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### **Americold Logistics LLC et al. v. ConAgra Foods Inc. et al. (14-1382)**

**Oral Argument: Jan. 19, 2016**

**Court Below: U.S. Court of Appeals for the Tenth Circuit**

#### **Issue**

In diversity jurisdiction cases, is a trust a citizen of every state where its beneficiaries reside?

#### **Question as Framed for the Court by the Parties**

Is the citizenship of a trust for purposes of federal diversity jurisdiction based on the citizenship of the controlling trustees, the trust beneficiaries, or some combination of both?

#### **Facts**

In December 1991, a fire in an underground storage facility destroyed food and other products that ConAgra Foods Inc. (ConAgra) was storing there. ConAgra leased the facility from Americold Logistics LLC. Americold Realty Trust (the Americold trust), a real estate investment trust (REIT), was Americold's parent company.

In 1992, ConAgra filed suit against Americold Logistics and the Americold trust (collectively, "Americold") in Kansas state court to recover damages for the destroyed goods. Americold removed the case to federal court, the U.S. District Court for the District of Kansas, on the basis of diversity jurisdiction. In district court, both parties moved for summary judgment, and the district court granted Americold's motion. ConAgra appealed the ruling to the U.S. Court of Appeals for the Tenth Circuit.

The Court of Appeals noted that neither the parties nor the district court addressed the jurisdictional issue of whether remov-

al from state to federal court was proper. Nevertheless, the Court of Appeals raised the issue *sua sponte*. The court posed two questions to the parties: (1) how should the citizenship of the Americold trust be determined, and (2) did complete diversity exist to make removal proper?

The Tenth Circuit ordered the parties to file supplemental briefing on the two questions. Subsequently, the court concluded that a trust is a citizen of every state in which its members are citizens. The court decided that it did not need to reach the issue of who qualifies as a member of a trust; rather, it held that at a minimum, the beneficiaries of a trust are members of the trust.

Accordingly, the court found the Americold trust did not demonstrate that it was completely diverse from ConAgra. The Americold trust did not disclose to the court the citizenship of its beneficiaries, so the court reasoned that the trust's members could be citizens of Delaware, Illinois, or Nebraska—states where ConAgra was a citizen.

Because complete diversity did not exist, the Tenth Circuit held that it could not hear the case on the basis of diversity jurisdiction. The court remanded the case to the district court with instructions to vacate its summary judgment ruling and remand the case back to Kansas state court. After the Court of Appeals denied Americold's motion for rehearing *en banc*, Americold filed a petition for writ of certiorari on May 15, 2015. The Supreme Court granted cert on Oct. 1, 2015.

#### **Discussion**

The Supreme Court's resolution of this case may affect the ability of REITs to bring suits in federal court, and the use of judicial resources in determining the citizenship of trusts. Americold contends that the

citizenship of a trust should be based on the citizenship of its trustees, not its beneficiaries. But ConAgra argues that for diversity jurisdiction, courts should consider a trust to be a citizen of every state in which any of the trust's members, shareholders, or beneficiaries is a citizen.

#### **REAL ESTATE INVESTMENT TRUSTS' ACCESS TO FEDERAL COURT**

REITs have become successful real estate operations, and the National Association of Real Estate Investment Trusts (NAREIT) asserts that like any successful enterprise, REITs can "be magnets for meritless litigation asserting state-law claims." But NAREIT fears that the Tenth Circuit's decision will prevent REITs from filing suit in, or removing suits to, federal court and thus deny them the protection federal courts provide from the "danger of local prejudice as large, out-of-state corporate litigants." NAREIT explains that many REITs are publicly traded (although Americold is not) and can have shareholders in every state in the country. Publicly traded REITs' beneficiaries include their shareholders, NAREIT asserts. If the citizenship of REITs depends on the citizenship of their beneficiaries, then NAREIT concludes that REITs will rarely satisfy complete diversity.

But ConAgra explains that if REITs are precluded from removing actions to federal court, the preclusion is the result that the Court's jurisprudence requires. ConAgra notes that the Court has upheld plaintiffs' ability to "craft" complaints to destroy diversity jurisdiction. ConAgra explains that plaintiffs can preclude diversity by specifying the amount in controversy or the parties to the action.

