

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.

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission (10-553)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (March 9, 2010)

Oral argument: Oct. 5, 2011

For five years, Perich taught at Hosanna-Tabor Evangelical Lutheran Church and School, including teaching several years as a minister. After narcolepsy caused Perich to miss several months of teaching, Hosanna-Tabor hired a new teacher. When prohibited from returning to her former position, Perich threatened to sue Hosanna-Tabor under the Americans With Disabilities Act (ADA). Hosanna-Tabor fired Perich, and Perich brought suit with the Equal Employment Opportunity Commission (EEOC), alleging that Hosanna-Tabor fired her in retaliation for threatening to sue. Hosanna-Tabor argues that the ADA's ministerial exception, which prevents employment suits against religious entities by religious employees, bars Perich's lawsuit because she fulfilled a religious role at the school. Perich contends that the ministerial exception does not apply under the ADA anti-retaliation statute and that her suit is not constitutionally barred. The Sixth Circuit determined the exception did not apply because Perich taught secular subjects with minimal religious components. The U.S. Supreme Court will decide whether the ministerial exception applies to teachers at religious schools who teach both secular and religious material.

Background

Hosanna-Tabor is a religious school in Michigan that employs both lay teachers and "called" teachers, who are

commissioned ministers. Perich began as a lay teacher at Hosanna-Tabor in July 1999 and became a "called" teacher in March 2000. She taught both secular and religious classes and led her class in prayer.

When Perich fell ill, she was encouraged to take a leave of absence for the 2004–2005 school year. In December 2004, Perich told Hosanna-Tabor that she would return in a few months. In January 2005, Perich was informed that a substitute teacher had been hired in Perich's absence. Subsequently, the Hosanna-Tabor congregation voted for Perich to resign. Perich presented a doctor's work release note to the school board but was still asked to resign.

When Perich appeared to resume her job, there was no job opening. Perich would not leave without acknowledgment that she had come to work in order to prevent voluntary termination under Hosanna-Tabor policy. In March 2005, the Board of Education informed Perich that if she did not accept a peaceful release from her job they would rescind her "called" status because of her disruptive behavior.

Hosanna-Tabor terminated Perich's employment in April 2005. In May, Perich filed a complaint with the EEOC, alleging discrimination and retaliation in violation of the ADA. The EEOC and Perich then sued Hosanna-Tabor.

The District Court for the Eastern District of Michigan granted summary judgment for Hosanna-Tabor, finding that Perich's claim fell under the ADA's "ministerial exception." The Sixth Circuit overturned the decision. The Supreme Court granted certiorari to consider whether the ministerial exception applies to a commissioned minister who teaches a secular curriculum.

Implications

The ADA's ministerial exception helps to separate church and state and allows the Court to refrain from exploring religious doctrine in violation of the First Amendment. Hosanna-Tabor argues that Perich's suit should be barred under the ministerial exception, because she was a commissioned minister of the Lutheran church and any finding for Perich would allow courts to make religious decisions for a church. The EEOC and Perich maintain that this case is a civil rights issue that rests on discrimination, and failing to rule in Perich's favor would allow churches to discriminate and retaliate against employees who seek to assert their legal rights.

Michigan and supporting states argue that a victory for Perich will cause courts to become too involved in religious questions. Michigan points out that, because Perich's work was "intimately intertwined with religious doctrine," the court could not resolve the controversy without exploring religious doctrine and should refrain from deciding the case entirely. In addition, Hosanna-Tabor fears that courts would have the ability to override decisions made by churches and interfere with the freedom of churches to select their own clergy.

The EEOC claims that this case involves a civil rights issue, not a religious issue, and that there is no excessive infringement on the separation of church and state. The NAACP Legal Defense Fund suggests that a blanket application of the ministerial exception to teachers could prohibit the application of many civil rights statutes. The NAACP asserts that a conflict with a church's religious doctrine should not allow a religious employer to opt out of the secular legal system.

