



## Cormac Early *Round-up*

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### Thursday round-up

The Court heard argument yesterday in two cases involving the use of drug-detection dogs. In *Florida v. Jardines*, the Court considered whether a dog sniff at the front door of a suspected marijuana grow house by a trained narcotics detection dog constitutes a Fourth Amendment search. In *Florida v. Harris*, the Court considered whether an alert by a trained drug-detection dog provides sufficient probable cause to search a vehicle. Transcripts of both oral arguments are available [here](#). Lyle covered both arguments for [this blog](#); other coverage comes from Nina Totenberg of [NPR](#) (who also [previewed](#) the case yesterday), Adam Liptak of [The New York Times](#), Bill Mears of [CNN](#), David G. Savage of the [Los Angeles Times](#), Robert Barnes of [The Washington Post](#), Emily Bazelon of [Slate](#), Jess Bravin of [The Wall Street Journal](#) (subscription required), Richard Wolf of [USA Today](#), Jonathan Stempel of [Reuters](#), and Jesse J. Holland of the [Associated Press](#).

The editorial board of [The New York Times](#) weighed in on yesterday's arguments as well, contending that "[t]he justices have a duty to protect citizens from infringements on their constitutional rights, including by man's best friend." Other commentary comes from Orin Kerr at the [Volokh Conspiracy](#), Dana Milbank of [The Washington Post](#), J. Amy Dillard at [ACSblog](#), and Kent Scheidegger at the [Crime and Consequences](#) blog. Jacob Sullum of Reason comments on *Jardines* [here](#) and on *Harris* [here](#).

After postponing Tuesday's oral arguments because of Hurricane Sandy, the Court will hear arguments in two cases this morning. In *Bailey v. United States*, the Court will consider whether police executing a search warrant can detain someone who left the premises to be searched before the search began. At [The Atlantic](#), Daniel Epps argues that the case "should tell us something about just how interested Justice Scalia is in rethinking Fourth Amendment law in his remaining years on the Court."

The Court will also hear argument in *Chaidez v. United States*, in which it will [\[A2\]](#) consider whether *Padilla v. Kentucky*, in which it held that criminal defendants receive ineffective assistance of counsel when their attorneys fail to advise them that pleading guilty to an offense will subject them to deportation, applies retroactively. The Constitutional Accountability Center's [Text and History](#) blog previews the case. [Disclosure: Goldstein & Russell, P.C., whose attorneys work for

or contribute to this blog in various capacities, is among the counsel to the petitioner in this case.]

Yesterday the federal government filed a brief in which it advised the Court that it does not object to Liberty University's efforts to reopen a challenge to the Affordable Care Act. Lyle Denniston reported on the filing for [this blog](#), while Mark Sherman of the [Associated Press](#) also has coverage.

Other commentary focuses on [Standard Fire Insurance Co. v. Knowles](#), in which the Court will consider whether the named plaintiff in a state class action case can defeat removal to federal court under the Class Action Fairness Act by stipulating that the damages he seeks on behalf of absent class members will not exceed five million dollars. Alison Frankel of [Reuters](#) reports on an *amicus* brief filed by the National Association of Manufacturers, while at [Cato@Liberty](#) Ilya Shapiro discusses Cato's *amicus* brief in the case.

Monday's argument in [Clapper v. Amnesty International USA](#), in which the Court considered whether Amnesty International and other lawyers, journalists, and human rights activists have standing to challenge warrantless wiretapping under the Foreign Intelligence Surveillance Act Amendments Act of 2008 when they cannot prove that they will be monitored, continues to attract coverage. In a column for the [Los Angeles Times](#), Michael McGough argues that, even if the plaintiffs do have standing, the state secrets doctrine might prevent courts from deciding whether the program is constitutional, while David D. Cole criticizes the government's position in the case for [ACSblog](#).

Briefly:

- Writing for [this blog](#), Ronald Mann reports on Monday's oral argument in [Kirtsaeng v. John Wiley & Sons, Inc.](#), in which the Court considered whether copyrighted works made and sold abroad can be imported into the United States without the copyright owner's permission.
- Claire Zillman of [The American Lawyer](#) reports on efforts by Joshua Rosenkranz, who argued on behalf of petitioner Supap Kirtsaeng on Monday morning, to reach Washington and the Court while Hurricane Sandy was brewing.
- At the [Opinionator](#) blog of The New York Times, Linda Greenhouse discusses the Court's absence from the presidential campaign, noting that "[o]f all the words uttered at the national party conventions, "Supreme Court" did not pass the lips of a single speaker at either one."
- The Hoover Institution's [Uncommon Knowledge](#) series has posted video of a recent interview with Justice Scalia. (Thanks to Howard Bashman for the link.)
- At [Balkinization](#), Linda McClain discusses the government's brief urging the Court to grant cert. in [Windsor v. United States](#), in which the Second Circuit ruled that Section 3 of the Defense of Marriage Act is unconstitutional. (Lyle [covered](#) the filing for this blog as well.)
- Jacques Couret of the [Atlanta Business Chronicle](#) reports on [Bullock v. Bank Champaign, N.A.](#), in which the Court will consider whether trustee misconduct constitutes "defalcation" under Section 523(a)(4) of the Bankruptcy Code when the

trustee had no intent to steal, and the misconduct did not result in actual loss to the trust principal.

- Writing for the [Daily Caller](#), Ilya Shapiro explains why he is “still not over” the Court’s decision in the health care case.