

The Supreme Court - November 2, 2020

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

Related Capabilities

- Appellate

Mckesson v. Doe, No. 19-1108: The plaintiff-respondent in this case is a police officer who suffered devastating injuries after being struck by a rock-like object during a protest in Baton Rouge, Louisiana. The protest demonstration was organized by petitioner DeRay Mckesson, and involved occupying the highway in front of police headquarters to protest a local police shooting. The officer, being unable to identify who threw the item, instead sought damages from Mckesson on the theory he negligently staged the protest in a manner that caused the assault. The District Court dismissed the negligence claim as barred by the First Amendment. A divided Fifth Circuit panel reversed, first holding that Louisiana state law could provide for relief here notwithstanding that it generally imposes no duty to protect others from third persons' criminal activities, and next holding that the First Amendment was no impediment to liability. Today, in a *per curiam* opinion, the Court vacated and remanded, holding that under the unusual circumstances of this case, the Fifth Circuit should not have ventured into such an uncertain area of state tort law without first using state certification procedures to seek guidance from the Louisiana Supreme Court. Justice Thomas dissented. Justice Barrett took no part in the consideration or decision of the case.

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

Taylor v. Roijas, No. 19-1261: Petitioner Trent Taylor, an inmate of the Texas Department of Criminal Justice, brought suit against correction officers who held him in two cells for six days that were teeming with human waste. The Fifth Circuit recognized that this conduct violated the Eighth Amendment's prohibition on cruel and unusual punishment, but granted the officers qualified immunity on the basis that they did not have fair warning that their specific acts were unconstitutional. Today, the Court reversed in a *per curiam* opinion, holding that the Fifth Circuit erred because any reasonable correctional officer should have realized that Taylor's conditions of confinement offended

the Fifth Amendment. Justice Barrett took no part in the consideration or decision of the case. Justice Alito concurred, writing that while he agreed on the merits, this petition was ill-suited for the Court's review under the Court's Rule 10 criteria. Justice Thomas dissented.

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