#### **CONSERVATION OF JUDICIAL RESOURCES**

Winston Wen-Young Wong, who sued to recover \$2 billion of his father's assets that were transferred to a U.S. trust, argues that determining the citizenship of trusts based on the citizenship of their beneficiaries will waste judicial time and resources. Wong asserts that it can be difficult to determine the citizenship of a trust because "the beneficia-

ries of a traditional trust often are not actual persons or entities.” For example, Wong explains a trust may be created for “charitable purposes,” but a purpose does not have citizenship. Wong concludes that broad purpose declarations raise the question of “which past, present or theoretical future” beneficiaries control the trust’s citizenship.

However, ConAgra maintains that the Tenth Circuit’s decision is simple to follow and implement. ConAgra notes that REITs seeking to invoke diversity jurisdiction only need to plead the basis for it, by, for example, revealing the citizenship of its members or shareholders. Additionally, ConAgra contends that Wong’s discussion mischaracterizes Americold as a “traditional trust,” and is thus inapplicable to the case because Americold is a Maryland-law REIT.

## Analysis

To hear a case, federal courts must have jurisdiction. Diversity is one basis for jurisdiction. To find diversity, courts must conclude that no plaintiff has the same state citizenship as a defendant. In this case, the Supreme Court will decide whether, for diversity purposes, a trust is a citizen of every state where its beneficiaries reside.

Americold argues that common law grants trustees exclusive power to sue on behalf of a trust, and contends that the Court has recognized the trustee as the “real” party in litigation involving a trust. Accordingly, Americold asserts that the Court looks to the citizenship of the trustee, and not beneficiaries, in making diversity determinations. But ConAgra argues that the Americold trust is an unincorporated entity under Maryland law. ConAgra maintains that the Court, in deciding the citizenship of unincorporated entities, looks to the citizenship of the entities’ members.

## ARE REITS LIKE COMMON LAW TRUSTS, OR UNINCORPORATED ENTITIES?

Since *Navarro Savings Assn. v. Lee*, 446 U.S. 458 (1980), Americold argues, the Court has examined the trustee’s citizenship, and not the citizenship of the trust’s beneficiaries, to determine if diversity exists. Americold explains that common law vests a trust’s legal title in the trustee. The trustee has the sole authority to sue on the trust’s behalf, Americold continues, and generally has the power “to hold, manage, and dispose of trust assets for the benefit of others.” Recognizing the trustee’s power, Americold asserts that the

Court has declared the trustee as the “real” party in suits against a trust.

Americold contends that the Tenth Circuit mistakenly relied on *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990), which held that the citizenship of unincorporated entities, such as partnerships, depends on its members. Americold argues that trusts are legally different than unincorporated entities. Americold explains that trusts have two tiers of members; trustees have authority over the trust, while beneficiaries have limited rights to benefit from the trust. But common law partnerships have one tier of members, partners, who share the same legal status. Even if the Court applies *Carden*’s reasoning, Americold argues that the relevant members of a trust are the trustees, not the beneficiaries, because the trustees are personally liable for the trust’s obligations, in the same way a partner is liable for a partnership’s obligations.

ConAgra contends that having “trust” in its name does not make the Americold trust legally identical to common law trusts. Furthermore, ConAgra argues that merely because both a trust’s beneficiaries and the Americold trust’s shareholders cannot litigate on behalf of the trusts does not mean that they are the same. Americold explains that there are many corporate entities, such as limited partnerships, in which members are not liable for a manager’s conduct. But these entities, Americold asserts, are not considered trusts.

ConAgra maintains that Americold is a REIT under Maryland law, and that Maryland law states REITs are unincorporated entities. ConAgra asserts that the Americold trust’s beneficiaries are indistinguishable from members of unincorporated entities because both beneficiaries and members “invest capital,” have transferrable interests, and are not personally liable for managers’ liabilities. Accordingly, ConAgra argues that the Court should apply the *Carden* line of cases that dealt with unincorporated entities. ConAgra concludes that the Court has created a dichotomy regarding diversity citizenship: Either an entity is a corporation or an unincorporated entity, and a trust, by definition, can only be classified as an unincorporated entity.

