TRIBUTE TO JUDGE SANDRA IKUTA

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INTRODUCTION

Few jurists have been as effective as Judge Sandra Ikuta in upholding our country's rule of law. Until her passing, for two decades, she sought to interpret our laws with fidelity to their text and history. True to her job as a circuit judge, she also insisted on the binding nature of Supreme Court precedent, reminding us that Supreme Court holdings are rules to follow, not mere suggestions to be subverted. We may be tempted to hold in high regard those judges who declare grand visions or innovations in the law in the manner of an enlightened philosopher. Some may even praise the disregard of law for what they perceive as a greater good. But good judges do their jobs by guarding (not transcending) the law. They serve the public best by holding fast to their station, conveying basic principles of our constitutional order entrusted to us by our forebears with a clarity that helps us recover what we may have forgotten.

By that measure, Judge Ikuta stands among the greats. The division between judging and lawmaking is integral to the scheme of separated powers devised by our Founders and upon which our republic was built. With the strength of her formidable intellect, Judge Ikuta did her part to hold up this structure. She consistently enforced the limits of the judicial role, adhered to the Constitution as understood by the people who ratified it, and read statutes according to their plain meaning—rather than deviate from the text in favor of policy goals. All this she did patiently, in case after case,

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* Circuit Judge, United States Court of Appeals for the Ninth Circuit. A version of this tribute appeared in the *Harvard Journal of Law & Public Policy: Per Curiam*. *See* Eric Tung, *Tribute to Judge Sandra Ikuta*, 49 HARV. J.L. & PUB. POL'Y PER CURIAM (Nov. 10, 2025), https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2025/11/Tung-Ikuta-Tribute-vf-11-9.pdf.

as one mends fences, without splash or fanfare, without seeking fame or honor; for her, it seemed, a duty discharged was its own reward.

Judge Ikuta's writings evince a fiercely intelligent and independent mind. They combine certain elements that made her a force on the bench: her razor-like logic cutting through the tangle of arguments; the authorities she convincingly marshalled, which leave little to no room for rebuttal; her presentation of the facts so lucid and thorough (for she would know the record cold) that by the time one gets through just the facts, the outcome often presents itself as inevitable. Soon after joining the bench, Judge Ikuta earned a reputation as an honest, hardworking jurist who analyzed arguments with rigor and articulated her holdings with precision. Small wonder that, time and again, her views (often in dissent) were vindicated by the Supreme Court.

Judge Ikuta's opinions speak for themselves. What follows is by no means an exhaustive review of her jurisprudence. But a few of her key decisions catalogued here—covering topics such as jurisdiction, constitutional rights, statutory interpretation, civil procedure, and the role of precedent—demonstrate the breadth and quality of her work.

I. JURISDICTION

Judge Ikuta's decisions relating to the court's jurisdiction should stand as classics in the federal reports. In *Sarei v. Rio Tinto, PLC*,[1] the majority held that residents of Papua New Guinea could sue a mining company operating there in federal court under the Alien Tort Statute for allegedly violating the law of nations. Dissenting, Judge Ikuta said no: "In its rush to announce which . . . favorite academic theories create international law norms enforceable in federal courts, the majority has stumbled on the threshold question: whether the [statute] gives us jurisdiction over this particular suit

[1] 671 F.3d 736 (9th Cir. 2011) (en banc).

at all."[2] "As it happens," the judge wrote, "this threshold is no mere doorsill but a formidable obstacle: in fact, the [statute] gives us *no* authority to hear a case where an alien sues another alien."[3] In a few deft strokes, Judge Ikuta explained why—(1) a federal court has jurisdiction if there's a federal question or diversity; (2) a case arising out of the law of nations does not arise out of federal law; (3) the Constitution confers jurisdiction over disputes between certain diverse parties (such as between a citizen of a U.S. state and a citizen of a foreign state) but not over disputes between aliens; and (4) a federal court thus has no jurisdiction to hear a suit between aliens alleging a violation of the law of nations.

