

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.

### **Fisher v. University of Texas at Austin**

*Appealed from the U.S. Court of Appeals for the Fifth Circuit*

**Oral argument: Oct. 10, 2012**

#### **Introduction**

Petitioner Abigail Fisher, a white Texan, was denied admission to the University of Texas at Austin for the Fall 2008 entering class. Fisher sued the university, arguing that the denial violated her Fourteenth Amendment right to equal protection because she was denied admission to the public university in favor of minority applicants with lower credentials. Fisher contends that the university's admission policy cannot survive strict scrutiny as required by *Grutter v. Bollinger*, 539 U.S. 306 (2003). The university argues that its admissions policy is essentially identical to the policy upheld in *Grutter*. It asserts that its use of a holistic admissions process, considering race as one factor for admission, creates a diverse student body that benefits the entire university. This case allows the Supreme Court to reexamine *Grutter*, and it will have far-reaching implications for university admissions policies and racial demographics in schools throughout the United States.

#### **Background**

The University of Texas at Austin (UT) is a public education institution, authorized by the Texas Constitution and backed by state and federal funding. UT guarantees undergraduate admission to all in-state applicants in the top 10 percent of their high school class as mandated by state law (Top Ten Percent Law). UT accepts the vast majority of its students through the Top Ten Percent Law.

For in-state applicants outside the top

10 percent of their high school classes and all other applicants, UT employs its Academic and Personal Achievement Indices, as it has done since 1997. The Academic Index (AI) is based on standardized test scores and high school class rank, while the Personal Achievement Index (PAI) reflects the strength of the applicant's essays and a "personal achievement score." The PAI considers the applicant's leadership abilities, awards and honors, work experience, extracurricular activities, and "special circumstances," which may include socioeconomic status, family status, and race. UT determines personal achievement scores holistically, so it does not consider any factor individually or assign separate numerical values for any one factor. An applicant's race has no bearing on admissions decisions if the applicant's academic performance and essays are sufficiently strong or prohibitively weak, and the university does not monitor the racial composition of the class during the admissions process.

Abigail Fisher, a white Texas resident, was denied undergraduate admission to UT for the Fall 2008 entering class. Claiming that her academic credentials exceeded those of many admitted minority students, Fisher filed suit in the U.S. District Court for the Western District of Texas, challenging UT's use of race in admissions under the Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C. § 1981, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964. The district court granted summary judgment for UT, and the Fifth Circuit affirmed, finding that UT's use of race in admissions passed the strict-scrutiny standard established by the Supreme Court in *Grutter*. After the Fifth Circuit denied rehearing en banc, Fisher appealed to the Supreme Court. The Supreme Court granted certiorari on

Feb. 21, 2012, to consider whether UT's consideration of race in undergraduate admissions decisions violates the Fourteenth Amendment.

#### **Implications**

In the 2003 case *Grutter v. Bollinger*, the 5-4 split Supreme Court held that "student body diversity is a compelling state interest that can justify the use of race in university admissions." Under *Grutter's* rationale, race-conscious admissions policies at public universities must be "narrowly tailored" to pass strict scrutiny. Pure quota systems are unconstitutional, but a holistic admissions scheme can stand if a university considers race as one of many factors in individualized admissions decisions.

The CATO Institute suggests that race-conscious admissions policies can create negative educational environments, with heightened racial tensions and stigmatization. More specifically, CATO argues that race-conscious policies reinforce stereotypes that minorities are unable to achieve success on their own, thereby promoting notions of inferiority and feelings of division and hostility. The Center for Individual Rights supports this argument by noting that the beneficiaries of race-conscious policies often under-perform at the universities, further perpetuating those negative stereotypes.

Numerous colleges and universities counter these arguments, asserting that race-conscious admissions policies create a more diverse educational environment and provide greater opportunities to historically underrepresented racial groups. The United States endorses the notions that a racially diverse educational environment promotes cross-racial understanding, helps to eliminate racial stereotypes, enhances learning, and better prepares students for diversity in the workplace and society. The American Civil Liberties Union argues that colleges and universities are entitled to seek the benefits of racial diversity based on academic freedom and institutional autonomy.

