

*Lopez* v. *Gonzales*

05-0547

CA8

*Consol. with 05-7664*

**Categories:** Criminal Non-Business Statutory Immigration

**Timeline:** Pet: 11/1/2005 Grant: 4/3/2006 Top: 6/19/2006 Bot: 8/23/2006 Arg: 10/3/2006

Whether an immigrant who is convicted in state court of a drug crime that is a felony under the state's law but that would only be a misdemeanor under federal law has committed an "aggravated felony" for purposes of the immigration laws.

*Toledo-Flores* v. *United States*

05-7664

CA5

*Consol. with 05-547*

**Categories:** Criminal Non-Business Statutory Immigration

**Timeline:** Pet: 11/21/2005 Grant: 4/3/2006 Top: 6/19/2006 Bot: 8/23/2006 Arg: 10/3/2006

Has the Fifth Circuit erred in holding - in opposition to the Second, Third, Sixth, and Ninth Circuits - that a state felony conviction for simple possession of a controlled substance is a "drug trafficking crime" under 18 U.S.C. §924 (c) (2) and hence an "aggravated felony," under 8 U.S.C. § 1101(a) (43) (B), even though the same crime is a misdemeanor under federal law?

*Ormoski* v. *Belmontes*

05-493

CA9

**Categories:** Criminal Non-Business Constitutional Jury instructions

**Timeline:** Pet: 10/1/2005 Grant: 5/1/2006 Top: 6/22/2006 Bot: 8/7/2006 Arg: 10/3/2006

(1) Does *Boyde v. California* confirm the constitutional sufficiency of California's "unadorned factor (k)" instruction when a defendant presents mitigating evidence of his background and character which relates to, or has a bearing on, his future prospects as a life prisoner? (2) Does the 9th Circuit's holding, that California's "unadorned factor (k)" instruction is constitutionally inadequate to inform jurors they may consider "forward-looking" mitigation evidence constitute a "new rule" under *Teague v. Lane*?

*MedImmune* v. *Genentech*

05-608

CAFed

**Categories:**

General Civil

Business

Statutory

Patent

**Timeline:** Pet: 11/15/2005 Grant: 2/21/2006 Top: 5/15/2006 Bot: 7/26/2006 Arg: 10/4/2006

Does Article III's grant of jurisdiction of "all Cases . . . arising under . . . the Laws of the United States," implemented in the "actual controversy" requirement of the Declaratory Judgment Act, 28 U.S.C. § 2201(a), require a patent licensee to refuse to pay royalties and commit material breach of the license agreement before suing to declare the patent invalid, unenforceable or not infringed?

*BP America* v. *Watson*

05-669

CADC

**Categories:**

General Civil

Business

Statutory

Mineral Leasing Act

**Timeline:** Pet: 11/25/2006 Grant: 4/17/2006 Top: 6/13/2006 Bot: 8/4/2006 Arg: 10/4/2006

2. Whether - contrary to the decision below but consistent with decisions of the Tenth and Federal Circuits - the limitations period in 28 U.S.C. § 2415(a) applies to federal agency orders requiring the payment of money claimed under a lease or other agreement.

*Global Crossing* v. *Metrophones*

05-705

CA9

**Categories:**

General Civil

Business

Statutory

Telecommunications

**Timeline:** Pet: 12/2/2005 Grant: 2/21/2006 Top: 5/22/2006 Bot: 7/26/2006 Arg: 10/10/2006

1. Whether 47 U.S.C. § 201(b) of the Communications Act of 1934 creates a private right of action for a provider of payphone services to sue a long distance carrier for alleged violations of the FCC's regulations concerning compensation for coinless payphone calls.

*Norfolk Southern* v. *Sorrell*

05-746 CA MO, E.

**Categories:** General Civil Business Statutory Employment

**Timeline:** Pet: 12/12/2006 Grant: 5/16/2006 Top: 7/17/2006 Bot: 9/7/2006 Arg: 10/10/2006

Whether the court below erred in determining, in conflict with Supreme Court multiple courts of appeals precedent, that the causation standard for employee contributory negligence under the Federal Employers Liability Act (FELA) differs from the causation standard for railroad negligence?

