

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.

Mohamad v. Palestinian Authority, et al. (11-88)

Appealed from the U.S. Court of Appeals for the District of Columbia (March 18, 2011)

Oral argument: Feb. 28, 2012

Asid Mohamad, on behalf of Azzam Rahim, sued the Palestinian Authority and the Palestinian Liberation Organization pursuant to the Torture Victim Protection Act (TVPA), alleging that these organizations were liable for Rahim's torture and extrajudicial killing. Mohamad asserts that the TVPA permits plaintiffs to sue private organizations as well as natural persons. In contrast, the Palestinian Authority and the Palestinian Liberation Organization argue that the act's use of the term *individual* explicitly exempts private organizations from liability. This case will determine the extent to which torture victims can sue organizations that may be responsible for acts of torture.

Background

Azzam Rahim, a Palestinian-born American citizen, was visiting the West Bank when several men who identified themselves as security police forced him into an unmarked car. The men took Rahim to a prison in Jericho, where he was tortured and killed. The U.S. Department of State reported that Rahim had "died in the custody of PA [Palestinian Authority] intelligence officers in Jericho." Subsequently, Asid Mohamad sued the Palestinian Authority and the Palestinian Liberation Organization (collectively "the Palestinian organizations") on Rahim's behalf for damages under the Torture Victim Protection Act.

The TVPA allows aliens and U.S. citizens to sue "individuals" committing acts of torture and extrajudicial killing.

The TVPA was proposed in response to a question of whether the Alien Tort Statute included a private right of action for victims of torture that took place in other countries. The statute fulfills U.S. obligations to eliminate human rights abuses under the United Nations Charter.

Mohamad sued in the U.S. District Court for the Southern District of New York. The Palestinian organizations did not answer the complaint, and the district court granted Mohamad a default judgment. Subsequently, the Palestinian organizations moved to vacate the default judgment and to dismiss the complaint for lack of personal jurisdiction. In response, Mohamad moved to have the case transferred to the U.S. District Court for the District of Columbia, which dismissed the case, holding that Mohamad did not have a cause of action under the TVPA or federal common law. The U.S. Court of Appeals for the District of Columbia affirmed the decision, holding that the term *individual* meant that only natural persons could be liable under the TVPA, and neither the Palestinian Authority nor the Palestinian Liberation Organization is a natural person.

Implications

Amici Juan Mendez, the UN Special Rapporteur on Torture, and former Sen. Arlen Specter argue that the failure to hold legal entities liable for torture would result in victims having no legal recourse against their torturers in the United States. Mohamad notes that many victims do not know the person who tortured them, and organizations often take credit for these acts. Mohamad also asserts that individuals often will not have sufficient contacts in the United States to permit courts to have jurisdiction and will seldom have enough assets to pay damages. Mendez

further argues that suits against entities are necessary to eradicate torture and that reading the TVPA as a law that forbids such suits undermines state obligations to achieve this goal.

The Palestinian organizations argue that exempting groups from liability would not unduly limit the legal remedies of victims, because the TVPA is already limited in its application: the act only encompasses actions committed under the color of law. The Palestinian organizations assert that the TVPA already exempts actions carried out by completely private groups, such as terrorist organizations and state entities, so refusing to apply the TVPA to groups like the Palestinian Authority and the Palestinian Liberation Organization would not significantly curtail the scope of the TVPA. Moreover, the Palestinian organization contend that victims often can identify officials who authorized acts of torture and will still be able to file suits against those persons.

The Palestinian organization argue that the Court should construe the TVPA narrowly in order to avoid problems related to foreign policy. For example, the Palestinian organization argue that broadly interpreting the TVPA imposes American law on extraterritorial acts. The American Petroleum Institute (API) asserts that allowing liability for corporations under the TVPA would discourage foreign direct investment in less developed countries, stunting growth and making political stability more difficult. The API believes that allowing such suits would prevent foreign investment in the United States, because companies would avoid developing contacts that would subject them to suit.