Hosanna-Tabor asserts that limiting the ministerial exception would force a church to violate its process of resolving religious conflicts. The Lutheran Church–Missouri Synod encourages the resolution of claims within the church and argues that ruling in Perich's favor would increase the number of church controversies in

American courts. The Missouri Synod believes that courts do not understand their religious views on disputes with commissioners and would make decisions on church issues out of line with Lutheran values.

Perich states that extending a ministerial exception to teachers would allow a religious employer to disregard widely applicable employment laws. The Americans United for Separation of Church and State and the American Civil Liberties Union support that a ministerial exception allows religious organizations to convey religious messages without governmental interference but worry that the application of the exception works against the protection of employees through anti-discrimination laws. Both groups also argue that courts have applied the ministerial exception with no proof of religious justification, potentially leading to discriminatory terminations with no theological basis.

Legal Arguments

At issue is the ADA's ministerial exception, which prevents most employment law litigation between religious organizations and their employees who perform religious functions. Hosanna-Tabor argues that the ministerial exception should extend to Perich, because she served an important religious role. Perich and the EEOC argue that this lawsuit is not barred, because the ADA's anti-retaliation provision does not contain a ministerial exception. Moreover, they argue that application of the ADA's anti-retaliation provision in this case does not violate the First Amendment.

The Free Exercise Clause

Hosanna-Tabor contends that the Free Exercise Clause safeguards religious organizations' right to choose who performs important religious functions. Hosanna-Tabor argues that the ministerial exception is crucial to the free exercise of religion and applies to employees performing important religious functions, including teachers. Hosanna-Tabor claims that Perich performed such functions by teaching religion and leading classes in prayer, and that her status as a "called" teacher is proof of her religious role.

Furthermore, the ministerial exception also applies to retaliation claims, Hosanna-Tabor argues, because evaluating those claims requires assessing religious performance.

In opposition, Perich argues that the question is not a religious one but, instead, asks whether she was wrongfully terminated from her position in retaliation for stating her intention to sue for disability discrimination. Therefore, Perich asserts that applying the ADA does not violate the Free Exercise Clause. Perich also contends that Congress has not enacted a religious exemption from ADA's anti-retaliation statute; consequently, there is no ministerial exception. The EEOC supports Perich's argument and asserts that the Free Exercise Clause affords religious organizations no protection from laws prohibiting disability discrimination and retaliation.

The Establishment Clause

Hosanna-Tabor argues that Perich's suit is barred, because the Establishment Clause forbids governmental appointment of ministers and entanglement in religious questions. Hosanna-Tabor contends that, because the remedy for discrimination in Perich's lawsuit is reinstatement or its monetary equivalent, it poses a problem of separation of church and state. Hosanna-Tabor argues that Perich's lawsuit forces the government to evaluate decisions made by the church—namely, Perich's fitness to serve the religious entity—thereby entangling the government in theological disputes. Moreover, Hosanna-Tabor claims that reinstatement would effectively allow the court to appoint Perich to perform religious functions. Hosanna-Tabor also contends that awarding Perich the monetary equivalent of her former employment would force the court to invalidate Hosanna-Tabor's decisions. Accordingly, Hosanna-Tabor insists that this case risks allowing government interference in churches' internal affairs, thereby violating the Establishment Clause by infringing on the churches' constitutional right to decide their religious affiliations.

In contrast, the EEOC insists that the Establishment Clause does not bar Perich's claim, because it neither

entangles the government in religious questions nor forces the government to appoint religious persons. The EEOC argues that Perich is not seeking reinstatement, since the church-operated school is now closed. Furthermore, the EEOC argues that Perich's lawsuit does not entangle the government in a theological dispute, because the court is not required to decide religious doctrine or assess the church's religious validity. The EEOC contends that the Court can accept the church's religious doctrine as true and still evaluate Perich's claims of retaliation. Perich points out that the entanglement between church and state must be excessive before it becomes unconstitutional, and such entanglement requires a greater degree of interaction between the government and a religious organization than is present in this case.

