OVERSEAS DECISIONS BULLETIN

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Decisions of the Supreme Court of the United Kingdom, the Supreme Court of Canada, the Supreme Court of the United States, the Constitutional Court of South Africa, the Supreme Court of New Zealand and the Hong Kong Court of Final Appeal. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

Administrative Law

R (on the application of DN (Rwanda)) v Secretary of State for the Home Department

United Kingdom Supreme Court: [2020] UKSC 7

Judgment delivered: 26 February 2020

Coram: Lords Kerr, Wilson, and Carnwath, Lady Black, and Lord Kitchin

Catchwords:

> Administrative law – Judicial review – Where appellant, DN, was Rwandan national granted refugee status in UK in 2000 – Where appellant subsequently convicted of offences, including assisting unlawful entry of non-European Economic Area national into UK and three pecuniary advantage offences – Where in 2004, Secretary of State for Home Department specified a number of offences, including assisting unlawful immigration, as particularly serious offences with consequence that Secretary could order deportation of persons convicted of such offences pursuant to *Nationality, Immigration and Asylum Act 2002* – Where, at conclusion of appellant's prison term, Secretary decided to deport appellant on basis of conviction for assisting unlawful immigration – Where appellant detained pending deportation – Where appellant sought judicial review of deportation decision – Where England and Wales Court of Appeal determined in 2009 that Secretary's 2004 order specifying "particularly serious offences" was unlawful – Whether appellant's

detention pending deportation lawful despite deportation order being unlawful.

Held (5:0): Appeal allowed; the appellant was unlawfully detained and is entitled to pursue a claim for damages for false imprisonment.

In the matter of an application by Deborah McGuinness for Judicial Review; In the matter of an application by Deborah McGuinness for Judicial Review (No 2)
United Kingdom Supreme Court: [2020] UKSC 6

Judgment delivered: 19 February 2020

Coram: Lady Hale, Lords Wilson, Carnwath, Lloyd-Jones, and Sales

Catchwords:

> Administrative law – Judicial review – Notification of tariff expiry – Where Mr Stone attacked group of mourners at Milltown Cemetery, Belfast, in 1988, killing several, including appellant's brother – Where in 1989 Mr Stone given life sentence (with other concurrent terms of imprisonment) with recommended tariff of 30 years' imprisonment – Where Belfast Agreement led to *Northern Ireland (Sentences) Act 1998* which created early release scheme for certain prisoners – Where Mr Stone applied to Sentence Review Commissioners ("SRC") seeking early release – Where in 1999 SRC determined Mr Stone eligible for early release – Where Mr Stone released on licence in July 2000 – Where, after further offending, Mr Stone's licence revoked by SRC in 2011 – Where in 2017 Northern Ireland Prison Service referred Mr Stone's case to Parole Commissioners, notifying them that his tariff expiry date would be 21 March 2018, assessed on basis that period of release on licence should count towards 30 year tariff period – Where Mrs McGuinness sought judicial review of Prison Service's notification of tariff expiry date on basis that period of release on licence should not have been included – Where Divisional Court of High Court treated case as "a criminal cause or matter" and certified question of law of general public importance suitable for appeal to Supreme Court – Whether Mrs McGuinness's application for judicial review constituted such a cause.

Held (5:0): The proceedings did not constitute "a criminal cause or matter" with the result that the Supreme Court lacked jurisdiction to hear the appeals.

R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council
United Kingdom Supreme Court: [2020] UKSC 3

Judgment delivered: 5 February 2020

Coram: Lady Hale, Lords Carnwath, Hodge, Kitchin, and Sales

Catchwords:

Administrative law – Planning – Where paragraph 90 of National Planning Policy Framework ("NPPF") relevantly provided that "Certain other forms of development are not inappropriate in the Green Belt provided that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These are: - mineral extraction…" – Where application made for extension of operational face of Jackdaw Crag quarry – Where Planning and Regulatory Functions Committee of North Yorkshire County Council (appellant) accepted officer's recommendation that planning permission be granted – Where officer's report included comments addressing openness of Green Belt – Where first and second respondent sought judicial review of decision to grant planning permission – Where first and second respondent alleged that officer's report erred in consideration of 'openness' in not considering visual impact – Whether visual impact had to be taken into account in consideration of openness.