## EVOLVING LAW AND PRACTICAL CONSIDERATIONS

Americold suggests that evolutions in trust law, such as the ability of trusts in some states to litigate in their own name, does not justify a deviation from the Court’s

traditional view: Trustees are still the parties actively involved in litigation. Americold asserts that looking to the citizenship of the beneficiaries of a trust when a trust is sued in its own name would lead to “gamesmanship” by parties seeking favorable forums. And Americold maintains that looking to the citizenship of a trust’s beneficiaries would be too complex because beneficiaries are frequently numerous and dispersed.

ConAgra counters that looking to all of the beneficiaries will not encourage forum shopping because state law usually limits whom plaintiffs can sue for relief. ConAgra also contends that the Court has affirmed plaintiffs’ ability to craft complaints to create or destroy diversity.

## Conclusion

The Court will decide how to determine the citizenship of a REIT. Americold maintains that the citizenship of a trust should be based on the citizenship of the trustees, not the beneficiaries. However, ConAgra argues that a trust is a citizen in each state where its beneficiaries reside. The decision in this case will impact the citizenship of REITs and how courts determine a trust’s citizenship. ☉

*Written by Tyler Vandeventer and Jason Ottomano. Edited by Alice Chung.*

## Molina-Martinez v. United States (14-8913)

**Oral argument:** Jan. 12, 2016

**Court below:** U.S. Court of Appeals for the Fifth Circuit

## Issue

For the purposes of plain-error review, should an appellate court apply a rebuttable presumption of prejudice against a defendant if a misapplication of the Sentencing Guidelines (Sentencing Guidelines) leads a trial court to rely on an erroneous sentencing range calculation?

## Question as Framed for the Court by the Parties

Where an error in the application of the United States Sentencing Guidelines results in the application of the wrong Guideline range to a criminal defendant, should an appellate court presume, for purposes of plain-error review under Federal Rule of Criminal Procedure 52(b), that the error affected the defendant’s substantial rights?

## Facts

On Aug. 31, 2012, U.S. Customs and Border Protection agents arrested petitioner Saul Molina-Martinez (Molina-Martinez)—a Mexican national with no legal status in the United States—near Sarita, Texas. The agents determined that on Aug. 26 Molina-Martinez illegally entered the United States without inspection. Prior to this arrest, Molina-Martinez had been deported from the United States on two earlier dates, Feb. 5, 2007, and Aug. 20, 2012. Moreover, Molina-Martinez had two previous convictions from 2002 and 2011 for aggravated burglary. A grand jury indicted Molina-Martinez with one count under 8 U.S.C. § 1326(a) and (b) of unlawful presence in the United States after deportation. Molina-Martinez pled guilty in the United States District Court for the Southern District of Texas.

To assist with the sentencing phase, the district court ordered a presentencing report (PSR). Based on Molina-Martinez's criminal history, which included four aggravated burglaries in May 2009, a fifth aggravated burglary in May 2010, and an arrest in June 2010 for those burglaries, the PSR calculated that Molina-Martinez had a criminal history score of 18. Based on this score, the Sentencing Guidelines recommended a sentencing range of 77 to 96 months of imprisonment and the district court sentenced Molina-Martinez to 77 months of imprisonment. Molina-Martinez appealed to the United States Court of Appeals for the Fifth Circuit, arguing for the first time that the district court erred in its criminal history score calculation.

On appeal and under plain-error review, the Fifth Circuit affirmed the district court's decision. The Fifth Circuit found that the PSR erred in calculating the criminal history score by not accounting for a lack of intervening arrests between the May 2009 burglaries and May 2010 burglary. The Fifth Circuit instead found that the proper calculation would have given Molina-Martinez only 12 criminal history points and would have reduced Molina-Martinez's sentencing range to 70 to 87 months of imprisonment. However, the Fifth Circuit found that because the actual sentence fell within the correct sentencing range, Molina-Martinez had to show additional evidence to establish that there was a clear and obvious error affecting his substantial rights. The Fifth Circuit concluded from the record that Molina-Martinez produced no additional evidence to establish that the sentencing guidelines error affected

his substantial rights and warranted a plain-error reversal.

