

The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. This department includes an in-depth look at two cases plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.

Chamber of Commerce of the United States v. Whiting (09-115)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Sept. 17, 2008)

Oral argument: Dec. 8, 2010

The state of Arizona passed the Legal Arizona Workers Act (LAWA), which authorizes Arizona's attorney general and county attorneys to sue employers who knowingly or intentionally employ unauthorized workers. Congress, however, previously enacted the Immigration Reform and Control Act, which imposes different sanctions on employers for hiring illegal immigrants. The Chamber of Commerce of the United States and other organizations claim that federal law pre-empts LAWA, thus making it invalid. In addition, the Chamber of Commerce argues that LAWA fosters employment discrimination and unduly harms businesses. However, those in support of LAWA claim that Arizona has the authority to enforce LAWA and that LAWA is not pre-empted by federal law.

Background

Congress first imposed sanctions for hiring unauthorized workers when it passed the Immigration Reform and Control Act of 1986 (IRCA), which criminalized the knowing or intentional hiring or continued employment of "unauthorized aliens." The U.S. attorney general enforces violations of the IRCA, which expressly pre-empts all state and local laws. One of the three pilot programs that the U.S. attorney general established to verify a new employee's eligibility for employment is known as E-Verify. This program, available in all 50 states, allows employers to verify an employee's work authorization status

through the Internet and is optional for most businesses.

Believing that the current federal law fails to reduce illegal immigration adequately, the state of Arizona enacted the Legal Arizona Workers Act, giving the Arizona attorney general and county attorneys the authority to bring an action against employers who knowingly or intentionally employ unauthorized workers. Violators of LAWA must fire all unauthorized workers, submit quarterly reports of all new hires for a probationary period, and file an affidavit with the court verifying that all unauthorized workers have been terminated and pledging not to knowingly hire any more such individuals. If a violation occurs during the probationary period, courts will permanently revoke the employer's business license. LAWA also mandates that all employers use E-Verify.

Shortly after Arizona enacted LAWA, the Chamber of Commerce of the United States, along with various businesses and civil rights organizations (collectively Chamber of Commerce) sued the governor of Arizona, the state's attorney general, and other state agencies (collectively Arizona). The district court ultimately held that the challenged provisions of LAWA are constitutional, and the Ninth Circuit Court of Appeals affirmed the district court's findings. Specifically, the Ninth Circuit found that LAWA is a licensing law and not strictly an immigration law, and that neither the sanction regime nor the E-Verify requirement is inconsistent with federal goals. The Supreme Court of the United States subsequently granted certiorari on June 28, 2010.

Implications

In this case, the U.S. Supreme Court will determine whether the federal

scheme established in the Immigration Reform and Control Act pre-empts the Legal Arizona Workers Act. The Chamber of Commerce argues that the IRCA pre-empts LAWA because LAWA impermissibly allows Arizona state officials to regulate the verification of a person's employment status and impose more severe sanctions than those imposed by the IRCA. However, Arizona contends that LAWA is simply addressing the IRCA's inadequacy in effectively deterring the illegal entry of unauthorized workers.

The National Immigrant Justice Center argues that LAWA places an impermissible burden on employees, employers, and practitioners because they must reconcile competing state and federal regulatory regimes. A national coalition of business groups agrees, arguing that LAWA burdens not only businesses that operate across state borders but also businesses that operate within Arizona. These business groups also argue that LAWA places an even greater burden on businesses because it imposes sanctions that go beyond the penalties imposed under federal law.

In addition, the Asian American Justice Center argues that LAWA undermines Congress' goal of balancing the need to deter the employment of unauthorized workers and the importance of preventing discrimination. According to the Asian American Justice Center, the sanctions imposed by LAWA are so severe that they give employers incentives to not hire individuals who appear foreign for fear that such individuals will either be unable to prove their work authorization status or have great difficulty doing so.