Held (5:0): Appeal allowed.

Arbitration

Micula & Ors v Romania
United Kingdom Supreme Court: [2020] UKSC 5

Judgment delivered: 19 February 2020

Coram: Lady Hale, Lords Reed, Hodge, Lloyd-Jones, and Sales

Catchwords:

Arbitration – Enforcement of awards – Where claimants (respondents to appeal) invested in food production in Romania before it acceded to European Union – Where claimants made investments in early 2000s relying on investment incentive scheme known as "EGO 24" – Where Romania entered into bilateral investment treaty with Sweden in 2002 providing for reciprocal protection of investments and investor-State arbitration under Convention on Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention") – Where, as a result of accession negotiations with EU, Romania repealed all but one of incentives under EGO 24 – Where in 2005 claimants sought ICSID arbitration – Where in 2013 tribunal issued award in favour of claimants – Where Romania purported to implement award by setting off tax debts one of claimants owed – Where in 2014 European Commission issued injunction ordering Romania to suspend action executing award until Commission had decided on compatibility of award with State aid rules – Where in 2015 Commission concluded that payment of award by Romania would constitute unlawful State aid – Where claimants sought

and, in 2019, obtained annulment of Commission's decision by General Court of European Union – Where Commission applied to appeal against annulment decision – Where in 2014 claimants commenced proceedings in England applying to have award registered under *Arbitration (International Investment Disputes) Act 1966* – Where application granted – Where in 2015 Romania applied for stay of enforcement and claimants sought order for security – Where in 2017 High Court granted stay and refused to order security – Where claimants appealed to Court of Appeal which continued stay but ordered Romania to provide security – Where Romania appealed against order for security and claimants cross-appealed against grant of stay – Whether stay should be lifted or order for security quashed.

Held (5:0): Claimants' cross-appeal allowed; stay lifted.

Bankruptcy

Ritzen Group, Inc v Jackson Masonry, LLC
Supreme Court of the United States: Docket No 18-938

Judgment delivered: 14 January 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

Bankruptcy – Appeals – Finality – Where Ritzen Group, Inc ("Ritzen") agreed to buy land from Jackson Masonry, LLC ("JM") – Where sale fell through and Ritzen sued for breach of contract – Where JM filed for bankruptcy just prior to trial in contract proceedings – Where provision of Bankruptcy Code (11 U.S.C. §362(a)) operated to automatically stay contract proceedings – Where Ritzen unsuccessfully sought to have stay lifted by Federal Bankruptcy Court – Where Ritzen then filed proof of claim against bankruptcy estate – Where Bankruptcy Court disallowed Ritzen's claim and confirmed JM's reorganization plan – Where Ritzen then filed in District Court challenging Bankruptcy Court's refusal to lift stay – Where District Court dismissed appeal as out of time – Where Court of Appeals for Sixth Circuit affirmed – Whether Bankruptcy Court's order refusing to lift stay "final" within meaning of 28 U.S.C. §158(a) such that 14-day period to file appeal ran from entry of order.

Held (9:0): Decision of the Court of Appeals for the Sixth Circuit affirmed.

