorsuch) (5-4) (Roberts, Thomas, Alito, Kavanaugh dissenting) (Oklahoma Supreme Court, reversed) **(pro indiv)**

Under the Major Crimes Act, any Native American who commits a crime within "Indian Country" must be tried in federal court. "Indian Country" includes the limits of an Indian Reservation. The Supreme Court holds that, based on historical analysis, a reservation for the Creek Nation was established in 1852 and never revoked. That was where the crime occurred. There are still a group of Indian reservations in eastern Oklahoma, subject to the requirement of the MCA that criminal cases against Indians in the reservation must be tried in federal court.

Procedure

8. *Davis v. United States*, 140 S.Ct. 1060 (2020) (per curiam) (5th Cir. reversed) **(pro indiv).**

Fed. R. Crim. proc. 52(b) provides that an appeal court can review the record for plain error even if the issue had not been brought to the court's attention. Supreme Court holds that plain error review permitted under that rule covers factual arguments as well as legal arguments.

9. *United States v. Sineneng-Smith*, 140 S.Ct. 1575 (2020) (Ginsburg) (9-0) (9th Cir. reversed) **(pro govt)**

A Federal statute makes it a crime to "encourage or induce" an alien to "come to, enter, or reside" in the United States knowing that, or in reckless disregard of the fact that such advice will be in violation of the law. After the defendant raised certain issues and was convicted, the Court of Appeals appointed amicus to raise other issues never raised by defendant's counsel. The Supreme Court remands the case to the Circuit, telling it to examine only those issues actually raised by defendant.

10. *Holguin-Hernandez v. United States*, 140 S.Ct. 762 (2020) (Breyer) (9-0) (5th Cir. reversed) **(pro indiv)**
Under the Fed. Rules Crim. Proc., 51(b), a defendant must inform the judge of his or her objection to the sentence that the court intends to impose. When a defendant told the judge that the proper sentence was no time or any sentence less than one year, he made a proper objection to the one year actually imposed by the Court. Thus, the Supreme Court holds, he could appeal the ruling.

11. *Shular v. United States*, 140 S.Ct. 779 (2020) (Ginsburg) (9-0) (11th Cir. affirmed) (**pro govt)**
Under the Armed Career Criminal Act, a person convicted of being a felon in possession of a firearm must receive a fifteen-year sentence, if he had previously been convicted of three "serious drug offenses." The Supreme Court holds that "serious drug offenses" are defined by state law. There is no "generic" drug offense that serves as the comparison.

Due Process

12. *Kahler v. Kansas*, 140 S.Ct. 1021 (2020) (Kagan) (6-3) (Breyer, Ginsburg, Sotomayor, dissenting) (Kansas Supreme Court affirmed) **(pro govt)**
The insanity defense contains two separate elements: (1) The cognitive element which examines whether a defendant understands that what he was doing was a crime; (2) the moral element which examines whether the defendant understands that what he was doing was wrong. Kansas has eliminated the moral element in its definition of insanity. The Supreme Court upholds Kansas redefinition of the insanity defense.

Preemption

13. *Kansas v. Garcia,* 140 S.Ct. 791 (2020) (Alito) (5-4) (Breyer, Ginsburg, Sotomayor, Kagan dissenting) (Kansas Supreme Court reversed) (**pro govt)**
Kansas passed various laws criminalizing identity theft, i.e. engaging in fraud with respect to a person's identity in order to obtain a benefit. Three illegal immigrants used false social security

cards to obtain employment, The Kansas Supreme Court held that the Kansas law was preempted by the Federal Immigration Reform and Control Act. The Supreme Court reverses, holding that no federal law preempted the Kansas provision.

AFFIRMATIVE LITIGATION

14. *Hernandez v. Mesa*, 140 S.Ct 735 (2020) (Alito) (5-4) (Ginsburg, Breyer, Sotomayor, Kagan, dissenting) (5th Cir. affirmed) **(pro govt)**
A U.S. border agent shot across the U.S.-Mexican border and killed a 15-year old Mexican national. His parents brought a Bivens action against the border agent. The Supreme Court holds that no Bivens action will lie for the following reasons: (1) such an action may affect foreign relations; (2) allowing such an action could undermine border security; (3) Congress has repeatedly declined to allow the award of damages for acts that occurred abroad; (4) Bivens actions should not be expanded.