However, Joseph Stiglitz, an expert in economic theory, rejects the idea that corporate liability under the TVPA would be bad for businesses. He asserts that, in a modern economy, tort law provides necessary incentives for corporations to monitor their employees' behavior. Moreover, Stiglitz cites studies showing that corporate liability under the Alien Tort Statute has not reduced investment in less developed

countries. He also notes that many “corporate good citizens”—that is, corporations whose behavior already comports with the TVPA—will actually gain an advantage by no longer having to compete with corporations that lack the moral scruples that the corporate good citizens have.

Legal Arguments

Definition of “Individual”

Asid Mohamad argues that the dictionary definition of *individual* includes both natural persons and private entities. He argues that, when compared to the definition of *person*, a term generally accepted as encompassing legal entities, the term *individual* is even more suggestive of including organizations. Mohamad contends that the Supreme Court has historically interpreted *individual* to include non-natural entities. Mohamad states that, if Congress had intended to exclude private entities from TVPA liability, it could have done so by specifying that the act applied only to natural persons. Mohamad argues that Congress’ choice of the term *individual* was done solely to avoid creating liability for foreign states.

The Palestinian organizations argue that the plain meaning of the word *individual* does not extend beyond natural persons. The Palestinian organizations contend that *individual* must be given its ordinary meaning because there is no contrary statutory definition. The Palestinian organizations also assert that, under various legal and nonlegal definitions, the meaning of *individual* is “a single, natural person.” In addition, the Palestinian organizations argue that courts have traditionally interpreted *individual* to mean a natural person. The Palestinian organizations contend that, when Congress wished to include private organizations within the scope of liability, it consistently used the term *person*. Therefore, the Palestinian organizations assert that, because of the accepted reading of the word *individual*, Congress had no reason to define the term to exclude organizations.

Legal Principles

Mohamad argues that the Torture Victim Protection Act creates a cause

of action in tort based on international legal norms; therefore, the act must be read against that backdrop. Mohamad asserts that, because there is organizational liability for agents’ actions under tort law, the TVPA must similarly extend liability not only to natural persons but also to their principal organizations. Furthermore, Mohamad contends that the TVPA must also be read in light of international legal norms. Because international legal norms prohibiting torture and extrajudicial killings apply to all actors, Mohamad argues that private organizations may violate such norms.

The Palestinian organizations argue that Mohamad’s organizational liability argument was brought for the first time in his reply brief and is therefore waived. Second, the Palestinian organizations insist that Mohamad has overemphasized any presumption of organizational liability. The Palestinian organizations contend that such presumptions arise only when a contrary statutory purpose is lacking. Because the TVPA has specifically limited liability to individuals, the Palestinian organizations argue, expanding liability to organizations would go against the text of the act and invalidate the presumption.

The History of the TVPA

Mohamad argues that Congress chose to use the term *individual* solely to exclude foreign states from liability, not to exempt private organizations. Amicus Larry Bowoto contends that, aside from its stated purpose of excluding foreign states from liability, Congress has used the words *individual* and *person* interchangeably throughout the TVPA’s history. Mohamad argues that, according to the House and Senate committee reports, the TVPA was intended to expand the Alien Tort Statute by providing a cause of action to U.S. citizens for torture and extrajudicial killings. Mohamad reasons that, because the Alien Tort Statute provides for organizational liability, it follows that, as an act expanding the Alien Tort Statute, the Torture Victim Protection Act must also extend liability to organizations. Mohamad alleges that, because the Court has held that the committee reports are the authoritative source for establishing legislative

intent, the Palestinian organizations’ contrary citations to other reports are of no consequence.

The Palestinian Authority and the Palestinian Liberation Organization contend that the TVPA is unambiguous; therefore, there is no reason to consult the legislative history of the act. Alternatively, the Palestinian organizations argue that the legislative history shows congressional intent to limit liability to natural persons. The Palestinian organizations insist that the term *individual* was used to explicitly remove nonstate organizations from TVPA liability. The Palestinian organizations explain that, although earlier drafts of the TVPA used the term *person*, the word was ultimately replaced with *individual* when the bill was marked up because of Congress’ decision to exclude organizations from the scope of the TVPA. The Palestinian organizations argue that the Supreme Court commonly relies on such changes during statutory markup to determine legislative intent. In addition, the Palestinian organizations assert that, if Congress had not intended to exclude organizations from liability by choosing to use the term *individual*, it could have simply retained the term *person* and then specifically exempted foreign states.

