

# A QUANTITATIVE ACCOUNTING OF THE USE OF INTERNATIONAL SOURCES IN SUPREME COURT CIVIL RIGHTS CASES FROM 2000 TO 2016

JUSTIN MELLO\*

*“We must never forget that it is a Constitution for the United States of America that we are expounding. . . . [T]he views of other nations, however enlightened the Justices of this Court may think them to be, cannot be imposed upon Americans through the Constitution.”*

– Justice Antonin Scalia, dissenting in *Thompson v. Oklahoma*<sup>1</sup>

## I. INTRODUCTION

It has been nearly three decades since the late-Justice Antonin Scalia began his crusade against the use of international sources in federal jurisprudence.<sup>2</sup> Starting in the 1988 case *Thompson v. Oklahoma*, Justice Scalia dropped a subtle footnote<sup>3</sup> disapproving of the majority’s reliance on the abolition of the death penalty in other western democracies, including “West Germany, France, Portugal, The Netherlands, and all of the Scandinavian countries.”<sup>4</sup> Since then, the debate over the use of international sources in federal jurisprudence, notably in Supreme Court jurisprudence, has raged in both academic circles<sup>5</sup> and the marble halls of the federal judiciary.<sup>6</sup> While these debates have centered on the normative question of

---

\*. Justin F. Mello is a third-year J.D. candidate at the University of Southern California Gould School of Law.

1. *Thompson v. Oklahoma*, 487 U.S. 815, 868 n.4 (1988) (Scalia, J., dissenting).

2. *See id.*; *see also* Robert Barnes, *Breyer Says Understanding Foreign Law is Critical to Supreme Court’s Work*, WASH. POST (Sept. 12, 2015), [https://www.washingtonpost.com/politics/courts\\_law/breyer-says-understanding-foreign-law-is-critical-to-supreme-courts-work/2015/09/12/36a38212-57e9-11e5-8bb1-b488d231bba2\\_story.html?utm\\_term=.5e6798168d70](https://www.washingtonpost.com/politics/courts_law/breyer-says-understanding-foreign-law-is-critical-to-supreme-courts-work/2015/09/12/36a38212-57e9-11e5-8bb1-b488d231bba2_story.html?utm_term=.5e6798168d70)

(“Breyer said the first criticism of the practice he could find in a Supreme Court opinion came in 1988, when Scalia dissented from a decision that it was unconstitutional to impose the death penalty on someone who was younger than 16 at the time of the crime.”).

3. *Thompson v. Oklahoma*, 487 U.S. at 868 n.4 (Scalia, J., dissenting).

4. *Id.* at 831.

5. *See, e.g.*, Curtis A. Bradley, *The Federal Judicial Power and the International Legal Order*, 2006 SUP. CT. REV. 59 (2006); Steven Calabresi & Stephanie Dotson Zimdahl, *The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and The Juvenile Death Penalty Decision*, 47 WM. & MARY L. REV. 743 (2005); Sarah H. Cleveland, *Our International Constitution*, 31 YALE J. INT’L L. 1, 63 (2006); *see also, e.g.*, Roger P. Alford, *Misusing International Sources to Interpret the Constitution*, 98 AM. J. INT’L L. 57 (2004).

6. *See, e.g.*, Associated Press, *Scalia Criticizes Use of Foreign Law in Interpreting U.S. Constitution*, FOX NEWS (May 18, 2006), <http://www.foxnews.com/story/2006/05/18/scalia-criticizes-use-foreign-law-in-interpreting-us-constitution.html>; Emily Bazelon, *Moments of Truth: What John Roberts Really Thinks*, SLATE (Sept. 15, 2005), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2005/09/moments\\_of\\_truth.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2005/09/moments_of_truth.html); Lyle Denniston, *Ginsburg on Kagan and Foreign Law*,

whether the Supreme Court should consider these sources, there remains the open question of *how often* has the Supreme Court actually cited to international sources.<sup>7</sup>

In light of the fear that international influence on Supreme Court jurisprudence is deleterious to our legal system,<sup>8</sup> is the Supreme Court, in practice, making an effort as an institution to reduce the number of times it references international sources? I hypothesize that it has not. Within the scope of civil rights cases between 2000 and 2016, I think that the normative debate over the use of international sources has been somewhat ineffective. Yet, I further hypothesize that an increase in citations to international sources will still comprise only a small percentage of all civil rights cases ruled on, and will ultimately prove to be insubstantial when viewed in the big picture.

## II. BACKGROUND: INTERNATIONAL SOURCES – FRIEND OR FOE?

### A. ACADEMIA – FRIEND

Justice O'Connor wrote that "this Nation's evolving understanding of human dignity certainly is neither wholly isolated from, nor inherently at odds with, the values prevailing in other countries."<sup>9</sup> This overarching theme of unity has developed into a justification for the use of international sources in Supreme Court jurisprudence. Over time, academics have argued that international sources should be used in Supreme Court jurisprudence because it promotes legitimacy within the worldwide community,<sup>10</sup> helps provide clarity as a comparison tool for many of the vague and esoteric phrases used in our legal system,<sup>11</sup> and further bolsters a historical precedent of looking abroad as a means of interpretation.<sup>12</sup>

---

SCOTUSBLOG (July 30, 2010, 6:19 PM), <http://www.scotusblog.com/2010/07/ginsburg-on-kagan-and-foreign-law/>; Adam Liptak, *Ginsburg Shares Views on Influence of Foreign Law on Her Court, and Vice Versa*, N.Y. TIMES (Apr. 11, 2009), <http://www.nytimes.com/2009/04/12/us/12ginsburg.html>; Dana Milbank, *And the Verdict on Justice Kennedy Is: Guilty*, WASH. POST (Apr. 9, 2005), <http://www.washingtonpost.com/wp-dyn/articles/A38308-2005Apr8.html>; Hope Yen, *O'Connor Extols Role of International Law*, BOS. GLOBE (Oct. 28, 2004), [http://archive.boston.com/news/nation/washington/articles/2004/10/28/role\\_of\\_international\\_law\\_lauded/?rss\\_id=Boston%20Globe%20--%20National%20News](http://archive.boston.com/news/nation/washington/articles/2004/10/28/role_of_international_law_lauded/?rss_id=Boston%20Globe%20--%20National%20News).

7. Calabresi & Zimdahl, *supra* note 5, at 838 n.463 (taking note of the dearth of research done on *how often* the Court has actually used international sources).

8. See, e.g., Justice Antonin Scalia, Address at the American Enterprise Institute: Role of International Law in American Courts (Aug. 25, 2014), <https://www.c-span.org/video/?c4507054/scalia-international-law>; Associated Press, *supra* note 6. But see, e.g., Barnes, *supra* note 2; Denniston, *supra* note 6; John O. McGinnis & Ilya Somin, *Should International Law Be Part of Our Law?*, 59 STAN. L. REV. 1175 (2007).

9. *Roper v. Simmons*, 543 U.S. 551, 605 (2005).

10. See Bradley, *supra* note 5.

11. See Harold Hongju Koh, *International Law as Part of Our Law*, 98 AM. J. INT'L L. 43, 56 (2004).

12. See *id.*; Calabresi & Zimdahl, *supra* note 5; Cleveland, *supra* note 5, at 63.

In recognizing the consistency between international norms and American ideals, Justice O'Connor implicitly endorsed the idea that there is an importance in acknowledging the congruence between the international community and the United States.<sup>13</sup> Curtis Bradley picks up on this idea and discusses the possibility of the increase in international legitimacy that reliance on international sources can bring.<sup>14</sup> This legitimacy comes in the form of an increased uniformity with the interpretation and application of international law and furthered compliance with international obligations.<sup>15</sup> As pointed out by Bradley, the Court has previously emphasized the need for uniformity, declaring that “[i]f there were no revising authority to control . . . jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the [C]onstitution of the United States would be different . . . .”<sup>16</sup> Furthermore, there is added value in “speaking with one voice,” a value respected in national courts all around the world.<sup>17</sup>

The reliance on and consideration of international sources can also help shed light on our own Constitutional democracy. As Bradley points out, “The Court has treated . . . international materials as evidence that may be relevant to the interpretation of vague or uncertain constitutional provisions.”<sup>18</sup> Fundamentally, Harold Koh believes that the use of international sources in this vein is critical in understanding provisions of the law such as “due process,” “equal protection,” and “cruel and unusual punishment.”<sup>19</sup> These were ideas that did not originate with the United States, but rather “have long carried global meaning.”<sup>20</sup> Moreover, looking abroad for help in interpreting these provisions not only evinces enlightenment by the Court, but contributes to international legitimacy as well.<sup>21</sup> “To construe these terms in ignorance of these foreign and international precedents virtually ensures that our Supreme Court rulings will generate conflict and controversies with our closest global allies.”<sup>22</sup> Koh emphatically believes that the evidence of community norms and standards abroad should not be ignored: “Wise American judges did not do so at the beginning of the Republic, and there is no warrant for them to start now.”<sup>23</sup>

Moreover, the Supreme Court’s use of international sources is said to be faithful to historical precedent. From the moment of its inception, the Supreme Court has cited to international sources as either background material or as a method of comparison.<sup>24</sup> In fact, the very debate over

---

13. See *Roper v. Simmons*, 543 U.S. at 605.

14. See Bradley, *supra* note 5, at 93.

15. *Id.* at 109–12.

16. *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816).

17. Eyal Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts*, 102 AM. J. INT’L L. 241, 242, 273 (2008).

18. Bradley, *supra* note 5, at 93.

19. Koh, *supra* note 11.

20. *Id.* at 47.

21. *Id.*; see also notes 9–16 and accompanying text.

22. Koh, *supra* note 11, at 47.

23. *Id.* at 56.

24. See generally Calabresi & Zimdahl, *supra* note 5; Cleveland, *supra* note 5. For some examples of early Supreme Court cases citing to international law, see *The Antelope*, 23 U.S. (10 Wheat.) 66, 114–17, 123–24 (1825); *Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 136–37 (1812); *Rose v.*

whether to look to international sources was relevant “as early as 1820 when Justice Livingston responded to Justice Story’s use of foreign law to provide a definition for the crime of piracy.”<sup>25</sup> Throughout the Supreme Court’s history, there has been recognition of the “traditional view” that “the Constitution . . . incorpor[ates], and reflect[s], common values drawn from the international legal system.”<sup>26</sup> Overall, it is argued that “[t]he historical record establishes that our constitutional tradition is significantly more receptive to international norms than is understood in the current scholarly and judicial debate.”<sup>27</sup> Given the “rich historical relationship between the Constitution and international law,”<sup>28</sup> the Supreme Court’s occasional reliance on international sources is not an aberration in the landscape of federal jurisprudence.

Finally, these scholars argue that the fear expressed by opponents of this approach is misguided. Bradley argues that despite the occasional use of international sources in Supreme Court jurisprudence, the Supreme Court has consistently insisted on “a certain degree of autonomy from the international legal system.”<sup>29</sup> The Court has made clear that it will only use international sources against a “backdrop of the usual constitutional, procedural, and remedial doctrines that govern the domestic legal system.”<sup>30</sup>

## B. JUDICIARY – FRIEND

The loudest proponents for the use of international sources in Supreme Court jurisprudence have traditionally sat on the liberal end of the political spectrum.<sup>31</sup> Justice Breyer<sup>32</sup> and Justice Ginsburg<sup>33</sup> are just two of the more famous liberal Justices who have taken strong, public stances in favor of the use of international sources. Now, the willingness to remain flexible and open to international influence would appear to stem from the general liberal philosophy of constitutional interpretation that views the Constitution as a “living document.”<sup>34</sup> In interpreting the Constitution as a “living document,” an observer interprets it through the lens of the problems that the United

---

Himely, 8 U.S. (4 Cranch) 241, 268–71 (1808); *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 115, 118 (1804).

25. Calabresi & Zimdahl, *supra* note 5, at 754 (referring to the early Supreme Court case, *United States v. Smith*, 18 U.S. (5 Wheat.) 153 (1820)).

26. Cleveland, *supra* note 5, at 124.

27. *Id.*

28. *Id.*

29. Bradley, *supra* note 5, at 112.

30. *Id.*

31. See, e.g., Robert J. Delahunty & John Yoo, *Against Foreign Law*, 29 HARV. J.L. & PUB. POL’Y 291, 293 (2005) (noting the several Justices who have cited to international sources); see also Jill Silos-Rooney, *The 7 Most Liberal Supreme Court Justices in American History*, THOUGHTCO. (June 15, 2017), <https://www.thoughtco.com/most-liberal-supreme-court-justices-3325462/>.

32. See, e.g., Barnes, *supra* note 2; STEPHEN BREYER, *THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES* (2015).

33. Denniston, *supra* note 6; Liptak, *supra* note 6.

34. David A. Strauss, *The Living Constitution*, U. CHI. L. SCH. (2010), <https://www.law.uchicago.edu/news/living-constitution>; Byron Williams, *Constitution is Clearly a Living Document*, HUFFINGTON POST (Apr. 16, 2012, 4:53 PM), [https://www.huffingtonpost.com/byron-williams/same-sex-marriage-constitution\\_b\\_1429064.html](https://www.huffingtonpost.com/byron-williams/same-sex-marriage-constitution_b_1429064.html) (last updated June 16, 2012).

States faces today.<sup>35</sup> Despite its arguable vagueness, the “living document” philosophy—unlike its counterpart, “originalism”—embraces the changing world, while adapting to a new social reality that could not have been foreseen at the time of the founding.<sup>36</sup>

Now, among the Justices, Justice Breyer has been the “yin” to Justice Scalia’s “yang.” As the Court’s leading supporter of the use of international sources in Supreme Court jurisprudence, Justice Breyer has articulated this philosophy in many of his own opinions.<sup>37</sup> Outside of his commentary in official Supreme Court opinions, Justice Breyer has also been outspoken regarding his support of the inclusion of international sources in Supreme Court jurisprudence.<sup>38</sup> In his keynote address before the American Society of International Law, Justice Breyer proclaimed that “comparative analysis emphatically is relevant to the task of interpreting constitutions and enforcing human rights,” while touting that the “global legal enterprise . . . is now upon us.”<sup>39</sup> More recently, Justice Breyer claimed that “15 to 20 percent of [Supreme Court] cases require the judges to know something about what happens abroad.”<sup>40</sup>

In his most recent book, Justice Breyer espoused his views that international sources are becoming increasingly valuable in the evermore interconnected global world.<sup>41</sup> As Breyer writes, the global community has developed into a “world of instant communication and commerce, and shared problems of (for example) security, the environment, health, and trade, all of which ever more pervasively link individuals without regard to national boundaries.”<sup>42</sup> Particularly in the realm of foreign affairs and global terrorism, and the effects of each on the United States domestically, Breyer opines that “the Court will *increasingly have* to consider activities, both nonjudicial and judicial, that take place abroad.”<sup>43</sup> And to Breyer’s approval, the Court has begun to implicitly engage international sources in these cases.<sup>44</sup> Overall, Breyer wants the Supreme Court to listen to the “many voices” in our progressively globalized world, “to take account of a foreign as well as the domestic legal landscape.”<sup>45</sup>

---

35. See Williams, *supra* note 34.

36. See *id.*

37. See, e.g., *Glossip v. Gross*, 135 S. Ct. 2726, 2761, 2767, 2769, 2775–67, 69, 75–76 (2015) (Breyer, J., dissenting); *Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 367 (2009) (Breyer, J., concurring & dissenting); *Baze v. Rees*, 553 U.S. 35, 111–12 (2008); *Vieth v. Jubelirer*, 541 U.S. 267, 363 (2004) (Breyer, J., dissenting); *Ring v. Arizona*, 536 U.S. 584, 618 (2002) (Breyer, J., concurring); *Zelman v. Simmons-Harris*, 536 U.S. 639, 718, 725 (2002) (Breyer, J., dissenting); *Nixon v. Shrink Mo. Gov’t Pac*, 528 U.S. 377, 403 (2000) (Breyer, J., concurring); see also Calabresi & Zimdahl, *supra* note 5, at 879–83.

38. See generally BREYER, *THE COURT AND THE WORLD*, *supra* note 32; Barnes, *supra* note 2; Justice Stephen Breyer, Keynote Address Before the American Society of International Law (Apr. 2003), in 97 AM. SOC’Y INT’L L. PROC. 265, 266 (2003).

39. See Alford, *supra* note 5, at 57 (citing Breyer, *supra* note 38).

40. Barnes, *supra* note 2 (citation omitted).

41. BREYER, *THE COURT AND THE WORLD*, *supra* note 32.

42. *Id.* at 4.

43. *Id.* at 81 (emphasis added).

44. *Id.*

45. *Id.* at 7.

Justice Breyer is not alone in his support of the use of international sources on the Supreme Court.<sup>46</sup> For example, Justice Kennedy has been known to cite to international sources as a means of comparison in the interpretation of habeas corpus,<sup>47</sup> due process,<sup>48</sup> the Eighth Amendment,<sup>49</sup> the Sixth Amendment,<sup>50</sup> and the First Amendment,<sup>51</sup> among other rights. Despite suffering through calls for his impeachment for his reliance on international sources,<sup>52</sup> Justice Kennedy has occasionally looked to the international community favorably, treating these sources as no different than “the many studies or friend-of-the-court briefs that seek to influence [the Justice’s] deliberations.”<sup>53</sup>

Moreover, former-Justice Stevens, Justice Ginsburg, and Justice Kagan have all either explicitly or implicitly endorsed the use of international sources in Supreme Court jurisprudence.<sup>54</sup> Justice Stevens was the author of the majority opinion in *Thompson v. Oklahoma*, the case which sparked Justice Scalia’s open ire towards the use of international sources in Supreme Court jurisprudence.<sup>55</sup> Beyond that opinion, like Justice Kennedy, Justice Stevens referenced international sources in his interpretation of the Eighth Amendment,<sup>56</sup> the First Amendment,<sup>57</sup> the Second Amendment,<sup>58</sup> the Fifth Amendment,<sup>59</sup> habeas corpus,<sup>60</sup> and the equal protection clause.<sup>61</sup> Justice Ginsburg, while also dedicating much Supreme Court ink to the reference of international sources,<sup>62</sup> has been outspoken beyond the bench in her support for the utilization of international sources in interpreting American law.<sup>63</sup> Speaking at a symposium at the Moritz College of Law at Ohio State University, Justice Ginsburg went so far as to express her bewilderment over the “brouhaha” that members of Congress and her colleagues on the Supreme

---

46. See Denniston, *supra* note 6; Liptak, *supra* note 6; Milbank, *supra* note 6.

47. See *Boumediene v. Bush*, 553 U.S. 723, 740–42, 745, 747–45, 747–52, 754, 767–68, 779 (2008); *Hamdan v. Rumsfeld*, 548 U.S. 557, 639–45 (2006) (Kennedy, J., concurring); *Zadvydas v. Davis*, 533 U.S. 678, 715–16, 721 (2001) (Kennedy, J., dissenting).

48. See *Lawrence v. Texas*, 539 U.S. 558, 573, 576–77 (2003).

49. See *Graham v. Florida*, 560 U.S. 48, 80–82 (2010); *Roper v. Simmons*, 543 U.S. 551, 567, 575–78 (2005).

50. See *Lafler v. Cooper*, 566 U.S. 156, 185 (2012).

51. See *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1685 (2015) (Kennedy, J., dissenting).

52. See Milbank, *supra* note 6.

53. Barnes, *supra* note 2.

54. *Id.*

55. See *Thompson v. Oklahoma*, 487 U.S. 815, 818–19 (1988).

56. See *Baze v. Rees*, 553 U.S. 35, 77 n.9 (2008) (Stevens, J., concurring); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002).

57. See *Zelman v. Simmons-Harris*, 536 U.S. 639, 686 (2002) (Stevens, J., dissenting).

58. See *McDonald v. City of Chi.*, 561 U.S. 742, 888, 888 n.32, 895–96 (2010) (Stevens, J., dissenting).

59. See *Chavez v. Martinez*, 538 U.S. 760, 788 n.2 (2003) (Stevens, J., concurring & dissenting).

60. See *Medellin v. Texas*, 552 U.S. 491, 533–37 (2008) (Stevens, J., concurring); *Hamdan v. Rumsfeld*, 548 U.S. 557, 604, 610, 613, 619–20, 625–33 (2006).

61. See *Vieth v. Jubelirer*, 541 U.S. 267, 331 n.25 (2004) (Stevens, J., dissenting).

62. See, e.g., *Golan v. Holder*, 565 U.S. 302, 306–44 (2012); *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 360–65 (2006) (Ginsburg, J., concurring); *Eldred v. Ashcroft*, 537 U.S. 186, 200 n.5, 205–06 (2003); *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring).

63. See Denniston, *supra* note 6; Liptak, *supra* note 6.

Court have taken up over the use of international sources.<sup>64</sup> For Justice Ginsburg, it makes little sense to ignore the wisdom of a judge from abroad simply because that judge *is* abroad.<sup>65</sup> Justice Kagan, another supporter of the use of international sources, had Justice Ginsburg come to her defense when she indicated that she would support such use during her confirmation hearings.<sup>66</sup> As Kagan expressed in her hearings, she favored “good ideas . . . wherever you can get them.”<sup>67</sup>

### C. ACADEMIA – FOE

Opponents of the use of international sources in Supreme Court jurisprudence either claim that it is extremely difficult to use appropriately or that it is never appropriate to use at all.<sup>68</sup> Roger Alford takes the former view, claiming that international sources are misused in four distinct ways: in a counter-majoritarian fashion; in a way that elevates appropriate uses of international law erroneously (such as elevating treaties to a status that they should not have in accordance with our federal system); in a haphazard way; and selectively, to a fault.<sup>69</sup>

When the Supreme Court utilizes international sources in a counter-majoritarian fashion, the Court is “undermin[ing] the sovereign limitations inherent in federalist restraints” by ascribing “constitutional value” to the global opinion of mankind at the expense of the “domestic opinions of Americans.”<sup>70</sup> Moreover, when the Court erroneously uses international law, such as elevating a treaty without legal cause, they are circumventing limitations imposed by the Constitution, while “empower[ing] the political branches to create source materials . . . that serve as interpretive inputs to the process of constitutional decision making.”<sup>71</sup> Furthermore, in using international sources in a haphazard way and “relying on only those materials that are readily at its fingertips,” the Court is engaging in incomplete comparativism that results in a process that “is essentially a random, playful, and perhaps even unconscious process of reaching into a grab bag and using the first thing that happens to fit the constitutional problem at hand.”<sup>72</sup> Finally, there is a clear failure when the Court only uses international sources to further buttress the “assumption that it will enhance rather than diminish basic human rights in this country.”<sup>73</sup> As Alford quips, “If international and foreign sources are arrows in the quiver of constitutional

64. Liptak, *supra* note 6 (citation omitted).

65. *Id.* (emphasis added).

66. *See* Denniston, *supra* note 6.

67. *Id.* (citation omitted).

68. *See, e.g.,* Alford, *supra* note 5; Roger P. Alford, *Federal Courts, International Tribunals, and the Continuum of Deference*, 43 VA. J. INT’L L. 675 (2003); Joan Larsen, *Importing Constitutional Norms from a “Wider Civilization”: Lawrence and the Rehnquist Court’s Use of Foreign and International Law in Domestic Constitutional Interpretation*, 65 OHIO L.J. 1283 (2004); Scalia, *supra* note 8.

69. *See* Alford, *supra* note 5, at 58–69.

70. *Id.* at 58–59, 61.

71. *Id.* at 61.

72. *Id.* at 64 (citing Mark Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 YALE L.J. 1225, 1237–38, 1285–1306 (1999)).