Freedom of Association

Hosanna-Tabor contends that the right to freedom of religious association gives members of the public the right to associate with one another to further a religious goal. Hosanna-Tabor argues that this right encompasses the right to choose the members within the association and therefore prevents the government from interfering with the selection of those who are chosen to serve a religious entity's mission. Hosanna-Tabor claims that Perich's case would, in effect, allow the Court to choose members of the church, which violates the church's right of freedom of association.

Perich argues that the freedom of association inquiry is contingent upon whether the application of the law would significantly hinder the organization's message and whether the burden serves compelling state interests. Perich and the EEOC insist that, even if there is a right to associate to operate schools, general anti-discrimination laws still apply to Hosanna-Tabor, because the government has a compelling interest in protecting teachers from discrimination and providing access to courts in order to enforce this interest. In addition, the EEOC asserts that the church has failed to prove how including Perich in their religious entity would

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significantly impair its religious mission. Perich argues that the school's expressive association interests do not override the government's interest in preventing employment discrimination.

Conclusion

In this case, the Supreme Court will decide whether a ministerial exception applies to a teacher at a religious school who teaches secular subjects. Hosanna-Tabor contends that the ADA's ministerial exception protects the school from a lawsuit by one of its "called" teachers, and an unfavorable ruling will infringe on the separation of church and state. Perich and the EEOC assert that the case presents solely a civil rights issue and that any ministerial exception does not negate anti-discrimination laws designed to protect employees. This case will help define the scope of the ministerial exception and affect the ability of religious employees to sue their religious employers under the ADA. Full text is available at law.cornell.edu/supct/cert/10-553. **TFL**

*Prepared by Jenny Liu and Lisa Schmidt.
Edited by Eric Schulman.*

Maples v. Thomas (10-63)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (Oct. 26, 2009)

Oral argument: Oct. 4, 2011

Upon receiving a death sentence issued by a state court, Maples claimed ineffective assistance of counsel in post-conviction proceedings and petitioned for an evidentiary hearing. The court clerk took no action when notice that the petition had been denied was returned because two of Maples' attorneys had left their firm. Notice reached Maples' local counsel in Alabama, but he took no action either. Shortly thereafter, the time to appeal the petition's denial lapsed. Maples argues that the court clerk's failure to notify him that his petition had been denied caused the default and violated his due process rights. In addition, Maples asserts that his attorneys'

actions entitle him to federal habeas corpus review. Thomas, the commissioner of the Alabama Department of Corrections, argues that the court clerk successfully notified one attorney, and Supreme Court precedent places the risk of attorney error on the petitioner in post-conviction proceedings. This decision could affect the risk clients bear for their attorneys' performance and could determine whether a court clerk's failure to notify attorneys constitutes cause to excuse a procedural default.

Background

Maples was found guilty of murder and sentenced to death for shooting and killing two people after drinking. Despite Maples' attempt to argue that his acts did not constitute capital murder, the jury sentenced him to death. The conviction and death sentence were affirmed on direct appeal.

Maples then filed a petition for post-conviction relief pursuant to *Alabama Rule of Criminal Procedure 32*, alleging ineffective assistance of counsel. The trial court issued an order (Rule 32 Order) dismissing the petition. The court clerk mailed the Rule 32 Order to Maples' pro bono attorneys, Jaasi Munanka and Clara Ingen-Housz at the law firm of Sullivan & Cromwell, and to Maples' local Alabama counsel, John Butler. Maples' pro bono attorneys had left Sullivan & Cromwell and, even though the firm had arranged for other attorneys to assume representation of Maples, the Rule 32 Order was returned to the court clerk unopened. Meanwhile, Butler took no action. No notice to appeal the dismissal was filed within the allowable time frame.

The state's attorney wrote to Maples to inform him that the deadline for appealing the Rule 32 Order had passed, but Maples could still file a federal habeas corpus petition. Maples petitioned the Alabama Court of Criminal Appeals and the Alabama Supreme Court for a writ of mandamus requesting an out-of-time appeal. Both courts denied the request.