In contrast, Arizona State Senator Russell Pearce contends that, by challenging LAWA, the Chamber of Commerce is attempting to protect employers who violate the law, to the detriment of the authorized workers in Arizona. Pearce compares the situation in Arizona to that in *De Canas v. Bica*, in which the Supreme Court affirmed a California law that regulates the employment of foreign unauthorized

workers to protect workers who are native to the state. Pearce notes that Arizona is suffering from the same problems that California faces—high unemployment rates and widespread illegal immigration.

The Eagle Forum Education and Legal Defense Fund advances a different argument, asserting that the Chamber of Commerce lacks standing to challenge LAWA because it does not face an “imminent” injury under Article III. Specifically, individuals who are authorized work or anyone who appears to be foreign, according to the Eagle Forum, have not experienced imminent, actual harm. The Eagle Forum also rejects the accusation that LAWA is discriminatory, arguing that LAWA incorporates the IRCA’s anti-discrimination provisions and does not in any way require Arizona employers to discriminate.

Legal Arguments

The Supreme Court will address whether the IRCA expressly or implicitly pre-empts LAWA’s provision dealing with unauthorized workers and whether federal law implicitly pre-empts LAWA’s E-Verify mandate.

Is LAWA’s Unauthorized Workers Provision Expressly Pre-empted?

Traditionally, regulating unauthorized workers’ employment fell within the states’ police powers. Congress changed this, however, by passing the IRCA in 1986. IRCA expressly pre-empts the states’ power, but it also creates a “savings clause,” which allows states to use “licensing and similar laws” to sanction anyone who employs unauthorized workers.

Arizona posits that LAWA’s provision dealing with unauthorized workers falls within the savings clause because, under Arizona law, a “license” is defined to include permission forms required to operate a business; examples of these forms are articles of incorporation, certificates of partnership, and authorization for foreign entities to conduct business in the state (business licenses). Because LAWA’s penalties include suspending and revoking these “business licenses,” Arizona asserts that LAWA falls within the IRCA’s savings clause.

The Chamber of Commerce contends that Arizona exploited a loophole in LAWA by defining its way around pre-emption. The Chamber of Commerce argues that Congress intended that the word “license” to apply narrowly to “fitness to do business laws.” An example would be laws requiring labor-contracting businesses to have a license. The states only grant the license when the contractor demonstrates that it is fit to conduct business lawfully, and the states may revoke the license if the contractor fails to maintain a record of compliance with immigration law.

Arizona counters, however, that Congress’ purpose is ambiguous at best. Arizona argues that, when Congress intended “license” to apply narrowly in the past, it did so expressly by referencing, for example, professional, occupational, or drivers’ licenses. Arizona also points to the statute’s language, “licensing and similar laws,” as indicative of an intent that is broader than the Chamber of Commerce’s interpretation. Because Congress’ intent is ambiguous, Arizona argues that a presumption exists against pre-emption.

The Chamber of Commerce also argues that the savings clause explicitly applies to sanctions only. Therefore, according to the Chamber’s view, the clause does not apply to state adjudication, as authorized by LAWA, to determine who is an unauthorized worker or to determine whether an employer knowingly hired an unauthorized worker. Because these adjudications do not fall within the savings clause, the Chamber of Commerce asserts that they are pre-empted. Arizona claims that this interpretation is not what Congress intended. Specifically, Arizona posits that nothing explicitly grants the federal courts exclusive jurisdiction over these adjudications; in fact, Arizona argues that the IRCA’s legislative history actually reveals that Congress intended for states to have adjudication.

Is LAWA’s Unauthorized Workers Provision Implicitly Pre-empted?

