ACLU SUMMARY
of the
2014 SUPREME COURT TERM

* * *

Major Civil Liberties Decisions

Steven R. Shapiro
National Legal Director
ACLU

Dated: June 30, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

SAME-SEX MARRIAGE

In *Obergefell v. Hodges*, 2015 WL 2473451 (June 26, 2015)(5-4), the Court held that states are required to license same-sex marriages and to recognize licensed marriages from other states. The ruling was based on both due process and equal protection. Writing for the majority, Justice Kennedy began by noting that our concept of constitutional liberty is an evolving one and that the founders "entrusted to future generations a charter protecting the right to enjoy liberty as we learn its meaning." *Id*. at ___. He then offered four reasons why marriage is deemed fundamental under the Due Process Clause and concluded that each one applies to same-sex couples as well as opposite-sex couples. Explaining that liberty and equality are mutually reinforcing in this context, he noted that "same-sex couples are denied all the benefits afforded to opposite-sex couples [in states with marriage bans] and are barred from exercising a fundamental right." *Id*. at ____. And while he did not hold that sexual orientation is a suspect class, or even specify the level of scrutiny he was applying under the Equal Protection Clause, he did describe sexual orientation as an immutable characteristic and described in detail the long history of discrimination against gays and lesbians – two factors that weigh in favor of heightened scrutiny. There were four dissents, which principally argued that the question of whether to recognize same-sex marriages should be resolved through the democratic process and not by judges. In response, Justice Kennedy wrote: "the Constitution contemplates that democracy is the appropriate process for change, so long as that process does not abridge fundamental rights." *Id*. at ____. The ACLU was co-counsel for plaintiffs from Kentucky and Ohio.

HEALTH CARE

In *King v. Burwell*, 2015 WL 2473448 (June 25, 2015)(6-3), the Court ruled that the health insurance subsidies provided by the Affordable Care Act are available to all eligible individuals regardless of whether they live in a state that has established its own health care exchange or one in which the health care exchange was created by the federal government. The legal issue arose because the subsidy provision of the ACA refers to insurance purchased on an exchange "established by the State." Writing for the majority, Chief Justice Roberts acknowledged that this statutory language, read in isolation, would seem to foreclose federal subsidies on federal exchanges. But, he noted, the Court's duty is "to construe statutes, not isolated provisions," *id*. at ___ (internal citations omitted). Reading the critical language alongside other relevant provisions of the law, and in light of the Act's broader purpose to reduce the cost of insurance by expanding the pool of insured individuals, he concluded that participants in a federal exchange are entitled to receive the same subsidy as participants in a state exchange. Were the rule otherwise, he explained, the Act would paradoxically produce the "calamitous result that Congress plainly meant to avoid," *id*. at ___, by reducing the number of insured, increasing premiums, and driving insurance carriers from the marketplace. Justice Scalia's dissent, joined by Justices Thomas and Alito, accused the majority of "favor[ing] some laws over others," and doing "whatever it takes to uphold and assist its favorites." *Id*. at ___.

FREE SPEECH

In *Williams-Yulee v. Florida Bar*, 135 S.Ct. 1656 (April 29, 2015)(5-4), the Court upheld Florida's ban on the solicitation of campaign contributions by judicial candidates both on its face and as applied to the mass mailing at issue in this case. All but Justice Ginsburg agreed that strict scrutiny applied to Florida's restriction. Writing for a majority, Chief Justice Roberts then

concluded that Florida has a compelling interest in preserving the fact and appearance of judicial integrity and that its ban on personal solicitation was narrowly tailored to advance that goal, even though the law allowed judicial candidates to solicit funds through a campaign committee and to personally thank those who contributed. The decision thus joins only a handful of cases in which the Court has upheld a law restricting speech on the basis of content. There were three separate dissents by Justices Scalia, Thomas, and Alito, all of which focused on the meaning of narrow tailoring. In Justice Alito's words, "[i]f this rule can be characterized as narrowly tailored, then narrow tailoring has no meaning, and strict scrutiny, which is essential to the protection of free speech, is seriously impaired." *Id*. at 1685. The ACLU submitted an *amicus* brief arguing that Florida's rule was unconstitutional as applied.

In *Walker v. Sons of Confederate Veterans*, 2015 WL 2473375 (June 18, 2015)(5-4), the Court upheld a decision by Texas state officials to reject a specialty license plate proposed by the Texas Division of the Sons of Confederate Veterans. Writing for the majority, Justice Breyer ruled that all license plates, including specialty license plates, are a form of government speech and therefore not subject to the normal First Amendment prohibition on viewpoint discrimination. Justice Alito's dissent challenged the majority's characterization of specialty license plates as government speech, noting that Texas had approved over 350 specialty license plates on a wide range of subjects, including specialty license plates supporting rival state universities. The ACLU submitted an *amicus* brief arguing against expansion of the government speech doctrine and noting that other states had used the same power claimed by Texas to allow "Pro Life" license plates while disallowing "Respect Choice" license plates.

