

## 12-158 BOND V. UNITED STATES

DECISION BELOW: 681 F.3d 149

LOWER COURT CASE NUMBER: 08-2677

### QUESTION PRESENTED:

Two years ago, this Court held that petitioner had standing to challenge her criminal conviction as a violation of the Constitution's structural limits on federal authority. See *Bond v. United States*, 131 S. Ct. 2355 (2011). The Court rejected the argument that Congress' reliance on the treaty power somehow defeated petitioner's standing. On remand, however, the court of appeals held that, while petitioner had standing, her constitutional challenge was a non-starter because the basic limits on the federal government's power are not "applicable" to statutes purporting to implement a valid treaty. App. 36 n.21. Although it had grave misgivings about its decision, the Third Circuit viewed this startling result as compelled by dictum in *Missouri v. Holland*, which states that "if [a] treaty is valid there can be no dispute about the validity of the statute [implementing that treaty] under Article 1, Section 8, as a necessary and proper means to execute the powers of the Government." 252 U.S. 416, 432 (1920). The court thus broadly construed *Holland* as allowing the Senate and the President to expand the federal government's constitutional authority by negotiating a valid treaty requiring implementing legislation otherwise in excess of Congress' enumerated powers.

The questions presented are:

Do the Constitution's structural limits on federal authority impose any constraints on the scope of Congress' authority to enact legislation to implement a valid treaty, at least in circumstances where the federal statute, as applied, goes far beyond the scope of the treaty, intrudes on traditional state prerogatives, and is concededly unnecessary to satisfy the government's treaty obligations?

Can the provisions of the Chemical Weapons Convention Implementation Act, codified at 18 U.S.C. § 229, be interpreted not to reach ordinary poisoning cases, which have been adequately handled by state and local authorities since the Framing, in order to avoid the difficult constitutional questions involving the scope of and continuing vitality of this Court's decision in *Missouri v. Holland*?

CERT. GRANTED 1/18/2013