Alternatively, the Chamber of Commerce argues that the IRCA

implicitly pre-empts LAWA’s provision related to unauthorized workers, because the rights and obligations under LAWA conflict with the IRCA’s structure and operation. The Chamber reasons that the IRCA constructed a comprehensive regulatory scheme to investigate and adjudicate work-authorization status, authorized federal officers to perform these investigations, and established the federal courts as the judicial bodies where employers can seek relief. Arizona’s separate investigatory and adjudicatory processes, the Chamber of Commerce argues, simply do not fit within this framework. Arizona counters by noting that the IRCA mentions only federal procedures; it is silent regarding the states. Although the IRCA did establish a comprehensive regulatory matrix, Arizona argues that this alone fails to imply pre-emption. Indeed, Arizona attests that a presumption exists that anything left unaddressed by Congress remains subject to state law.

The Chamber of Commerce also argues that the IRCA implicitly pre-empts LAWA’s provision related to unauthorized workers, because that provision meddles with the federal regulatory scheme, disturbing the balance Congress struck between numerous policy objectives. The Chamber of Commerce states that, besides preventing unlawful immigration, Congress also sought to prevent discrimination by employers, to minimize burdens on employers, and to protect the privacy of potential employees. The Chamber argues that Arizona’s separate regulatory scheme, unique adjudicatory standards, and different penalties have completely rebalanced these interests in favor of furthering just one goal: preventing unlawful immigration. Nevertheless, Arizona contends that, in order to avoid pre-emption, LAWA must only avoid a direct conflict with federal requirements and need not advance every one of Congress’ purposes.

Is LAWA’s E-Verify Mandate Implicitly Pre-empted?

The Chamber of Commerce contends

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that federal law implicitly pre-empts LAWA's E-Verify requirement. The Chamber argues that, when LAWA forces employers to use E-Verify, the act directly conflicts with Congress' wishes, because E-Verify was intended as a temporary and experimental "pilot program," which Congress has kept strictly voluntary.

Arizona asserts, however, that no conflict exists, because employers do not face the dilemma of deciding between contrary state and federal requirements: participating in E-Verify does not violate any federal law. Arizona further argues that the requirement actually furthers Congress' wishes, because Congress ultimately intended to create an effective verification system, not a voluntary one. Arizona contends that by making E-Verify mandatory, LAWA advances this goal, because it helps eliminate lack of employer use—a barrier to the effectiveness of E-Verify.

Conclusion

In this case, the Supreme Court will determine whether the Immigration Reform and Control Act of 1986 pre-empts the Legal Arizona Workers Act. If the Court agrees with the Chamber of Commerce and finds that federal law does pre-empt Arizona's law, it will become more difficult for states to regulate illegal immigration independently. On the other hand, if the Court agrees with Arizona, businesses will have to deal with a regulatory scheme that is potentially not uniform. The Chamber of Commerce is concerned that the Arizona law's stricter penalties may force businesses to shut down and may possibly lead to employment discrimination, whereas Arizona believes that current federal enforcement is inadequate to address the problem of illegal immigration. Full text is available at topics.law.cornell.edu/supct/cert/09-115. **TFL**

Prepared by Teresa Lewi and Benjamin Rhode. Edited by Joanna Chen.

Thompson v. North American Stainless (09-291)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (June 5, 2009)

Oral argument: Dec. 7, 2010

Eric L. Thompson, formerly employed by North American Stainless, sued his employer under § 704(a) of Title VII of the Civil Rights Act of 1964, alleging that Stainless fired him in retaliation for a gender discrimination complaint that Miriam Regalado, his then fiancée (now his wife), filed against Stainless with the Equal Employment Opportunity Commission (EEOC). The Sixth Circuit found that Thompson did not have standing to sue Stainless and dismissed his complaint. Thompson now appeals, arguing that Title VII not only prohibits third-party retaliation but also gives third-party victims standing to sue, because doing so furthers Title VII's goal of eliminating discrimination and is consistent with the EEOC's longstanding interpretation of Title VII.

Background

North American Stainless owns and operates a facility that manufactures stainless steel in Kentucky. Miriam Regalado joined the company in 2000. Soon after, she and Thompson began dating and were engaged in 2003, and their relationship was "common knowledge" at Stainless. Stainless fired Thompson in early 2003.

