US Supreme Court issues reactionary rulings on warrants and interrogations

John Burton
20 March 2012

As the media drumbeat grows louder for next week's extraordinary six hours of argument on the constitutionality of president Barack Obama's mandatory health insurance law, the Supreme Court continues, with the backing of Obama's solicitor general—the lawyer responsible for representing administration positions in the high court—to weaken key provisions of the Bill of Rights, the first 10 amendments to the US Constitution.

Last month, the Supreme Court ruled that police officers who obtain and serve invalid warrants cannot be sued, and that they do not have to give the familiar *Miranda* warnings to jail and prison inmates prior to interrogations. Both anti-civil rights decisions affirmed positions urged by the solicitor general.

The Bill of Rights was adopted in 1791 as a limitation on the federal government only. Most states had their own constitutional provisions mirroring the Bill of Rights. Many sanctioned slavery, however.

The Fourteenth Amendment, enacted at the conclusion of the Civil War, by prohibiting individual states from denying federal rights to "any person within its jurisdiction," profoundly changed the legal framework for democratic rights in the United States by providing a federal constitutional limitation on the power of state and local officials to violate someone's rights.

A key provision in the Civil Rights Act of 1866, referred to today as "Section 1983," empowers "any person" to sue for money damages whenever a state official "subjects, or causes to be subjected" that person to "the deprivation of any rights, privileges, or immunities secured by the Constitution."

Following the collapse of Reconstruction, reactionary Supreme Court decisions—epitomized by the 1896 decision in *Plessy v. Ferguson* upholding state mandated racial segregation of public facilities—gutted both the Fourteenth Amendment and Section 1983. The trend eventually reversed. The Supreme Court set a series of precedents "incorporating" provisions from the Bill of Rights into the Fourteenth Amendment, particularly during the tenure of Chief Justice Earl Warren (1953-1969), which coincided with the postwar boom and mass civil rights struggles.

As a result, it is now largely accepted that state and local police who violate federal constitutional rights risk a Section 1983 lawsuit for money damages, as well as the exclusion of unlawfully obtained evidence from criminal trials.

Over the next four decades, under Chief Justices Warren E. Berger (1969-1986) and William Rehnquist (1986-2005), the Supreme Court established both exceptions and limitations on the scope of constitutional rights and the power to enforce them in civil lawsuits and criminal cases. This process has accelerated under the current chief justice, John G. Roberts, Jr., with the explicit support of Obama's solicitor general, Donald B. Verrilli, Jr.

On February 22, the Supreme Court ruled 7-2 in *Messerschmidt v. Millender* that police detectives cannot be sued for preparing and executing a search warrant that fails to describe the property to be seized with particularity and lists items to be seized for which there is no probable cause. Both defects violate the Fourth Amendment's prohibition against "unreasonable searches and seizures."

The day before, in *Howes v. Fields*, the Supreme Court ruled 6-3 that a jail inmate taken by deputy sheriffs from his cell to a room for interrogation was not "in custody," and therefore was not protected by the Fifth Amendment's well-known requirement that a person must be informed of his rights to remain silent and to speak to a lawyer.

In both cases, Solicitor General Verrilli intervened as an *amicus curiae* "friend of the court" to argue on the side of the police. Also, in both cases, president Obama's most recent Supreme Court appointee, former Solicitor General Elena Kagan, voted with the right-wing majority.

What is most remarkable about both decisions is the unprincipled manner in which the Supreme Court manipulated the facts and law to create precedents strengthening the repressive powers of the state.

This phenomenon was most striking in *Messerschmidt*. Los Angeles Sheriff's detectives investigating a man accused of assaulting his girlfriend with a specific sawed-off shotgun obtained a search warrant for the home of Augusta Millender, an elderly woman who 15 years earlier had been his foster parent. The suspect no longer lived in the home.

Although the Fourth Amendment specifies that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be

searched, and the persons or things to be seized," the detectives' search warrant listed broad categories of items, such as "[a]ny photographs … which may depict evidence of criminal activity," and "any firearms." During a brutal SWAT search of Ms. Millender's home, deputies rifled through her personal papers and belongings, and seized her personal shotgun, a full-length weapon not used in the assault.

