



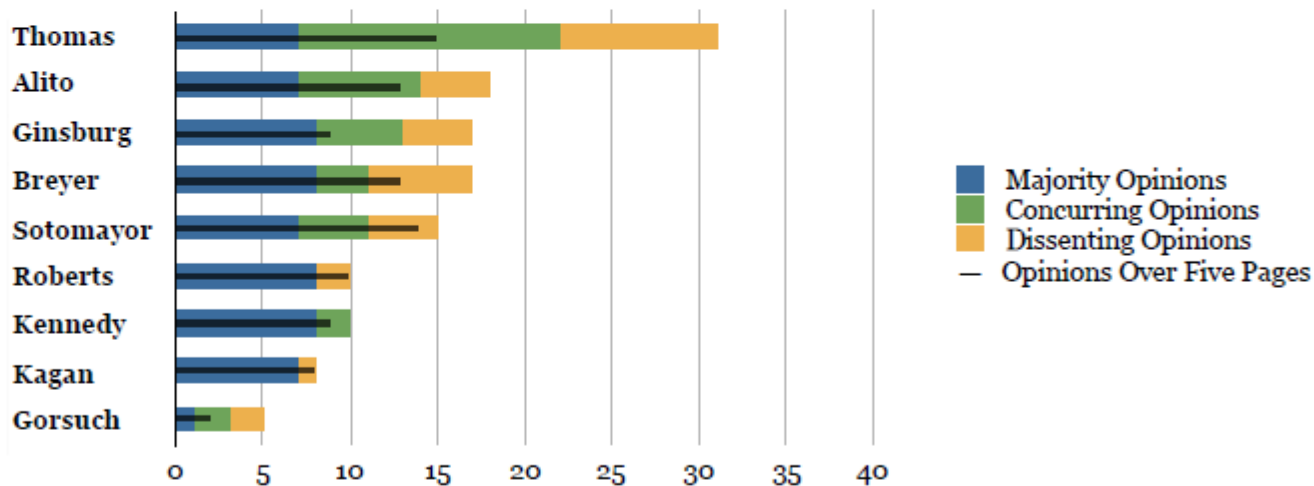
**Supreme Court Overview
2016-2017 Term
Criminal Cases**

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Total Opinion Authorship

The number of opinions five pages or longer is included in parentheses and represented by a black line in the chart below.

| | Total Opinions | Majority Opinions | Concurring Opinions | Dissenting Opinions |
|------------|----------------|-------------------|---------------------|---------------------|
| Roberts | 10 (10) | 8 (8) | - (-) | 2 (2) |
| Kennedy | 10 (9) | 8 (8) | 2 (1) | - (-) |
| Thomas | 31 (15) | 7 (7) | 15 (4) | 9 (4) |
| Ginsburg | 17 (9) | 8 (8) | 5 (0) | 4 (1) |
| Breyer | 17 (13) | 8 (8) | 3 (0) | 6 (5) |
| Alito | 18 (13) | 7 (7) | 7 (2) | 4 (4) |
| Sotomayor | 15 (14) | 7 (7) | 4 (3) | 4 (4) |
| Kagan | 8 (8) | 7 (7) | - (-) | 1 (1) |
| Gorsuch | 5 (2) | 1 (1) | 2 (0) | 2 (1) |
| Per Curiam | 8 (5) | 8 (5) | - (-) | - (-) |
| | 139 (98) | 69 (66) | 38 (10) | 32 (22) |



Frequency in the Majority

The following charts measure how frequently each justice has voted with the majority during October Term 2016. The charts include summary reversals but do not include cases that were dismissed.

