

THIRD ANNUAL SUPREME COURT REVIEW

THE 2011-2012 TERM

IMPACT ON THE LATINO COMMUNITY AND PRACTITIONERS



Hosted by CUNY School of Law's
Center on Latino and Latina Rights and Equality
and
Hispanic National Bar Association- New York Region
Puerto Rican Bar Association

Kelley Drye & Warren, LLP
101 Park Avenue
New York, NY 10178

Thursday, September 20, 2012
6:30 – 8:30 PM

CLE PROGRAM MATERIALS

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**SUPREME COURT TERM
Panel Program
September 20, 2012
6:30-8:30pm**

6:30 – 6:35 WELCOME

**Jenny Rivera
Director
CLORE**

**Gelvina Stevenson
Former Regional
President
HNBA-NY**

**Elena Goldberg
President
PRBA**

**William Escobar
Partner
Kelley Drye &
Warren LLP**

6:35 – 8:05 PANEL PRESENTATION

**6:35 – 6:40 PANELIST
INTRODUCTIONS**

**Jenny Rivera
Moderator**

**6:40 – 6:50 INTELLECTUAL
PROPERTY**

**Wendy E. Miller
Partner
Cooper & Dunham LLP**

6:50 – 7:05 HEALTHCARE

**Deborah A. Brown
Deputy General Counsel
& Vice President, Legal,
Regulatory & Professional
Affairs
Greater New York
Hospital Association**

7:05 – 7:25	CRIMINAL LAW & CRIMINAL PROCEDURE	Elba Galvan Principle Court Attorney to NY Supreme Court Judge Analisa Torres Pablo Quiñones Partner – Reed Smith
7:25 – 7:30	CIVIL PROCEDURE	Jenny Rivera Director CLORE
7:30 – 7:45	VOTING RIGHTS & IMMIGRANTS RIGHTS	Juan Cartagena President and General Counsel LatinoJustice PRLDEF
7:45– 8:00	QUESTION AND ANSWER	
8:00 – 8:05	CLOSING	Jenny Rivera Director CLORE

RECEPTION IMMEDIATELY FOLLOWING

PANELISTS' BIOGRAPHIES **(Alphabetical Order)**

Deborah A. Brown is the Deputy General Counsel and Vice President of Legal, Regulatory & Professional Affairs at Greater New York Hospital Association. She is primarily responsible for compliance-related legal issues, including corporate compliance, fraud and abuse, and tax-exempt developments. Immediately before joining GNYHA, Ms. Brown was Senior Legislative Counsel at the New York City Council, where she was responsible for a wide range of municipal legislative, finance, and policy matters. Prior to that, Ms. Brown was in private practice, specializing in health care law. Ms. Brown began her career in the Attorney General's Honors Program at the United States Department of Justice, where she served on the Health Care Task Force of the Antitrust Division. Ms. Brown received a JD from Columbia University School of Law, and an MSW from the Columbia University School of Social Work. She received her BA from the University of Pennsylvania.

Juan Cartagena is President and General Counsel of LatinoJustice PRLDEF, one of the nation's leading civil rights public interest legal organizations representing Latinas and Latinos throughout the Eastern seaboard. He is a constitutional and civil rights attorney who has vast experience litigating cases on behalf of Latino and African American communities in the areas of voting rights, employment discrimination, language rights, education, and criminal justice issues.

He formerly served as General Counsel and Vice President for Advocacy at the Community Service Society of New York. At CSS he also directed the Mass Imprisonment & Reentry Initiative which focuses on the effects these policies have on poor and minority communities. Mr. Cartagena is a former Municipal Court Judge in Hoboken, NJ. From 2005 to 2011.

A graduate of Dartmouth College and Columbia University School of Law, Mr. Cartagena lectures on constitutional and civil rights issues at Rutgers University in New Brunswick. He has written numerous articles on constitutional, human and civil rights laws, and has been recognized for his work on the political representation of poor and marginalized communities - especially Puerto Rican and Latino communities. His current research interests include the effects of mass imprisonment on Latino, and particularly Puerto Rican, communities, unlawful trespass arrests as an element of the NYPD's stop and frisk practices, and employment discrimination issues affecting persons with previous criminal histories.

Mr. Cartagena has served on numerous boards of community-based organizations and government task forces in New York and New Jersey, including, most recently, Governor Paterson's Task Force on Transforming New York State's Juvenile Justice System and Governor Corzine's Blue Ribbon Advisory Panel on Immigrant Policy.

Mr. Cartagena lives with his family in Jersey City. He is active in various community activities including cultural activities that highlight the diversity of Jersey City's neighborhoods.

Elba Galvan is the principal court attorney to acting New York Supreme Court Judge Analisa Torres, New York County, and criminal trial part. Prior to this position, Ms. Galvan worked as a litigator and appellate attorney in two private firms, served as special counsel to the Puerto Rican Legal Defense and Education Fund (currently Latino Justice PRLDEF) and managed a solo practice. At PRLDEF, she worked on a variety of matters ranging from educational rights to environmental justice and voting rights.

Ms. Galvan appeared before the Department of Justice after the 2000 Census to advocate for fair and appropriate redistricting. As lead counsel in another case, Ms. Galvan argued that undocumented City University of New York (CUNY) students, as residents of New York, were entitled to in-state tuition. Governor Pataki, eventually signed legislation into law entitling undocumented immigrants attending CUNY and the State University of New York to state resident tuition rates.

In 2005 and 2006, Ms. Galvan served as a founding board member of the South Bronx Classical Charter School and currently serves on the board of Project Epic, a program that sponsors financially disadvantaged high school students to attend pre-college enrichment programs. She is a member of the Puerto Rican Bar Association and The New York Women's Bar Association. Ms. Galvan received her B.A., German Studies, from Cornell University and J.D. from Howard University School of Law. She is fluent in German and is a member of the New York Bar, and U.S. District Courts for the Southern and Eastern Districts of New York.