*US* v. *Resendiz-Ponce*

05-998 CA9

**Categories:** Criminal Non-Business Constitutional Harmless Error

**Timeline:** Pet: 2/8/2006 Grant: 4/17/2006 Top: 6/23/2006 Bot: 8/24/2006 Arg: 10/10/2006

Whether the omission of an element of a criminal offense from a federal indictment can constitute harmless error?

*Cunningham* v. *California*

05-6551 CA Cali, 1st

**Categories:** Criminal Non-Business Constitutional Sentencing

**Timeline:** Pet: 9/22/2005 Grant: 4/3/2006 Top: 5/4/2006 Bot: 7/12/2006 Arg: 10/11/2006

Whether California's Determinate Sentencing Law, by permitting judges to impose enhanced sentences based on their determination of facts not found by the jury or admitted by the defendant, violates the 6th and 14th amendments?

*Carey v. Musladin*

05-785 CA9

**Categories:** Civil Rights Non-Business Statutory Due Process

**Timeline:** Pet: 12/19/2005 Grant: 4/17/2006 Top: 6/22/2006 Bot: 8/21/2006 Arg: 10/11/2006

In the absence of controlling Supreme Court law, did the 9th Circuit exceed its authority under 28 U.S.C. sec. 2254(d) (1) by overturning Musladin's state conviction of murder on the ground that the courtroom spectators included three family members of the victim who wore buttons depicting the deceased?

*Osborn v. Haley*

05-593 CA6

**Categories:** General Civil Business Statutory Employment

**Timeline:** Pet: 11/20/2005 Grant: 5/15/2006 Top: 7/14/2006 Bot: 9/1/2006 Arg: 10/30/2006

(1) Whether the Attorney General's decision under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (Westfall Act), 28 U.S.C. 2679(d), to certify that "the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose" (thus permitting the substitution of the United States for the employee as the defendant and the removal of the case to federal court) must accept the truth of the plaintiff's allegations? (2) Whether the Westfall Act's provision that the "certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal" of the suit from state court, 28 U.S.C. 2679(d)(2), establishes that a district court is to retain jurisdiction over the removed suit, even if the court ultimately overturns the Attorney General's scope-of-employment certification for purposes of substituting the United States as the defendant? (3) Whether the court of appeals had jurisdiction to review the district court's remand order, notwithstanding 28 U.S.C. § 1444(d)?

*Williams v. Overton*

05-7142 CA6

*Consol. with 05-7058*

**Categories:** Criminal Non-Business Statutory Prison Grievances

**Timeline:** Pet: 10/24/2005 Grant: 3/6/2006 Top: 8/14/2006 Bot: Arg: 10/30/2006

(1) Whether satisfaction of the Prison Litigation Reform Act's exhaustion requirement is a prerequisite to a prisoner's federal civil rights suit such that the prisoner must allege in his complaint how he exhausted his administrative remedies (or attach proof of exhaustion to the complaint), or alternatively, whether non-exhaustion is an affirmative defense that must be pleaded and proven by the defense? (2) Whether the PLRA requires a prisoner to name a particular defendant in his or her administrative grievance in order to exhaust his or her administrative remedies as to that defendant and to preserve his or her right to sue them? (3) Whether the PLRA prescribes a "total exhaustion" rule that requires a federal district court to dismiss a prisoner's federal civil rights complaint for failure to exhaust administrative remedies whenever there is a single unexhausted claim, despite the presence of other exhausted aims?

*Jones v. Bock*

05-7058

CA6

*Consol. with 05-7142*

**Categories:**

Criminal

Non-Business

Statutory

Prison Grievances

**Timeline:** Pet: 10/19/2005 Grant: 3/6/2006 Top: 8/14/2006 Bot: Arg: 10/30/2006

(1) Whether satisfaction of the Prison Litigation Reform Act's exhaustion requirement is a prerequisite to a prisoner's federal civil rights suit such that the prisoner must allege in his complaint how he exhausted his administrative remedies (or attach proof of exhaustion to the complaint), or alternatively, whether non-exhaustion is an affirmative defense that must be pleaded and proven by the defense? (2) Whether the PLRA requires a prisoner to name a particular defendant in his or her administrative grievance in order to exhaust his or her administrative remedies as to that defendant and to preserve his or her right to sue them? (3) Whether the PLRA prescribes a "total exhaustion" rule that requires a federal district court to dismiss a prisoner's federal civil rights complaint for failure to exhaust administrative remedies whenever there is a single unexhausted claim, despite the presence of other exhausted aims?

