

The Supreme Court - December 14, 2020

Today, the Supreme Court of the United States issued the following two decisions:

Texas v. New Mexico, No. 65, Orig.: The States of New Mexico and Texas are parties to the 1949 Pecos River Compact, which provides for equitable apportionment of the use of that River's water by the two States. In 2014, Texas asked New Mexico to temporarily store water from the River that would otherwise flow into Texas in an effort to prevent flooding. New Mexico stored the water as requested, and when it released the water months later, some of the water had evaporated in the interim. The two States disputed whether New Mexico should get delivery credit for the evaporated water. The River Master found for New Mexico, and Texas moved for this Court's review. After first finding New Mexico's petition to the River Master was timely, the Court denied Texas's motion for review, holding that under the River Master's Manual, when water is stored in New Mexico "at the request of Texas," New Mexico's delivery obligation is "reduced by the amount of reservoir losses attributable to its storage," which would include water that evaporated during storage. Justice Kavanaugh issued the Court's opinion. Justice Alito concurred in part and dissented in part. Justice Barrett did not participate in the case.

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

Shinn v. Kayer, No. 19-1302: Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), when a state court has applied clearly established federal law to reasonably determined facts in adjudicating a claim on the merits, Supreme Court precedent dictates that a federal habeas court may not disturb the state court's decision unless the error is "beyond any possibility for fairminded disagreement." Here, respondent George Kayer was convicted of murder and sentenced to death by an Arizona state court. After being found guilty, Kayer refused to fully cooperate with a mitigation specialist and made clear his desire to expedite sentencing. In post-conviction proceedings, Kayer claimed he received ineffective assistance of counsel because his attorneys failed to investigate mitigating circumstances (addictions and physical and mental illness). The State Court rejected the claim, finding that trial counsel did not act

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deficiently, nor was there prejudice. On habeas review in federal court, the District Court rejected Kayser's claim, but the Ninth Circuit reversed, determining that Kayser's attorneys should have begun to pursue mitigation evidence promptly after their appointment, and that their failure to do so likely affected Kayser's sentence. The Court today, in a *per curiam* opinion, vacated and remanded, holding that the Ninth Circuit erred in ordering issuance of a writ of habeas corpus despite ample room for reasonable disagreement about the prisoner's ineffective-assistance-of-counsel claim. Justices Breyer, Sotomayor, and Kagan dissented.

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

Late on Friday, the Supreme Court of the United States granted certiorari in the following case:

Goldman Sachs Group v. AR Teacher Retirement, No. 20-222: 1) Whether a defendant in a securities class action may rebut the presumption of classwide reliance recognized in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), by pointing to the generic nature of the alleged misstatements in showing that the statements had no impact on the price of the security, even though that evidence is also relevant to the substantive element of materiality. 2) Whether a defendant seeking to rebut the *Basic* presumption has only a burden of production or also the ultimate burden of persuasion.