

The Supreme Court - April 1, 2019

The Supreme Court of the United States issued two decisions this morning:

Biestek v. Berryhill, No. 17-1184: Petitioner Michael Biestek, a former construction laborer, applied for social security disability benefits after he developed a degenerative disc disease and other ailments. An Administrative Law Judge (“ALJ”) was assigned to hold a hearing to determine whether Biestek could successfully transition to less physically demanding work. The Social Security Administration relied on an expert who testified to the availability of other jobs in the economy, based largely on private market-survey data. But when Biestek requested that the expert turn over those surveys, the expert refused. The ALJ denied Biestek’s application, basing the conclusion on the expert’s testimony. While an agency’s factual findings in such a proceeding are “conclusive” in judicial review so long as they are supported by “substantial evidence,” 42 U.S.C. §405(g), Biestek argued on appeal that the expert’s testimony could not be deemed “substantial evidence” given that the expert refused to provide the underlying data relied upon when specifically requested. The District Court rejected that argument, and the Sixth Circuit affirmed. Today, the Court likewise affirmed, holding that a vocational expert’s refusal to provide private market-survey data during a Social Security disability benefits hearing upon the applicant’s request does not categorically preclude the testimony from counting as “substantial evidence” in federal court under 42 U.S.C. §405(g).

The Court’s decision is available [here](#).

Bucklew v. Precythe, No. 17-8151: Petitioner Russell Bucklew is on death row in Missouri. He argued that the State’s lethal injection protocol would be unconstitutional as applied to him because his unique medical condition would result in the State’s lethal injection protocol causing him severe pain. Bucklew acknowledged that the Court’s decisions in *Baze v. Rees*, 553 U.S. 35 (2008) and *Glossip v. Gross*, 576 U.S. ___ (2015), provided the controlling standard for facial challenges to a state’s execution protocol, and required the identification of a “feasible, readily implemented” alternative procedure that

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would “significantly reduce a substantial risk of severe pain.” Bucklew contended, however, that showing was not required in an as applied challenge, and that in any event, he had identified the use of nitrogen gas – which neither Missouri nor any other State had ever used to carry out an execution – as an available alternative method. The District Court and Eighth Circuit both rejected Bucklew’s arguments. The Court today affirmed, holding that anyone bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain – including an as-applied challenge – must meet the *Baze-Glossip* test, and that Bucklew had failed to present an alternative that could be “readily implemented,” that it was “legitimate” for the State to choose not to be the first to experiment with a new method of execution, and that there was insufficient evidence showing that Bucklew’s proposed alternative method would significantly reduce a substantial risk of severe pain.

The Court’s decision is available [here](#).

Today, the Supreme Court granted certiorari in the following case:

Kansas v. Glover, No. 18-556: Whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.