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## **Supreme Court Update**

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## I. Scope of This Outline

This outline contains all criminal law and criminal procedure cases heard by the Supreme Court in its 2016 Term *except* those pertaining solely to federal practice – because, for instance, the issue presented concerns interpretation of a federal criminal law, sentencing provision, or rule. In each section, cases already decided are discussed first, followed by a description of the issues presented in those still awaiting decision at the time of writing. Texas cases are highlighted with an asterisk. The final section briefly describes criminal law and criminal procedure cases slated to be heard in the October 2017 Term.

A terrific resource for all of these cases, and to track the Supreme Court’s jurisprudence in general, is SCOTUSblog.com, which, for each case on which certiorari is granted, compiles the decision below, the briefs, the transcript of oral argument, and the Court’s opinion, as well as expert commentary.<sup>1</sup>

## I. First Amendment

### **Packingham v. North Carolina, No. 15-1194 (Argued Feb. 27, 2017): Scope of First Amendment protection against criminalizing speech**

**Background and Issue:** Petitioner was convicted in 2002 of taking “indecent liberties of a minor” (an offense he pled two after being charged with two counts of statutory rape of a 13-year-old), and as a consequence was required to register as a sex offender. Among North Carolina’s array of restrictions on convicted sex offenders is a law making it a crime a registered sex offender to “access” a “commercial social networking Web site” when the offender “knows” that it allows minors. In 2010, petitioner had the good luck of having his traffic ticket dismissed, and he took to Facebook to celebrate, posting, “God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court costs, no nothing spent . . . Praise be to GOD, WOW! Thanks JESUS!” The post was discovered by the Durham, North Carolina police, and petitioner was convicted of the crime of using social media as a registered sex offender. (He received a suspended sentence.) Petitioner had sought dismissal of the charge, and later sought reversal, arguing that the law violates the First Amendment on its face and as applied to him. The North Carolina Supreme Court was not persuaded. The issue before the Court, then, is whether restricting registered sex offenders’ consumption of social media in this manner violates the First Amendment.

## II. The Fourth Amendment

### **Manuel v. City of Joliet, 137 S. Ct. 911 (2017): Fourth Amendment protection during pretrial detention**

**Background and Issue:** Petitioner was stopped in his car by Joliet police officers, and subjected to a search that uncovered a vitamin bottle containing pills. Despite a negative field test for the presence of controlled substances, petitioner was arrested. Then, despite

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<sup>1</sup> See, e.g., SCOTUSblog, <http://www.scotusblog.com>.

additional negative results in testing by an evidence technician, a report was filed falsely claiming a positive result for ecstasy. These false findings led to a criminal charge and a judicial finding of probable cause. Petitioner was incarcerated for 48 days before the prosecution, then in possession of an additional negative laboratory report, dismissed the criminal charges.

Petitioner filed a civil suit under 42 U.S.C. Section 1983 alleging that he was detained without probable cause in violation of the Fourth Amendment. The district court, affirmed by the Seventh Circuit, dismissed the suit because in the Seventh Circuit, in contrast to ten other circuits that had decided the issue, the Fourth Amendment protection against unreasonable seizure had been held not to apply to any period of time past onset of legal process – here, the magistrate’s probable cause determination. The issue presented was whether the suit could indeed proceed under the Fourth Amendment. Prosecute

**Held:** (Reversed 6-2) The Court held that the Fourth Amendment protects against “unreasonable” detention throughout the pretrial period, both before and after a formal probable cause determination. Writing for seven justices, Justice Kagan viewed the question as essentially resolved by Gerstein v. Pugh, 420 U.S. 103 (1975), and Albright v. Oliver, 510 U.S. 266 (1994). In alleging that the complaint presented to and blessed by the magistrate was girded by false evidence, causing him to be detained for 48 days, petitioner had presented a claim under the Fourth Amendment. (The Court left for lower court resolution the vexing questions in this case of when the claim accrued and whether it was barred by the statute of limitation.)

### **III. Double Jeopardy**

#### **Bravo-Fernandez v. United States, 137 S. Ct. 352 (2016): Scope of issue preclusion component of Double Jeopardy Clause**

**Background and Issue:** At the petitioner’s trial on bribery-related charges, the jury acquitted him of conspiracy to bribe and interstate travel for purposes of bribing, but convicted him of bribery. On appeal from that conviction, the Court of Appeals vacated the conviction because of a jury instruction error. On remand, petitioner argued that he was entitled to a judgment of acquittal on the bribery charge, based on the Double Jeopardy Clause and the rule of issue-preclusion. In Ashe v. Swenson, 397 U.S. 436 (1970), the Court held that the protection against Double Jeopardy encompasses the civil law concept of “issue preclusion” – that when a factual issue has been finally determined by one proceeding, it cannot be relitigated by the same parties. Bravo-Fernandez argued that the jury’s acquittals – on conspiracy to bribe and travel to bribe – necessarily decided the factual issue of whether petitioner *had bribed*, because the existence of a bribe was the only disputed matter at trial. The issue presented, then, was whether the protection against Double Jeopardy entitled him to dismissal of the bribery charges on retrial.

**Held:** (Affirmed, 8-0) The issue-preclusion component of the double jeopardy clause does not bar retrial where a jury returns inconsistent verdicts of conviction and acquittal and the conviction is subsequently vacated for reasons other than sufficiency of the evidence. Issue preclusion does not require reversal of a conviction where a jury

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