73. *Id.* at 67.

interpretation, those arrows should pierce our constitutional jurisprudence to produce results that we celebrate and that we abhor.”<sup>74</sup>

The late-Justice Antonin Scalia took the latter view, claiming “that modern foreign legal material can never be relevant to any interpretation of, that is to say, to the meaning of the United States Constitution.”<sup>75</sup> As the most outspoken member of the Court on this issue, Justice Scalia supported the proposition that in interpreting the U.S. Constitution, the norms and legal developments of international organizations and countries are absolutely irrelevant.<sup>76</sup> While not as absolutist as Justice Scalia, Joan Larsen takes the position that the substantive use of international sources in Supreme Court opinions lacks an “adequate theoretical foundation” and should not be a tool utilized by the Supreme Court.<sup>77</sup> Larsen concludes that the unjustified substantive use of international sources have mostly been drawn from “foreign or international bodies [that] have adopted a particular rule” and used to stand as justification for the constitutionalizing of that rule domestically.<sup>78</sup> Larsen observes and abhors the pattern of the “everyone’s doing it” approach to constitutional interpretation” and posits that there is simply no justification for the use of international sources in this common method of Supreme Court jurisprudence.<sup>79</sup>

#### D. JUDICIARY – FOE

The loudest opponents of the use of international sources have generally sat on the conservative end of the political spectrum. Very much related to the popularity of “originalism,”<sup>80</sup> the traditionally conservative members of the Court have historically, and conceptually, spoken out against the influence of international sources on American jurisprudence.<sup>81</sup> Originalist thinkers interpret the Constitution as it was originally drafted, without considering the way the nation has developed over the almost three centuries it has been in existence.<sup>82</sup> Originalists firmly believe that remaining faithful to the originally drafted Constitution is the best way to realize the

74. *Id.* at 69.

75. Anne Gearan, *Foreign Rulings Not Relevant to High Court, Scalia Says*, WASH. POST (Apr. 3, 2004), [https://www.washingtonpost.com/archive/politics/2004/04/03/foreign-rulings-not-relevant-to-high-court-scalia-says/40ebe162-8266-4cf2-9cb3-c0a0fa2336c3/?utm\\_term=.29e5b53cdb11](https://www.washingtonpost.com/archive/politics/2004/04/03/foreign-rulings-not-relevant-to-high-court-scalia-says/40ebe162-8266-4cf2-9cb3-c0a0fa2336c3/?utm_term=.29e5b53cdb11).

76. See Antonin Scalia, *supra* note 8. See also *Roper v. Simmons*, 543 U.S. 551, 624 (2005) (“More fundamentally, however, the basic premise of the Court’s argument—that American law should conform to the laws of the rest of the world—ought to be rejected out of hand.”).

77. Larsen, *supra* note 68, at 1283.

78. *Id.* at 1326–27.

79. *Id.* (internal quotation marks omitted).

80. See, e.g., Caleb Nelson, *Originalism and Interpretive Conventions*, 70 U. CHI. L. REV. 519 (2003); Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CIN. L. REV. 849 (1989); Lawrence B. Solum, *Originalism and Constitutional Construction*, 82 FORDHAM L. REV. 453 (2013); Aaron Blake, *Neil Gorsuch, Antonin Scalia and Originalism, Explained*, WASH. POST (Feb. 1, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/02/01/neil-gorsuch-antonin-scalia-and-originalism-explained/?utm\\_term=.d36ac19cea4e](https://www.washingtonpost.com/news/the-fix/wp/2017/02/01/neil-gorsuch-antonin-scalia-and-originalism-explained/?utm_term=.d36ac19cea4e).

81. See, e.g., Bazelon, *supra* note 6; Gearan, *supra* note 75.

82. See Nelson, *supra* note 80; Scalia, *supra* note 80; Solum, *supra* note 80; Blake, *supra* note 80.



constitutional republic originally imagined.<sup>83</sup> International sources simply do not fall within that paradigm.

In addition to Justice Scalia, who has been documented as the most ardent opponent of the use of international sources at the Supreme Court,<sup>84</sup> Justice Thomas and Chief Justice Roberts have stood out as other outspoken jurists in decrying international sources in Supreme Court jurisprudence.<sup>85</sup> On several occasions,<sup>86</sup> Justice Thomas has criticized the Court's reliance on international sources, at times calling it a "deviat[ion] from the Constitution."<sup>87</sup> Furthermore, Justice Thomas has even said that "[w]hile Congress, as a *legislature*, may wish to consider the actions of other nations on any issue it likes, this Court's . . . jurisprudence should not impose foreign moods, fads, or fashions on Americans."<sup>88</sup>

Chief Justice Roberts has been even more of an outspoken critic of the use of international sources outside of his own opinions from the bench.<sup>89</sup> During his confirmation hearings, the Chief Justice consistently expressed his displeasure in citing to international sources.<sup>90</sup> As the Chief Justice declared, in "[f]oreign law, you can find anything you want. If you don't find it in the decisions of France or Italy, it's in the decisions of Somalia or Japan or Indonesia or wherever."<sup>91</sup> Furthermore, the Chief Justice firmly believes that the use of international sources implicates a clear violation of our constitutional principles, declaring that "[i]f we're relying on a decision from a German judge about what our Constitution means, no president accountable to the people appointed that judge and no Senate accountable to the people confirmed that judge. . . . yet he's playing a role in shaping the law that binds . . . this country."<sup>92</sup>

---

83. *See id.*

84. *See supra* note 75 and accompanying text.

85. *See* Barnes, *supra* note 2; Bazelon, *supra* note 6; Tom Curry, *A Flap Over Foreign Matter at the Supreme Court*, NBC NEWS (Mar. 11, 2004), [http://www.nbcnews.com/id/4506232/ns/politics-tom\\_curry/t/flap-over-foreign-matter-supreme-court/#.WfT9omhSzIU](http://www.nbcnews.com/id/4506232/ns/politics-tom_curry/t/flap-over-foreign-matter-supreme-court/#.WfT9omhSzIU); Liptak, *supra* note 6.

86. *See, e.g.,* Johnson v. Bredesen, 558 U.S. 1067, 1071–72, 1073 (2009) (Thomas, J., concurring); Hamdi v. Rumsfeld, 542 U.S. 507, 587–88, 597 n.6 (2004) (Thomas, J., dissenting).

87. *Johnson*, 558 U.S. at 1071 (Thomas, J., concurring).

88. *Foster v. Florida*, 537 U.S. 990, 990 n.\* (2002) (Thomas, J., concurring).

89. *See* Bazelon, *supra* note 6. This is in stark contrast to Justice Thomas, who is known for his reclusive nature, both outside of the Court and during oral arguments. *See* Ron Elving, *Clarence Thomas Speaks: After a Decade, Questions from the Quiet Justice*, NPR (Feb. 29, 2016), <https://www.npr.org/2016/02/29/468600863/after-a-decade-questions-emerge-from-the-quiet-justice> ("He is known to give speeches or interviews from time to time. . . . But he has not taken part in the oral arguments that are a feature of the court's handling of important cases.").

90. *See* Bazelon, *supra* note 6.

91. *Id.* (citation omitted).

92. *Id.* (citation omitted).

### III. RESEARCH HYPOTHESES

#### A. PRIMARY HYPOTHESIS: THERE HAS BEEN AN INCREASE IN CITATIONS TO INTERNATIONAL SOURCES IN SUPREME COURT CIVIL RIGHTS CASES BETWEEN 2000 AND 2016

The literature addressing the normative question of *whether* the Court should use international sources in its opinions presumes an increase in the use of said sources.<sup>93</sup> As my primary hypothesis, I will be testing this presumption through the lens of civil rights cases from 2000 to 2016. The observable implications will be the number of civil rights cases and opinions that have used international sources. Based on the literature, I hypothesize that there will be an increase in the use of international sources in Supreme Court jurisprudence, within the scope of civil rights cases between 2000 and 2016.<sup>94</sup>

That said, I believe that the increased use of international sources in the Supreme Court is marginal in relation to the total number of civil rights cases considered by the Court. As cited in the literature, the Supreme Court does not simply cite to international sources in a haphazard fashion.<sup>95</sup> As it is the case that the Court has historically cited to international sources throughout its history,<sup>96</sup> I do not think the Court has heeded the warnings of Justice Scalia; but, it is still likely to be a rare phenomenon.

#### B. ALTERNATIVE HYPOTHESES

As a corollary to my primary hypothesis, I will test several alternative hypotheses intuited from the literature. The observable implications in these hypotheses will be identical to those seen in my primary hypothesis. I will perform simple longitudinal analyses to produce the observable implications.

As an alternative hypothesis, I hypothesize that international sources will not only be used more often in civil rights cases generally, from 2000 to 2016, but will be used most often in Eighth Amendment cases. This hypothesis stems from the literature observing and analyzing this branch of cases predominantly, as opposed to cases involving habeas corpus, due process, and the like.<sup>97</sup> Furthermore, specifically in Eighth Amendment cases, there is a standard of reasonableness derived from the “maturing values of civilized society.”<sup>98</sup> While this language is not universally used, the sentiment finds itself throughout Eighth Amendment jurisprudence, starting

93. See Calabresi & Zimdahl, *supra* note 5. See generally Daniel Bodansky, *The Use of International Sources in Constitutional Opinion*, 32 GA. J. INT’L & COMP. L. 421 (2004); Rex D. Glensy, *The Use of International Law in U.S. Constitutional Adjudication*, 25 EMORY INT’L L. REV. 197 (2011).

94. See generally BREYER, *THE COURT AND THE WORLD*, *supra* note 32, at 4 (arguing for a hypothesis grounded in globalization).

95. See Bradley, *supra* note 5, at 112.

96. See Calabresi & Zimdahl, *supra* note 5; Cleveland, *supra* note 5; see also Harry A. Blackmun, *The Supreme Court and the Law of Nations*, 104 YALE L.J. 39 (1994); Douglas J. Sylvester, *International Law as Sword or Shield? Early American Foreign Policy and the Law of Nations*, 32 N.Y.U. J. INT’L L. & POL. 1 (1999).

97. See, e.g., Calabresi & Zimdahl, *supra* note 5, at 891–94.

98. *Roper v. Simmons*, 543 U.S. 551, 605 (2005) (O’Connor, J., dissenting).

in *Thompson v. Oklahoma*.<sup>99</sup> From that sentiment stems the temptation to look abroad for guidance, and in that notion, I believe it will be observed that Eighth Amendment cases represent the largest share of cases citing to international sources, particularly those that cite for the sake of comparison.

My next alternative hypothesis will test the effect of perceived ideology on the use of international sources in the Supreme Court. Based on the literature,<sup>100</sup> and the open views of the sitting Justices,<sup>101</sup> I hypothesize that for those Justices who *have actually cited to international sources*, the liberal Justices of the Court will use them more often than the conservative Justices. Furthermore, I hypothesize that the liberal Justices will cite to international sources as means of comparison more often than the conservative Justices. For the sake of labelling, the traditionally liberal Justices of the Supreme Court, who have cited to international sources in civil rights cases between 2000 and 2016, are: Justices Stevens, Souter, Breyer, Ginsburg, and Sotomayor.<sup>102</sup> The traditionally conservative Justices, who have cited to international sources in civil rights cases between 2000 and 2016, are: Justices Thomas, Scalia, O'Connor, Alito, Kennedy,<sup>103</sup> and both Chief Justices Rehnquist and Roberts.<sup>104</sup>

In addition, I will test the longstanding debate between Justice Scalia and Justice Breyer. As described earlier in this paper,<sup>105</sup> Justice Breyer and the late-Justice Scalia have openly argued over the place of international sources in Supreme Court jurisprudence. Justice Breyer has been an outspoken supporter of their use in the Supreme Court,<sup>106</sup> while Justice Scalia had long

99. See *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988).

100. See *supra* Section II, Parts A, C.

101. See *supra* Section II, Parts B, D.

102. Abby Norman, *Which Supreme Court Justices Are Liberal? Trump Is Planning to Appoint a Conservative*, ROMPER (Jan. 30, 2017), <https://www.romper.com/p/which-supreme-court-justices-are-liberal-trump-is-planning-to-appoint-a-conservative-34144>; see also Robert Barnes, *Justice Stevens' Liberal Legacy Goes Beyond Ideology*, SEATTLE TIMES (Apr. 10, 2010), <https://www.seattletimes.com/nation-world/justice-stevens-liberal-legacy-goes-beyond-ideology/>; David G. Savage, *John Paul Stevens' Unexpectedly Liberal Legacy*, L.A. TIMES (Apr. 9, 2010), <http://articles.latimes.com/2010/apr/09/nation/la-na-stevens-legacy10-2010apr10> (describing Justice John Paul Stevens' confusing legacy, where he evolved into a centrist-left Justice among a right-shifting Court); David G. Savage, *Justice Souter: Liberal or Conservative?*, L.A. TIMES (May 4, 2009), <http://articles.latimes.com/2009/may/04/nation/na-souter4> (describing Justice Souter as a converted liberal after *Planned Parenthood v. Casey*).

103. While Justice Kennedy is considered by some as the "purple" vote, his voting record aligns him more closely with the conservative bloc. See Lawrence Hurley & Andrew Chung, *Fearing Trump's Next Move, Liberals Urge Supreme Court Conservative Kennedy to Stay*, REUTERS (June 1, 2017), <https://www.reuters.com/article/us-usa-court-kennedy/fearing-trumps-next-move-liberals-urge-supreme-court-conservative-kennedy-to-stay-idUSKBN18S4LT>; Ariane de Vogue, *Fearing His Retirement, Liberals Hope Anthony Kennedy Can Help Resist the Conservative Tide*, CNN (Oct. 2, 2017), <https://www.cnn.com/2017/10/02/politics/anthony-kennedy-liberals/index.html>.

104. Marcus Hawkins, *Top 5 Conservative Supreme Court Justices*, THOUGHTCO. (May 21, 2017), <https://www.thoughtco.com/top-conservative-supreme-court-justices-3303395>; Adam Liptak, *Chief Justice John Roberts Amasses a Conservative Record, and Wrath from the Right*, N.Y. TIMES (Sept. 28, 2015), <https://www.nytimes.com/2015/09/29/us/politics/chief-justice-john-roberts-amasses-conservative-record-and-the-rights-ire.html>; Abigail Perkiss, *A Look Back at Justice Sandra Day O'Connor's Court Legacy*, NAT'L CONST. CTR.: CONST. DAILY (July 1, 2018), <https://constitutioncenter.org/blog/a-look-back-at-justice-sandra-day-oconnors-court-legacy>; see also Hurley & Chung, *supra* note 103.

105. See *supra* Section II, Part B.

106. See *supra* Section II, Part B.

called for their prohibition all together.<sup>107</sup> With that in mind, I hypothesize that Justice Breyer has cited to international sources more often than Justice Scalia. Moreover, I hypothesize that Justice Breyer has cited to international sources as a means of comparison more often than Justice Scalia. Finally, I hypothesize that *all* citations to international sources by Justice Scalia will be for the purposes of background.<sup>108</sup>

Furthermore, I will test how often Justice Kennedy cited to international sources in Supreme Court civil rights cases prior to his recent retirement. Stemming from his notable opinions citing to international sources, including *Lawrence v. Texas*<sup>109</sup> and *Roper v. Simmons*,<sup>110</sup> many observers equate the use of international sources with Justice Kennedy's jurisprudence.<sup>111</sup> I hypothesize that despite the fanfare surrounding Justice Kennedy's supposed propensity to cite to international sources, Justice Kennedy has actually not relied on international sources as often as is imagined. I believe that his close identity with the conservative cohort of the bench<sup>112</sup> will lead him not to rely on international sources, either in a background or comparative capacity.

Finally, I will test the effects that the arrivals of Chief Justice Roberts and Justice Alito had on the use of international sources in the Supreme Court. Beyond looking at how they have used such sources from the time they were appointed, in 2006, to the end of the sample, 2016, I hypothesize that there will be fewer citations to international sources in Court opinions overall, as compared to such opinions cited between 2000 and 2005. "Court opinion" is being used to label the majority and plurality opinions of the Court. Furthermore, I hypothesize that their appointments led to a decrease in the use of international sources for the sake of comparison overall, particularly in Court opinions. With their appointments in 2006, the Court began to lean more conservative, particularly with the right-leaning Justice Alito replacing the more moderate Justice O'Connor.

#### IV. METHODOLOGY

While the above material outlines much of the prominent normative debate surrounding the use of international sources in the Supreme Court,<sup>113</sup> this project is concerned with the empirical reality of said phenomenon in civil rights cases from 2000 to 2016. Specifically, this project will track the number of times the Court has actually referenced or cited international sources in civil rights cases during this time. While scholars have dedicated a lot of time to studying the use of international sources in landmark cases, they have made little effort to "count" the number of times the Court has

---

107. See *supra* Sections I & II, Part D.

108. See Scalia, *supra* note 8 (further reiterating Justice Scalia's position that foreign law has no place in federal jurisprudence).

109. 539 U.S. 558, 573, 576–77 (2003).

110. 543 U.S. 551, 567, 576–75 (2005).

111. See Jeffrey Rosen, *Supreme Leader: On the Arrogance of Anthony Kennedy*, NEW REPUBLIC (June 15, 2007), <https://newrepublic.com/article/60925/supreme-leader-the-arrogance-anthony-kennedy>.

112. See Hurley & Chung, *supra* note 103.

113. See *supra* Section II.

mentioned such sources.<sup>114</sup> I hope to fill in that gap for civil rights cases decided during most of the twenty-first century.

I assembled my data by collecting all of the Supreme Court cases decided from 2000 to 2016.<sup>115</sup> This included significant writ of certiorari denials and conventional decisions. I then began reading through each case to determine which cases qualified as civil rights cases. I have treated civil rights cases as those that *turn* on “any of the individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation . . . .”<sup>116</sup> This line-drawing endeavor inherently called for an exercise in judgment; that said, when a case was on the border of qualifying as a civil rights case, I opted to include it.<sup>117</sup> Some examples of cases that did not get classified as civil rights cases were those that strictly spoke of ex post facto laws,<sup>118</sup> Native American tribal issues,<sup>119</sup> statutory retirement<sup>120</sup> and Medicare or Medicaid issues,<sup>121</sup> the Federal Rules of Evidence,<sup>122</sup> the Federal Rules of Civil Procedure,<sup>123</sup> and immigration appeals.<sup>124</sup> These cases were ignored when they only strictly spoke of said subject-matter, not when they turned on civil rights, in some capacity.<sup>125</sup> Wherever possible, a case was indexed in the data.

After I identified a case as turning on a civil rights issue, I then determined whether any part of the opinion (the Court’s opinion (which, as mentioned previously, refers to the majority or plurality opinion of a decision), the concurrence, or the dissent) referenced international sources. I have treated international sources as any reference to another country (or their laws) or international organization that can be construed as a consortium composed of several countries (for example, the United

114. See Calabresi & Zimdahl, *supra* note 5, at 838 & n.463 (“It does not, however, address every instance in which the members of the Court have looked to such sources.”).

115. See *United States Supreme Court Cases*, FINDLAW, <http://caselaw.findlaw.com/court/us-supreme-court> (last visited Nov. 8, 2017); see also *Supreme Court Cases*, INSIDEGOV, <http://supreme-court-cases.insidegov.com/> (last visited Nov. 8, 2017).

116. *Civil right*, BLACK’S LAW DICTIONARY 743 (8th ed. 2005).

117. See, e.g., *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002). While the case appeared to turn on a procedural matter, the interpretation of Title VII pushed this borderline case into my index of data.

118. See, e.g., *Peugh v. United States*, 569 U.S. 530 (2013); *Vartelas v. Holder*, 566 U.S. 257 (2012); *Stogner v. California*, 539 U.S. 607 (2003); *Garner v. Jones*, 529 U.S. 244 (2000).

119. See, e.g., *Menominee Indian Tribe v. United States*, 136 S. Ct. 750 (2016); *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003); *C & L Enters. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411 (2001); *Arizona v. California*, 530 U.S. 392 (2000).

120. See, e.g., *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936 (2016); *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008); *Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003); *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).

121. See, e.g., *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012); *Ark. Health & Human Servs. v. Ahlborn*, 547 U.S. 268 (2006); *Wis. Dep’t of Health & Family Servs. v. Blumer*, 534 U.S. 473 (2002); *Shalala v. Ill. Council on Long Term Care*, 529 U.S. 1 (2000).

122. See, e.g., *Warger v. Shauers*, 135 S. Ct. 521 (2014); *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91 (2011); *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379 (2008).

123. See, e.g., *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

124. See, e.g., *Scialabba v. De Osorio*, 134 S. Ct. 2191 (2014); *Nken v. Holder*, 556 U.S. 418 (2009); *Jama v. Immigration & Customs Enf’t*, 543 U.S. 335 (2005); *INS v. Ventura*, 537 U.S. 12 (2002).

125. See, e.g., *Demore v. Hyung Joon Kim*, 538 U.S. 510 (2003) (involving immigration and substantial due process implications).

Nations).<sup>126</sup> Similar to the exercise classifying civil rights cases, I operated with a presumption of inclusion. The use of international sources came in several forms and I separated the data accordingly.

Of note, I kept cases that used international sources for historical purposes, as background, apart from those that used international sources as a comparative tool. Eighteenth century English law and Blackstone Commentaries are examples of sources that were frequently used for background purposes. International sources that were consistently used as a tool for comparison were laws of other countries, international treaties, and United Nations declarations, to name a few.

I have indexed the data in many different categories in order to increase the robustness of my results and dive into the data fully. First, I divided the cases and the data into basic categories: civil rights cases; cases involving the discussion of international sources; due process; equal protection; First Amendment; Fourth Amendment; Fifth Amendment; Sixth Amendment; Eighth Amendment; habeas corpus; statutory civil rights cases; and miscellaneous cases implicating civil rights. Miscellaneous cases involved those that interpreted the Second Amendment,<sup>127</sup> Seventh Amendment,<sup>128</sup> and common law civil rights claims, like *Bivens*.<sup>129</sup>

Second, I indexed the data according to the amount of times international sources were discussed in Court opinions, concurrences, and dissents. Then, I indexed the data according to the use of international sources as background, international sources as a means of comparison, or both.

Moreover, I indexed the data according to the Justices, noting how many times the appropriate Supreme Court Justices had cited to international sources for background, for comparison's sake, or both. Finally, I indexed what type of cases used international sources more than others, either in background usage, for comparison, or both.

With all this data, I performed simple statistical analyses to see how the use of international sources in civil rights cases has changed over time. I will observe whether the fears of Justice Scalia have come true.<sup>130</sup> I believe that Supreme Court jurisprudence has fluctuated between being receptive to international sources at the beginning of our nation's history, to falling back into an isolationist frame of mind, to now embracing a more globalized approach, particularly in civil rights cases where international norms can have an appropriate influence on the development of American legal norms and consciousness.<sup>131</sup>

---

126. I did not include cases that cited to international academic journals, newspapers, or the like *on their own*. See, e.g., *Glossip v. Gross*, 135 S. Ct. 2726, 2784 (2015) (Sotomayor, J., dissenting) (referencing a British journal); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 842 (2007) (Breyer, J., dissenting) (referencing an international newspaper).

127. See, e.g., *McDonald v. City of Chi.*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

128. See, e.g., *B&B Hardware, Inc. v. Hargis Indus.*, 135 S. Ct. 1293 (2015); *Cooper Indus. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424 (2001).

129. See *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61 (2001); see also *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

130. See Scalia, *supra* note 8.

131. Koh, *supra* note 11, at 46, 57.

## V. EMPIRICAL RESULTS

Presented in this section are the results I obtained after scientifically exploring my research question: Has the Supreme Court increased its use of international sources in civil rights cases from 2000 to 2016? The following analyses adhere to the pattern described in my methodology section. While the tests are easily observable through the visual aids, I tested different variables and the examinations varied accordingly.

### A. OVERARCHING TRENDS

Overall, there were 712 civil rights cases decided or considered by the Supreme Court between 2000 and 2016.<sup>132</sup> As described in the methodology, this included significant writ of certiorari denials and conventional decisions.<sup>133</sup> There were 63 due process cases, 38 equal protection cases, 108 First Amendment cases, 79 Fourth Amendment cases, 41 Fifth Amendment cases, 94 Sixth Amendment cases, 48 Eighth Amendment cases, 121 habeas corpus cases, 109 statutory civil rights cases, and 11 miscellaneous civil rights cases.<sup>134</sup> Of the 712 cases, 119 of them included citations to international sources, either as background material or as a means of comparison.<sup>135</sup> Therefore, between 2000 and 2016, 16.7% of civil rights cases included citations to international sources in some capacity.

