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Arizona v. United States (11-182)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (April 11, 2011)
Oral argument: April 25, 2012

In 2010, Arizona enacted the Support Our Law Enforcement and Safe Neighborhoods Act, which creates state immigration offenses and expands local police officers' immigration law enforcement authority. The United States sued Arizona in federal district court, arguing that the state law was pre-empted by federal law, and sought a preliminary injunction to prevent the state law from taking effect. The district court granted a preliminary injunction with respect to four provisions of the Arizona law, and the Ninth Circuit affirmed the decision. The state of Arizona and the governor of Arizona, Janice K. Brewer, argue that federal law does not pre-empt its statute, because Arizona's statute merely creates a formal cooperative relationship between federal and state officers to implement federal laws. The United States asserts that implementation of the statute would infringe on the executive branch's exclusive authority to regulate immigration and is therefore invalid.

Background

Arizona maintains that it faces rampant illegal immigration, which has increased the incidence of crime and harmed Arizona's economy. In April 2010, the Arizona State Legislature enacted the Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070), which establishes or amends state immigration offenses and defines local police officers' immigration law enforcement authority. Section 1 of S.B. 1070 states that the Arizona legislature's goal in enacting this statute was to deter illegal immigrants from entering the country and from engaging in economic activity.

S.B. 1070 attempts to accomplish that purpose through several provisions. Under § 2 of S.B. 1070, when an officer who is conducting a lawful stop or arrest reasonably believes that a person is in the United States illegally, the officer must determine that person's immigration status before releasing him or her. Section 3 of the law creates a state criminal offense for failing to carry immigration documents but prohibits officers from using race or national origin when enforcing the provision. Under § 4, an officer charged with enforcing human trafficking laws has the authority to stop a driver when the officer reasonably believes that the person committed a civil traffic violation. Section 5 prohibits motor vehicle drivers from blocking traffic while attempting to employ a person for work at a different location. Section 5(C) prohibits an unlawful alien from performing, soliciting, or applying for work. Section 6 authorizes a warrantless arrest when an officer has probable cause to believe that a person has committed an offense for which the person could be removed from the United States. The Arizona law also amends current sanctions to deter employers from hiring illegal aliens (§§ 7, 8, and 9) and authorizes an officer to impound a vehicle used to transport unlawful aliens (§ 10).

The United States challenged S.B. 1070 in district court, alleging that the statute violated the Commerce Clause and was pre-empted by the federal statutory framework established largely through the Immigration and Nationality Act. Challenging the first six provisions of S.B. 1070, the United States sought an injunction to prevent the implementation of the law in its entirety. The district court granted the preliminary injunction with respect to §§ 2(B), 3, 5(C), and 6. The Ninth Circuit affirmed the district court's decision.

Implications

In this case, the Landmark Legal Foundation argues that Arizona provides a major access point for illicit drug traffickers and human traffickers. U.S.Border Control argues that Arizona experiences violent cross-border crimes because of federal underenforcement of immigration laws. The Center for Constitutional Jurisprudence (CCJ) adds that, if S.B. 1070 is not upheld and enforced, the U.S. government's inadequate enforcement of immigration law will threaten illegal immigrants' well-being, because underenforcement allows illegal workers to accept unsafe working conditions, effectively creating an underclass. Freedom Watch adds that illegal immigrants will not be subjected to racial discrimination if S.B. 1070 is enforced, because the statute prohibits law enforcement officers from considering an individual's race or national origin when determining immigration status.

The American Bar Association (ABA) responds that § 2 of S.B. 1070 raises due process concerns and impermissibly places the burden of proving legal status on the detainee. According to the ABA, determining immigration status is often complicated at the federal level, sometimes leading to lengthy detainment. The ABA claims that such difficulties will be intensified at the state level, where officials have less experience with federal immigration laws. The United States Conference of Catholic Bishops argues that S.B. 1070 threatens important federal objectives, including the promotion of family unity and human rights. The Conference of Catholic Bishops maintains that S.B. 1070 will cause more families to be separated and will prevent some immigrants from providing for their families.

