

OT 04 Case Summaries

543 U. S., Part 1

[Leocal v. Ashcroft](#), 543 U. S. ____ (2004)

R001; No. 03-583; 11/09/04. State driving-under-the-influence offenses, such as Florida's, which either do not have a mens rea component or require only a showing of negligence in the operation of a vehicle, are not crimes of violence under 18 U. S. C. §16 and therefore are not aggravated felonies that can subject aliens to deportation under the Immigration and Nationality Act.

[Norfolk Southern R. Co. v. James N. Kirby, Pty Ltd.](#), 543 U. S. ____ (2004)

R002; No. 02-1028; 11/09/04. Federal maritime law governs the interpretation of two bills of lading arranging the intercontinental delivery of goods to the inland United States; petitioner railroad is entitled to be protected by those bills' liability limitations in an action for damages caused by a train wreck on the last, inland leg of the goods' journey.

[Smith v. Texas](#), 543 U. S. ____ (2004) (*per curiam*)

R003; No. 04-5323; 11/15/04. The instruction given in the penalty phase of petitioner's capital murder trial-which allowed the jury to give effect to mitigation evidence only by negating what would otherwise be affirmative responses to two special issues relating to deliberateness and future dangerousness-was constitutionally inadequate under *Penry v. Johnson*, 532 U. S. 782.

[Koons Buick Pontiac GMC, Inc. v. Nigh](#), 543 U. S. ____ (2004)

R004; No. 03-377; 11/30/04. The 1995 amendment adding clause (a)(2)(A)(iii) to 15 U. S. C. §1640, the Truth in Lending Act's civil-liability provision, raised the statutory damages recoverable for TILA violations involving real-property-secured loans, but left unaltered the \$100/\$1,000 minimum and maximum recoveries previously prescribed for TILA violations involving personal-property loans.

[San Diego v. Roe](#), 543 U. S. ____ (2004) (*per curiam*)

R005; No. 03-1669; 12/6/04. The city of San Diego did not violate respondent police officer's First and Fourteenth Amendment rights to freedom of speech when it terminated him for selling videotapes of himself engaging in sexually explicit acts while wearing a police uniform and for related activity.

[Kansas v. Colorado](#), 543 U. S. ____ (2004)

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R006; No. 105, Orig.; 12/7/04. Kansas' exceptions to the Special Master's Fourth Report are overruled, the Master's recommendations are accepted, and the case is recommitted to the Master for preparation of a decree.

[KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.](#), 543 U. S. ____ (2004)

R007; No. 03-409; 12/8/04. A party raising the statutory affirmative defense of fair use to a claim of trademark infringement does not have a burden to negate any likelihood that the practice complained of will confuse consumers about the origin of the goods or services affected.

[Kowalski v. Tesmer](#), 543 U. S. ____ (2004)

R008; No. 03-407; 12/13/04. Respondent attorneys lack third-party standing to assert the rights of indigent defendants to challenge Michigan's procedure denying appointed appellate counsel to indigents pleading guilty or nolo contendere.

[Devenpeck v. Alford](#), 543 U. S. ____ (2004)

R009; No. 03-710; 12/13/04. A warrantless arrest by a law officer is reasonable under the Fourth Amendment if, given the facts known to the officer, there is probable cause to believe that a crime has been or is being committed; it is not made unlawful by the fact that the offense establishing probable cause is not "closely related" to the offense stated by the arresting officer at the time of arrest.

[Cooper Industries, Inc. v. Aviall Services, Inc.](#), 543 U. S. ____ (2004)

R010; No. 02-1192; 12/13/04. A private party who has not been sued under §106 or §107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 may not obtain contribution under §113(f)(1) of that Act from other liable parties.

[Florida v. Nixon](#), 543 U. S. ____ (2004)

R011; No. 03-931; 12/13/04. Counsel's failure to obtain the defendant's express consent to a strategy of conceding guilt in a capital trial does not automatically render counsel's performance constitutionally deficient; such counsel's effectiveness should be evaluated under the reasonableness standard prescribed in *Strickland v. Washington*, 466 U. S. 668.