Furthermore, of the 119 cases that cited to international sources, 46 of those cases cited to international sources for the sake of comparison and 73 of those cases cited to international sources as background material.<sup>136</sup> Put another way, 38.7% of the cases that cited to international sources used such material for the sake of comparison.<sup>137</sup> Likewise, 61.3% of the cases that cited to international sources used such material for the sake of background.<sup>138</sup>

### B. HAS THERE BEEN AN INCREASE IN THE USE OF INTERNATIONAL SOURCES?

Between 2000 and 2016, the percentage of cases including international sources fluctuated dramatically.<sup>139</sup> On average, 16.7% of all civil rights cases decided during those years included international sources. Starting in 2000, 8.8% of all civil rights cases cited to international sources.<sup>140</sup> Following that year, in order, the percentages fluctuated to the tune of: 14.3%, 13.0%, 17.8%, 16.7%, 19.6%, 24.4%, 8.6%, 24.3%, 14.0%, 17.4%, 15.9%, 22.7%, 15.4%, 9.4%, 23.8%, and 12.8% in 2016.<sup>141</sup> The years exhibiting the lowest

---

132. See Appendix B.

133. See *supra* Section IV.

134. See Appendix A, Chart 1.

135. See *id.*

136. See Appendix A, Chart 2.

137. See *id.*

138. See *id.*

139. See Appendix A, Chart 3.

140. *Id.*

141. *Id.*

percentages were 2000, 2007, and 2014.<sup>142</sup> The years exhibiting the highest percentages were 2006, 2008, and 2015.<sup>143</sup>

In looking at the data, there is no clear trend to observe. For the overall scheme, the data is erratic, which on its own is interesting enough. However, within the overall scheme, there are four major spikes: 2006, 2008, 2012, and 2015.<sup>144</sup> Yet longitudinally, there has been no demonstrative increase in the use of international sources in civil rights cases in the Supreme Court. It appears that my primary hypothesis is, on its face, disproved.

There is one period of time that indicates an isolated increase: there was a steady increase from 2000 to 2006.<sup>145</sup> This will implicate an alternative hypothesis, discussed below. However, if anything, this only indicates that my primary hypothesis was *partly* disproved. In some capacity, there was an increase, but that increase was capped by erratic behavior from 2007 to 2016.<sup>146</sup>

### C. ALTERNATIVE HYPOTHESES

#### 1. Eighth Amendment Cases

Within the types of cases that the Supreme Court decides, Eighth Amendment cases stand out as ripe for international influence.<sup>147</sup> Particularly because of the importance placed on the “maturing values of civilized society,”<sup>148</sup> the Court would appear primed to look to international sources in the interpretation of the Eighth Amendment. Now, is this the case?

Of the 119 civil rights cases that utilized international sources, nine cases interpreted the Eighth Amendment.<sup>149</sup> That amounts to 7.6% involving the interpretation of the Eighth Amendment.<sup>150</sup> In comparison to the other types of cases involving civil rights, this marks the third lowest percentage (tied with equal protection cases).<sup>151</sup> For example, while the Court only used international sources in nine Eighth Amendment cases, they used international sources in twenty-two First Amendment cases.<sup>152</sup> This amounted to 18.5% of all civil rights cases, the highest percentage among all civil rights cases.<sup>153</sup>

However, in all Eighth Amendment cases decided between 2000 and 2016, the Court looked to international sources in 18.8% of those cases.<sup>154</sup> This rests above the average by 2.1 percentage points, but the difference is marginal. Furthermore, the 18.8% is still one of the lowest marks, with the

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *See, e.g.,* Calabresi & Zimdahl, *supra* note 5, at 891–94.

148. *Roper v. Simmons*, 543 U.S. 551, 605 (2005) (O’Connor, J., dissenting).

149. Appendix A, Chart 4.

150. Appendix A, Chart 5.

151. *Id.*

152. Appendix A, Chart 4.

153. Appendix A, Chart 5.

154. *Id.*



highest mark found in Fifth Amendment cases.<sup>155</sup> Of all Fifth Amendment cases decided, 31.7% included international sources.<sup>156</sup> All of these numbers suggest that my first alternative hypothesis is disproven. It is not the case that the Court looked to international sources in Eighth Amendment cases more often than in other types of cases.

## 2. Trends Among the Justices

From 2000 to 2016, twelve different Justices have cited to international sources as either background material or for comparison's sake.<sup>157</sup> First, there are 180<sup>158</sup> separate opinions citing to international sources.<sup>159</sup> This includes separate Court opinions, concurrences, and dissents.<sup>160</sup> Of those 180 opinions, the conservative bloc of the Court was responsible for 113 of the citing opinions.<sup>161</sup> The liberal bloc of the Court was responsible for the remaining sixty-seven citing opinions.<sup>162</sup> Overall, my alternative hypothesis is disproven in that the conservative Justices of the Court actually cited to international sources more frequently than the liberal Justices.

Among that same alternative hypothesis, the data yields context to this result. As mentioned in my alternative hypotheses section, I further hypothesized that liberal Justices would be more likely to use international sources as a means of comparison. There are seventy-four citing opinions that involved comparison.<sup>163</sup> Of those seventy-four citing opinions, the conservative bloc of the Court was responsible for thirty-nine of the citing opinions.<sup>164</sup> The liberal bloc of the Court was responsible for the remaining thirty-five citing opinions.<sup>165</sup> This shows that even in using international sources as a means of comparison, conservative Justices still looked at such sources more frequently. However, this discrepancy is slight compared to the data's overall trend.

Moreover, for cases using international sources as background material, a total of 106 cases,<sup>166</sup> the conservative bloc was responsible for seventy-four of the citing opinions.<sup>167</sup> The liberal bloc of the Court was responsible for the remaining thirty-two citing opinions.<sup>168</sup> So, as compared to the frequency with which international sources were cited for comparison purposes, the conservative bloc cited to international sources for background material significantly more often than the liberal bloc. All in all, the alternative hypothesis that the liberal Justices of the Court were more likely

---

155. *Id.*

156. *Id.*

157. Appendix A, Chart 6.

158. There are actually 181 opinions. The 180 number does not include one per curiam opinion that cite to an international source. *See Garcia v. Texas*, 564 U.S. 940 (2011).

159. Appendix A, Chart 8.

160. *Id.*

161. Appendix A, Chart 6.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

than the conservative Justices of the Court to cite to international sources is seemingly disproved.

Justice Breyer and Justice Scalia are the two of the most outspoken Supreme Court Justices on the use of international sources in Supreme Court jurisprudence. Justice Breyer has been a strong supporter of the practice;<sup>169</sup> Justice Scalia has consistently spoken out against it.<sup>170</sup> Now, how is this debate reflected in the data? Of the 180 separate citing opinions,<sup>171</sup> Justice Scalia cited to international sources in thirty opinions.<sup>172</sup> In contrast, Justice Breyer cited to international sources in twenty-four opinions.<sup>173</sup> Moreover, of the thirty opinions that Justice Scalia cited to international sources, Justice Scalia used international sources as background material in twenty-one cases, as a means of comparison in six cases, and some combination of both in three cases.<sup>174</sup> Of the twenty-five cases in which Justice Breyer cited to international sources, Justice Breyer used international sources as background material in six cases, as a means of comparison in 8 cases, and some combination of both in eleven cases.<sup>175</sup>

Overall, Justice Scalia surprisingly cited to international sources in more citing opinions than Justice Breyer.<sup>176</sup> However, most of his citations were for the purpose of background material.<sup>177</sup> This was the exact opposite for Justice Breyer.<sup>178</sup> While the general hypothesis appears to be disproven, the deeper material seems to indicate that the initial presumption regarding the use of international sources by these two jurists is correct. Also, it should be noted that Justice Scalia did not *only* use international sources as background material.

While Justice Scalia and Justice Breyer are arguably the most outspoken Justices on the use of international sources in Supreme Court jurisprudence, Justice Kennedy is the most famous for his use of said sources in a few landmark cases.<sup>179</sup> However, in 180 civil rights opinions that cited to international sources, Justice Kennedy issued seventeen of them.<sup>180</sup> Furthermore, Justice Kennedy cited to international sources for the sake of background material eight times and international sources for the sake of comparison nine times, and some combination of both four times.<sup>181</sup> Of the

---

169. See *supra* Section II, Part B.

170. See *supra* Section II, Part D.

171. Appendix A, Chart 8.

172. Appendix A, Chart 6.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. See Stephen C. McCaffrey, *There's a Whole World Out There: Justice Kennedy's Use of International Sources*, 44 MCGEORGE L. REV. 201 (2013); Jimmy Hoover, *Justice Kennedy Signals a More Globally Minded High Court*, LAW360 (Sept. 23, 2016, 4:18 PM), <https://www.law360.com/articles/843829/justice-kennedy-signals-a-more-globally-minded-high-court>; see also *Anthony Kennedy Biography*, BIOGRAPHY.COM, <https://www.biography.com/people/anthony-kennedy-9362868> (last visited Oct. 13, 2016).

180. Appendix A, Chart 6.

181. *Id.*

twelve Justices who cited to international sources, five Justices cited to said sources more often, or as many times as, Justice Kennedy.<sup>182</sup> Justices Scalia, Thomas, Stevens, and Breyer cited to international sources more often than Justice Kennedy.<sup>183</sup> Justice Roberts cited to international sources as often as Justice Kennedy.<sup>184</sup>

It appears that Justice Kennedy's use of international sources is not as trailblazing as is conventionally considered, at least in civil rights cases. In that same vein, my hypothesis appears to have been confirmed. Despite the fanfare surrounding Justice Kennedy, he is just as likely to cite to an international source as Chief Justice Roberts, who himself has gone on the record to disavow the practice entirely.<sup>185</sup>

With the appointments of Justice Alito and Chief Justice Roberts, there would presumably be changes in the use of international sources in Court opinions.<sup>186</sup> As these appointments established a stronger conservative majority, the data should show a decreased use of international sources in Court opinions.<sup>187</sup> Of the sixty-four majority or plurality Court opinions that cited to international sources, thirty-eight of those opinions occurred between 2007 and 2016.<sup>188</sup> While the sample size of the time in which Justice Alito and Chief Justice Roberts were sitting on the bench is larger, there is no significant change between the two different periods. Beyond that, there were 116 concurrences, dissents, or a combination of both.<sup>189</sup> Between the period of 2007 and 2016, there were sixty-four such opinions.<sup>190</sup> With the sample size issues aside, it does appear that there is some increase in corollary opinions. This may indicate a continued use of international sources—just not through the majority, or plurality, where the conservative bloc would have the greatest influence during this period.

## VI. DISCUSSION

### A. THE REALITY OF INTERNATIONAL SOURCES IN SUPREME COURT CIVIL RIGHTS JURISPRUDENCE

The Supreme Court has not notably increased, nor decreased, its use of international sources in civil rights cases between 2000 and 2016.<sup>191</sup> This observation is a derivation from the failure of my primary hypothesis, that being: the number of civil rights cases discussing or citing to international sources will increase from 2000 to 2016. Despite the growing optimism of Justice Breyer's view, that the interconnected world would promote such behavior over time,<sup>192</sup> there is simply no data in the sample of civil rights

---

182. *Id.*

183. *Id.*

184. *Id.*

185. *See supra* Section II, Part D.

186. *See supra* Section IV.

187. *See id.*

188. Appendix A, Chart 7.

189. Appendix A, Chart 8.

190. *Id.*

191. *See discussion supra* Section V, Part B.

192. *See BREYER, supra* note 32, at 4.

cases to support that position. Furthermore, the Court has exhibited a reluctance to rely on international norms, rather than using them as a means of background material. This shows that the forces that prevented the Court from relying on these sources throughout its history appear to be in full swing today. There is a real institutional barrier to allowing international sources to influence the federal judiciary, and the data indicates as much.

That said, the use of international sources is not as insignificant as I had hypothesized. The data shows that 16.7% of all civil rights cases between 2000 and 2016 used international sources.<sup>193</sup> Therefore, Justice Breyer was right when he said “15 to 20 percent of [Supreme Court] cases require the judges to know something about what happens abroad.”<sup>194</sup> The Supreme Court has, over the course of seventeen years, looked to international sources a relatively significant number of times. My secondary hypothesis was disproven, as a significant number of civil rights cases relied on international sources in some capacity, whether it was for background material or for a means of comparison.

Beyond that, there is no real evidence that the Court is more willing to look abroad in some cases and not in others. While intuitively, Eighth Amendment cases would be the strongest candidates for this material, the Court has actually not looked to the international community here as often as would be presumed.<sup>195</sup> In truth, the Court is much more likely to look abroad for support in Fifth Amendment, First Amendment, and Sixth Amendment cases.<sup>196</sup> While this may support Harold Koh’s assertions regarding the place of international sources in domestic jurisprudence,<sup>197</sup> it hardly falls in line with the jurisprudential language of Eighth Amendment cases.<sup>198</sup>

In examining the alternative hypotheses, it is interesting that the conservatives of the Court appeared just as likely, if not more likely, to cite to international sources. Admittedly, there were more conservatives in the sample; yet, the rhetoric coming from that side of the spectrum<sup>199</sup> would lead one to believe that the use of international sources is sacrilegious. Diving into the data does also show that they are far more likely to cite to international sources as background material.<sup>200</sup> This is not surprising. Stemming from the originalist philosophy,<sup>201</sup> it is intuitive to think that conservative-leaning Justices are likely to look to eighteenth century English law and the commentaries on such law (such as Blackstone).<sup>202</sup> However, the conservative bloc narrowly cited more often to international sources in the

---

193. See *supra* Section V, Part B.

194. Barnes, *supra* note 2 (citation omitted).

195. See *supra* Sections III, Part B & VI, Part B and accompanying text.

196. See Appendix A, Charts 4 & 5.

197. Koh, *supra* note 11, at 46, 57.

198. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 605 (2005) (O’Connor, J., dissenting) (“This inquiry reflects the special character of the Eighth Amendment, which, as the Court has long held, draws its meaning directly from the maturing values of civilized society.”).

199. See *supra* Section II, Part D.

200. See Appendix A, Chart 6.

201. See Nelson, *supra* note 80; Scalia, *supra* note 80; Solum, *supra* note 80; Blake, *supra* note 80.

202. For example, see *Rogers v. Tennessee*, 532 U.S. 451, 453 (2001) (citing 4 W. Blackstone, *Commentaries on the Laws of England* 197–98 (1769)).

vein of comparison.<sup>203</sup> Of note, even Justice Scalia himself was guilty of this.<sup>204</sup> For example, in a First Amendment case, he wrote about the French constitution and the views of the French.<sup>205</sup> This indicates that, while there is not a clear pattern with the use of international sources, it is not strictly divided along ideological lines.

Furthermore, Justice Scalia and Justice Breyer provided an interesting sample. While conventional wisdom would indicate that Justice Breyer and Justice Scalia would fall on opposite sides of the spectrum in terms of frequency in which they turned to international sources,<sup>206</sup> it appears that this is not the case. Overall, Justice Scalia cited to international material more often than Justice Breyer.<sup>207</sup> Yet, upon looking deeper, it is observable that Justice Scalia mostly used international sources as background material.<sup>208</sup> As observed in the data between the liberal blocs and the conservative blocs collectively, this is indicative of Justice Scalia's propensity to use these sources in an originalist fashion.<sup>209</sup> While Justice Scalia did in fact use international sources in a comparative fashion, albeit rarely, Justice Breyer used international sources more often as a means of comparison.<sup>210</sup> Comparative use of these sources is really what brings about controversy,<sup>211</sup> so the conventional wisdom on this result appears to ring true.

Moreover, among the individual Justice research, Justice Kennedy does not appear to be significantly more likely to cite to international sources than the other Justices who have done so during the twenty-first century in Supreme Court civil rights opinions. The public reaction regarding Justice Kennedy's use of international sources colors the perception the public holds regarding his propensity to use international sources. It is particularly noteworthy because it is generally believed that Justice Kennedy uses international sources in civil rights cases to expand such rights.<sup>212</sup> While he certainly has done so, he has not been doing it as often as was believed. Nevertheless, he is still more likely to cite to international sources than half of the Justices who have cited to international sources in Supreme Court civil rights cases between 2000 and 2016.<sup>213</sup>

Finally, the appointments of Justice Alito and Chief Justice Roberts did not bring about a renaissance of isolationist thinking. While there was a slight

---

203. See Appendix A, Chart 6.

204. See *id.*

205. *McCreary Cty. v. ACLU*, 545 U.S. 844, 886 (2005) (Scalia, J., dissenting) ("That is one model of the relationship between church and state—a model spread across Europe by the armies of Napoleon, and reflected in the Constitution of France, which begins, 'France is [a] . . . secular . . . Republic.' France Const., Art. 1, in 7 *Constitutions of the Countries of the World*, p 1 (G. Flanz ed. 2000).").

206. Compare Section II, Part B with Section II, Part D.

207. Appendix A, Chart 6.

208. See *id.*

209. See Scalia, *supra* note 80. Justice Scalia's originalist philosophy was so famous that it became the topic of a stage play called "The Originalist." See Alex Gangitano, "The Originalist" Is a Modern Story of a Cultural Icon, *ROLL CALL* (July 17, 2017), <https://www.rollcall.com/news/hoh/originalist-modern-story-cultural-icon>.

210. See Appendix A, Chart 6.

211. Larsen, *supra* note 68, at 1299, 1326–27.

212. See McCaffrey, *supra* note 179, at 203, 206; *Anthony Kennedy Biography*, *supra* note 179.

213. Appendix A, Chart 6.

increase in the use of international sources up until their appointments,<sup>214</sup> only to have the increase erratically fluctuate,<sup>215</sup> there is no real significant change. That said, when looking at the concurrences and dissents during this time, there was some uptick in the use of international sources.<sup>216</sup> If anything, this may be a result of the liberal bloc and perhaps, Justice Kennedy,<sup>217</sup> being relegated to corollary opinions.

Now that I have provided additional context to my empirical results, I will delve into three cases: *Roper v. Simmons*, *Baze v. Rees*, and *McDonald v. City of Chicago*. These cases provided in-depth analyses of the use of international sources by the Justices. They occur at different points in my continuum and present the debate as only the Justices of the United States Supreme Court can. It is not a black and white endeavor, and these cases exemplify just that.

#### B. ROPER V. SIMMONS

In *Roper v. Simmons*, the Supreme Court addressed the question of whether the Eighth Amendment's prohibition on cruel and unusual punishment forbade the imposition of the death penalty for crimes committed when the offender was under the age of eighteen years old.<sup>218</sup> This case is significant because as observed in this paper,<sup>219</sup> Eighth Amendment cases should have proven to be the most likely candidates for the inclusion of international sources, and this case in particular appeared to rely heavily on the influence of the international community. Furthermore, it represents a case early on in the continuum of my research and will serve as a comparison tool to the latter two cases that I will delve into.

Justice Kennedy, writing for the majority, first cites to an international source in the form of a treaty, the International Covenant on Civil and Political Rights (ICCPR).<sup>220</sup> In response to the Petitioner's claim that the ratification of that treaty was made with reservation regarding the prohibition of capital punishment for juveniles, Justice Kennedy dismisses the international document as being too old and not relevant enough to show a "national consensus" on the death penalty.<sup>221</sup> Despite being a scant reference

---

214. Appendix A, Chart 3.

215. *Id.*

216. See Appendix A, Chart 8.

217. Justice Kennedy, despite being considered a conservative-leaning Justice, has authored several civil rights opinions where he has relied on international sources. See *Lafler v. Cooper*, 566 U.S. 156, 185 (2012); *Graham v. Florida*, 560 U.S. 48, 80–82 (2010); *Boumediene v. Bush*, 553 U.S. 723, 740–42, 745–47, 752, 754, 767–68, 779 (2008); *Hamdan v. Rumsfeld*, 548 U.S. 557, 639–45 (2006) (Kennedy, J., concurring); *Lawrence v. Texas*, 539 U.S. 558, 573, 576–77 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 715–16, 721 (2001) (Kennedy, J., dissenting). Furthermore, despite not having the actual track record to support his reputation as a trailblazer in using international sources, he still cites to international sources more often than half of the Justices who have cited to said sources in civil rights cases between 2000 and 2016. See *supra* notes 206–13 and accompanying text.

218. See 543 U.S. 551 (2005).

219. See *supra* Section III, Part B and accompanying text.

220. See *Roper v. Simmons*, 543 U.S. at 567.

221. *Id.*

to an international source, Kennedy chooses to ignore this evidence, representing international norms, modified for our domestic society.<sup>222</sup>

Furthermore, Justice Kennedy cites favorably to international sources in comparing the United States to other countries in regards to the treatment of capital punishment for juveniles.<sup>223</sup> In one of his lengthiest passages regarding international sources, Justice Kennedy heavily relies on the prevailing wisdom against the juvenile death penalty held by other countries.<sup>224</sup> In a strong passage, Kennedy writes, “[O]nly seven countries other than the United States have executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. Since then each of these countries has either abolished capital punishment for juveniles or made public disavowal of the practice.”<sup>225</sup> With judgment between the lines, he declares, “[T]he United States now stands alone in a world that has turned its face against the juvenile death penalty.”<sup>226</sup>

In her dissenting opinion, Justice O’Connor continued her endorsement of the use of international sources in Supreme Court jurisprudence, particularly in the Eighth Amendment, by half-endorsing Justice Kennedy’s second citation to international sources.<sup>227</sup> While she decried the “confirmatory role” of international consensus endorsed by the Court, she challenged Justice Scalia’s dissenting opinion, claiming that it is incorrect to categorically disprove of the use of international sources.<sup>228</sup> As she writes, “[T]he existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus.”<sup>229</sup>

Taking up his familiar role as foil, Justice Scalia went on a full attack in his dissenting opinion.<sup>230</sup> Beginning the main part of his dissent, Scalia writes, “Though the views of our own citizens are essentially irrelevant to the Court’s decision today, the views of other countries and the so-called international community take center stage.”<sup>231</sup> As a fine tone-setter, Scalia uses this demonstrative statement to set up his main point: that the majority is using international sources selectively, while ignoring an affirmative repudiation of international norms in the form of the reserved ratification of a treaty.<sup>232</sup> The majority opinion, in ignoring the reservation of the ICCPR applying to juvenile capital offenders, is allegedly committing the mistake

---

222. *See id.*

223. *Id.* at 575–76.

224. *Id.* at 577.

225. *Id.*

226. *Id.*

227. *Id.* at 604 (O’Connor, J., dissenting)

228. *Id.*

229. *Id.* at 605.

230. *Id.* at 622–28. (Scalia, J., dissenting)

231. *Id.* at 622.

232. *Id.* 622–23 (“It is interesting that whereas the Court is not content to accept what the States of our Federal Union *say*, but insists on inquiring into what they *do* . . . the Court is quite willing to believe that every foreign nation—of whatever tyrannical political makeup and with however subservient or incompetent a court system—in fact *adheres* to a rule of no death penalty for offenders under 18.”).

warned of by Roger Alford and the Chief Justice.<sup>233</sup> In selectively applying an international source, the Court seems to be picking-and-choosing where they want to see foreign influence infiltrate Supreme Court jurisprudence. While spilling much more ink on his distaste for the use of international sources in Supreme Court jurisprudence, Scalia concludes this applicable portion of his dissent by quipping,

The Court should either profess its willingness to reconsider all these matters in light of the views of foreigners, or else it should cease putting forth foreigners' views as part of the reasoned basis of its decisions. To invoke alien law when it agrees with one's own thinking, and ignore it otherwise, is not reasoned decisionmaking, but sophistry.<sup>234</sup>

This case is an illustration of the struggle that can be felt between the two philosophical bends of the Court. On one side, Justice Kennedy, a considered proponent of the use of international sources in the Supreme Court, despite resting on the conservative side of the ideological divide,<sup>235</sup> writes for the majority. While on the other side, Justice Scalia, the most-well known opponent of such use, pens a passionate, yet-well thought-out dissent. As one of the most well-developed discussions of the use of international sources during the twenty-first century, the divide is clear. However, based on the data, the legitimate concerns of Justice Scalia go without substantial change. Supreme Court opinions cite international sources sporadically, yet with varying degrees of certainty, between 2006 to 2016. Despite being a single case, this is a microcosm of the Court's consistent appraisal, albeit with a divide, of international sources as a means of domestic civil rights law. The next case, *Baze v. Rees*<sup>236</sup>, another Eighth Amendment case, marks the next deep discussion of international sources at the Supreme Court.