In September 2002, Regalado had filed a complaint against Stainless with the EEOC alleging gender discrimination in violation of Title VII of the Civil Rights Act of 1964. Stainless received notice of Regalado's complaint in February 2003, and fired Thompson three weeks later—allegedly for performance-based reasons. Thompson then filed a complaint with the EEOC, alleging that Stainless actually terminated him in retaliation for Regalado's EEOC complaint.

The EEOC found "reasonable cause to believe that [Stainless] violated Title VII" and granted Thompson a right-to-sue letter. Thompson filed his Title VII retaliation claim against Stainless in

the U.S. District Court for the Eastern District of Kentucky. The district court granted Stainless' motion for summary judgment, finding that Thompson failed to state a claim of retaliation, because he himself had not engaged in any activities protected by Title VII. On appeal, the Sixth Circuit initially overturned the district court's ruling but granted Stainless' petition for rehearing en banc. The en banc Sixth Circuit vacated its earlier opinion and affirmed the lower court's dismissal of Thompson's complaint.

Thompson appealed to the U.S. Supreme Court, which granted certiorari to consider whether Title VII's protection against retaliation extends to third parties associated with the employee who files a complaint, and whether third parties have standing to sue for such violations.

Implications

Congress enacted Title VII to protect employees against workplace discrimination and employer retaliation following a complaint of discrimination. Eric Thompson argues that this protection against retaliation extends to third parties associated with a complaint filer, giving them standing to sue if an employer retaliates against them for a complaint filed by their friend or family member. Stainless agrees that Title VII prohibits employers from retaliating against a complaining party's friends or family but argues that Title VII's retaliation provision does not give third parties standing to sue.

Discouraging Discrimination and Retaliation

The National Women's Law Center (NWLC) argues that, if the Court rules in favor of Stainless, the decision will subvert Title VII's goal of eliminating discrimination. Specifically, the NWLC argues that such a ruling could encourage employers to retaliate against the friends and family of a complaining employee, because those third parties would be prohibited from suing. The NWLC contends that this outcome could force even more victims of workplace discrimination into

silence, many of whom already stay silent for fear of retaliation. Moreover, the NWLC claims, Title VII cases confirm the “not infrequent” occurrence of employer retaliation against a complaining employee’s partner or close associate.

In contrast, the Equal Employment Advisory Council (EEAC) asserts that the NWLC’s characterization of employer retaliation against third parties is a “gross exaggeration.” The EEAC argues that a ruling against Stainless will harm the workplace, because fear of frivolous lawsuits will make it unnecessarily difficult for employers to make decisions about disciplinary action. This is because the employee who files a complaint has nearly “automatic job protection” under Title VII. Accordingly, Stainless argues, if every employee asserts a third-party relationship with a complainant, the employer may be unable to take justified disciplinary action against any employee.

Confusing Employees, Employers, and Courts

If the Court rules for Stainless, the National Employment Lawyers Association argues, complaining employees and third-party victims are likely to face significant confusion about who has standing to sue under Title VII. Specifically, the United States argues that disallowing third-party suits would create a “trap for unrepresented litigants” by barring the most obvious plaintiff—the third-party victim who suffered the retaliatory action. By the time the plaintiffs realize their mistake, it is unlikely that the complaining employee will be able to sue the employer for retaliation in a timely manner.

In contrast, the EEAC argues that, if the Court rules for Thompson, employers and courts will actually suffer the greatest confusion. Specifically, the EEAC claims that employers will have to inquire or guess about employees’ relationships before taking any disciplinary actions out of fear that the person they are disciplining is closely associated with a complaining employee. Courts, Stainless asserts, will similarly be forced to guess which relationships qualify for Title

VII’s “automatic protection” and will be forced to conduct “mini-trials” to determine relationships before a claim could move forward.