U.S. Border Control claims that underenforcement has subjected Arizona

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to home invasions, kidnappings, and other crimes related to illegal immigration. Border Control maintains that the federal government requires the state to provide benefits for aliens, the cost of which has increased by approximately $2.7 billion as a result of illegal immigration. The American Unity Legal Defense Fund states that underenforcement harms American workers and claims that the federal government's inadequate enforcement of immigration law has contributed to unemployment and lower wages for low-income workers, and that employers often choose illegal immigrants over more expensive legal workers.

Former commissioners of the U.S. Immigration and Naturalization Service respond that collective enforcement will eventually create an inefficient patchwork of local immigration laws. The former commissioners also argue that S.B. 1070 will require the use of limited federal resources to make immigration status determinations for Arizona. According to Madeleine K. Albright, the secretary of state in the Clinton administration, state immigration laws like S.B. 1070 interfere with foreign relations by creating tension with other nations and causing retaliation against U.S. citizens. According to Albright, government officials in Mexico and countries in Central and South America have criticized the law, and some have warned their citizens about the dangers in traveling to the United States.

Legal Arguments

The United States argues that the power to regulate immigration lies exclusively with the federal government, because a nation's relations with aliens residing in U.S. territory are intertwined with the United States' relationships with other nations, and that it is crucial for the United States to have a single policy on immigration. The United States contends that the Immigration and Nationality Act, which regulates the status of aliens, gives the executive branch the authority to exercise its full discretion in enforcing immigration law. The United States argues that the federal government's right to use its discretion is necessary because of the need to allocate enforcement resources wisely and because of the executive branch's need to handle any repercussions stemming from its decisions regarding aliens. The United States contends that, through this statute, Arizona would inevitably infringe on the executive branch's discretion by being able to enforce federal immigration law without taking into account federal immigration policies.

Arizona argues that Congress intended for state and federal law enforcement officers to cooperate in enforcing immigration laws. For instance, Arizona argues, the provision of S.B. 1070 that allows state officers to make warrantless arrests is constitutional, because state officers have concurrent authority to arrest unlawful aliens under federal law. Arizona further contends that its officers have authority to make arrests for civil and criminal violations of immigration law, and that state officers will make such arrests in a manner that does not deviate from federal law. Arizona argues that the Ninth Circuit incorrectly found that Congress intended to allow state officers to enforce immigration policies concurrent with federal officers based only on an agreement made with the attorney general of the United States. Arizona emphasizes that states generally have the right to enforce federal laws, provided there is no explicit congressional statement to the contrary.

The United States argues that provisions of S.B. 1070 give Arizona the ability to create state offenses and impose penalties for violations of federal law independently. The United States asserts that requirements imposed on aliens, such as alien registration, are under the exclusive authority of the executive branch, and states cannot impose penalties for violations in an area in which the conduct is comprehensively regulated by the federal government. The United States contends that the relationship between aliens and the government is federal in nature, because it was created and is regulated by federal law, and the failure to comply with any federal requirements should not result in any state penalties. The United States contends that, in similar areas of law under the exclusive authority of the federal government, the U.S. Supreme Court has found that states did not have a right to impose independent penalties.

The United States also argues that the punishments that the Arizona statute sets forth are especially problematic, because they conflict with the purposes of federal immigration law. The United States asserts that, under S.B. 1070, Arizona would punish only aliens who have not obtained authorization to stay in the United States, but maintains that the federal scheme does not view unlawful presence as a crime and affords relief at its discretion. Furthermore, the United States argues that, the Immigration and Nationality Act requires employers to check an employee's employment eligibility after he or she is hired, but S.B. 1070 imposes criminal penalties for merely soliciting or applying for work. In this way, the United States contends, the statute conflicts with federal immigration laws and their flexibility.

