Supreme Court Review

Presented by the **State and Local Legal Center**

Hosted by the **International Municipal Lawyers Association**

Featuring **Melissa Arbus Sherry, Latham & Watkins** and **David Salmons, Morgan Lewis & Bockius**

About the Webinar

- Thank you IMLA for hosting this webinar!
- Send questions in the chat box or email lsoronen@sso.org
- A recording of the webinar will be available on the SLLC's website following the webinar
- By email you should have received speakers' bios and a handout
- The views expressed in this webinar do not necessarily reflect the views of the SLLC member groups

About the SLLC

- Members:
  - National Governors Association
  - National Conference of State Legislatures
  - Council for State Governments
  - National Association of Counties
  - National League of Cities
  - U.S. Conference of Mayors
  - International City/County Management Association
- Associate members: International Municipal Lawyers Association and Government Finance Officers Association

About the SLLC

- Since 1983 the SLLC has filed over 300 briefs
- The SLLC filed 12 briefs before the Supreme Court this term—including three discussed in this webinar
- The SLLC is a resource for Big Seven members on the Supreme Court—this webinar is an example

About the Speaker

- **Melissa Arbus Sherry, Latham & Watkins**
- **David Salmons, Morgan Lewis & Bockius**

Kingsley v. Hendrickson

- **Facts:** Officials in a Wisconsin county jail used a Taser on a pre-trial detainee who resisted removal of handcuffs. Section 1983 excessive force claim.
- **Issue:** What standard governs an excessive force claim by a pre-trial detainee under the 14th Amendment's Due Process Clause? Objective or subjective?
- **Holding**: Pre-trial detainee must show a purposeful or knowing (or possibly reckless) use of force that was *objectively* unreasonable. Does not need to show that the officers were subjectively aware that their use of force was unreasonable.
- **Court Lineup:** 5-4 decision by Justice Breyer. Justice Kennedy sided with the more "liberal" Justices in the majority. Justice Alito (in dissent) would have dismissed the case as improvidently granted ("DIG").
- **Amicus Support:** US largely supported pre-trial detainee, as did Former Corrections Administrators and the National Sheriffs' Association. National Association of Counties, National League of Cities, U.S. Conference of Mayors, etc. and 10 States (led by Indiana) supported jail officers.

Holt v. Hobbs

- **Facts**: Arkansas prison denied request by Muslim prisoner to grow ½ inch beard for religious reasons in violation of prison grooming policy. RLUIPA claim.
- **Issue**: Whether prison's policy, as applied, "substantially burdens" religious exercise and, if so, whether it is the "least restrictive means" of furthering a "compelling governmental interest."
- **Holding**: It does substantially burden and it is not the least restrictive means. The Court simply did not buy the two reasons (stopping flow of contraband and making it easy to identify prisoners) put forth by the prison. The fact that the policy included a medical exception allowing ¼ inch beards and that most other jurisdictions allowed comparable facial hair (at least for religious reasons) did not help matters.
- **Court Lineup**: Unanimous decision by Justice Alito. Justices Ginsburg and Sotomayor filed concurring opinions.
- **Amicus Support**: US supported prisoner, as did Former Corrections Officials and Former Prison Wardens. 18 States (led by Alabama) supported the Department of Correction.

Grady v. North Carolina

- **Facts**: Recidivist sex offender subjected to satellite-based monitoring (SBM) for the rest of his life. Fourth Amendment challenge.
- **Issue**: Whether being forced to wear a tracking device is a "search" and, if so, whether it violates the Fourth Amendment.
- **Holding**: It is a search. The Court does not decide, however, whether it is an *unreasonable* search, *i.e.*, whether it violates the Fourth Amendment.
- **Court Lineup:** Summary reversal. Per curiam decision without argument.

City and County of San Francisco v. Sheehan

- **Facts**: Police officers forcibly entered the room of a mentally disabled woman and shot her after unsuccessfully trying to subdue her. She sued the City of San Francisco under the Americans with Disabilities Act (ADA) and the police officers under Section 1983.
- **Issues**: (1) Whether Title II of the ADA applies to arrests (*i.e.*, whether law enforcement officers are required to provide accommodations when facing violent, on-the-street confrontations); and (2) Whether the officers are entitled to qualified immunity.
- **Holding**: The Court did not decide the first question presented (another "DIG"). On the second question, the police officers are entitled to qualified immunity.
- **Court Lineup**: 6-2 decision by Justice Alito. Justices Scalia and Kagan would have dismissed both questions. Justice Breyer did not take part in the decision.
- **Amicus Support**: US supported City and officers, as did the National League of Cities, U.S. Conference of Mayors, National Association of Counties, etc. and the International Municipal Lawyers Association, Major Cities Chiefs Association, etc.