[Brosseau v. Haugen](#), 543 U. S. ____ (2004)

R012; No. 03-1261; 12/13/04. The Ninth Circuit erred in denying Officer Brosseau qualified immunity under *Saucier v. Katz*, 533 U. S. 194, 201-202, in *Haugen's* 42 U. S. C. §1983 civil

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action; at the time Brosseau shot Haugen while he was fleeing police in his vehicle, the pertinent cases did not "clearly establish" that Brosseau's conduct violated the Fourth Amendment.

[Whitfield v. United States](#), 543 U. S. ____ (2005)

R013; No. 03-1293; 1/11/05. Conviction for conspiracy to commit money laundering, in violation of 18 U. S. C. §1956(h), does not require proof of an overt act in furtherance of the conspiracy.

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[United States v. Booker](#), 543 U. S. ____ (2005)

R014; No. 04-104; 1/12/05. The Sixth Amendment as construed in *Blakely v. Washington*, 542 U. S. ____, applies to the Federal Sentencing Guidelines; the Sentencing Reform Act of 1984 provision making those Guidelines mandatory, 18 U. S. C. §3553(b)(1), must be severed and excised from the Act, as must §3742(e), which depends upon the Guidelines' mandatory nature.

[Jama v. Immigration and Customs Enforcement](#), 543 U. S. ____ (2005)

R015; No. 03-674; 1/12/05. Title 8 U. S. C. §1231(b)(2)(E)(iv) permits an alien to be removed to a country without the advance consent of that country's government.

[Clark v. Martinez](#), 543 U. S. ____ (2005)

R016; No. 03-878; 1/12/05. Under 8 U. S. C. §1231(a)(6), the Secretary of Homeland Security may detain inadmissible aliens beyond a statutory 90-day removal period, but only so long as is reasonably necessary to achieve removal; because both aliens here were detained well beyond the presumptive time allotted to remove them and their removal to Cuba is not reasonably foreseeable, their habeas petitions should have been granted.

[Illinois v. Caballes](#), 543 U. S. ____ (2005)

R017; No. 03-923; 1/24/05. A sniff by a narcotics-detection dog that is conducted by the police during a concededly lawful traffic stop does not violate the Fourth Amendment where the sniff reveals no information other than the location of a substance that no individual has any right to possess.

[Commissioner v. Banks](#), 543 U. S. ____ (2005)

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R018; No. 03-892; 1/24/05. When a litigant's recovery constitutes income, the litigant's gross income for federal income tax purposes includes the portion of the recovery paid to the attorney as a contingent fee.

[Howell v. Mississippi](#), 543 U. S. ____ (2005) (*per curiam*)

R019; No. 03-9560; 1/24/05. The writ of certiorari is dismissed as improvidently granted because petitioner did not raise his claim in the Mississippi Supreme Court that that State's courts violated his Eighth and Fourteenth Amendment rights by refusing to require a jury instruction about a lesser-included offense in his capital case.

[Bell v. Cone](#), 543 U. S. ____ (2005) (*per curiam*)

R020; No. 04-394; 1/24/05. The Sixth Circuit erred in granting respondent habeas relief because, in finding that the statutory aggravating circumstance found by the jury at sentencing was unconstitutionally vague and that the Tennessee Supreme Court failed to cure this vagueness on direct appeal, the Sixth Circuit failed to accord the state court the deference required by 28 U. S. C. §2254(d).

[Smith v. Massachusetts](#), 543 U. S. ____ (2005)

R021; No. 03-8661; 2/22/05. Once the defense went forward with its case, the Double Jeopardy Clause forbade the judge to reconsider her midtrial decision to acquit petitioner of one of the charges.

[Stewart v. Dutra Constr. Co.](#), 543 U. S. ____ (2005)

R022; No. 03-814; 2/22/05. A dredge is a "vessel" under the Longshore and Harbor Workers' Compensation Act.

[Johnson v. California](#), 543 U. S. ____ (2005)

R023; No. 03-636; 2/23/05. Strict scrutiny is the proper standard of review for an equal protection challenge to the California Department of Corrections' unwritten policy of racially segregating male prisoners in double cells for up to 60 days each time they enter a new correctional facility.