In *Reed v. Town of Gilbert*, 2015 WL 2473374 (June 18, 2015)(9-0), the Court struck down a municipal sign ordinance that imposed different regulatory rules on different categories of signs. Writing for the majority, Justice Thomas held that the distinction between ideological signs, political signs, and signs leading people to the petitioner's church service were content-based on their face and could not survive strict scrutiny. In reaching this conclusion, the majority ruled that a law can be content-based in one of two ways: either the text of the regulation draws explicitly content-based lines, or the regulation is facially neutral but justified by reference to the content of the regulated speech. If the former condition is satisfied, the latter need not be proved. Justice Kagan wrote a concurring opinion urging a common-sense approach in which even regulations that are facially content-based may not trigger strict scrutiny if there is no "realistic possibility" that unpopular ideas are in danger of being suppressed.

FOURTH AMENDMENT

In *Heien v. North Carolina*, 135 S.Ct. 530 (Dec. 15, 2014)(8-1), the Court held that a traffic stop based on an officer's objectively reasonable misunderstanding of the law (in this case, the question was whether state law required one working brake light or two) does not violate the Fourth Amendment. Both the majority opinion by Chief Justice Roberts and a concurring opinion by Justice Kagan, however, stressed that the standard for determining objective reasonableness in this context "is not as forgiving as the one employed in the distinct context of deciding whether an officer is entitled to qualified immunity." *Id*. at 540. Justice Sotomayor, the sole dissenter, criticized the Court for ignoring the impact of its decision on "communities and . . . their relationship with the police. *Id*. at 544.

In *Grady v. North Carolina*, 135 S.Ct. 1368 (Mar. 30, 2015)(9-0), the Court summarily ruled, in a *per curiam* opinion, that subjecting a recidivist sex offender to a satellite-based monitoring system constitutes a search under *United States v. Jones*, 565 U.S. ___ (2012). The Court then remanded for further proceedings to determine whether the search was reasonable under the Fourth Amendment.

In *Rodriguez v. United States*, 135 S.Ct. 1609 (April 21, 2015)(6-3), the Court held that the Fourth Amendment prohibits the police from prolonging a traffic stop to conduct a dog sniff absent reasonable suspicion. Relying heavily on the Court's earlier decision in *Illinois v. Caballes*, 543 U.S. 405 (2005), Justice Ginsburg's majority opinion held that a traffic stop "ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." *Id*. at 1611.

In *Los Angeles v. Patel*, 2015 WL 2473445 (June 22, 2015)(5-4), the Court struck down a Los Angeles ordinance authorizing the police to conduct warrantless inspections of hotel registries as facially unconstitutional under the Fourth Amendment. Writing for the majority, Justice Sotomayor first held that facial challenges can be brought under any enforceable provision of the Constitution, including the Fourth Amendment. She then explained that the facial constitutionality of a statute should be judged by focusing on those cases where the statute applies but not those cases where it is irrelevant. Applying that standard here, she ruled that the fact that warrantless searches could be conducted with consent or under exigent circumstances did not save the ordinance from facial invalidity because those searches would be constitutional even if the ordinance did not exist. Finally, she concluded that the failure of the ordinance to provide for any pre-compliance judicial review – either through an administrative warrant or the opportunity to challenge an administrative subpoena – rendered the statute facially unconstitutional. Only Justices Alito and Thomas dissented from this characterization of facial challenges. Along with Chief Justice Roberts, they also joined in Justice Scalia's separate dissent arguing that the ordinance is constitutional despite the absence of any opportunity for judicial review because the hotel industry is closely regulated.

CONFRONTATION CLAUSE

In *Ohio v. Clark*, 2015 WL 2473372 (June 18, 2015)(9-0), the Court unanimously ruled that the introduction at trial of the hearsay statements made by a 3-year old victim of child abuse to his teachers was not "testimonial" and thus did not violate the Confrontation Clause because the "primary purpose" for which the statements were elicited was to deal with an ongoing emergency and not to gather evidence of a crime. While declining to adopt a categorical exception to the Confrontation Clause for statements made to persons other than the police, Justice Alito emphasized that the fact that the child was speaking to his teachers and not the police was highly relevant.