### C. BAZE V. REES

The Eighth Amendment case, *Baze v. Rees*, exemplifies the difficulty in consistently applying international sources to domestic civil rights problems. Chief Justice Roberts, writing for the majority,<sup>237</sup> and Justices Alito,<sup>238</sup> Stevens,<sup>239</sup> Thomas,<sup>240</sup> and Breyer,<sup>241</sup> each writing their own concurrence, all looked abroad for some guidance in solving the fact-specific inquiry of whether Kentucky was in violation of the Eighth Amendment's bar on "cruel and unusual punishment."<sup>242</sup> This case is significant because of its panoply

---

233. See Alford, *supra* note 5, at 64–69; Bazelon, *supra* note 6.

234. *Roper v. Simmons*, 543 U.S. at 627.

235. See Hurley & Chung, *supra* note 103.

236. 553 U.S. 35 (2008).

237. See *id.* at 58.

238. See *id.* at 68–69 (Alito, J., concurring).

239. See *id.* at 77 n.9 (Stevens, J., concurring).

240. See *id.* at 95–97 (Thomas, J., concurring).

241. See *id.* at 111–12 (Breyer, J., concurring).

242. *Id.* at 35.



of opinions from Justices known as either opponents or proponents of the use of international sources in the Supreme Court.

Justice Roberts does not delve deep into international sources to support his opinion that Kentucky's lethal injection protocol was not in violation of the Eighth Amendment. In a lone sentence, Justice Roberts writes, "In the Netherlands, for example, where physician-assisted euthanasia is permitted, the Royal Dutch Society for the Advancement of Pharmacy recommends the use of a muscle relaxant (such as pancuronium dibromide) in addition to thiopental in order to prevent a prolonged, undignified death."<sup>243</sup> This proves to be significant as an opinion where the Chief Justice is betraying his own notions regarding international sources. It is true that he is not citing international *law*, but why should that make a substantive difference. Are the opinions of societies unique to the Netherlands more valid than the lawmakers and judicial officers of that same country? Regardless, the Chief Justice addresses this point without issuing a disclaimer of his distaste for international sources in the Supreme Court, as Justice Scalia would likely have done.

Justice Alito picks up on where the Chief Justice leaves off. Citing to the same international study, which has influenced the country of the Netherlands itself, Alito argues that public policy should not be dictated by one study.<sup>244</sup> He writes, "Rather, my point is that public policy on the death penalty, an issue that stirs deep emotions, cannot be dictated by the testimony of an expert or two or by judicial findings of fact based on such testimony."<sup>245</sup> This is the only mention of international sources by Justice Alito. I pose the following question: Would Justice Alito be so reticent to accept this study as persuasive had it been a study from the American Medical Association? That question comes to mind due to his implicit disbelief, or rather his distrust, of the Dutch study.<sup>246</sup> Alito is no friend to international sources, like his fellow members of the conservative cohort of the Court. Regardless, this citation is non-friendly and falls in line with his lack of citations generally.

Justice Steven's footnote is very brief and only addresses the concerns expressed by Justice Alito. However, he doesn't implicitly endorse the distrust that Justice Alito does. Stevens delegitimizes the concerns of the study based on the fact that "[i]n the Netherlands, however, physicians with training in anesthesiology are involved in assisted suicide . . . physicians have no similar role in America . . ."<sup>247</sup> This reference is only significant in setting a much different tone than Justice Alito's similar response to the same concerns.

Justice Thomas' citation to international sources is emblematic of his traditional use of international sources.<sup>248</sup> Rather than look to the influential practice of another country, he uses his ink in favor of English law from the

---

243. *Id.* at 58.

244. *Id.* at 69.

245. *Id.*

246. *Id.* at 68 (citing to an amicus brief that expresses disbelief over the Dutch study, saying "Now, what do they know that we haven't figured out yet?").

247. *Id.* at 77 n.9.

248. *Id.* at 95–97.

eighteenth century. As mentioned previously,<sup>249</sup> most studies of international sources in the Supreme Court do not consider citations to English law particularly noteworthy. However, it does establish a pattern of tolerance to international background material. Here, we see Justice Thomas remain faithful to his own pattern of citing to English cases dating back to the genesis of the United States.

Justice Breyer's concurring opinion picks up on the only reference to international sources mentioned previously, that being the practices of the Dutch.<sup>250</sup> In sharp contrast to Justice Alito, Breyer does not discount this material as irrelevant or untrustworthy. Rather, he implicitly acknowledges the source as legitimate, while declaring "that difference does not resolve the apparently *conflicting views* about the inherent propriety or impropriety of use of this drug to extinguish human life humanely."<sup>251</sup> The views of the Netherlands, and their use of the drug in question, are a consideration that he takes into account. It is not the end-all-be-all, and that is why he stresses the existence of conflicting views.

*Baze v. Rees* involves a controversial citation to the practices of the Netherlands, and a study published therein. It is particularly interesting because it provides a look at several different takes, especially by reading between the lines, at one particular citation. Beyond that, we see a significant departure in the form of the Chief Justice. With respect to the data, this case stands among the many that peak during 2008.

#### D. McDONALD V. CITY OF CHICAGO

After issuing *District of Columbia v. Heller*, the groundbreaking Second Amendment case which established the right to own a handgun for the purposes of self-defense within the home,<sup>252</sup> the Supreme Court was soon faced with the question of whether this right should be enforced against the state through the doctrine of incorporation.<sup>253</sup> In *McDonald v. City of Chicago*, the Court determined that the right to bear handguns, for the purposes of self-defense within the home, was applicable to the states.<sup>254</sup> This case serves as a non-Eighth Amendment case that involved uses of international sources for both background and comparison's sake.<sup>255</sup> Similar to *Heller*, *McDonald* dedicates a lot of ink to English common law and pre-

249. See Larsen, *supra* note 68, at 1299, 1326–27.

250. 553 U.S. at 111–12.

251. *Id.* (emphasis added).

252. See *District of Columbia v. Heller*, 554 U.S. 570 (2008).

253. Incorporation refers to the application of the Bill of Rights to the several States. Before the Fourteenth Amendment, they only applied to the federal government. Due Process in the Fourteenth Amendment does not automatically draw the entire Bill of Rights in, but some rights are important enough that to deny them would be to deny Due Process of law. For example, see *Duncan v. Louisiana*, 391 U.S. 145 (1968) (right to a jury trial in criminal cases); *Robinson v. California*, 370 U.S. 660 (1962) (prohibition on cruel and unusual punishment); *Gitlow v. New York*, 268 U.S. 652 (1925) (freedom of speech); *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226 (1897) (Takings Clause).

254. See *McDonald v. City of Chi.*, 561 U.S. 742, 742 (2010).

255. See *id.*

1776 law from abroad, while also featuring citations to the practices of other countries.<sup>256</sup>

Justice Alito, writing for the majority, invokes international sources as both a means of background support and comparison. While citing to Blackstone and English common law throughout,<sup>257</sup> Alito begins his foray into international sources by dropping a footnote alluding to the practices of Roman, Jewish, and Greek law.<sup>258</sup> This footnote, serving as background material for the right to bear arms, further cites to Blackstone, and doesn't provide a remarkable departure from Alito's traditional use of international sources. Importantly, Alito does depart from his personal norms by addressing the practices of "England, Canada, Australia, Japan, Denmark, Finland, Luxembourg, and New Zealand,"<sup>259</sup> which either ban, or severely restrict, gun ownership. In addressing these countries, there is a sense of legitimacy given by the conservative Justice. Alito states that it is not appropriate to use the practices of these democracies to conclude that this right is not protected simply because it is not recognized by "all temperate and civilized governments."<sup>260</sup>

Justice Thomas, in his traditional fashion, limits his references to international sources to Blackstone and English common law.<sup>261</sup> Focused very much on tradition, Thomas relies on these English decisions to set a foundation for his originalist interpretation of the Second Amendment. This part of the opinion is unremarkable except in the role it can serve in illustrating my method of dividing background use and comparison use.

Justice Stevens, in his dissenting opinion, uses international sources as a means of background and comparison for this jurisprudential point on the Second Amendment.<sup>262</sup> Beyond citing Blackstone in a footnote,<sup>263</sup> Stevens takes the opposite approach to Justice Alito in addressing the practice of other western democracies.<sup>264</sup> Where Alito was unconvinced, Justice Stevens writes, "[T]he experience of other advanced democracies, including those that share our British heritage, undercuts the notion that an expansive right to keep and bear arms is intrinsic to ordered liberty."<sup>265</sup> In his ultimate point through international comparison, Stevens describes the United States as an "international outlier" for which the Court should not be responsible for proliferating the Second Amendment right in question.<sup>266</sup> In a final point on the use of international sources generally, Stevens concludes that "we ought [not] dismiss" the experience of other countries so easily and in fact, it is

---

256. *See id.*

257. *See id.* at 768–69.

258. *Id.* at 767 n.15.

259. *See id.* at 781.

260. *Id.*

261. *See id.* at 813–18 (Thomas, J., concurring).

262. *See id.* at 888 n.32, 895 (Stevens, J., dissenting).

263. *See id.* at 888 n.32.

264. *See id.* at 895.

265. *Id.*

266. *Id.* at 896.

“silly -- indeed, arrogant -- to think we have nothing to learn about liberty from the billions of people beyond our borders.”<sup>267</sup>

Justice Breyer, in his dissent, dedicates his opinion to mostly background use of international sources, a departure from his traditional approach to such material.<sup>268</sup> Very much a reference to the use of international sources in *Heller*, Justice Breyer’s decision uses references to Blackstone and English law to discredit *Heller*’s traditional analysis as flawed.<sup>269</sup> Breyer looks at new scholarly articles assessing the historical analysis from *Heller* to then delve back into eighteenth century international sources in an effort to delegitimize the groundbreaking Second Amendment case.<sup>270</sup> While interesting in the departure from his normal approach to this material, particularly in light of the opinions of the other Justices, this opinion illustrates Justice Breyer’s selective, yet nuanced approach to international sources.

This case is significant because it exemplifies the ways in which international sources can be used. As described throughout this paper, this case has citations to international sources for both background and comparison’s sake. Moreover, as a 2010 case, this is the most recent, non-Eighth Amendment case involving an in-depth analysis of international sources. This should educate observers that the influence of international sources in civil rights cases is overblown. The data supports the assertion that this case illustrates. Finally, the case exemplifies the reality that there is no-clear cut demarcation between liberal and conservative. While the data does indicate that conservatives actually cite to international sources more often, the sample sizes of the Justices and the close divide indicate that it is hard to say one side of the aisle is remarkably more willing to embrace international sources. This is not the only case where conservative Justices, like Alito, and liberal Justices, like Breyer, fail to fall within the preconceived notion that liberals favor international influence and conservatives favor the contrary.

## VII. CONCLUSION

In this paper I have attempted to determine how often the Supreme Court has looked to international sources in civil rights cases from 2000 to 2016. It does not appear as if there has been an increase in the use of said sources during this designated time period. However, there was still a large percentage of cases using international sources, enough to not be insignificant.

While my primary hypothesis was largely disproved, several of my alternative hypotheses were confirmed, along with the notions underlying them. First, the Court does appear to look to international norms to define vague legal terms, such as “due process” and “equal protection.”<sup>271</sup> As noted, in 31.7% of all Fifth Amendment cases the Court looked to international

---

267. *Id.*

268. *See id.* at 914–16, 932 (Breyer, J., dissenting).

269. *Id.*

270. *Id.*

271. *See* Koh, *supra* note 11, at 46, 57.

sources. Second, whether or not a Justice of a particular ideology decides to look abroad for guidance is not a black-and-white phenomenon. Simply because a Justice tends to fall in line with a particular ideology does not necessarily preclude them from looking abroad. Even Justice Scalia, the strongest opponent of the use of international sources in the Supreme Court, cited to international sources as background material, and albeit rarely, to such sources as a means of comparison. Third, despite his reputation, Justice Kennedy did not cite to international sources at a significantly higher rate than any of the other conservative or liberal Justices. The data shows that his bloated reputation is misleading, likely because of the blockbuster nature of the landmark opinions where he decided to rely on international sources. Fourth, the appointments of Justice Alito and Chief Justice Roberts did not signal a new era of anti-international jurisprudence. Rather, they marshaled in an era of instability and unpredictability in the use of international sources in Supreme Court civil rights jurisprudence. At most, the appointments of these two conservative-leaning Justices relegated the use of international sources to corollary opinions.

Now, what do these observations mean for the future? This project was not meant to predict the future frequency by which international sources in Supreme Court civil rights jurisprudence will appear. Rather, it was concerned with documenting the possible growth of such forces in a time of great globalization, where the interchange of ideas has no borders. Nevertheless, the future likely will not bring a massive change to this area. The appointment of Justice Neil Gorsuch only replaces Justice Scalia in the ideological vacuum.<sup>272</sup> As noted by many pundits, Gorsuch is an admirer of the late-Justice Scalia<sup>273</sup> and it stands to reason that he too will not look favorably to the import of international sources to domestic United States law.<sup>274</sup> In fact, Justice Gorsuch declared during his confirmation hearings that “as a general matter,” it is improper for the Supreme Court to look at international sources when interpreting the United States Constitution.<sup>275</sup> Therefore, it can likely be expected that the use of international sources will remain contingent on the types of cases being decided. For instance, it may be more likely that Fifth Amendment cases will see an import of international sources than it will be to see habeas cases use such material. Until the Court’s ideological balance shifts significantly, likely coming with the recent

---

272. Lydia Wheeler, *Supreme Court Enters New Era, Raising Conservative Hopes*, THE HILL (Apr. 8, 2017), <http://thehill.com/regulation/court-battles/327884-supreme-court-entering-new-era> (“Gorsuch, who was confirmed by the Senate on Friday, is widely expected to shift the ideological balance of the court to the right, with his views seen as mostly in line with the man he is replacing: the late-Justice Antonin Scalia.”).

273. See Robert P. George, *Ignore the Attacks on Neil Gorsuch. He’s an Intellectual Giant — and a Good Man*, WASH. POST (Feb. 1, 2017), [https://www.washingtonpost.com/posteverything/wp/2017/02/01/ignore-the-attacks-on-neil-gorsuch-hes-an-intellectual-giant-and-a-good-man/?utm\\_term=.0829de4ff4bd](https://www.washingtonpost.com/posteverything/wp/2017/02/01/ignore-the-attacks-on-neil-gorsuch-hes-an-intellectual-giant-and-a-good-man/?utm_term=.0829de4ff4bd) (“Gorsuch, who greatly admired Scalia, thinks about the constitutional issues in these areas pretty much the same way Scalia did.”).

274. See Anthea Roberts, *Pledging American Exceptionalism: US Supreme Court Justice Gorsuch on International Law*, OPINIO JURIS (May 23, 2017), <http://opiniojuris.org/2017/05/23/33125/>.

275. Adam Liptak, Charlie Savage, Matt Flegenheimer & Carl Hulse, *Highlights from Judge Gorsuch’s Confirmation Hearing*, N.Y. TIMES (Mar. 22, 2017), <https://www.nytimes.com/2017/03/22/us/politics/what-to-watch-will-democrats-be-more-aggressive-with-neil-gorsuch.html>.

retirement of Justice Kennedy<sup>276</sup> and subsequent appointment of Justice Kavanaugh,<sup>277</sup> the unpredictability of the use of international sources is bound to remain prescient.

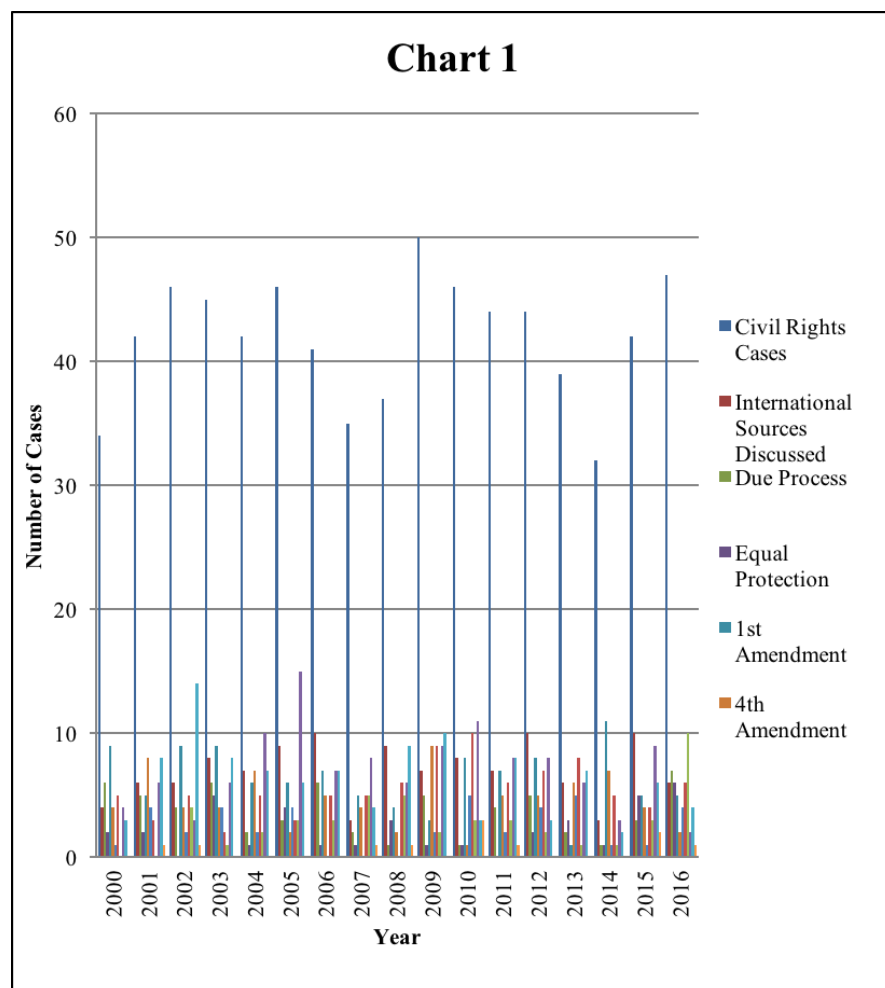
To further my research, and begin to tie the loose ends of my study, social scientists in the future could expand the sample size to all cases decided between 2000 and 2016. Furthermore, the ambitious among us could expand the research to every Supreme Court case, and significant denial of certiorari, decided since the inception of the Court. That could provide a greater longitudinal and historical understanding of the use of such materials at this country's highest court.

As is customary in all social science endeavors, the data was messy. It required hard judgment calls as to the types of cases to be used and about whether or not citations qualified as international sources. That said, the Supreme Court is a dynamic entity that will continue to grow and evolve, just as the country for which it adjudicates will change. That evolution may or may not involve the import of international sources. Whether or not it should is a question best left to contemplations in line with one's own personal constitution. However, until the ideological balance of the Court significantly changes, international sources will make their way into Court opinions erratically, only to the behest of the few that champion its use from the bench of this country's highest court.

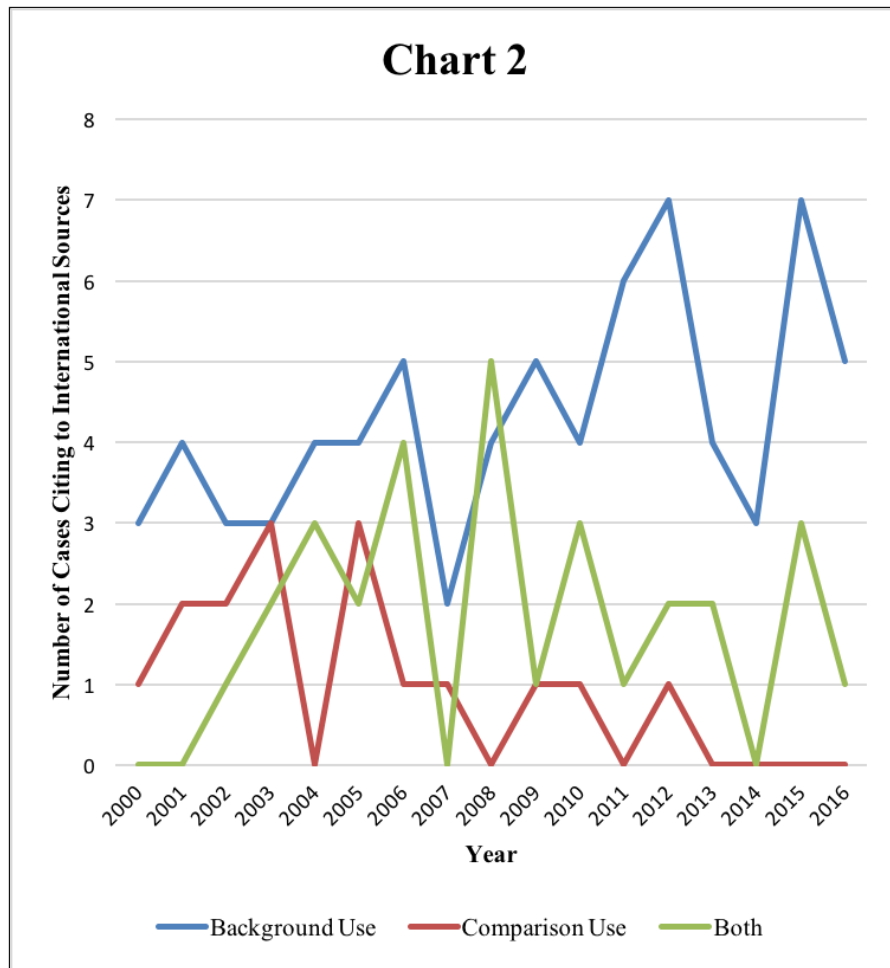
---

276. See Joseph P. Williams, *All Eyes Are on Justice Anthony Kennedy's Retirement Plans*, U.S. NEWS (July 10, 2017), <https://www.usnews.com/news/national-news/articles/2017-07-10/all-eyes-are-on-justice-anthony-kennedys-retirement-plans>. See also Ruth Marcus, Opinion, *The Terrifying and Terrible Prospect of Justice Kennedy Retiring*, WASH. POST (June 23, 2017), [https://www.washingtonpost.com/opinions/the-terrifying-and-terrible-prospect-of-justice-kennedy-retiring/2017/06/23/bc73ff9a-5830-11e7-a204-ad706461fa4f\\_story.html?utm\\_term=.17e8d4e39744](https://www.washingtonpost.com/opinions/the-terrifying-and-terrible-prospect-of-justice-kennedy-retiring/2017/06/23/bc73ff9a-5830-11e7-a204-ad706461fa4f_story.html?utm_term=.17e8d4e39744).