Legal Arguments

Under Title VII, employees may sue their employers for workplace discrimination. In addition, § 704(a) of Title VII forbids employers from “discriminat[ing] against any ... [employee] because he ... has made a charge ... under this title.” Thompson contends that he was fired because his then fiancée filed a discrimination claim against Stainless, their mutual employer. He argues that his dismissal violated Title VII, because § 704(a) forbids employers from retaliating against Title VII claimants by inflicting punishment upon a closely related third party. Thompson further contends that, if this retaliation against a third party does occur, Title VII authorizes the third-party victim to sue the employer. Stainless agrees that third-party reprisals are illegal under Title VII but argues that the plain language of the anti-retaliation provision bars a third-party victim from bringing suit because the victim has not personally engaged in conduct that is protected under Title VII.

Do Third-Party Reprisals Violate Title VII’s Anti-Retaliation Clause?

Thompson argues that Title VII’s anti-retaliation provision prevents an employer from retaliating against an employee by firing or otherwise disciplining a third party. Thompson contends that, because Congress broadly worded the protections in this provision, it intended to forbid all forms of retaliation, including reprisals against third parties. Furthermore, Thompson points to other sections of Title VII that an employer violates only when the effects are on the “plaintiff’s own employment.” (Emphasis in original.) Accordingly, Thompson argues that the lack of such a requirement in the anti-retaliation provision supports the contention that an employer violates it when the effects of retaliation are felt by a third party.

Stainless, however, contends that the issue in this case is not, as Thompson alleges, whether employers can

retaliate against third parties. In fact, Stainless asserts that reprisals against third parties are actionable under the anti-retaliation provision and that the person who engaged in the protected conduct may bring a suit for such retaliation. Therefore, Stainless argues, this case is actually about who may sue the employer when that employer retaliates against a third party who did not engage in activity that is protected under Title VII.

May Third-Party Victims of Retaliation Bring Suit Against Their Employer Under Title VII?

Thompson argues that, as a third-party victim, he is a “person aggrieved” under Title VII and, as such, has standing to sue Stainless. According to Thompson, use of this broad term evidences Congress’ intent to construe standing broadly, thus extending the right to sue beyond those “whose own rights have been violated” to all those against whom employers have retaliated. Thompson contends that he may also bring this action by asserting traditional third-party standing. Thompson argues that he satisfies the three requirements for third-party standing: (1) he in fact suffered an injury when he was fired; (2) he has a close relationship to the party whose rights were violated, namely his then fiancée; and (3) it would be nearly impossible for Regalado to obtain relief for the injury that Thompson suffered, because she does not have a “personal stake in the outcome” of Thompson’s claim.

Stainless argues that both the purpose and the plain language of the anti-retaliation provision bar Thompson from bringing a claim as a third-party victim. The anti-retaliation provision, Stainless asserts, is intended to prevent harm to individuals who engage in activities that are protected under Title VII. Therefore, because Thompson never engaged in such activity, he is not a member of the class that the anti-retaliation provision intends to protect. Moreover, Stainless argues, according to the plain language of § 704(a), Thompson does not have a cause of action, because Title VII liti-

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gants are protected based “upon their conduct, not upon their associations.” Stainless contends that Thompson does not have standing, because “person aggrieved” does not include *any* injured party. Rather, Stainless argues, if Congress had intended such a broad meaning, “injured” would replace “aggrieved,” or Congress could have defined “aggrieved” to refer to “any injured person.”

Is the EEOC’s Interpretation of Title VII’s Anti-Retaliation Provision Entitled to Deference?

Thompson contends that the Supreme Court should give deference to EEOC interpretations and guidance regarding the anti-retaliation clause. Through guidance and adjudication, the EEOC has repeatedly stated that reprisals against a third party violate the anti-retaliation provision and that victims of such retaliation may assert their own rights against employers. Thompson argues that the Court should recognize the importance of this “long-standing construction” by the EEOC, an agency with the information and experience to make such a judgment.

Stainless argues that the EEOC’s interpretation of the anti-retaliation provision is not entitled to the Court’s deference. The Court, Stainless contends, has already determined that interpretive guidelines, such as those on which Thompson relies, are entitled to respect, not deference. Furthermore, lower courts have already refused to rely on these same interpretations. Ultimately, Stainless asserts, this case revolves around statutory construction—an area in which the judiciary maintains final authority.