No one addressed this defect before Judge Ikuta spotted it, but once she did, the need for dismissal became obvious. The Supreme Court vacated the Ninth Circuit's judgment, which led to the suit's dismissal (on related but different grounds).[4] Years later, Justice Gorsuch would also write that the Alien Tort Statute could not permit suits between aliens without exceeding a court's jurisdiction, citing Judge Ikuta's dissent in *Sarei*.[5] An idea rooted in principle tends to stand the test of time.

Another Ikuta special addressing jurisdictional limits is *United States v. Sanchez-Gomez*. [6] There, the majority deemed unconstitutional a district court's policy of shackling pretrial detainees in the courtroom. Judge Ikuta held nothing back in her dissent (despite the fact that she had once clerked for the author of the majority opinion). "The majority's analysis is wrong at every turn," she said, "substitut[ing] the supposed wisdom of the ivory tower for the expertise of the United States Marshals Service and the district courts themselves." [7] At the outset, Judge Ikuta

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[2] *Id.* at 818–19.

[3] *Id.* at 819.

[4] *See generally* Rio Tinto, PLC v. Sarei, 569 U.S. 945 (2013); Sarei v. Rio Tinto, PLC, 722 F.3d 1109 (9th Cir. 2013).

[5] *See* Jesner v. Arab Bank, PLC, 584 U.S. 241, 286–88 (2018) (Gorsuch, J., concurring in part and concurring in the judgment).

[6] 859 F.3d 649 (2017) (en banc).

[7] *Id.* at 684 (Ikuta, J., dissenting).

concluded, the case was moot because the criminal defendants were already convicted and their cases closed, and so they were no longer subject to the shackling policy.[8] But even if the merits of pretrial shackling could be reached, in Judge Ikuta's view, nothing in the Constitution prohibited it. At common law, detainees could be secured in irons at arraignment (though not at trial), she recounted, citing Blackstone's Commentaries and a King's Bench case from 1722 in which a barrister (Christopher Layer) was arrested, tried, and executed for his role in a conspiracy to restore the Stuart monarchy. [9] That had been the Supreme Court's conclusion too,[10] which Judge Ikuta (unlike the majority) did not think proper to second-guess.[11] Once again, her stance prevailed at the Supreme Court, which vacated the Ninth Circuit's judgment and remanded the case to that court with directions to dismiss as moot.

More examples abound of Judge Ikuta's vigilance in ensuring the federal court's proper role in our republican design. In *Hall v. City of Los Angeles*, [12] Judge Ikuta lambasted the majority for "skipping over the most important limitation on a federal court: our jurisdiction." The majority had gone out of its way to reverse a judgment that the appellant had never sought to appeal—taking this extraordinary step *sua sponte* to avoid a perceived "manifest injustice" (involving a Fifth Amendment claim of coerced interrogation). But Judge Ikuta would have none of it: "These equitable concerns carry the majority beyond what the Constitution empowers us to do. . . . A fundamental premise of this adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them."[13] In many other matters she had more success convincing her

[8] *See id.* at 666, 669.

[9] *Id.* at 679.

[10] *See generally* Deck v. Missouri, 544 U.S. 622 (2005).

[11] *See Sanchez-Gomez*, 859 F.3d at 678.

[12] 697 F.3d 1059, 1076 (9th Cir. 2012).

[13] *Id.* at 1079 (internal quotation marks and citations omitted).

colleagues when the court has lacked jurisdiction.[14] But whether in the majority or not, Judge Ikuta could be counted on to keep close watch over the boundaries of the court's powers.