15. *Comcast Corporation v. National Association of African-American Owned Media*, 140 S.Ct. 1009 (2920) (Gorsuch) (9-0) (9th Cir. reversed) **(pro corp)**
A group of African-American media companies brought a Section 1981 claim against Comcast for refusing to run their programs. The Ninth Circuit held that the plaintiffs did not have to show "but for" causation under Section 1981, only that race played some role in the decision. The Supreme Court reversed, holding that plaintiffs in a Section 1981 case must show "but for" causation to succeed in their action.

16. *Babb v. Wilkie*, 140 S.Ct. 1168 (2020) (Alito) (8-1) (Thomas dissenting) (11th Cir. reversed) **(pro govt)**
Under the federal employee age discrimination law, 29 U.S.C. §633a(a), any personnel actions affecting a federal employee "shall be made free from any discrimination based on age." The private sector provision of the ADEA has different language, namely prohibiting discrimination in any employment decision "because of such individual's age." 29 U.S.C. §623(a)(1). The Supreme Court

interprets the federal employee provision as requiring that personnel decisions be untainted by any consideration of age. But the more serious remedies, such as hiring, reinstatement, back pay, the employee must show "but for" causation.

17. *New York State Rifle and Pistol Association v. City of New York*, 140 S.Ct. 1525 (2020) (per curiam) (2d Cir. reversed) New York City passed a law limiting a gun owner's ability to transport or carry his or her weapon away from home. A person with a "premises" license to own a gun, (as opposed to a "carry" license) could only take the weapon to a range or shooting facility. After the lower courts upheld the law, and cert was granted, the City repealed the law. The Supreme Court held that the case was now moot.

18 *Opati v. Republic of Sudan*, 140 S.Ct. 1601 (2020) (Gorsuch) (8-0) (Kavanaugh disqualified) (D.C. Cir reversed) **(pro indiv)**
The former version of the Foreign Sovereign Immunities Act precluded suits for punitive damages. That provision was in effect when certain terrorist acts were taken against American embassies abroad. Congress then amended the law to allow for punitive damages under those circumstances and explicitly declared the new provision to be retroactive. The Supreme Court holds that the retroactive provision applies, and punitive damages can be awarded.

19. *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721 (2040) (Kagan) (9-0) (10th Cir. affirmed) **(pro govt)**
A Prisoner brought action against the facility for removing him from sex-offender treatment program. Under the Prison Litigation Reform Act, a prisoner cannot sue prison officials if his three previous suits had been dismissed. The Supreme Court holds that the three-strike rule applies whether the prior suits had been dismissed with or without prejudice.

20. *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020) (Gorsuch) (6-3) (Alito, Thomas, Kavanaugh, dissenting)
(2d Cir. affirmed) **(pro indiv)**
Title VII of the 1964 Civil Rights Act prohibits discrimination in employment on "the basis of sex." If an employer discriminates on the basis of homosexuality or transgender status, the employer is intentionally treating individual employees differently because of their sex. Thus, the Supreme Court holds, such discrimination is a violation of Title VII. The fact that at the time the law was enacted, the law was not designed to cover homosexual conduct is irrelevant. A court must apply the specific terms of the law.

21. *June Medical Services v. Russo*, 140 S.Ct. (2020) (Breyer, Roberts) (5-4) (Thomas, Alito, Gorsuch, Kavanaugh, dissenting) (5th Cir. reversed) (**pro indiv)**
Louisiana passed a law limiting abortion clinics to doctors who have visiting privileges within thirty miles of the clinic. The law is almost identical to a Texas law declared unconstitutional three years previously. The Supreme Court holds that the Texas precedent must be upheld and the Louisiana law is unconstitutional.