TVPA’s Statutory Structure

The Palestinian organizations argue that an organization cannot be an individual within the meaning of the TVPA, because the act uses the term *individual* to denote both the victim and the perpetrator of the torture or killing. The Palestinian organizations argue that an organization cannot be tortured and therefore cannot be a victim of torture. The Palestinian organizations maintain that, because principles of statutory construction require terms within the same statute to be defined the same way, Mohamad’s suggested dual reading of *individual* is impermissible.

Mohamad contends that the structure of the TVPA’s liability provision illustrates an intent to hold organizations liable. Mohamad insists that, because the TVPA does not require that the principal in the agency

PREVIEWS *continued on page 68*

relationship has performed the alleged act, the TVPA adopts principles of agency liability. In addition, Mohamad argues that, even though organizations cannot be victims of torture, the fact that the TVPA uses the term *individual* to denote the perpetrator as well as the victim is of no consequence. Mohamad contends that terms may have various contextual meanings, and there are no rules of interpretation that require the identical meaning to be given to a term every time it is used.

Conclusion

The Supreme Court will decide if nonstate organizations can be held liable for torture and extrajudicial killings under the Torture Victim Protection Act. Asid Mohamad argues that the plain meaning of the statute, its structure, and its legislative history support a finding that private organizations fall within the scope of TVPA liability. The Palestinian Authority and the Palestinian Liberation Organization, however, argue that holding organizations liable violates the statutory purpose of the TVPA. The Court's decision will affect the number of suits that victims of torture and extrajudicial killings abroad can bring in U.S. courts. Full text is available at www.law.cornell.edu/supct/cert/11-88. **TFL**

Prepared by Curtis Coolidge and Jocelyn Krieger. Edited by Kelly Halford.

United States v. Alvarez (11-210)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 17, 2010)

Oral argument: Feb. 22, 2012

Xavier Alvarez, an elected member of the board of directors of the Three Valleys Water District, lied about receiving a Congressional Medal of Honor during a board meeting. After the lie, he was criminally convicted of violating the Stolen Valor Act, which was enacted to preserve the value of military awards. Alvarez challenged the constitutionality of the act under the First Amendment, and prevailed on appeal. The United States argues that

a “breathing space” test should apply, because the Stolen Valor Act limits making only knowingly false factual statements and that, therefore, under this test, the act does not violate the First Amendment. Alvarez counters that strict scrutiny should apply, because the act imposes a content-based restriction, and, under strict scrutiny, the act is an unconstitutional restriction of free speech. The ruling in this case may affect the value of military awards and will implicate the protection given to other false representations.

Background

Congress enacted the Stolen Valor Act, 18 U.S.C. § 704(b), to prohibit people from falsely representing that they had been awarded a medal from the United States Armed Services. Congress created the act to uphold the “reputation and meaning” of military awards. As such, lying about receiving an award constitutes a misdemeanor under the Stolen Valor Act.

In 2007, Xavier Alvarez was serving as an elected member of the board of directors of the Three Valleys Water District in Claremont, Calif. During a board meeting, Alvarez stated: “I’m a retired marine of 25 years Back in 1987, I was awarded the Congressional Medal of Honor.” This statement was a lie—he had never served in the Marine Corps or received a Medal of Honor.

After Alvarez made his untruthful statement during the board meeting, the FBI received a recording of the statement and initiated a proceeding against Alvarez in the U.S. District Court for the Central District of California for violating the Stolen Valor Act. Specifically, Alvarez was charged with violating 18 U.S.C. §§ 704(b) and (c)(1) of the act. Alvarez was subsequently convicted of these violations. The charge against Alvarez emphasized the fact that he knew he was lying when he stated that he had received a Medal of Honor.