All Cases

| Justice | Votes | Frequency in Majority | OT15 | OT14 | OT13 | OT12 | OT11 | OT10 | |
|-----------|-------|-----------------------|------|------|------|------|------|------|-----|
| Kennedy | 71 | 69 | 97% | 98% | 88% | 92% | 91% | 93% | 94% |
| Roberts | 70 | 65 | 93% | 92% | 80% | 92% | 86% | 92% | 91% |
| Kagan | 69 | 64 | 93% | 95% | 85% | 92% | 81% | 82% | 81% |
| Breyer | 71 | 64 | 90% | 94% | 92% | 88% | 83% | 76% | 79% |
| Sotomayor | 70 | 63 | 90% | 83% | 89% | 82% | 79% | 80% | 81% |
| Alito | 71 | 61 | 86% | 84% | 72% | 88% | 79% | 83% | 86% |
| Ginsburg | 71 | 60 | 85% | 88% | 86% | 85% | 79% | 70% | 74% |
| Gorsuch | 17 | 14 | 82% | - | - | - | - | - | - |
| Thomas | 71 | 58 | 82% | 72% | 61% | 88% | 79% | 86% | 88% |

Divided Cases

| Justice | Votes | Frequency in Majority | OT15 | OT14 | OT13 | OT12 | OT11 | OT10 | |
|-----------|-------|-----------------------|------|------|------|------|------|------|-----|
| Kennedy | 30 | 28 | 93% | 96% | 80% | 84% | 83% | 88% | 88% |
| Roberts | 30 | 25 | 83% | 84% | 66% | 76% | 73% | 86% | 83% |
| Kagan | 29 | 24 | 83% | 91% | 75% | 75% | 63% | 67% | 67% |
| Breyer | 30 | 23 | 77% | 89% | 86% | 64% | 67% | 57% | 60% |
| Sotomayor | 29 | 22 | 76% | 68% | 82% | 46% | 59% | 64% | 64% |
| Alito | 30 | 20 | 67% | 70% | 52% | 63% | 59% | 69% | 74% |
| Ginsburg | 30 | 19 | 63% | 78% | 77% | 56% | 60% | 45% | 50% |
| Gorsuch | 8 | 5 | 63% | - | - | - | - | - | - |
| Thomas | 30 | 17 | 57% | 49% | 34% | 64% | 60% | 74% | 76% |