Arizona argues that the statute is constitutional, because the Supreme Court has previously found that, as long as Congress has not declared that federal law pre-empts an entire area of law, states are free to prohibit conduct that is also prohibited under federal law. Arizona asserts that, because the registration provision of S.B. 1070 prohibits exactly what federal immigration law prohibits and imposes nearly identical penalties for failure to comply with registration requirements, the provision is valid. Moreover, Arizona contends that prohibiting employers from hiring unauthorized aliens is consistent with federal law's objective of curtailing employment of unauthorized aliens, making the provisions regarding employment valid as well. Arizona argues that it has the right to regulate that particular area of immigration law, because the regulation of employment falls under traditional state police powers, and protecting its workers is a legitimate interest.

In asserting that federal law does not pre-empt the penalties imposed by S.B. 1070, Arizona emphasizes that, in

previous cases, the Supreme Court has rejected the argument that the federal government's decision not to adopt a regulation automatically prohibits states from adopting it. Arizona asserts that such treatment should not be any different for immigration law, and thus states should be able to create regulations in areas of traditional state authority, such as employment, even if the state law affects immigration, when Congress has purposely refrained from doing so.

Conclusion

In this case, the U.S. Supreme Court will determine whether federal immigration laws impliedly pre-empt an Arizona statute that mandates that its law enforcement officers enforce federal immigration laws along with federal officers and imposes state penalties for noncompliance with federal immigration requirements. The state of Arizona and its governor, Janice K. Brewer, argue that the statute creates a cooperative relationship between state and federal officers and also promotes federal immigration policy objectives. The United States argues that the statute is invalid, because it gives Arizona the authority to set policies and penalties in an area in which Congress has vested exclusive authority in the federal government. This case will have substantial implications for the balance of state and federal powers in enforcing immigration law. **TFL**

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

Dorsey v. United States and *Hill v. United States (11-5683* and *11-5721)*

Appealed from the U.S. Court of Appeals for the Seventh Circuit (Nov. 28, 2011)
Oral argument: April 17, 2012

On August 3, 2010, President Obama signed the Fair Sentencing Act (FSA), which reduces the disparity between the amounts of crack and powder cocaine required to trigger certain minimum mandatory sentences under the federal Sentencing Guidelines. Petitioners Edward Dorsey and Corey Hill were both arrested for possession of crack cocaine with intent to distribute prior to passage of the FSA, but both were sentenced after Congress enacted the FSA. Under the pre-FSA guidelines, Dorsey and Hill received 10-year prison sentences, but under the new FSA guidelines, both would have received substantially shorter sentences. Dorsey, Hill, and the United States government all argue that Congress intended the FSA to apply immediately, and, therefore, Dorsey and Hill should have been sentenced according to the FSA. Miguel Estrada, a court-appointed amicus curiae writing in support of the judgments, argues that nothing indicates that Congress intended immediate implementation of the FSA and that the federal Saving Statute prevents retroactive application of new statutes that would eliminate penalties that were previously incurred. The decision in these cases will have implications for the application of FSA to prisoners falling within this sentencing window, as well as potential social costs and burdens on the justice system.

Background

In 1986, Congress established a tiered system of mandatory five- and 10-year prison sentences for drug trafficking. Concerned about the proliferation of crack cocaine, Congress set a 100:1 ratio that treated one gram of crack cocaine as equivalent to 100 grams of powder cocaine for purposes of mandatory minimum sentencing. Trafficking of five grams or more of crack cocaine called for a minimum mandatory five-year sentence, and trafficking of 50 grams or more called for a minimum mandatory 10-year sentence. In comparison, violators would need to traffic 500 grams of powder cocaine to get a mandatory five-year sentence, and five kilograms to get the mandatory 10-year sentence.

