

## INTRODUCTION TO AGORA, PART II: REFLECTIONS ON *ZIVOTOFSKY V. KERRY*

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AJIL Unbound is pleased to publish the second part of an Agora on the Supreme Court's recent decision in *Zivotofsky v. Kerry* (*Zivotofsky II*).<sup>1</sup> As we explained in our introduction to the first part of the Agora published in July, *Zivotofsky II* is a significant separation-of-powers decision concerning the exclusivity of the President's authority to recognize foreign sovereigns and their territory.<sup>2</sup> The essays in the first part of the Agora, by Curtis Bradley, Harlan Cohen, Jean Galbraith, and Peter Spiro, discussed the Supreme Court's methodology in *Zivotofsky II* and considered the decision's implications for the balance of authority between Congress and the executive branch and for the future direction of U.S. foreign relations law.

The essays in the second part of the Agora consider *Zivotofsky II* from a number of additional perspectives. Julian Mortenson of the University of Michigan School of Law praises the decision for clarifying that a President can disregard a federal statute on the ground that it invades executive authority only if the President is exercising exclusive, and not merely inherent, authority.<sup>3</sup> Catherine Powell of Fordham School of Law focuses on the signing statement accompanying President George W. Bush's signature of the statute at issue in *Zivotofsky II*, and she discusses how such signing statements can promote a dialogic approach to resolving constitutional controversies.<sup>4</sup> John Torpey of the Graduate Center of the City University of New York considers *Zivotofsky II* against the backdrop of domestic and international politics and describes more generally the political nature of passports.<sup>5</sup> Finally, Campbell McLachlan of Victoria University of Wellington offers a non-U.S. perspective on the decision, explaining that, although the Supreme Court's conclusion that the President has an exclusive recognition power is consistent with principles of English law, those principles do not support a more general executive authority in foreign affairs that is free from legal constraint.<sup>6</sup>

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Originally published online 21 August 2015.

<sup>1</sup> *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S.Ct. 2076 (2015).

<sup>2</sup> Curtis A. Bradley & Carlos M. Vázquez, *Introduction to Agora: Reflections on Zivotofsky v. Kerry*, 109 AJIL UNBOUND 1 (2015).

<sup>3</sup> Julian Davis Mortenson, *Zivotofsky: The Difference Between Inherent and Exclusive Presidential Power*, 109 AJIL UNBOUND 45 (2015).

<sup>4</sup> Catherine Powell, *Presidential Signing Statements and Dialogic Constitutionalism*, 109 AJIL UNBOUND 51 (2015).

<sup>5</sup> John Torpey, *Zivotofsky and the Politics of Passports*, 109 AJIL UNBOUND 57 (2015).

<sup>6</sup> Campbell McLachlan, *Speaking with one Voice on the Recognition of States*, 109 AJIL UNBOUND 61 (2015).