EIGHTH AMENDMENT

In *Glossip v. Gross*, 2015 WL 2473454 (June 29, 2015)(5-4), the Supreme Court upheld Oklahoma's three-judge protocol for execution by lethal injection, which relies on a sedative named midazolam rather than a barbiturate to act as an anesthetic, even though midazolam was not designed for that purpose and there is considerable evidence that it cannot function in that way. Writing for the majority, Justice Alito's ruling rested on two independent grounds. First, he held that the burden is on a death row inmate challenging a state's method of execution to prove

that there is another known and available alternative that entails a smaller risk of pain, and that petitioners in this case had not carried that burden, largely because pharmaceutical companies responding to market pressures were no longer supplying states with barbiturates for lethal execution. In other words, the majority ruled that Oklahoma's lethal injection protocol is constitutional even if there is a reasonable risk of extreme pain because the state was left with no other choice given the advocacy efforts of death penalty opponents. Second, Justice Alito held that the district court's finding that midazolam could function as an anesthetic for these purposes was not clearly erroneous. Justice Sotomayor's dissent disputed the majority's reading of the record. Justice Breyer's dissent (joined by Justice Ginsburg), described the death penalty as an unreliable and arbitrary penalty without a legitimate penological justification, and concluded by saying that it is "highly likely that the death penalty violates the Eighth Amendment." *Id*. at ____. It is the first time that either Justice Breyer or Justice Ginsburg has come this close to saying that the death penalty should be declared unconstitutional.

DUE PROCESS

In *Kerry v. Din*, 2015 WL 2473334 (June 15, 2015)(5-4), the court ruled that the government did not violate the due process rights of a U.S. citizen wife when it denied an immigrant visa to her non-citizen husband on national security grounds. Justice Scalia, joined by Chief Justice Roberts and Justice Thomas, held that due process does not guarantee husbands and wives the right to live together in the United States even if one is a U.S. citizen. The opinion rests on Justice Scalia's very narrow interpretation of substantive due process. Justice Kennedy, joined by Justice Alito, concurred in the result but disagreed with the reasoning. In his view, it was unnecessary to decide whether any due process rights were involved in this case because the government had satisfied due process by citing a national security provision of the immigration law as a basis for the visa denial, even though the government never indicated which subsection it deemed relevant or provided any opportunity to contest its determination. Relying on *Kleindienst v. Mandel*, 408 U.S. 753 (1972), Justice Kennedy went on to say that more probing judicial review would be inappropriate "in a case such as this" given the national security concerns and the deference given to the political branches on immigration matters. Justice Breyer's dissent argued that the interests involved in this case were important enough to trigger procedural protection under the due process clause even if they did not qualify as fundamental for substantive due process purposes. And, he wrote, the governments general citation to a broad statutory provision with many subsections does not satisfy the notice requirements of procedural due process. The ACLU submitted an *amicus* brief agreeing with Justice Breyer that the government had provided inadequate notice in this case.

In *Kingsley v. Hendrickson*, 2015 WL 2473447 (June 22, 2015)(5-4), the Court ruled that the due process test for determining whether a pretrial detainee has been subject to excessive force is an objective one. Writing for the majority, Justice Breyer acknowledged that previous cases had held that the a convicted prisoner alleging excessive force under the Eighth Amendment must also show that the officer acted with malicious intent but concluded that those precedents did not apply to a pretrial detainee who has not been convicted and thus cannot be subject to punishment. In dicta, the majority suggested that it might be willing to reconsider the Eighth Amendment test, as well, in an appropriate case. The ACLU submitted an *amicus* brief urging the Court to adopt an objective standard for pretrial detainees.

REDISTRICTING

In *Arizona State Legislature v. Arizona Independent Redistricting Comm'n*, 2015 WL 2473452 (June 29, 2015)(5-4), the Court upheld an independent redistricting commission in Arizona that had been created by initiative against a challenge brought by the state legislature, which argued that only the legislature had redistricting authority under the Constitution. Writing for the majority, Justice Ginsburg concluded that the state legislature had standing to bring its challenge but then rejected that challenge on the merits. Her opinion begins by noting that "partisan gerrymanders [are incompatible] with democratic principles." *Id*. at ___ (internal citations omitted). It then goes on to hold that Arizona's independent redistricting commission is consistent with the Elections Clause for two reasons. First, federal law adopted pursuant to the Elections Clause specifically refers to redistricting "in the manner provided by the law" of any state, 2 U.S.C. § 2a(c). Second, "it would be perverse to interpret the term "Legislature" in the Elections Clause so as to exclude lawmaking by the people." *Id*. at ____. The ACLU submitted an *amicus* brief arguing that the independent redistricting commission in Arizona was constitutional.