The Asian American Legal Founda-

**PREVIEWS** *continued on page 62*

tion further argues that UT's admissions policy discriminates against some students, like Asian applicants, by treating them as members of an over-represented, and therefore disfavored, race. The American Center for Law and Justice agrees, further arguing that the government should not define who is a member of a race, especially in a country with many multiracial individuals. The Asian American Legal Defense and Education Fund points out that race-conscious admissions policies like that used by UT can increase diversity within racial groups, like Asian students, by affirmatively benefitting underrepresented subgroups.

### Legal Arguments

The Fourteenth Amendment guarantees equal protection of the laws without regard to a person's race. The Supreme Court has addressed race-based admissions decisions on several prior occasions. In *Regents of the University of California v. Bakke*, the Court struck down the admissions policy of the Medical School at the University of California at Davis that set aside 16 of 100 seats for non-white applicants. In *Grutter v. Bollinger*, a divided Court upheld the University of Michigan Law School's admission policy, which included race as a plus factor rather than employing a rigid quota system. *Grutter* reaffirmed the central premise of Justice Powell's concurring opinion in *Bakke*: student-body diversity is a compelling state interest, but racial quotas are not permissible. Applying *Grutter* and *Bakke*, the Court of Appeals for the Fifth Circuit upheld UT's admissions policy, finding UT's policy "identical" to the policy upheld in *Grutter*.

Both parties agree that UT's admissions policy must survive strict scrutiny. Under strict-scrutiny review, UT must demonstrate that its consideration of race is "necessary to further a compelling government interest" and "specifically and narrowly framed to accomplish that purpose."

### Compelling Government Interest

The Supreme Court has previously stated that the educational benefits of student-body diversity are a compel-

ling interest, but Fisher claims that UT is engaging in racial balancing, which the Court held to be unconstitutional in *Grutter*. Fisher also claims that UT's only other interest is in promoting individual classroom diversity. Fisher further argues that even if UT's admission policy furthers a compelling state interest, the university has failed to show that the policy is necessary to create a diverse student body. She asserts that Texas's Top Ten Percent Law has caused a dramatic increase in minority enrollment, so UT has established a "critical mass" of minority students without the use of racial classifications.

UT denies that it is engaged in racial balancing, insisting that its interest is in preparing students for a diverse society after they leave the university. UT claims that their policy makes racial balancing impossible because the university does not monitor the racial composition of the class during the admissions process.

UT asserts that its admissions policy seeks to increase the educational benefits that result from a diverse university. UT further asserts that the policy sets no thresholds, quotas, or targets for minority admissions. UT argues that although the Top Ten Percent Law has increased minority enrollment, this rise is the result of de facto segregation in Texas high schools. According to UT, its admissions policy allows for greater "diversity within diversity" by drawing minority students from a variety of backgrounds.

Fisher also claims that UT has failed to provide strong enough proof that racial classifications were necessary to create a diverse student body. UT argues that such a high standard would subject universities to extra-strict scrutiny beyond the requirements of *Grutter*. Instead, UT asks the Court to look to whether the university made a "serious, good faith consideration" when determining that other remedies were not viable.

### Narrow Tailoring

In order to survive strict scrutiny, UT's use of racial classifications in admissions decisions must be "narrowly tailored," that is, no broader than necessary to achieve its goal. Fisher claims

that UT cannot narrowly tailor its interest in classroom diversity. She argues that UT's definition of classroom diversity—at least two African-American, two Hispanic, and two Asian-American students—is unattainable. Fisher also argues that UT's interest in racial demographics is impossible to implement in a narrowly tailored manner. According to Fisher, attempting to mirror state demographics would require enrollment targets for students of various racial groups, which would constitute a de facto quota.

UT asserts that it is interested in broad, education-based diversity, and it denies a focus on classroom diversity or racial balancing. UT argues that its plan is narrowly tailored because it subjects candidates to an individualized, holistic review process, and race is only a possible plus factor. According to UT, there is no race-based target or quota, and the university does not monitor the racial composition of the class during the admissions process. UT argues that its policy is essentially identical to the policy upheld in *Grutter*, so the Court should uphold the admissions scheme.

### Overruling Precedent

Fisher asks the Court to clarify or overrule *Grutter* in order to restore strict scrutiny review in higher education. Fisher claims that *Grutter* is full of "interpretive difficulties" that allow lower courts to depart from strict scrutiny analysis in analyzing race-based admissions schemes. She claims that courts mechanically uphold admissions policies and are too deferential to universities. Fisher also claims that *Grutter* has proven to be unworkable and perpetuates racial hostilities.