Justice Agreement - All Cases

| | Kennedy | | Thomas | | Ginsburg | | Breyer | | Alito | | Sotomayor | | Kagan | | Gorsuch | | Total | |
|--------------------------------------|---------|-----|-----------|-----|-----------|-----|-----------|-----|-----------|-----|-----------|-----|-------|------|-----------|-----|----------------|-----------|
| Roberts | 58 | 85% | 43 | 63% | 43 | 63% | 51 | 75% | 55 | 81% | 48 | 72% | 53 | 80% | 12 | 71% | 68 | |
| | 60 | 88% | 52 | 76% | 46 | 68% | 52 | 76% | 55 | 81% | 50 | 75% | 54 | 82% | 14 | 82% | | |
| | 62 | 91% | 56 | 82% | 52 | 76% | 56 | 82% | 62 | 91% | 55 | 82% | 56 | 85% | 15 | 88% | | |
| | 6 | 9% | 12 | 18% | 16 | 24% | 12 | 18% | 6 | 9% | 12 | 18% | 10 | 15% | 2 | 12% | | |
| Kennedy | 38 | 55% | 50 | 72% | 56 | 81% | 47 | 68% | 54 | 79% | 59 | 88% | 59 | 88% | 11 | 65% | 69 | |
| | 47 | 68% | 52 | 75% | 59 | 86% | 50 | 72% | 55 | 81% | 59 | 88% | 59 | 88% | 13 | 76% | | |
| | 53 | 77% | 55 | 80% | 61 | 88% | 59 | 86% | 58 | 85% | 59 | 88% | 14 | 82% | | | | |
| | 16 | 23% | 14 | 20% | 8 | 12% | 10 | 14% | 10 | 15% | 8 | 12% | 3 | 18% | | | | |
| Thomas | 27 | 39% | 33 | 48% | 49 | 71% | 30 | 44% | 34 | 51% | 34 | 51% | 17 | 100% | 69 | | | |
| | 35 | 51% | 40 | 58% | 59 | 86% | 37 | 54% | 41 | 61% | 41 | 61% | 17 | 100% | | | | |
| | 45 | 65% | 49 | 71% | 63 | 91% | 46 | 68% | 47 | 70% | 47 | 70% | 17 | 100% | | | | |
| | 24 | 35% | 20 | 29% | 6 | 9% | 22 | 32% | 20 | 30% | 20 | 30% | 0 | 0% | | | | |
| Ginsburg | 51 | 74% | 30 | 43% | 54 | 79% | 55 | 82% | 8 | 47% | 69 | | | | | | | |
| | 55 | 80% | 34 | 49% | 57 | 84% | 57 | 85% | 9 | 53% | | | | | | | | |
| | 59 | 86% | 47 | 68% | 63 | 93% | 60 | 90% | 11 | 65% | | | | | | | | |
| | 10 | 14% | 22 | 32% | 5 | 7% | 7 | 10% | 6 | 35% | | | | | | | | |
| Breyer | 39 | 57% | 53 | 78% | 58 | 87% | 8 | 47% | 69 | | | | | | | | | |
| | 42 | 61% | 56 | 82% | 60 | 90% | 9 | 53% | | | | | | | | | | |
| | 51 | 74% | 59 | 87% | 62 | 93% | 11 | 65% | | | | | | | | | | |
| | 18 | 26% | 9 | 13% | 5 | 7% | 6 | 35% | | | | | | | | | | |
| Alito | 37 | 54% | 41 | 61% | 14 | 82% | 69 | | | | | | | | | | | |
| | 40 | 59% | 43 | 64% | 15 | 88% | | | | | | | | | | | | |
| | 50 | 74% | 51 | 76% | 16 | 94% | | | | | | | | | | | | |
| | 18 | 26% | 16 | 24% | 1 | 6% | | | | | | | | | | | | |
| Sotomayor | 58 | 87% | 7 | 41% | 68 | | | | | | | | | | | | | |
| | 59 | 88% | 8 | 47% | | | | | | | | | | | | | | |
| | 61 | 91% | 10 | 59% | | | | | | | | | | | | | | |
| | 6 | 9% | 7 | 41% | | | | | | | | | | | | | | |
| Kagan | 9 | 53% | 67 | | | | | | | | | | | | | | | |
| | 10 | 59% | | | | | | | | | | | | | | | | |
| | 11 | 65% | | | | | | | | | | | | | | | | |
| | 6 | 35% | | | | | | | | | | | | | | | | |
| Key | | | | | | | | | | | | | | | | | | |
| Fully Agree | | | | | | | | | | | | | | | | | | |
| Agree in Full or Part | | | | | | | | | | | | | | | | | | |
| Agree in Full, Part or Judgment Only | | | | | | | | | | | | | | | | | | |
| Disagree in Judgment | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | Gorsuch | 69 |