*Philip Morris v. Williams*

05-1256

S. Ct. OR

**Categories:**

General Civil

Business

Constitutional

Tobacco

**Timeline:** Pet: 3/31/2006 Grant: 5/25/2006 Top: 7/28/2006 Bot: 9/15/2006 Arg: 10/31/2006

(1) Whether, in reviewing a jury's award of punitive damages, an appellate court's conclusion that a defendant's conduct was highly reprehensible and analogous to crime can override the constitutional requirement that punitive damages must be reasonably related to the harm to the plaintiff? (2) Whether due process permits a jury to punish a defendant for the effects of its conduct on non-parties?

*Lawrence v. Florida*

05-8820

CA11

**Categories:**

Criminal

Non-Business

Constitutional

Capital Punishment

**Timeline:** Pet: 1/25/2006 Grant: 5/22/2006 Top: 6/26/2006 Bot: 8/30/2006 Arg: 10/31/2006

(1) Whether the one-year statute of limitations period of the Antiterrorism and Effective Death Penalty Act (AEDPA) denies habeas relief? (2) Does the confusion around the statute of limitations --as evidenced by the split in the circuits -- constitute an "extraordinary circumstance," entitling a defendant to equitable tolling during the time when his claim is being considered by the U.S. Supreme Court on certiorari?

*Wharton v. Bockting*

05-595 CA9

**Categories:** General Civil Non-Business Constitutional Sixth Amendment

**Timeline:** Pet: 11/10/2005 Grant: 5/15/2006 Top: 7/19/2006 Bot: 8/15/2006 Arg: 11/1/2006

(1) Whether, in direct conflict with opinions of the 2nd, 6th, 7th and 10th circuits, the 9th Circuit erred in holding that the Supreme Court's 2004 decision in *Crawford v. Washington* regarding the admissibility of testimonial hearsay evidence under the 6th Amendment, applies retroactively to cases on collateral review? (2) Whether the 9th Circuit's ruling that *Crawford* applies retroactively to cases on collateral review violates the Supreme Court's 1989 ruling in *Teague v. Lane*? (3) Whether, in direct conflict with opinions of the 4th and 7th circuits, the 9th Circuit erred in holding that 28 U.S.C. sec. 2254(d)(1) and (2) adopted the *Teague* exceptions for private conduct which is beyond criminal prosecution and watershed rules?

*Env. Defense v. Duke Energy*

05-848 CA4

**Categories:** Civil Rights Business Statutory Clean Air Act

**Timeline:** Pet: 1/5/2006 Grant: 5/15/2006 Top: 7/21/2006 Bot: 9/15/2006 Arg: 11/1/2006

(1) Whether the court of appeals lacked jurisdiction by virtue of Section 307(b) of the Clean Air Act, 42 U.S.C. 7607(b), which provides that nationally applicable regulations that the EPA issues to implement the Act may be reviewed only through properly filed petitions for review, not in enforcement actions? (2) Whether the Clean Air Act requires the EPA to interpret the statutory term "modification" consistently in its Prevention of Significant Deterioration (PSD) provisions and New Source Performance Standards (NSPS) regulations?

*Wallace v. Kato*

05-1240 CA7

**Categories:** Civil Rights Non-Business Constitutional 4th Amendment

**Timeline:** Pet: 3/27/2006 Grant: 6/19/2006 Top: 8/24/2006 Bot: Arg: 11/6/2006

When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the 4th Amendment accrue when the fruits of the search were introduced in a person's criminal trial and he was convicted?