Wendy Miller is a partner with the law firm of Cooper & Dunham LLP, a New York City intellectual property boutique established in 1887. Celebrating 23 years with the firm, Ms. Miller's practice includes litigation before the Federal Courts and the U.S. Patent and Trademark Office, counseling, licensing and IP portfolio development. Ms. Miller was on the team representing the patentee, SEB S.A., before the U.S. Supreme Court and in the lower courts in the case of *Global-Tech Appliances v. SEB, S.A.*, 131 S.Ct. 2060 (2011). She has spoken on several occasions on the subject of indirect patent infringement and on intellectual property in general. Ms. Miller has a bachelor's degree in physics from Penn State and a J.D. from The George Washington University. She is an active member of the International Committee of the National Association of Women Lawyers and chairs the Committee's United Nations subcommittee.

Pablo Quiñones is a partner in the firm's Global Regulatory Enforcement Group. As an Assistant U.S. Attorney for eight years, Mr. Quiñones was responsible for numerous grand jury investigations and prosecutions of major cases involving securities fraud, public corruption, narcoterrorism, money laundering, and RICO crimes. He prosecuted numerous jury trials to verdict, as well as briefed and argued appeals before the United States Court of Appeals for the Second Circuit. Most recently, Mr. Quiñones served as a member of the SDNY's Securities and Commodities Fraud Task Force, where he prosecuted high-profile securities fraud cases, such as the insider trading scheme involving former hedge fund portfolio manager Joseph F. Skowron III and French doctor Yves Benhamou, and the investment fraud and market manipulation scheme

involving former Wall Street executives Ross H. Mandell and Adam Harrington. His securities fraud cases involved coordination with parallel investigations and litigation brought by the SEC, the Commodity Futures Trading Commission, FINRA, the London Stock Exchange, and the United Kingdom's Financial Services Authority.

As a federal prosecutor, Mr. Quiñones also developed broad experience investigating and prosecuting public corruption and various mail, wire, and tax fraud crimes. Mr. Quiñones prosecuted former New York State Senator Efrain Gonzalez, Jr., and participated in the investigation of former New York City Police Commissioner Bernard B. Kerik. His high-profile international cases included investigating and prosecuting corruption in the Middle East and Europe and narcotics and money laundering crimes in the United States, Latin America, the Caribbean, and Spain. Mr. Quiñones also served for five years as a Special Assistant U.S. Attorney in Washington, D.C., co-leading the largest prosecution in U.S. history of the 50 leaders of the FARC, a foreign terrorist organization in Colombia. Prior to joining the U.S. Attorney's Office in 2004, Mr. Quiñones represented businesses in complex commercial litigation at Anderson Kill & Olick, P.C., and served as an Associate General Counsel at AmeriChoice Health Services, Inc., now a UnitedHealth Group company.

Jenny Rivera (Moderator) is a Professor of Law at CUNY School of Law and the Founder and Director of the Law School's Center on Latino and Latina Rights and Equality (CLORE).

Professor Rivera teaches administrative law, civil procedure, property, legal writing, and courses on Antidiscrimination Law and Latinas/os and the Law. She has authored several articles on civil and women's rights, and her scholarship has been published widely in legal journals and anthologies. Professor Rivera is a member of the American Law Institute, the leading independent U.S. organization producing scholarly work to clarify, modernize, and improve the law. ALI has over 4000 members, consisting of judges, lawyers, and law professors. Professor Rivera is a Member and Reporter for the American Bar Association's Commission on Hispanic Legal Rights and Responsibilities, and a member of the Hispanic National Bar Association's Commission on the Status of Latinas in the Legal Profession. She is a co-author of the HNBA Commission's Report, *La Voz De La Abogada Latina: Challenges and Rewards in Serving the Public Interest*.

Professor Rivera is a former Administrative Law Judge of the New York State Division of Human Rights, a former member of the New York City Commission on Human Rights, and served as the Special Deputy Attorney General for Civil Rights for New York State Attorney General Andrew M. Cuomo. Professor Rivera clerked for Justice Sonia Sotomayor when the Justice served on the Southern District of New York bench, and she also clerked in the Second Circuit Court of Appeals *Pro Se* Law Clerk office. She was a lawyer for the Legal Aid Society's Homeless Family Rights Project and served as an Associate Counsel for the Puerto Rican Legal Defense and Education Fund. Professor Rivera received her J.D. from New York University School of Law and her LL.M. from Columbia University School of Law.

2011-2012 DECISIONS
(Selected Cases by Subject Area)
(Alphabetic order)
(Full opinions available on CLORE website)

Civil Procedure

Taniguchi v. Kan Pacific Saipan, Ltd., 566 U.S. ____, 132 S.Ct. 1997 (2012)

Section § 1920(6) did not allow the district court to award party the costs of translating documents.

Ninth Circuit vacated and remanded, 6-3, in an opinion by Justice Alito. Justice Ginsburg filed a dissenting opinion, joined by Justices Breyer and Sotomayor.

<http://www.supremecourt.gov/opinions/11pdf/10-1472.pdf>

Criminal Procedure

Florence v. Burlington, 566 U.S. ____, 132 S.Ct. 1510 (2012).

Strip searches for inmates entering the general population of a prison do not violate the Fourth Amendment. The Court concluded that a prisoner's likelihood of possessing contraband based on the severity of the current offense or an arrestee's criminal history is too difficult to determine effectively.

<http://www.supremecourt.gov/opinions/11pdf/10-945.pdf>

Lafler v. Cooper, 566 U.S. ____, 132 S.Ct. 1376 (2012)

The proper test for a party's claim to ineffective assistance of counsel is whether, absent the ineffective counsel, a defendant would have accepted an offered plea that was less severe than his eventual sentence, and the trial court would have accepted the terms of that plea. Moreover, the proper remedy is not specific performance of the original plea; on remand, the prosecution should re-offer the plea and, if the defendant accepts it, the trial court can decide how to amend the original sentence.

The Sixth Circuit, in an opinion delivered by Justice Kennedy. Justice Scalia filed a dissenting opinion, joined by Justice Thomas; Chief Justice Roberts joined as to all but Part IV. Justice Alito filed a dissenting opinion.