During the proceedings, Molina-Martinez preserved for possible review his contention that an error in the use of Sentencing Guidelines should be presumed prejudicial. Molina-Martinez subsequently petitioned the Supreme Court of the United States for a writ of certiorari, which the Supreme Court granted on Oct. 1, 2015.

## Discussion

This case presents the Supreme Court with an opportunity to determine whether an appellate court should adopt a rebuttable presumption of prejudice under plain-error review when a misapplication of Sentencing Guidelines leads to a sentencing error. Molina-Martinez argues that a misapplication of the Sentencing Guidelines should result in a rebuttable presumption that the error affected the defendant's substantial rights. The United States counters that the misapplication of the Sentencing Guidelines is a non-structural error, and as such Molina-Martinez retains the burden of showing prejudice in his sentencing. The Court's decision will impact appellate courts' application of plain-error review under Federal Rule of Criminal Procedure 52(b) (Rule 52(b)) and potentially affect the procedural strategy and substantive rights of criminal-trial litigants.

### DOES A REBUTTABLE PRESUMPTION INCENTIVIZE DEFENDANTS TO WITHHOLD OBJECTIONS UNTIL APPEAL?

Molina-Martinez maintains that a rebuttable presumption of prejudice will not encourage defendants to delay objections to sentencing guideline errors until appeal. Molina-Martinez argues that a defendant is incentivized to challenge sentencing calculations prior to appeal. In support, Molina-Martinez explains that withholding an objection lacks any tactical advantage and would possibly disadvantage the defendant in litigation and sentencing, particularly because any presumption of prejudice would be rebuttable. This rebuttable presumption, Molina-Martinez contends, allows courts to correct errors made in sentencing while preserving defendants' incentives to object during the proceedings.

The United States counters that forcing the government to rebut prejudice will discourage defense counsels from both scrutinizing and objecting to the Sentencing Guideline calculations during sentencing.

The United States argues that that the current plain-error rule puts the onus on defense counsels to be diligent and attentive, and encourages them to address any potential errors in the Sentencing Guideline calculations at the defendant's sentencing. Given the complexity of the Sentencing Guidelines, the United States argues that having the defendant retain the burden of showing prejudice will ensure that defense counsel remain diligent in identifying potential errors in the sentencing calculations.

### DOES A REBUTTABLE PRESUMPTION PROTECT THE DISTRICT COURT'S ROLE IN SENTENCING?

Molina-Martinez argues that a presumption of prejudice will allow district courts to retain their power over appellate courts as a sentencing body. Based on this protection, Molina-Martinez asserts that a rebuttable presumption will provide district courts the opportunity to correct undisputed sentencing errors. Molina-Martinez contends that this will force district courts to rethink their sentencing policies and will help to amend the Sentencing Guidelines.

The United States argues that, although district court judges are in the best position to calculate sentences, preserving the current prejudice requirements will encourage timely objections, which will better preserve the district court's sentencing role. The United States asserts that allowing district courts to correct and avoid mistakes before they can affect the defendant's final sentence would be the best way to respect the district court's role.

### DOES A REBUTTABLE PRESUMPTION IMPOSE EXTRA COSTS ON THE LEGAL SYSTEM?

Molina-Martinez contends that an appellate court's application of a rebuttable presumption will not pose significant costs on the legal system. Molina-Martinez notes that the remanding of cases generates minimal costs and that the brevity of the sentencing proceedings requires only minimal effort from the involved parties when compared to a retrial. Moreover, Molina-Martinez maintains that parties can waive the right to attend allocution, which allows courts to enter new judgments without a hearing. Given these low costs and the benefits of reaching the correct result, Molina-Martinez contends that applying a rebuttable presumption will incentivize courts to reverse errors and exercise proper sentencing.

The United States counters that Molina-Martinez undervalues the costs that a rebuttable presumption will generate. The United States argues that resentencing will force over-burdened district courts to revisit an error that could have been resolved with an objection and to bear the costs of reconvening all parties involved in the prior litigation. The United States further argues that there is no evidence to indicate that defendants would waive their right to allocution. The United States points to the overall value to defendants of being able to present evidence of post-sentencing rehabilitation, as well as the current rarity in practice of defendants waiving allocution.