Meanwhile, Maples filed a federal habeas petition claiming ineffective assistance of counsel. The district court

stayed the petition until the state appellate courts denied Maples' out-of-time appeal requests. Thereupon, the district court denied Maples' habeas petition, finding that Maples' failure to appeal the dismissal of his Rule 32 petition in time procedurally defaulted his claim of ineffective assistance of counsel, and any failure of counsel that may have caused the default does not establish cause, because there is no constitutional right to counsel after a defendant has been convicted of a crime. The Eleventh Circuit affirmed the district court's decision, and the Supreme Court granted certiorari.

Implications

Federal courts use habeas corpus review to look past such things as a procedural default in state proceedings and to consider whether any constitutional right has been violated. Maples argues that, because he had been effectively abandoned by counsel, there is adequate cause to excuse the default. Thomas, the commissioner of the Alabama Department of Corrections, asserts that federalism and finality interests, as well as the precedent set in the case of *Coleman v. Thompson*, 501 U.S. 722 (1991), justify finding no cause. In this case, the Supreme Court will weigh the costs of federal habeas corpus review against the equitable principles that would encourage excusing the default.

Importance of Equity in Habeas Corpus Review

In support of Maples, the Alabama Criminal Defense Lawyers Association (ACDLA) emphasizes the history and importance of equity in habeas corpus review and insists on the need for flexibility and circumstance-based analysis in such cases. Equity and justice, ACDLA argues, cry out against an absolute rule that would penalize defendants, such as Maples, for being effectively abandoned by his attorneys.

Thomas insists that there is no inequity in adhering to a clear rule allocating risk of attorney error to the petitioner. Texas and other states argue that the lack of a workable limitation

to the exception sought by Maples would create unnecessary uncertainty. To support these concerns, Texas points to recent petitions seeking to further expand the exception sought by Maples; floodgates, Texas argues, that could be opened by poking a hole in the *Coleman* rule, which requires “external cause” to excuse a procedural default by state courts in a federal habeas hearing.

Satisfying Due Process

ACDLA argues that Maples’ case demonstrates the potential for violations of the Due Process Clause under Alabama’s capital punishment system. Maples agrees, noting that Alabama’s capital punishment system is somewhat unique in its reliance on out-of-state counsel to represent indigent capital inmates during the post-conviction stage. This reliance, Maples argues, makes it “unreasonable” for court clerks to fail to take extra measures to confirm that notices reach out-of-state attorneys.

However, Thomas insists that due process is not compromised, because Butler received notice, even if Munanka and Ingen-Housz did not. Moreover, Thomas disagrees with any characterization that the role of local counsel in the Alabama system is negligible. Texas adds that, since collateral review under state habeas corpus is not a constitutional right, neither is the right to effective assistance of counsel in such proceedings. Therefore, allocating the risk of attorney error to the petitioner does not violate the Constitution.

The Client’s Accountability for the Attorney’s Conduct

Alabama’s appellate court justices and bar presidents decry the Alabama system as severely lacking qualified counsel for indigents, insisting that clients like Maples should not be punished for having unqualified lawyers. Furthermore, the justices and bar presidents claim that the Alabama system does not adequately shoulder the costs of representing indigents, causing counsel to be inadequately compensated for their representation. Thus, Maples, along with these justices and bar presidents in Alabama, argues that it would be inherently unjust, under

such conditions, to impute Butler’s failures to Maples.

Texas, however, insists that Butler and the law firm of Sullivan & Cromwell represented Maples during the post-conviction phase and Maples’ complaint lies only with them. Moreover, Texas argues that an attorney’s error after a defendant’s conviction does not offer grounds for relief, and allowing Maples to claim that he had no actual representation at the time of the default would invite a flood of claims seeking to mask poor legal advocacy as none at all. Thomas insists the government interest in finality counsels against interpreting an attorney’s conduct as an “external cause,” and there is no inequity in a rule allocating risk of attorney error to petitioners.