Alvarez filed a motion to dismiss the indictment, asserting that the Stolen Valor Act was unconstitutional both as written and as applied to him under the First Amendment. The district court denied his motion and sentenced Alvarez to probation. Alvarez condi-

tionally pleaded guilty to the first count and appealed the First Amendment issue to the Ninth Circuit. The Ninth Circuit reversed Alvarez’s conviction, holding that the Stolen Valor Act violates the First Amendment. The court determined that the broad prohibition articulated in the act unconstitutionally limits free speech—the provision is not narrow enough to meet a “compelling government interest.” The United States now appeals this ruling.

Implications

The American Legion argues that the Stolen Valor Act’s criminalization of lies is crucial for the preservation of the integrity of military awards. The American Legion argues that many benefits are available to recipients of military awards, and without some kind of prohibition, imposters could wrongfully access government disability payments, tax breaks, and other social benefits. Military awards also have inherent value, conferring respect and status on the recipients, the Congressional Medal of Honor Foundation (CMOHF) contends. The Legion of Valor and the Criminal Justice Legal Foundation argue that individuals who lie about receiving these awards reduce the value of military awards by causing others to doubt the real recipients.

The National Association of Criminal Defense Lawyers (NACDL) counters that individuals who lie about receiving military awards do not dilute the prestige of these awards. Indeed, the NACDL argues, the fact that people falsely claim to have received awards indicates that they still have great value. Alvarez asserts that the military knows who the true recipients are and can confer benefits to these people without being hampered by false claims. In addition, the American Civil Liberties Union and the ACLU of Southern California (collectively, ACLU) argue that there are better ways to preserve the status of awards than by restricting speech; these alternatives include maintaining a searchable database of award recipients and initiating a public campaign to promote respect for military honors.

The CMOHF contends that limit-

ing false representations about military awards is beneficial to society and argues that ensuring that awards have meaning inspires troops and encourages citizens to join the armed forces. The Legion of Valor and the Criminal Justice Legal Foundation explain that the value of awards is mostly psychological, and in order for medals to foster morale, recognition must be based on real merit. Furthermore, 20 states contend that, because a military award is a verifiable fact, there is no risk that the speaker will be punished for expressing an opinion or an honest mistake.

Several media groups counter that judging the acceptability of speech by the social harm it might cause is not desirable for society. The media groups argue that lying is valuable in order to expose the truth. The ACLU adds that our society values the ability to lie in order to assert individual autonomy and achieve self-fulfillment. Allowing the Stolen Valor Act to limit lies, the ACLU contends, could set a precedent for Congress to create laws that criminalize such things as the profile information on dating sites and qualifications on résumés.

Legal Arguments

The United States argues that, because the Court treats false statements differently than true ones, the Court should review the Stolen Valor Act under a lower standard than the one applied to other content-based restrictions. The United States maintains that the validity of the Stolen Valor Act should depend on the strength of the state interest in protecting official military awards and the “breathing space” of the restriction for First Amendment protections. According to the United States, a restriction on a knowingly false statement is valid if the restriction does not inhibit or “chill” legitimate statements that the First Amendment protects. The United States argues that a valid restriction on speech leaves “breathing space” for protected speech and notes that the Court used the “breathing space” analysis in categories such as fraud and false promises made during political campaigns. The United States asserts that, because the Stolen Valor Act restricts the same kind of knowingly false speech as these

categories do, the Court should review the act using the “breathing space” test. In addition, the United States argues that applying strict scrutiny would depart from the Court’s previous treatment of federal restrictions on false statements.

Alvarez argues that a lower standard of review, such as the test used by the United States, should not be applied, because doing so would weaken the requirement that a state interest in restricting speech be compelling and would allow merely important state interests to suffice. Alvarez contends that the United States’ test is fundamentally the same as the test that the Court rejected in *United States v. Stevens*, because both grant the government the unfounded power to decide which speech to protect and which to prohibit. Moreover, Alvarez argues that United States distorts the “breathing space” test for restrictions on historically unprotected categories of speech. Even though explicit elements—scien-ter and materiality, for example—permit “breathing space” for protected speech, according to Alvarez, the Stolen Valor Act fatally lacks these elements. Under the First Amendment, Alvarez states, any law restricting the content of speech is facially invalid, with only a few exceptions. Alvarez contends that the list of historically unprotected speech categories includes obscenity, defamation, and fraud. Alvarez argues that this list of exceptions excludes lying about receiving awards for military service. Therefore, Alvarez asserts, the Court should find the Stolen Valor Act invalid under a strict scrutiny test.