II. CONSTITUTIONAL RIGHTS

When the court had jurisdiction, Judge Ikuta did not hesitate to secure the constitutional rights of those who properly asserted their violation. In *Cedar Point Nursery v. Shiroma*,[15] union organizers sought to trespass onto the property of a strawberry nursery and a shipper of table grapes, claiming a "right to access" under California law so they could encourage workers to join a union. Contra the majority, Judge Ikuta decried the breach of private property, reasoning that the "Supreme Court has long recognized that an easement in gross is a traditional form of private property that cannot be taken without just compensation."[16] While the majority saw no taking because the unions did not have "continuous access" under state law, Judge Ikuta shut the door on that argument: "There is no support for the majority's claim that the government can appropriate easements free of charge so long as the easements do not allow for access 24 hours a day, 365 days a year.'"[17] The majority then invoked *PruneYard Shopping Center v. Robins*[18] which held that the owner of a shopping mall lacked a takings claim where state law (also California) had permitted pamphleteers to distribute literature on the premises. But fending off that analogy, Judge Ikuta said that the case "did not involve a state law that gave third parties access to otherwise private property; rather, the owner in *PruneYard* 'had already opened his

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[14] *See generally, e.g.*, Atl. Nat'l Trust LLC v. Mt. Hawley Ins. Co., 621 F.3d 931 (9th Cir. 2010); Planes v. Holder, 652 F.3d 991 (9th Cir. 2011); Ctr. for Biological Diversity v. Bernhardt, 946 F.3d 553 (9th Cir. 2019); Perez-Camacho v. Garland, 54 F.4th 597 (9th Cir. 2022).

[15] 956 F.3d 1162 (9th Cir. 2020).

[16] *Id.* at 1169 (Ikuta, J., dissenting from denial of rehearing en banc).

[17] *Id.* at 1172.

[18] 447 U.S. 74 (1980).

property to the general public.'"[19] The Supreme Court agreed with Judge Ikuta's conclusion that there was a taking and reversed the Ninth Circuit's judgment.[20]

The Supreme Court vindicated Judge Ikuta in more constitutional cases still. In *Americans for Prosperity Foundation v. Becerra*,[21] California sought to force a non-profit group to disclose the names of its donors despite the history of harassment that this group faced because of its conservative viewpoints. (Supporters of the group, for example, faced death threats, and at least one was punched at a rally.) Judge Ikuta, in dissent, would have accorded First Amendment protection to the group. "Under [the majority's] analysis," she wrote, "the government can put the First Amendment associational rights of members and contributors at risk for a list of names it does not need, so long as it promises to do better in the future to avoid public disclosure of the names."[22] "Given the inability of governments to keep data secure," she continued, "this standard puts anyone with controversial views at risk."[23] The Supreme Court agreed, found California's disclosure regime to be unconstitutional, and reversed the panel's judgment.[24]

The Supreme Court concurred with Judge Ikuta in other constitutional cases—including a pair of election law cases arising out of Arizona. In *Gonzalez v. Arizona*,[25] Judge Ikuta (writing for the majority) concluded that the Elections Clause—which gives Congress the authority to "make or alter" state regulations concerning "the times, places and manner of holding [federal congressional] elections"—compelled preemption, under federal law, of Arizona's voter-registration requirements in federal

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[19] *Cedar Point*, 956 F.3d at 1174 (quoting Nollan v. Cal. Coastal Comm'n, 483 U.S. 825, 832 n.1 (1987)).

[20] *See generally* Cedar Point Nursery v. Hassid, 141 S. Ct. 2063 (2021).

[21] 919 F.3d 1177 (9th Cir. 2019).

[22] *Id.* at 1187 (Ikuta, J., dissenting from denial of rehearing en banc).

[23] *Id.*

[24] *See generally* Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373 (2021).