[Roper v. Simmons](#), 543 U. S. ____ (2005)

R024; No. 03-633; 3/01/05. The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.

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[Cherokee Nation of Okla. v. Leavitt, 543 U. S. ____ \(2005\)](#)

R025; No. 04-1472; 3/01/05. The Federal Government's promises to pay certain "contract support costs," 25 U. S. C. §450j-1(a)(2), incurred by these Indian Tribes, are legally binding.

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[Tenet v. Doe, 544 U. S. 1 \(2005\)](#)

R026; No. 03-1395; 3/2/05. The rule of *Totten v. United States*, 92 U. S. 105, prohibiting suits against the Government based on covert espionage agreements bars respondents' suit alleging that the Central Intelligence Agency failed to provide them with financial assistance it had promised in return for their espionage activities during the Cold War.

[Shepard v. United States, 544 U. S. 1 \(2005\)](#)

R027; No. 03-9168; 3/7/05. Enquiry under the Armed Career Criminal Act-which mandates an enhanced sentence for a felon possessing a firearm after three prior convictions for, *inter alia*, violent felonies-to determine whether a prior guilty plea to burglary defined by a nongeneric state statute necessarily admitted elements of the generic offense is limited to the terms of the charging document, to the terms of a plea agreement or transcript of colloquy between judge and defendant in which the defendant confirmed the factual basis for the plea, or to some comparable judicial record of this information.

[Ballard v. Commissioner, 544 U. S. 1 \(2005\)](#)

R028; No. 03-184; 3/7/05. No statute authorizes, and Tax Court Rule 183's current text does not warrant, that court's practice of excluding from the record on appeal reports submitted to the court by special trial judges conducting hearings in cases involving tax deficiencies exceeding \$50,000.

[Wilkinson v. Dotson, 544 U. S. 1 \(2005\)](#)

R029; No. 03-287; 3/7/05. State prisoners may bring a 42 U. S. C. §1983 action for declaratory and injunctive relief challenging the constitutionality of state parole procedures; they need not seek relief exclusively under the federal habeas corpus statutes.

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[Dura Pharmaceuticals, Inc. v. Broudo, 544 U. S. ____ \(2005\)](#)

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R040; No. 03-932; 4/19/05. In a securities fraud action, a security's inflated purchase price will not by itself constitute or cause the relevant economic loss needed to allege and prove "loss causation" under 15 U. S. C. §78u-4(b)(4); respondents' complaint was legally insufficient in respect to its "loss causation" allegation.

[Pasquantino v. United States](#), 544 U. S. ____ (2005)

R041; No. 03-725; 4/26/05. A plot to defraud a foreign government of tax revenue violates the federal wire fraud statute, 18 U. S. C. §1343, and a prosecution for such fraud does not derogate from the common-law revenue rule barring courts from enforcing foreign sovereigns' tax laws.

[Small v. United States](#), 544 U. S. ____ (2005)

R042; No. 03-750; 4/26/05. Title 18 U. S. C. §922(g)(1), which forbids a felon "convicted in any court" from possessing a firearm, applies only to convictions entered in a domestic court, not to foreign convictions.

[Pace v. DiGuglielmo](#), 544 U. S. ____ (2005)

R043; No. 03-9627; 4/27/05. Because petitioner filed his federal habeas petition beyond the deadline and is not entitled to statutory or equitable tolling for the time his untimely state postconviction petition was pending, his federal petition is barred by the Antiterrorism and Effective Death Penalty Act of 1996's statute of limitations.

[Bates v. Dow Agrosciences LLC](#), 544 U. S. ____ (2005)

R044; No. 03-388; 4/27/05. The Federal Insecticide, Fungicide, and Rodenticide Act's pre-emption provision applies only to state-law "requirements for labeling and packaging," 7 U. S. C. §136v(b); petitioner farmers' defective design, defective manufacture, negligent testing, and breach of express warranty claims against respondent pesticide producer were not premised on such requirements and are thus not pre-empted; while their fraud and negligent-failure-to-warn claims are based on common-law rules that qualify as labeling and packaging requirements, the Court of Appeals should resolve in the first instance whether those claims are pre-empted.