Taylor v. Barkes

- **Facts**: Delaware prisoner committed suicide after mental health intake evaluation by nurse did not identify him as suicide risk. Section 1983 claim against prison officials for failure to supervise/monitor.
- **Issue**: Fact-specific application of qualified immunity doctrine. Whether it was clearly established that incarcerated individual had Eighth Amendment right to proper implementation of adequate suicide prevention protocols.
- **Holding**: It was not clearly established, so qualified immunity.
- **Court Lineup**: Another summary reversal. Per curiam opinion without argument.

Hein v. North Carolina

- Because a traffic stop qualifies as a seizure, the Fourth Amendment requires that there be reasonable suspicion of criminal activity.
- An officer stopped a vehicle because one of its two break lights was out. During the course of the stop, the officer became suspicious and asked to search the car, to which the vehicle's occupants consented. The search revealed a sandwich bag containing cocaine. The driver and passenger were arrested.
- It turns out, North Carolina law requires only one functional break light, not two. Nevertheless, it was "objectively reasonable" for officer to think a broken light was a violation.

Hein v. North Carolina

Question Presented

- Whether a mistake of law can nonetheless give rise to the reasonable suspicion necessary to uphold a seizure under the Fourth Amendment?

Holding (8-1)

- An officer's **objectively reasonable** mistake of law may justify the reasonable suspicion necessary to uphold a search or seizure.
- This parallel's the Court's previous decisions that held searches and seizures based on mistakes of fact may be reasonable. *See e.g.*, *Illinois v. Rodriguez*, 497 U.S. 177 (1990).

Hein v. North Carolina

- Court (Roberts, C.J.) holds that "reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion."
- What about the time-worn maxim: "ignorance of the law is no excuse"?
  - Hein and Justice Sotomayor's dissent argues that it is unfair to forgive mistakes of law by police officers when the citizenry receives no such luxury. Sotomayor is also concerned about expanding police powers and abuse from officers feigning legal "mistakes."
  - The Court notes the "rhetorical appeal" of the point, but reasons that even though "mistakes of law cannot justify either the imposition or the avoidance of criminal liability, it does not follow that they cannot justify an investigatory stop. And Hein is not appealing a break-light ticket; he is appealing a cocaine-trafficking conviction as to which there is no asserted mistake of fact or law."

Rodriguez v. United States

- An Officer stops a car at 12:06 am after observing it veer onto the highway's shoulder and jerk back into traffic. During the first twenty minutes after the initial stop, the Officer obtained the driver's license and registration, the passenger's license, and issued a written warning.
- The Officer then asked for permission to walk his dog around the vehicle. The driver withheld consent.
- Around 12:33 am the Officer walked his dog around the vehicle, and during the second pass the dog altered. The Officer found a large bag of methamphetamine.
- Seven to eight minutes elapsed from the time the Officer issued the written warning to the dog search (while the Officer waited for backup to arrive).

Rodriguez v. United States

Question Presented

- Whether police may routinely extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff?

Holding (6-3)

- A police stop that prolongs (*i.e.* adds time to) the initial traffic stop becomes an unlawful seizure under the Fourth Amendment.
- Affirms *Illinois v. Caballes*, 543 U.S. 405 (2005), which held that a traffic stop "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission."

Rodriguez v. United States

- Court (Ginsburg, J.) holds that an Officer's mission in conducting a traffic stop is enforcing traffic laws and ensuring that vehicles on the road are operated safely and responsibly.
- Because dog sniffs are aimed at detecting evidence of criminal wrongdoing, a dog sniff is unrelated to vehicle safety.
- Therefore a dog sniff is not sufficiently connected to an officer's traffic mission to justify prolonging a traffic stop, even by a small amount.
- Dissents emphasize break with prior precedent, especially *Illinois v. Caballes*.
- Part of trend treating dog sniffs as more like traditional searches (*Florida v. Jardines*)

City of Los Angeles v. Patel

- A group of hotels challenged Los Angeles Municipal Code § 41.49(3)(a) as facially unconstitutional under the Fourth Amendment.
- § 41.49 requires hotel operators to record information about their guests including their name and address, number of people in each guest's party, the make, model, and license plate number of any guest's vehicle parked on hotel property, the rate charged and amount collected for the room, and the method of payment.
- This information must be kept on the hotel's premises for 90 days and "shall be made available to any officer of the Los Angeles Police Department for inspection" upon request.
- Failing to make records available is a misdemeanor punishable by up to six months in jail and a $1,000 fine.