Conclusion

Congress enacted Title VII of the 1964 Civil Rights Act to protect employees against workplace discrimination and against employer retaliation stemming from discrimination complaints. Thompson argues that Title VII not only prohibits third-party retaliation but also gives third-party victims standing to sue, primarily because this furthers Title VII’s goal of

eliminating discrimination and is consistent with the EEOC’s long-standing interpretation of Title VII. North American Stainless agrees that Title VII prohibits employers from retaliating against a third party but argues that § 704(a) does not give third parties standing to sue, because doing so would contradict congressional intent and unnecessarily curtail employers’ ability to manage their workforces. Full text is available at topics.law.cornell.edu/supct/cert/09-291. **TFL**

Prepared by Jacqueline Bendert and Rachel Sparks Bradley. Edited by Joanna Chen.

Chase Bank USA, N.A., v. McCoy (09-329)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Mar. 16, 2009)
Oral argument: Dec. 8, 2010

James McCoy alleges that Chase Bank retroactively increased the interest rate on his credit card without notice, in violation of the Truth in Lending Act’s Regulation Z. The regulation has since been revised to require notice in this particular situation. McCoy argues that the plain language of Regulation Z mandated that he receive notice prior to his interest rate being increased. Chase argues that the bank provided adequate notice. In support of its argument, Chase cites unofficial commentary promulgated by the Federal Reserve Board, the agency that implements the Truth in Lending Act. The Supreme Court’s ruling will clarify the level of notice required prior to raising interest rates and will provide advice on what sources may be used in interpreting complex statutes. Full text is available at topics.law.cornell.edu/supct/cert/09-329. **TFL**

Prepared by James McHale and Eli Kirschner. Edited by Kate Hajjar.

CIGNA Corp. v. Amara, (09-804)

Appealed from the U.S. Court of Appeals for the Second Circuit (Oct. 6, 2009)
Oral argument: Nov. 30, 2010

CIGNA Corporation changed its Employee retirement plan from a traditional defined benefits plan to a cash balance plan. Under ERISA, a company that changes its retirement plan must release a summary plan description (SPD) that outlines changes in a manner that the average employee can understand. CIGNA released an SPD that described the change but did not mention a “wear-away” period during which enrolled employees would continue earning credits under the plan while their minimum benefit would remain the same. Current and former CIGNA employees sued, alleging that the inconsistency between the summary plan description and the actual benefit plan violated ERISA. CIGNA argues that a showing of “detrimental reliance” on the part of the employees is required before they can receive a remedy. The Court’s decision is likely to affect the contents of SPDs and the availability of class actions related to pension benefit plans. Full text is available at topics.law.cornell.edu/supct/cert/09-804. **TFL**

Prepared by So Jung Choo and Alex Malahoff. Edited by Sarah Chon.

Henderson v. Shinseki (09-1036)

Appealed from the U.S. Court of Appeals for the Federal Circuit (Dec. 17, 2009)
Oral argument: Dec. 6, 2010

David Henderson, a veteran of the Korean War, was discharged from active military duty after being diagnosed with paranoid schizophrenia. After the Department of Veterans Affairs denied his request for financial assistance with home care, Henderson failed to file his intent to appeal in time. Claiming that his illness prevented him from filing on time, Henderson requested the Veterans Court to apply

equitable tolling to permit his appeal. During this process, the Supreme Court of the United States handed down a ruling in the case of *Boules v. Russell*, which the lower courts interpreted to mean that all statutory deadlines for filing appeals are jurisdictional, and therefore Henderson's request for equitable tolling was rejected for lack of jurisdiction. The Supreme Court's decision will clarify how lower courts should evaluate statutory time limits and will help determine which procedural limits are jurisdictional and thus not subject to equitable tolling. Full text is available at topics.law.cornell.edu/supct/cert/09-1036. **TFL**

Prepared by L. Sheldon Clark and Omair Khan. Edited by Joanna Chen.