Legal Arguments

In *Coleman v. Thompson*, the Supreme Court held, that, when considering federal habeas corpus petitions, federal courts may excuse a procedural default in state court if the petitioner can show an external cause for the default and prejudice resulting from the default. A procedural default may not be excused when it can be attributed to the petitioner’s actions. Here, the Court will consider what constitutes an adequate cause external to the petitioner.

Inadequate Notice as External Cause

Maples compares this case with *Jones v. Flowers*, 547 U.S. 220 (2006), a case involving failed notice of divestment of a property interest. In that case, the Supreme Court determined that a state may not claim it “tried,” upon learning that first notice did not reach the intended recipient. Maples argues that due process requires at least a similar threshold for capital punishment and contends that even fewer steps were taken to notify him of the failure to contact his attorneys than the inadequate notice that was given in *Jones*.

Thomas argues that Maples’ reliance on *Jones* is misplaced, because, in that case, all forms of notice were returned. In Alabama, notice is sufficient if any counsel receives it, and Maples’ local counsel received notice. Because

Maples’ local attorney received notice, both state law and federal due process requirements were satisfied. As such, Maples is foreclosed from arguing that the court clerk failed to provide him notice because his pro bono attorneys were unreachable.

Maples counters that, because Alabama relies heavily on out-of-state pro bono attorneys, the due process requirement should be greater than notifying the local attorney, who often plays no real role in representing the client. Maples argues that, under Supreme Court precedent, this peculiar fact should be considered when addressing the unique circumstances surrounding this due process case. Therefore, Maples argues that notice cannot be adequate under these circumstances when only the local attorney received notice.

Thomas insists that, because local counsel plays a critical and responsible role for defendants, it was reasonable for the court clerk to consider the notice adequate when it reached Butler. Moreover, Thomas notes that the test used in *Coleman v. Thompson* is two-pronged, requiring Maples to show “cause” and “actual prejudice.” Thomas asserts that the Court has described the second prong as requiring petitioners to prove their innocence, which Maples does not attempt to do. Therefore, Thomas argues, Maples failed to show that a denial of his habeas claim would constitute actual prejudice.

The Attorney’s Error as External Cause

Maples argues that, if the actions of the court clerk do not excuse the default, the actions of Maples’ pro bono attorneys do. Maples asserts that attorney abandonment, as experienced in this case, constitutes cessation of that attorney’s agency in any meaningful sense. Therefore, Maples contends that courts should not impute attorney error to abandoned clients.

However, Thomas contends that *Coleman*, which held that a petitioner “must bear the risk of [attorney] errors” in post-conviction actions, governs this case. In identifying attorney error as

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an external cause of default, Thomas argues that Maples must show that his attorneys ceased their role and became “external to [his] defense,” and that his attorneys “impeded his efforts to comply with the state’s procedural rule.” Despite the departure of Maples’ Sullivan & Cromwell attorneys, Thomas insists that Maples maintained an attorney-client relationship with another attorney at the firm, thereby maintaining that firm’s agency. Therefore, Thomas argues that, despite any mistake, Maples’s attorneys were never external to the case.

In response, Maples contends that the finding in *Coleman* is more limited, holding only that attorney error in post-conviction proceedings cannot be “imputed to the State.” In other words, if an attorney abandons a client, it may not be imputed to the state because counsel is not guaranteed by the state in post-conviction proceedings. However, Maples argues, such abandonment may still constitute an “external cause” to excuse a default.

Conclusion

The Supreme Court’s decision could affect what constitutes “external cause” to excuse a procedural default for the purposes of federal habeas corpus review. Maples argues that the court clerk’s failure to notify him that his petition for an evidentiary hearing was denied was the external cause of his procedural default and violated his due process rights. Alternatively, he argues that his counsels’ effective abandonment created cause to excuse the default. Thomas argues that the clerk successfully notified one attorney and that Supreme Court precedent places the risk of attorney error on the petitioner during post-conviction proceedings. Full text is available at law.cornell.edu/supct/cert/10-63. **TFL**

Prepared by Amanda Bradley and Brooks Kaufman. Edited by Colin O’Regan. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