QUALIFIED IMMUNITY

In *Carroll v. Carman*, 135 S.Ct. 348 (Nov. 10, 2014)(9-0), the Court held, in a *per curiam* summary reversal, that the police officers in this case were entitled to qualified immunity in this § 1983 suit alleging that the officers had violated the Fourth Amendment by entering plaintiffs' property without a warrant and seeking entry to their home through the carport rather than the front door. The Court's chose not to decide whether the "knock and talk" exception to the Fourth Amendment allows police officers to approach a home without a warrant through any entrance that is usually open to visitors. Instead, the Court explained, "whether or not the constitutional rule applied by the court below was correct," qualified immunity should have been granted because the rule was not beyond debate." *Id*. at 352 (citation and internal quotes omitted).

In *City and County of San Francisco v. Sheehan*, 135 S.Ct. 1765 (May 18, 2015)(6-2), the Court held that police officers were entitled to qualified immunity after entering the room of and ultimately shooting a mentally ill women living in a group home, who had earlier threatened both a group home employee and the officers with a knife, absent clearly established law that their actions violated the Fourth Amendment. The majority opinion, written by Justice Alito, dismissed as improvidently granted a second question presented on whether Title II of the Americans with Disability Act applies to the arrest of a mentally ill suspect. In an opinion concurring in part and dissenting in part, Justices Scalia and Kagan agreed that the ADA claim was properly dismissed and declined to reach the qualified immunity claim. The ACLU submitted an *amicus* brief addressing only the ADA claim, which we argued should either have been resolved in plaintiff's favor or dismissed.

In *Taylor v. Barkes*, 135 S.Ct. 2042 (June 1, 2015)(9-0), the Court summarily reversed the Third Circuit's denial of qualified immunity for state correction officials who had been sued under § 1983 by the family of a prisoner who committed suicide in jail. The theory of the case was that the correction officials had failed properly to supervise and monitor the suicide screening procedures used by the private contractor who they had hired to provide medical care at the facility. In a *per curiam* opinion, the Court held that the right to adequate suicide prevention protocols, if it exists at all, was not clearly established at the time of the suicide.

SUPREMACY CLAUSE

In *Armstrong v. Exceptional Child Center, Inc.*, 135 S.Ct. 1378 (Mar. 31, 2015)(5-4), the Court dismissed a challenge brought by health care providers arguing that Medicaid reimbursement rates in Idaho were lower than required by federal law. All nine members of the Court agreed that the Supremacy Clause did not itself create an implied right of action. The Court split, however, on the question of whether the equity powers of the federal courts were sufficient to enjoin compliance with federal law under the circumstances of this case. Writing for the majority, Justice Scalia emphasized that Medicaid is a funding statute and that the only express statutory remedy for non-compliance is a funding cut-off. He also stressed that the specific rate-setting provisions at issue were broadly written and did not easily lend themselves to judicially manageable standards. Justice Breyer joined Justice Scalia's opinion (except for one section), but wrote separately to highlight his view that ratemaking, in particular, is more suited to administrative decisionmaking than judicial decisionmaking. Justice Sotomayor dissented on the ground that federal courts have long exercised their equitable authority to strike down state laws on preemption grounds unless the exercise of that authority is expressly precluded by Congress, which it had not been here. In that regard, she distinguished equitable actions from damage actions, which she agreed must be affirmatively authorized by Congress. The ACLU submitted an *amicus* brief supporting the right to seek judicial relief in this case.

SEPARATION OF POWERS

In *Zivitofsky v. Kerry*, 2015 WL 2473281 (June 8, 2015)(6-3), the Court concluded that the power to recognize the sovereignty of foreign states belongs exclusively and conclusively to the president. Based on that premise, Justice Kennedy then held that a congressional statute requiring the State Department to issue passports to U.S. citizens born in Jerusalem that lists Israel as their place of birth at their request violates separation of powers and is therefore unconstitutional. The majority was careful to cabin its opinion, however, by noting that "[i]t is not for the the President alone to determine the whole content of the Nation's foreign policy." *Id.* at ___. The three dissenters – Chief Justice Roberts, Justice Scalia, and Justice Alito – argued that the power of recognition does not belong exclusively to the president and that, even if it did, the challenged statute does not infringe it.

COMMERCE CLAUSE

In *Comptroller of the Treasury of Maryland v. Wynne*, 135 S.Ct. 1787 (May 18, 2015) (5-4), the Court ruled, in an opinion by Justice Alito, that Maryland's failure to credit the out-of-state taxes paid by Maryland residents when calculating their in-state tax liability violates the dormant Commerce Clause. In an unusual lineup, the four dissenters were Justices Scalia, Thomas, Ginsburg and Kagan.