[25] 677 F.3d 383 (9th Cir. 2012).

elections.[26] On Judge Ikuta's reading, the text and history of the Clause (and of the National Voter Registration Act) commanded that result, regardless of one's policy preferences. The Supreme Court adopted Judge Ikuta's view in an opinion penned by Justice Scalia.[27]

In the other election law case, *Democratic National Committee v. Reagan*,[28] Judge Ikuta was vindicated yet again. *Reagan* raised constitutional challenges (under the First, Fourteenth, and Fifteenth Amendments) regarding two Arizona laws—a requirement that in-person voters cast their votes in their assigned precinct and a prohibition against third-party collection of early ballots. Because the district court had made proper detailed factual findings that these laws did not impose a severe burden on Arizona voters and were not enacted with discriminatory intent, the majority (in an opinion by Judge Ikuta) affirmed the denial of the plaintiffs' constitutional claims. The Supreme Court upheld that judgment (in the same Term—indeed, on the same day—that it vindicated Judge Ikuta's dissent in *Americans for Prosperity Foundation*).[29]

And most recently, the Supreme Court affirmed the Ninth Circuit's judgment in a case involving the dormant commerce clause in which Judge Ikuta wrote the opinion for a unanimous panel. In *National Pork Producers Council v. Ross*,[30] farm interest groups challenged a California proposition that banned "the sale of whole pork meat (no matter where produced) from animals confined in a manner inconsistent with California standards."[31] The plaintiffs argued that the state law had "an impermissible

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[26] *See id.* at 392 ("In contrast to the Supremacy Clause, which addresses preemption in areas within the states' historic police powers, the Elections Clause affects only an area in which the states have no inherent or reserved power: the regulation of federal elections.").

[27] *See generally* Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1 (2013).

[28] 904 F.3d 686 (9th Cir. 2018).

[29] *See generally* Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321 (2021).

[30] 6 F.4th 1021 (9th Cir. 2021).

[31] *Id.* at 1025.

extraterritorial effect" and "undue burden on interstate commerce" in violation of the dormant Commerce Clause.[32]

To start, Judge Ikuta noted that the Clause "does not, on its face, impose any restrictions on state law in the absence of congressional action" (and here there had not been federal action).[33] But the Clause, she recognized, had been interpreted by the Supreme Court to "implicitly preempt[ ] state laws that regulate commerce in a manner that is disruptive to economic activities in the nation as a whole."[34] Carefully construing the various strands of Supreme Court case law addressing the so-called dormant Commerce Clause, Judge Ikuta concluded that, while earlier cases had used "broad language" to suggest a categorical "extraterritoriality principle" (which would conceivably invalidate any state law that had any effect outside the state), that principle is "not applicable to a statute that does not dictate the price of a product and does not tie the price of its in-state products to out-of-state prices."[35] To give an example: a state law would be invalid if it says you can only sell beer within the state at a price no higher than the lowest price at which you could sell that same beer in any other state. But where (as here) a state law merely increased the cost of producing pork meat in other states, that law would not be invalid. For that very reason, Judge Ikuta concluded, California's pork regulation did not impose an "undue burden on interstate commerce." The Supreme Court agreed with Judge Ikuta's thorough analysis and affirmed.[36]

III. STATUTORY INTERPRETATION AND CIVIL PROCEDURE

Several statutory and civil procedure cases also exemplified Judge Ikuta's skill as a jurist. One of the most significant opinions in the area of class-action litigation is her dissent in *Dukes v. Wal-*

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[32] *Id.* at 1026.

[33] *Id.*

[34] *Id.*

[35] *Id.* at 1028 (citations omitted).

[36] *See generally* Nat'l Pork Producers Council v. Ross, 143 S. Ct. 1142 (2023).

Mart Stores, Inc.[37] There, the majority affirmed the certification of a class of 1.5 million women who had worked at Walmart in a case about alleged workplace discrimination. Judge Ikuta observed at the outset that "[n]o court has ever certified a class like this one, until now" and "with good reason": Because there was no "evidence of a company-wide discriminatory policy" or "practice," she said, "there [was] nothing to bind these purported 1.5 million claims together in a single action."[38] "Never before has such a low bar been set for certifying such a gargantuan class."[39]