Justice Agreement - Non-Unanimous Cases

| | | Kennedy | | Thomas | | Ginsburg | | Breyer | | Alito | | Sotomayor | | Kagan | | Gorsuch | | Total |
|------------------|----|---------|-----------|--------|-----------|----------|-----------|--------|-----------|-------|-----------|-----------|----|-------|-----------|---------|-----------|-----------|
| Roberts | 23 | 82% | 12 | 43% | 11 | 39% | 15 | 54% | 21 | 75% | 15 | 56% | 17 | 63% | 4 | 50% | 28 | |
| | 23 | 82% | 18 | 64% | 11 | 39% | 15 | 54% | 21 | 75% | 15 | 56% | 17 | 63% | 6 | 75% | | |
| | 23 | 82% | 18 | 64% | 12 | 43% | 16 | 57% | 23 | 82% | 15 | 56% | 17 | 63% | 6 | 75% | | |
| | 5 | 18% | 10 | 36% | 16 | 57% | 12 | 43% | 5 | 18% | 12 | 44% | 10 | 37% | 2 | 25% | | |
| Kennedy | 9 | 32% | 15 | 54% | 20 | 71% | 16 | 57% | 18 | 67% | 20 | 74% | 3 | 38% | 28 | | | |
| | 13 | 46% | 15 | 54% | 20 | 71% | 16 | 57% | 18 | 67% | 20 | 74% | 5 | 63% | | | | |
| | 13 | 46% | 15 | 54% | 21 | 75% | 18 | 64% | 18 | 67% | 20 | 74% | 5 | 63% | | | | |
| | 15 | 54% | 13 | 46% | 7 | 25% | 10 | 36% | 9 | 33% | 7 | 26% | 3 | 38% | | | | |
| Thomas | 2 | 7% | 6 | 21% | 15 | 54% | 5 | 19% | 6 | 22% | 8 | 100% | 8 | 100% | 28 | | | |
| | 4 | 14% | 8 | 29% | 22 | 79% | 7 | 26% | 9 | 33% | 8 | 100% | | | | | | |
| | 6 | 21% | 10 | 36% | 23 | 82% | 7 | 26% | 9 | 33% | 8 | 100% | | | | | | |
| | 22 | 79% | 18 | 64% | 5 | 18% | 20 | 74% | 18 | 67% | 0 | 0% | | | | | | |
| Ginsburg | 18 | 64% | 4 | 14% | 21 | 78% | 19 | 70% | 1 | 13% | 28 | | | | | | | |
| | 18 | 64% | 4 | 14% | 21 | 78% | 19 | 70% | 2 | 25% | | | | | | | | |
| | 18 | 64% | 7 | 25% | 22 | 81% | 20 | 74% | 2 | 25% | | | | | | | | |
| | 10 | 36% | 21 | 75% | 5 | 19% | 7 | 26% | 6 | 75% | | | | | | | | |
| Breyer | 9 | 32% | 18 | 67% | 21 | 78% | 1 | 13% | 28 | | | | | | | | | |
| | 9 | 32% | 18 | 67% | 21 | 78% | 1 | 13% | | | | | | | | | | |
| | 11 | 39% | 18 | 67% | 22 | 81% | 2 | 25% | | | | | | | | | | |
| | 17 | 61% | 9 | 33% | 5 | 19% | 6 | 75% | | | | | | | | | | |
| Alito | 8 | 30% | 11 | 41% | 6 | 75% | 28 | | | | | | | | | | | |
| | 8 | 30% | 11 | 41% | 7 | 88% | | | | | | | | | | | | |
| | 10 | 37% | 12 | 44% | 7 | 88% | | | | | | | | | | | | |
| | 17 | 63% | 15 | 56% | 1 | 13% | | | | | | | | | | | | |
| Sotomayor | 21 | 78% | 0 | 0% | 27 | | | | | | | | | | | | | |
| | 21 | 78% | 1 | 13% | | | | | | | | | | | | | | |
| | 21 | 78% | 1 | 13% | | | | | | | | | | | | | | |
| | 6 | 22% | 7 | 88% | | | | | | | | | | | | | | |
| Kagan | 1 | 13% | 28 | | | | | | | | | | | | | | | |
| | 2 | 25% | | | | | | | | | | | | | | | | |
| | 2 | 25% | | | | | | | | | | | | | | | | |
| | 6 | 75% | | | | | | | | | | | | | | | | |
| Gorsuch | | | | | | | | | | | | | | | | | | 28 |

| Key | |
|-----|--------------------------------------|
| | Fully Agree |
| | Agree in Full or Part |
| | Agree in Full, Part or Judgment Only |
| | Disagree in Judgment |

Bravo-Fernandez v. United States

- 8-0
- The issue-preclusion component of the double jeopardy clause, which bars a second contest of an issue of fact or law raised and necessarily resolved by a prior judgment, does not bar the government from retrying defendants after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal and the convictions are later vacated for legal error unrelated to the inconsistency.

Packingham v. North Carolina

- 8-0
- A North Carolina statute, which makes it a felony for a registered sex offender “to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages,” impermissibly restricts lawful speech in violation of the First Amendment.

Manuel v. City of Joliet

- 6-2
- Pre-trial detention can be challenged on Fourth Amendment grounds.

Nelson v. Colorado

- 7-1
- Colorado's Exoneration Act, which permits the state to retain conviction-related assessments unless and until the prevailing defendant institutes a discrete civil proceeding and proves her innocence by clear and convincing evidence, violates the 14th Amendment's guarantee of due process.