UT contends that the *Bakke* and *Grutter* standards have not proven to be unworkable, pointing to three decades of successful implementation by the Department of Education and a lack of conflicting decisions in the lower courts. The university also underscores *Grutter's* positive impact, noting that the student-body diversity fostered by these programs has benefited millions of Americans.

## Conclusion

The Supreme Court will determine whether UT's admissions policy, which considers race as one factor of a holistic scheme, is constitutional under the Equal Protection Clause of the Fourteenth Amendment. The Court may also reexamine whether racial classifications generally are still permissible in the university-admissions process. Fisher argues that UT's admissions policy fails strict-scrutiny analysis and asks the Court to clarify or overrule *Grutter*, which allows some consideration of race in admissions decisions. UT argues that its admissions policy is essentially identical to the policy upheld in *Grutter* and that the Court should not overrule *Grutter*. This case will have significant implications for university admissions policies and racial demographics at schools across the country. **TFL**

---

*Prepared by Thomas Santoro and Stephen Wirth. Edited by Lisa Schmidt.*

## Johnson v. Williams (11-465)

*Appealed from the U.S. Court of Appeals for the Ninth Circuit*

**Oral argument: Oct. 3, 2012**

## Introduction

While Respondent Williams was on trial, the court dismissed and replaced a juror, over Williams' objections. The jury ultimately convicted Williams. Williams appealed, claiming that the juror's dismissal had violated California state law as well as her Sixth Amendment rights. The California Court of Appeals affirmed Williams' conviction, but only did so by addressing her state law claims, ultimately failing to explicitly discuss the Sixth Amendment issues raised. Williams filed a writ of habeas corpus alleging a violation of her Sixth Amendment rights, but the federal district court denied her petition. The U.S. Court of Appeals for the Ninth Circuit reversed, finding that Williams' Sixth Amendment right had not been "adjudicated on the merits" within the meaning of 28 U.S.C. § 2254(d). Warden Deborah K. Johnson appealed, claiming that the California Court of Appeals' prior ruling was an adjudication on the merits and therefore precluded the subsequent habeas petition.

How the Supreme Court decides the case will determine the degree of deference a federal court hearing a petition for habeas corpus will give a state court decision that does not explicitly address the federal grounds for relief. The decision may possibly formulate new requirements for state court opinions and may impact the relationship between state and federal courts.

## Background

Tara Williams was found guilty of special circumstances murder and firearm enhancement and sentenced to life in prison without the possibility of parole, in a jury trial. During the jury deliberations, the jury foreman sent two notes to the court suggesting that Juror No. 6 was behaving in a manner that the court could interpret as misconduct. The foreman noted the juror's specific statements, including discussions about civil disobedience in historical criminal trials as well as the need for a high standard of proof requirement because of the severity of the charge. The foreman also reported that the juror had expressed his reservations about voting for a conviction to the other jurors.

Under direct questioning, the juror stated that none of the jurors had considered the possibility that Williams could receive the sentence of life imprisonment without the possibility of parole. The juror also told the court that he had not been using a high burden of proof for the crime, as the foreman had suggested during his questioning. He further specified that if a juror has reasonable doubt as to the guilt of the defendant, that juror, by law, must vote to acquit.

As a result of the juror's responses, the prosecution sought his removal from the jury. The court agreed that it appeared that the juror was holding the State to a higher burden of proof than was required by law and, after questioning the other 10 jurors, dismissed the juror, citing his bias towards the defendant premised on his discussion of a higher burden of proof. The following day, the Court replaced the juror with an alternate and Williams was ultimately found guilty.

Williams appealed the decision, claiming that removal of the juror at trial violated the California Code and her

Sixth Amendment rights. The California Court of Appeals affirmed the conviction. On appeal, the California Supreme Court remanded the case for reconsideration following the decision in *People v. Cleveland*. On remand, the California Court of Appeals affirmed the trial court's ruling for a second time, reiterating that the juror had proved himself to be biased and thus, removal was lawful and required. The Court of Appeals' opinion did not address Williams' claim that dismissal of the Juror was a violation of her Sixth Amendment rights.