### Analysis

In this case, the Supreme Court will decide whether Rule 52(b) triggers a rebuttable presumption that affects a defendant's substantial rights when the Sentencing Guidelines result in an inaccurate sentencing range. If a defendant's substantial rights are prejudiced due to a plain error, appellate courts will consider the error on appeal despite it not being raised in the lower court. Molina-Martinez argues that Sentencing Guideline errors, unobjected to by defense counsel, trigger a rebuttable presumption that the error affected the defendant's substantial rights. The United States argues that sentencing miscalculations, unobjected to by defense counsel, do not trigger a rebuttable presumption that the error affected a defendant's substantial right. The United States maintains that a defendant seeking relief from such an error must fulfill all the "requirements of the plain-error standard" set forth in Rule 52(b).

### DOES THE DIFFICULTY OF PROVING PREJUDICE NECESSITATE A REBUTTABLE PRESUMPTION OF PREJUDICE?

In *United States v. Olano*, the Supreme Court established a four-prong test for plain-error review under Rule 52(b). Under the third prong of plain-error review, the defendant bears the burden of showing prejudice to a substantial right. Molina-Martinez argues that the Supreme Court created two exceptions to this presumption in *Olano*. Molina-Martinez focuses on the second *Olano* exception, which presumes prejudice when there is a high probability that the error will affect the outcome of the case and the nature of the error makes it unlikely that the defendant will be able to make a specific

showing of prejudice. Molina-Martinez argues that the difficulty of proving prejudice under the Sentencing Guidelines necessitates a rebuttable presumption of prejudice for sentencing miscalculations. Molina-Martinez contends that it is nearly impossible to determine whether an erroneous sentence would have been different because a judge can render a sentence with "little or no explanation." Molina-Martinez concludes that unless the sentencing judge makes a "fortuitous comment" explaining why a specific sentence was imposed, the defendant cannot demonstrate prejudice.

The United States argues that the miscalculation of a sentence under the Sentencing Guidelines is not an error that is "presumptively prejudicial." The United States maintains that the Supreme Court's precedent indicates that "structural errors"—those errors "affect[ing] the framework within which the trial proceeds"—are presumptively prejudicial. The United States argues that the misapplication of the Sentencing Guidelines is a "nonstructural" error that requires a showing of prejudice. The United States therefore contends that relief under Rule 52(b) requires Molina-Martinez to demonstrate that there is a high likelihood he would have received a lesser sentence. The United States argues that a presumption of prejudice is inappropriate when based on the "difficulty in establishing case-specific prejudice from a Guidelines error." The United States maintains that a fortuitous comment is not necessarily required for proving specific prejudice in Sentencing Guideline cases. To support this, the United States points out that the reviewing court will know the "nature and magnitude" of the sentencing error in every case, which will allow the court to determine the likelihood of prejudice regardless of a "fortuitous comment." The United States further contends that there will be other evidence on the record for proving specific prejudice, such as sentencing memoranda, pre-sentence reports, and any objections filed by either party.

### CAN THE 'NATURAL EFFECT' OF THE SENTENCING GUIDELINE SUPPORT A PRESUMPTION OF PREJUDICE?

Molina-Martinez maintains that Supreme Court precedents "suggest that a rebuttable presumption of prejudice is appropriate in a criminal case where the 'natural effect' of a particular error is to affect a defendant's substantial rights. Molina-Martinez then

argues that the "natural effect" of erroneously calculating a Sentencing Guideline is to directly affect a defendant's sentence, which subsequently affects the substantial rights of that defendant. Molina-Martinez contends that the Sentencing Guidelines' "continuing centrality and influence in federal sentencing provide compelling reasons for presuming that Guideline application errors affect a defendant's substantial rights." Molina-Martinez supports this assertion by noting that the Sentencing Guidelines are not only the starting point for district court judges in determining a sentence, but also that judges must take them into consideration throughout the entire sentencing process. Molina-Martinez highlights Supreme Court precedent post *United States v. Booker* to demonstrate that the Sentencing Guidelines still hold considerable weight in sentencing decisions despite not being mandatory. Thus, Molina-Martinez asserts that an erroneously calculated sentence under the Sentencing Guideline affects a defendant's substantial rights, because "the whole point of the guidelines is to affect the defendant's 'substantial rights' by guiding the district court's analysis of how much of his liberty he must forfeit to the government."