CIVIL RIGHTS STATUTES

A. Fair Housing Act

In *Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project*, 2015 WL 2473449 (June 25, 2015)(5-4), the Court held that the Fair Housing Act (FHA) prohibits practices that have a discriminatory impact without the need to prove discriminatory intent. Writing for the majority, Justice Kennedy pointed to case law interpreting similar statutory language under Title VII and the Age Discrimination in Employment Act, the fact that

all nine circuits that have ruled on the issue have allowed discriminatory impact claims under the FHA, and that Congress implicitly ratified that consistent judicial interpretation when it amended the FHA in 1988. The ACLU submitted an *amicus* brief pointing out the importance of preserving discriminatory impact claims as a means of addressing ongoing problems of housing discrimination.

B. Voting Rights Act

In *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (Mar. 25, 2105)(5-4), the Court reversed a three-judge court decision upholding Alabama's state legislative redistricting following the 2010 census. In so doing, the lower court rejected a claim that the State had engaged in unconstitutional racial gerrymandering by "packing" racial minorities intro majority-minority districts. Writing for the majority, Justice Breyer detailed four legal errors in the lower court's reasoning: (1) it focused on the State's plan "as a whole" rather than determining whether specific districts had been subject to racial gerrymandering; (2) it improperly denied plaintiff's standing to raise certain claims; (3) in concluding that race was not the predominant factor in the State's redistricting decisions, it mistakenly weighed in the balance the State's desire to adhere as closely as possible to the principle of one-person, one-vote, when that goal should have been treated instead as a background principle that applies in all redistricting cases; and (4) it misinterpreted Section 5 of the Voting Rights Act to prohibit retrogression in the percentage of minorities in a given district rather than retrogression in the number of districts where minorities have a fair opportunity to elect a candidate of their choice. Accordingly, the case was remanded to the three-judge court for a reevaluation of the record under the proper legal standards. The ACLU submitted an *amicus* brief supporting plaintiffs' racial gerrymandering claim.

C. Title VII

In *Mach Mining, LLC v. EEOC,* 135 S.Ct. 1645 (April 29, 2015)(9-0), the Court unanimously held that the requirement in Title VII that the EEOC must engage in conciliation efforts before filing suit is subject to judicial review but only to this limited extent. A reviewing court can determine whether the employer was notified of the charge against it and offered an opportunity to engage in discussion to resolve the complaint, but the agency has unreviewable discretion to decide when and how those discussions should end.

In *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S.Ct. 2028 (June 1, 2015)(8-1), the Court held that a job applicant need not have asked for a religious accommodation in order to prevail on a disparate treatment claim under Title VII if she can show that religion was a substantial motivating factor in the employer's decision not to hire her. Justice Scalia wrote the majority opinion. The ACLU submitted an *amicus* brief advocating the result reached by the Court.

D. Pregnancy Discrimination Act

In *Young v. United Parcel Service, Inc.*, 135 S.Ct. 1338 (Mar. 25, 2015)(6-3), the Court considered whether an employer must provide a pregnant employee with an accommodation (in this case, relief from heavy lifting) when it provides that accommodation to some but not all non-pregnant employees who are "similar in their ability or inability to work." Writing for the majority, Justice Breyer held that the answer to that question lies in the *McDonnell-Douglas* framework under which an employee seeking to prove a disparate treatment claim must first

make out a prima facie case of discrimination, at which point the burden shifts to the employer to establish a legitimate, non-discriminatory reason for the difference in treatment, with the employee then getting a final chance to show that the employer's stated reason is pretextual. In applying that test here, Justice Breyer ruled the question of whether an employer has provided a legitimate, non-discriminatory reason turns on whether the non-accommodation policy imposes a significant burden on pregnant women and whether an employer, like UPS, that already accommodates many non-pregnant workers has a good reason for refusing to extend the same accommodation to pregnant women. Significantly, the Court also held that the mere fact that accommodating pregnant women "is more expensive or less convenient," *id*. at 1354, is not an adequate justification for disparate treatment. Because these issues were not explored below, the case was remanded for further proceedings. The ACLU submitted an *amicus* brief supporting the employee's pregnancy discrimination claim.

E. Religious Land Use and Institutionalized Persons Act

In *Holt v. Hobbs*, 135 S.Ct. 853 (Jan. 20, 2015)(9-0), a unanimous Court ruled that Arkansas prison officials violated RLUIPA when they refused to allow a Muslim inmate to grow a ½ inch beard. Writing for the majority, Justice Alito recognized that prison security is a compelling interest but concluded that defendants had failed to establish that the ban on ½ inch beards actually furthered that interest or that it was the least restrictive alternative for achieving that goal. After pointing out that the least-restrictive-means standard "is exceptionally demanding," *id*. at 858 (quoting *Hobby Lobby*), Justice Alito noted, among other things, that Arkansas officials had failed to show why their security needs were materially different than the vast majority of prison systems across the country that permitted short beards. Justice Ginsburg added a brief concurrence noting that, unlike *Hobby Lobby*, "accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief." *Id*. at 867. The ACLU submitted an *amicus* brief urging the Court to uphold the RLUIPA claim.

