

The Supreme Court - January 7, 2019

The Supreme Court of the United States issued two per curiam opinions today:

Shoop v. Hill, No. 18-56: Respondent Danny Hill was convicted and sentenced to death in 1986 for the torture, rape, and murder of a 12-year old boy. His direct appeal and attempt to obtain postconviction relief in state and federal court were unsuccessful. Hill then filed a new petition in the Ohio courts contending his death sentence was illegal under *Atkins v. Virginia*, 536 U.S. 304 (2002), which held that the imposition of a death sentence on someone who is “mentally retarded” was unconstitutional. The state courts denied the claim. In 2010, Hill filed a new federal habeas petition seeking review of his *Atkins* claim. Although the District Court denied the petition, the Sixth Circuit reversed, finding that the state-court adjudication “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” In doing so, the Sixth Circuit relied repeatedly on the Court’s subsequent decision in *Moore v. Texas*, 581 U.S. ___ (2017), but reasoned that *Moore*’s holding was “merely an application of what was clearly established by *Atkins*.” Today, the Court vacated the decision, holding that the Court of Appeals’ reliance on *Moore* was plainly improper, and remanded so that Hill’s claim regarding intellectual disability can be evaluated based solely on the holdings of the Court that were clearly established at the relevant time.

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

Escondido v. Emmons, No. 17-1660: A Section 1983 claim for excessive force was brought against two officers who stopped, took down, and handcuffed a man who exited a residence the officers were responding to for a domestic disturbance. The District Court rejected the claim, finding one officer did not use force at all, and finding the other was entitled to qualified immunity. The Ninth Circuit reversed as to both, summarily reasoning that “[t]he right to be free of excessive force was clearly established at the time of the events in question.” The Court today reversed the judgment as to the officer who

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was not involved in the excessive force claim, and vacated and remanded as to the other officer, finding that the clearly established right must be defined with specificity, and that the Court of Appeals should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances.

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

On Friday afternoon, January 4, 2019, the Supreme Court of the United States agreed to hear the following six cases:

Emulex Corp. v. Varjabedian, No. 18-459: Whether the Ninth Circuit correctly held, in express disagreement with five other courts of appeals, that Section 14(e) of the Securities Exchange Act of 1934 supports an inferred private right of action based on a negligent misstatement or omission made in connection with a tender offer.

Iancu v. Brunetti, No. 18-302: Whether the prohibition on the federal registration of “immoral” or “scandalous” marks in Section 2(a) of the Lanham Act, 15 U.S.C. §1052(a), is facially invalid under the Free Speech Clause of the First Amendment.

Taggart v. Lorenzen, No. 18-489: Whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt.

United States v. Davis, No. 18-431: Whether the subsection-specific definition of “crime of violence” in 18 U.S.C. §924(c)(3)(B), which applies only in the limited context of a federal criminal prosecution for possessing, using, or carrying a firearm in connection with acts comprising such a crime, is unconstitutionally vague.

Rucho v. Common Cause, No. 18-422: This North Carolina gerrymandering case presents the following issues: (1) Whether plaintiffs have standing to press their partisan gerrymandering claims. (2) Whether plaintiffs' partisan gerrymandering claims are justiciable. (3) Whether North Carolina's 2016 congressional map is, in fact, an unconstitutional partisan gerrymander.

Lamone v. Benisek, No. 18-726: This Maryland gerrymandering case presents the following issues: (1) Are the various legal claims articulated by the three-judge district court unmanageable? (2) Did the three-judge district court err when, in granting plaintiffs' motion for summary judgment, it resolved disputes of material fact as to multiple elements of plaintiffs' claims, failed to view the evidence in the light most favorable to the non-moving party, and treated as “undisputed” evidence that is the subject of still-unresolved hearsay and other evidentiary objections? (3) Did the three-judge district court abuse its discretion in entering an injunction despite the plaintiffs' years-long delay in seeking injunctive relief, rendering the remedy applicable to at most one election before the next decennial census necessitates another redistricting?