William then filed a petition for a writ of habeas corpus with the U.S. District Court for the Central District of California claiming that her Sixth Amendment rights were violated when the Juror was dismissed. The Court of Appeals for the Ninth Circuit finally agreed with Williams, stating that the Sixth Amendment claim had not been "adjudicated on the merits" for the purposes of a habeas petition. On behalf of the state, Petitioner Warden Deborah K. Johnson appealed to the Supreme Court of the United States. The Supreme Court's decision will affect the level of deference federal courts give to state courts in future habeas petitions and may possibly formulate new requirements for state court opinions.

## Implications

A state court issue is "adjudicated on the merits" by way of a written opinion or a judicial decision, and therefore cannot be the subject of a writ of habeas corpus. The Antiterrorism and Effective Death Penalty Act (AEDPA) directs federal courts to give deference to state court decisions and work under the assumption that the state court's ruling is correct and thus need not be reconsidered by a federal court. In this case, the Court will decide whether a writ of habeas corpus has been "adjudicated on the merits" where the state court's opinion never mentioned the federal basis for the claim at issue.

## Deference to State Courts

The attorney general, on behalf of 31 states, points out that AEDPA was passed to increase federal deference to state court rulings, suggesting that state

**PREVIEWS** *continued on page 64*

courts' opinions impliedly cover all issues raised by the petitioner of the writ. The National Association of Criminal Defense Lawyers (NACDL) counters that by allowing federal courts to review federal issues not explicitly ruled on in state court opinions would give petitions an opportunity to have their cases fully and fairly adjudicated while alleviating the potential error of a state court.

The states go on to argue that increased federal oversight incentivizes petitioners to bury their claim in the initial state court writ on the chance that the state court will ignore it, opening the door for federal adjudication of the issue. The NACDL counters that a mention in the state court opinion that all meritorious claims have been adjudicated is a simple remedy.

#### **State Court Opinion Requirements**

The states go on to suggest such a language requirement will retard the development of common law by reducing the number of state court opinions; state courts will be apprehensive of issuing opinions that are likely to be attacked or overturned by federal courts for failure to explicitly include a mention that all claims have been adjudicated. The NACDL argues that instead of being detrimental, a requirement of specific language would likely lead to state courts writing more complete, and this beneficial, opinions.

#### **Legal Arguments**

Under AEDPA, a petition for a writ of habeas corpus may not be granted for a claim that has been adjudicated on the merits unless that adjudication is contrary to "clearly established Federal law" or unreasonable in light of the evidence. In *Harrington v. Richter*, the Court held that a decision by a state court unaccompanied by a written explanation may still serve as an adjudication on the merits for AEDPA purposes.

#### **Adjudication of the Merits**

Williams argues that a habeas court must look to content of the state court's opinion for clues as to whether the federal claim was actually adjudicated on the merits and that a federal claim overlooked by a state court decision

should be reviewed anew. Williams argues that *Richter's* analysis applies only to summary court orders and thus the state appellate court's decision falls outside of the purview of *Richter* because it was accompanied by an explanation. In the present case, where the Ninth Circuit found no analysis, direct or indirect, of the Sixth Amendment claim, it would be "illogical" to conclude that that claim had been adjudicated on the merits.

Johnson argues that a federal court should consider a federal claim adjudicated on the merits so long as the claim was dismissed "on substantive grounds," even if the federal basis was not explicitly addressed. Johnson also cites *Early v. Packer*, which held that a state court decision is not "contrary to established federal law" simply because it does not cite U.S. Supreme Court cases. Johnson concludes that, taken together with *Richter's* presumption of adjudication on the merits, *Early* suggests the rule that a state court's ruling that no error occurred is an adjudication of federal claims based on the same error.

#### **Indirect Adjudication**

The Ninth Circuit found that a juror dismissal complying with California law may still violate the Sixth Amendment. The Ninth Circuit's decision suggests that, in some cases, a state court's adjudication of a state law claim may indirectly serve as an adjudication of a constitutional claim if adjudicating the state claim "necessarily entailed" considering the constitutional basis. This would be the case if, for example, California defined a court's discretion to discharge a juror to have the same limits as the Sixth Amendment. Johnson, however, argues that because Williams "intertwined" her claims, the state court had no reason to consider them separately.