F. Fair Labor Standards Act

In *Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513 (Dec. 8, 2014)(9-0), the Court unanimously held that Amazon's warehouse employees were not entitled to compensation for post-shift time going through a security screening intended to discourage theft. Writing for the Court, Justice Thomas ruled that the FSLA only applies to activities that are integral and indispensable to an employee's work, and that security screening is neither, even though it was required by the employer.

G. Truth in Lending Act

In *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S.Ct. 790 (Jan. 13, 2015)(9-0), the Court unanimously held, in an opinion written by Justice Scalia, that a borrower's right to rescind a loan by notifying the lender within a statutorily designated period does not require the borrower to file a lawsuit but merely to inform the lender of the borrower's intent to rescind. The ACLU filed an *amicus* brief supporting the statutory interpretation adopted by the Court.

H. Whistleblower Protection Act

In *Department of Homeland Security v. MacLean*, 135 S.Ct. 913 (Jan. 21, 2015)(7-2), the Court considered whether an exception to the Whistleblower Protection Act that exempts otherwise covered disclosures if they are "specifically prohibited by law" was triggered by DHS

regulations prohibiting the disclosures at issue in this case. Writing for the majority, Chief Justice Roberts held that the DHS regulations did not qualify as "law" for these purposes. His opinion relied heavily on the fact that the section of the Homeland Security Act authorizing DHS to issue its regulations also repeatedly uses the phrase "law, rule, or regulation," suggesting that the three were not deemed equivalent by Congress.

I. Federal Tort Claims Act

In *United States v. Kwai Fun Wong*, 135 S.Ct. 1625 (April 22, 2015)(5-4), the Court held that two provisions of the Federal Tort Claims Act, which require that claims must first be presented to the appropriate administrative agency within two years after the claim accrues and that any federal lawsuit must then be filed within six months of the agency's denial of the claim, are not jurisdictional and are therefore subject to equitable tolling. Justice Kagan wrote the majority opinion.

IMMIGRATION

In *Mellouli v. Lynch*, 135 S.Ct. 1980 (June 1, 2015)(7-2), the Court held that a provision of federal law authorizing the removal of any alien who is convicted in state or federal court of an offense "relating to a controlled substance" as defined by federal law did not apply to the alien in this case because his Kansas drug conviction rested on the state's definition of controlled substances, which is more expansive than federal law, without naming the actual drugs involved. Justice Ginsburg wrote the majority opinion.

In *Mata v. Lynch*, 2015 WL 2473335 (June 15, 2015)(8-1), the Court reaffirmed the jurisdiction of the federal circuits to review decisions from the Bureau of Immigration Appeals denying a motion to reopen removal proceedings, even if the motion was denied as untimely and/or a motion for equitable tolling was rejected. Justice Kagan wrote the majority opinion.

HABEAS CORPUS

In *Lopez v. Smith*, 135 S.Ct. 1 (October 6, 2014)(9-0), the Court summarily reversed a writ of habeas corpus by the Ninth Circuit in this murder case. The Ninth Circuit ruled that the defendant had not received constitutionally adequate notice that the prosecution would seek a jury instruction on aiding and abetting as an alternative theory of guilt. The Court, however, held that the alleged failure of notice did not violate clearly established Supreme Court law, as required by AEDPA and admonished the lower courts that they may not "rely[] on their own precedent to conclude that a particular constitutional principle is 'clearly established.'" *Id.* at 2.

In *Glebe v. Frost*, 135 S.Ct. 429 (Nov. 17, 2014)(9-0), the Court once again summarily reversed the Ninth Circuit's grant of habeas corpus from a state court conviction. In a *per curiam* opinion, the Court ruled that the failure to allow the defendant to argue alternative theories in his closing argument – that the prosecution had failed to prove that he was in fact an accomplice to a string of robbers or, if he was, that he had acted under duress – did not qualify as a structural error under clearly established Supreme Court law and thus the state court's characterization of any error as harmless did not justify federal relief under AEDPA.

In *Jennings v. Stephens*, 135 S.Ct. 793 (Jan. 14, 2015)(6-3), the Court held that a habeas petitioner who prevailed on two theories of ineffective assistance of counsel but lost on the third in the district court may defend the habeas judgment in his favor on all three grounds without filing a cross-appeal. The Court's opinion was written by Justice Scalia.