22. *Chiafalo v. Waashington*, 140 S.Ct. (2002) (Kagan) (9-0) (Washington Sup. Ct. affirmed) **(pro indiv)**
The Supreme Court holds that States may require that electors for President must follow the results of a Presidential election in the State and must vote for the person who won a majority of the votes in that State. The State can punish (fine) persons who do not follow the requirements of the law or otherwise insure that result.

FIRST AMENDMENT

23. *Thompson v. Hedbon,* 140 S.Ct. 348 (2019) (per curiam) (9th Cir. reversed)
Alaska law limits political contributions to political groups to $500. The Supreme Court remanded the case back to Court of Appeals to determine whether the law was consistent with Supreme Court precedents on campaign contributions.

24. *Republican National Committee v. Democratic National Committee,* 140 S.Ct. 1205 (2020) (per curiam) (Ginsburg, Breyer, Sotomayor and Kagan, dissenting) (Wisconsin District Court reversed) (**pro govt)**

In the face of the pandemic, and the resulting difficulty in voting, the district court issued an order requiring that absentee ballots could be sent in even after election day. The Supreme Court reverses, holding that federal courts should not issue orders on the eve of an election.

25. *United States Agency for Economic Development v. Alliance for Open Society International*, 140 S.Ct. (2020) (Kavanaugh) (5-3) (Ginsburg, Breyer, Sotomayor, dissenting, Kagan disqualified) (2d Cir. reversed) **(pro govt)**

The Supreme Court had previously held that Congress could not deny funding to an American corporation unless it had a written policy opposing prostitution and sex trafficking. Such a law violated the First Amendment. However, the Court holds, the law can be applied to foreign corporations. Congress has greater control over funding of foreign corporations, to insure that such funding advances our foreign affairs.

26. *Espinoza v. Montana Department of Revenue*, 140 S.Ct. (2020) (Roberts) (5-4) (Ginsburg, Breyer, Sotomayor, Kagan, dissenting) (Montana Sup. Ct. reversed) **(pro indiv).**

Montana established a program whereby individuals are given a tax credit for contributions made to organizations that award scholarships for private school tuition. But a "no aid" provision of the Montana Constitution prohibits any state contributions to religious organizations. The program thus violates the no aid" provision. Supreme Court reverses, holding that the "no aid" provision in this case violates the Free exercise clause. **State Law unconstitutional.**

27. *Barr v. American Association of Political Consultants*, 140 S.Ct. (2020) (Kavanaugh) (5-4) (Breyer, Ginsburg, Kagan, Gorsuch, dissenting) (4th Cir. affirmed) **(pro indiv)**

Congress passed a law prohibiting robocalls to cell phones. It amended the law to allow robocalls to collect a debt owed to the United States. The Supreme Court holds the law is unconstitutional. The law is content based, prohibited by the First Amendment.

Federal law unconstitutional

28. *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania; Trump v. Pennsylvania,* 140 S.Ct. (2020) (Thomas) (7-2) (Sotomayor, Ginsburg, dissenting) (3d Cir. reversed) **(pro indiv)**

The ACA requires that any medical plan must provide for "preventive care and screenings" for female employees without any cost to those employees. But the law also gave the Department of Health and Human Services the obligation to issue guidelines for religious organizations, allowing them to raise religious objections to the contraceptive obligations. The final guidelines also allowed companies that any "moral objections" to contraception to opt out of coverage. The Supreme Court holds that the guidelines issued by HHS allowing religious organizations to opt out of coverage do not violate the APA and are protected by the Free Exercise clause.

29. *Our Lady of Guadalupe School v. Morrissey-Berru; St. James School v. Biel*, 140 S.Ct. (2020) (Alito) (7-2) (Ginsburg, Sotomayor, dissenting) (9th Cir. reversed) **(pro indiv)**

In *Hossana-TaborEvangelical Lutheran Church and School v. E.E.O.C.* , the Court held that the religious exception to federal civil rights law applied to teachers who were considered ministers. In this case, the Court holds, the same rule applies. In this case, the teachers taught religion to their pupils, prayed with them and were required to develop and promote a Catholic School faith community. The Court holds that the teachers are therefore subject to the ministerial exception to federal civil rights laws.