Competition Law

Competition Commission of South Africa v Standard Bank of South Africa Limited
Constitutional Court of South Africa: [2020] ZACC 2

Judgment delivered: 20 February 2020

Coram: Cameron, Froneman, Jafta, and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ, and Theron J

Catchwords:

> Competition law – Procedure – Where Competition Commission of South Africa referred to Competition Tribunal complaints of anti-competitive behaviour made against Standard Bank of South Africa Limited and group of seven other companies ("Waco respondents") – Where, after referral but before answering complaints, Bank and Waco respondents sought access (pursuant to Competition Commission Rules r 15) to records of investigation held by Commission – Where Bank also applied directly to Competition Appeal Court, sitting as court of first instance with single judge presiding, for review of Commission's decision to refer complaint to Tribunal – Where, in review proceedings, Bank sought access to Commission's record of referral decision, including record of investigation, pursuant to Uniform Rules of Court r 53 – Whether party can access Commission's record of investigation pursuant to r 15 after complaint referred to Tribunal but before party has answered complaint – Whether under r 53, Competition Appeal Court has power in review proceedings, sitting as court of first instance with single judge presiding, to order Commission to furnish record of referral decision.

Held (8:1 on the r 15 appeals; 7:2 on the r 53 appeal): Leave to appeal granted; appeals allowed.

Costs

Commissioner of Inland Revenue v Poon Cho-Ming, John
Hong Kong Court of Final Appeal: [2020] HKCFA 2

Judgment delivered: 13 January 2020

Coram: Ribeiro, Fok, and Cheung PJJ, Bokhary and Lord Neuberger of Abbotsbury NPJJ

Catchwords:

> Costs – Where taxpayer succeeded against Commissioner of Inland Revenue in underlying proceedings – Where order nisi made awarding costs of those proceedings and proceedings below to taxpayer, to be taxed if not agreed – Where taxpayer sought to have costs of appeal (and of application for leave to appeal) taxed on indemnity basis or on common

fund basis rather than party/party basis – Whether awarding costs on basis sought by taxpayer would achieve fairer result.

Held (5:0): Order nisi made absolute.

Criminal Law

Holguin-Hernandez v United States
Supreme Court of the United States: Docket No. 18-7739

Judgment delivered: 26 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

> Criminal Law – Appeals – Where r 51(b) of Federal Rules of Criminal Procedure provides that criminal defendants who want to "preserve a claim of error" for appellate review must raise with trial judge the action they wish court to take, or their objection to the court's action and grounds for that objection – Where petitioner convicted of drug offences and sentenced to 60 months imprisonment and five years of supervised release while serving term of supervised release for another conviction – Where, in District Court, state sought additional consecutive prison term of 12-18 months for breaching supervision conditions – Where petitioner submitted that sentencing factors in 18 U.S.C. §3553 either did not support additional time or supported sentence less than 12 months – Where District Court imposed consecutive 12-month term – Where petitioner argued on appeal that sentence was unreasonably long – Where Court of Appeals for Fifth Circuit held that petitioner could not maintain that argument because he had not objected to reasonableness of sentence in District Court – Whether petitioner's argument in District Court for no additional sentence or one of less than 12 months preserved his claim of error on appeal.

Held (9:0): Judgment of the Court of Appeals for the Fifth Circuit vacated; case remanded.

Shular v United States
Supreme Court of the United States: Docket No. 18-6662

Judgment delivered: 26 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

Criminal Law – Where *Armed Career Criminal Act* (18 U.S.C §924) mandates 15-year minimum sentence for defendant convicted of being felon in possession of firearm if defendant has at least three convictions for serious drug offences – Where state offence is serious drug offence only if it involves "manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance" – Where petitioner pleaded guilty to being felon in possession of firearm and received 15-year sentence – Whether petitioner's six prior cocaine-related convictions under Florida law were serious drug offences within meaning of *Armed Career Criminal Act*.

Held (9:0): Judgment of the Court of Appeals for the Eleventh Circuit affirmed.

McKinney v Arizona

Supreme Court of the United States: [Docket No. 18-1109]

Judgment delivered: 25 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

Criminal Law – Sentencing – Where petitioner convicted of two counts of first-degree murder – Where trial judge weighed aggravating and mitigating factors and sentenced petitioner to death – Where some two decades later, Court of Appeals for Ninth Circuit held that sentencing court violated *Eddings v Oklahoma* 455 U.S. 104 by failing to properly consider petitioner's PTSD in mitigation – Where Arizona Supreme Court then reweighed aggravating and mitigating circumstances for itself pursuant to *Clemons v Mississippi* 494 U.S. 738, rather than returning sentencing to jury – Whether *Clemons* reweighing permissible remedy for *Eddings* error.