Douglas v. Independent Living Center of Southern California, Douglas v. California Pharmacist Association, and Douglas v. Santa Rosa Memorial Hospital (consolidated) (09-958, 09-1158, and 10-283)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (July 9, 2009)

Oral argument: Oct. 3, 2011

Reforms passed by the California Assembly reduced the state’s payments to California Medicaid providers. Several health care providers sued Douglas, the director of California’s Department of Health Care Services, claiming the payment reductions violated 42 U.S.C. § 1396(a)(30)(A), which requires that state Medicaid plans comply with federal law or else lose federal funding if they fail to comply. Douglas argues that health care providers cannot sue to enforce § 30(A) because the statute does not grant enforceable rights, and Congress did not intend for private-party suits to enforce the statute. Conversely, the health care providers argue that the Supremacy Clause permits private parties injured by state action to sue, and they assert that Congress did not disallow private lawsuits under § 30(A). The Supreme Court’s decision will affect the predictability of federal law, the ability of private parties to enforce federal law by lawsuit, and the availability of health care to Medicaid beneficiaries. Full text is available at law.cornell.edu/supct/cert/09-958. **TFL**

Prepared by Curtis Coolidge and Jocelyn Krieger. Edited by Natanya DeWeese.

Reynolds v. United States (10-6549)

Appealed from the U.S. Court of Appeals for the Third Circuit (May 14, 2010)

Oral argument: Oct. 3, 2011

Reynolds, a registered sex offender, was convicted of failing to update his residence registration. Under the newly enacted Sex Offender

Registration and Notification Act (SORNA), sex offenders must update the federal registry within three days of changing their residence. An interim rule applied the statute retroactively to sex offenders convicted before the enactment of SORNA, and Reynolds was included. He challenged the legality of the interim rule, but the Third Circuit dismissed the case for a lack of standing. Reynolds argues that SORNA’s registration requirements are inapplicable to individuals with pre-SORNA convictions. Reynolds adds that the interim rule made SORNA’s requirements applicable to him, thus giving him standing. The Supreme Court’s decision will determine whether sex offenders who were convicted before the enactment of SORNA can state a claim against the interim rule, which in turn may delay the government’s creation of a national sex offender registry. However, the decision may also prevent the government from issuing new registration requirements without notice to those in Reynolds’ situation. Full text is available at law.cornell.edu/supct/cert/10-6549. **TFL**

Prepared by Heather Byrne and Judah Druck. Edited by Edan Shertzer.

Martinez v. Ryan (10-1001)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Jan. 11, 2010)

Oral argument: Oct. 4, 2011

Martinez, a convicted felon, filed a writ of habeas corpus, seeking relief in federal court. Martinez alleges that the assistance provided by his trial counsel was ineffective and, because his appellate counsel failed to raise a claim of ineffective assistance of counsel in the post-conviction proceeding, procedural grounds precluded the claim. The Ninth Circuit held that, because Martinez had no right to post-conviction counsel, a claim of ineffective assistance of counsel will not overcome the procedural default. Consequently, Martinez is barred from raising his claim, even if post-conviction counsel’s ineffective

assistance caused the default. Martinez argues that there is a right to effective assistance of post-conviction counsel in raising his claim of ineffective assistance of trial counsel, and ineffective post-conviction counsel should preclude the procedural default. Ryan asserts that, because defendants have no right to counsel in post-conviction proceedings, the procedural default is not defeated by Martinez's claim of ineffective assistance of post-conviction counsel. The Supreme Court will have to balance the potential impact on poorly represented defendants against the efficiency of state criminal proceedings. Full text is available at law.cornell.edu/supct/cert/10-1001. **TFL**

Prepared by William Dong and Alicia Lee. Edited by Jacqueline Bendert.