[Granholm v. Heald](#), 544 U. S. ____ (2005)

R045; No. 03-1116; 5/16/05. Michigan and New York laws limiting the direct sale of out-of-state wines discriminate against interstate commerce in violation of the Commerce Clause, and that discrimination is neither authorized nor permitted by the Twenty-first Amendment.

[Lingle v. Chevron U. S. A. Inc.](#), 544 U. S. ____ (2005)

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R046; No. 04-163; 5/23/05. The formula set forth in *Agins v. City of Tiburon*, 447 U. S. 255, 260-where the Court declared that government regulation of private property "effects a [compensable] taking if [it] does not substantially advance legitimate state interests"-is not an appropriate test for determining whether a regulation effects a Fifth Amendment taking.

Johanns v. Livestock Marketing Assn., 544 U. S. ____ (2005)

R047; No. 03-1164; 5/23/05. Because a federally imposed assessment (or checkoff) on cattle sales and imports is used to fund the Federal Government's own speech, it is not susceptible to a First Amendment compelled-subsidy challenge.

Clingman v. Beaver, 544 U. S. ____ (2005)

R048; No. 04-37; 5/23/05. The Tenth Circuit's decision invalidating Oklahoma's semiclosed primary system as violative of the First Amendment right to freedom of association is reversed, and the case is remanded.

Deck v. Missouri, 544 U. S. ____ (2005)

R049; No. 04-5293; 5/23/05. The Constitution forbids the use of visible shackles during a capital trial's penalty phase, as it does during the guilt phase, unless that use is "justified by an essential state interest"-such as courtroom security-specific to the defendant on trial. *Holbrook v. Flynn*, 475 U. S. 560, 568-569.

Medellin v. Dretke, 544 U. S. ____ (2005) (*per curiam*)

R050; No. 04-5928; 5/23/05. The writ is dismissed as improvidently granted in light of the possibility that Texas courts will provide petitioner, a Mexican national asserting a claim under the Vienna Convention on Consular Relations, with the review he seeks, and the potential thereafter for review in this Court.

Arthur Andersen LLP v. United States, 544 U. S. ____ (2005)

R051; No. 04-368; 5/31/05. At petitioner auditor's trial for destroying documents relating to Enron Corporation's financial difficulties, the jury instructions failed to convey properly the elements of a conviction under 18 U. S. C. 1512(b)(2)(A) and (B), which prohibit "knowingly . . . corruptly persuad[ing] another person . . . with intent to . . . cause" that person to "withhold" documents from, or "alter" documents for use in, an "official proceeding."

Cutter v. Wilkinson, 544 U. S. ____ (2005)

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R052; No. 03-9877; 5/31/05. On its face, 3 of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U. S. C. 2000cc-1(a)(1)-(2)-which provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means"-qualifies as a permissible accommodation of religion that is not barred by the Establishment Clause.

[Tory v. Cochran](#), 544 U. S. ____ (2005)

R053; No. 03-1488; 5/31/05. Cochran's widow is substituted as respondent; the California Court of Appeal's judgment is vacated because the injunction prohibiting petitioners from, e.g., picketing Cochran's law firm has lost its rationale.

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[Gonzales v. Raich](#), 545 U. S. 1 (2005)

R054; No. 03-1454; 6/6/05. Congress' Commerce Clause power includes the power to prohibit the local cultivation and use of marijuana in compliance with California's Compassionate Use Act, which authorizes the limited use of marijuana for medicinal purposes.

[Alaska v. United States](#), 545 U. S. ____ (2005)

R055; No. 128 Orig; 6/6/05. The Court overrules Alaska's exceptions to the Special Masters recommendations that the United States, not Alaska, has title to pockets and enclaves of submerged lands underlying waters in the Alexander Archipelago and title to submerged lands underlying the waters of Glacier Bay.

[Spector v. Norwegian Cruise Line Ltd.](#), 545 U. S. ____ (2005)

R056; No. 03-1388; 6/6/05. The Fifth Circuit's decision holding Title III of the Americans with Disabilities Act of 1990 inapplicable to foreign-flag cruise ships in U. S. waters is reversed, and the case is remanded.