SEPARATION OF POWERS

30. *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment LLC*, 140 S.Ct. 1649 (2020) (Breyer) (9-0) (1st Cir. reversed)
Congress created a new board to oversee and control Puerto Rico's financial problems. The board consisted of seven individuals appointed directly by the President without Senate approval. The Supreme Court holds that the provision does not violate the Appointments Clause of the Constitution because the Board was exercising local and not federal powers.

31. *Seila Law v. Consumer Financial Protection Bureau*, 140 S.Ct. (2020) (Roberts) (5-4) (Kagan, Ginsburg, Breyer, Sotomayor, dissenting) (9th Cir. reversed)
The CFPB has a single director appointed by the President with the approval of Congress. He serves a five-year term and cannot be dismissed by the President except for "inefficiency, neglect of duty, or malfeasance in office." The director has many executive functions such as the authority to issue subpoenas, conduct investigations, bring suits in federal court. The Supreme Court holds that the director is exercising executive powers. Therefore the President must have control over such federal bodies, and the law is unconstitutional **Federal law unconstitutional.**

32. *Trump v. Vance*, 140 S.C. (2020) (Roberts) (7-2) (Thomas, Alito, dissenting) (2d Cir. affirmed)
The New York City District Attorney issued a subpoena for certain tax records of President Trump. The President objected claiming absolute immunity. The Supreme Court holds that Article II and the Supremacy Clause do not preclude, or require heightened scrutiny for, the issuance of a state criminal subpoena to a sitting President. Precedents such as the Aaron Burr case where Jefferson was subpoenaed or the Nixon and Clinton cases show that the President is not above the law in such instances.

33. *Trump v. Mazars, USA LLP; Trump v. Deutsche Bank*, 140 S.Ct. (2020) (Roberts) (7-2) (Thomas, Alito, dissenting) (D.C. Cir. reversed)

Three Congressional committees issued subpoenas for bank records of President Trump. Lower federal courts had upheld the subpoenas. The Supreme Court reverses those orders. It holds that special separation of powers problems arise when such subpoenas are issued to the President. Courts must take adequate account of the separation of powers principles at stake, including the significant interests of Congress and the unique position of the President. The subpoena should be "no broader than is reasonably necessary to support the Congress' particular legislative objective.

INTELLECTUAL PROPERTY

34. *Peter v. Nantkwest*, 140 S.Ct. 365 (2019) (Sotomayor) (9-0) (Fed. Cir. affirmed)

If a party is dissatisfied with a ruling of the Patent and Trademark Office, it may appeal to the Federal Circuit or it may bring a civil action against the PTO. If it brings a new action, introduces new evidence, and then loses, it must pay "all the expenses of the proceeding." The Supreme Court holds that the expenses that can be recovered by the PTO does not include the salaries of the PTO attorneys and paralegals who worked on the case.

35. *Allen v. Cooper*, 140 S.Ct. 994 (2020) (Kagan) (9-0) (4th Cir. affirmed)

The Eleventh Amendment prohibits federal courts from considering any claims against a State. The Supreme Court had previously held that the 11th Amendment prohibits federal courts from hearing patent cases against a State, *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U.S, 627 (1999) . The Court holds that the same rule applies to copyright cases. **Federal law unconstitutional**

36. *Thryv Inc.v. Click to Call Technologies*, 140 S.Ct. 1367 (2020) (Ginsburg) (7-2) (Gorsuch, Sotomayor dissenting) (Fed. Cir. reversed)

Under *inter partes* review, a private party may challenge the Patent Office decision to grant a patent to another party. Such challenges cannot be made more than a year after the patent office decision granting the patent. But the Office has discretion whether to apply that rule. It did not apply the rule when a case was dismissed without prejudice. The Supreme Court holds that the decision of the Patent Office to permit such review is not reviewable.