Janus Capital Group v. First Derivative Traders (09-525)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (May 7, 2009)

Oral argument: Dec. 7, 2010

A 2003 investigation by the attorney general of New York revealed that Janus Capital Management, an investment adviser, had secretly allowed several hedge funds to engage in market-timing trades using the assets of the Janus Investment Fund, which were publicly marketed to long-term investors. Subsequently, First Derivative Traders, a stockholder in Janus Capital Management's parent company, brought a private securities fraud action against the Janus companies, alleging that Janus Capital Management was responsible for misleading statements in the Janus Funds' prospectuses. Even though Janus Capital Management argued that its status as a mere outside service provider precluded liability, the Fourth Circuit allowed First Derivative Traders to sustain its claim. The Supreme Court will decide whether an investment adviser can be held responsible for misstatements that appear in its client's offering documents. Full text is available at topics.law.cornell.edu/supct/cert/09-525. **TFL**

Prepared by Colin O'Regan and Edan Shertzer. Edited by Eric Johnson.

Milner v. Department of the Navy (09-1163)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 5, 2009)

Oral argument: Dec. 1, 2010

Glenn Milner filed a request with the Department of the Navy under the Freedom of Information Act to gain access to files describing the blast radius of Navy-managed munitions stored on Indian Island in Washington. The Navy refused, claiming that the requested documents were exempt from disclosure under Exemption 2 of the FOIA. Some courts have interpreted Exemption 2 to cover two types of information: (1) "Low 2" information, which consists of relatively trivial internal matters, and (2) "High 2" information, which is considered more substantial and the disclosure of which would "risk circumvention of a legal requirement." The U.S. Court of Appeals for the Ninth Circuit held that the requested information was High 2 information and not subject to disclosure. Milner appeals, arguing that the High 2 Exemption is not supported by the plain text of the statute or its legislative history and that the Navy must disclose the information. Full text is available at topics.law.cornell.edu/supct/cert/09-1163. **TFL**

Prepared by Kelly Halford and Eric Schulman. Edited by Kate Hajjar.

Pepper v. United States (09-6822)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (July 2, 2009)

Oral argument: Dec. 6, 2010

Jason Pepper pleaded guilty to conspiracy to distribute methamphetamine and cooperated with the authorities by testifying against his co-defendants. Because Pepper had no prior convictions, cooperated with the authorities, and indicated his desire to seek drug treatment, the district court judge handed down a 24-month prison sentence, which was substantially below the sentence recommended by the Federal Sentencing Guidelines. The Eighth Circuit reversed the decision made about the sentence, deter-

mining that the district court abused its discretion by decreasing Pepper's sentence. During the appeal, Pepper successfully completed his sentence. Upon remand to the district court, Pepper again received the 24-month sentence, this time because of his post-sentence rehabilitation. The Eighth Circuit again reversed the decision, finding that the judge could not consider post-sentencing rehabilitation in choosing a sentence below the guidelines. In this case, the Supreme Court will determine whether post-sentence rehabilitation is a proper factor to consider in resentencing, and whether the "law of the case" doctrine applies to Pepper's appeal. Full text is available at topics.law.cornell.edu/supct/cert/09-6822. **TFL**

Prepared by Melissa Koven and Sarah Pruett. Edited by Christopher Maier.