Held (5:4): Judgment of Arizona Supreme Court affirmed.

HKSAR v Chow Ho Yin

Hong Kong Court of Final Appeal: [[2020] HKCFA 52]

Judgment delivered: 10 January 2020

Coram: Ma CJ, Ribeiro, Fok, and Cheung PJJ, McLachlin NPJ

Catchwords:

Criminal Law – Fair trial – Where appellant charged with trafficking dangerous drug – Where he admitted to possession – Where at trial appellant contended confession was involuntary on basis that it was induced by certain promises made by police and therefore inadmissible –

Where appellant fell ill when voir dire was to be held to determine admissibility – Where application for adjournment in order to seek medical care was refused on basis that appellant would not be prejudiced by being absent from voir dire because his barrister was there with full instructions – Where appellant missed voir dire – Where confession held admissible and appellant subsequently convicted – Whether refusal to adjourn hearing and decision to continue in appellant's absence deprived him of fair trial.

Held (5:0): Appeal dismissed.

Employment Law

Association of Mineworkers and Construction & Ors v Royal Bafokeng Platinum Limited & Ors

Constitutional Court of South Africa: [2020] ZACC 1

Judgment delivered: 23 January 2020

Coram: Mogoeng CJ, Cameron, Froneman, Jafta, and Khampepe JJ, Ledwaba AJ, Madlanga, Mhlantla, and Theron JJ

Catchwords:

Employment law – Collective agreements – Where respondent mining company (Royal Bafokeng Platinum Limited) made retrenchment agreement with two unions active at mine, National Union of Mines ("NUM") and United Association of South Africa ("UASA") – Where retrenchment agreement product of earlier collective agreement between respondent, NUM and UASA – Where, under collective agreement, respondent recognised NUM as majority union within company, and granted organisational and bargaining rights to NUM and UASA – Where third, minority union (Association of Mineworkers and Construction Union – "AMCU") not afforded bargaining rights under collective agreement – Where retrenchment agreement decided without AMCU – Where 103 AMCU members retrenched – Where retrenchment agreement extended to 103 AMCU members pursuant to s 23(1)(d) of *Labour Relations Act 1995* ("*LRA*") – Where retrenchment agreement contained full and final settlement clause – Where retrenched AMCU members claimed not to know about retrenchment agreement until they were issued with notices of retrenchment and barred from entering workplace – Whether collective agreement constitutionally permissible in allowing majority union to conclude retrenchment agreement in absence of minority union (a question concerning whether s 189(1) of *LRA* consistent with right to fair labour practices) – Whether extension of such agreement to members of excluded minority union constitutionally valid (a question concerning interpretation of s 23(1)(d)).

Held (5:4): Leave to appeal granted; appeal dismissed.

Equity

Intel Corporation Investment Policy Committee v Sulyma
Supreme Court of the United States: [Docket No. 18-1116]

Judgment delivered: 26 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

> Equity – Fiduciary duties – Where respondent worked at Intel Corporation between 2010 and 2012 and participated in two retirement plans – Where, in 2015, respondent sued petitioners (administrators of plans) alleging imprudent management of plans – Where *Employee Retirement Income Security Act* of 1974 required plaintiffs with "actual knowledge" of alleged fiduciary breach to commence proceedings within three years of gaining that knowledge – Where petitioners contended that respondent commenced proceedings out of time on basis that they were commenced more than three years after disclosure by petitioners of investment decisions – Where relevant disclosures published on website – Where respondent had visited website many times but testified that he did not remember reviewing relevant disclosures and that he was unaware of impugned investments while working at Intel – Where District Court granted summary judgment to petitioners – Where Ninth Circuit reversed – Whether plaintiff must actually become aware of information in disclosures to have "actual knowledge" of that information.

Held (9:0): Judgment of the Court of Appeals for the Ninth Circuit affirmed.