The United States argues that the state interest in military service is so compelling that the narrowly tailored Stolen Valor Act survives even the highest level of scrutiny. Military awards, according to the United States, not only encourage valor and service but also educate the public about honorable actions. In addition, the United States contends that military awards motivate servicemembers to be brave and to act honorably. The United States contends that the criteria for conferring an award are stringent; only the most deserving candidates receive honors. The United States argues that, because it is the exclusivity that makes

the award valuable, false claims can depreciate the value of the award. Moreover, according to the United States, the Stolen Valor Act prohibits making knowingly false claims about receiving military awards, but it does not deter legitimate, hyperbolic assertions of valor or other false, self-aggrandizing claims. The United States argues that the knowledge requirement of the Stolen Valor Act prevents deterrence of truthful or mistakenly false speech. Noting that the Stolen Valor Act permits criticism of the military awards program and false descriptions of valor, the United States argues that the Stolen Valor Act is narrowly tailored to the state interest in preserving the integrity of the military awards program by targeting only knowingly false claims to military awards.

Alvarez questions the extent to which medals and ribbons actually cause praiseworthy behavior and argues that the United States fails to offer a sufficiently strong or important interest to justify the broad restriction on speech even under the “breathing space” test. Alvarez contends that the United States mischaracterizes the harm the Stolen Valor Act imposes on society by drastically undervaluing false speech. Alvarez invokes the “marketplace of ideas” theory, according to which the competition of statements sharpens distinctions between facts and falsehoods and also enhances participants’ analytical abilities. Alvarez asserts that, under this theory, being able to enter the marketplace at all has more societal value than predetermining which statements deserve entry, and the ability to lie facilitates individual autonomy in society. Alvarez argues that, under the United States’ interpretation, the Stolen Valor Act could encompass irony, hyperbole, and parody. Alvarez also suggests that the act is not narrowly tailored, because other governmental measures, such as a public database of award recipients, would address the problem of devaluing the military award program without threatening First Amendment protections. Furthermore, Alvarez argues that the United States undervalued the public’s role in attacking false claims to military awards.

PREVIEWS *continued on page 70*

Conclusion

This case will determine whether the provision of the Stolen Valor Act that prohibits falsely claiming to have received a military award is valid under the First Amendment. In addition to deciding whether strict scrutiny or the “breathing space” test to review the Stolen Valor Act applies, the Supreme Court will decide whether the Stolen Valor Act targets a historically unprotected category of speech. In addition, the Court will decide whether the United States has demonstrated a sufficiently strong governmental interest to justify the restriction of false claims to receiving military awards. Full text is available at www.law.cornell.edu/supct/cert/11-210. **TFL**

Prepared by Meredith Carpenter and Charlotte Davis. Edited by Natanya DeWeese.

Armour v. City of Indianapolis (11-161)

Appealed from the Indiana Supreme Court (May 10, 2011)

Oral argument: Feb. 29, 2012

The Supreme Court will resolve whether a local taxing authority violated the Constitution’s Equal Protection Clause when it forgave the outstanding debt owed by taxpayers who elected to pay a special assessment over the course of several years but refused to refund similarly situated taxpayers who paid the assessment in full. The Indiana Supreme Court determined that Indianapolis did not violate the Equal Protection Clause despite the large disparity in tax obligations of identically situated taxpayers. Christine Armour and other taxpayers argue that, when a state has made a determination to treat a group of properties as the same class, it must treat the taxpayers of those properties with rough equality. They assert that forgiving the outstanding debt of some taxpayers without issuing refunds to those who made a single full payment violated the Equal Protection Clause. The city of Indianapolis, however, maintains that the differing treatment

is based on legitimate governmental interests and is constitutionally valid. Full text is available at www.law.cornell.edu/supct/cert/11-161. **TFL**

Prepared by William Dong and Alicia Lee. Edited by Natanya DeWeese.

