American University Criminal Law Brief

Volume 8 | Issue 1 Article 5

Supreme Court Watch

Joe Hernandez

Supreme Court Watch

Recent Decisions of Selected Criminal Cases | By Joe Hernandez

FISHER V. UNIVERSITY OF TEXAS AT AUSTIN

Docket Number: 11-345
Argument: October 10, 2012

Issue:

Whether the University of Texas at Austin violated the Fourteenth Amendment by explicitly using race as a criterion for in-state applicants for the purpose of increasing enrollment of Hispanic and African-American applicants.

Facts:

The University of Texas at Austin ("UT") denied Petitioner, Abigail Fisher, a white female, admission to UT when she failed to achieve admission against minority applicants who had lesser credentials as measured by standardized tests and grades. Students who attend a Texas public high school are automatically offered admission to UT if they achieve a ranking in the top 10% of their graduating class. Otherwise, race is among a range of factors used to evaluate a student's application.

Fisher was ranked 82nd in her 674-person class at Stephen F. Austin High School after having earned a 3.59 out of a possible 4.0 grade point average. Having failed to achieve admission through a top 10% ranking in her high school, Fisher was evaluated against the larger pool of students seeking general admission. When she was not admitted, she filed suit against UT, arguing that the school's use of race as a factor in admission violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The District Court sided with UT that its policies conformed to the standard set in *Grutter v. Bollinger*, 539 U.S. 306 (2003). The United States Court of Appeals for the Fifth Circuit affirmed the District Court's decision, and denied a rehearing on banc by a 9-7 vote.

In response to *Hopwood v. Texas* (5th Cir. 1996), a case prohibiting the use of race in admissions, UT adopted admissions policies designed to be race neutral. Specifically, a Personal Achievement Index ("PAI") score is calculated based on two written essays that an applicant submits in conjunction with "personal achievement scores" that includes grades and standardized test scores, as well as "special circumstances" such as socio-economic status, language(s) spoken at home other than English, parental status, etc. Those scores are calculated then graphed with admission decision based on how well a person performs relative to the whole applicant pool.

UT argues that its decision to use race as a factor in admissions conforms to the standard set in *Grutter* by assuring race is only among several factors used to achieve a "critical mass" of minority students. However, Fisher claims that race is a predominate factor that does not pass strict scrutiny review, as set out under *Grutter*. The replacement of Justice O'Connor with Justice Alito, in light of spectacle questioning by Alito, Chief Justice Roberts, and Justice Scalia, indicates to many that *Grutter* will either be narrowed or outright overruled.

MONCRIEFFE V. HOLDER

Docket Number: 11-702
Argument: October 10, 2012

Issue:

Whether a conviction under state law for the distribution of a minimal amount of marijuana qualifies as an aggravated felony.

Facts:

This case involves a Jamaica native, Adrian Moncrieffe, who was admitted to the United States lawfully in 1984 as a permanent resident. While in Georgia, he was found to be in possession of enough marijuana to make approximately two joints. He pled guilty to the charges in a Georgia court to possession with intent to distribute. The Department of

Homeland Security initiated removal proceedings against him for being an alien convicted of an aggravated felony and as an alien convicted of a controlled substance offense. An immigration judge concurred with the government that Moncrieffe's crime constituted an "aggravated felony" and was therefore a removable offense.

Moncrieffe is not challenging his conviction. Instead, he is asserts that his offense—the possession of the marijuana—was not an "aggravated felony" permitting his removal. The case and the statutory basis for it represent a complicated mix of federal and state law. First, the immigration judge initially determined that while state law formed the basis of Moncrieffe's conviction, the similarities between it and federal law were sufficient that his possession of marijuana would be a felony under federal law. The Board of Immigration Appeals and the United States Court of Appeals for the Fifth Circuit concurred with the immigration judge.

The case may seem simple on its face, however, the nature of immigration law provides categorical authority to the Attorney General and delegated officers to exercise certain measures of discretion that creates a sort of gray area as to what conditions must be met before exercising that discretion. Moncrieffe argued in effect that the amount he possessed was simply not a felony under federal law and state law definitions cannot trump or substitute a federal definition when relating to a subject of federal law. The government countered that the policy preference of Congress was to establish that seemingly small, misdemeanor crimes at the state level when overlapping with federal law could subject a person to removal. In oral arguments, reaction to this argument seemed to evoke skepticism since it requires piecing together several disparate sets of federal laws that the statute in question does not seem to invite. Regardless, the case has serious implications for immigrant defendants that face potentially minor, insignificant drug possession cases.

