

15-118 HERNANDEZ V. MESA

DECISION BELOW: 785 F.3d 117

LOWER COURT CASE NUMBER: 12-50217

QUESTION PRESENTED:

In *Boumediene v. Bush*, this Court held that the Constitution's extraterritorial application "turn[s] on objective factors and practical concerns," not a "formal sovereignty-based test." 553 U.S. 723, 764 (2008). That holding is consistent with Justice Kennedy's concurrence two decades earlier in *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), rejecting four Justices' formalist approach to extraterritorial application of the Fourth Amendment's warrant requirement.

The questions presented are:

1. Does a formalist or functionalist analysis govern the extraterritorial application of the Fourth Amendment's prohibition on unjustified deadly force, as applied to a cross-border shooting of an unarmed Mexican citizen in an enclosed area controlled by the United States?

2. May qualified immunity be granted or denied based on facts-such as the victim's legal status- unknown to the officer at the time of the incident?

IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: "WHETHER THE CLAIM IN THIS CASE MAY BE ASSERTED UNDER *BIVENS v. SIX UNKNOWN FED. NARCOTICS AGENTS*, 403 U.S. 388 (1971)."

CERT. GRANTED 10/11/2016