

The Supreme Court - February 25, 2020

Today, the Supreme Court of the United States issued the following four opinions:

Rodriguez v. FDIC, No. 18-1269: The Internal Revenue Service (“IRS”), under its statutes and regulations, allows an affiliated group of corporations to file a consolidated federal return. IRS regulations likewise provide that any tax refunds owed will be paid as a single refund to the group’s designated agent, but are otherwise silent as to how the refund should be distributed among the group’s members. Many groups have entered into tax allocation agreements to govern that issue, and many courts have turned to state law to resolve disputes when there is no tax allocation agreement or its terms are disputed. But some federal courts, starting with the Ninth Circuit in *In re Bob Richards Chrysler-Plymouth Corp.*, 473 F.2d 262 (9th Cir. 1973), have adopted the *Bob Richards* rule – a federal common law general rule of allocation to be followed in the absence of an unambiguous tax allocation agreement. Here, respondent Federal Deposit Insurance Corporation (“FDIC”) as the receiver for United Western Bank, and petitioner Simon Rodriguez as the parent corporation’s bankruptcy trustee, both sought claim to a \$4 million refund issued by the IRS. The Tenth Circuit found for the FDIC, applying the *Bob Richards* rule. Today, in a unanimous opinion by Justice Gorsuch, the Court vacated and remanded, holding that the *Bob Richards* rule is not a legitimate exercise of federal common lawmaking.

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

Hernández v. Mesa, No. 17-1678: Sergio Adrián Hernández Güereca, a 15-year old Mexican national, was shot and killed by a U.S. Border Patrol Agent from United States soil after Hernández ran back across a culvert from United States to Mexican soil. Hernández’s parents brought a suit for damages under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) against the Border Patrol Agent, alleging a violation of Hernández’s Fourth and Fifth Amendment rights. The original *Bivens* decision held that a person could bring a Fourth Amendment claim against the responsible officer for a purportedly unlawful arrest, even when no federal statute authorized such a claim.

Related Capabilities

- Appellate
- Tax Controversy & Litigation

When this case first came to the Court, it remanded to the Fifth Circuit to consider *Bivens*' applicability in light of the Court's most recent decisions on the subject. On remand, the Fifth Circuit refused to recognize a *Bivens* claim for a cross-border shooting. Today, the Court affirmed in a 5-4 opinion, refusing to extend *Bivens* to the new field of cross-border shooting claims, on the basis of its distinctive foreign relations and national security implications. Justice Alito authored the Court's opinion. Justice Ginsburg dissented, joined by Justices Breyer, Sotomayor, and Kagan.

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

McKinney v. Arizona, No. 18-1109: Petitioner James McKinney was convicted by a jury in Arizona state court of two counts of first degree murder. He was sentenced to death after the trial court found aggravating circumstances for both murders, and weighed aggravating and mitigating circumstances. On habeas review decades later, the Ninth Circuit held that the Arizona courts failed to consider mitigating evidence of McKinney's posttraumatic stress disorder, in violation of *Eddings v. Oklahoma*, 455 U.S. 104 (1982). On remand to the Arizona Supreme Court, McKinney contended he was entitled to resentencing by a jury, but the Arizona Supreme Court agreed with the State that the Arizona Supreme Court itself could reweigh the aggravating and mitigating circumstances per *Clemons v. Mississippi*, 494 U.S. 738 (1990). The Arizona Supreme Court, after engaging in this reweighing, upheld both death sentences. The Court today affirmed in a 5-4 decision authored by Justice Kavanaugh, holding that the Court's precedents establish that state appellate courts may conduct a *Clemons* reweighing of aggravating and mitigating circumstances, and may do so in collateral review proceedings as appropriate and provided under state law. Justice Ginsburg filed a dissenting opinion joined by Justices Breyer, Sotomayor, and Kagan.

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

Monasky v. Taglieri, No. 18-935: The Hague Convention on the Civil Aspects of International Child Abduction provides that a child wrongfully removed from her country of "habitual residence" ordinarily must be returned to that country. Petitioner Michelle Monasky (a United States citizen) and respondent Domenico Taglieri (an Italian citizen) were married in the United States and relocated to Italy two years later, after which the relationship allegedly became abusive and Monasky became pregnant. Two months after the baby was born, Monasky fled Italy with the infant to the United States. Taglieri brought a petition in federal court in Ohio under the Hague Convention on the ground that Italy was the child's habitual residence. The District Court granted Taglieri's petition and the Sixth Circuit affirmed, determining that an infant's habitual residence depends on the shared intent of the parents, and found no clear error in the District Court's findings. The Court today, in an opinion by Justice Ginsburg, affirmed, holding that a child's habitual residence depends on the totality of the circumstances; that an actual agreement between the parents is not necessary to establish an infant's habitual residence; and that the habitual residence determination is reviewed on appeal for clear error. Justice Thomas and Justice Alito filed separate concurrences.

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