Human Rights

R (on the application of Jalloh (formerly Jollah)) v Secretary of State for the Home Department
United Kingdom Supreme Court: [[2020] UKSC 4]

Judgment delivered: 12 February 2020

Coram: Lady Hale, Lords Kerr, Carnwath, Briggs, and Sales

Catchwords:

> Human rights – False imprisonment at common law – Deprivation of liberty under European Convention on Human Rights ("ECHR") – Where claimant released from immigration detention on bail in October 2013 –

Where immigration officer purported to impose restrictions on claimant including reporting conditions and requirements to live at certain address and to stay there between 11pm and 7am – Where electronic monitoring and curfew in place for 891 days – Where England and Wales Court of Appeal determined in 2016 that Secretary of State lacked power to impose restrictions by way of curfew – Where claimant sought damages for false imprisonment – Whether curfew, though unlawful, met requirements for common law false imprisonment – Whether common law false imprisonment should be altered to align with more demanding concept of deprivation of liberty under ECHR.

Held (5:0): Appeal dismissed.

ZN v Secretary for Justice & Ors
Hong Kong Court of Final Appeal: [2020] HKCFA 53

Judgment delivered: 10 January 2020

Coram: Ma CJ, Ribeiro and Fok PJJ, Chan and McLachlin NPJJ

Catchwords:

Human Rights – Where Pakistani appellant brought to Hong Kong as foreign domestic helper between 2007 and 2010 – Where appellant mistreated by employer in that time, restricting his movements, making him work long hours, beating him regularly, not paying him wages, and threatening serious harm if he left employment – Where in 2010 employer tricked appellant into returning to Pakistan – Where appellant returned to Hong Kong in 2012 and reported mistreatment to Immigration Department, Police, and Labour Department – Where appellant sought judicial review in respect of Government's breach of his rights under art 4 of Hong Kong Bill of Rights – Where art 4(1) prohibits slavery, art 4(2) provides that "no one shall be held in servitude", and art 4(3)(a) provides that "no one shall be required to perform forced or compulsory labour" – Whether art 4 prohibits human trafficking and if it does, what is scope of prohibition – Whether art 4 imposes positive duty on Government to maintain specific offence criminalising activities prohibited by art 4.

Held (5:0): Appeal dismissed.

Private International Law

Monasky v Taglieri
Supreme Court of the United States: Docket No. 18-935

Judgment delivered: 25 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

> Private international law – Hague Convention on Civil Aspects of International Child Abduction – Where petitioner, a US citizen, asserted that her respondent Italian husband became abusive after they moved from US to Italy – Where their daughter born in Italy – Where two months after her birth, petitioner left with infant for Ohio – Where respondent sought return of daughter under Hague Convention (implemented by International Child Abduction Remedies Act 22 U.S.C. §9001ff) on basis that she had been wrongfully removed from her country of "habitual residence" – Where District Court granted respondent's petition, finding shared intention between parents that child would live in Italy – Where daughter returned to Italy – Where Court of Appeals for Sixth Circuit affirmed District Court's decision – Whether Italy could qualify as child's country of "habitual residence" in absence of actual agreement by parents to raise her there.

Held (9:0): Judgment of the Court of Appeals for the Sixth Circuit affirmed.

Newfoundland and Labrador (Attorney General) v Uashaunnuat (Innu of Uashat and of Mani-Utenam)
Supreme Court of Canada: 2020 SCC 4

Judgment delivered: 21 February 2020

Coram: Wagner CJ and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe, and Martin JJ

Catchwords:

> Private international law – Jurisdiction of Quebec courts – Where Innu claimants filed suit in Quebec Superior Court against mining companies operating project in parts of both Quebec and Newfoundland and Labrador – Where claimants sought permanent injunction, damages, and declaration that mining companies' project violated Aboriginal title and other Aboriginal rights – Where mining companies and Newfoundland and Labrador Crown sought to have portions of claim concerning property situated in that province struck out – Whether Quebec courts had jurisdiction over entire claim – *Civil Code of Québec*, arts. 3134, 3148.