37. *Romag Fasteners Inc. v. Fossil, Inc.*, 140 S. Ct. 1492 (2020) (Gorsuch) (9-0) (Fed. Cir. reversed)

The Lanham Act provides that a person suing for trademark dilution must prove willfulness to obtain the infringers profits. But there is no such requirement in the trademark infringement section of the law, The Supreme Court holds that a plaintiff bringing a trademark infringement action under the Lanham Act is entitled to an award of profits even if the plaintiff did not prove that the infringement was willful.

38 *Georgia v. Public Resource.Org., Inc.*, 140 S.Ct. 1498 (2020) (Roberts) (5-4) (Thomas, Alito, Breyer, Ginsburg, dissenting) (11th Cir. affirmed)

Georgia issues an official code, the Official Code of Georgia Annotated. The Code contains not only specific legal provisions, but annotations to those provisions, including court decisions discussing the provisions, Attorney General opinions about the provisions and citation of law reviews discussing them as well. The annotations are prepared by an outside company, Matthew Bender, but approved by the State legislature. The Supreme Court holds that the annotations are legal documents, not subject to copyright protection.

39 *Lucky Brand Dungarees, Inc. v. Marcel Fashion Group, Inc.,* 140 S.Ct. 1589 (2020) (Sotomayor) (9-0)
(2d Cir. reversed)

In prior litigation between the parties, one party was successful. But in later litigation, that party did not raise claim preclusion to the new claims. In this case, the conduct complained of occurred after the

original case was decided. The Supreme Court holds that neither claim preclusion nor defense preclusion applies.

40. *United States Patent and Trademark Office v. Booking.com B.V.* , 140 S.Ct. (2020) (Ginsburg) (8-1) (Breyer dissenting) (4th Cir. affirmed)
The Supreme Court holds that the term "booking.com" is not a generic trademark, based on various studies. The PTO determined that if the main part of an internet name is generic, adding ".com" to that term automatically makes the new name generic. The Court rejects that analysis. The term can be registered as a trademark.

IMMIGRATION

41. *Guerrero-Lasprilla v. Barr*, 140 S.Ct. 1062 (2020) (Breyer) (7-2) (Thomas, Alito, dissenting) (5th Cir. reversed)
(**pro indiv)**
Under our immigration law, a court has limited power of review of an order of deportation. If the deportee has committed a crime and is ordered removed by an immigration board, a federal court may only review "constitutional claims or questions of law." The Supreme Court holds that the "questions of law" provision includes examination of whether equitable tolling could be applied to allow a deportee to argue that he exercised due diligence in seeking review. A federal court could apply the law to the settled facts in the case.

42. *Barton v. Barr*, 140 S.Ct. 1442 (2020) (Kavanaugh) (5-4) (Sotomayor, Ginsburg, Breyer, Kagan) (11th Cir. affirmed)
Under the immigration law, a lawful permanent resident (a person with a green card) can be deported if he commits a removable offense as defined in 8 U.S.C. §1182(A)(2). The LPR can request cancellation of a removal order, but the statute eliminates that possibility if the LPR committed a serious crime, as defined by the statute. One of the later offenses committed by the LPR was aggravated assault. The Supreme Court concludes that the offense that precludes cancellation of removal does not have to be one that requires deportation. The LPR can be removed.

43. *Department of Homeland Security v. Regents of the University of California*, 140 S.Ct. 1891 (2020) (Roberts) (5-4) (Thomas, Aliso, Gorsuch, Kavanaugh, dissenting)
(9th Cir. affirmed)
In 2012, the Department of Homeland Security issued a ruling, the Deferred Action for Childhood Arrivals (DACA) allowing children who had arrived in the United States to apply for a two-year forbearance of removal. The program also allowed DACA recipients to become eligible for work authorization and other benefits. In 2017, the Acting Homeland Security Secretary Elaine Duke terminated the program. She relied on the fact that the Attorney General had declared the program illegal. The Supreme Court holds that her actions were arbitrary and capricious since Duke had discretion with respect to the manner in which the program was shut down and what kind of forbearance was still possible. Thus, her actions violated the Administrative Procedure Act.