Blueford v. Arkansas (10-1320)

Appealed from the Arkansas Supreme Court (Jan. 20, 2011)

Oral argument: Feb. 22, 2012

The state of Arkansas brought charges against Alex Blueford for the murder of a child. Ultimately, the jury was unable to arrive at a verdict and the court scheduled a retrial. Blueford moved to prevent retrial on the capital and first-degree murder charges, arguing that the jury had acquitted him on those counts. Arkansas contended that there was no acquittal, because the hung jury had been unable to reach a verdict. The Supreme Court of Arkansas denied Blueford’s motion, and he appealed. Blueford argues that allowing a retrial on all the charges would violate the Double Jeopardy Clause. Arkansas asserts that barring a retrial on the capital and first-degree murder charges would result in a partial verdict, which leads to jury decisions based on compromise and coercion. The Supreme Court’s decision will affect the protections defendants receive from the threat of multiple trials and will determine whether a court must record a verdict before it becomes final. Full text is available at www.law.cornell.edu/supct/cert/10-1320. **TFL**

Prepared by Amy Hsu and Alison Skatife. Edited by Jacqueline Bendert.

Elgin v. Department of the Treasury (11-45)

Appealed from the U.S. Court of Appeals for the First Circuit (Apr. 8, 2011)

Oral argument: Feb. 27, 2012

Michael Elgin and three other government employees were termi-

nated from their jobs for not registering with the Selective Service, as required for employment by the government. Following the statutory review procedures outlined by the Civil Service Reform Act (CSRA), the petitioners filed claims with the Merit Systems Protection Board (MSPB), alleging that the registration requirement was unconstitutional. The MSPB dismissed the constitutional claims for lack of jurisdiction. Rather than appeal to the Federal Circuit as directed by the CSRA, the petitioners filed in federal district court, which dismissed their claims. On appeal, the First Circuit found that the district court did not possess jurisdiction, because the CSRA directs federal employee claims through the MSPB. Petitioners argue that the CSRA does not explicitly preclude original jurisdiction of the district courts. The U.S. Department of the Treasury, however, contends that Congress intended the CSRA scheme to be the sole channel for federal employees’ claims. The Supreme Court’s decision will affect the options available to federal employees pursuing their employment-related claims. Full text is available at www.law.cornell.edu/supct/cert/11-45. **TFL**

Prepared by Amanda Bradley and Brooks Kaufman. Edited by Jacqueline Bendert.

Freeman v. Quicken Loans Inc. (10-1042)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Nov. 17, 2010)

Oral argument: Feb. 21, 2012

Quicken Loans charged three couples with mortgage discount fees that were allegedly unearned. One couple, the Freemans, initiated a civil action under § 2607(b) of the Real Estate Procedures Act of 1974 (RESPA), claiming that the RESPA prohibits a settlement services provider from charging any unearned fees. The district court dismissed the suit, holding that § 2607(b) applies only to fees split with another culpable party. The Fifth Circuit affirmed the decision. Now,

ing their case with the other couples' claims, the Freemans argue that the Fifth Circuit's decision should be overturned, because the intent of the RESPA was to proscribe all unearned fees, including fees charged by settlement service providers acting unilaterally. Quicken Loans counters that Congress intended to restrict only split fees, protecting consumers such as the Freemans through extensive disclosure requirements. The Supreme Court's decision will clarify the judicial interpretation of § 2607(b) and determine which fees the RESPA forbids. Full text is available at www.law.cornell.edu/supct/cert/10-1042. **TFL**

Prepared by Amanda Hellenthal and Chuan Liu. Edited by Edan Shertzer.