In the 1990s, the public began to question the sentencing disparities between powder cocaine and crack cocaine offenses. Critics asserted that the disparities tended to have a disproportionate impact on minorities. Between 1995 and 2007, the Sentencing Commission, an agency that establishes sentencing guidelines for the federal courts, recommended several amendments to the Sentencing Guidelines. On Aug. 3, 2010, President Obama signed the FSA, which increased the required amount of crack cocaine for a mandatory five-year sentence from five grams to 28 grams, and from 50 to 280 grams for a mandatory 10-year sentence.

On Aug. 6, 2008, Edward Dorsey was arrested and charged with possession of five and one-half grams of crack cocaine with intent to distribute. He pleaded guilty on June 3, 2010. Because Dorsey had a prior felony drug conviction, the pre-FSA sentencing guidelines required a mandatory minimum 10-year prison term. However, the sentencing occurred on Sept. 20, 2010, after the FSA was enacted; under the FSA guidelines, Dorsey was not eligible for the mandatory minimum 10-year prison term. He appealed, arguing that the FSA applied retroactively to sentences that were pending at the time it became effective. The Seventh Circuit denied the appeal.

In 2009, Corey Hill was found guilty of possessing 50 or more grams of crack cocaine with intent to distribute. Like Dorsey, Hill would have received a reduced sentence under the FSA guidelines. However, the Seventh Circuit, relying on its decision in Dorsey's case, held that the FSA did not apply when the underlying criminal conduct occurred before the law was enacted, even if the sentencing occurred after enactment.

At the time of sentencing and during the appeals for both Dorsey and Hill, the United States maintained that the FSA did not apply to individuals who had committed a crime before the FSA was passed but were sentenced after the FSA was enacted. However, on July 15, 2011, the United States changed its position, and the attorney general stated that the FSA does not apply to sentences already imposed, but it does apply to all sentencing proceedings occurring on or after Aug. 3, 2010.

Implications

Hill and Dorsey argue that Congress

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wanted a clear, consistent, and immediate application of the FSA, as evidenced by the directive to amend the Sentencing Guidelines to conform with the provisions of the FSA as soon as possible. In contrast, the court-appointed amicus curiae asserts that the petitioners' interpretation would lead to "partial retroactivity," under which two defendants could have engaged in identical criminal conduct but receive different treatment based on whether their sentencing took place before or after the FSA went into effect.

The National Association of Criminal Defense Lawyers and the National Association of Federal Defenders argue that, if the Supreme Court upholds the Seventh Circuit's interpretation, the harsher penalties will unnecessarily incarcerate defendants who have been given longer sentences. The two associations also maintain that Congress intended to alleviate the 100:1 ratio and that continuing to impose harsher penalties would frustrate congressional intent. The Center on the Administration of Criminal Law at New York University School of Law argues that correcting the erroneous post-FSA sentences for individuals like Dorsey and Hill would not substantially burden the justice system, because it is estimated that there are fewer than 5,000 of these cases.

The American Civil Liberties Union claims that Congress recognized the racial injustice in the old 100:1 sentencing ratio and passed the FSA with the intention of rectifying that injustice. Therefore, the American Civil Liberties Union argues that, if Congress passed the new FSA in order to redress those racial disparities in sentencing, the FSA should apply immediately, because the old guidelines no longer further a legislative purpose.

Legal Arguments

Dorsey contends that both the plain meaning of the FSA and congressional intent indicate that the act was meant to apply immediately to all defendants sentenced after its enactment. He asserts that § 8 of the FSA, in which Congress directed the Sentencing Commission to amend its guidelines to conform to the FSA in 90 days or fewer, supports the immediate application of the FSA. Hill argues the fact that Congress ordered the Sentencing Commission to "conform" its amendments to the "applicable law" shows that Congress clearly intended the law to have immediate effect and was directing the commission to update its sentencing guidelines. Hill maintains that the FSA's sentencing rules applied immediately, because Congress' purpose was to rapidly rectify guidelines that were systematically unfair. As an alternative, he contends that, because the Sentencing Commission's amended guidelines went into effect on Nov. 1, 2010, the mandatory penalty for any individual sentenced after that date falls under the FSA.