<http://www.supremecourt.gov/opinions/11pdf/10-209.pdf>

Miller v. Alabama, 567 U.S. ____, 132 S.Ct. 2455 (2012)

The Eighth Amendment's prohibition against cruel and unusual punishment forbids the mandatory sentencing of life in prison without the possibility of parole for juvenile homicide offenders. Children are constitutionally different from adults for sentencing purposes. While a mandatory life sentence for adults does not violate the Eighth Amendment, such a sentence would be an unconstitutionally disproportionate punishment for children.

Court of Criminal Appeals of Alabama reversed and remanded, 5-4, in an opinion delivered by Justice Kagan. Justice Breyer filed a concurring opinion, joined by Justice Sotomayor. Chief Justice Roberts filed a dissenting opinion, joined by Justices Scalia, Thomas, and Alito. Justice Thomas filed a dissenting opinion, joined by Justice Scalia. Justice Alito filed a dissenting opinion, joined by Justice Scalia.

<http://www.supremecourt.gov/opinions/11pdf/10-9646.pdf>

Missouri v. Frye, 566 U.S. ____, 132 S.Ct. 1399 (2012)

The Sixth Amendment requires defense attorneys to communicate formal plea offers from the prosecution. A party must show a reasonable probability that he would have accepted the initial plea, and that neither the prosecution nor the trial court would have prevented the offer from being accepted or implemented.

Court of Appeals of Missouri, Western District vacated and remanded, 5-4, in an opinion delivered by Justice Kennedy. Justice Scalia filed a dissenting opinion, joined by Chief Justice Roberts and Justices Thomas and Alito.

<http://www.supremecourt.gov/opinions/11pdf/10-444.pdf>

U.S. v. Jones, 565 U. S. ____, 132 S.Ct. 945 (2012)

The Court affirmed the judgment of the lower court, and held that the installation of a GPS tracking device on Jones' vehicle, without a warrant, constituted an unlawful search under the Fourth Amendment. The Court rejected the government's argument that there is no reasonable expectation of privacy in a person's movement on public thoroughfares and emphasized that the Fourth Amendment provided some protection for trespass onto personal property.

<http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf>

Smith v. Cain, 565 U. S. ____, 132 S.Ct. 627 (2012)

The Supreme Court held that because the eyewitness testimony was the only evidence linking Smith to the murders, the witness' statements to the police were material to the jury's decision. The Court noted that contradictory statements will not always be material if there is enough other evidence to sustain confidence in the verdict.

Reversed and remanded, 8-1, in an opinion by Chief Justice Roberts and Justice Thomas filed a dissenting opinion.

<http://www.supremecourt.gov/opinions/11pdf/10-8145.pdf>

Williams v. Illinois, 567 U.S. ____, 132 S.Ct. 2221 (2012)

The testimony of an expert witness that is based on a test the expert did not personally perform is admissible and does not violate the defendant's Sixth Amendment Confrontation Clause right.

Supreme Court of Illinois affirmed, 5-4, in an opinion delivered by Justice Alito for a four-justice plurality. Justice Breyer filed a concurring opinion. Justice Thomas filed an opinion concurring in the judgment. Justice Kagan filed a dissenting opinion, joined by Justices Scalia, Ginsburg, and Sotomayor.

<http://www.supremecourt.gov/opinions/11pdf/10-8505.pdf>

Healthcare

Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. ____, 132 S.Ct. 1161 (2012)

Twenty-six states, as well as private individuals and organization of independent businesses, brought action against federal Health and Human Services (HHS), Treasury, and Labor Departments and their Secretaries, challenging constitutionality of Patient Protection and Affordable Care Act (PPACA).

The Supreme Court, Chief Justice Roberts in a 5-4 decision, held that:

(1) Anti-Injunction Act did not bar pre-enforcement suit, abrogating *Liberty Univ., Inc. v. Geithner*, 671 F.3d 391; (2) the individual mandate, imposing minimum essential coverage requirement under which certain individuals must purchase and maintain health insurance coverage, exceeded Congress's power under Commerce Clause, abrogating *Thomas More Law Center v. Obama*, 651 F.3d 529, and *Seven-Sky v. Holder*, 661 F.3d 1; (3) the individual mandate was a "tax" that was within Congress's taxing powers; (4) statutory provision giving Secretary of Health and Human Services (HHS) the authority to penalize States that chose not to participate in Act's expansion of Medicaid program exceeded Congress's power under the Spending Clause; and (5) the penalization

provision was severable.

Justice Ginsburg filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, in which Justice Sotomayor joined, and in which Justices Breyer and Kagan joined in part. Justices Scalia, Kennedy, Thomas, and Alito filed a dissenting opinion.

Justice Thomas filed a dissenting opinion.

<http://www.supremecourt.gov/docket/pdfs/11-420%20bio.pdf>

Immigrant Rights

Arizona v. United States, 565 U.S. ____, 132 S.Ct. 2492 (2012)

The Supreme Court held that provision 1 of S.B. 1070 conflicts with the federal alien registration requirements and enforcement provisions already in place. Provision 2 is preempted because its method of enforcement interferes with the careful balance Congress struck with federal laws on unauthorized employment of aliens. Provision 4 is preempted because it usurps the federal government's authority to use discretion in the removal process..

Justice Anthony M. Kennedy, delivered the opinion for the 5-3 majority, with Justice Scalia dissenting in part and concurring in part.

<http://www.supremecourt.gov/opinions/11pdf/11-713.pdf>

Intellectual Property

Kappos v. Hyatt, 566 U.S. ____, 132 S.Ct. 1690 (2012)

A patent applicant's ability to introduce new evidence in a civil action against the Patent and Trademark Office was only limited by the Federal Rules of Evidence and the Federal Rules of Civil Procedure. Also, a district court can decide a de novo factual question without giving deference to the prior decision; it may take both new evidence and the administrative record into account.