*Marrama* v. *Citizens Bank* 05-996 CA1

**Categories:** General Civil Business Statutory Bankruptcy

**Timeline:** Pet: 2/8/2006 Grant: 6/12/2006 Top: 8/7/2006 Bot: 9/29/2006 Arg: 11/6/2006

Whether the right to convert a chapter 7 bankruptcy case to another chapter can be denied notwithstanding the plain language of the statute and its legislative history?

*Burton* v. *Waddington* 05-9222 CA9

**Categories:** Criminal Non-Business Constitutional Sentencing

**Timeline:** Pet: 2/15/2006 Grant: 6/5/2006 Top: 8/28/2006 Bot: Arg: 11/7/2006

(1) Is the holding in *Blakely v. Washington* a new rule or was it dictated by *Apprendi v. New Jersey*? (2) If *Blakely* is a new rule, does its requirement that facts resulting in an enhanced statutory maximum be proved beyond a reasonable doubt apply retroactively?

*James* v. *US* 05-9264 CA11

**Categories:** Criminal Non-Business Statutory Sentencing

**Timeline:** Pet: 2/16/2006 Grant: 6/12/2006 Top: 8/17/2006 Bot: Arg: 11/7/2006

Whether the 11th Circuit erred by holding that all convictions in Florida for attempted burglary qualify as a violent felony under 18 U.S.C. sec. 924(e)?

*Gonzales* v. *Pl. Parenthood* 05-1382 CA9

**Categories:** Civil Rights Non-Business Constitutional Abortion

**Timeline:** Pet: 5/7/2006 Grant: 6/19/2006 Top: 8/3/2006 Bot: 9/27/2006 Arg: 11/8/2006

**Whether, notwithstanding Congress's determination that a health exception was unnecessary to preserve the health of the mother, the Partial-Birth Abortion Ban Act of 2003 is invalid because it lacks a health exception or is otherwise unconstitutional on its face?**

*Gonzales* v. *Carhart* 05-380 CA8

**Categories:** Civil Rights Non-Business Constitutional Abortion

**Timeline:** Pet: 9/26/2005 Grant: 2/21/2006 Top: 5/22/2006 Bot: 8/10/2006 Arg: 11/8/2006

**Whether, notwithstanding Congress's determination that a health exception was unnecessary to preserve the health of the mother, the Partial-Birth Abortion Ban Act of 2003 is invalid because it lacks a health exception or is otherwise unconstitutional on its face?**

*KSR* v. *Teleflex* 04-1350 CAFed

**Categories:** General Civil Business Statutory Patent

**Timeline:** Pet: 4/11/2005 Grant: 6/26/2006 Top: 8/22/2006 Bot: 10/16/2006 Arg:

**Whether the Federal Circuit erred in holding that a claimed invention cannot be held "obvious," and thus unpatentable under 35 U.S.C. sec. 103(a), in the absence of some proven "'teaching, suggestion or motivation' that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed"?**



*Ledbetter* v. *Goodyear*

05-1074 CA11

**Categories:** General Civil Business Statutory Title VII

**Timeline:** Pet: 2/23/2006 Grant: 6/26/2006 Top: 9/7/2006 Bot: 10/23/2006 Arg:

Whether a plaintiff asserting a disparate pay claim under Title VII against an employer that periodically reviewed and re-established her pay under a facially neutral compensation system may challenge pay decisions prior to the last decision immediately preceding the start of the statutory limitations period?

*Massachusetts* v. *EPA*

05-1120 CADC

**Categories:** General Civil Business Statutory Greenhouse Gases

**Timeline:** Pet: 3/7/2006 Grant: 6/26/2006 Top: 8/31/2006 Bot: Arg:

(1) Whether, in this challenge to the denial by the Environmental Protection Agency of petitioners' rule making petition, petitioners adequately established standing-i.e., that their alleged injuries were caused by the denial of the rulemaking petition and would be redressed by a judicial decision in their favor in this case? (2) Whether the court of appeals correctly determined that the EPA lawfully exercised its discretion in denying petitioners' rulemaking petition seeking regulation of carbon dioxide and other greenhouse gas emissions from mobile sources (such as cars and light trucks) under Section 202(a)(1) of the Clean Air Act, 42 U.S.C. 7521(a)(1), where, among other things, the EPA believed pertinent scientific and technological issues could be better analyzed after the completion of ongoing studies? (3) Whether the EPA correctly determined that the Clean Air Act does not give it authority to regulate greenhouse gas emissions for the purpose of addressing concerns about global climate change?