44. *Department of Homeland Security v. Thureissigiam*, 140 S.Ct. 1959 (2020) (Alito) (7-2) (Sotomayor, Kagan, dissenting) (9th Cir. reversed) (**pro govt)**
An Immigrant crossed the border and after being apprehended, sought asylum. When his request was denied, he then sought relief by filing a habeas corpus petition. The Supreme Court holds that habeas corpus relief is not available for immigrants just crossing the border who were then denied asylum. None of the Court's precedents such as *Boumedience* or *St. Cyr* support the immigrant's position.

45. *Nasrallah v. Barr*, 140 S.Ct. 1683 (2020) (Kavanaugh) (7-2) (Thomas, Alito, dissenting) (11th Cir. reversed) **(pro indiv)**
Under federal immigration law, non-citizens who are ordered deported can assert that they will be tortured if they return to their home county. Under the Convention against Torture treaty (CAT).
Such a showing precludes deportation. The Supreme Court holds that a CAT defense raised by an immigrant can be reviewed by the federal court of appeals.

ENVIRONMENTAL LAW

46. *Atlantic Richfield Company v. Christian,* 140 S.Ct. 1335 (2020) (Roberts) (6-3) (Alito, Thomas, Gorsuch dissenting) (Montana Supreme Court reversed)

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides for federal jurisdiction over certain claims relating to hazardous waste sites. But the Supreme Court holds that state common law claims could still be brought under those circumstances. Landowners whose environmental problems arose were responsible parties under the act and could bring suit.

47. *County of Maui, Hawaii v. Hawaii Wildlife Fund*, 140 S.Ct, 1462 (2020) (Breyer) (6-3) (Thomas, Gorsuch, Alito, dissenting) (9th Cir. reversed)

The Clean Water Act forbids the discharge of any pollutant from any point source into navigable waters without a permit from the EPA. The Supreme Court holds that a discharge occurs when there is a direct discharge of a pollutant into navigable waters or where there is the functional equivalent of a direct discharge.

PROCEDURE

48. *Rotkiske v. Klemm,* 140 S.Ct. 355 (2019) (Thomas) (8-1) (Ginsburg, dissenting) (3d Cir. affirmed)

The Fair Debt Collection Practices Act has a one-year statute of limitation. The Supreme Court holds that the one-year period begins to run when the violation occurred, not when the violation is discovered.

49. *Retirement Planer Committee of IBM v. Jander*, 140 S.Ct. 592 (2020) (per curiam) (2d Cir. reversed)

In a case under the Employee Retirement Income Securities Act, the parties did not focus on the duties of a prudent fiduciary in making the proper investments. The parties focused on other issues. The

case was remanded by the Supreme Court, for the Court of Appeals to consider these other issues.

50. *Ritzen Group, Inc. v. Jackson Masonry LLC*, 140 S.Ct. 582 (2020) (Ginsburg) (9-0) (6th Cir. affirmed)
The Supreme Court holds that a bankruptcy court's order unreservedly denying relief from the automatic stay provided for in the law constitutes a final, immediately appealable order.

51. *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S.Ct. 696 (2020) (per curiam) (Puerto Rican Supreme Court reversed)
The Supreme Court holds that once a notice of removal is filed in a state or territorial court, that court loses jurisdiction.

52. *Rodriguez v. Federal Deposit Insurance Corporation,* 140 S.Ct. 713 (2020) (Gorsuch) (9-0)
(10th Cir. reversed)
The Supreme Court holds that if I.R.S. issues a refund to a group of corporations which filed joint tax returns, the manner in which the refund is distributed to the filers is a matter for the state courts to determine. There is no federal interest involved.

53. *Monasky v. Taglieri*, 140 S.Ct. 719 (2020) (Ginsburg) (9-0) (6th Cir. affirmed)
Under laws dealing with child abduction, a child must be returned to his or her "habitual residence," after a divorce. The fact that the parents entered into a private agreement determining the child's future residence is not controlling, according to the Supreme Court.