FLORIDA V. JARDINES

Docket: 11-564
Argument: October 31, 2012

Issue:

Whether a dog sniff of the front door by a trained narcotics detection dog based on an anonymous tip that a marijuana growing operation was occurring inside, constitutes a Fourth Amendment search requiring probable cause.

Facts:

Police officers received an anonymous tip that Joelis Jardines was using his home to grow marijuana. The Miami-Dade Police Department in conjunction the Drug Enforcement Agency conducted warrantless surveillance of the home, and observed no apparent activity in and around the home. During the course of the surveillance, a drug-sniffing dog and its handler walked up to the front of the house. The dog gave a positive alert when it sniffed the front door. Based on this positive alert, the police sought a full warrant to search the house that confirmed the premises were being used as a grow house. Prior to approaching the house, police admittedly did not have probable cause based on the anonymous tip that Jardines was running a marijuana growing operation.

Jardines makes three distinct arguments. First, the prevailing assumption accepted by the Court in prior cases that dog sniffs are *sui generis* and detect only for contraband that a person cannot form a legitimate expectation of privacy is simply is wrong. Scientific data and information have tended to suggest that dog sniffs are not as reliable as previously thought with tests showing a range of critical factors that can lead to false alerts. For instance, the substance methyl benzoate is a component of cocaine that is also found in flowers, perfumes, and food additives. The State of Florida and amicus briefs filed in its support highlight the indispensable success that government agents have with detecting contraband, specifically marijuana, through dog sniffs. They assert the track record reveals the overall effectiveness of dog sniffs.

Second, allowing dog sniffs of homes without probable cause will lead to indiscriminate invasions of privacy of people's homes since law enforcement will be permitted to conduct wide sweeps based on mere hunches and intuition. Florida responds to this charge by claiming that such concerns are irrational. Dog sniffs are a time consuming measures that require highly trained and expensive police dogs. The state does not have an interest in using that resource poorly, and the concern of neighborhood sweeps is impractical. Moreover, they have never happened.

Third, the expectation of privacy in the home is greater than anyplace where the *sui generis* standard has previously been applied. In all other cases the item searched was either a piece of luggage, car, or item that has been exposed in a public forum due to the defendant's own actions. With Jardines, though, the police action encroached specifically onto an area that is not transportable or historically granted anything except the highest expectation of privacy. Florida argues that the path leading up to the home is public in nature because police officers, visitors, and mailmen necessarily walk up to without actually peering inside the home. This Florida asserts respects the sanctity of the home.

The Court's decision will have a serious impact whichever way it resolves the case.

CHAIDEZ V. UNITED STATES

Docket Number: 11-820
Argument: November 1, 2012

Issue:

Whether the Court's decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) holding that the failure of attorneys of criminal defendants to advise their clients that pleading guilty to an offense will subject the defendant to deportation constitutes ineffective assistance of counsel under the Sixth Amendment, applies to persons whose convictions became final before its announcement.

Facts:

Roselva Chaidez immigrated to the United States from Mexico to move to the United States in 1971, and became a lawful permanent resident six years later. After being indicted on three counts of mail fraud in connection with an insurance scheme in 2003, Chaidez, on the advice of her attorney, pleaded guilty and received a sentence of four years probation. In 2009, the U.S. government began removal proceedings against Chaidez, under a federal law allowing for the deportation of any alien who commits an aggravated felony.

Chaidez filed for a writ of coram nobis, arguing ineffective assistance of counsel. The U.S. Supreme Court then issued *Padilla v. Kentucky*. The district court concluded that the *Padilla* holding applied to Chaidez's case. The United States Court of Appeals for the Seventh Circuit, however, reversed, reasoning that *Padilla* announced a new rule, and was not retroactively applicable in this case.