U.S. Court of Appeals for the Federal Circuit affirmed and remanded, 9-0, in an opinion delivered by Justice Thomas. Justice Sotomayor filed a concurring opinion, joined by Justice Breyer.

<http://www.supremecourt.gov/opinions/11pdf/10-1219.pdf>

Voting Rights

Perry v. Perez, 565 U.S. ____, 132 S.Ct. 934 (2012)

In making an interim ruling on challenges to a § 5 “covered jurisdiction,” a district court must be careful not to prejudge the merits of the preclearance proceedings; the need to avoid prejudging is fulfilled by taking guidance from the legislative policies underlying a State’s new plans, to the extent that any challenges are not insubstantial.

District Court for the Western District of Texas reversed, in an unsigned, *per curiam* decision. Justice Thomas filed a concurring opinion.

<http://www.supremecourt.gov/opinions/11pdf/11-713.pdf>

LIST OF OPINIONS AUTHORED BY ASSOCIATE JUSTICE SONIA SOTOMAYOR
(Alphabetical order)

1. *Blueford v. Arkansas*, 566 U.S. ____, 132 S.Ct. 2044 (2012) (dissenting opinion)
2. *Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S*, 566 U. S. ____, 132 S.Ct. 1670 (2012) (concurring opinion)
3. *CompuCredit Corp. v. Greenwood*, 565 U. S. ____, 132 S.Ct. 665 (2012) (concurring opinion)
4. *FAA v. Cooper*, 566 U. S. ____, 132 S.Ct. 1441 (2012) (dissenting opinion)
5. *Filarsky v. Delia*, 566 U. S. ____, 132 S.Ct. 1657 (2012) (concurring opinion)
6. *Gonzalez v. Thaler*, 565 U. S. ____, 132 S.Ct. 641 (2012) (majority opinion)
7. *Hall v. United States*, 566 U.S. ____, 132 S.Ct. 1882 (2012) (majority opinion)
8. *Kappos v. Hyatt*, 566 U.S. ____, 132 S.Ct. 1690 (2012) (concurring opinion)
9. *Knox v. Service Employees*, 567 U.S. ____, 132 S.Ct. 2277 (2012) (concurring opinion)
10. *Kurns v. Railroad Friction Products Corp.*, 565 U. S. ____, 132 S.Ct. 1261 (2012) (concurring opinion)
11. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. ____, 132 S.Ct. 2199 (2012) (dissenting opinion)
12. *Messerschmidt v. Millender*, 565 U. S. ____, 132 S.Ct. 1235 (2012) (dissenting opinion)
13. *Mohamad v. Palestinian Authority*, 566 U.S. ____, 132 S.Ct. 1702 (2012) (majority opinion)
14. *Perry v. New Hampshire*, 565 U. S. ____, 132 S.Ct. 716 (2012) (dissenting opinion)
15. *Roberts v. Sea-Land Services, Inc.*, 566 U. S. ____, 132 S.Ct. 1350 (2012) (majority opinion)
16. *Salazar v. Ramah Navajo Chapter*, 567 U.S. ____, 132 S.Ct. 2181 (2012) (majority opinion)
17. *Southern Union Co. v. United States*, 567 U.S. ____, 132 S.Ct. 2344 (2012) (majority opinion)
18. *United States v. Jones*, 565 U. S. ____, 132 S.Ct. 945 (2012) (concurring opinion)
19. *Zivotofsky v. Clinton*, 566 U. S. ____, 132 S.Ct. 1421 (2012) (concurring opinion)

BRIEF DESCRIPTION OF ASSOCIATE JUSTICE SONIA SOTOMAYOR'S OPINIONS
(Alphabetical order)*

Majority Opinions

1. *Gonzalez v. Thaler*, 565 U. S. ____, 132 S.Ct. 641 (2012)

Question Presented:

(1) whether the Court of Appeals had jurisdiction to adjudicate the petitioner's appeal, notwithstanding the §2253(c)(3) defect; and (2) whether petitioner's habeas petition was time barred under §2244(d)(1) due to the date on which his judgment became final?

In an 8-1 decision, interpreting the Effective Death Penalty Act of 1996, the Court affirmed the lower court, holding 1. that the fact that the certificate of appealability did not indicate a constitutional issue did not deprive the court of appeals of jurisdiction because §2253(c)(3) is a nonjurisdictional rule; and 2. That the judgment becomes final for purposes of Section 2244(d)(1) when the time for seeking review by the state's highest court expires.

<http://www.supremecourt.gov/opinions/11pdf/10-895.pdf>

2. *Hall v. United States*, 566 U.S. ____, 132 S.Ct. 1882 (2012)

Question Presented:

Whether a federal income tax liability resulting from individual debtors' sale of a farm during the pendency of a Chapter 12 bankruptcy is "incurred by the estate" and thus dischargeable.

In a 5-4 decision, the Court affirmed the lower court, holding that there is no separately taxable estate in Chapter 12 bankruptcies, so the taxes in question were not "incurred by the estate."

<http://www.supremecourt.gov/opinions/11pdf/10-875.pdf>

3. *Mohamad v. Palestinian Authority*, 566 U.S. ____, 132 S.Ct. 1702 (2012)

Question Presented:

Whether the Torture Victim Protection Act, 28 U.S.C. § 1350, permits actions against defendants who are not natural persons.

In a 9-0 decision, the Court affirmed the lower court's opinion, holding that the word "individual" in the Torture Victim Protection Act means a natural person and does not impose liability against organizations.

<http://www.supremecourt.gov/opinions/11pdf/11-88.pdf>

4. *Roberts v. Sea-Land Services, Inc.*, 566 U. S. ____, 132 S.Ct. 1350 (2012)

Question Presented:

Whether, under the Longshore Act and the Harbor Workers' Compensation Act, the period when an individual is newly awarded compensation is the fiscal year when an injured worker first becomes entitled to compensation or the fiscal year when the injured worker is actually awarded compensation.

In an 8-1 decision, the Court affirmed the lower court's opinion, holding that the maximum compensation rate is set at the time that the worker becomes disabled no matter when a compensation order is entered.