The United States argues that a "category-wide presumption of prejudice" cannot be "based on an error's natural effect." The United States maintains that the Supreme Court has cautioned against the use of "mandatory presumptions and rigid rules rather than case-specific application of judgment, based upon examination of the record." The United States further contends that there is a "congressional preference for determining 'harmless error' without the use of presumptions." The United States argues that the courts of appeals, when determining Guideline errors, has never "determined the 'natural effect' of a type of error based on 'empirical evidence' and 'expertise.'" The United States maintains that Molina-Martinez's 'natural-effects test' is inappropriate. The United States relies on *Booker* to demonstrate the test's impracticality because in that case there was "no relevant data to consult because district courts had just begun sentencing under advisory Guidelines." The United States argues "even now, with a body of judicial experience and data on advisory Guidelines sentencing, empirical evidence still provides an unreliable and shifting basis for crafting legal presumptions that may long outlive empirical generalizations thought true at the time."

## IF A PRESUMPTION OF PREJUDICE IS NOT ADOPTED, CAN THE COURT FIND THAT MOLINA-MARTINEZ'S SUBSTANTIAL RIGHTS HAVE BEEN AFFECTED?

Molina-Martinez argues that even if the rebuttable presumption of prejudice he proposes is not adopted, “the Court should hold that [he] nevertheless met his burden of establishing an effect on his substantial rights, because the record shows at least a reasonable probability that the sentence would be lower under the correct Guideline range.” Specifically, Molina-Martinez points out that although the government asked for the longest sentence under the Guidelines, the district court actually assigned Molina-Martinez the shortest possible sentence within that range.

The United States counters by arguing that Molina-Martinez’s argument for reversal lacks merit because it was not articulated in the question presented. The United States further notes that it is erroneous to address Molina-Martinez’s alternative argument because “it would not resolve whether [Molina-Martinez] is entitled to relief under the fourth prong on the plain-error test.” The United States argues that even if the court did address this argument, it would not grant Molina-Martinez relief because there is no evidence to suggest that the court would have imposed a shorter sentence had the correct Guidelines been used.

### Conclusion

In this case, the Supreme Court will determine whether an appellate court should apply a rebuttable presumption of prejudice for purposes of plain-error review if a misapplication of the Sentencing Guidelines leads to an erroneously calculated sentencing range. To resolve the issue, the Supreme Court will have to decide whether a misapplication of the Sentencing Guidelines that produces an erroneous sentencing range prejudices a defendant’s substantial rights. The Court’s ruling will potentially alter appellate courts’ application of plain-error-review procedure under Rule of 52(b) and affect the procedural strategy and substantive rights of criminal-trial litigants. ☉

*Prepared by Benjamin Einhouse and Victor Pinedo. Edited by Abbie Petty.*

## Friedrichs et al. v. California Teachers Ass’n et al. (14-915)

**Oral argument:** Jan. 11, 2016

**Court below:** U.S. Court of Appeals for the Ninth Circuit

Under California law, a union may become the exclusive bargaining representative for all public school employees in a particular school district if it can show that a majority of the employees agree to be represented by that union. Such a union may establish an “agency shop” arrangement with the school district, under which employees, not members of the union, are required to pay an agency fee, and may only opt out from funding union activities not related to collective bargaining. Friedrichs asserts that because of the political nature of collective bargaining, compelled agency fees are a violation of the First Amendment, and the opt-out system takes advantage of dissenters unaware of the affirmative objection requirement. In opposition, the union argues that there is no justifiable reason to modify the opt-out arrangements, and that “agency shop” arrangements do not infringe employees’ First Amendment rights but are necessary to prevent a free riding problem. The Court’s decision in this case will impact unions’ abilities to raise funds and the First Amendment rights of non-members of the union. Full text available at [www.law.cornell.edu/supct/cert/14-915](http://www.law.cornell.edu/supct/cert/14-915). ☉