In *Padilla*, an individual who had pleaded guilty to a state offense sought post-conviction relief. Padilla'a post-conviction motion for relief argued that his counsel's failure to advise him that his guilty plea would subject him to virtually automatic deportation constituted constitutionally "deficient performance" under *Strickland v. Washington*, 466 U.S. 668 (1984). *Strickland* articulated a two-prong test for assessing when "counsel's assistance was so defective as to require reversal of a conviction." First, "the defendant must show that counsel's performance was deficient." Second, the defendant must show that he suffered prejudice. In *Padilla*, the Court held that there was deficient assistance of counsel, focusing especially on the "prevailing professional norms" and "the practice and expectations of the legal community" at the time of the plea.

Chaidez focuses on the retroactivity of the *Padilla* holding. Specifically, *Chaidez* argues that the Court should not hold that a new rule is created whenever *Strickland*'s precedent is applied in divergent factual settings for two reasons. First, precedent dictated *Padilla's* result; like other Strickland cases that came before it, the Court in *Padilla* applied *Strickland's* rule for evaluating attorney performance according to prevailing professional norms to a new set of facts. Second, the lower courts who ruled against applying *Strickland* distinguished between acts and omission rather than between deportation advice and other types of advice given by an attorney to his client. Additionally, *Chaidez* emphasized that in the twenty years since this Court decided *Teague v. Lane*, 489 U.S. 288 (1989), there have been more than a dozen cases in which people have sought habeas relief based on ineffective assistance of counsel, but the Supreme Court has never once held that applying *Strickland* in those divergent factual settings constituted a new rule. The United States countered that *Padilla* in fact created a new rule and could not be applied retroactively by Chaidez in collaterally attacking her conviction. This case will have important repercussions for attorneys working in immigration law, and their clients. Moreover, this case highlights the intersection between the criminal law and immigrant law fields.

BAILEY V. UNITED STATES

Docket: 11-770
Argument: November 1, 2012

Issue:

Whether police officers may detain a person when executing a search warrant after the individual has left the immediate vicinity *before* the warrant is executed.

Facts:

The case involves whether the standard set under *Michigan v. Summers*, 452 U. S. 692 (1981)—which provides law enforcement with the authority to detain individuals during the execution of a search warrant—extends to situations in which law enforcement observes a person leaving his premises immediately prior to execution of a search warrant of one's home. In *Bailey*, police officers who observed Bailey leaving his apartment, stopped him about three-quarters of a mile from the premises. The officials proceeded to search him whereupon they found a key that was later learned to open the front door of his house. Bailey also made statements connecting him to the premises in question. The search of Bailey's basement apartment turned up drugs and a gun that led to Bailey's conviction for possession of both.

The central issue in the case centers on whether *Summers* provides law enforcement with the ability to detain individuals outside the immediate vicinity of where the search of a home is be executed. Attorneys for the defendant argue *Summers* was limited to the "immediate vicinity" and that the standard under *Terry v. Ohio*, 392 U.S. 1 (1968)—reasonable suspicion that a person was committing a crime—must be shown before police can detain and seize a person outside that immediate

vicinity. Moreover, the policy reasons underlying *Summers* were to provide protection to police by fully securing the premises to be searched. One additional concern expressed during oral argument by Bailey's attorney is that extending *Summers* outside the immediate vicinity would enable law enforcement to detain individuals with any connection to a location.

The government responded that they were not advancing a rule that enables individual's to be detained who have a mere connection to a premise. Instead, law enforcement must establish an observable connection between the individual and premises, and the original safety concerns articulated under *Summers* are still applicable even when the person has left the premises. Several of the justices appeared skeptical of this argument and seemed to suggest it was too broad relative to the Fourth Amendment's probable cause and particularity standard. Additionally, extending *Terry* would make individuals caught in Bailey's circumstance would make him subject to arrest, therefore only *Summers* properly covers the situation.

The Court's decision could have a sweeping impact on the scope of a search warrant. Siding with the government's position could seemingly enable law enforcement to search and detain a person with little actual connection to a premise. However, the "immediate vicinity" test argued by Bailey may be too narrow to fulfill the safety rationale initially articulated under *Summers*.

MISSOURI V. MCNEELY

Docket Number: 11-1425
Argument: January 9, 2013

Issue:

Whether a law enforcement officer may obtain a nonconsensual and warrantless blood sample from a driver, allegedly driving while intoxicated, under the exigent circumstances exception to the Fourth Amendment warrant requirement based upon the natural dissipation of alcohol in the bloodstream.