Estrada asserts that Congress did not intend to vitiate the federal Saving Statute, 1 U.S.C. § 109, which preserves penalties incurred when an old law was in effect, even if the law has since changed. He argues that congressional directives to the Sentencing Commission to conform its guidelines to the FSA are not an explicit waiver of the anti-retroactivity provision included in § 109. Estrada contends that applying new sentencing guidelines to defendants who committed crimes before the FSA became law would be retroactive in violation of § 109. He asserts that the reduction in mandatory minimum sentences cannot be separated from other FSA sections, including those that increase penalties for major drug traffickers. Estrada argues that § 109 applies to all of the FSA and, because it would be unconstitutional to apply the increased penalty provisions to pre-FSA offenders, the reduced penalty provisions cannot be applied to pre-FSA offenders either. Finally, he notes that the legislators were not concerned with retroactivity, evidenced by the fact that they did not explicitly refer to retroactivity when debating the FSA.

Dorsey argues that Congress did not need to incorporate an explicit provision in the FSA in order to override the federal Saving Statute. Indeed, in a similar case, the Third Circuit decided that the FSA's provisions applied immediately to all defendants who had not yet been sentenced. Dorsey emphasizes that § 109 bars retroactivity only as to criminal penalties that have already been incurred. He argues that a penalty can only be incurred at sentencing. Dorsey contends that Estrada's interpretation that a penalty is incurred at the time a crime was committed is inconsistent with the judicial system's presumption of innocence. He asserts that the amount of drugs in a defendant's possession is not an element of the crime charged but a mandatory minimum sentencing factor that is determined only after conviction.

Hill argues that, even if § 109 does apply to the FSA, it exists merely as a default rule that a demonstration of congressional intent can override. He maintains that the statutory text and congressional intent here are sufficient to show that Congress intended the FSA to apply immediately. Hill contends that § 109 does not operate to block the immediate application of the FSA.

In contrast, Estrada argues that the federal Saving Statute prohibits retroactive application of criminal laws that absolve defendants from criminal penalties unless expressly provided in the statute. He contends that, to overcome the Saving Statute, the FSA must "plainly" or "necessarily" repeal the earlier guidelines. He contends that, for the FSA to apply retroactively, Congress would have had to implicitly repeal the old statute, because the language of the FSA does not expressly deal with retroactivity. Estrada maintains that, to find an implicit repeal, the Court must find an "irreconcilable conflict" between the two opposing statutes. He argues that, because there is no conflict between the retroactivity provisions of the FSA and § 109, there is no repeal, and therefore, the Saving Statute applies.

Estrada argues that legislative intent does not show that Congress intended the FSA to be exempt from the provisions in § 109. He asserts that, even though the legislative history discussed the FSA's coming into effect immediately, that reference does not indicate anything about the statute's application to past offenders. Estrada argues

that, even though the FSA directs the Sentencing Commission to bring its guidelines into conformity within 90 days, that language does not necessarily mean Congress desired to apply the FSA retroactively to crimes committed before the date the FSA went into effect.

Conclusion

The Supreme Court will decide whether the FSA applies to all sentences handed down after its enactment on Aug. 3, 2010, or whether it applies only to sentences for criminal conduct that were handed down after that date. Dorsey, Hill, and the United States argue that Congress intended the FSA to apply to all sentencing occurring after the effective date, regardless of the date of the underlying criminal conduct. Estrada argues that Congress did not intend the FSA to apply immediately, and that the federal Saving Statute prevents retroactive application. Ultimately, this decision will affect prisoners who committed crimes before the Fair Sentencing Act became law but who were sentenced after it was enacted. **TFL**

Prepared by Cheryl Blake and Jennifer Uren. Edited by Kelly Halford. The authors would like to thank Frank Wagner, the former Supreme Court reporter of decisions, for his assistance in preparing this preview.