## Duncan v. Owens (14-1516)

**Oral argument:** Jan. 12, 2016

**Court below:** U.S. Court of Appeals for the Seventh Circuit

In a November 2000 bench trial, the Circuit Court of Cook County, Ill. convicted Lawrence Owens of first-degree murder. In the trial judge’s verdict, the judge referenced facts not presented as evidence during the trial. The facts related to Owens’ motive for committing the crime, which is not an element of the offense under Illinois law. The Illinois State Appellate court affirmed the trial court’s verdict. The court found the trial judge’s comments a “baseless” but harmless error because the prosecution presented sufficient eyewitness testimony to convict. Fifteen years later, the U.S. Seventh Circuit Court of Appeals granted Owens

habeas corpus relief on the grounds that his due process rights were violated. The Seventh Circuit found that the trial court unconstitutionally convicted based on facts not in evidence. In this case, the Supreme Court will decide whether the Antiterrorism and Effective Death Penalty Act (AEDPA) precluded the Seventh Circuit from granting habeas relief. The AEDPA enables federal courts to hear habeas proceedings in which defendants allege that states violated their constitutional rights. However, § 2254(d) provides that courts cannot hear habeas proceedings unless the state court decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court.” Representing the state of Illinois, Stephen Duncan, warden of the Lawrence Correctional Center in Sumner, Ill., contends that there was no clearly established federal law to apply to Owens’ case. But Owens argues that the Seventh Circuit accurately identified his constitutional right to be convicted based only on evidence presented at trial. The Court’s decision will affect the balance of power between state and federal courts, and the finality and validity of state court convictions. Full text available at [www.law.cornell.edu/supct/cert/14-1516](http://www.law.cornell.edu/supct/cert/14-1516). ☉

## Bank Markazi v. Peterson et al. (14-770)

**Oral argument:** Jan. 13, 2016

**Court below:** U.S. Court of Appeals for the Second Circuit

In dozens of consolidated cases, Deborah D. Peterson and other plaintiffs (collectively, Peterson) representing terror victims collected billions of dollars in judgments against Iran for financing terrorist attacks. In 2010, Peterson sued Bank Markazi, the government-owned Central Bank of Iran, under the Terrorism Risk Insurance Act (TRIA). TRIA allows plaintiffs to attach or garnish the blocked assets of terrorists or their agents. While the action was pending, President Obama issued an executive order blocking the transfer of Bank Markazi’s assets from New York-based accounts, and Congress passed the Iran Threat Reduction and Syria Human Rights Act. The Act’s relevant portion, §8772, authorized the Peterson plaintiffs to execute against Bank Markazi’s assets to satisfy their unpaid judgments. The law was explicitly limited to Peterson’s action, pending in the District Court for the

Southern District of New York. Based on §8772, the district court granted Peterson summary judgment, and the Second Circuit affirmed. The Supreme Court will decide whether Congress violated the constitutional principle of separation of powers by enacting laws that compelled a certain outcome in Peterson's case. Bank Markazi argues that §8772 impermissibly determines the outcome of a single pending case, which marks a congressional expansion of power that is not supported by the Constitution or the Court's precedent. Peterson contends that Bank Markazi's attack on the statute is unwarranted because Congress has the constitutional authority to modify the governing law for pending civil litigation in outcome-determinative ways. The outcome of this case will affect the balance of power between Congress and the courts and clarify Congress' power to affect pending litigation. Full text available at [www.law.cornell.edu/supct/cert/14-770](http://www.law.cornell.edu/supct/cert/14-770). ☉

## **Puerto Rico v. Valle (15-108)**

**Oral argument:** Jan. 13, 2016

**Court below:** Puerto Rico Supreme Court

Two defendants were charged in Puerto Rico court and federal court on the same set of facts and for largely the same crimes. Each defendant was convicted and sentenced in federal court first, and then moved to dismiss the pending state charges. The defendants argued that the double jeopardy clause of the Fifth Amendment to the U.S. Constitution prohibited Puerto Rico from prosecuting them for the same crimes they were convicted of in federal court. The trial courts granted the defendants' motions to dismiss, but the Puerto Rico Court of Appeals reversed. Relying on the dual sovereignty doctrine, the Court held that Puerto Rico, an independent sovereign, could charge the defendants for crimes under the Puerto Rico Constitution. However, the Puerto Rico Supreme Court reversed, deciding that Puerto Rico had no sovereign status, derived its power to prosecute from the U.S. Constitution, and thereby could not charge the defendants for the same crime. The Supreme Court will decide whether the Puerto Rico Supreme Court was right. Puerto Rico argues that the island is a sovereign state and that under the dual sovereignty doctrine, there are no double jeopardy concerns. However, Valle contends that the