Facts:

After stopping the defendant's truck for speeding, a Missouri state highway patrolman noticed signs of intoxication and conducted a DWI investigation. After the defendant performed poorly on sobriety tests and refused a breath test, the officer drove the defendant to a local hospital to test his blood to secure evidence of his intoxication. The officer did not seek a warrant. There, over the defendant's refusal, the officer directed a phlebotomist to draw the defendant's blood for alcohol testing at 2:33 a.m. The blood sample was analyzed, and the results revealed that the blood-alcohol content was well above the legal limit.

At trial, the defendant moved to suppress the results of the blood test as a violation of his Fourth Amendment rights. The Missouri Supreme Court disagreed with the Missouri Court of Appeals and affirmed the ruling of the trial court, holding that the nonconsensual and warrantless blood draw was a violation of the defendant's Fourth Amendment right to be free from unreasonable searches of his person. The Missouri Supreme Court, reasoning that *Schmerber v. California*, 384 U.S. 757 (1966) was expressly limited to its facts, noted that the patrolman was not confronted with these same "special facts," and concluded that exigent circumstances did not exist for the warrantless seizure.

This case represents an opportunity for the Supreme Court to rectify a clear and increasing split of authority, which has developed among state courts of last resort. Some courts have interpreted Schmerber broadly, holding that the natural dissipation of alcohol in the bloodstream is sufficient to create exigent circumstances justifying a warrantless blood draw in drunk-driving related crimes. Other courts have a more restrictive view, amounting to a decision that *Schmerber* is limited to its "special facts." Missouri argues that due to the divide in jurisprudence among state courts, this case is a prime candidate for certiorari; whereas McNeely argues that this case is an inappropriate vehicle for the court to handle the larger issue—when exigent circumstances justify a nonconsensual and warrantless blood draw—due to the special facts presented by this case and issues like an undeveloped and incomplete factual record.

MARYLAND V. KING

Docket Number: 12-207
Argument: February 26, 2013

Issue:

Whether a state law allowing police to collect and analyze DNA from people arrested and charged with serious crimes violates the Fourth Amendment protection against unreasonable searches and seizures.

Facts:

The State of Maryland's DNA Collection Act provides law enforcement the discretion to collect DNA samples from individuals for a crime of violence. This includes attempted crimes of violence, burglary, attempted burglary, rape, and molestation. The defendant, Alonzo Jay King, was arrested for first and second degree assault charges. During the duration between arrest and trial, King's DNA sample was matched to a sample from an unsolved rape case where the DNA was the only piece of evidence linking King to the rape. The victim was unable to identify the attacker. A motion to suppress the

DNA evidence was denied and King was eventually convicted of first-degree rape and sentenced to life in prison.

The case invites a new analysis into the question set out under *U.S. v. Katz*, 389 *U.S.* 347 (1967): (1) Does an individual form an expectation of privacy in their DNA? (2) Is that expectation of privacy one that society is prepared to recognize as legitimate? In *Katz* and later cases, the Court has articulated that the balance between individual expectations of privacy is in part weighed against the nature of the government interest at stake. The Maryland Court of Appeals reversed the trial court, holding the law that permitted police to extract King's DNA without a particularized warrant violated the Fourth Amendment since King's expectation of privacy exceeded the apparent government interest at stake.

The briefs in the case are heavily focused on the question as to what degree of privacy a pretrial detainee can expect before the period of conviction, and whether the Fourth Amendment's particularity standard is fulfilled under Maryland's DNA Collection Act. Maryland argues that the interest to resolve violent crimes that are otherwise unable to be solved without DNA matches is a legitimate government interest that is sufficiently particularized in light of practical limitations. The respondent claims that DNA evidence, more than most other information, should be provided the highest degree of protection, and that the law creates a general warrant against pretrial detainees.

About the Author

Joe Hernandez is a second year student at American University Washington College of Law. For the 2012-2013 academic year, he is the Executive Editor for the Criminal Law Brief. Originally from the suburbs of Boston, Joe lived in Wilmington, Delaware during his high school years before returning to New England for college at Yale University. Outside of school he is an avid golfer, and worked last summer at the Maryland Public Defender's Office in Prince George's County. His legal interests include criminal defense, white collar crime, class action litigation, government contracts, and immigration.