

## Petitions to watch | Conference of 05.26.11

Posted By [Christa Culver](#) On May 24, 2011 @ 1:47 am In [Cases in the Pipeline,Featured](#) | [Comments Disabled](#)

This edition of "Petitions to watch" features cases up for consideration at the Justices' May 26 conference. These are petitions raising issues that Tom has determined to have a reasonable chance of being granted, although we post them here without consideration of whether they present appropriate vehicles in which to decide those issues.

**Title:** *Ryan v. Gonzales*

**Docket:** [10-930](#) <sup>[1]</sup>

**Issue(s):** Does 18 U.S.C. § 3599(a)(2) – which provides that an indigent capital state inmate pursuing federal habeas relief "shall be entitled to the appointment of one or more attorneys" – entitle a death row inmate to stay the federal habeas proceedings he initiated if he is not competent to assist counsel?

Certiorari stage documents:

- [Opinion below \(9th Circuit\)](#) <sup>[2]</sup>
- [Petition for certiorari](#) <sup>[3]</sup>
- [Brief in opposition](#) <sup>[4]</sup>
- [Amicus brief of Utah et al.](#) <sup>[5]</sup>

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**Title:** *Damra v. United States*

**Docket:** [10-937](#) <sup>[6]</sup>

**Issue(s):** 1) Whether a defendant who establishes the loss of material and favorable evidence when the government deports a prospective defense witness prior to trial must demonstrate that the government acted in bad faith in order to establish a violation of the Sixth Amendment's Compulsory Process Clause; and 2) whether a defendant asserting a violation of the Sixth Amendment's Compulsory Process Clause may establish, through the defendant's trial testimony alone, that a prospective defense witness deported by the government prior to trial would have provided material and favorable evidence?

Certiorari stage documents:

- [Opinion below \(6th Circuit\)](#) <sup>[7]</sup>
- [Petition for certiorari](#) <sup>[8]</sup>
- [Brief in opposition](#) <sup>[9]</sup>
- [Petitioner's reply](#) <sup>[10]</sup>

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**Title:** *National Corn Growers Association v. Environmental Protection Agency*

**Docket:** [10-1031](#) <sup>[11]</sup>

**Issue(s):** Whether the District of Columbia Circuit has properly construed the hearing requirement and related rules of the Federal Food, Drug, and Cosmetic Act.

Certiorari stage documents:

- [Opinion below \(DC Circuit\)](#) <sup>[12]</sup>
- [Petition for certiorari](#) <sup>[13]</sup>
- [Brief in opposition](#) <sup>[14]</sup>
- [Petitioners' reply](#) <sup>[15]</sup>
- [Amicus brief of American Chemistry Council, et. al.](#) <sup>[16]</sup>
- [Amicus brief of Pacific Legal Foundation and the Cato Institute](#) <sup>[17]</sup>

- [Amicus brief of Croplife America and American Farm Bureau Federation](#)
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**Title:** *Black v. United States*

**Docket:** [10-1038](#) <sup>[18]</sup>

**Issue(s):** Whether the right to trial by a jury, and *Chapman v. California* and its progeny, permit a court to deem a constitutional error "harmless" on the ground that the government's evidence supports guilt, without crediting evidence that favors acquittal or assessing the impact of the error on the jury.

Certiorari stage documents:

- [Opinion below \(7th Circuit\)](#) <sup>[19]</sup>
  - [Petition for certiorari](#) <sup>[20]</sup>
  - [Brief in opposition](#) <sup>[21]</sup>
  - [Petitioners' reply](#) <sup>[22]</sup>
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**Title:** *Farina v. Nokia, Inc.*

**Docket:** [10-1064](#) <sup>[23]</sup>

**Issue(s):** (1) Whether a regulation based on authority conferred by a statute that explicitly disclaims any implied preemptive effect can impliedly preempt state law on a "frustration of purpose" theory of preemption; and (2) whether an agency's National Environmental Policy Act regulation, which imposes no substantive requirements, may preempt substantive state health, safety, or consumer-protection laws.