<http://www.supremecourt.gov/opinions/11pdf/10-1399.pdf>

5. *Salazar v. Ramah Navajo Chapter*, 567 U.S. ____, 132 S.Ct. 2181 (2012)

Question Presented:

Whether, under the Indian Self-Determination and Education Assistance Act (ISDA), the government is required to pay all of the contract support costs incurred by a tribal contractor, as mandated by the Act, if payment of those costs would exceed the express statutory cap on the appropriations available to pay such costs?

In a 5-4 decision, the Court affirmed the lower court's opinion, holding that the government's promises under ISDA should be treated like other contract promises, and the government must pay each tribe's contract support costs in full.

<http://www.supremecourt.gov/opinions/11pdf/11-551.pdf>

6. *Southern Union Co. v. United States*, 567 U.S. ____, 132 S.Ct. 2344 (2012)

Question Presented:

Whether a fact that increases the penalty for a crime, beyond the prescribed statutory maximum, must be submitted to a jury and proved beyond a reasonable doubt if the penalty is the imposition of criminal fines.

In a 6-3 decision, the Court reversed and remanded the lower court's opinion, holding that the Apprendi rule that the determination of any fact that increases a defendant's maximum potential sentence should be left to the jury applies to sentences of criminal fines.

<http://www.supremecourt.gov/opinions/11pdf/11-94a1b2.pdf>

Concurring Opinions

1. *Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S*, 566 U. S. ____, 132 S.Ct. 1670 (2012)

Question Presented:

Whether Congress has authorized a generic company to challenge a use code's accuracy by bringing a counterclaim against the brand manufacturer in a patent infringement suit.

In a 9-0 decision, the Court reversed and remanded the lower court's opinion, holding that the Hatch-Waxman Act allows counterclaims to challenge unpatented uses of generic drugs even if other approved uses are still under patent.

Justice Sotomayor filed a concurring opinion emphasizing that a counterclaim would only lessen the difficulties created by an overly broad use code, but cannot fix them; and noting that the FDA's guidance as to what is required of brand manufacturers in use codes is opaque.

<http://www.supremecourt.gov/opinions/11pdf/10-844.pdf>

2. *CompuCredit Corp. v. Greenwood*, 565 U. S. ____, 132 S.Ct. 665 (2012)

Question Presented:

Whether the Credit Repair Organizations Act (CROA), 15 U. S. C. §1679 *et seq.*, precludes enforcement of an arbitration agreement in a lawsuit alleging violations of the Act.

In an 8-1 decision, the Court reversed and remanded to the lower court, holding that the disclosure provision of the Credit Repair Organizations Act (CROA) does not provide consumers with a right to bring an action in a court of law. The Federal Arbitration Act applies and arbitration agreement must be enforced in accordance with its terms.

Justice Sotomayor filed a concurring opinion, arguing that Greenwood's and CompuCredit's interpretations of the CROA were equally compelling given the lack of clear congressional

intent. Hence, precedent requires that CompuCredit prevails, because the burden of showing that Congress disallowed arbitration lies with Greenwood. She also rejected the majority's notion that Congress must explicitly preclude arbitration of statutory claims.

<http://www.supremecourt.gov/opinions/11pdf/10-948.pdf>

3. *Filarsky v. Delia*, 566 U. S. ____, 132 S.Ct. 1657 (2012)

Question Presented:

Whether a private individual hired by the government may assert qualified immunity, for a section 1983 claim, even though the individual works for the government on something other than a permanent or full-time basis.

In a 9-0 decision, the Court reversed the lower court's opinion, holding that there is no reason to distinguish part time or temporary government workers from full time employees and a temporarily employed individual may assert qualified immunity.

Justice Sotomayor filed a concurring opinion clarifying that not every private individual who temporarily works for the government is protected by qualified immunity in all circumstances. Such employees must satisfy the usual test for qualified immunity.

<http://www.supremecourt.gov/opinions/11pdf/10-1018.pdf>

4. *Kappos v. Hyatt*, 566 U.S. ____, 132 S.Ct. 1690 (2012)

Question Presented:

Whether a plaintiff, who is appealing the denial of an application of a patent by commencing a civil action against the Director of the United States Patent and Trademark Office (PTO) in a federal district court pursuant to 35 U.S.C. § 145, can introduce new evidence that could have been presented to the agency in the first instance. Whether, when new evidence is introduced under Section 145, the district court can decide *de novo* the factual questions to which the evidence pertains, without giving deference to the prior decision of the PTO.

In a 9-0 decision, the Court affirmed the lower court's opinion, holding that a patent applicant's ability to introduce new evidence in a civil action against the Patent and Trademark Office is only limited by the Federal Rules of Evidence and the Federal Rules of Civil Procedure. The Court also held that a district court can decide a *de novo* factual question without giving deference to the prior decision and that it may take both new evidence and the administrative record into account. Justice Sotomayor filed a concurring opinion emphasizing that the Court's decision should not foreclose a district court's authority to exclude evidence that was deliberately suppressed or withheld in bad faith.

<http://www.supremecourt.gov/opinions/11pdf/10-1219.pdf>

5. *Knox v. Service Employees*, 567 U.S. ____, 132 S.Ct. 2277 (2012)

Question Presented:

Whether the First Amendment allows a public-sector union to require objecting nonmembers to pay a special fee for the purpose of financing the union's political and ideological activities.

In a 7-2 decision, the Court reversed and remanded the lower court, holding a special assessment must come with a notice that allows nonmembers to opt in.

Justice Sotomayor filed a concurring opinion arguing that the Court went beyond its authority by specifying that an opt-in system better fits the requirements of the First Amendment when there is no precedent to support such a statement.

<http://www.supremecourt.gov/opinions/11pdf/10-1121c4d6.pdf>

6. *Kurns v. Railroad Friction Products Corp.*, 565 U. S. ____, 132 S.Ct. 1261 (2012)

Question Presented:

Whether petitioners' state-law tort claims for defective design and failure to warn are pre-empted by the Locomotive Inspection Act (LIA), 49 U. S. C. §20701 et seq.