In *Christeson v. Roper*, 135 S.Ct. 891 (Jan. 20, 2015)(7-2), the Court summarily ruled that the Eighth Circuit erred in denying a motion to substitute counsel for a death row inmate who sought to argue that his deadline for filing a habeas petition should be equitably tolled due to the ineffective assistance of his original counsel who miscalculated the filing deadline. In a *per curiam* opinion, the Court held that the serious conflict of interest presented by these facts – the original counsel could not argue for equitable tolling without acknowledging their own serious errors – was sufficient to grant the substitution motion. The Court expressed no view on the ultimate question of whether equitable tolling should be allowed.

In *Woods v. Donald*, 135 S.Ct. 1372 (Mar. 30, 2015)(9-0), the Court summarily reversed the Sixth Circuit's grant of habeas corpus, holding that there was no prior case clearly establishing that counsel's absence during testimony concerning his client's co-defendants was per se ineffective assistance, especially since counsel had already stated on the record that the testimony in question was irrelevant to his client.

In *Coleman v. Tollefson*, 135 S.Ct. 1759 (May 18, 2015)(9-0), the Court unanimously held that a prisoner who has had three prior suits dismissed as "frivolous, malicious, or fail[ing] to state a claim on which relief may be granted," 28 U.S.C. § 1915(g), cannot be granted *in forma pauperis* status – and thus relieved of the duty to pay filing fees – even if one of those dismissals is pending on appeal.

In *Davis v. Ayala*, 2015 WL 2473373 (June 18, 2015)(5-4), Justice Alito ruled for the Court that the exclusion of defense counsel from the *Batson* hearing in this capital case was harmless error when evaluated under the standards applicable in habeas proceedings. Justice Kennedy's concurring opinion is an essay on the inhumanity of solitary confinement.

In *Brumfield v. Cain*, 2015 WL 2473376 (June 18, 2105)(5-4), the Court ruled that petitioner was entitled to habeas relief because the Louisiana Supreme Court's decision denying him an evidentiary hearing on his *Atkins* claim was an unreasonable determination of the facts under 28 U.S.C. § 2254(d). Among other things, Justice Sotomayor concluded for the majority that the state courts had place too much weight on a single IQ test score of 75.

FEDERAL CRIMINAL LAW

In *Whitfield v. United States*, 135 S.Ct. 785 (Jan. 13, 2015)(9-0), the Court unanimously held that the enhanced penalties set forth in 18 U.S.C. § 2113(e) are triggered whenever someone committing or fleeing a bank robbery "forces anyone to accompany him," regardless of how far they move. In this case, the defendant had sought refuge in a home after robbing a bank and forced the homeowner to move from the hallway to a den, less than ten feet away, where she suffered a fatal heart attack. The Court's opinion was written by Justice Scalia.

In *Yates v. United States*, 135 S.Ct. 1074 (Feb. 25, 2015)(6-3), the Court held that a provision of the Sarbanes-Oxley Act that makes it a crime to knowingly alter, destroy or falsify "any record, document, or tangible object" with the intent to impede or obstruct a federal investigation, 18 U.S.C. § 1519, did not apply to the defendant's destruction of undersize fish. Writing for the plurality, Justice Ginsburg conceded that the dictionary definition of "tangible

object" would include the missing fish in this case, but argued that the dictionary definition did not make sense in the context of a statute that was enacted to address corporate fraud following the Enron scandal. Justice Alito provided the fifth vote for the majority. Justice Kagan dissented, joined by Justices Kennedy, Scalia and Thomas. While rejecting the majority's conclusion that tradition modes of statutory interpretation require a narrow reading of the statutory language as issue here, she ended her dissent with the following observation: "Still and all, I tend to think, for the reasons the plurality gives, that §1519 is a bad law—too broad and undifferentiated, with too-high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion. And I'd go further: In those ways, §1519 is unfortunately not an outlier, but an emblem of a deeper pathology in the federal criminal code." *Id*. at 1101.

In *Henderson v. United States*, 13 S.Ct. 1780 (May 18, 2105)(9-0), a unanimous Court held, in an opinion written by Justice Kagan, that 18 U.S.C. § 922(g), which prohibits a convicted felon from possessing guns, does not prevent a convicted felon from designating the recipient of his guns so long as the court approving the transfer is assured that the convicted felon will not continue to exercise either actual or constructive possession of them.