Certiorari stage documents:

- [Opinion below \(3d Circuit\)](#) <sup>[24]</sup>
  - [Petition for certiorari](#) <sup>[25]</sup>
  - [Brief in opposition](#) <sup>[26]</sup>
  - [Amicus brief of the Constitutional Accountability Center](#) <sup>[27]</sup>
  - [Petitioner's reply](#) <sup>[28]</sup>
- 

**Title:** *Eisai Co. v. Teva Pharmaceuticals USA*

**Docket:** [10-1070](#) <sup>[29]</sup>

**Issue(s):** When a case becomes moot as the result of a third party's independent action after the court of appeals issues a judgment but while a petition for rehearing is still pending, should the court of appeals vacate the judgment upon the request of the aggrieved party?

Certiorari stage documents:

- [Opinion below \(Fed. Circuit\)](#) <sup>[30]</sup>
  - [Petition for certiorari](#) <sup>[31]</sup>
  - [Brief in opposition](#) <sup>[32]</sup>
  - [Petitioners' reply](#) <sup>[33]</sup>
- 

The following petitions have been re-listed for the conference of May 26. If any other paid petitions are re-distributed for this conference, we will add them below as soon as their re-distribution is noted on the docket.

**Title:** *Messerschmidt v. Millender*

**Docket:** [10-704](#) <sup>[34]</sup>

**Issue(s):** (1) Whether police officers are entitled to qualified immunity when they obtained a facially valid warrant to search for firearms, firearm-related materials, and gang-related items in the residence of a gang member and felon who had threatened to kill his girlfriend and fired a sawed-off shotgun at her? (2) Whether *United States v. Leon*, 468 U.S. 897 (1984), and *Malley v. Briggs*, 475 U.S. 335 (1986), should be reconsidered or clarified?

Certiorari stage documents:

- [Opinion below \(9th Circuit\)](#) <sup>[35]</sup>
  - [Petition for certiorari](#) <sup>[36]</sup>
  - [Brief in opposition](#) <sup>[37]</sup>
  - [Petitioners' reply](#) <sup>[38]</sup>
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**Title:** *Martinez v. Regents of the University of California*

**Docket:** [10-1029](#) <sup>[39]</sup>

**Issue(s):** (1) Whether a state statute that provides resident tuition rates at public postsecondary institutions to illegal aliens, based on their attendance at high schools in the state, is preempted by 8 U.S.C. § 1623; (2) whether a court must undertake conflict preemption analysis after concluding that an express preemption provision does not apply in a case involving both types of preemption claims.

Certiorari stage documents:

- [Opinion below \(California Supreme Court\)](#) <sup>[40]</sup>
  - [Petition for certiorari](#) <sup>[41]</sup>
  - [Brief of the Regents of the University of California et al. in opposition](#) <sup>[42]</sup>
  - [Brief of the Board of Governors of the California Community Colleges et al. in opposition](#) <sup>[43]</sup>
  - [Petitioners' reply \(forthcoming\)](#) <sup>[44]</sup>
  - [Amicus brief of the Eagle Forum Education and Legal Defense Fund, Inc.](#) <sup>[45]</sup>
  - [Amicus brief of U.S. Reps. Lamar Smith et al.](#) <sup>[46]</sup>
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**Title:** *Cavazos v. Smith*

**Docket:** [10-1115](#) <sup>[47]</sup>

**Issue(s):** Did the Ninth Circuit exceed its authority under 28 U.S.C. § 2254(d) by granting relief for insufficient evidence based on its acceptance of the cause-of-death testimony of defense experts over the contrary opinion testimony of prosecution experts?

Certiorari stage documents:

- [Opinion below \(9th Circuit\)](#) <sup>[48]</sup>
  - [Petition for certiorari](#) <sup>[49]</sup>
  - [Brief in opposition](#) <sup>[50]</sup>
  - [Petitioner's reply](#) <sup>[51]</sup>
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- [1] 10-930: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-930.htm>
- [2] Opinion below (9th Circuit): <http://www.ca9.uscourts.gov/datastore/opinions/2010/10/20/08-72188.pdf>
- [3] Petition for certiorari: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/03/Brief-03-04-11-103439.pdf>
- [4] Brief in opposition : <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/Dkt-04-04-25-11-Brief-in-Opposition-Gonzales.pdf>
- [5] *Amicus* brief of Utah et al.: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/03/RyanArizona-v-Gonzales-ami-brf.pdf>
- [6] 10-937: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-937.htm>
- [7] Opinion below (6th Circuit): <http://www.ca6.uscourts.gov/opinions.pdf/10a0301p-06.pdf>
- [8] Petition for certiorari: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/02/Brief-02-22-11-125338.pdf>
- [9] Brief in opposition : <http://www.justice.gov/osg/briefs/2010/0responses/2010-0937.resp.pdf>