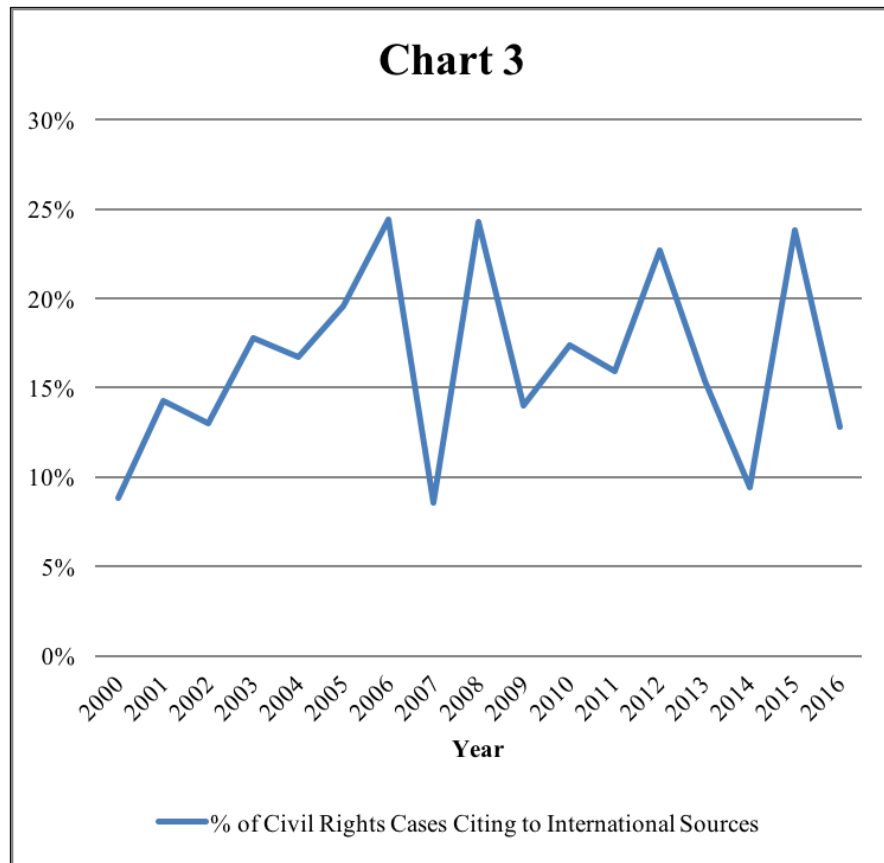
277.. See Robert Loeb, *Brett Kavanaugh: A Judicial Lamb on National Security*, LAWFARE (July 25, 2018), <https://www.lawfareblog.com/brett-kavanaugh-judicial-lamb-national-security> (describing how Justice Kavanaugh, in *Bihani v. Obama*, espoused that “a federal court lacks legitimate authority” to enforce international law, or even consider it, to limit a statute or to interfere with the powers of the executive.”); see also Marjorie Cohn, *Kavanaugh Scorns International Law and Loves Executive Power*, TRUTHOUT (July 18, 2018), <https://truthout.org/articles/kavanaugh-scorns-international-law-and-loves-executive-power/> (“Supreme Court nominee Brett Kavanaugh has nothing but contempt for international law.”).

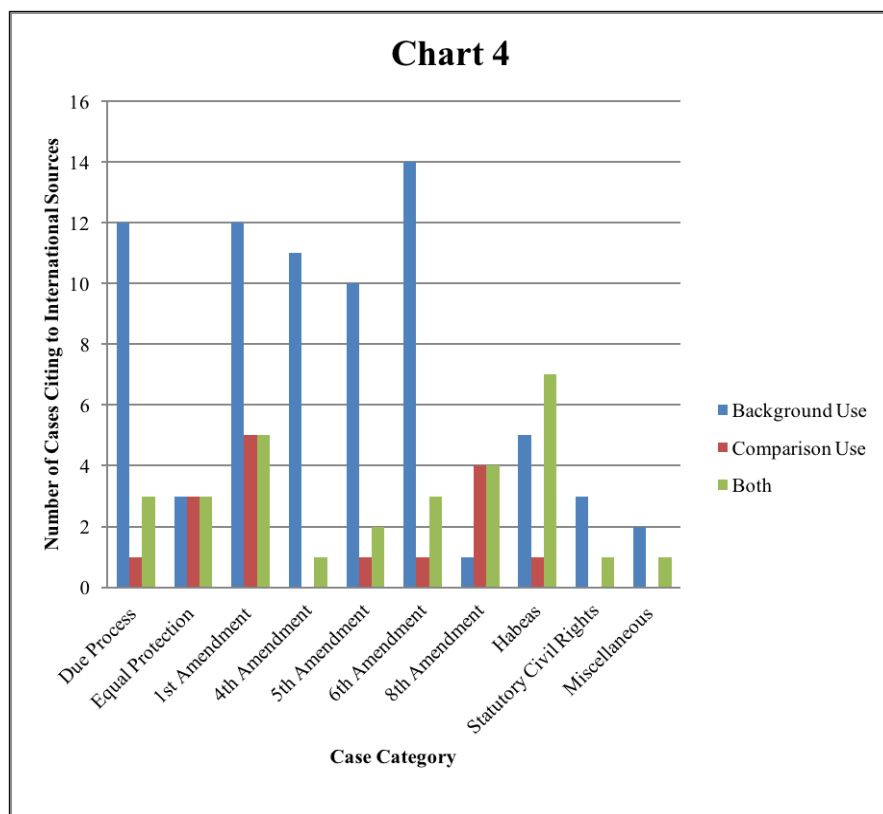
APPENDIX A<sup>278</sup>

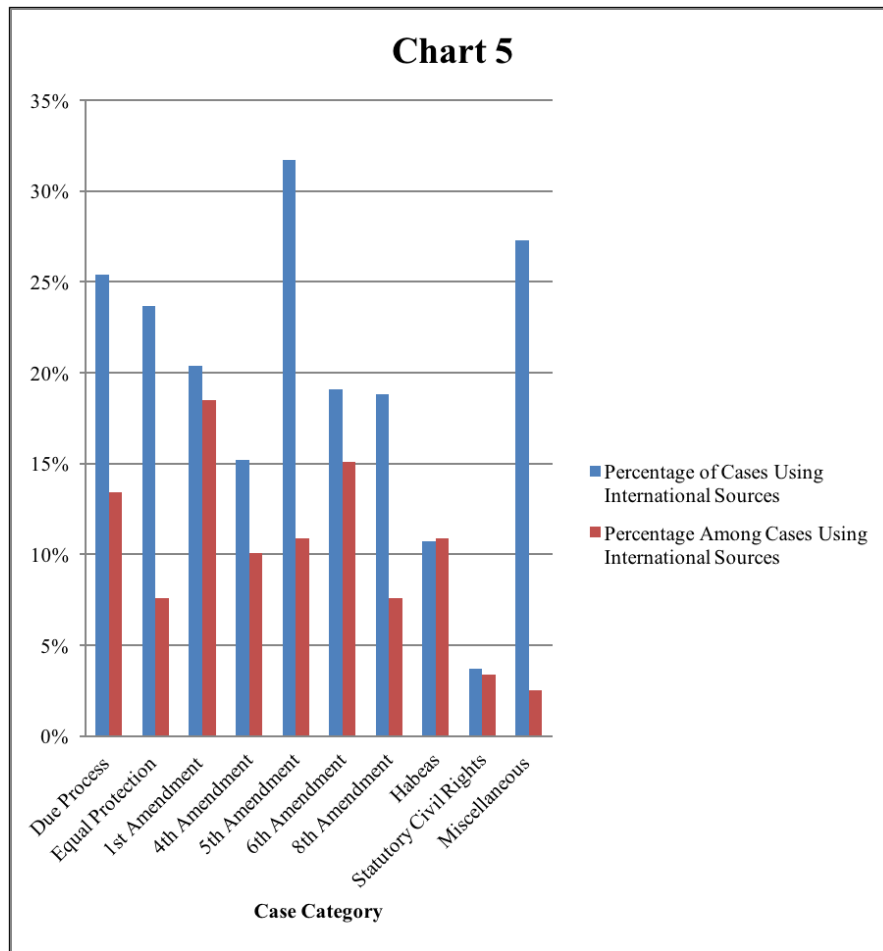
<sup>278</sup> Each chart has an embedded link to a high-resolution image in its proper dimensions.

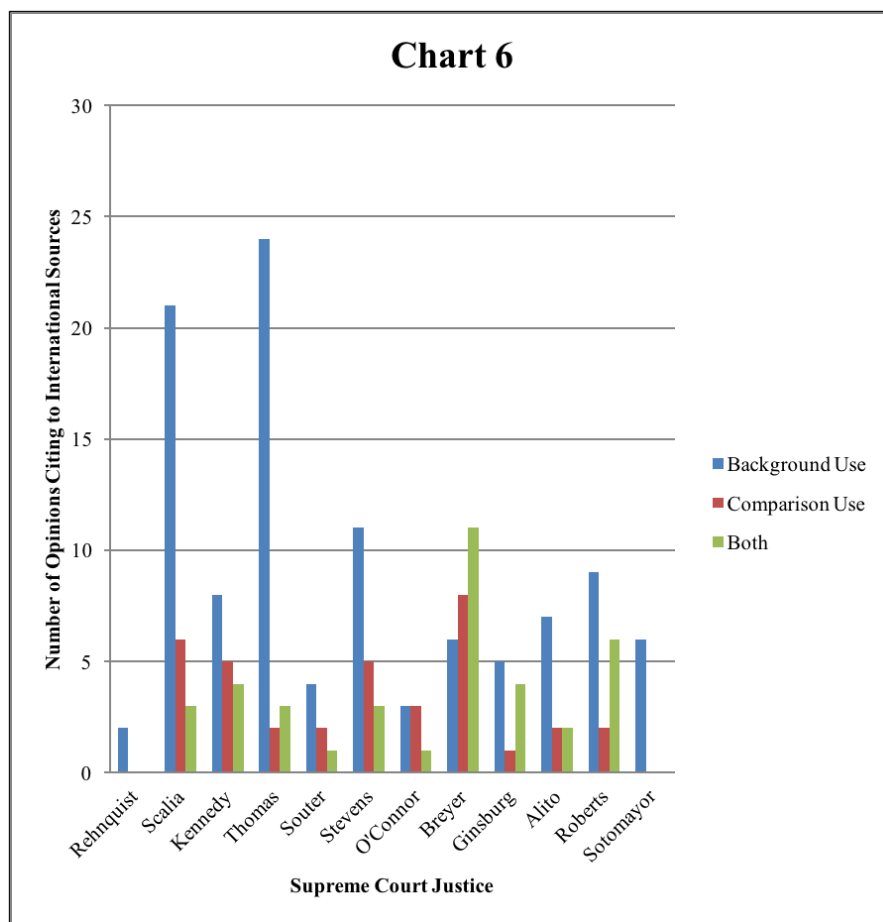


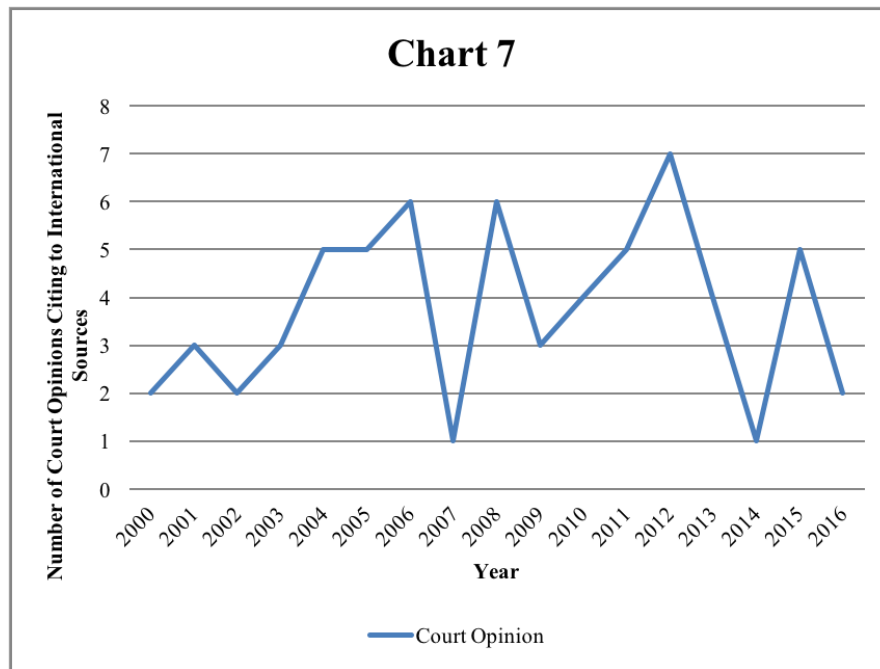


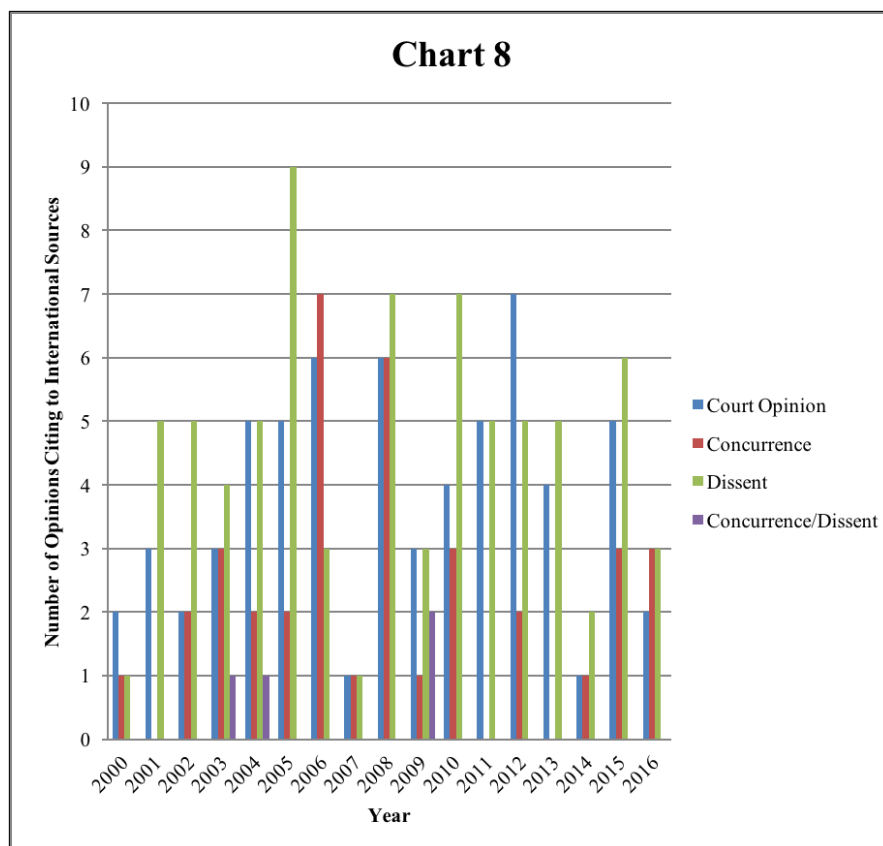












APPENDIX B

Case Citation <sup>279</sup>	Civil Rights Classification	Justice Discussion(s) of International Sources
Apprendi v. New Jersey, 530 U.S. 466 (2000)	Due Process	N/A
Artuz v. Bennett, 531 U.S. 4 (2000)	Habeas	N/A
Bd. of Regents v. Southworth, 529 U.S. 217 (2000)	1 <sup>st</sup> Amendment	N/A
Bond v. United States, 529 U.S. 334 (2000)	4 <sup>th</sup> Amendment	N/A
Boy Scouts of Am. v. Dale, 530 U.S. 640 (2000)	1 <sup>st</sup> Amendment	N/A
Cal. Democratic Party v. Jones, 530 U.S. 567 (2000)	1 <sup>st</sup> Amendment	N/A
City of Erie v. Pap's A.M., 529 U.S. 277 (2000)	1 <sup>st</sup> Amendment	N/A
City of Indianapolis v. Edmond, 531 U.S. 32 (2000)	4 <sup>th</sup> Amendment	N/A
Dickerson v. United States, 530 U.S. 428, 433 (2000)	Due Process	Rehnquist (Opinion): Background
Edwards v. Carpenter, 529 U.S. 446 (2000)	6 <sup>th</sup> Amendment	N/A
Florida v. J.L., 529 U.S. 266 (2000)	4 <sup>th</sup> Amendment	N/A
Hill v. Colorado, 530 U.S. 703, 744 (2000)	1 <sup>st</sup> Amendment	Scalia (Dissent): Comparison
Illinois v. Wardlow, 528 U.S. 119 (2000)	4 <sup>th</sup> Amendment	N/A
Martinez v. Court of Appeal, 528 U.S. 152 (2000)	6 <sup>th</sup> Amendment	N/A
Mitchell v. Helms, 530 U.S. 793 (2000)	1 <sup>st</sup> Amendment	N/A
Nixon v. Shrink Mo. Gov't Pac, 528 U.S. 377 (2000)	1 <sup>st</sup> Amendment	N/A
Portuondo v. Agard, 529 U.S. 61 (2000)	Due Process	N/A
Reeves v. Sanderson Plumbing Prods., 530 U.S. 133 (2000)	Statutory	N/A
Reno v. Bossier Par. Sch. Bd., 528 U.S. 320 (2000)	Statutory	N/A
Reno v. Condon, 528 U.S. 141 (2000)	Statutory	N/A

---

279. Pincite refers to the pages in which there is a citation to an international source. Cases are sorted by year, then alphabetically.

Rice v. Cayetano, 528 U.S. 495, 502-04 (2000)	Equal Protection	Kennedy (Opinion): Background
Roe v. Flores-Ortega, 528 U.S. 470 (2000)	6 <sup>th</sup> Amendment	N/A
Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000)	1 <sup>st</sup> Amendment	N/A
Sinkfield v. Kelley, 531 U.S. 28 (2000)	Equal Protection	N/A
Slack v. McDaniel, 529 U.S. 473 (2000)	Habeas	N/A
Smith v. Robbins, 528 U.S. 259 (2000)	Due Process	N/A
Stenberg v. Carhart, 530 U.S. 914 (2000)	Due Process	N/A
Troxel v. Granville, 530 U.S. 57 (2000)	Due Process	N/A
United States v. Playboy Entm't Grp., 529 U.S. 803 (2000)	1 <sup>st</sup> Amendment	N/A
United States v. Hubbell, 530 U.S. 27, 51 & n.2 (2000)	5 <sup>th</sup> Amendment	Thomas (Concurrence): Background
United States v. Martinez-Salazar, 528 U.S. 304 (2000)	6 <sup>th</sup> Amendment	N/A
Weeks v. Angelone, 528 U.S. 225 (2000)	Habeas	N/A
Williams v. Taylor, 529 U.S. 362 (2000)	6 <sup>th</sup> Amendment	N/A
Williams v. Taylor, 529 U.S. 420 (2000)	Habeas	N/A
Adarand Constructors, Inc. v. Mineta, 534 U.S. 103 (2001)	Equal Protection	N/A
Alexander v. Sandoval, 532 U.S. 275 (2001)	Statutory	N/A
Arkansas v. Sullivan, 532 U.S. 769 (2001)	4 <sup>th</sup> Amendment	N/A
Atwater v. City of Lago Vista, 532 U.S. 318, 327 n.2, 328-338, 332 n.6 (2001)	4 <sup>th</sup> Amendment	Souter (Opinion): Background
Bartnicki v. Vopper, 532 U.S. 514 (2001)	1 <sup>st</sup> Amendment	N/A
Bd. of Trs. v. Garrett, 531 U.S. 356 (2001)	Statutory	N/A
Booth v. Churner, 532 U.S. 731 (2001)	Statutory	N/A
Calcano-Martinez v. Ins, 533 U.S. 348 (2001)	Habeas	N/A
Clark Cty. Sch. Dist. v. Breeden, 532 U.S. 268 (2001)	Statutory	N/A



Corr. Servs. Corp. v. Malesko, 534 U.S. 61 (2001)	Miscellaneous	N/A
Daniels v. United States, 532 U.S. 374 (2001)	6 <sup>th</sup> Amendment	N/A
DOI v. Klamath Water Users Protective Ass'n, 532 U.S. 1 (2001)	Statutory	N/A
Duncan v. Walker, 533 U.S. 167 (2001)	Habeas	N/A
Easley v. Cromartie, 532 U.S. 234 (2001)	Equal Protection	N/A
FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431 (2001)	1 <sup>st</sup> Amendment	N/A
Ferguson v. City of Charleston, 532 U.S. 67 (2001)	4 <sup>th</sup> Amendment	N/A
Fiore v. White, 531 U.S. 225 (2001)	Due Process	N/A
Florida v. Thomas, 532 U.S. 774 (2001)	4 <sup>th</sup> Amendment	N/A
Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001)	1 <sup>st</sup> Amendment	N/A
Illinois v. McArthur, 531 U.S. 326 (2001)	4 <sup>th</sup> Amendment	N/A
INS v. St. Cyr, 533 U.S. 289, 301-02 & ns. 16-23, 342-43 (2001)	Habeas	Stevens (Opinion): Background Scalia (Dissent): Background
Kyllo v. United States, 533 U.S. 27 (2001)	4 <sup>th</sup> Amendment	NA
Lackawanna Cty. Dist. Atty. v. Coss, 532 U.S. 394 (2001)	Habeas	N/A
Lujan v. G & G Fire Sprinklers, 532 U.S. 189 (2001)	Due Process	N/A
Nevada v. Hicks, 533 U.S. 353 (2001)	Statutory	N/A
Ohio v. Reiner, 532 U.S. 17 (2001)	5 <sup>th</sup> Amendment	N/A
Palazzolo v. Rhode Island, 533 U.S. 606 (2001)	5 <sup>th</sup> Amendment	N/A
Penry v. Johnson, 532 U.S. 782 (2001)	5 <sup>th</sup> Amendment	N/A
PGA Tour, Inc. v. Martin, 532 U.S. 661, 700 (2001)	Statutory	Scalia (Dissent): Background
Pollard v. E. I. du Pont de Nemours & Co., 532 U.S. 843 (2001)	Statutory	N/A
Rogers v. Tennessee, 532 U.S. 451, 453, 472-74 (2001)	Due Process	O'Connor (Opinion): Background Stevens (Dissent): Background

Saucier v. Katz, 533 U.S. 194 (2001)	4 <sup>th</sup> Amendment	N/A
Seling v. Young, 531 U.S. 250 (2001)	5 <sup>th</sup> Amendment	N/A
Shafer v. South Carolina, 532 U.S. 36 (2001)	Due Process	N/A
Shaw v. Murphy, 532 U.S. 223 (2001)	1 <sup>st</sup> Amendment	N/A
Stewart v. Smith, 534 U.S. 157 (2001)	6 <sup>th</sup> Amendment	N/A
Texas v. Cobb, 532 U.S. 162 (2001)	6 <sup>th</sup> Amendment	N/A
Tuan Anh Nguyen v. INS, 533 U.S. 53, 91-92 (2001)	Due Process	O'Connor (Dissent): Comparison
Tyler v. Cain, 533 U.S. 656 (2001)	Habeas	N/A
United States v. Knights, 534 U.S. 112 (2001)	4 <sup>th</sup> Amendment	N/A
United States v. United Foods, 533 U.S. 405 (2001)	1 <sup>st</sup> Amendment	N/A
Zadvydas v. Davis, 533 U.S. 678, 715-16, 721 (2001)	Habeas	Kennedy (Dissent): Comparison
Alabama v. Shelton, 535 U.S. 654 (2002)	6 <sup>th</sup> Amendment	N/A
AMTRAK v. Morgan, 536 U.S. 101 (2002)	Statutory	N/A
Ashcroft v. ACLU, 535 U.S. 564 (2002)	1 <sup>st</sup> Amendment	N/A
Ashcroft v. Free Speech Coal., 535 U.S. 234 (2002)	1 <sup>st</sup> Amendment	N/A
Atkins v. Virginia, 536 U.S. 304, 316 n.21, 340-41, 347-49, 354 (2002)	8 <sup>th</sup> Amendment	Stevens (Opinion): Comparison Scalia (Dissent): Background
Barnes v. Gorman, 536 U.S. 181 (2002)	Statutory	N/A
BE&K Constr. Co. v. NLRB, 536 U.S. 516 (2002)	1 <sup>st</sup> Amendment	N/A
Bell v. Cone, 535 U.S. 685 (2002)	6 <sup>th</sup> Amendment	N/A
Bd. of Educ. v. Earls, 536 U.S. 822 (2002)	4 <sup>th</sup> Amendment	N/A
Carey v. Saffold, 536 U.S. 214 (2002)	Habeas	N/A
Chevron U.S.A. v. Echazabal, 536 U.S. 73 (2002)	Statutory	N/A
Christopher v. Harbury, 536 U.S. 403 (2002)	Due Process	N/A
City of L.A. v. Alameda Books, 535 U.S. 425 (2002)	1 <sup>st</sup> Amendment	N/A