The facts would drive the decision in such a case, and so Judge Ikuta patiently laid them out—facts about Walmart's complex corporate structure (e.g., 3,400 stores nationwide each having its own manager and assistant managers with substantial discretion in both pay and promotion decisions) and facts about the class (e.g., six women served as class representatives, and three of them claimed to have been discriminated against by female store managers *who themselves were part of the class*—thus "featur[ing] the unusual distinction of placing victims and their alleged victimizers on the same side of the counsel table," as Judge Ikuta noted).[40] Given these facts and with no proof to "bridge the gap between [an individual] claim and the existence of company-wide discrimination," the plaintiffs could not satisfy Rule 23(a)'s commonality and typicality requirements for class certification.[41] Nor could the plaintiffs' expert close this gap, Judge Ikuta said, for the expert's "[i]nformation about [pay] disparities at the regional and national level does not establish the existence of disparities at individual stores, let alone raise the inference that a company-wide policy of discrimination is implemented by discretionary decisions at the store and district level."[42]

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[37] Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571 (9th Cir. 2010).

[38] *Id.* at 628–29 (Ikuta, J., dissenting).

[39] *Id.* at 652.

[40] *Id.* at 629–30 & n.4.

[41] *Id.* at 632.

[42] *Id.* at 637.

Judge Ikuta resolved another key issue that would have lasting ramifications on how class actions would be litigated. The majority (and plaintiffs) sought to bar judges, at the class-certification stage, from considering the merits of the case (which, in their view, collapsed with the class-certification question of whether there was a general policy of discrimination). Judge Ikuta viewed that maneuver as a clear circumvention of the rigorous standards for class certification under Rule 23. "[T]he degree of overlap between the merits determination and the determination that the class meets the Rule 23 requirements is largely irrelevant."[43] "If plaintiffs cannot demonstrate that the proposed class was subject to a general policy of discrimination," she said, "then the class action is not an efficient mechanism for pursuing relief, and the district court may not certify the class."[44] All these points resonated with the Supreme Court, which (in an opinion by Justice Scalia) adopted Judge Ikuta's reasoning and reversed the Ninth Circuit's judgment.[45]

The Federal Arbitration Act is another area in which Judge Ikuta made her mark. In *Morris v. Ernst & Young*,[46] the majority held that the National Labor Relations Act (NLRA) prohibited agreements between employers and employees to arbitrate their disputes—despite the Federal Arbitration Act's (FAA) command that such agreements be enforced. In dissent, Judge Ikuta wrote that this "decision is breathtaking in its scope and in its error; it is directly contrary to Supreme Court precedent and joins the wrong side of a circuit split."[47] The main issue in the case was whether the labor statute (which protected "concerted activities") could be harmonized with the arbitration statute (which required enforcement of contracts to arbitrate), and Judge Ikuta held that the answer was clearly yes. Thoroughly canvassing the case law in this area, she reasoned that, "[w]hile the NLRA protects concerted

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[43] *Id.* at 634.

[44] *Id.*

[45] *See* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011).

[46] Morris v. Ernst & Young, LLP, 834 F.3d 975 (9th Cir. 2016).

[47] *Id.* at 990 (Ikuta, J., dissenting); *see also id.* at 991 ("[T]he majority effectively cripples the ability of employers and employees to enter into binding agreements to arbitrate.").

activity, it does not give employees an unwaivable right to proceed as a group to arbitrate or litigate disputes."[48] And focusing on the NLRA's "language"—protecting "concerted activities for the purpose of collective bargaining or other mutual aid or protection"—Judge Ikuta held that it enables "group efforts to dispute employer positions," but it "does not expressly preserve any right for employees to use a specific *procedural* mechanism to litigate or arbitrate disputes collectively; even less does it create an unwaivable right to such a mechanism."[49] "In teasing out of the NLRA a 'mandate' that prevents the enforcement of [the] arbitration agreement," Judge Ikuta concluded, "the majority exhibits the very hostility to arbitration that the FAA was passed to counteract."[50] The Supreme Court agreed with Judge Ikuta (in an opinion by Justice Gorsuch) and reversed the Ninth Circuit's judgment.[51]

