

The Supreme Court - April 17, 2018

The Supreme Court of the United States issued three decisions today:

United States v. Microsoft Corp., No. 17-2: Federal law enforcement agents obtained a warrant under 18 U.S.C. §2703, requiring Microsoft to disclose all e-mails and other information associated with one of its customers, which the agents believed were being used for illegal drug trafficking. All of that account data was stored in Microsoft's datacenter in Ireland, and Microsoft moved to quash. The District Court denied the motion, but the Second Circuit reversed, holding that enforcing the warrant here would be an unauthorized extraterritorial application of §2703. On March 23, 2018, after the Court granted certiorari, the Clarifying Lawful Overseas Use of Data Act (Cloud Act) became law. It added a provision to the Stored Communications Act that a service provider shall comply with the obligations "regardless of whether such communication, record, or other information is located within or outside the United States." Because the Government then obtained a new warrant pursuant to the new law, the Court today held that no live dispute remains between the parties over the issue with respect to which certiorari was granted, and instructed that the case be dismissed as moot.

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

Sessions v. Dimaya, No. 15-1498: Under the Immigration and Nationality Act (INA), aliens convicted of an "aggravated felony" after entering the United States are deportable. 8 U.S.C. §1227(a)(2)(A)(iii). In addition to listing offenses that qualify as an "aggravated felony," the Act also defines "aggravated felony" as including "a crime of violence," which in turn includes "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C. §16(b). Here, Immigration Judges found that respondent James Dimaya was deportable as an aggravated felon, because his two convictions of first-degree burglary under California law were a "crime of violence" under §16(b). Dimaya appealed to the Ninth Circuit, and while that appeal was pending, the Supreme Court in *Johnson v. United States*, 576 U.S.

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___ (2015), held that the similarly phrased residual clause in the Armed Career Criminal Act's definition of "violent felony" was unconstitutionally void for vagueness. The Ninth Circuit, in turn, likewise held that §16(b) was unconstitutionally vague. Today, the Court affirmed, adhering to the analysis in *Johnson*.

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

Wilson v. Sellers, No. 16-6855: Petitioner Marion Wilson was convicted of murder and sentenced to death in Georgia state court. After his appeals failed, Wilson filed a petition for habeas corpus in state court, alleging ineffective assistance of counsel at sentencing. The state habeas court denied the petition after a hearing, because it found no evidence to show counsel was deficient, and in any event that the new evidence offered did not show any prejudice. The Georgia Supreme Court, without explanation, denied Wilson's application for a certificate of probable cause to appeal the state habeas decision. Wilson then filed a petition for habeas corpus in federal court, making the same arguments. The District Court, in determining whether the state-court decision involved an unreasonable application of federal law or was based on an unreasonable determination of fact, "looked through" the unexplained decision of the Georgia Supreme Court to the rationale provided in the lower state court decision, and deferred to that decision. On appeal, the Eleventh Circuit instead held that the proper inquiry for an unexplained decision was to ask what arguments "could have supported" the Georgia Supreme Court's refusal to grant permission to appeal. The Court today reversed and remanded, holding that federal habeas law employs a "look through" presumption that the State may rebut by showing that the unexplained affirmance relied or most likely did rely on different grounds than the lower state court's decision.

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