Schwarzenegger v. Plata (09-1233)

Appealed from the U.S. District Courts for the Eastern District of California and the Northern District of California (Aug. 4, 2009)

Oral argument: Nov. 30, 2010

The decisions of the two lower courts resulted from separate class actions concerning health care conditions in California state prisons. Although the cases were decided separately, the district court in each case determined that the lack of adequate physical or mental care violated prisoners' Eighth Amendment rights. After California's Governor Arnold Schwarzenegger declared a state of emergency because of prison overcrowding, the plaintiffs argued that the only means of remedying the continued constitutional violations was the release of significant numbers of inmates from state prisons. Subsequently, a three-judge district court that was convened under the Prison Litigation Reform Act (PLRA) issued a prisoner release order. Governor Schwarzenegger appealed the decision to the U.S. Supreme Court, contending that the three-judge district court improperly applied the PLRA, because

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California had not had sufficient time to implement the latest court order. Schwarzenegger also contends that the district court failed to determine that prison overcrowding was the primary cause of the violations. Full text is available at topics.law.cornell.edu/supct/cert/09-1233. **TFL**

*Prepared by Sara Myers and John Sun.
Edited by Catherine Sub.*

Virginia Office for Protection and Advocacy v. Stewart (09-529)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (June 2, 2009)
Oral argument: Dec. 1, 2010

The Virginia Office for Protection and Advocacy (VOPA), a state agency, advocates for individuals with mental illnesses and developmental disabilities. In accordance with federal funding requirements, Virginia law authorizes VOPA to access an individual's records if the agency believes that an individual was abused. During an investigation, a state facility denied VOPA access to the records of three individuals, and VOPA sued state officials, alleging that they had violated federal law. The 11th Amendment to the U.S. Constitution provides that states cannot be sued in federal court by state residents. However, the Supreme Court, in *Ex parte Young*, recognized an exception, allowing a party to sue state officials to correct an ongoing violation of federal law. The Fourth Circuit held that, because the plaintiff in this suit was a state-created agency, the suit could not proceed under the *Ex parte Young* exception and that allowing it to proceed in federal court would be a violation of Virginia's sovereign immunity. Full

text is available at topics.law.cornell.edu/supct/cert/09-529. **TFL**

Prepared by Kristen Barnes and Jessica Meneses. Edited by Eric Johnson.

Wall v. Kholi (09-868)

Appealed from the U.S. Court of Appeals for the First Circuit (Sept. 23, 2009)
Oral argument: Nov. 29, 2010

In December 1993, Khalil Kholi was convicted of sexual assault in the first degree and was sentenced to life imprisonment. Three years later, Kholi filed a motion to reduce his sentence, seeking discretionary leniency in state court. In 2007, Kholi filed a habeas corpus petition in federal court. The federal district court denied Kholi's petition on the grounds that it was not filed in time under the Anti-Terrorism and Effective Death Penalty Act (AEDPA). The First Circuit reversed, holding that a discretionary post-conviction motion to reduce a sentence constitutes collateral review under 28 U.S.C. § 2244(d)(2) and tolls AEDPA's one-year limitation period. Petitioner A.T. Wall appeals, arguing that a discretionary sentence-reduction motion does not constitute collateral review, because it does not challenge the validity of a conviction or a sentence. Full text is available at topics.law.cornell.edu/supct/cert/09-868. **TFL**

Prepared by Natanya DeWeese and James Rumpf. Edited by Joanna Chen.

Walker v. Martin (09-996)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Oct. 6, 2009)
Oral argument: Nov. 29, 2010

Charles Martin is serving life imprisonment for robbery and first-degree murder. After exhausting his direct appeals, Martin filed a petition for habeas corpus in California state court, alleging that his trial counsel had been ineffective. The California Supreme Court dismissed the petition under the state's timeliness rule, which bars claims filed after "substantial delay." Martin then filed a habeas corpus claim in federal court, which found that the state's timeliness grounds were "adequate" for dismissal of the federal case. Under the adequate state grounds doctrine, a federal court will not review a state court's decision if the federal court's decision would have no impact on the case. The Ninth Circuit reversed, finding that the state had failed to prove that California's timeliness rule was sufficiently clear and consistently applied so as to be an adequate state bar. Petitioner James Walker appeals, arguing that the rule is consistently applied. Full text is available at topics.law.cornell.edu/supct/cert/09-996. **TFL**

Prepared by Justin Haddock and Priscilla Fasoro. Edited by Sarah Chon.

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