Shortly after publishing her dissent in *Morris* (and in the wake of Justice Scalia's passing), Judge Ikuta reflected in more theoretical fashion on the importance of adhering to statutory text (rather than having legislative history drive a judge's analysis). "[W]hat difference does it make," she queried, "whether judges interpret statutes based on their actual text and original public meaning, or whether judges take into account the law's legislative history?"[52]"According to Justice Scalia," she noted, "it makes an enormous difference."[53] "Nothing less than the rule of law itself is at stake. For Justice Scalia, the text of the statute is the law. He said, 'We are bound not by the intent of our legislators, but by the laws which they enacted.' By contrast, if judges are free to pursue unexpressed legislative intents, there's an enormous risk that

[48] *Id.* at 995.

[49] *Id.*

[50] *Id.* at 998.

[51] *See* Epic Systems Corp. v. Lewis, 584 U.S. 497 (2018).

[52] *Text over Intent and the Demise of Legislative History*, 43 U. DAYTON L. REV. 103, 103–04 (2018) (statement of Judge Ikuta).

[53] *Id.* at 104.

judges will pursue their own objectives and desires."[54] And *that*, Judge Ikuta intuited, is the key divide among the competing schools of interpretation: whether judges are bound by the laws or are free from them, and what interpretive methodology best cabins a judge's temptation to reach for his or her own personal policy preferences (accounting for the fact that, in Judge Ikuta's words, "judges are famous for plucking ambiguity out of the jaws of clarity."[55]). It is clear where Judge Ikuta stood in that debate.

IV. CLARITY AND PRECEDENT

Judge Ikuta put a premium on the *clarity* of rules—an important rule-of-law value benefitting lower courts and litigants.[56]

That clarity is lost when the circuit deviates from settled Supreme Court precedent in favor of murky judicial standards that do nothing but aggrandize a judge's power. In several cases (even early in her tenure), Judge Ikuta did not hesitate to point out such deviations.

For example, in *Quon v. Arch Wireless Operating Co., Inc.*, a case in which the majority held that a city police department violated the Fourth Amendment when it audited messages on its SWAT pagers to determine why the number of messages exceeded what the department contracted for, Judge Ikuta dissented from the majority's contravention of established precedent governing "special needs" searches.[57] Judge Ikuta identified two problems with the panel's decision: first, the panel erred in holding that SWAT team members had a reasonable expectation of privacy (contra *O'Connor v. Ortega*);[58] and second, the panel required that the government prove that it used the "least intrusive means" when

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[54] *Id.*

[55] *Id.* at 114.

[56] *See, e.g.*, United States v. Cervantes, 678 F.3d 798, 810 (9th Cir. 2012) (Ikuta, J., dissenting); Ross v. Williams, 950 F.3d 1160, 1176–77 (9th Cir. 2020) (Ikuta, J., dissenting); Brown v. Atchley, 76 F.4th 862, 873–74 (9th Cir. 2023) (Ikuta, J., concurring).

[57] Quon v. Arch Wireless Operating Co., Inc., 554 F.3d 769 (9th Cir. 2009).

[58] O'Connor v. Ortega, 480 U.S. 709 (1987).

conducting the search.[59] As Judge Ikuta pointed out, "[t]he panel's decision to adopt a less intrusive means test conflicts not only with Supreme Court case law, but also with the decisions of seven of our sister circuits."[60] With rebuttals so pointed and precise, it was no surprise that Judge Ikuta's dissent convinced the Supreme Court to grant certiorari and reverse.[61]

Judge Ikuta's opinions also revealed habeas as another area in which the Ninth Circuit has struggled. In *Ayala v. Wong*, she criticized the majority's failure to defer (under the Antiterrorism and Effective Death Penalty Act [AEDPA]) to a state court denial of a federal claim even if the state court issued a summary denial—contra *Harrington v. Richter*.[62] Mincing no words, Judge Ikuta said "the approach to AEDPA embodied in the panel majority's opinion has already struck out twice at the Supreme Court. I fear that with this case, we are looking at a hat trick"[63]—she proved prescient when the Supreme Court reversed the judgment.[64]

Proper application of qualified-immunity law has also traditionally vexed the Ninth Circuit. In *Hughes v. Kisela*,[65] Judge Ikuta dissented from a decision denying such immunity in an excessive-force case where the majority had "frame[d] [the] clearly established law" at "too high a level of generality."[66] In her view, where an officer "must make split-second decisions regarding the use of force," and no clearly established precedent on point renders

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[59] *Quon*, 554 F.3d at 773 (Ikuta, J., dissenting from denial of rehearing en banc).