In *Elonis v. United States*, 135 S.Ct. 2001 (June 1, 2015)(8-1), the Court held that a conviction under the federal anti-threat statute, 18 U.S.C. § 875(c), cannot be based solely on the fact that the person named in the allegedly threatening statement reasonably regarded it as a threat. Instead, Chief Justice Roberts wrote for the majority, the government must establish that the speaker acted with some form of criminal intent. The opinion explicitly left unresolved whether actual intent is required or whether recklessness is enough. (Justice Alito concurred in the decision but dissented on this point – he would have held that recklessness is sufficient.) Interestingly, the majority opinion does not mention the First Amendment at all but relies on what the Chief Justice described as "the basic principle" that "wrongdoing must be conscious to be criminal." *Id*. at 2009 (internal citation omitted). The ACLU submitted an *amicus* brief urging the Court to reject the government's interpretation of the statute.

In *Johnson v. United States*, 2015 WL 2473450 (June 26, 2015)(8-1), the Court held that the so-called residual clause of the Armed Career Criminal Act (ACCA) is unconstitutionally vague. In general, ACCA provides for a sentencing enhancement based on three or more prior convictions for a serious drug offense or violent felony. The residual clause then says that the category of violent felonies includes, in addition to certain enumerated crimes, other unidentified crimes "involv[ing] conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B). The Court's previous cases interpreting that phrase had indicated that, sentencing judges should consider what conduct is ordinarily associated with those unenumerated crimes in deciding whether they fit within the residual clause. Justice Scalia concluded that all of this left a person of ordinary intelligence guessing which crimes triggered an enhancement under the residual clause. "Invoking so shapeless a provision to condemn someone to prison for 15 years to life," he wrote, "does not comport with the Constitution's guarantee of due process." *Id.* at ____. In the course of his opinion, he also seemingly rejected the proposition that a statute must be vague in all its applications to be facially unconstitutional.

FEDERAL CIVIL PROCEDURE

In *Johnson v. City of Shelby*, 135 S.Ct. 346 (Nov. 10, 2014)(9-0), the Court summarily reversed a Fifth Circuit ruling dismissing this complaint by local policemen who claimed that they had been fired from their jobs for exposing criminal activity by one of the city's alderman. According to the Fifth Circuit, the complaint was deficient because it did not specifically mention 42 U.S.C. § 1983 as a basis for relief. In a *per curiam* opinion, the Court held otherwise, describing the Fifth Circuit's holding as a "heightened pleading requirement," and stating that the complaint in this case had met the pleading rules by "informing the city of the factual basis for" the lawsuit.

In *Warger v. Schauers*, 135 S.Ct. 521 (Dec. 9, 2014)(9-0), the Court unanimously held that a motion for a new trial based on the allegation that a member of the jury lied during voir dire cannot rest on another juror's affidavit describing comments made in the jury room. Writing for the Court, Justice Sotomayor based her conclusion on the plain language of Federal Rule of Evidence 606(b), which bars the use of juror testimony regarding jury deliberations to challenge the validity of a verdict.

In *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.Ct. 547 (Dec. 15, 2014)(5-4), the Court held that a defendant seeking to remove a case from state to federal court based on diversity of citizenship must file a form in federal court alleging that the case involves the jurisdictionally required amount-in-controversy, but need not provide evidence substantiating that submission. Writing for the majority, Justice Kennedy analogized the situation to notice pleading.

JUDICIAL REVIEW

In *T-Mobile South, LLC v. City of Roswell*, 135 S.Ct. 808 (Jan. 14, 2015)(6-3), the Court ruled that a municipality must provide reasons when denying an application to build a cell tower. The majority opinion, written by Justice Sotomayor, rested on the language of the Telecommunications Act of 1996, which does not mention the necessity for a statement of reasons but provides for judicial review. As Justice Sotomayor explained: "In order to determine whether a locality's denial was supported by substantial evidence, as Congress directed, courts must be able to identify the reason or reasons why the locality denied the application." *Id*. at 814. She further held that the reasons need not be provided in the denial notice, but most be provided in sufficient time to allow the applicant to evaluate whether an appeal is warranted.

STARE DECISIS

In *Kimble v. Marvel Entertainment, LLC*, 2015 WL 2473380 (June 22, 2015)(6-3), the Court applied *stare decisis* to uphold a 1964 decision that patent royalties cannot be charged beyond the life of the patent even if the parties agree otherwise. Writing for the majority, Justice Kagan stressed that *stare decisis* has particular force on matter of statutory interpretation that Congress can correct, if it chooses, and when property or contract rights are involved because of the reliance interests at stake. She also noted that the prior decision in this case had not been undermined by subsequent doctrinal developments. "Respecting *stare decisis*," she wrote, "means sticking to some wrong decisions." *Id.* at ___.