Dusenbery v. United States, 534 U.S. 161 (2002)	Due Process	N/A
Early v. Packer, 537 U.S. 3 (2002)	Habeas	N/A
Edelman v. Lynchburg Coll., 535 U.S. 106 (2002)	Statutory	N/A
EEOC v. Waffle House, Inc., 534 U.S. 279 (2002)	Statutory	N/A
Foster v. Florida, 537 U.S. 990, 991-93 (2002)	8 <sup>th</sup> Amendment	Thomas (Concurrence): Comparison Breyer (Dissent): Comparison
Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)	Statutory	N/A
Hope v. Pelzer, 536 U.S. 730 (2002)	8 <sup>th</sup> Amendment	N/A
Kansas v. Crane, 534 U.S. 407 (2002)	Statutory	N/A
Kelly v. South Carolina, 534 U.S. 246 (2002)	Due Process	N/A
Kirk v. Louisiana, 536 U.S. 635 (2002)	4 <sup>th</sup> Amendment	N/A
Lapides v. Bd. of Regents, 535 U.S. 613 (2002)	Statutory	N/A
Lee v. Kemna, 534 U.S. 362 (2002)	Due Process	N/A
McKune v. Lile, 536 U.S. 24 (2002)	5 <sup>th</sup> Amendment	N/A
Mickens v. Taylor, 535 U.S. 162 (2002)	6 <sup>th</sup> Amendment	N/A
Owasso Indep. Sch. Dist. No. I-011 v. Falvo, 534 U.S. 426 (2002)	Statutory	N/A
Porter v. Nussle, 534 U.S. 516 (2002)	Statutory	N/A
Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81 (2002)	Statutory	N/A
Republican Party v. White, 536 U.S. 765, 798 n.1 (2002)	1 <sup>st</sup> Amendment	Stevens (Dissent): Background
Ring v. Arizona, 536 U.S. 584, 618 (2002)	8 <sup>th</sup> Amendment	Breyer (Concurrence): Background
Stewart v. Smith, 536 U.S. 856 (2002)	6 <sup>th</sup> Amendment	N/A
Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002)	Statutory	N/A
Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 535 U.S. 302 (2002)	5 <sup>th</sup> Amendment	N/A
Thomas v. Chi. Park Dist., 534 U.S. 316, 320 (2002)	1 <sup>st</sup> Amendment	Scalia (Opinion): Background

Thompson v. W. States Med. Ctr., 535 U.S. 357 (2002)	1 <sup>st</sup> Amendment	N/A
Toyota Motor Mfg., Ky. v. Williams, 534 U.S. 184 (2002)	Statutory	N/A
United States v. Arvizu, 534 U.S. 266 (2002)	4 <sup>th</sup> Amendment	N/A
United States v. Bass, 536 U.S. 862 (2002)	Miscellaneous	N/A
United States v. Drayton, 536 U.S. 194 (2002)	4 <sup>th</sup> Amendment	N/A
United States v. Ruiz, 536 U.S. 622 (2002)	6 <sup>th</sup> Amendment	N/A
US Airways, Inc. v. Barnett, 535 U.S. 391 (2002)	Statutory	N/A
Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 536 U.S. 150 (2002)	1 <sup>st</sup> Amendment	N/A
Woodford v. Visciotti, 537 U.S. 19 (2002)	Habeas	N/A
Zelman v. Simmons-Harris, 536 U.S. 639, 686, 718, 725 (2002)	1 <sup>st</sup> Amendment	Stevens (Dissent): Comparison Breyer (Dissent): Comparison
Branch v. Smith, 538 U.S. 254 (2003)	Statutory	N/A
Brown v. Legal Found., 538 U.S. 216 (2003)	5 <sup>th</sup> Amendment	N/A
Bunkley v. Florida, 538 U.S. 835 (2003)	Due Process	N/A
Castro v. United States, 540 U.S. 375 (2003)	Habeas	N/A
Chavez v. Martinez, 538 U.S. 760, 788 n.2 (2003)	5 <sup>th</sup> Amendment	Stevens (Concurrence & Dissent): Comparison
City of Cuyahoga Falls v. Buckeye Cmty. Hope Found., 538 U.S. 188 (2003)	Equal Protection	N/A
City of L.A. v. David, 538 U.S. 715 (2003)	Due Process	N/A
Clackamas Gastroenterology Assocs., P.C. v. Wells, 538 U.S. 440 (2003)	Statutory	N/A
Clay v. United States, 537 U.S. 522 (2003)	Habeas	N/A
Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1 (2003)	Due Process	N/A
Demore v. Hyung Joon Kim, 538 U.S. 510, 538 (2003)	Due Process	O'Connor (Concurrence): Background
Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003)	Statutory	N/A

Eldred v. Ashcroft, 537 U.S. 186, 200 n.5, 205-206, 232-33 & n.9, 257-61, 264-65 (2003)	1 <sup>st</sup> Amendment	Ginsburg (Opinion): Background & Comparison Stevens (Dissent): Background Breyer (Dissent): Comparison
Ewing v. California, 538 U.S. 11 (2003)	8 <sup>th</sup> Amendment	N/A
FEC v. Beaumont, 539 U.S. 146 (2003)	1 <sup>st</sup> Amendment	N/A
Fitzgerald v. Racing Ass'n, 539 U.S. 103 (2003)	Equal Protection	N/A
Georgia v. Ashcroft, 539 U.S. 461 (2003)	Statutory	N/A
Gratz v. Bollinger, 539 U.S. 244 (2003)	Equal Protection	N/A
Gutter v. Bollinger, 539 U.S. 306, 344 (2003)	Equal Protection	Ginsburg (Concurrence): Comparison
Ill. ex rel. Madigan v. Telemarketing Assocs., 538 U.S. 600 (2003)	1 <sup>st</sup> Amendment	N/A
Inyo Cty. v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony, 538 U.S. 701 (2003)	4 <sup>th</sup> Amendment	N/A
Kaupp v. Texas, 538 U.S. 626 (2003)	4 <sup>th</sup> Amendment	N/A
Lawrence v. Texas, 539 U.S. 558, 568, 573, 576-77, 598 (2003)	Due Process	Kennedy (Opinion): Background & Comparison Scalia (Dissent): Comparison
Lockyer v. Andrade, 538 U.S. 63 (2003)	Habeas	N/A
Maryland v. Pringle, 540 U.S. 366 (2003)	4 <sup>th</sup> Amendment	N/A
Massaro v. United States, 538 U.S. 500 (2003)	Habeas	N/A
McConnell v. FEC, 540 U.S. 93 (2003)	1 <sup>st</sup> Amendment	N/A
Meyer v. Holley, 537 U.S. 280 (2003)	Statutory	N/A
Miller-El v. Cockrell, 537 U.S. 322 (2003)	Equal Protection	N/A
Mitchell v. Esparza, 540 U.S. 12 (2003)	Habeas	N/A
Nev. Dep't of Human Res. v. Hibbs, 538 U.S. 721 (2003)	Statutory	N/A
Nike, Inc. v. Kasky, 539 U.S. 654 (2003)	1 <sup>st</sup> Amendment	N/A
Overton v. Bazzetta, 539 U.S. 126, 142-43 (2003)	1 <sup>st</sup> Amendment	Stevens (Concurrence): Background
Pierce Cty. v. Guillen, 537 U.S. 129 (2003)	Statutory	N/A

Price v. Vincent, 538 U.S. 634 (2003)	5 <sup>th</sup> Amendment	N/A
Raytheon Co. v. Hernandez, 540 U.S. 44 (2003)	Statutory	N/A
Sattazahn v. Pennsylvania, 537 U.S. 101 (2003)	5 <sup>th</sup> Amendment	N/A
Sell v. United States, 539 U.S. 166 (2003)	Due Process	N/A
United States v. Am. Library Ass'n, 539 U.S. 194, 238 (2003)	1 <sup>st</sup> Amendment	Souter (Dissent): Comparison
United States v. Banks, 540 U.S. 31 (2003)	4 <sup>th</sup> Amendment	N/A
Virginia v. Black, 538 U.S. 343, 352 (2003)	1 <sup>st</sup> Amendment	O'Connor (Opinion): Background
Virginia v. Hicks, 539 U.S. 113 (2003)	1 <sup>st</sup> Amendment	N/A
Wiggins v. Smith, 539 U.S. 510 (2003)	6 <sup>th</sup> Amendment	N/A
Woodford v. Garceau, 538 U.S. 202 (2003)	Habeas	N/A
Yarborough v. Gentry, 540 U.S. 1 (2003)	6 <sup>th</sup> Amendment	N/A
Ashcroft v. ACLU, 542 U.S. 656 (2004)	1 <sup>st</sup> Amendment	N/A
Baldwin v. Reese, 541 U.S. 27 (2004)	Habeas	N/A
Banks v. Dretke, 540 U.S. 668 (2004)	Habeas	N/A
Beard v. Banks, 542 U.S. 406 (2004)	Habeas	N/A
Blakely v. Washington, 542 U.S. 296, 301, 307 n.11, 313-14 (2004)	6 <sup>th</sup> Amendment	Scalia (Opinion): Background
Brosseau v. Haugen, 543 U.S. 194 (2004)	4 <sup>th</sup> Amendment	N/A
City of Littleton v. Z. J. Gifts D-4, L.L.C., 541 U.S. 774 (2004)	1 <sup>st</sup> Amendment	N/A
City of San Diego v. Roe, 543 U.S. 77 (2004)	1 <sup>st</sup> Amendment	N/A
Crawford v. Washington, 541 U.S. 36, 43-47, 47 n.2, 50, 52, 52 n.3, 54 n.5, 56 n.6, 69-73, 70 n.2 & 3, 71 n.4 (2004)	6 <sup>th</sup> Amendment	Scalia (Opinion): Background Rehnquist (Concurrence): Background
Devenpeck v. Alford, 543 U.S. 146 (2004)	4 <sup>th</sup> Amendment	N/A
Dretke v. Haley, 541 U.S. 386 (2004)	Habeas	N/A

Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004)	1 <sup>st</sup> Amendment	N/A
Fellers v. United States, 540 U.S. 519 (2004)	6 <sup>th</sup> Amendment	N/A
Florida v. Nixon, 543 U.S. 175 (2004)	6 <sup>th</sup> Amendment	N/A
Gen. Dynamics Land Sys. v. Cline, 540 U.S. 581 (2004)	Statutory	N/A
Groh v. Ramirez, 540 U.S. 551 (2004)	4 <sup>th</sup> Amendment	N/A
Hamdi v. Rumsfeld, 542 U.S. 507, 518-19, 520-21, 556-60, 561-62, 564, 587-88, 597 n.6, 549-52 (2004)	Due Process	O'Connor (Opinion): Comparison Scalia (Dissent): Background Thomas (Dissent): Background Souter (Concurrence & Dissent): Comparison
Hibbs v. Winn, 542 U.S. 88 (2004)	1 <sup>st</sup> Amendment	N/A
Hiiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 183 (2004)	4 <sup>th</sup> Amendment	Kennedy (Opinion): Background
Holland v. Jackson, 542 U.S. 649 (2004)	Habeas	N/A
Illinois v. Fisher, 540 U.S. 544 (2004)	Due Process	N/A
Illinois v. Lidster, 540 U.S. 419 (2004)	4 <sup>th</sup> Amendment	N/A
Iowa v. Tovar, 541 U.S. 77 (2004)	6 <sup>th</sup> Amendment	N/A
Jones v. R. R. Donnelley & Sons Co., 541 U.S. 369 (2004)	Statutory	N/A
Locke v. Davey, 540 U.S. 712 (2004)	1 <sup>st</sup> Amendment	N/A
Middleton v. McNeil, 541 U.S. 433 (2004)	Habeas	N/A
Missouri v. Seibert, 542 U.S. 600 (2004)	5 <sup>th</sup> Amendment	N/A
Muhammad v. Close, 540 U.S. 749 (2004)	Statutory	N/A
Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157 (2004)	Statutory	N/A
Nelson v. Campbell, 541 U.S. 637 (2004)	Statutory	N/A
Pa. State Police v. Suders, 542 U.S. 129 (2004)	Statutory	N/A
Pliler v. Ford, 542 U.S. 225 (2004)	Habeas	N/A

Rasul v. Bush, 542 U.S. 466, 480-81 n.11-14, 482, 502-05 (2004)	Habeas	Stevens (Opinion): Background Scalia (Dissent): Comparison
Rumsfeld v. Padilla, 542 U.S. 426 (2004)	Habeas	N/A
Smith v. Texas, 543 U.S. 37 (2004)	8 <sup>th</sup> Amendment	N/A
Tennard v. Dretke, 542 U.S. 274 (2004)	8 <sup>th</sup> Amendment	N/A
Tennessee v. Lane, 541 U.S. 509 (2004)	Statutory	N/A
Thornton v. United States, 541 U.S. 615, 630-31 (2004)	4 <sup>th</sup> Amendment	Scalia (Concurrence): Background
United States v. Flores-Montano, 541 U.S. 149 (2004)	4 <sup>th</sup> Amendment	N/A
United States v. Patane, 542 U.S. 630 (2004)	5 <sup>th</sup> Amendment	N/A
Vieth v. Jubelirer, 541 U.S. 267, 331 n.25, 363 (2004)	Equal Protection	Breyer (Dissent): Comparison Stevens (Dissent): Background & Comparison
Yarborough v. Alvarado, 541 U.S. 652 (2004)	Habeas	N/A
Bell v. Cone, 543 U.S. 447 (2005)	Habeas	N/A
Bell v. Thompson, 545 U.S. 794 (2005)	Habeas	N/A
Bradshaw v. Richey, 546 U.S. 74 (2005)	Habeas	N/A
Bradshaw v. Stumpf, 545 U.S. 175 (2005)	Habeas	N/A
Brown v. Payton, 544 U.S. 133 (2005)	Habeas	N/A
City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005)	Statutory	N/A
Clark v. Suarez Martinez, 543 U.S. 371 (2005)	Habeas	N/A
Clingman v. Beaver, 544 U.S. 581 (2005)	1 <sup>st</sup> Amendment	N/A
Cutter v. Wilkinson, 544 U.S. 709 (2005)	1 <sup>st</sup> Amendment	N/A
Deck v. Missouri, 544 U.S. 622, 626, 630-32, 638-40, 639 n.2 (2005)	Due Process	Breyer (Opinion): Background Thomas (Dissent): Background
Dodd v. United States, 545 U.S. 353 (2005)	Habeas	N/A
Dye v. Hofbauer, 546 U.S. 1 (2005)	Habeas	N/A



Gonzalez v. Crosby, 545 U.S. 524 (2005)	Habeas	N/A
Halbert v. Michigan, 545 U.S. 605 (2005)	Equal Protection	N/A
Howell v. Mississippi, 543 U.S. 440 (2005)	8 <sup>th</sup> Amendment	N/A
Illinois v. Caballes, 543 U.S. 405 (2005)	4 <sup>th</sup> Amendment	N/A
Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005)	Statutory	N/A
Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550 (2005)	1 <sup>st</sup> Amendment	N/A
Johnson v. California, 545 U.S. 162 (2005)	Equal Protection	N/A
Johnson v. California, 543 U.S. 499 (2005)	Equal Protection	N/A
Johnson v. United States, 544 U.S. 295 (2005)	Habeas	N/A
Kane v. Garcia Espitia, 546 U.S. 9 (2005)	6 <sup>th</sup> Amendment	N/A
Kelo v. City of New London, 545 U.S. 469, 505 (2005)	5 <sup>th</sup> Amendment	Thomas (Dissent): Background
Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)	5 <sup>th</sup> Amendment	N/A
Mayle v. Felix, 545 U.S. 644 (2005)	Habeas	N/A
McCreary Cty. v. ACLU, 545 U.S. 844, 886 (2005)	1 <sup>st</sup> Amendment	Scalia (Dissent): Comparison
Medellin v. Dretke, 544 U.S. 660 <sup>280</sup> (2005)	Habeas	Ginsburg (Concurrence): Background & Comparison O'Connor (Dissent): Background & Comparison Souter (Dissent): Background & Comparison Breyer (Dissent): Background & Comparison
Miller-El v. Dretke, 545 U.S. 231, 272 (2005)	Equal Protection	Breyer (Concurrence): Comparison
Muehler v. Mena, 544 U.S. 93 (2005)	4 <sup>th</sup> Amendment	N/A
Pace v. DiGuglielmo, 544 U.S. 408 (2005)	Habeas	N/A
Rhines v. Weber, 544 U.S. 269 (2005)	Habeas	N/A
Rompilla v. Beard, 545 U.S. 374 (2005)	Habeas	N/A

---

280 Entire case involved the interpretation of an international source, so no pincite is appended.

Roper v. Simmons, 543 U.S. 551, 567, 576-78, 604-05, 622-28 (2005)	8 <sup>th</sup> Amendment	Kennedy (Opinion): Comparison O'Connor (Dissent): Comparison Scalia (Dissent): Comparison
San Remo Hotel, L.P. v. City & Cty. of S.F., 545 U.S. 323 (2005)	5 <sup>th</sup> Amendment	N/A
Schaffer v. Weast, 546 U.S. 49 (2005)	Statutory	N/A
Shepard v. United States, 544 U.S. 13 (2005)	6 <sup>th</sup> Amendment	N/A
Schriro v. Smith, 546 U.S. 6 (2005)	8 <sup>th</sup> Amendment	N/A
Smith v. City of Jackson, 544 U.S. 228 (2005)	Statutory	N/A
Smith v. Massachusetts, 543 U.S. 462, 467-68, 474 (2005)	5 <sup>th</sup> Amendment	Scalia (Opinion): Background
Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 135-36, 151-52, 154-55 (2005)	Statutory	Kennedy (Opinion): Background & Comparison Scalia (Dissent): Background & Comparison
Tory v. Cochran, 544 U.S. 734 (2005)	1 <sup>st</sup> Amendment	N/A
Town of Castle Rock v. Gonzales, 545 U.S. 748, 765 (2005)	Due Process	Scalia (Opinion): Background
United States v. Booker, 543 U.S. 220 (2005)	6 <sup>th</sup> Amendment	N/A
Van Orden v. Perry, 545 U.S. 677 (2005)	1 <sup>st</sup> Amendment	N/A
Wilkinson v. Austin, 545 U.S. 209 (2005)	Due Process	N/A
Wilkinson v. Dotson, 544 U.S. 74 (2005)	Statutory	N/A
Arbaugh v. Y & H Corp., 546 U.S. 500 (2006)	Statutory	N/A
Ash v. Tyson Foods, Inc., 546 U.S. 454 (2006)	Statutory	N/A
Ayers v. Belmontes, 549 U.S. 7 (2006)	8 <sup>th</sup> Amendment	N/A
Ayotte v. Planned Parenthood, 546 U.S. 320 (2006)	Due Process	N/A
Beard v. Banks, 548 U.S. 521, 539 (2006)	1 <sup>st</sup> Amendment	Thomas (Concurrence): Background
Brigham City v. Stuart, 547 U.S. 398 (2006)	4 <sup>th</sup> Amendment	N/A
Brown v. Sanders, 546 U.S. 212 (2006)	Habeas	N/A
Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53 (2006)	Statutory	N/A

Carey v. Musladin, 549 U.S. 70 (2006)	Habeas	N/A
Clark v. Arizona, 548 U.S. 735, 746-47, 749 & n. 8, 766 (2006)	Due Process	Souter (Opinion): Background
Davis v. Washington, 547 U.S. 813, 822 n.1, 828, 836 (2006)	6 <sup>th</sup> Amendment	Scalia (Opinion): Background & Comparison Thomas (Dissent): Background
Day v. McDonough, 547 U.S. 198 (2006)	Habeas	N/A
Dixon v. United States, 548 U.S. 1, 13 n.6, 19 (2006)	Due Process	Stevens (Opinion): Background Alito (Concurrence): Background
Evans v. Chavis, 546 U.S. 189 (2006)	Habeas	N/A
Garcetti v. Ceballos, 547 U.S. 410 (2006)	1 <sup>st</sup> Amendment	N/A
Georgia v. Randolph, 547 U.S. 103, 123-24 (2006)	4 <sup>th</sup> Amendment	Stevens (Concurrence): Background
Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 426, 437-38 (2006)	1 <sup>st</sup> Amendment	Roberts (Opinion): Background & Comparison
Hamdan v. Rumsfeld, 548 U.S. 557 <sup>281</sup> (2006)	Habeas	Stevens (Opinion): Background & Comparison Kennedy (Concurrence): Background & Comparison Thomas (Dissent): Background & Comparison
Hartman v. Moore, 547 U.S. 250 (2006)	1 <sup>st</sup> Amendment	N/A
Hill v. McDonough, 547 U.S. 573 (2006)	Statutory	N/A
Holmes v. South Carolina, 547 U.S. 319 (2006)	6 <sup>th</sup> Amendment	N/A
House v. Bell, 547 U.S. 518 (2006)	Habeas	N/A
Hudson v. Michigan, 547 U.S. 586 (2006)	4 <sup>th</sup> Amendment	N/A
Jones v. Flowers, 547 U.S. 220 (2006)	Due Process	N/A
Kansas v. Marsh, 548 U.S. 163, 187 & n.3 (2006)	8 <sup>th</sup> Amendment	Scalia (Concurrence): Comparison
League of United Latin Am. Citizens v. Perry, 548 U.S. 399 (2006)	Statutory	N/A
Oregon v. Guzek, 546 U.S. 517 (2006)	8 <sup>th</sup> Amendment	N/A
Randall v. Sorrell, 548 U.S. 230 (2006)	1 <sup>st</sup> Amendment	N/A

---

281. Entire case involved the interpretation of an international source, so no pincite is appended.

Rice v. Collins, 546 U.S. 333 (2006)	Equal Protection	N/A
Rumsfeld v. Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47 (2006)	1 <sup>st</sup> Amendment	N/A
Samson v. California, 547 U.S. 843 (2006)	4 <sup>th</sup> Amendment	N/A
Sanchez-Llamas v. Oregon, 548 U.S. 331 <sup>282</sup> (2006)	Habeas	Roberts (Opinion): Background & Comparison Ginsburg (Concurrence): Background & Comparison Breyer (Dissent): Background & Comparison
United States v. Georgia, 546 U.S. 151 (2006)	Statutory	N/A
United States v. Gonzalez-Lopez, 548 U.S. 140 (2006)	6 <sup>th</sup> Amendment	N/A
United States v. Grubbs, 547 U.S. 90, 100 (2006)	4 <sup>th</sup> Amendment	Souter (Concurrence): Background
Washington v. Recuenco, 548 U.S. 212 (2006)	6 <sup>th</sup> Amendment	N/A
Will v. Hallock, 546 U.S. 345 (2006)	Due Process	N/A
Wis. Right to Life, Inc. v. FEC, 546 U.S. 410 (2006)	1 <sup>st</sup> Amendment	N/A
Woodford v. Ngo, 548 U.S. 81 (2006)	Statutory	N/A
Youngblood v. West Virginia, 547 U.S. 867 (2006)	Due Process	N/A
Zedner v. United States, 547 U.S. 489 (2006)	6 <sup>th</sup> Amendment	N/A
Abdul-Kabir v. Quarterman, 550 U.S. 233 (2007)	8 <sup>th</sup> Amendment	N/A
Allen v. Siebert, 552 U.S. 3 (2007)	Habeas	N/A
Bowles v. Russell, 551 U.S. 205 (2007)	Habeas	N/A
Brendlin v. California, 551 U.S. 249 (2007)	4 <sup>th</sup> Amendment	N/A
Brewer v. Quarterman, 550 U.S. 286 (2007)	Habeas	N/A
Burton v. Stewart, 549 U.S. 147 (2007)	Habeas	N/A
Cunningham v. California, 549 U.S. 270 (2007)	6 <sup>th</sup> Amendment	N/A
Davenport v. Wash. Educ. Ass'n, 551 U.S. 177 (2007)	1 <sup>st</sup> Amendment	N/A