In a 6-3 decision, the Court affirmed the lower court, holding that the Locomotive Inspection Act (LIA) preempted the state law design defect claims and the state law failure to warn claims.

Justice Sotomayor filed an opinion concurring in part and dissenting in part, agreeing that the LIA preempted claims for defective design, but arguing that the LIA did not preempt claims for failure to warn because those claims were not based on any product's physical compensation, but on a failure to provide adequate instructions or warning.

<http://www.supremecourt.gov/opinions/11pdf/10-879.pdf>

7. *United States v. Jones*, 565 U. S. ____, 132 S.Ct. 945 (2012)

Question Presented:

Whether the attachment of a GlobalPositioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment.

In a 9-0 decision, the Court affirmed the lower court, holding that the installation of a GPS tracking device on Jones' vehicle, without a warrant, constituted an unlawful search under the Fourth Amendment. Justice Sotomayor filed a concurring opinion agreeing that the government had obtained information by usurping Jones' property and by invading his privacy. However, she further reasoned that the Fourth Amendment was not only concerned with trespasses onto property. She stated that a Fourth Amendment search occurs whenever the government violates a subjective expectation of privacy that society recognizes as reasonable, which is particularly important in an era where physical intrusion is unnecessary to many forms of surveillance.

<http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf>

8. *Zivotofsky v. Clinton*, 566 U. S. ____, 132 S.Ct. 1421 (2012)

Question Presented:

Whether the political question doctrine deprives a federal court of jurisdiction to enforce a federal statute that explicitly directs the Secretary of State how to record the birthplace of an American citizen on a Consular Report of Birth Abroad and on a passport.

In an 8-1 decision, the Court vacated and remanded the lower court's opinion, holding that such a claim does not involve a political question and is thus justiciable. Justice Sotomayor filed an opinion concurring in part, and concurring in the judgment, stating that the inquiry required by the political question doctrine is more demanding than that suggested by the Court.

<http://www.supremecourt.gov/opinions/11pdf/10-699.pdf>

Dissenting Opinions

1. *Blueford v. Arkansas*, 566 U.S. ____, 132 S.Ct. 2044 (2012)

Question Presented:

Whether a defendant may be retried on charges of capital and first-degree murder after a mistrial where the jury concluded deliberations in his case and reported that it was unanimous against guilt on charges of capital murder and first-degree murder, was deadlocked on manslaughter, and had not voted on negligent homicide.

In a 6-3 decision, the Court affirmed the lower court's opinion, holding that the Double Jeopardy Clause did not prohibit Arkansas from retrying Blueford on charges of capital and first-degree murder. The Court also held that the trial court's declaration of a mistrial was proper. Justice Sotomayor filed a dissenting opinion characterizing the forewoman's announcements of unanimous votes on capital and first-degree murder as acquittals, arguing that Arkansas required a jury to acquit on greater charges before considering lesser charges. She also disagreed that the jury was free to reconsider its unanimous votes on the charges. Finally, Justice Sotomayor argued that manifest necessity required trial judges in acquittal-first jurisdictions to honor

requests for a partial verdict before declaring a mistrial; moreover, there was no clear necessity for a mistrial.

<http://www.supremecourt.gov/opinions/11pdf/10-1320.pdf>

2. *FAA v. Cooper*, 566 U. S. ____, 132 S.Ct. 1441 (2012)

Question Presented:

Whether the term “actual damages,” as used in the Privacy Act, includes damages for mental or emotional distress.

In a 5-3 decision, the Court reversed and remanded the lower court’s opinion, holding that the civil remedy provision of the Privacy Act does not unequivocally authorize an award of damages for mental or emotional distress, and accordingly, the Act does not waive the Federal Government’s sovereign immunity from liability for such harms.

Justice Sotomayor filed a dissenting opinion arguing that the majority’s opinion that actual damages are limited to pecuniary loss is at odds with the text, structure, and drafting history of the Act; and that it cripples the Act’s core purpose of redressing and deterring violations of privacy interests.

<http://www.supremecourt.gov/opinions/11pdf/10-1024.pdf>

3. *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. ____, 132 S.Ct. 2199 (2012)

Question Presented:

1. Whether Patchak lacked standing because he does not fall within the zone-of-interests protected by the Indian Reorganization Act (IRA). 2. Whether Patchak’s suit is precluded by sovereign immunity to quiet title claims drawn from the Quiet Title Act (QTA).

In an 8-1 decision, the Court affirmed and remanded the lower court’s opinion, holding that the U.S. waived its sovereign immunity and respondent prudential standing to bring suit. The Court further concluded that Patchak had standing to bring the suit because his claim falls within the zone-of-interests that the IRA regulates.

Justice Sotomayor filed a dissenting opinion stating that the majority’s limitation of sovereign immunity under the QTA was too broad. Under the majority’s formulation, those with no personal interest in government owned property could bypass sovereign immunity to challenge the government’s interest.

<http://www.supremecourt.gov/opinions/11pdf/11-246.pdf>

4. *Messerschmidt v. Millender*, 565 U. S. ____, 132 S.Ct. 1235 (2012)

Question Presented:

Whether police officers are entitled to qualified immunity when they obtain a 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.

In a 6-3 decision, the Court reversed the lower court's opinion, holding that the police officers were entitled to qualified immunity, which protects government officials from civil liability when their conduct does not violate any clearly established right of which a reasonable person would have known.

Justice Sotomayor filed a dissenting opinion disagreeing with the majority's assertion that the conduct of the police officers was objectively reasonable because the officer's search included a search for evidence unrelated to the specific crime the officers were investigating.

<http://www.supremecourt.gov/opinions/11pdf/10-704.pdf>

5. *Perry v. New Hampshire*, 565 U. S. ____, 132 S.Ct. 716 (2012)

Question Presented:

Whether the Due Process Clause requires a trial judge to conduct a preliminary assessment of the reliability of an eyewitness identification made under suggestive circumstances not arranged by the police.