#### **Federalism and Comity Concerns**

In the states' view, the Ninth Circuit's opinion assumes that the California Court of Appeals was, at best, careless and is thus inconsistent with a relationship of mutual respect and cooperation that must exist between federal and state courts. Contrary to this, Johnson believes that the Ninth Circuit's opinion would give federal courts power to dic-

tate how state courts are to write their opinions—a power specifically denied by the Supreme Court. Williams further notes that the Ninth Circuit tried (and failed) to find that the state court had impliedly adjudicated the Sixth Amendment claims on the merits. In addition, Williams argues that the Ninth Circuit, far from presuming error on the part of the state court, actually found that *Richter* did not apply only after a substantive examination of *Richter's* underlying reasoning. Accordingly, Williams believes that the Ninth Circuit's reasoning leaves both federalism and comity intact.

#### **Conclusion**

In this case, the Supreme Court will determine whether a federal claim has been "adjudicated on the merits" for AEDPA purposes when a state court issues a decision accompanied by an explanation of the state law claim but does not explicitly address the federal grounds for relief. Petitioner Johnson argues that the AEDPA calls for federal courts to defer to state court decisions when considering habeas corpus petitions and that any dismissal of a claim on substantive grounds should be considered adjudication on the merits. Respondent Williams counters that if a state court opinion does not explicitly address a federal ground for relief, the federal court can review that ground anew when raised in a subsequent habeas petition. The outcome of the case will affect how federal and state courts interact regarding federal claims on habeas corpus review. **TFL**

---

*Prepared by Jeremy Amar-Dolan and Zachary Zemlin. Edited by Judah Druck.*

### **Arkansas Game and Fish Commission v. United States (11-597)**

*Appealed from the U.S. Court of Appeals for the Federal Circuit*

**Oral argument: Oct. 3, 2012**

The Arkansas Game and Fish Commission sued the United States for a violation of the Takings Clause of the Fifth Amendment, which compels the government to compensate parties when the government physically seizes property. Specifically, the commission

argues that the U.S. Army Corps of Engineers permanently destroyed trees in a bottomland hardwood forest in Arkansas by intermittently flooding the forest for six years. The United States asserts that the actions of the corps did not constitute a taking because the corps did not oust the commission of possession of the forest, and only a continuous invasion qualifies as a physical taking. The Supreme Court's decision in this case will determine whether a temporary invasion is a taking which will affect the meaning of the Takings Clause as it is used in future disputes concerning the destruction of property. Full text is available at [www.law.cornell.edu/supct/cert/11-597](http://www.law.cornell.edu/supct/cert/11-597). **TFL**

---

*Prepared by Z. Lu and Sherry Jarons.  
Edited by Jenny Liu.*

### **Kiobel v. Royal Dutch Petroleum (10-1491)**

*Appealed from the U.S. Court of Appeals for the Second Circuit*  
**Oral argument: Oct. 1, 2012**

Esther Kiobel, representing a group of individuals from the Ogoni region in Nigeria, filed a class action lawsuit against the Royal Dutch Petroleum Co., Shell Transport and Trading Company PLC, and Shell Petroleum Development Company of Nigeria, LTD (Royal Dutch) under the Alien Tort Statute (ATS). The ATS grants jurisdiction to some federal courts for certain violations of international law. Petitioners allege that Royal Dutch aided the Nigerian government in committing various acts of violence against protestors of the oil exploration projects in the Ogoni region. Petitioners claim that they have standing to sue under the ATS because the history, text, and purpose of the statute support the application of the ATS to actions in foreign countries. Petitioner also contends that previous court decisions interpreted the ATS to extend beyond U.S. territory. In response, Royal Dutch argues that the ATS is not an exception to the presumption that U.S. law does not apply extraterritorially, and should not be applicable to actions outside of the United States. The Court's decision in this case will clarify the reach of the U.S. federal courts' jurisdiction over certain extrater-

ritorial tort claims. Full text is available at [www.law.cornell.edu/supct/cert/10-1491](http://www.law.cornell.edu/supct/cert/10-1491). **TFL**

---

*Prepared by Claire Holton-Basaldua and Dean Caruwana. Edited by Jenny Liu.*

### **Kloeckner v. Solis (11-184)**

*Appealed from the U.S. Court of Appeals for the Eighth Circuit*  
**Oral argument: Oct. 2, 2012**