Held (5:4): Appeal dismissed.

Public International Law

Nevsun Resources Ltd v Araya

Supreme Court of Canada: [2020 SCC 5]

Judgment delivered: 28 February 2020

Coram: Wagner CJ and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe, and Martin JJ

Catchwords:

> Public international law – Human rights – Act of state doctrine – Customary international law – Jus cogens – Peremptory norms – Doctrine of adoption – Direct remedy for breach of customary international law – Where Eritrean workers commenced action against Canadian corporation in British Columbia – Where workers alleged they were forced to work at mine owned by Canadian corporation in Eritrea and subjected to violent, cruel, inhuman and degrading treatment – Where workers sought damages for breaches of customary international law prohibitions and of domestic torts – Where corporation brought motion to have pleadings struck out on basis of act of state doctrine and on basis that claims based on customary international law have no reasonable prospect of success – Whether act of state doctrine forms part of Canadian common law – Whether customary international law prohibitions against forced labour, slavery, cruel, inhuman or degrading treatment and crimes against humanity can ground claim for damages under Canadian law – Whether claims should be struck out.

Held (7:2/5:4 (Brown and Rowe JJ dissenting in part)): Appeal dismissed.

Taxation

Rodriguez v Federal Deposit Insurance Corporation

Supreme Court of the United States: [Docket No. 18-1269]

Judgment delivered: 25 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

> Taxation – Distribution of tax refunds between companies in group – Where United Western Bank suffered losses and its parent company, United Western Bancorp, Inc, became bankrupt – Where Internal Revenue Service issued group $4 million tax refund – Where petitioner (United Western Bancorp, Inc's trustee in bankruptcy) and respondent (United Western Bank's receiver) each claimed refund – Whether rule from *In re Bob Richards Chrysler-Plymouth Corp.* 473 F. 2d 262 applied so as to govern distribution of refund among group members.

Held (9:0): Judgment of the Court of Appeals for the Tenth Circuit vacated; case remanded.

FMX Food Merchants Import Export Co Ltd v Commissioners for Her Majesty's Revenue and Customs
Supreme Court: [2020] UKSC 1

Judgment delivered: 29 January 2020

Coram: Lords Reed, Hodge, Briggs, Lady Arden, and Lord Kitchin

Catchwords:

> Taxation – Customs duty – Where FMX Food Merchants Import Export Co Ltd (respondent) imported ten consignments of garlic to UK in 2003-2004 – Where respondent declared that garlic came from Cambodia – Where respondent accordingly claimed exemption from import duties under EU's Generalised System of Preferences – Where an investigation later concluded that garlic was from China – Where Her Majesty's Revenue and Customs (appellant) issued a post-clearance demand requiring payment of customs duty in 2011 on basis that garlic from China – Where respondent submitted that demand was issued outside of three year post-clearance found in art 221(3) of EU's Customs Code (Council Regulation (EEC) No 2913/92 as amended) – Where appellant submitted that art 221(4) of Code provided an applicable exception to time limit – Whether art 221(4) empowered appellant to make post-clearance demand outside three year time limit even though UK had not enacted finite alternative limit.

Held (5:0): Appeal allowed.

Torts

Hernández v Mesa
Supreme Court of the United States: Docket No. 17-1678

Judgment delivered: 25 February 2020

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ

Catchwords:

> Torts – Where respondent US Border Patrol Agent shot 15-year-old Mexican national – Where Border Patrol Agent standing on US soil when he fired fatal bullets – Where Mexican national standing on Mexican soil when shot and killed, having just run back across border – Where petitioner parents of Mexican national sought damages under *Bivens v Six*

Unknown Fed. Narcotics Agents 403 US 388, alleging breach of son's Fourth and Fifth Amendment rights – Whether *Bivens* extends to claims based on cross-border shooting.

Held (5:4): Judgment of the Court of Appeals for the Fifth Circuit affirmed.