In an 8-1 decision, the Court affirmed the lower court's opinion, holding that the due process clause does not require a preliminary judicial inquiry into the reliability of the identification, unless it was procured under unnecessarily suggestive circumstances, arranged by law enforcement.

Justice Sotomayor filed a dissenting opinion stating that it is not merely the act of suggestion, but rather the effect of an act of suggestion on the reliability of a resulting identification that creates a due process problem.

<http://www.supremecourt.gov/opinions/11pdf/10-8974.pdf>

THE 2012-2013 TERM CASES TO WATCH
(Alphabetical order by subject area)

CONSTITUTIONAL LAW

1. *U.S. v. Bormes*

Question Presented

Whether the Little Tucker Act, 28 U.S.C. § 1346(a)(2), waives the sovereign immunity of the United States with respect to damages actions for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

Argument Date: Tuesday, October 2, 2012

2. *Ryan v. Gonzales*

Question Presented

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.

Argument Date: Tuesday, October 9, 2012

3. *Tibbals v. Carter*

Question Presented

1) Whether capital prisoners possess a “right to competence” in federal habeas proceedings under *Rees v. Peyton*; and 2) whether a federal district court can order an indefinite stay of a federal habeas proceeding under *Rees*.

Argument Date: Tuesday, October 9, 2012

4. *Fisher v. University of Texas at Austin*

Question Presented

Whether this Court's decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Grutter v. Bollinger*, permit the University of Texas at Austin's use of race in undergraduate admissions decisions. (Kagan, J., recused)

Argument Date: Wednesday, October 10, 2012

6. *Already, LLC v. Nike*

Question Presented

Whether a federal district court is divested of Article III jurisdiction over a party's challenge to the validity of a federally registered trademark if the registrant promises not to assert its mark against the party's then-existing commercial activities.

Argument Date: Wednesday, November 7, 2012

CIVIL PROCEDURE

1. *Johnson v. Williams*

Question Presented

(1) Whether a habeas petitioner's claim has been "adjudicated on the merits" for purposes of 28 U.S.C. § 2254(d) where the state court denied relief in an explained decision but did not expressly acknowledge a federal-law basis for the claim.

Argument Date: Wednesday, October 3, 2012

2. *Comcast v. Behrend*

Question Presented

Whether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis.

Argument Date: Monday, November 5, 2012

3. *Smith v. U.S.*

Question Presented

Whether withdrawing from a conspiracy prior to the statute of limitations period negates an element of a conspiracy charge such that, once a defendant meets his burden of production that he did so withdraw, the burden of persuasion rests with the government to prove beyond a reasonable doubt that he was a member of the conspiracy during the relevant period – a fundamental due process question that is the subject of a well-developed circuit split.

Argument Date: Tuesday, November 6, 2012

4. *Marx v. General Revenue Corp.*

Question Presented

Whether a prevailing defendant in a Fair Debt Collection Practices Act (FDCPA) case may be awarded costs for a lawsuit that was not “brought in bad faith and for the purpose of harassment,” when the FDCPA provides that “[o]n a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney’s fees reasonable in relation to the work expended and costs” and Federal Rule of Civil Procedure 54(d) provides that “[u]nless a federal statute, these rules, or a court order provides otherwise, costs -- other than attorney’s fees -- should be allowed to the prevailing party.”

Argument Date: Wednesday, November 7, 2012

CORPORATE LAW

1. *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*

Question Presented

(1) Whether, in a misrepresentation case under Securities and Exchange Commission Rule 10b-5, the district court must require proof of materiality before certifying a plaintiff class based on the fraud-on-the-market theory; and (2) whether, in such a case, the district court must allow the defendant to present evidence rebutting the applicability of the fraud-on-the-market theory before certifying a plaintiff class based on that theory. (Breyer, J., recused)

Argument Date: Monday, November 5, 2012

CRIMINAL PROCEDURE

1. *Bailey v. U.S.*

Question Presented

Whether, pursuant to *Michigan v. Summers*, police officers may detain an individual incident to the execution of a search warrant when the individual has left the immediate vicinity of the premises before the warrant is executed.

Argument Date: Tuesday, October 30, 2012

2. *Florida v. Jardines*

Question Presented

Whether a dog sniff at the front door of a suspected grow house by a trained narcotics detection dog is a Fourth Amendment search requiring probable cause?

Argument Date: Wednesday, October 31, 2012

3. *Florida v. Harris*

Question Presented

Whether an alert by a well-trained narcotics detection dog certified to detect illegal contraband is insufficient to establish probable cause for the search of a vehicle.

Argument Date: Wednesday, October 31, 2012

4. *Evans v. Michigan*

Question Presented

Whether the Double Jeopardy Clause bars retrial after the trial judge erroneously holds a particular fact to be an element of the offense and then grants a midtrial directed verdict of acquittal because the prosecution failed to prove that fact.

Argument Date: Tuesday, November 6, 2012

IMMIGRATION

1. *Moncrieffe v. Holder*

Question Presented

Whether a conviction under a provision of state law that encompasses but is not limited to the distribution of a small amount of marijuana without remuneration constitutes an aggravated felony, notwithstanding that the record of conviction does not establish that the alien was convicted of conduct that would constitute a federal felony.

Argument Date: Wednesday, October 10, 2012

2. *Chaidez v. U.S.*

Question Presented

Whether the Court's decision in *Padilla v. Kentucky*, holding that criminal defendants receive ineffective assistance of counsel under the Sixth Amendment when their attorneys fail to advise them that pleading guilty to an offense will subject them to deportation, applies to persons whose convictions became final before its announcement.

Argument Date: Tuesday, October 30, 2012

INTELLECTUAL PROPERTY

1. *Kirtsaeng v. John Wiley & Sons*

Question Presented

How do Section 602(a)(1) of the Copyright Act, which prohibits the importation of a work without the authority of the copyright's owner, and Section 109(a) of the Copyright Act, which allows the owner of a copy "lawfully made under this title" to sell or otherwise dispose of the copy without the copyright owner's permission, apply to a copy that was made and legally acquired abroad and then imported into the United States?