*Bell Atlantic* v. *Twombly*

05-1126 CA2

**Categories:** General Civil Business Statutory Antitrust

**Timeline:** Pet: 3/7/2006 Grant: 6/26/2006 Top: 8/25/2006 Bot: 10/13/2006 Arg:

Whether a complaint states a claim under Section 1 of the Sherman Act, 15 U.S.C. § 1, if it alleges that the defendants engaged in parallel conduct and adds a bald assertion that the defendants were participants in a "conspiracy," without any allegations that, if later proved true, would establish the existence of a conspiracy under the applicable legal standard.

*Watters* v. *Wachovia*

05-1342

CA6

**Categories:** General Civil Business Constitutional 10th Amendment

**Timeline:** Pet: 4/21/2006 Grant: 6/19/2006 Top: 9/1/2006 Bot: Arg:

1) Is the interpretation of the Comptroller of the Currency that 12 CFR 7.4006 preempts Michigan's laws regarding mortgage lending, as applied to state-chartered nonbank operating subsidiaries, entitled to judicial deference under *Chevron USA, Inc. v. Natural Resources Defense Council*? (2) Does 12 CFR 7.4006, by equating a state-chartered nonbank operating subsidiary with a national bank for the purposes of federal preemption of state regulation, violate the 10th Amendment to the Constitution?

*Weyerhaeuser Co.* v. *Ross-Simmons*

05-381

CA9

**Categories:** General Civil Business Statutory Antitrust

**Timeline:** Pet: 9/26/2005 Grant: 6/26/2006 Top: 8/24/2006 Bot: Arg:

Whether a plaintiff alleging that a defendant engaged in "predatory bidding" constituting anticompetitive conduct for purposes of Section 2 of the Sherman Act, 15 U.S.C. 2, must prove that the defendant suffered a loss in the short term and that it had a dangerous probability of recouping its loss in the long term?

*Meredith* v. *Jefferson County*

05-915

CA6

*In tandem with 05-908*

**Categories:** Civil Rights Non-Business Constitutional

**Timeline:** Pet: 1/23/2006 Grant: 6/5/2006 Top: 8/21/2006 Bot: 10/10/2006 Arg:

(1) Should *Grutter v. Bollinger* and *Regents of University of California v. Bakke* and *Gratz v. Bollinger* be overturned and/or misapplied by the Jefferson County Board of Education to use race as the sole factor to assign students to the regular (non-traditional) schools in the Jefferson County public schools? (2) Whether the race-conscious Student Assignment Plan with mechanical and inflexible quota systems of not less than 50% of African American students without individually or holistic review of any student, meets the 14th Amendment requirement of the use of race which is a compelling interest narrowly tailored with strict scrutiny? (3) Did the District Court abuse and/or exceed its remedial judicial authority in maintaining desegregative attractiveness in the public schools of Jefferson County, Kentucky?

*Parents Involved* v. *Seattle School*

05-908

CA9

*In tandem with 05-915*

**Categories:**

Civil Rights

Non-Business

Constitutional

School Diversity

**Timeline:** Pet: 1/20/2006 Grant: 6/5/2006 Top: 8/21/2006 Bot: 10/10/2006 Arg:

**(1) How are the Equal Protection rights of public high school students affected by the jurisprudence of *Grutter v. Bollinger* and *Gratz v. Bollinger*? (2) Is racial diversity a compelling interest that can justify the use of race in selecting students for admission to public high schools? (3) May a school district that is not racially segregated and that normally permits a student to attend any high school of her choosing deny a child admission to her chosen school solely because of her race in an effort to achieve a desired racial balance in particular schools, or does such racial balancing violate the Equal Protection Clause of the 14th Amendment?**