Pena-Rodriguez v. Colorado

- 5-3
- When a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Weaver v. Massachusetts

- 7-2
- In the context of a public-trial violation during jury selection, when the error is neither preserved nor raised on direct review but is raised later via an ineffective-assistance-of-counsel claim, the defendant must demonstrate prejudice to secure a new trial.

McWilliams v. Dunn

- 5-4
- The Alabama courts' determination that James McWilliams received all the assistance to which *Ake v. Oklahoma* entitled him -- when certain threshold criteria are met, access to a state-provided mental health expert who is sufficiently available to the defense and independent from the prosecution to effectively “conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense” -- was contrary to, or an unreasonable application of, clearly established federal law.

Moore v. Texas

- 5-3
- The decision of the Texas Court of Criminal Appeals holding that the defendant was not mentally disabled under *Atkins* violated the Eighth Amendment by rejecting the habeas court's application of current medical diagnostic standards and by following the standard under *Ex parte Briseno*, including the nonclinical *Briseno* factors.

Lee v. United States

- 6-2
- Defendant who pleaded guilty based on counsel's erroneous advice that he would not be deported as a result of pleading guilty to an aggravated felony can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

Davila v. Davis

- 5-4
- The ineffective assistance of post-conviction counsel does not provide cause to excuse the procedural default of ineffective-assistance-of-appellate-counsel claims.

Buck v. Davis

- 6-2
- (1) Duane Buck demonstrated ineffective assistance of counsel under *Strickland v. Washington* when his attorney introduced evidence tying his “future dangerousness” in part to his race; and (2) the district court's denial of Buck's motion to re-open his federal habeas case under Federal Rule of Civil Procedure 60(b)(6) was an abuse of discretion.

Ziglar v. Abbasi

- 4-2
- Non-citizen detainees alleging unlawful detention and abuse following 9/11 could not bring *Bivens* claims against federal officials.

Hernandez v. Mesa

- Per curiam
- A Bivens remedy is not available when there are “special factors counselling hesitation in the absence of affirmative action by Congress”; the court of appeals should consider how the reasoning and analysis in *Ziglar* bear on the question whether the parents of a victim shot by a U.S. Border Patrol agent may recover damages for his death.
- With respect to Hernandez’s Fifth Amendment claim, because it is undisputed that the victim's nationality and the extent of his ties to the United States were unknown to the agent at the time of the shooting, the en banc court of appeals erred in granting qualified immunity based on those facts.

County of Los Angeles v. Mendez

- 8-0
- The Fourth Amendment provides no basis for the 9th Circuit’s “provocation rule,” which makes an officer’s otherwise reasonable use of force unreasonable if (1) the officer “intentionally or recklessly provokes a violent confrontation” and (2) “the provocation is an independent Fourth Amendment violation.”



Shaw v. United States

- 8-0
- Subsection (1) of the bank fraud statute covers schemes to deprive a bank of money in a customer's deposit account. Defendant's arguments in favor of his claim that subsection (1) does not apply to him because he intended to cheat only a bank depositor, not a bank, are unpersuasive.

Manrique v. United States

- 6-2
- A defendant wishing to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from that order; if he fails to do so and the government objects, he may not challenge the restitution order on appeal.

Beckles v. United States

- The Federal Sentencing Guidelines, including Section 4B1.2(a)'s residual clause, are not subject to vagueness challenges under the due process clause.

Esquivel-Quintana v. Sessions

- 8-0
- In the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of “sexual abuse of a minor” requires the age of the victim to be less than 16.

Honeycutt v. United States

- 8-0
- Because forfeiture pursuant to Section 853(a)(1) of the Comprehensive Forfeiture Act of 1984 is limited to property the defendant himself actually acquired as the result of the crime, that provision does not permit forfeiture with regard to Terry Honeycutt, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales.

Dean v. United States

- 8-0
- 18 U. S. C. §924(c), which criminalizes using or carrying a firearm during and in relation to a crime of violence or drug trafficking crime, or possessing a firearm in furtherance of such an underlying crime, does not prevent a sentencing court from considering a mandatory minimum imposed under that provision when calculating an appropriate sentence for the predicate offense.