[Johnson v. California](#), 545 U. S. ____ (2005)

R057; No. 04-6964; 6/13/05. California's "more likely than not" standard is an inappropriate yardstick by which to measure the sufficiency of a prima facie case of purposeful discrimination in jury selection under *Batson v. Kentucky*, 476 U. S. 79

[Bradshaw v. Stumpf](#), 545 U. S. ____ (2005)

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R058; No. 04-637; 6/13/05. The Sixth Circuit erred in granting respondent habeas relief on the grounds that his guilty plea was not knowing, voluntary, and intelligent and that it was void because the State, in a later trial of respondent's accomplice, pursued a theory of the case inconsistent with the one advanced in respondent's case; but the case is remanded for that court to resolve in the first instance the merits of the inconsistency claim as it relates to respondent's death sentence.

[Merck KGaA v. Integra Lifesciences I, Ltd.](#), 545 U. S. ____ (2005)

R059; No. 03-1237; 6/13/05. Title 35 U. S. C. §271(e)(1) exempts from patent infringement the use of a patented compound in preclinical studies at least as long as there is a reasonable basis to believe that the compound tested could be the subject of a Food and Drug Administration submission and the experiments will produce the types of information relevant to an investigational new drug application or a new drug application made to the FDA.

[Wilkinson v. Austin](#), 545 U. S. ____ (2005)

R060; No. 04-495; 6/13/05. The procedures by which Ohio classifies prisoners for placement at its "Supermax" prison provide inmates with sufficient protection to comply with the Fourteenth Amendment's Due Process Clause.

[Miller-El v. Dretke](#), 545 U. S. ____ (2005)

R061; No. 03-9659; 6/13/05. Petitioner is entitled to prevail on his claim that prosecutors' peremptory strikes of potential jurors in his capital murder trial were based on race in violation of the Fourteenth Amendment, see *Batson v. Kentucky*, 476 U. S. 79, and is thus entitled to federal habeas relief.

[Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.](#), 545 U. S. ____ (2005)

R062; No. 04-603; 6/13/05. The national interest in providing a federal forum for federal tax litigation is sufficiently substantial to support the exercise of federal-question jurisdiction over petitioner's state quiet title action on removal to federal court.

[San Remo Hotel, L. P. v. City and County of San Francisco](#), 545 U. S. ____ (2005)

R063; No. 04-340; 6/20/05. This Court will not create an exception to the full faith and credit statute, 28 U. S. C. §1738, in order to provide a federal forum for litigants seeking to advance Fifth Amendment takings claims.

[Dodd v. United States](#), 545 U. S. ____ (2005)

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R064; No. 04-5286; 6/20/05. Title 28 U. S. C. §2255, 6(3)'s 1-year limitation period begins to run on the date on which this Court "initially recognized" the right asserted in an applicant's motion for habeas relief, not the date on which that right was made retroactive.

Rompilla v. Beard, 545 U. S. ____ (2005)

R065; No. 04-5462; 6/20/05. Even when a capital defendant and his family members have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the trial's sentencing phase.

Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson, 545 U. S. ____ (2005)

R066; No. 04-169; 6/20/05. Because the False Claims Act's statute of limitations, 31 U. S. C. §3731(b)(1), does not govern §3730(h) retaliation actions, the most closely analogous state statute of limitations applies.

American Trucking Assns., Inc. v. Michigan Pub. Serv. Comm'n, 545 U. S. ____ (2005)

R067; No. 03-1230; 6/20/05. Michigan's flat annual fee on trucks engaged in intrastate commercial hauling does not violate the dormant Commerce Clause.

Mid-Con Freight Systems, Inc. v. Michigan Pub. Serv. Comm'n, 545 U. S. ____ (2005)

R068; No. 03-1234; 6/20/05. Title 49 U. S. C. §14504 does not pre-empt an annual \$100 fee Michigan imposes on each Michigan license-plated truck operating entirely in interstate commerce.

