

**Supreme Court Review:
Criminal Law and Procedure Cases**

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I. Fourth Amendment

Utah v. Streiff, 136 S.Ct. 2056 (2016). Evidence seized incident to a lawful arrest on an outstanding warrant should not be suppressed when the warrant was discovered during an investigatory stop later found to be unlawful. Discovery of a valid, pre-existing, and untainted arrest warrant attenuated the connection between the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest.

Birchfield v. North Dakota, 136 S.Ct. 2160 (2016). In the absence of a warrant, a state may make it a crime for a person to refuse to take a breath test, but not a blood test, to detect the presence of alcohol in the person's blood.

II. Eighth Amendment

Montgomery v. Louisiana, 136 S.Ct. 718 (2016). *Miller v. Alabama* adopts a new substantive rule that applies retroactively on collateral review to people sentenced to life without possibility of parole for crimes committed as juveniles.

III. Vagueness and the Armed Career Criminal Act

Welch v. United States, 136 S.Ct. 1257 (2016). Johnson v. United States announced a new substantive rule of constitutional law that applies retroactively to cases that are on collateral review.

Beckles v. United States, 616 Fed.Appx. 415 (11th Cir. 2015), *cert. granted*, 136 S.Ct. 2510 (2016). (1) Whether Johnson v. United States applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in United States Sentencing Guidelines (U.S.S.G.) § 4B1.2(a)(2) (defining “crime of violence”); (2) whether *Johnson's* constitutional holding applies to the residual clause in U.S.S.G. § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review; and (3) whether mere possession of a sawed-off shotgun, an offense listed as a “crime of violence” only in commentary to U.S.S.G. § 4B1.2, remains a “crime of violence” after *Johnson*.

Lynch v. DiMaya, 803 F.3d 1110 (9th Cir. 2015), *cert. granted*, 136 S.Ct. ____ (Sept. 29, 2016). Whether 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States, is unconstitutionally vague.

IV. Due process

Williams v. Pennsylvania, 136 S.Ct. 1899 (2016). Under the Due Process Clause, there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case.

Foster v. Chatman, 136 S.Ct. 1737 (2016). (1) The Court has jurisdiction to review the judgment of the Georgia Supreme Court denying Timothy Foster a certificate of probable cause on his claim, under *Batson v. Kentucky*, that the state's use of peremptory challenges to strike all four black prospective jurors qualified to serve on the jury for his capital murder trial was racially motivated; and (2) the decision of the Georgia Supreme Court that Foster failed to show purposeful discrimination was clearly erroneous.

V. Bribery

McDonnell v. United States, 136 S.Ct. 2355 (2016). setting up a meeting, talking to another official, or organizing an event or agreeing to do so, without more, does not fit the definition of "official act," for purposes of the federal bribery statute.

VI. Sixth Amendment

Betterman v. Montana, 136 S.Ct. 1609 (2016). Sixth Amendment's speedy trial guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges,

Luis v. United States, 136 S.Ct. 1083 (2016). The pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments.

Pena-Rodriguez v. Colorado, 350 P.3d 287 (Colo. 2015), *cert. granted*, 136 S.Ct. 1513 (2016). Whether a no-impeachment rule constitutionally may bar evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury.

Buck v. Davis, 623 Fed.Appx. 668 (5th Cir. 2015), *cert. granted* 136 S.Ct. 2409 (2016). Whether the Fifth Circuit imposed an improper and unduly burdensome Certificate of Appealability (COA) standard that contravenes this Court's precedent and deepens two circuit splits when it denied petitioner a COA on his motion to reopen the judgment and obtain merits review of his claim that his trial counsel was constitutionally ineffective for knowingly presenting an "expert" who testified that petitioner was more likely to be dangerous in the future because he is Black, where future dangerousness was both a prerequisite for a death sentence and the central issue at sentencing.