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TEXAS Law
The University of Texas at Austin
School of Law

SUPREME COURT UPDATE – 2021 TERM

2022 Robert O. Dawson Conference on Criminal Appeals

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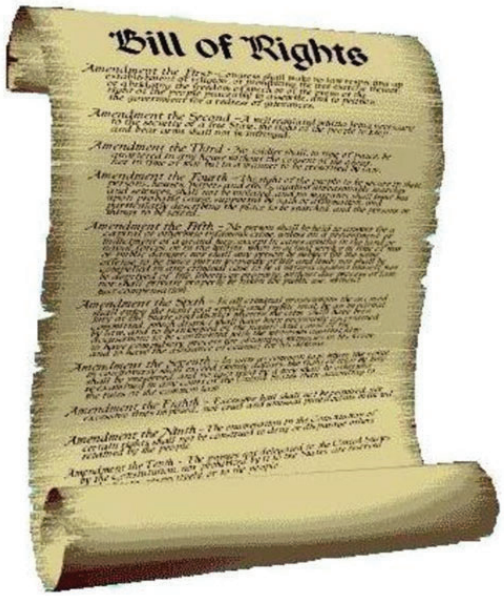
Overview

- Fourth Amendment
- Fifth Amendment
- Sixth Amendment
- Eighth Amendment
- Federal Statutes that Matter
  - RLUIPA
  - Federal Major Crimes Act
- Coming Attractions



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Some Themes

Stealthy criminal procedure docket

Relatively lower ideological polarization

Watching Justice Barrett

Fourth Amendment – Malicious Prosecution

Thompson v. Clark, 142 S. Ct. 1332 (2022)

- Must plaintiff prove termination of prosecution on basis of *innocence* to bring Fourth Amendment malicious prosecution claim under 42 U.S.C. §1983?
  - But wait – *is there* a Fourth Amendment malicious prosecution claim under §1983? (Fifth Circuit had said, "NO!")
- Held (6-3, Kavanaugh writing): No.
  - Sure there's a 4th Amendment cause of action for malicious prosecution!
  - Elements?
    - First, look to common law of torts *in 1871*. Consensus of authority was that "favorable termination" was element and required only *end* to prosecution, not *end based on innocence*.
    - Second, this result is consistent with "values and purposes" of the Fourth Amendment.
- Dissent (Alito, plus Thomas and Gorsuch)
  - Majority has created a chimera: The Fourth Amendment and malicious prosecution have nothing in common.
  - "Common law of 1871" approach is not wrong, but yields conclusion that false arrest or false imprisonment are only available analogies.

Fifth Amendment - *Miranda*

Vega v. Tekoh, No. 21-499

- May a plaintiff state a claim for relief against a law enforcement officer under 42 U.S.C. § 1983 based simply on an officer's failure to provide the warnings prescribed in *Miranda v. Arizona*?
  - The lurking question: Are the warnings prescribed in *Miranda* required by the 5th Amendment?
    - Texas et al.: "This case presents an opportunity for the Court to clarify *Miranda*'s doctrinal underpinnings"; the "warnings were a novel creation of this Court . . . defensible (*if at all*) as a judge-made prophylactic rule."
  - A narrower way for Tekoh to lose: Does a police officer *cause* the self-incrimination violation if downstream actors (prosecutors, judges) are the proximate causes of statements being admitted in court?

Sixth Amendment - Confrontation

Hemphill v. New York, 142 S. Ct. 681 (2022)

- Does a criminal defendant who opens the door to responsive evidence forfeit the right to exclude the evidence as barred by the Confrontation Clause?
- Held (8-1, Sotomayor writing): No.
  - *Crawford v. Washington*, 541 U.S. 36 (2004), rejected "reliability" as touchstone of 6th Amendment inquiry. The Constitution "bars admission of out-of-court testimonial statements unless the out-of-court witness is unavailable and the defendant had a prior opportunity to cross-examine the individual, or unless the statement falls within 'exceptions [to confrontation] established at the time of the founding.'" *Crawford*, 541 U.S. at 54.
  - Rejecting NY's contention that rule was "procedural," governing when D's forfeit a 6th Amendment objection. Rule was substantive, requiring judges to evaluate reliability of testimonial hearsay, which *Crawford* forbids.
  - "The parties agree that the rule of completeness does not apply to the facts of this case." (*See* Tex. R. Evid. 107)
- Justice Alito, concurring
  - D can impliedly waive the right of confrontation by "conduct evincing intent to relinquish the right" or "action inconsistent with the assertion of that right." That did not happen here.
  - The "traditional rule of completeness" is an example of implicit waiver. "By introducing part or all of a statement made by an unavailable declarant, a defendant has made a knowing and voluntary decision to permit that declarant to appear as an unconfronted witness."
- Justice Thomas, dissenting: Hemphill's claim is not properly before the Court because it was not adequately presented to the court below.

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