Howes v. Fields (10-680)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (March 5, 2010)
Oral argument: Oct. 4, 2011

While Fields was incarcerated, officers unaffiliated with the prison questioned him about activities that were not related to charges against him. Fields made incriminating statements, which were admitted into evidence, and was convicted. The Sixth Circuit granted Fields' petition for habeas relief, holding that the state court's decision conflicted with Supreme Court precedent forbidding the admission of statements made without the protection of *Miranda* warnings. The Supreme Court will determine whether there is established precedent that a prisoner is "in custody," and entitled to *Miranda* protections when separated from the prison population and questioned. Howes contends that the state court's decision does not conflict with Supreme Court precedent. In contrast, Fields argues there is an established rule granting *Miranda* protection to prisoners when isolated and questioned. Howes maintains that requiring *Miranda* rights when a prisoner is questioned will grant prisoners greater protections than ordinary citizens have. Fields counters that requiring officers to issue

Miranda warnings will protect prisoners' Fifth Amendment rights. Full text is available at law.cornell.edu/supct/cert/10-680. **TFL**

Prepared by Amy Hsu and Alison Skaijfe. Edited by Kelly Halford.

Golan v. Holder (10-545)

Appealed from the U.S. Court of Appeals for the Tenth Circuit (June 21, 2010)
Oral argument: Oct. 5, 2011

Congress enacted § 514 of the Uruguay Round Agreements Act to comply with the international copyright standards of the Berne Convention for the Protection of Literary and Artistic Works. Golan challenged § 514, which restores copyright protection to foreign works found in the public domain. Golan argues that Congress' removal of works from the public domain exceeded its Copyright Clause power to grant copyright for a limited time and violated the First Amendment by not serving an important government interest. Holder counters that the Copyright Clause does not restrict Congress' authority to remove works from the public domain. He argues that § 514 does not violate the First Amendment because of the government's interest in complying with the Berne Convention and protecting American works abroad. This decision will affect millions of foreign works in the public domain, works based on those foreign works, and the copyright protection of American works in foreign countries. Full text is available at law.cornell.edu/supct/cert/10-545. **TFL**

Prepared by Brandon Bodnar and Milson Yu. Edited by Natanya DeWeese.

Compucredit Corp. v. Greenwood (10-948)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 17, 2010)
Oral argument: Oct. 11, 2011

Greenwood and the respondents each applied for an Aspire Visa

credit card that CompuCredit marketed. Synovus Bank issued the credit cards after an agreement containing a binding arbitration provision was signed. When the respondents were charged fees related to the credit cards, they filed a class action lawsuit against CompuCredit and Synovus Bank, alleging violations of the Credit Repair Organizations Act. CompuCredit moved to compel arbitration pursuant to the pre-dispute arbitration agreement, but the district court held that the statute created a nonwaivable right for consumers to sue in court. The Ninth Circuit affirmed the decision. The petitioners argue that the contract's arbitration clause should be enforced, whereas the respondents contend that Congress intended to preserve the right to sue in court under the Credit Repair Organizations Act. The Supreme Court's decision will balance consumers' right to contract against providing protections for vulnerable consumers. This decision will affect the enforceability of pre-dispute arbitration agreements and the extent to which arbitration may act as an acceptable substitute to the courtroom. Full text is available at law.cornell.edu/supct/cert/10-948. **TFL**

Prepared by Amanda Hellenthal and Chuan Liu. Edited by Jacqueline Bendert.

Greene v. Fisher, Superintendent, Smithfield (10-637)

Appealed from the U.S. Court of Appeals for the Third Circuit (May 28, 2010)
Oral argument: Oct. 11, 2011

Greene was accused of participating in a grocery store robbery that left the store owner dead. Greene argued that the statements made by his co-defendants who did not testify at trial improperly implicated him when the court redacted his name. While awaiting appeal, the Supreme Court decided *Gray v. Maryland*, holding that obvious redactions fail to protect the accused. Greene petitioned for habeas relief. The Third Circuit denied

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relief, reasoning that § 2254(d) of the Antiterrorism and Effective Death Penalty Act did not apply, because *Gray* was not “clearly established Federal law” during Greene’s trial. Greene argues that habeas petitioners have benefitted from Supreme Court decisions handed down before their convictions became final. Fisher argues that the phrase “clearly established” precludes relitigation of issues settled by state courts unless the state’s decision was unreasonable under the law existing when the decision was handed down. The Supreme Court’s decision could settle the meaning of “clearly established Federal law,” posing broad implications for habeas petitions. Full text is available at law.cornell.edu/supct/cert/10-637. **TFL**

Prepared by Cheryl Blake and Jennifer Uren. Edited by Colin O’Regan.

