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Recent Developments

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RECENT DEVELOPMENTS

Peyton Hildebrand*

HERNANDEZ V. MESA

In a 5-4 opinion, the United States Supreme Court once again denied a *Bivens* action.¹ This case involved a tragic cross-border shooting by a border patrol agent standing on United States soil, who shot and killed a young boy standing on Mexican soil. Petitioners, the boy’s parents, sought relief under *Bivens*², arguing the agent’s action violated the Constitution. However, the Court determined the cross-border shooting was a new *Bivens* context, which required an analysis of whether any special factors “counseled hesitation” for the cause of action to be extended. The Court concluded *Bivens* was inappropriate because several factors “counseled hesitation”—namely, separation of powers concerns such as national security and foreign relations.

KAHLER V. KANSAS

James K. Kahler, petitioner in *Kahler v. Kansas*³, charged with capital murder after killing his four family members, argued that Kansas’s insanity defense violated due process. However, the United States Supreme Court held that a state’s insanity defense does not violate due process when it permits the conviction of a defendant whose mental illness thwarted his ability to distinguish between what is morally right and wrong. The Court denied that due process requires states to adopt a specific insanity test and concluded that the defense should predominantly be left open to changing social norms and medical discovery and, thus, state purview.

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1. *Hernandez v. Mesa*, 589 U.S. __ (2020) (slip op.).

2. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

3. *Kahler v. Kansas*, 589 U.S. __ (2020) (slip op.).

KANSAS V. GLOVER

After running a license plate check and discovering a vehicle's owner's driver's license had been revoked, a deputy sheriff pulled over Charles Glover, Respondent, who was indeed the owner. Glover argued that the deputy lacked reasonable suspicion to pull him over, violating the Fourth Amendment. The United States Supreme Court issued a narrow opinion, holding that, given the "totality of the circumstances" in this case, the deputy had reasonable suspicion when he inferred that the vehicle's owner was also likely the one driving the vehicle.