In 2005, Carolyn M. Kloeckner left her job as a senior investigator for the Department of Labor's (DOL) Employee Benefits Security Administration in the St. Louis office. Soon after, she filed an Equal Employment Opportunity (EEO) complaint alleging sex and age discrimination and a hostile work environment. The DOL charged her with being "absent without leave" and fired her a year later. The dismissal, coupled with the discrimination complaint, result in what is known as a "mixed" case, and is therefore subject to certain forum restrictions. After an unsuccessful outcome with her EEO complaint, Kloeckner appealed to the Merit Systems Protection Board (MSPB), which dismissed her claims as untimely. Kloeckner tried to challenge this MSPB decision in federal district court, but the Eighth Circuit Court of Appeals affirmed the district court, holding that only federal circuit courts had jurisdiction over mixed cases that were dismissed on a procedural ground. The federal circuit courts disagree on this issue, and so the Supreme Court's decision in this case will determine whether a federal district court or a federal appellate-level court can hear an appeal of an MSPB decision to dismiss a mixed claim for being untimely. Full text is available at [www.law.cornell.edu/supct/cert/11-184](http://www.law.cornell.edu/supct/cert/11-184). **TFL**

---

*Prepared by Michaela Dudley and Alison Nolan. Edited by Charlotte Davis.*

### **Lozman v. City of Riviera Beach (11-626)**

*Appealed from the U.S. Court of Appeals for the Eleventh Circuit*  
**Oral argument: Oct. 1, 2012**

The City of Riviera Beach seized Fane Lozman's houseboat after he

did not comply with new city regulations. The Eleventh Circuit Court of Appeals affirmed the district court's holding that the indefinitely moored houseboat was a "vessel" for purposes of maritime jurisdiction under 1 U.S.C. § 3. Lozman argues that courts should interpret "vessel" purposively and that his houseboat was not a vessel because its purpose was not to transport people or goods. The City of Riviera Beach counters that the definition of "vessel" requires a capability test that asks merely if the structure is capable of transporting people or goods. Additionally, both parties and the U.S. solicitor general argue the subsequent purchase and destruction of Lozman's houseboat by the City of Riviera Beach does not render the case moot because of a \$25,000 security bond that the city posted. The Supreme Court's decision in this case may reshape the role of state and federal courts in some maritime matters. The decision could also expand current maritime legislation to apply to structures such as casino boats or floating homes, or remove federal legislative protections for maritime lenders. Full text is available at [www.law.cornell.edu/supct/cert/11-626](http://www.law.cornell.edu/supct/cert/11-626). **TFL**

---

*Prepared by Ethan Roman and Dan Youngblut. Edited by Brandon Bodnar.*

### **Moncrieffe v. Holder (11-702)**

*Appealed from the U.S. Court of Appeals for the Fifth Circuit*  
**Oral argument: Oct. 10, 2012**

In 2009, Adrian Moncrieffe, a Jamaican permanent resident of the United States, was arrested while in possession of 1.3 grams of marijuana. Moncrieffe pleaded guilty in a Georgia court to possession of marijuana with intent to distribute under Ga. Code § 16-13-30(j) (1) and was sentenced to five years of probation. In 2010, the Department of Homeland Security successfully brought removal proceedings against Moncrieffe arguing that his conviction in state court corresponds with an aggravated felony, which made him removable under the Immigration and Nationality Act. Moncrieffe appealed to the Board of Immi-

**PREVIEWS** *continued on page 66*

gration Appeals, which upheld the lower court's decision. After the U.S. Court of Appeals for the Fifth Circuit denied review, Moncrieffe filed a petition for a writ of certiorari with the U.S. Supreme Court. Moncrieffe argues that his conviction does not correspond with an aggravated felony because the conduct leading to his conviction instead corresponds with a federal misdemeanor. Holder argues that a state conviction for possession of marijuana with the intent to distribute constitutes an aggravated felony. This decision could impact how immigration deportation cases are decided and place stricter limits on the attorney general's discretion to seek removal. This decision could also impact how criminal cases are conducted (e.g., whether to go to trial, to plead guilty, to admit evidence) and how courts construct state law in accordance with federal law, specifically in immigration matters. Full text is available at [www.law.cornell.edu/supct/cert/11-702](http://www.law.cornell.edu/supct/cert/11-702). **TFL**