The case attracted attention because both the American Civil Liberties Union (ACLU) and the National Rifle Association (NRA) intervened as *amicus curiae* in support of Ms. Millender. The NRA's prior intervention in the Supreme Court led to the rulings in *District of Columbia v. Heller* (2008) and *McDonald v. City of Chicago* that the Second Amendment protects private ownership of firearms in the home. Many expected that the Supreme Court, to be consistent, would have to rule that the seizure of Ms. Millender's shotgun violated her right to bear arms.

Instead, Chief Justice Roberts' majority opinion does not mention the *Heller* and *McDonald* decisions, or even allude to the controversial Second Amendment right his court established just a few years ago. Moreover, there is no analysis of the validity of the warrant's use of general categories instead of particularly describing the property subject to search and seizure. Instead, Roberts states that "The validity of the warrant is not before us. The question instead is whether [the detectives] are entitled to immunity from damages, even assuming that the warrant should not have been issued."

After a review of the evidence that the dissenters accurately state "ignores the police's own conclusions, as well as the undisputed facts presented to the District Court," Roberts concluded, "Whether any of these facts, standing alone or taken together, actually establish probable cause is a question we need not decide. Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments. The officers' judgment that the scope of the warrant was supported by probable cause may have been mistaken, but it was not plainly incompetent."

In other words, local police are free to violate the Constitution, as long as they are not "plainly incompetent" in the eyes of the judges reviewing their conduct.

In an unusually sharp dissent, Justice Sonia Sotomayor, joined only by Justice Ruth Bader Ginsburg, stressed that "the Fourth Amendment was adopted specifically in response to the Crown's practice of using general warrants and writs of assistance to search 'suspected places' for evidence of smuggling, libel, or other crimes. Early patriots railed against these practices as 'the worst instrument of arbitrary power' and John Adams later claimed that 'the child Independence was born' from colonists' opposition to their use."

After pointing out that "all 13 federal judges who previously considered this case had little difficulty concluding that the police officers' search … violated the Fourth Amendment," Sotomayor would have denied the detectives any immunity because their seeking what was essentially a general warrant was "objectively unreasonable."

In *Howes v. Fields*, Justice Samuel Alito wrote for the majority that sheriff's deputies who interrogated Randall Fields, a prisoner serving a sentence in a Michigan jail, for between five and seven hours, were not required to give the familiar *Miranda* warnings.

To reach this conclusion, Alito had to work around one of the best known Warren-era precedents, *Miranda v. Arizona*, which requires police to tell people who are "in custody" about their Fifth Amendment rights to remain silent and consult an attorney, and another Warren-era precedent directly on point, *Mathis v. United States*, which established that *Miranda* warnings must be given when law enforcement officers remove an inmate from the general prison population and interrogate him.

Rejecting "any categorical rule" that an incarcerated person is "in custody," Alito wrote that "Not all restraints on freedom of movement amount to custody for purposes of *Miranda*." The Supreme Court ruled that statements Fields made during the interrogation were properly used to convict him.

Ginsburg, writing for the dissent, pointed out that by its own terms *Miranda* applies "in all settings in which [a person's] freedom of action is curtailed in any significant way."

Ginsburg explained, "Fields did not invite or consent to the interview. He was removed from his cell in the evening, taken to a conference room in the sheriff's quarters, and questioned by two armed deputies long into the night and early morning. He was not told at the outset that he had the right to decline to speak with the deputies. Shut in with the armed officers, Fields felt 'trapped.' Although told he could return to his cell if he did not want to cooperate, Fields believed the deputies 'would not have allowed [him] to leave the room,' And with good reason. More than once, 'he told the officers … he did not want to speak with them anymore.' He was given water, but not his evening medications. Yet the Court [majority] concludes that Fields was in 'an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave.'"

Millions of workers and students voted for Obama in 2008 in the mistaken belief that the former "constitutional law professor" would fight for civil liberties. Instead, they have witnessed the installation of a right-wing administration that shamelessly collaborates openly with the most reactionary justices on the high court to roll back democratic rights and strengthen the repressive power of the state.