---

282. Entire case involved the interpretation of an international source, so no pincite is appended.

Erickson v. Pardus, 551 U.S. 89 (2007)	8 <sup>th</sup> Amendment	N/A
FEC v. Wis. Right to Life, Inc., 551 U.S. 449 (2007)	1 <sup>st</sup> Amendment	N/A
Fry v. Pliler, 551 U.S. 112 (2007)	Habeas	N/A
Gonzales v. Carhart, 550 U.S. 124 (2007)	Due Process	N/A
Haas v. Quest Recovery Servs., 549 U.S. 1163 (2007)	Statutory	N/A
Hein v. Freedom from Religion Found., Inc., 551 U.S. 587 (2007)	1 <sup>st</sup> Amendment	N/A
Jones v. Bock, 549 U.S. 199 (2007)	Statutory	N/A
Kimbrough v. United States, 552 U.S. 85 (2007)	6 <sup>th</sup> Amendment	N/A
Lawrence v. Florida, 549 U.S. 327 (2007)	Habeas	N/A
Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007)	Statutory	N/A
L.A. Cty. v. Rettele, 550 U.S. 609 (2007)	4 <sup>th</sup> Amendment	N/A
Morse v. Frederick, 551 U.S. 393, 412 n.2, 413 (2007)	1 <sup>st</sup> Amendment	Thomas (Concurrence): Background
Panetti v. Quarterman, 551 U.S. 930 (2007)	8 <sup>th</sup> Amendment	N/A
Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 842 (2007)	Equal Protection	Breyer (Dissent): Comparison
Philip Morris USA v. Williams, 549 U.S. 346 (2007)	Due Process	N/A
Rita v. United States, 551 U.S. 338 (2007)	6 <sup>th</sup> Amendment	N/A
Roper v. Weaver, 550 U.S. 598 (2007)	Habeas	N/A
Schiro v. Landrigan, 550 U.S. 465 (2007)	Habeas	N/A
Scott v. Harris, 550 U.S. 372 (2007)	4 <sup>th</sup> Amendment	N/A
Smith v. Arizona, 552 U.S. 985 (2007)	8 <sup>th</sup> Amendment	N/A
Smith v. Texas, 550 U.S. 297 (2007)	8 <sup>th</sup> Amendment	N/A
Tenn. Secondary Sch. Ath. Ass'n v. Brentwood Acad., 551 U.S. 291 (2007)	1 <sup>st</sup> Amendment	N/A
Uttecht v. Brown, 551 U.S. 1 (2007)	6 <sup>th</sup> Amendment	N/A

Wallace v. Kato, 549 U.S. 384 (2007)	4 <sup>th</sup> Amendment	N/A
Whorton v. Bockting, 549 U.S. 406 (2007)	6 <sup>th</sup> Amendment	N/A
Wilkie v. Robbins, 551 U.S. 537, 564 (2007)	Miscellaneous	Souter (Opinion): Background
Winkelman v. Parma City Sch. Dist., 550 U.S. 516 (2007)	Statutory	N/A
Arave v. Hoffman, 552 U.S. 117 (2008)	6 <sup>th</sup> Amendment	N/A
Baze v. Rees, 553 U.S. 35, 58, 68-69, 77 n.9, 95-97, 111-12 (2008)	8 <sup>th</sup> Amendment	Roberts (Opinion): Comparison Alito (Concurrence): Comparison Stevens (Concurrence): Comparison Thomas (Concurrence): Background Breyer (Concurrence): Comparison
Boumediene v. Bush, 553 U.S. 723, 740 -42, 745, 747-52, 754, 767-68, 779, 817, 825, 835 n. 3, 841, 844-48, 847 n. 7, 849 (2008)	Habeas	Kennedy (Opinion): Background & Comparison Roberts (Dissent): Comparison Scalia (Dissent): Background
CBOCS W., Inc. v. Humphries, 553 U.S. 442 (2008)	Statutory	N/A
Crawford v. Marion Cty. Election Bd., 553 U.S. 181 (2008)	Equal Protection	N/A
Danforth v. Minnesota, 552 U.S. 264 (2008)	6 <sup>th</sup> Amendment	N/A
Davis v. FEC, 554 U.S. 724 (2008)	1 <sup>st</sup> Amendment	N/A
District of Columbia v. Heller, 554 U.S. 570 <sup>283</sup> (2008)	Miscellaneous	Scalia (Opinion): Background Stevens (Dissent): Background
Engquist v. Or. Dep't of Agric., 553 U.S. 591 (2008)	Equal Protection	N/A
Emmett v. Johnson, 553 U.S. 1051 (2008)	8 <sup>th</sup> Amendment	N/A
Fed. Express Corp. v. Holowecki, 552 U.S. 389 (2008)	Statutory	N/A
Giles v. California, 554 U.S. 353, 359, 361 n.1, 362-64, 369-72, 369 n.3, 381-82, 383-84, 391, 393-95, 397-98 (2008)	6 <sup>th</sup> Amendment	Scalia (Opinion): Background & Comparison Breyer (Dissent): Background & Comparison
Gomez-Perez v. Potter, 553 U.S. 474 (2008)	Statutory	N/A

---

283. Entire case relies heavily on interpretation of background international sources.

Hedgpeth v. Pulido, 555 U.S. 57 (2008)	Habeas	N/A
Indiana v. Edwards, 554 U.S. 164, 182 (2008)	6 <sup>th</sup> Amendment	Scalia (Dissent): Background
Kelly v. California, 555 U.S. 1020 (2008)	8 <sup>TH</sup> Amendment	N/A
Kennedy v. Louisiana, 554 U.S. 407 (2008)	8 <sup>th</sup> Amendment	N/A
Ky. Ret. Sys. v. EEOC, 554 U.S. 135 (2008)	Statutory	N/A
Marlowe v. United States, 555 U.S. 963 (2008)	Statutory	N/A
Meacham v. Knolls Atomic Power Lab., 554 U.S. 84 (2008)	Statutory	N/A
MeadWestvaco Corp. v. Ill. Dep't of Revenue, 553 U.S. 16 (2008)	Due Process	N/A
Medellin v. Texas, 552 U.S. 491 <sup>284</sup> (2008)	Habeas	Roberts (Opinion): Background & Comparison Stevens (Concurrence): Background & Comparison Breyer (Dissent): Background & Comparison
Munaf v. Geren, 553 U.S. 674, 680, 686-88, 693-94 (2008)	Habeas	Roberts (Opinion): Background & Comparison
N.Y. State Bd. of Elections v. Lopez Torres, 552 U.S. 196 (2008)	1 <sup>st</sup> Amendment	N/A
Nunez v. United States, 554 U.S. 911 (2008)	Habeas	N/A
Pennsylvania v. Dunlap, 555 U.S. 964 (2008)	4 <sup>th</sup> Amendment	N/A
Riley v. Kennedy, 553 U.S. 406 (2008)	Statutory	N/A
Rothgery v. Gillespie Cty., 554 U.S. 191, 219-21 (2008)	6 <sup>th</sup> Amendment	Thomas (Dissent): Background
Snyder v. Louisiana, 552 U.S. 472 (2008)	Equal Protection	N/A
Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379 (2008)	Statutory	N/A
Stephenson v. United States, 554 U.S. 913 (2008)	6 <sup>th</sup> Amendment	N/A
Taylor v. Sturgell, 553 U.S. 880 (2008)	Statutory	N/A
United States v. Williams, 553 U.S. 285 (2008)	1 <sup>st</sup> Amendment	N/A

284. Entire case involved the interpretation of an international source, so no pincite is appended.

Virginia v. Moore, 553 U.S. 164, 178 n.1 (2008)	4 <sup>th</sup> Amendment	Ginsburg (Concurrence): Background
Walker v. Georgia, 555 U.S. 979 (2008)	8 <sup>th</sup> Amendment	N/A
Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442 (2008)	1 <sup>st</sup> Amendment	N/A
Wright v. Van Patten, 552 U.S. 120 (2008)	Habeas	N/A
14 Penn Plaza LLC v. Pyett, 556 U.S. 247 (2009)	Statutory	N/A
Alvarez v. Smith, 558 U.S. 87 (2009)	Due Process	N/A
Arizona v. Gant, 556 U.S. 332 (2009)	4 <sup>th</sup> Amendment	N/A
Arizona v. Johnson, 555 U.S. 323 (2009)	4 <sup>th</sup> Amendment	N/A
AT&T Corp. v. Hulteen, 556 U.S. 701 (2009)	Statutory	N/A
Bartlett v. Strickland, 556 U.S. 1 (2009)	Statutory	N/A
Beard v. Kindler, 558 U.S. 53 (2009)	Habeas	N/A
Bobby v. Bies, 556 U.S. 825 (2009)	5 <sup>th</sup> Amendment	N/A
Bobby v. Van Hook, 558 U.S. 4 (2009)	6 <sup>th</sup> Amendment	N/A
Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009)	Due Process	N/A
Cone v. Bell, 556 U.S. 449 (2009)	Due Process	N/A
Corcoran v. Levenhagen, 558 U.S. 1 (2009)	6 <sup>th</sup> Amendment	N/A
Crawford v. Metro. Gov't of Nashville & Davidson Cty., 555 U.S. 271 (2009)	Statutory	N/A
DA's Office v. Osborne, 557 U.S. 52 (2009)	Due Process	N/A
Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246 (2009)	Equal Protection	N/A
Forest Grove Sch. Dist. v. T. A., 557 U.S. 230 (2009)	Statutory	N/A
Grooms v. United States, 556 U.S. 1231 (2009)	4 <sup>th</sup> Amendment	N/A
Harbison v. Bell, 556 U.S. 180 (2009)	Habeas	N/A
Haywood v. Drown, 556 U.S. 729 (2009)	Statutory	N/A
Herring v. United States, 555 U.S. 135 (2009)	4 <sup>th</sup> Amendment	N/A



Horne v. Flores, 557 U.S. 433, 490 (2009)	Statutory	Breyer (Dissent): Background
In re Davis, 557 U.S. 952 (2009)	Habeas	N/A
Jimenez v. Quarterman, 555 U.S. 113 (2009)	Habeas	N/A
Johnson v. Bredeisen, 558 U.S. 1067, 1071-72, 1073 (2009)	8 <sup>th</sup> Amendment	Thomas (Concurrence): Background & Comparison
Kansas v. Ventris, 556 U.S. 586 (2009)	6 <sup>th</sup> Amendment	N/A
Knowles v. Mirzayance, 556 U.S. 111 (2009)	Habeas	N/A
Locke v. Karass, 555 U.S. 207 (2009)	1 <sup>st</sup> Amendment	N/A
Meggison v. United States, 556 U.S. 1230 (2009)	4 <sup>th</sup> Amendment	N/A
Melendez-Diaz v. Massachusetts, 557 U.S. 305, 314-15, 321 n.7, 344-46 (2009)	6 <sup>th</sup> Amendment	Scalia (Opinion): Background Kennedy (Dissent): Background
Michigan v. Fisher, 558 U.S. 45 (2009)	4 <sup>th</sup> Amendment	N/A
Montejo v. Louisiana, 556 U.S. 778 (2009)	6 <sup>th</sup> Amendment	N/A
Muhammad v. Kelly, 558 U.S. 1019 (2009)	Habeas	N/A
Nw. Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193 (2009)	Statutory	N/A
O'Brien v. O'Laughlin, 557 U.S. 1301 (2009)	Habeas	N/A
Oregon v. Ice, 555 U.S. 160, 169 n. 8 & 10 (2009)	6 <sup>th</sup> Amendment	Ginsburg (Opinion): Background
Pearson v. Callahan, 555 U.S. 223 (2009)	4 <sup>th</sup> Amendment	N/A
Pleasant Grove City v. Summum, 555 U.S. 460 (2009)	1 <sup>st</sup> Amendment	N/A
Porter v. McCollum, 558 U.S. 30 (2009)	6 <sup>th</sup> Amendment	N/A
Ricci v. DeStefano, 557 U.S. 557 (2009)	Statutory	N/A
Rivera v. Illinois, 556 U.S. 148 (2009)	Due Process	N/A
Safford Unified Sch. Dist. #1 v. Redding, 557 U.S. 364, 398-99 (2009)	4 <sup>th</sup> Amendment	Thomas (Concurrence & Dissent): Background
Thompson v. McNeil, 556 U.S. 1114 (2009)	8 <sup>th</sup> Amendment	N/A

Van de Kamp v. Goldstein, 555 U.S. 335 (2009)	Statutory	N/A
Vermont v. Brillon, 556 U.S. 81 (2009)	6 <sup>th</sup> Amendment	N/A
Virginia v. Harris, 558 U.S. 978 (2009)	4 <sup>th</sup> Amendment	N/A
Waddington v. Sarausad, 555 U.S. 179 (2009)	Habeas	N/A
Webster v. Cooper, 558 U.S. 1039 (2009)	Habeas	N/A
Wong v. Belmontes, 558 U.S. 15 (2009)	6 <sup>th</sup> Amendment	N/A
Yeager v. United States, 557 U.S. 110, 122, 128 (2009)	5 <sup>th</sup> Amendment	Stevens (Opinion): Background Scalia (Dissent): Background
Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 367 (2009)	1 <sup>st</sup> Amendment	Breyer (Concurrence & Dissent): Comparison
Allen v. Lawhorn, 562 U.S. 1118 (2010)	Habeas	N/A
Berghuis v. Smith, 559 U.S. 314 (2010)	6 <sup>th</sup> Amendment	N/A
Berghuis v. Thompson, 560 U.S. 370 (2010)	Habeas	N/A
Bloate v. United States, 559 U.S. 196 (2010)	Statutory	N/A
Carr v. United States, 560 U.S. 438 (2010)	Miscellaneous	N/A
Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez, 561 U.S. 661 (2010)	1 <sup>st</sup> Amendment	N/A
Citizens United v. FEC, 558 U.S. 310, 388-89 (2010)	1 <sup>st</sup> Amendment	Roberts (Concurrence): Background
City of Ontario v. Quon, 560 U.S. 746 (2010)	4 <sup>th</sup> Amendment	N/A
Dillon v. United States, 560 U.S. 817 (2010)	6 <sup>th</sup> Amendment	N/A
Doe v. Reed, 561 U.S. 186 (2010)	1 <sup>st</sup> Amendment	N/A
Florida v. Powell, 559 U.S. 50 (2010)	5 <sup>th</sup> Amendment	N/A
Gamache v. California, 562 U.S. 1083 (2010)	Due Process	N/A
Graham v. Florida, 560 U.S. 48, 80-82, 101, 109, 114 n.12 (2010)	8 <sup>th</sup> Amendment	Kennedy (Opinion): Comparison Thomas (Dissent): Comparison
Holder v. Humanitarian Law Project, 561 U.S. 1 <sup>285</sup> (2010)	1 <sup>st</sup> Amendment	Roberts (Opinion): Background & Comparison

---

285. Entire case involved the interpretation of an international source, so no pincite is appended.

		Breyer (Dissent): Background & Comparison
Holland v. Florida, 560 U.S. 631 (2010)	Habeas	N/A
Hollingsworth v. Perry, 558 U.S. 183 (2010)	Miscellaneous	N/A
Jefferson v. Upton, 560 U.S. 284 (2010)	Habeas	N/A
Kiyemba v. Obama, 559 U.S. 131 (2010)	Habeas	N/A
Levin v. Commerce Energy, Inc., 560 U.S. 413 (2010)	Equal Protection	N/A
Lewis v. City of Chi., 560 U.S. 205 (2010)	Statutory	N/A
L.A. Cty. v. Humphries, 562 U.S. 29 (2010)	Statutory	N/A
Machado v. Holder, 559 U.S. 966 (2010)	6 <sup>th</sup> Amendment	N/A
Magwood v. Patterson, 561 U.S. 320 (2010)	Habeas	N/A
Maryland v. Shatzer, 559 U.S. 98 (2010)	5 <sup>th</sup> Amendment	N/A
McDaniel v. Brown, 558 U.S. 120 (2010)	Habeas	N/A
McDonald v. City of Chi., 561 U.S. 742, 767 n.15, 768-69, 81, 82 n.29, 813-18, 888 n.32, 895, 914-16, 924, 932 (2010)	Miscellaneous	Alito (Opinion): Background & Comparison Thomas (Concurrence): Background Stevens (Dissent): Comparison Breyer (Dissent): Background & Comparison
Nurre v. Whitehead, 559 U.S. 1025 (2010)	1 <sup>st</sup> Amendment	N/A
Padilla v. Kentucky, 559 U.S. 356 (2010)	6 <sup>th</sup> Amendment	N/A
Pitre v. Cain, 562 U.S. 992 (2010)	8 <sup>th</sup> Amendment	N/A
Presley v. Georgia, 558 U.S. 209 (2010)	6 <sup>th</sup> Amendment	N/A
Renico v. Lett, 559 U.S. 766, 780 n.2 & 3 (2010)	5 <sup>th</sup> Amendment	Stevens (Dissent): Background
Robertson v. Watson, 560 U.S. 272, 279 (2010)	5 <sup>th</sup> Amendment	Roberts (Dissent): Background & Comparison
Salazar v. Buono, 559 U.S. 700 (2010)	1 <sup>st</sup> Amendment	N/A
Sears v. Upton, 561 U.S. 945 (2010)	6 <sup>th</sup> Amendment	N/A
Skilling v. United States, 561 U.S. 358 (2010)	6 <sup>th</sup> Amendment	N/A
Smith v. Spisak, 558 U.S. 139 (2010)	6 <sup>th</sup> Amendment	N/A

Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot., 560 U.S. 702, 709, 722, 739 (2010)	5 <sup>th</sup> Amendment	Scalia (Opinion): Background Kennedy (Concurrence): Background
Thaler v. Haynes, 559 U.S. 43 (2010)	Habeas	N/A
United States v. Stevens, 559 U.S. 460 (2010)	1 <sup>st</sup> Amendment	N/A
Weise v. Casper, 562 U.S. 976 (2010)	1 <sup>st</sup> Amendment	N/A
Wellons v. Hall, 558 U.S. 220 (2010)	Habeas	N/A
Wilkins v. Gaddy, 559 U.S. 34 (2010)	8 <sup>th</sup> Amendment	N/A
Wilson v. Corcoran, 562 U.S. 1 (2010)	Habeas	N/A
Wong v. Smith, 562 U.S. 1021, 1023-25 (2010)	Habeas	Alito (Dissent): Background
Wood v. Allen, 558 U.S. 290 (2010)	6 <sup>th</sup> Amendment	N/A
Wrotten v. New York, 560 U.S. 959 (2010)	6 <sup>th</sup> Amendment	N/A
Ariz. Christian Sch. Tuition Org. v. Winn, 563 U.S. 125 (2011)	1 <sup>st</sup> Amendment	N/A
Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721 (2011)	1 <sup>st</sup> Amendment	N/A
Ashcroft v. al-Kidd, 563 U.S. 731 (2011)	4 <sup>th</sup> Amendment	N/A
Bobby v. Dixon, 565 U.S. 23 (2011)	5 <sup>th</sup> Amendment	N/A
Bobby v. Mitts, 563 U.S. 395 (2011)	Habeas	N/A
Borough of Duryea v. Guarnieri, 564 U.S. 379, 395-96 (2011)	1 <sup>st</sup> Amendment	Kennedy (Opinion): Background
Brown v. Entm't Merchs. Ass'n, 564 U.S. 786 (2011)	1 <sup>st</sup> Amendment	Thomas (Dissent): Background
Brown v. Plata, 563 U.S. 493 (2011)	8 <sup>th</sup> Amendment	N/A
Buck v. Thaler, 565 U.S. 1022 (2011)	Habeas	N/A
Camreta v. Greene, 563 U.S. 692 (2011)	4 <sup>th</sup> Amendment	N/A
Cavazos v. Smith, 565 U.S. 1 (2011)	Habeas	N/A
Connick v. Thompson, 563 U.S. 51 (2011)	Statutory	N/A

Cullen v. Pinholster, 563 U.S. 170 (2011)	Habeas	N/A
Davis v. United States, 564 U.S. 229 (2011)	4 <sup>th</sup> Amendment	N/A
FCC v. AT&T Inc., 562 U.S. 397 (2011)	Statutory	N/A
Felkner v. Jackson, 562 U.S. 594 (2011)	Habeas	N/A
Fox v. Vice, 563 U.S. 826 (2011)	Statutory	N/A
Garcia v. Texas, 564 U.S. 940 <sup>286</sup> (2011)	Due Process	Per Curiam: Background & Comparison Breyer (Dissent): Background & Comparison
Greene v. Fisher, 565 U.S. 34 (2011)	Habeas	N/A
Hardy v. Cross, 565 U.S. 65 (2011)	6 <sup>th</sup> Amendment	N/A
Harrington v. Richter, 562 U.S. 86 (2011)	6 <sup>th</sup> Amendment	N/A
Huber v. N.J. Dep't of Env'tl. Prot., 562 U.S. 1302 (2011)	4 <sup>th</sup> Amendment	N/A
J. D. B. v. North Carolina, 564 U.S. 261, 273 & n.6 (2011)	5 <sup>th</sup> Amendment	Sotomayor (Opinion): Background
Kentucky v. King, 563 U.S. 452 (2011)	4 <sup>th</sup> Amendment	N/A
Michigan v. Bryant, 562 U.S. 344, 353, 357 n.3, 358 n.4, 389-91, 394, 395 (2011)	6 <sup>th</sup> Amendment	Sotomayor (Opinion): Background Scalia (Dissent): Background Ginsburg (Dissent): Background
Milner v. Dep't of the Navy, 562 U.S. 562 (2011)	Statutory	N/A
NASA v. Nelson, 562 U.S. 134 (2011)	Miscellaneous	N/A
Nev. Comm'n on Ethics v. Carrigan, 564 U.S. 117 (2011)	1 <sup>st</sup> Amendment	N/A
Ortiz v. Jordan, 562 U.S. 180 (2011)	8 <sup>th</sup> Amendment	N/A
Pepper v. United States, 562 U.S. 476, 488 (2011)	6 <sup>th</sup> Amendment	Sotomayor (Opinion): Background
Premo v. Moore, 562 U.S. 115 (2011)	6 <sup>th</sup> Amendment	N/A
Schindler Elevator Corp. v. United States ex rel. Kirk, 563 U.S. 401 (2011)	Statutory	N/A
Skinner v. Switzer, 562 U.S. 521 (2011)	Due Process	N/A
Snyder v. Phelps, 562 U.S. 443 (2011)	1 <sup>st</sup> Amendment	N/A