*Prepared by Alfonso Dulcey and Ali Paradis. Edited by Brooks Kaufman.*

### **Ryan v. Gonzales (10-930)**

*Appealed from the U.S. Court of Appeals for the Ninth Circuit*

**Oral argument: Oct. 9, 2012**

An Arizona jury convicted Ernest Valencia Gonzales of first-degree murder and sentenced him to death in 1991. After exhausting his state court options, Gonzales initiated federal habeas proceedings in 1999. Over the next few years, Gonzales began to display signs of delusion and paranoia, refusing a number of attempted visits from his attorney. The district court denied his attorney's motion to stay the habeas proceedings pending a competency determination. The Ninth Circuit eventually granted mandamus relief, holding that the capital inmate's right to counsel in federal habeas proceedings under 18 U.S.C. § 3599(a)(2) implicitly includes a right to be competent to assist one's counsel. Charles L. Ryan, director of the Arizona Department of Corrections, appeals the Ninth Circuit's decision arguing that the circuit court misread 18 U.S.C. § 3599(a)(2) to include a "right to competency" in

assisting counsel. Ryan asserts that such a right would allow for indefinite stays of habeas proceedings based on incompetency that contravene Congress' intent in the Antiterrorism and Effective Death Penalty Act. Gonzales contends that district courts have discretion to issue stays, and that such stays are appropriate where incompetency would deprive the capital inmate of "meaningful" right to counsel. This decision implicates federalism concerns over the finality of state court decisions in capital cases and the proper balance between the rights of victims and the rights of inmates. Full text is available at [www.law.cornell.edu/supct/cert/10-930](http://www.law.cornell.edu/supct/cert/10-930). **TFL**

*Prepared by Belinda Liu and Sarah O'Laughlin. Edited by Brandon Bodnar.*

### **Tibbals v. Carter (11-218)**

*Appealed from the U.S. Court of Appeals for the Sixth Circuit*

**Oral argument: Oct. 9, 2012**

Sean Carter was convicted of aggravated murder, aggravated robbery, and rape and was sentenced to death in Ohio. His counsel filed a federal habeas corpus petition challenging his conviction and requested a pre-petition competency hearing to determine whether Carter was competent to participate in the federal habeas proceeding. The district court granted both the petition and request. Two years later, the district court determined that Carter was incompetent and dismissed his petition while also stopping the one-year statute of limitations. When the warden at the facility where Carter is imprisoned challenged the district court's decision, the U.S. Court of Appeals for the Sixth Circuit determined that even though the district court was justified in finding Carter incompetent, the proper course of action was to stay, rather than dismiss, the habeas proceedings until Carter was competent. Another warden now argues that a district court does not have the authority to stay federal habeas proceedings, nor does Carter have a right to competence in his own habeas proceedings. How the Supreme Court decides this case will determine the balance between recognizing the finality of state-court criminal judg-

ments and allowing federal courts to use their discretion to implement stays in federal habeas proceedings where a capital prisoner's competence to assist counsel is questionable. Full text is available at [www.law.cornell.edu/supct/cert/11-218](http://www.law.cornell.edu/supct/cert/11-218).

**TFL**

*Prepared by Alexandra Cowen and Chanwoo Park. Edited by Judah Druck.*

### **United States v. Bormes (11-192)**

*Appealed from the U.S. Court of Appeals for the Federal Circuit*

**Oral argument: Oct. 2, 2012**

James Bormes used the U.S. government's online pay system to pay for a lawsuit that he had filed electronically. Following the transaction, the website displayed the last four digits of his credit card and the card's expiration date. Bormes then sued the government, alleging that it had violated the Fair Credit Reporting Act (FCRA) by displaying the expiration date. The United States argued that it had sovereign immunity with respect to claims under the FCRA because the act did not explicitly apply to the U.S. government. When Bormes countered that he could sue the government under the Little Tucker Act, which provides a remedy for those with claims against the government of less than \$10,000, the government contended that the Little Tucker Act applied only in situations where parties could not otherwise recover. In deciding this case, the Supreme Court must first determine the scope of the Tucker Act's waiver of the United States' sovereign immunity regarding claims brought under the Little Tucker Act for suits based on violations of the FCRA. As the country's largest employer, creditor, and lender, the U.S. government could see a massive increase in litigation and potential liability as a result of this decision. Additionally, the Supreme Court may address how explicitly Congress must act in order to exempt the federal government from liability. Full text is available at [www.law.cornell.edu/supct/cert/11-192](http://www.law.cornell.edu/supct/cert/11-192). **TFL**

*Prepared by Zachary Glantz and Jonathan Goddard. Edited by Brooks Kaufman.*