

SUPREME COURT DOCKET UPDATE (February 2024)

This update provides a summary of the Supreme Court's docket, focusing on cases relevant to New York criminal law. A list of currently docketed cases and cert petitions is included.

Although pending cases/petitions are important because they may directly implicate our cases, cert petitions can be very helpful for a less-obvious reason: **they can provide valuable research assistance**. If a cert petition touches on an issue that you are currently briefing, it can be a research goldmine.

I. Current 2023-2024 Docket

A. *McElrath v. Georgia* (decided on 2/21/24)

- HOLDING: Unanimous decision (Jackson, J.) held that where a verdict is repugnant (a guilty verdict and an acquittal are irreconcilable), a court cannot, under the double jeopardy clause, permit retrial on the count of acquittal. Instead, when the court vacates the guilty verdict on repugnancy grounds (and orders a new trial) it must prohibit retrial on the acquitted count. The Court reconfirmed that the “jury holds an unreviewable power to return a verdict of not guilty even for impermissible reasons.”
- NOTE: This decision is consistent with New York case law. *People v. DeLee*, 24 N.Y.3d 603, 610 (2014).

B. *Erlinger v. United States* (to be argued in March)

- ISSUE: Whether the Constitution requires a jury trial and proof beyond a reasonable doubt to find that a defendant's prior convictions were “committed on occasions different from one another,” as is necessary to impose an enhanced sentence under the Armed Career Criminal Act.
- NOTE: This case may clarify and limit the so-called “fact of prior conviction” exception to the jury right. Hopefully, one day, the Supreme Court will clarify that there is no such exception at all.

C. *United States v. Rahimi* (already argued)

- ISSUE: Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

D. *Smith v. Arizona* (already argued)

- ISSUE: Whether the Sixth Amendment permits the State to present testimony by a substitute expert conveying the testimonial statements of a nontestifying forensic analyst, on the theory that the testifying expert offers an independent opinion and the absent analyst's statements are not offered for their truth but to explain the testifying expert's opinion.
- NOTE: Our Court of Appeals has already ruled on this issue in favor of the defendant in *People v. Goldstein*, 6 N.Y.3d 119 (2005).

E. *Thornell v. Jones* (to be argued in April)

- ISSUE: Whether the Ninth Circuit employed a flawed methodology for assessing prejudice under *Strickland v. Washington* when it disregarded the district court's factual and credibility findings and excluded evidence in aggravation and the state's rebuttal when it reversed the district court and granted habeas relief.

F. *Williams v. Washington* (Oct. 2024 Term)

- ISSUE: Whether exhaustion of state administrative remedies is required to bring claims under 42 U.S.C. § 1983 in state court as opposed to federal court.

G. *Glossip v. Oklahoma* (Oct. 2024 Term)

- ISSUES: (1) Whether the suppression of the key prosecution witness' admission that he was under the care of a psychiatrist and the failure to correct that witness' false testimony about that care and related diagnosis violate due process under *Brady v. Maryland* and *Napue v. Illinois*; (2) whether the entirety of the suppressed evidence must be considered when assessing materiality; (3) whether due process of law requires reversal where a capital conviction is so infected with errors that the state no longer seeks to defend it; and (4) whether the Oklahoma Court of Criminal Appeals' holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment.

H. *Diaz v. United States* (to be argued in March)

- ISSUE: In a drug-trafficking case — where an element is that the defendant knew she was carrying illegal drugs — does Fed. R. Evid. 704(b) permit an expert to testify that most couriers know they are carrying drugs and that drug-trafficking organizations do not entrust large quantities of drugs to unknowing transporters.

II. Pending Cert Petitions (including some denied petitions)

A. *Sands v. Bradley* (pending)

- ISSUE: Whether federal courts have jurisdiction under [28 U.S.C. § 2241](#) over a petition for habeas corpus alleging that a prisoner's unconstitutional conditions of incarceration require release, either because habeas jurisdiction extends to conditions-of-confinement claims, or because it at least extends to such claims when the prisoner seeks release from custody.

B. *Missouri Department of Corrections v. Finney* (cert denied)

- ISSUES: Whether (1) the Fourteenth Amendment prohibits relying on stereotypes about religious views to strike jurors; (2) a violation under *Batson* is structural or is subject to harmless-error review; and (3) in the context of jury selection, the 14th Amendment protects both religious status and religious belief, religious status only, or neither.

C. *Molina v. Book* (cert denied)

- ISSUES: (1) Whether words printed on clothing are pure speech, and thus presumptively entitled to First Amendment protection, or whether they are protected only if they convey a "particularized message;" (2) whether, in light of important new historical evidence, this court should reconsider the doctrine of qualified immunity; and (3) whether the court of appeals erred in holding that a First Amendment right to unobtrusively observe and record police performing their duties in public is not clearly established.

D. *Compton v. Texas* (pending)

- ISSUES: (1) whether a court's comparison of generalizations about all the female prospective jurors who were struck by the prosecution with generalizations about the male jurors not struck by the prosecution, rather than a side-by-side analysis of individual jurors, disregards the basic equal protection principle that one discriminatory strike is too many; and (2) whether Texas exercised its peremptory strikes in a prohibited discriminatory fashion.

E. *Sandoval v. Texas* (pending)

- ISSUES: (1) How courts should determine when jury empanelment begins for a particular defendant's case, triggering the due process right to be present; and (2) whether the state court erroneously held that the trial court did not violate due process when it excluded the defendant and counsel from proceedings in which jurors sought discretionary excusals from the court.