- [10] Petitioner's reply: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-23-Damra-petitioners-reply.pdf>
- [11] 10-1031: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1031.htm>
- [12] Opinion below (DC Circuit): [http://www.cadc.uscourts.gov/internet/opinions.nsf/25A24885B2412F07852578070070EC06/\\$file/09-1284-1256951.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/25A24885B2412F07852578070070EC06/$file/09-1284-1256951.pdf)
- [13] Petition for certiorari: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/10-1031.pdf>
- [14] Brief in opposition: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/10-1031-BIO.pdf>
- [15] Petitioners' reply: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/1031-reply.pdf>
- [16] *Amicus* brief of American Chemistry Council, et. al.: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/1031-chem.pdf>
- [17] *Amicus* brief of Pacific Legal Foundation and the Cato Institute: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/1031-pac-legal.pdf>
- [18] 10-1038: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1038.htm>
- [19] Opinion below (7th Circuit): <http://www.ca7.uscourts.gov/tmp/7X1CWM8F.pdf>
- [20] Petition for certiorari: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/10-1038.pdf>
- [21] Brief in opposition: <http://www.justice.gov/osg/briefs/2010/0responses/2010-1038.resp.pdf>
- [22] Petitioners' reply: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/1038-reply.pdf>
- [23] 10-1064: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1064.htm>
- [24] Opinion below (3d Circuit): <http://www.ca3.uscourts.gov/opinarch/084034p.pdf>
- [25] Petition for certiorari: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/04/10-1064.pdf>
- [26] Brief in opposition : [http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/640943\\_1-Nokia-et-al-brief-in-opposition-No-10-1064.pdf](http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/640943_1-Nokia-et-al-brief-in-opposition-No-10-1064.pdf)
- [27] *Amicus* brief of the Constitutional Accountability Center: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/04/CAC-1064.pdf>
- [28] Petitioner's reply: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-23-Farina-petitioners-reply.pdf>
- [29] 10-1070: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1070.htm>
- [30] Opinion below (Fed. Circuit) : <http://www.cafc.uscourts.gov/images/stories/opinions-orders/09-1593.pdf>
- [31] Petition for certiorari : <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/10-1070.pdf>
- [32] Brief in opposition : <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/1070-BIO.pdf>
- [33] Petitioners' reply : <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/1070-reply.pdf>
- [34] 10-704: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-704.htm>
- [35] Opinion below (9th Circuit) : <http://www.ca9.uscourts.gov/datastore/opinions/2009/05/05/07-55518.pdf>
- [36] Petition for certiorari : <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/Cert.-in-Messerschmidt.pdf>
- [37] Brief in opposition : <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/BIO-in-Messerschmidt.pdf>
- [38] Petitioners' reply: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/Reply-in-Messerschmidt1.pdf>
- [39] 10-1029: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1029.htm>
- [40] Opinion below (California Supreme Court): <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-19-Martinez-opinion-below.pdf>
- [41] Petition for certiorari: <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05>

**/05-19-Martinez-cert-petition.pdf**

[42] Brief of the Regents of the University of California et al. in opposition:

**<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-19-Martinez-Brief-in-opposition.pdf>**

[43] Brief of the Board of Governors of the California Community Colleges et al. in opposition:

**<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-19-Martinez-Amicus-Board-of-Governors.pdf>**

[44] Petitioners' reply (forthcoming): **<http://>**

[45] *Amicus* brief of the Eagle Forum Education and Legal Defense Fund, Inc.:

**<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-19-Martinez-Eagle-Amicus.pdf>**

[46] *Amicus* brief of U.S. Reps. Lamar Smith et al.: **<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/05-19-Martinez-U.S.-Reps.-Amicus.pdf>**

[47] 10-1115: **<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1115.htm>**

[48] Opinion below (9th Circuit) : **<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/Smith-CA9-Opinion.pdf>**

[49] Petition for certiorari : **<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/Cavazos-Cert..pdf>**

[50] Brief in opposition : **<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/05/Cavos-BIO.pdf>**

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