---

286. Entire case involved the interpretation of an international source, so no pincite is appended.

<i>Staub v. Proctor Hosp.</i> , 562 U.S. 411 (2011)	Statutory	N/A
<i>Swarthout v. Cooke</i> , 562 U.S. 216 (2011)	Due Process	N/A
<i>Thompson v. N. Am. Stainless, LP</i> , 562 U.S. 170 (2011)	Statutory	N/A
<i>Turner v. Rogers</i> , 564 U.S. 431, 451 (2011)	Due Process	Thomas (Dissent): Background
<i>United States v. Tinklenberg</i> , 563 U.S. 647 (2011)	6 <sup>th</sup> Amendment	N/A
<i>Utah Highway Patrol Ass'n v. Am. Atheists, Inc.</i> , 565 U.S. 994 (2011)	1 <sup>st</sup> Amendment	N/A
<i>Valle v. Florida</i> , 564 U.S. 1067 (2011)	8 <sup>th</sup> Amendment	N/A
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011)	Statutory	N/A
<i>Walker v. Martin</i> , 562 U.S. 307 (2011)	Habeas	N/A
<i>Wall v. Kholi</i> , 562 U.S. 545 (2011)	Habeas	N/A
<i>Am. Tradition P'ship, Inc. v. Bullock</i> , 567 U.S. 516 (2012)	1 <sup>st</sup> Amendment	N/A
<i>Ark. Game &amp; Fish Comm'n v. United States</i> , 568 U.S. 23 (2012)	5 <sup>th</sup> Amendment	N/A
<i>Armour v. City of Indianapolis</i> , 566 U.S. 673 (2012)	Equal Protection	N/A
<i>Blueford v. Arkansas</i> , 566 U.S. 599, 611, 618 (2012)	5 <sup>th</sup> Amendment	Sotomayor (Dissent): Background
<i>Cash v. Maxwell</i> , 565 U.S. 1138 (2012)	Habeas	N/A
<i>Coleman v. Johnson</i> , 566 U.S. 650 (2012)	Due Process	N/A
<i>Delling v. Idaho</i> , 568 U.S. 1038, 1039 (2012)	Due Process	Breyer (Dissent): Background
<i>FAA v. Cooper</i> , 566 U.S. 284 (2012)	Statutory	N/A
<i>Fairey v. Tucker</i> , 567 U.S. 924 (2012)	6 <sup>th</sup> Amendment	N/A
<i>FCC v. Fox TV Stations, Inc.</i> , 567 U.S. 239 (2012)	5 <sup>th</sup> Amendment	N/A
<i>Filarsky v. Delia</i> , 566 U.S. 377, 388 (2012)	4 <sup>th</sup> Amendment	Roberts (Opinion): Background
<i>Florence v. Bd. of Chosen Freeholders</i> , 566 U.S. 318 (2012)	4 <sup>th</sup> Amendment	N/A

Golan v. Holder, 565 U.S. 302 <sup>287</sup> (2012)	1 <sup>st</sup> Amendment	Ginsburg (Opinion): Background & Comparison Breyer (Dissent): Background & Comparison
Gonzalez v. Thaler, 565 U.S. 134 (2012)	Habeas	N/A
Haynes v. Thaler, 133 S. Ct. 639 (2012)	Habeas	N/A
Hobby Lobby Stores, Inc. v. Sebelius, 568 U.S. 1401 (2012)	1 <sup>st</sup> Amendment	N/A
Hodge v. Kentucky, 568 U.S. 1056 (2012)	6 <sup>th</sup> Amendment	N/A
Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 182 (2012)	1 <sup>st</sup> Amendment	Roberts (Opinion): Background
Howes v. Fields, 565 U.S. 499 (2012)	5 <sup>th</sup> Amendment	N/A
Knox v. SEIU, Local 1000, 567 U.S. 298 (2012)	1 <sup>st</sup> Amendment	N/A
Lafler v. Cooper, 566 U.S. 156, 185 (2012)	6 <sup>th</sup> Amendment	Kennedy (Opinion): Comparison
Maples v. Thomas, 565 U.S. 266 (2012)	Habeas	N/A
Martel v. Clair, 565 U.S. 648 (2012)	Habeas	N/A
Martinez v. Ryan, 566 U.S. 1 (2012)	6 <sup>th</sup> Amendment	N/A
Messerschmidt v. Millender, 565 U.S. 535, 573 n.14 (2012)	4 <sup>th</sup> Amendment	Sotomayor (Dissent): Background
Miller v. Alabama, 567 U.S. 460 (2012)	8 <sup>th</sup> Amendment	N/A
Minnecci v. Pollard, 565 U.S. 118 (2012)	8 <sup>th</sup> Amendment	N/A
Missouri v. Frye, 566 U.S. 134 (2012)	6 <sup>th</sup> Amendment	N/A
Mount Soledad Mem'l Ass'n v. Trunk, 567 U.S. 944 (2012)	1 <sup>st</sup> Amendment	N/A
Parker v. Matthews, 567 U.S. 37 (2012)	Habeas	N/A
Perry v. Perez, 565 U.S. 388 (2012)	Statutory	N/A
Perry v. New Hampshire, 565 U.S. 228 (2012)	Due Process	N/A

---

287. Entire case involved the interpretation of an international source, so no pincite is appended.

Rehberg v. Paulk, 566 U.S. 356 (2012)	Statutory	N/A
Reichle v. Howards, 566 U.S. 658 (2012)	1 <sup>st</sup> Amendment	N/A
Ryburn v. Huff, 565 U.S. 469 (2012)	4 <sup>th</sup> Amendment	N/A
Sackett v. EPA, 566 U.S. 120 (2012)	Due Process	N/A
Smith v. Cain, 565 U.S. 73 (2012)	Due Process	N/A
S. Union Co. v. United States, 567 U.S. 343, 353-54, 356, 368-73, 379, 385 (2012)	6 <sup>th</sup> Amendment	Sotomayor (Opinion): Background Breyer (Dissent): Background & Comparison
Tennant v. Jefferson Cty. Comm'n, 567 U.S. 758 (2012)	Equal Protection	N/A
United States v. Alvarez, 567 U.S. 709 (2012)	1 <sup>st</sup> Amendment	N/A
United States v. Jones, 565 U.S. 400, 404-05 (2012)	4 <sup>th</sup> Amendment	Scalia (Opinion) Background
Wetzel v. Lambert, 565 U.S. 520 (2012)	Habeas	N/A
Williams v. Illinois, 567 U.S. 50, 68, 73, 94-95, 115, 117 (2012)	6 <sup>th</sup> Amendment	Alito (Opinion): Background Breyer (Concurrence): Background Thomas (Concurrence): Background
Wood v. Milyard, 566 U.S. 463 (2012)	Habeas	N/A
Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. 205 (2013)	1 <sup>st</sup> Amendment	N/A
Alleyne v. United States, 133 S. Ct. 2151, 2158, 2159-60, 2163 n.6, 2169 (2013)	6 <sup>th</sup> Amendment	Thomas (Opinion): Background Roberts (Dissent): Background
Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1 (2013)	Statutory	N/A
Bailey v. United States, 568 U.S. 186 (2013)	4 <sup>th</sup> Amendment	N/A
Boyer v. Louisiana, 569 U.S. 238 (2013)	6 <sup>th</sup> Amendment	N/A
Burt v. Titlow, 134 S. Ct. 10 (2013)	Habeas	N/A
Calhoun v. United States, 568 U.S. 1206 (2013)	Equal Protection	N/A
Chaidez v. United States, 568 U.S. 342 (2013)	6 <sup>th</sup> Amendment	N/A
Descamps v. United States, 570 U.S. 254 (2013)	6 <sup>th</sup> Amendment	N/A
Evans v. Michigan, 568 U.S. 313 (2013)	5 <sup>th</sup> Amendment	N/A



Fisher v. Univ. of Tex., 570 U.S. 297 (2013)	Equal Protection	N/A
Florida v. Harris, 568 U.S. 237 (2013)	4th Amendment	N/A
Florida v. Jardines, 569 U.S. 1, 6-8, 23 (2013)	4th Amendment	Scalia (Opinion): Background Alito (Dissent): Background & Comparison
Gallow v. Cooper, 133 S. Ct. 2730 (2013)	6 <sup>th</sup> Amendment	N/A
Horne v. Dep't of Agric., 569 U.S. 513 (2013)	5 <sup>th</sup> Amendment	N/A
Johnson v. Williams, 568 U.S. 289 (2013)	Habeas	N/A
Kansas v. Cheever, 134 S. Ct. 596 (2013)	5 <sup>th</sup> Amendment	N/A
Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013)	5 <sup>th</sup> Amendment	N/A
Maracich v. Spears, 570 U.S. 48 (2013)	Statutory	N/A
Marek v. Lane, 134 S. Ct. 8 (2013)	Statutory	N/A
Marshall v. Rodgers, 569 U.S. 58 (2013)	6 <sup>th</sup> Amendment	N/A
Maryland v. King, 569 U.S. 435 (2013)	4 <sup>th</sup> Amendment	N/A
McBurney v. Young, 569 U.S. 221, 233 (2013)	Statutory	Alito (Opinion): Background
McQuiggin v. Perkins, 569 U.S. 383, 409 (2013)	Habeas	Scalia (Dissent): Background
Metrish v. Lancaster, 569 U.S. 351 (2013)	Due Process	N/A
Missouri v. McNeely, 569 U.S. 141 (2013)	4th Amendment	N/A
Nevada v. Jackson, 569 U.S. 505 (2013)	6 <sup>th</sup> Amendment	N/A
Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 134 S. Ct. 506 (2013)	Due Process	N/A
Rapelje v. McClellan, 134 S. Ct. 399 (2013)	Habeas	N/A
Ryan v. Gonzales, 568 U.S. 57, 66 n.4 (2013)	Habeas	Thomas (Opinion): Background
Salinas v. Texas, 570 U.S. 178 (2013)	5 <sup>th</sup> Amendment	N/A
Shelby Cty. v. Holder, 570 U.S. 529 (2013)	Statutory	N/A
Stanton v. Sims, 134 S. Ct. 3 (2013)	4 <sup>th</sup> Amendment	N/A

Trevino v. Thaler, 569 U.S. 413 (2013)	6 <sup>th</sup> Amendment	N/A
Unger v. Young, 134 S. Ct. 20 (2013)	Habeas	N/A
United States v. Windsor, 133 S. Ct. 2675, 2699, 2715 & n.4 (2013)	Equal Protection	Roberts (Dissent): Background Alito (Dissent): Comparison
Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338 (2013)	Statutory	N/A
Vance v. Ball State Univ., 570 U.S. 421 (2013)	Statutory	N/A
Woodward v. Alabama, 134 S. Ct. 405 (2013)	8 <sup>th</sup> Amendment	N/A
Air Wis. Airlines Corp. v. Hooper, 134 S. Ct. 852 (2014)	1 <sup>st</sup> Amendment	N/A
Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2770 n.23, 2796 (2014)	1 <sup>st</sup> Amendment	Alito (Opinion): Background Ginsburg (Dissent): Background
Carroll v. Carman, 135 S. Ct. 348 (2014)	4 <sup>th</sup> Amendment	N/A
Elmbrook Sch. Dist. v. Doe, 134 S. Ct. 2283 (2014)	1 <sup>st</sup> Amendment	N/A
Fernandez v. California, 134 S. Ct. 1126 (2014)	4 <sup>th</sup> Amendment	N/A
Glebe v. Frost, 135 S. Ct. 429 (2014)	Habeas	N/A
Hall v. Florida, 134 S. Ct. 1986 (2014)	8 <sup>th</sup> Amendment	N/A
Harris v. Quinn, 134 S. Ct. 2618 (2014)	1 <sup>st</sup> Amendment	N/A
Heien v. North Carolina, 135 S. Ct. 530 (2014)	4 <sup>th</sup> Amendment	N/A
Hinton v. Alabama, 134 S. Ct. 1081 (2014)	6 <sup>th</sup> Amendment	N/A
Jones v. United States, 135 S. Ct. 8 (2014)	6 <sup>th</sup> Amendment	N/A
Kaley v. United States, 134 S. Ct. 1090, 1114 (2014)	6 <sup>th</sup> Amendment	Roberts (Dissent): Background
Lane v. Franks, 134 S. Ct. 2369 (2014)	1 <sup>st</sup> Amendment	N/A
Lopez v. Smith, 135 S. Ct. 1 (2014)	Habeas	N/A
Martinez v. Illinois, 134 S. Ct. 2070 (2014)	5 <sup>th</sup> Amendment	N/A
McCullen v. Coakley, 134 S. Ct. 2518 (2014)	1 <sup>st</sup> Amendment	N/A
McCutcheon v. FEC, 134 S. Ct. 1434 (2014)	1 <sup>st</sup> Amendment	N/A

Mount Soledad Mem'l Ass'n v. Trunk, 134 S. Ct. 2658 (2014)	1 <sup>st</sup> Amendment	N/A
Navarette v. California, 134 S. Ct. 1683 (2014)	4 <sup>th</sup> Amendment	N/A
North Carolina v. League of Women Voters, 135 S. Ct. 6 (2014)	Statutory	N/A
Plumhoff v. Rickard, 134 S. Ct. 2012 (2014)	4 <sup>th</sup> Amendment	N/A
Redd v. Chappell, 135 S. Ct. 712 (2014)	6 <sup>th</sup> Amendment	N/A
Riley v. California, 134 S. Ct. 2473, 2495 (2014)	4 <sup>th</sup> Amendment	Alito (Concurrence): Background
Schuette v. Coal. to Defend Affirmative Action, 134 S. Ct. 1623 (2014)	Equal Protection	N/A
Susan B. Anthony List v. Driehaus, 134 S. Ct. 2334 (2014)	1 <sup>st</sup> Amendment	N/A
Tolan v. Cotton, 134 S. Ct. 1861 (2014)	4 <sup>th</sup> Amendment	N/A
Town of Greece v. Galloway, 134 S. Ct. 1811 (2014)	1 <sup>st</sup> Amendment	N/A
Veasey v. Perry, 135 S. Ct. 9 (2014)	Statutory	N/A
Walden v. Fiore, 134 S. Ct. 1115 (2014)	Due Process	N/A
White v. Woodall, 134 S. Ct. 1697 (2014)	Habeas	N/A
Williams v. Johnson, 134 S. Ct. 2659 (2014)	6 <sup>th</sup> Amendment	N/A
Wood v. Moss, 134 S. Ct. 2056 (2014)	1 <sup>st</sup> Amendment	N/A
Ala. Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015)	Equal Protection	N/A
Bower v. Texas, 135 S. Ct. 1291 (2015)	8 <sup>th</sup> Amendment	N/A
Brumfield v. Cain, 135 S. Ct. 2269 (2015)	Habeas	N/A
Christeson v. Roper, 135 S. Ct. 891 (2015)	Habeas	N/A
City & Cty. of S.F. v. Sheehan, 135 S. Ct. 1765 (2015)	4 <sup>th</sup> Amendment	N/A
Cty. of Maricopa v. Lopez-Valenzuela, 135 S. Ct. 2046 (2015)	Due Process	N/A

Davis v. Ayala, 135 S. Ct. 2187, 2209 (2015)	Habeas	Kennedy (Concurrence): Background
Elonis v. United States, 135 S. Ct. 2001, 2024 (2015)	1 <sup>st</sup> Amendment	Thomas (Dissent): Background
EEOC v. Abercrombie & Fitch Stores, Inc., 135 S. Ct. 2028 (2015)	Statutory	N/A
Friedman v. City of Highland Park, 136 S. Ct. 447 (2015)	Miscellaneous	N/A
Glossip v. Gross, 135 S. Ct. 2726, 2755, 2761, 2767, 2769, 2775-76 (2015)	8 <sup>th</sup> Amendment	Breyer (Dissent): Background & Comparison
Grady v. North Carolina, 135 S. Ct. 1368 (2015)	4 <sup>th</sup> Amendment	N/A
Hittson v. Chatman, 135 S. Ct. 2126 (2015)	Habeas	N/A
Holt v. Hobbs, 135 S. Ct. 853 (2015)	Statutory	N/A
Horne v. Dep't of Agric., 135 S. Ct. 2419, 2426 (2015)	5 <sup>th</sup> Amendment	Roberts (Opinion): Background
Jackson v. City & Cty. of S.F., 135 S. Ct. 2799 (2015)	Miscellaneous	N/A
Jennings v. Stephens, 135 S. Ct. 793 (2015)	Habeas	N/A
Johnson v. United States, 135 S. Ct. 2551, 2567-68, 2572 (2015)	Due Process	Thomas (Concurrence): Background
Jordan v. Fisher, 135 S. Ct. 2647 (2015)	Habeas	N/A
Joyner v. Barnes, 135 S. Ct. 2643 (2015)	Habeas	N/A
Kalamazoo Cty. Rd. Comm'n v. Deleon, 135 S. Ct. 783 (2015)	Equal Protection	N/A
Kerry v. Din, 135 S. Ct. 2128, 2132-2133, 2137 (2015)	Due Process	Scalia (Opinion): Background
Mach Mining, LLC v. EEOC, 135 S. Ct. 1645 (2015)	Statutory	N/A
Maryland v. Kulbicki, 136 S. Ct. 2 (2015)	6 <sup>th</sup> Amendment	N/A
Mullenix v. Luna, 136 S. Ct. 305 (2015)	4 <sup>th</sup> Amendment	N/A
N.H. Right to Life v. HHS, 136 S. Ct. 383 (2015)	Statutory	N/A
Obergefell v. Hodges, 135 S. Ct. 2584, 2595, 2613, 2632-33, 2633 n.2, 2634 n.4 (2015)	Equal Protection	Kennedy (Opinion): Background Roberts (Dissent): Background Thomas (Dissent): Background

Ohio v. Clark, 135 S. Ct. 2173, 2182, 2186 (2015)	6 <sup>th</sup> Amendment	Alito (Opinion): Background Thomas (Concurrence): Background
Plumley v. Austin, 135 S. Ct. 828 (2015)	Habeas	N/A
Rapelje v. Blackston, 136 S. Ct. 388 (2015)	6 <sup>th</sup> Amendment	N/A
Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015)	1 <sup>st</sup> Amendment	N/A
Rodriguez v. United States, 135 S. Ct. 1609 (2015)	4 <sup>th</sup> Amendment	N/A
Shapiro v. McManus, 136 S. Ct. 450 (2015)	1 <sup>st</sup> Amendment	N/A
Strange v. Searcy, 135 S. Ct. 940 (2015)	Equal Protection	N/A
Taylor v. Barks, 135 S. Ct. 2042 (2015)	Statutory	N/A
Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S. Ct. 2507, 2530 (2015)	Equal Protection	Thomas (Dissent): Background & Comparison
Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239 (2015)	1 <sup>st</sup> Amendment	N/A
Warner v. Gross, 135 S. Ct. 824 (2015)	8 <sup>th</sup> Amendment	N/A
White v. Wheeler, 136 S. Ct. 456 (2015)	6 <sup>th</sup> Amendment	N/A
Williams-Yulee v. Fla. Bar, 135 S. Ct. 1656, 1666, 1685 (2015)	1 <sup>st</sup> Amendment	Roberts (Opinion): Background Kennedy (Dissent): Comparison
Woods v. Donald, 135 S. Ct. 1372 (2015)	Habeas	N/A
Young v. UPS, 135 S. Ct. 1338 (2015)	Statutory	N/A
Adams v. Alabama, 136 S. Ct. 1796 (2016)	8 <sup>th</sup> Amendment	N/A
Am. Freedom Def. Initiative v. King Cty., 136 S. Ct. 1022 (2016)	1 <sup>st</sup> Amendment	N/A
Arrigoni Enters., LLC v. Town of Durham, 136 S. Ct. 1409 (2016)	5 <sup>th</sup> Amendment	N/A
Ben-Levi v. Brown, 136 S. Ct. 930 (2016)	1 <sup>st</sup> Amendment	N/A
Betterman v. Montana, 136 S. Ct. 1609, 1614 (2016)	6 <sup>th</sup> Amendment	Ginsburg (Opinion): Background
Birchfield v. North Dakota, 136 S. Ct. 2160 (2016)	4 <sup>th</sup> Amendment	N/A
Bosse v. Oklahoma, 137 S. Ct. 1 (2016)	8 <sup>th</sup> Amendment	N/A

Boyer v. Davis, 136 S. Ct. 1446 (2016)	8 <sup>th</sup> Amendment	N/A
Bravo-Fernandez v. United States, 137 S. Ct. 352, 366-67 (2016)	5 <sup>th</sup> Amendment	Thomas (Concurrence): Background
Brooks v. Alabama, 136 S. Ct. 708 (2016)	8 <sup>th</sup> Amendment	N/A
Caetano v. Massachusetts, 136 S. Ct. 1027 (2016)	Miscellaneous	N/A
Cal. Bldg. Indus. Ass'n v. City of San Jose, 136 S. Ct. 928 (2016)	5 <sup>th</sup> Amendment	N/A
Conner v. Sellers, 136 S. Ct. 2440 (2016)	8 <sup>th</sup> Amendment	N/A
CRST Van Expedited, Inc. v. EEOC, 136 S. Ct. 1642 (2016)	Statutory	N/A
Del. Strong Families v. Denn, 136 S. Ct. 2376 (2016)	1 <sup>st</sup> Amendment	N/A
Elmore v. Holbrook, 137 S. Ct. 3 (2016)	6 <sup>th</sup> Amendment	N/A
Evenwel v. Abbott, 136 S. Ct. 1120, 1138 (2016)	Equal Protection	Thomas (Concurrence): Background
Fisher v. Univ. of Tex., 136 S. Ct. 2198 (2016)	Equal Protection	N/A
Flowers v. Mississippi, 136 S. Ct. 2157 (2016)	Equal Protection	N/A
Foster v. Chatman, 136 S. Ct. 1737 (2016)	Equal Protection	N/A
Green v. Brennan, 136 S. Ct. 1769 (2016)	Statutory	N/A
Harris v. Ariz. Indep. Redistricting Comm'n, 136 S. Ct. 1301 (2016)	Equal Protection	N/A
Heffernan v. City of Paterson, 136 S. Ct. 1412 (2016)	1 <sup>st</sup> Amendment	N/A
Hurst v. Florida, 136 S. Ct. 616 (2016)	6 <sup>th</sup> Amendment	N/A
James v. City of Boise, 136 S. Ct. 685 (2016)	Statutory	N/A
Johnson v. Lee, 136 S. Ct. 1802 (2016)	Habeas	N/A
Kansas v. Carr, 136 S. Ct. 633 (2016)	8 <sup>th</sup> Amendment	N/A
Kernan v. Hinojosa, 136 S. Ct. 1603 (2016)	Habeas	N/A
Luis v. United States, 136 S. Ct. 1083, 1094, 1098, 1099-1100, 1106-07 (2016)	6 <sup>th</sup> Amendment	Breyer (Opinion): Background Thomas (Concurrence): Background Kennedy (Dissent): Background

Lynch v. Arizona, 136 S. Ct. 1818 (2016)	Due Process	N/A
Montgomery v. Louisiana, 136 S. Ct. 718 (2016)	8 <sup>th</sup> Amendment	N/A
Musacchio v. United States, 136 S. Ct. 709 (2016)	Due Process	N/A
Puerto Rico v. Sánchez Valle, 136 S. Ct. 1863, 1882, 1884 (2016)	5 <sup>th</sup> Amendment	Breyer (Dissent): Background & Comparison
Sireci v. Florida, 137 S. Ct. 470 (2016)	8 <sup>th</sup> Amendment	N/A
Stormans, Inc. v. Wiesman, 136 S. Ct. 2433 (2016)	1 <sup>st</sup> Amendment	N/A
Tatum v. Arizona, 137 S. Ct. 11 (2016)	8 <sup>th</sup> Amendment	N/A
Taylor v. Yee, 136 S. Ct. 929 (2016)	Due Process	N/A
Tucker v. Louisiana, 136 S. Ct. 1801 (2016)	8 <sup>th</sup> Amendment	N/A
United States v. Bryant, 136 S. Ct. 1954 (2016)	6 <sup>th</sup> Amendment	N/A
Utah v. Strieff, 136 S. Ct. 2056 (2016)	4 <sup>th</sup> Amendment	N/A
Weary v. Cain, 136 S. Ct. 1002 (2016)	Due Process	N/A
Welch v. United States, 136 S. Ct. 1257 (2016)	Due Process	N/A
Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016)	Due Process	N/A
Williams v. Louisiana, 136 S. Ct. 2156 (2016)	Equal Protection	N/A
Williams v. Pennsylvania, 136 S. Ct. 1899, 1917-18, 1922 (2016)	Due Process	Thomas (Dissent): Background
Woods v. Etherton, 136 S. Ct. 1149 (2016)	6 <sup>th</sup> Amendment	N/A
Zubik v. Burwell, 136 S. Ct. 1557 (2016)	Statutory	N/A