54. *Intel Corporation Investment Policy Committee v. Sulyma*, 140 S.Ct. 768 (2020) (Alito) (9-0) (9th Cir. affirmed)
The statute of limitations for an action by an employee under ERISA is three years after the employee acquired "actual knowledge" of the violation. The Supreme Court holds that "actual knowledge" means that the plaintiff must in fact have become aware of the information.

55. *Thole v. U.S. Bank N.A,*, 140 S.Ct. 1615 (2020) (Kavanaugh) (5-4) (Sotomayor, Ginsburg, Breyer, Kagan dissenting) (8th Cir. affirmed)

Plaintiffs were beneficiaries of a defined benefits retirement plan which guaranteed them a fixed payment regardless of the fiduciaries' bad judgment. They sued the fiduciaries under ERISA claiming that they made bad investment decisions. The Supreme Court dismisses the case, holding that the plaintiffs lacked standing because they would receive the same guaranteed amount regardless of the investments.

56. *GE Energy Power Conversion France SAS Corp. v. Outokumpu Stainless USA LLC,*, 140 S.Ct. 1637 (2020) (Thomas) (9-0) (11th Cir. reversed)

The FAA provides that traditional principles of state law govern the interpretation of an arbitration agreement. Thus, if state law allows a non-signatory to an arbitration agreement to be compelled to arbitrate, that principle must also be applied by a federal court. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards does not change that result, according to the Supreme Court.

57. *Liu v. Securities and Exchange Commission*, 140 S.Ct. 1936 (2020) (Sotomayor) (8-1) (Thomas, dissenting) (9th Cir. reversed)

In a civil enforcement action, the SEC may order disgorgement of all of the wrongdoers' net profits that are awarded to victims. The Supreme Court holds that such an award is considered equitable relief under the Act.

GENERAL

58. *CITGO Asphalt Refining Company v. Frescati Shipping Company*, 140 S.Ct. 1081 (2020) (Sotomayor) (7-2) (Thomas, Alito, dissenting) (3d Cir. affirmed)

In an admiralty case, an oil tanker was struck by a hidden anchor while in a marine terminal. The Supreme Court holds that a claim can be brought under the "self-berth" clause in the contract between the parties.

59. *Maine Community Health Options v. United States*, 140 S.Ct. 1308 (2020) (Sotomayor) (8-1) (Alito, dissenting) (Fed. Cir. reversed)

Under the Affordable Care Act, if insurance plans are profitable, they must repay some of the profits to the government. In addition, if the plan was not profitable, the government must cover the losses incurred by the plan, so-called "risk corridors." Even though the government was required to pay more than it received from these programs, Congress prohibited the Center for Medicare and Medicaid Services (CMS) from making the necessary payments. The losing plans then sued under the Tucker Act, claiming a contract obligation on the part of the United States. The Court upholds the claims.

60. *United States Forest Service v. Cowpasture River Preservation Association*, 140 S.Ct. 1837 (2020) (Thomas) (7-2) (Sotomayor, Kagan dissenting) (4th Cir. reversed)

The Department of Interior assigned responsibility over the Appalachian Trail to the National Park Service. That assignment did not transfer the actual land into the Park Service. Thus the Forest Service had the right to grant pipeline right-of-way through lands within the national forest traversed by the trail.

SUMMARY

Of the 60 written decisions, seven were per curiam reversals, leaving 53 fully argued cases.

Of the 60 cases, 21 were affirmed and 39 were reversed.

Of the 60 cases, 50 came from federal courts and 10 from state courts.

There were thirteen 5-4 (or 5-3) cases. The four liberal justices lost nine of them, cases, no. #3, #13, #14, #24, #25, #26, #31, #42 and #55. They won three cases, two when joined by Chief Justice Roberts, cases #21, and #43, and one case #7, when joined by Justice Gorsuch

The Court found three federal laws unconstitutional, cases #27, #31 and #35 and one state law unconstitutional, case #26.

In criminal cases the Court found in favor of the defendant in seven of thirteen cases.

In the First Amendment area, the Court found in favor of the First Amendment right in four of six cases.

The Court overruled one precedent, case #2