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Kelo v. New London, 545 U. S. ____ (2005)

R069; No. 04-108; 6/23/05. Respondent city's proposed condemnation of petitioners' property for use under a development plan designed to revitalize the city economically qualifies as a "public use" within the meaning of the Fifth Amendment's Takings Clause.

Gonzalez v. Crosby, 545 U. S. ____ (2005)

R070; No. 04-6432; 6/23/05. Because petitioner's Federal Rule of Civil Procedure 60(b) motion challenged only the District Court's previous ruling on the Antiterrorism and Effective Death

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Penalty Act of 1996's statute of limitations, it is not the equivalent of a successive habeas petition and can be ruled upon by the District Court without precertification by the Eleventh Circuit; however, under the proper Rule 60(b) standards, the District Court was correct to deny relief here.

[*Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U. S. ____ \(2005\)](#)

R071; No. 04-70; 6/23/05. Where the other elements of jurisdiction are present and at least one named plaintiff in an action satisfies 28 U. S. C. §1332(a)'s amount-in-controversy requirement, §1367 authorizes supplemental jurisdiction over the claims of other plaintiffs in the same Article III case or controversy, even if those claims are for less than the requisite amount.

[*Orff v. United States*, 545 U. S. ____ \(2005\)](#)

R072; No. 03-1566; 6/23/05. In enacting a provision of the Reclamation Reform Act of 1982, 43 U. S. C. §390uu, Congress did not waive the United States' sovereign immunity from a breach of contract suit brought by petitioners, who purchase water from a local water district that receives its water, pursuant to contract, from the United States Bureau of Reclamation.

[*Halbert v. Michigan*, 545 U. S. ____ \(2005\)](#)

R073; No. 03-10198; 6/23/05. The Fourteenth Amendment's Due Process and Equal Protection Clauses require the appointment of counsel for defendants, convicted on pleas of guilty or nolo contendere, who seek access to first-tier review in the Michigan Court of Appeals.

[*Mayle v. Felix*, 545 U. S. ____ \(2005\)](#)

R074; No. 04-563; 6/23/05. A state prisoner's amendment to his federal habeas petition does not relate back to his timely original petition (and thereby avoid the one-year limitations period imposed by the Antiterrorism and Effective Death Penalty Act of 1996) when the amendment asserts a new ground for relief supported by facts different in time and type from those set forth in the original petition.

[*Van Orden v. Perry*, 545 U. S. ____ \(2005\)](#)

R075; No. 03-1500; 6/27/05. The Fifth Circuit's decision that the Establishment Clause allows the display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds is affirmed.

[*Castle Rock v. Gonzales*, 545 U. S. ____ \(2005\)](#)

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R076; No. 04-278; 6/27/05. Respondent did not, for Due Process Clause purposes, have a property interest in police enforcement of her restraining order against her husband.

[Bell v. Thompson](#), 545 U. S. ____ (2005)

R077; No. 04-514; 6/27/05. Assuming that Federal Rule of Appellate Procedure 41 authorizes a court of appeals to stay a mandate following a denial of certiorari and that a court may stay the mandate without entering an order, the Sixth Circuit's decision to do so here was an abuse of discretion.

[McCreary County v. American Civil Liberties Union of Ky.](#), 545 U. S. ____ (2005)

R078; No. 03-1693; 6/27/05. A determination of petitioner Counties' purpose in posting the Ten Commandments on their courthouse walls is a sound basis for ruling on, and may be dispositive of, Establishment Clause challenges to the postings; evaluation of the Counties' claim of secular purpose for the final versions of their displays should take account of the displays' evolution and development.

[Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.](#), 545 U. S. ____ (2005)

R079; No. 04-480; 6/27/05. One who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, going beyond mere distribution with knowledge of third-party action, is liable for the resulting acts of infringement by third parties using the device, regardless of the device's lawful uses.

[National Cable & Telecommunications Assn. v. Brand X Internet Services](#), 545 U. S. ____ (2005)

R080; No. 04-277; 6/27/05. The Federal Communications Commission's conclusion that broadband cable modem companies are exempt from mandatory common-carrier regulation under the Communications Act of 1934 is a lawful construction of the Act under *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, and the Administrative Procedure Act.