Puerto Rico has no sovereign status. The Court's decision will affect the balance of the federal system and the dignity of the people of Puerto Rico. Full text available at [www.law.cornell.edu/supct/cert/15-108](http://www.law.cornell.edu/supct/cert/15-108). ☉

## **Heffernan v. City of Paterson (14-1280)**

**Oral argument:** Jan. 19, 2016

**Court below:** U.S. Court of Appeals for the Third Circuit

In the 2006 Patterson, N.J., mayoral election, Mayor Jose Torres faced former police chief Lawrence Spagnola. Although he was friends with Spagnola and supported him privately, Paterson police detective Jeffrey Heffernan did not campaign for Spagnola, vote in the election, or consider himself politically active. But the day after picking up a Spagnola campaign yard sign at his mother's request, Heffernan was demoted for his alleged political activities. The Supreme Court will decide if Heffernan, to raise a First Amendment retaliation claim, must show that he actually engaged in constitutionally protected activity or merely demonstrate that the City of Paterson fired him based on its belief that he engaged in protected activity. Heffernan argues that the First Amendment protects government employees from adverse action that is based upon political expression or association, regardless of the true nature of employees' activities. But Paterson maintains that the First Amendment protects only the literal exercise of association and speech. The Court's decision will impact how public employees engage in political activity and the amount of litigation surrounding retaliation claims. Full text available at [www.law.cornell.edu/supct/cert/14-1280](http://www.law.cornell.edu/supct/cert/14-1280). ☉

## **Sturgeon v. Frost (14-1209)**

**Oral argument:** Jan. 20, 2016

**Court below:** U.S. Court of Appeals for the Ninth Circuit

The Supreme Court will decide the extent to which the National Park Service (NPS) has the authority to regulate nonfederal lands located within federal conservation system units (CSUs) under §103(c) of the Alaska National Interest Lands Conservation Act (ANILCA). Petitioner John Sturgeon argues that §103(c) of ANILCA extends regulatory power to NPS only over public lands within the boundaries of CSUs and that lands and

waters owned by the state, a native corporation, or a private party will not be subjected to such regulations. Conversely, respondent Bert Frost maintains that the contested navigable waters do not fall in the carve-out identified by §103(c) and that NPS has the authority to regulate such territory in the pursuit of federal interests. The Supreme Court's decision will impact the extent of Alaska's control over resources within the state. Full text available at [www.law.cornell.edu/supct/cert/14-1209](http://www.law.cornell.edu/supct/cert/14-1209). ☉

## **Nebraska et al. v. Parker et al. (14-1406)**

**Oral argument:** Jan. 20, 2016

**Court below:** U.S. Court of Appeals for the Eighth Circuit

In this case, the Supreme Court will decide whether an Indian reservation can be diminished through events occurring after the sale of land to non-Indian settlers despite an absence of clear congressional intent to diminish the reservation. In 1882, Congress passed a statute (Act of 1882) to sell a portion of the Omaha Indian Tribe's (Omaha Tribe) reservation in Nebraska. Since the enactment of the Act of 1882, it has been unclear whether the portion sold still belongs to the Omaha Tribe's reservation or if the reservation was diminished. Petitioners (Nebraska) argue that de facto diminishment has occurred because the Omaha Tribe has declined to exercise their jurisdiction over the land and the land has lost its Indian character. The Omaha Tribe denies that the land has lost its Indian character and argues that jurisdiction over the land was never abandoned. Significantly, the Omaha Tribe argues that neither the statutory language nor legislative history of the Act of 1882 supports the inference that Congress intended to diminish the reservation by selling the land.

The Court's decision in this case will implicate the reading of *Solem v. Bartlett*, which articulated a three-part analysis to evaluate when diminishment of an Indian reservation has occurred: (1) the statutory language used to sell Indian land; (2) events surrounding the passage of the sale of Indian land; and (3) events occurring after the sale of Indian land. Full text available at [www.law.cornell.edu/supct/cert/14-1406](http://www.law.cornell.edu/supct/cert/14-1406). ☉