[60] *Id.* at 774, 777–78 (citing three Supreme Court cases, including *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 629 n.9 (1989), which rejected "less-restrictive-alternative arguments" as "rais[ing] insuperable barriers to the exercise of virtually all search-and-seizure powers, because judges engaged in *post hoc* evaluations of government conduct can almost always imagine some alternative means by which the objectives of the government might have been accomplished").

[61] *See* City of Ontario v. Quon, 560 U.S. 746 (2010).

[62] Ayala v. Wong, 756 F.3d 656 (9th Cir. 2014); *contra* Harrington v. Richter, 562 U.S. 86 (2011).

[63] *Ayala*, 756 F.3d at 724.

[64] *See* Davis v. Ayala, 576 U.S. 257 (2015).

[65] Hughes v. Kisela, 862 F.3d 775 (9th Cir. 2016).

[66] *Id.* at 791 (Ikuta, J., dissenting from denial of rehearing en banc).

that officer's conduct unreasonable, the officer is entitled to qualified immunity.[67] Judge Ikuta dismissed a concurring opinion's stretched parsing of precedent (that supported the officer's conduct), reasoning that "[s]uch distinctions might be more compelling if a federal judge could descend as a *deus ex machina* to whisper in the ears of officers on the scene about the application of precedent before a shot is ever fired."[68] Here the only intervening force from above was the Supreme Court, which sided with Judge Ikuta once again.[69]

CONCLUSION

With Judge Ikuta's passing, I offer this tribute and (necessarily inadequate) review of her remarkable jurisprudence. She charted an unconventional path to the judiciary. Before law school, she created and wrote for the magazine, "Martial Arts Movies," which included interviews with Chuck Norris and Jackie Chan. (Makes sense, then, why her dissents could pack so much punch and land like roundhouse kicks.) For much of her legal career, she did not aspire to be a judge. But fortunately for us (and the country), she obliged and joined the bench. Once there, she worked harder than most—it is said she read an entire treatise on copyright law to get up to speed on a case (relatedly, for the judge's amusing opinion on whether the Batmobile could be copyrighted, see *DC Comics v. Towle*).[70] And for the last twenty years, she produced opinion after opinion, which have shaped our law for the better, nearer to what our Founders envisioned.

Reflecting on the qualities of a judge to serve in our American republic, Hamilton wrote that, due to the "voluminous" nature of our laws and variety of our "precedents" which "must unavoidably swell to a very considerable bulk" and "demand long and laborious

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[67] *Id.* at 798.

[68] *Id.*

[69] *See* Kisela v. Hughes, 584 U.S. 100 (2018).

[70] 802 F.3d 1012 (9th Cir. 2015).

study to acquire a competent knowledge of them," few people "will have sufficient skill in the laws to qualify them for the stations of judges." [71] And considering "the ordinary depravity of human nature," Hamilton continued, "the number must be still smaller of those who united the requisite integrity with the requisite knowledge."[72] All that, perhaps, can be summed up in the words (slightly modified) of a noted English novelist that "the [judge] who will work the hardest at it, and will work with the most honest purpose, will work the best."[73] In Sandra Ikuta, we had that judge, and I thank her for her life and service.

[71] THE FEDERALIST NO. 78, at 471 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

[72] *Id.*

[73] THE LETTERS OF ANTHONY TROLLOPE 57 (Bradford Allen Booth ed., Oxford Univ. Press 1951) (1860).