Argument Date: Monday, October 29, 2012

PROPERTY LAW

1. *Arkansas Game & Fish Commission v. U.S.*

Question Presented

Whether government actions that impose recurring flood invasions must continue permanently to take property within the meaning of the Takings Clause. (Kagan, J., recused)

Argument Date: Wednesday, October 3, 2012

TORT LAW

1. Kiobel v. Royal Dutch Petroleum

Question Presented:

(1) Whether the issue of corporate civil tort liability under the Alien Tort Statute, 28 U.S.C. § 1350, is a merits question or instead an issue of subject matter jurisdiction; (2) whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide may instead be sued in the same manner as any other private party defendant under the ATS for such egregious violations; and (3) whether and under what circumstances the Alien Tort Statute, 28 U.S.C. § 1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.

Argument Date: Monday, October 1, 2012

* Questions Presented taken from the Scotus Blog

SUPREME COURT ELECTRONIC RESOURCES

ABA Website Supreme Court Section

<http://www.abanet.org/publiced/preview/briefs/home.html>

Case list for the upcoming term with briefs and questions presented for each case.

Constitutional Law Prof Blog

<http://lawprofessors.typepad.com/conlaw/>

Provides analysis on constitutional law edited by Steven D. Schwinn, Associate Professor of Law at John Marshall Law School and Ruthann Robson, Distinguished Professor at CUNY School of Law.

Supreme Court – Case by Case

<http://www.reuters.com/supreme-court/2011-2012>

Provides summaries of case issues and the lawyers, firms and agencies involved in the cases.

Supreme Court Official Website

<http://www.supremecourt.gov>

Case lists, argument schedules, and general information about the Supreme Court

<http://www.supremecourt.gov/orders/grantednotedlist.aspx?Filename=10grantednotedlist.html>

Case list and document for the October Term.

Supreme Court Blog

<http://www.scotusblog.com>

Provides commentary and updates on cases currently before the Court as well as cases that will be considered in the future term. Contains case files and pending petitions before the Court.

On The Docket

<http://onthedocket.org>

Provides brief synopses of cases and outcomes.

Oyez.org

<http://www.oyez.org>

Provides updates, briefs, and commentary on cases before the Court.

New York Times – United States Supreme Court

http://topics.nytimes.com/top/reference/timestopics/organizations/s/supreme_court/index.html

Provides articles and analysis on decisions and justices.



The Mission of the Hispanic National Bar Association

To serve as the national voice for the concerns and opinions of Hispanics in the community generally, and in the legal profession in particular.

To promote the recruitment and retention of Hispanics in law schools and provide them with financial assistance.

To develop mechanisms to facilitate the exchange of information among Hispanics involved in all segments of the legal profession.

To conduct conventions and seminars in order to provide continuing legal education for attorneys and foster the exchange of ideas and information among its members.

To provide testimony before Congress, state legislatures and executive agencies on issues of concern to Hispanics.

To work with other bar associations, governmental agencies and community groups to achieve greater involvement in and understanding of the American legal system by the national Hispanic community.



PRBA MISSION STATEMENT

The Puerto Rican Bar Association was born out of a sense of duty and commitment to the Puerto Rican community and to those Puerto Rican pioneer lawyers that founded this organization as part of their struggle to make sure that future generations of Puerto Rican and Latinos would have the same rights and privileges that everyone else is entitled to by virtue of one's full citizenship.

Throughout the last 50 years many Puerto Rican lawyers have stepped up to provide leadership in the PRBA, to pay tribute to the contributions of those members of the association who came before them, and to follow in their tradition.

Today, a new generation of leaders is stepping up to continue in the tradition of excellence of the PRBA, in the belief that their work and leadership on behalf of the membership of the PRBA will serve as part of their contribution to something greater than themselves. It is their firm belief that their commitment to excellence in the practice of law, and in their lives, will yield a greater understanding of issues of relevance and significance to the largest ethnic minority group in the United States. That, in the practice of law, thoughtful resolve and deliberate action are needed always, but never more so than when assuring the rights of the most vulnerable among us. That when they speak of being members of the PRBA, they are in fact vouching for their commitment to excellence and tradition.

CLORE @ **CUNY SCHOOL OF LAW**
Center on Latino and Latina Rights and Equality

The Center on Latino and Latina Rights and Equality (CLORE) focuses on issues impacting the Latino community in the United States and on progressive strategies for legal reform. The Center seeks to educate lawyers, law students, scholars and the general public on the status of Latinos and Latinas, as well as to advocate for expanded civil rights in the areas that affect the Latino population.

The Center is located at the City University of New York School of Law and hosts events, sponsors forums, produces scholarly materials, and develops courses that highlight access to the legal system and explore issues affecting the Latino community.

The Center also supports increased opportunities for civil rights litigation and the involvement of the private bar in matters positively affecting the Latino community. The Center has two dynamic projects that focus on full equality under the law: the **Language Access Project**, which addresses discrimination based on language and Latino national origin and ethnicity, and the **Gender Equality Project**, which focuses on legal strategies to eliminate genderbased discrimination and its effects within Latino community. The Law School's library is the repository for the Center's Special Collection on Latinos and the Law.

The Center also brings together scholars and advocates for discussions and strategic planning, while making available its growing archives on Latino rights to the legal community, advocates, elected officials and others interested in ensuring equal opportunities for Latino/as in the United States.

For more information, please visit the CLORE webpage: <http://www.law.cuny.edu/clore>
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Kelley Drye & Warren LLP

Kelley Drye was founded in 1836. Today the Firm has more than 350 lawyers and other professionals throughout offices in New York, New York; Washington, D.C.; Los Angeles, California; Chicago, Illinois; Stamford, Connecticut and Parsippany, New Jersey. Outside of the U.S., the firm has an office in Brussels, Belgium, and an affiliate relationship with an independent law firm in Mumbai, India, Fortitude Law Associates. In more than 30 practice areas, we provide exceptional, cost-effective legal counsel that helps our clients achieve their business goals.

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