Pacific Operators Offshore v. Valladolid (10-507)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 13, 2010)
Oral argument: Oct. 11, 2011

Juan Valladolid, an employee of Pacific Operators Offshore, died when a forklift crushed him at the company’s oil-processing facility on the California coast. Valladolid’s widow filed a claim for federal workers’ compensation under the Outer Continental Shelf Lands Act, but the claim was rejected because Valladolid died on land rather than on the outer-continental shelf. On appeal, the Ninth Circuit reversed the decision, holding that the benefits provided under the statute were not limited to injuries or deaths that occurred on the outer-continental shelf. Rather, coverage depended on the existence of a nexus between the injury or death and operations on the outer-continental shelf. Now, Pacific Operators Offshore argues that the Outer Continental Shelf Lands Act contains a strict “situs-of-injury” requirement, whereas Valladolid contends that such a requirement would defeat congressional intent. The Supreme Court’s

decision will resolve a long-standing question of statutory interpretation and may shed light on the Court’s current approach to workers’ compensation laws. Full text is available at law.cornell.edu/supct/cert/10-507. **TFL**

Prepared by Angela Chang and Tian Wang. Edited by Edan Shertzer.

Judulang v. Holder (10-694)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Sept. 17, 2010)
Oral argument: Oct. 12, 2011

After Judulang, a legal permanent resident of the United States, was convicted of a deportable offense, the Board of Immigration Appeals denied Judulang eligibility for a discretionary waiver of deportability under § 212(c) of the Immigration and Nationality Act. On its face, § 212(c) applies only to legal permanent residents who are excludable when they attempt to enter the country. However, the Board of Immigration Appeals had allowed some permanent residents convicted of deportable offenses textually similar to excludable offenses to apply for the § 212(c) waiver. Judulang asserts that the waiver should apply to him, because his crimes would render him excludable if he tried to re-enter the country. Judulang argues that the change in the policy regarding deportable and excludable offenses is impermissibly retroactive and unconstitutional. The Department of Justice argues that the Board may require a textual similarity between a charged ground of deportability and a waivable ground of excludability. The Supreme Court’s decision will affect many legal permanent residents convicted of deportable offenses. Full text is available at law.cornell.edu/supct/cert/10-694. **TFL**

Prepared by Alison Carrizales and Tom Schultz. Edited by Colin O’Regan.

Florence v. Board of Chosen Freeholders (10-945)

Appealed from the U.S. Court of Appeals for the Third Circuit (April 15, 2010)
Oral argument: Oct. 12, 2011

Albert Florence was arrested on a nonindictable bench warrant for a nonindictable offense and was subjected to strip searches in two separate prison facilities. Florence sued both facilities, alleging that their blanket policies of strip searching all detainees, regardless of their offense, violated the Fourth Amendment. The U.S. Court of Appeals for the Third Circuit reversed an opinion handed down by a district court and held that the policies in this case did not violate Florence’s rights under the Fourth Amendment. Florence argues that the Fourth Amendment protects detainees from suspicionless strip searches when less intrusive alternatives better serve penological interests. The respondents contend that the prison context diminishes an individual’s privacy expectation under the Fourth Amendment and that the privacy expectation is outweighed by the security interest promoted by blanket strip searches. The Supreme Court’s decision in this case could affect prison security, the psychological well-being of detainees, and the amount of litigation to which prisons are exposed. Full text is available at law.cornell.edu/supct/cert/10-945. **TFL**

Prepared by Meredith Carpenter and Charlotte Davis. Edited by Eric Schulman.