Christopher v. SmithKline Beecham Corp. (11-204)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Feb. 14, 2011)
Oral argument: April 16, 2012

The Fair Labor Standards Act of 1938 (FLSA) requires employers to pay employees one-and-a-half times their normal wages for any time worked over forty hours in a given week, but exempts "outside salesmen" from this overtime pay requirement. Respondent GlaxoSmithKline (GSK) refused to pay overtime to petitioners Michael Christopher and Frank Buchanan, whom it employed as pharmaceutical sales representatives, because it considered them to be "outside salesmen." Christopher and Buchanan sued, arguing that they were not "outside salesmen" under the Secretary of Labor's interpretation. The Supreme Court will determine whether that interpretation is entitled to deference and whether Christopher and Buchanan are subject to the FLSA's outside salesman exemption. Full text is available at www.law.cornell.edu/supct/cert/11-204. **TFL**

Prepared by Alison Carrizales and Tom Schultz. Edited by Jacqueline Bendert.

Match-E-Be-Nash-She-Wish Band v. Patchak and Salazar v. Patchak (Docket No. 11-246 and 11-247 Consolidated)

Appealed from the U.S. Court of Appeals for the District of Columbia Circuit (Jan. 21, 2007)
Oral argument: April 24, 2012

The Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians requested the secretary of the interior to take certain lands in trust under the Indian Reorganization Act in order to allow the tribe to operate a casino. David Patchak sued to block the land transfer, but the district court dismissed the suit for lack of prudential standing. The District of Columbia Circuit reversed the decision and held that, under the Administrative Procedures Act, the federal government had expressly disclaimed sovereign immunity. On appeal, the federal government and the Match-E-Be-Nash-She-Wish Band argue that Patchak's claim is blocked by the government's sovereign immunity, invoked by the Quiet Title Act, in claims brought to divest the government of Indian lands held in trust. In addition, the federal government and the Match-E-Be-Nash-She-Wish Band contend that Patchak's interests do not fall within the zone of interests of the operative statute—the Indian Reorganization Act—and thus Patchak lacks prudential standing. Patchak argues that, because his claim challenges agency action under the Administrative Procedures Act, it falls outside the Quiet Title Act and the sovereign immunity invocation. Patchak contends that he has prudential standing, because his interest in the land's use falls within the Indian Reorganization Act's zone of interests. The Supreme Court's decision will resolve a circuit split on whether the Quiet Title Act applies to cases in which the plaintiff's interest in divesting title is something other than a claim of ownership to the land. Full text is available at www.law.cornell.edu/supct/cert/11-246. **TFL**

Prepared by Brandon Bodnar and Milson Yu. Edited by Colin O'Regan.

RadLAX Gateway Hotel v. Amalgamated Bank (11-166)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (June 28, 2011)
Oral argument: April 23, 2012

In 2007, the RadLAX Gateway Hotel LLC and related entities obtained a secured $142 million loan to construct the Radisson Hotel at Los Angeles International Airport. Substantially all of RadLAX's assets were designated as collateral for this loan. However, still saddled with $120 million of debt, RadLAX filed for bankruptcy in August 2009. RadLAX proposed a Chapter 11 reorganization plan that called for an auction sale of all its assets, free and clear of liens. The plan prohibited secured lenders from credit bidding—that is, using their loan amounts to offset the asset prices at the auction. Amalgamated Bank, representing the lender, objected to the plan, arguing that the plan violated § 1129(b)(2)(A)(ii) of the U.S. Bankruptcy Code. The bankruptcy court agreed and rejected RadLAX's plan. The Seventh Circuit affirmed the decision on appeal. The Supreme Court's resolution of this case may affect the balance of power between debtors and secured creditors in bankruptcy proceedings. Full text is available at www.law.cornell.edu/supct/cert/11-166. **TFL**

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