Kiobel v. Royal Dutch Petroleum (10-1491)

Appealed from the U.S. Court of Appeals for the Second Circuit (Sept. 17, 2010)
Oral argument: Feb. 28, 2012

Esther Kiobel and others, on behalf of a class of residents of the Ogoni region in Nigeria, assert that Royal Dutch Petroleum Company is liable under the Alien Tort Statute (ATS) for aiding and abetting the Nigerian government in conducting arbitrary arrests and detentions, crimes against humanity, and torture. On appeal, the Second Circuit raised the question of subject matter jurisdiction and held that the ATS does not provide a cause of action against corporations for these three alleged violations of international law. The parties now disagree on whether the question of corporate liability is jurisdictional or substantive and on whether corporations can be held liable for the alleged violations under the ATS. The Supreme Court's decision in this case may affect the interests of American corporations with overseas operations and may have an impact on the U.S. government's relationships with foreign nations. Full text is available at www.law.cornell.edu/supct/cert/10-1491. **TFL**

Prepared by Cheryl Blake and Jennifer Uren. Edited by Edan Shertzer.

Magner v. Gallagher (10-1032)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (Sept. 1, 2010)
Oral argument: Feb. 29, 2012

Thomas J. Gallagher, together with other owners and former owners of rental properties, sued the city of St. Paul, Minn., for violating the Fair Housing Act (FHA), which prohibits discriminatory housing practices. Gallagher claimed that the city's targeted enforcement of city housing codes against their rental units reduced the availability of low-income rentals and had a disparate impact upon African-Americans. The Eighth Circuit held that Gallagher stated a valid FHA claim under the disparate impact theory. St. Paul appeals, arguing that Gallagher's disparate impact claim is insufficient, because it lacks the required evidence of discriminatory intent. Gallagher contends that, given the Supreme Court's prior findings of disparate impact claims under similarly worded statutes, disparate impact claims are cognizable under the FHA. The Supreme Court's decision in this case may affect the extent to which city officials can use ordinances, code enforcement actions, and other land-use regulations to regulate low-income neighborhoods. Full text is available at www.law.cornell.edu/supct/cert/10-1032. **TFL**

Prepared by Angela Chang and Tian Wang. Edited by Colin O'Regan.

Taniguchi v. Kan Pacific Saipan Ltd. (10-1472)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (March 8, 2011)
Oral argument: Feb. 21, 2012

After falling through a deck on property owned by Kan Pacific Saipan Ltd., Kouichi Taniguchi filed suit against the company for negligence. The district court granted summary judgment in Kan Pacific's favor and also awarded the company costs under 28 U.S.C. § 1920(6), including costs incurred for translating various documents from Japanese into English. The Ninth Circuit upheld the

lower court's decision, holding that the phrase "compensation of interpreters" within § 1920(6) applied to written translations in addition to verbal interpretations. Taniguchi now appeals the decision, arguing that the statute's plain meaning, structure, and legislative history confirm that the term *interpreter* should be limited to oral translators of spoken language. The Supreme Court will decide whether litigants can recover for costs of nonverbal translation; this decision has the potential to increase recoverable court costs and therefore potentially deter litigation that may be worth pursuing. Full text is available at www.law.cornell.edu/supct/cert/10-1472. **TFL**

Prepared by Heather Byrne and Judah Druck. Edited by Eric Schulman.

Wood v. Milyard (10-9995)

Appealed from the U.S. Court of Appeals for the Tenth Circuit (Nov. 26, 2010)
Oral argument: Feb. 27, 2012

Patrick Wood filed a petition for a writ of habeas corpus on Feb. 25, 2008, to challenge his murder conviction. On appeal, the appellate court raised sua sponte a statute of limitations defense, based on 28 U.S.C. § 2244(d), that barred Wood's claims. Wood argues that appellate courts lack authority to raise sua sponte a statute of limitations defense, because an affirmative defense is forfeited if it is not raised and the state had waived its statute of limitations defense at the district court level. In opposition, Kevin Milyard argues that appellate courts do have authority to raise sua sponte a statute of limitations defense, assuming the state did not intelligently waive the defense in the district court. By looking at the ability of appellate courts to independently raise statute of limitations defenses, the Court's decision will have an impact on the finality of decisions made by lower courts. Full text is available at www.law.cornell.edu/supct/cert/10-9995. **TFL**

Prepared by Alison Carrizales and Tom Schultz. Edited by Eric Schulman.