City of Los Angeles v. Patel

Question Presented

- Whether facial challenges to statutes can be brought under the Fourth Amendment and, if so, whether § 41.49(3)(a) of the Los Angeles Municipal Code is facially invalid?

Holding (5-4)

- Facial challenges under the Fourth Amendment are permissible and not particularly disfavored.
- The records request here constitutes an "administrative search" and therefore the subject of the search must have an opportunity to obtain pre-compliance review before a neutral decision maker.
- Section 41.49(3)(a) lacks pre-compliance review and is therefore facially unconstitutional under the Fourth Amendment.

City of Los Angeles v. Patel

- Only an *opportunity* for pre-compliance review is necessary.
- The Court said that an administrative subpoena would provide the requisite pre-compliance review necessary for an administrative search because a subpoenaed hotel operator could move to quash the subpoena before a search occurs.
- Ultimately, police will not be prevented from obtaining access to these documents, and may rely on exceptions to warrant requirements that may apply, including exigent circumstances.

Carroll v. Carman

- The Pennsylvania State Police Department received a report that an armed car theif might have fled to the home of Andrew and Karen Carman. The Department sent two officers to the Carman home to investigate.
- Upon arrival, the officers parked on the side of the house. They say a sliding glass door that opened onto a patio. They approached the sliding door with the intent to knock on it. At this point, the Carmans arrived. Mr. Carman was hostile with police, but Mrs. Carman subsequently gave permission for the officers to search the home. The officers did not find anything and the Carmans were not charged with any crimes.
- The Carmans later sued one of the officers in federal court under 42 U.S.C. § 1983 for, among other things, unlawfully entering their property in violation of the Fourth Amendment by walking through the backyard and onto their deck to a sliding door without a warrant.

Carroll v. Carman

- The Officer argued that the "knock and talk" exception to the warrant requirements of the Fourth Amendment justified his actions. Under this exception, officers may knock on someone's door as long as they stay on the portions of the property accessible to the general public.
- The Third Circuit held that the knock and talk exception to the Fourth Amendment only applied to a home's front door, or at least that the officers were required to start with the front door.
- The Third Circuit further held that the requirement of starting with the front door was "clearly established" by a prior Third Circuit decision (*Marasco*) and that, as a result, the officer was not entitled to qualified immunity.

Carroll v. Carman

Qualified Immunity

- A government official sued under § 1983 is entitled to qualified immunity unless the conduct violated a clearly established statutory or constitutional right.
- A right is "clearly established" when "a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Holding (per curium)

- Officer was entitled to qualified immunity as he did not violate clearly established law by using the sliding door.
- So long as a back or side door is readily accessible to the public, there is no requirement to start with the front door.

Johnson v. City of Shelby, Mississippi

- Former police officers for the city of Shelby, Mississippi sued the city for compensatory damages under the Fourteenth Amendment , claiming that they had been illegally fired for illuminating criminal activities by their colleagues.
- The district court granted summary judgment for the city because Plaintiffs failed to expressly plead a claim under 42 U.S.C. § 1983.
- The Fifth Circuit affirmed, finding that a complaint must expressly invoke § 1983, "not [as] a mere pleading formality," but to provide adequate notice. The Fifth Circuit reasoned that notice was important because "consequences flow from claims under § 1983, such as the unavailability of *respondient superior* liability, which bears on the qualified immunity analysis." 743 F.3d 59, 62 (2013).
- The Supreme Court summarily reversed in a per curium opinion, remanding with instructions to allow Plaintiffs to add a §1983 claim to their complaint.

Johnson v. City of Shelby, Mississippi

42 U.S.C. § 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

Johnson v. City of Shelby, Mississippi

Qualified Immunity

- Citing *Owen v. Independence*, 445 U.S. 622 (1980), the Court clarified that "[n]o qualified immunity analysis is implicated here, as petitioners asserted a constitutional claim against the city only, not against any municipal officer."
- *Owen* found that "a municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983." 445 U.S. at 638.

Pleadings Burden

- The Court emphasized that the plausibility standard from *Twombley* and *Iqbal* applies to factual allegations. For legal theories, Federal Rule of Civil Procedure 8(a)(2) merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief."
- "Having informed the city of the factual basis for their complaint, they were required to do no more to stave off threshold dismissal for want of an adequate statement of their claim."

Future SLLC Webinars

- Revising Sign Ordinances After *Reed v. Town of Gilbert*
  - August 19
- FREE
- Register on the State and Local Legal Center's website