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JOHNSON V. UNITED STATES (13-7120) (REARGUMENT)

Court Below: U.S. Court of Appeals, Eighth Circuit

Oral Argument: April 20, 2015

Is the “residual clause” in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), unconstitutionally vague?

The Federal Bureau of Investigation started investigating Samuel James Johnson’s participation in the Aryan Liberation Movement (Movement) in 2010. Johnson intended to counterfeit U.S. currency to support the activities of the Movement. Johnson repeatedly told undercover agents that he manufactured explosives for the Movement and showed agents a large collection of weapons, including an AK-47 rifle. Because he possessed these firearms, Johnson was arrested in April 2012. Johnson was charged with six counts in his eventual indictment—four counts of being an armed career criminal in possession of a firearm and two counts of being a felon in possession of ammunition.

Johnson pled guilty to one count of being an armed career criminal in possession of a firearm. Under the Armed Career Criminal Act (ACCA), Johnson qualified as an armed career criminal—due to three violent felony convictions—and was subject to a mandatory minimum 15-year prison term. Johnson challenged the classification of his prior felonies as violent felonies, but the district court ruled that all three felonies were violent. Additionally, Johnson argued that the ACCA is unconstitutionally vague, but the court disagreed. The district court sentenced Johnson to 180 months in prison.

Johnson appealed to the U.S. Court of Appeals for the Eighth Circuit, arguing that the court should not consider his convictions for attempted simple robbery and possession of a short-barreled shotgun violent felonies under the ACCA, and that

the ACCA is unconstitutionally vague. The Eighth Circuit ruled that the district court properly classified Johnson’s past convictions as violent felonies under the ACCA. The court reasoned that, under the statute, a crime is a violent felony if it “otherwise involves conduct that presents a serious potential risk of physical injury to another.” According to Eighth Circuit precedent, possession of a short-barreled shotgun falls into this “residual clause” of the ACCA. Additionally, the court held that attempted simple robbery is a violent felony. The Eighth Circuit also ruled that the ACCA was not unconstitutionally vague.

Finally, Johnson appealed to the U.S. Supreme Court, which granted certiorari to determine whether possession of a short-barreled shotgun is a violent crime under the ACCA. However, after hearing oral arguments, the Court decided to have a rehearing on the issue of whether the residual clause of the ACCA is unconstitutionally vague.

Discussion

Upon rehearing this case, the Supreme Court will have the opportunity to consider if the residual clause contained in the ACCA is unconstitutionally vague. Johnson argues that the residual clause is unconstitutionally vague and undermines due process. Nevertheless, the United States claims that the residual clause is not unconstitutionally vague and does not violate due process. This case may implicate the ability of people to conform their conduct to the law, the uniformity of sentencing across the nation, and the interplay of the legislative and judiciary branches.

ADEQUATE NOTICE AND UNIFORMITY

Supporting Johnson, amici the National Association of Criminal Defense Lawyers (NACDL) argues that the residual clause of the ACCA is unconstitutionally vague

regarding all of its potential applications, including inchoate offenses, battery against a law enforcement officer, and statutory rape. The NACDL explains that “[n]umerous circuit splits persist, leaving the courts, litigants, and the public unable to surmise which predicate offenses are included within the residual clause or why.” More broadly, the NACDL asserts that the residual clause fails to adequately inform a defendant of the riskiness of his or her conduct. As a consequence, a defendant, the NACDL claims, is left with uncertainty about the sentence or consequences of certain criminal conduct.

The United States, in opposition, urges a “categorical approach” when determining the applicability of the residual clause to cases like Johnson’s. The categorical approach, the United States argues, makes the ACCA’s application “more predictable and uniform than ... statute[s] that impose criminal liability or sentencing consequences for risky conduct” on a case-by-case basis. The categorical approach, according to the United States, contemplates whether a defendant’s specific behavior falls within the general category of crimes contemplated by the ACCA. Because review of whether an offense falls under the residual clause is left to appellate courts, the United States argues that such review allows for predictable and consistent application to offenders. The United States further explains that such appellate determinations put defendants on notice regarding whether their actions in one state may constitute a predicate offense in another state.

THE ROLE OF THE JUDICIARY

The NACDL, in support of Johnson, contends that inquiries into a statute’s vagueness are necessary for “preserving the separate roles of the legislature and the judiciary.” Vague statutes and laws,

the NACDL argues, undermine the relationship between the government and its people when legislatures require judges to determine the conduct that triggers severe penalties under vague statutes. Ideally, the NACDL explains, the people give elected officials power to decide what conduct gives rise to severe penalties.

On the other hand, the United States contends that judges are in the best position to make determinations about severity of risk and the conduct applicable to particular convictions. The United States argues that under a categorical standard, judges are equipped to make well-reasoned decisions regarding whether the offense ordinarily causes a serious threat of injury as well as a “common sense judgment” regarding the riskiness of the particular conduct in question. The United States points out that in making both decisions, judges may rely on legislative judgments, empirical data, and case law in addition to their own common sense judgment.

Analysis

With this rehearing, the Court will consider whether the text of the residual clause of the ACCA is unconstitutionally vague. Johnson argues that the residual clause is unconstitutional, contending that the statute’s language is vague, courts lack clarity in interpreting the clause, and the clause violates due process. The United States counters that the standard for finding a statute unconstitutional is high, and that—because the ACCA’s residual clause has clear language and interpretations of the ACCA are reviewed de novo by an appellate court—the statute is constitutional.

TEXTUAL VAGUENESS

Johnson argues that because the language of the ACCA’s residual clause is vague and unclear, it is unconstitutional. Johnson contends that the lack of clarity leads to subjective interpretations by the courts because they are left without textual guidance from the statute. In particular, Johnson first credits vagueness to the inclusion of the word “otherwise” directly following four concrete examples of crimes that fall within the clause. Johnson explains that the Supreme Court treats the word “otherwise” to mean that the level or risk “must be the same as the enumerated offenses that precede it.” Therefore,

Johnson argues that the Court’s interpretation of the word “otherwise” is different from its dictionary and common definition of “in a different way or manner.”

The United States, however, counters that the language used in the residual clause is not ambiguous, and even if it were, it does not meet the standard to be deemed unconstitutional. The United States contends that the residual clause is not unconstitutional because the standard requires Johnson to show that the statute “could not intelligibly be construed to apply to any offenses. ...” To do so, the United States notes, the Supreme Court would have to overturn prior precedent, which weighs against finding the statute unconstitutional. To Johnson’s argument regarding including the word “otherwise” after four enumerated offenses, the United States maintains that the statute is precise, not vague. Furthermore, the United States contends that even if the risk of the enumerated offenses varies, this does not make the residual clause uninterpretable. The United States supports its argument by referencing numerous federal statutes and over two hundred state statutes that use similar language to that of the residual clause when defining a level of risk.

DUE PROCESS

Johnson argues that the residual clause is so vague that it violates the “vagueness doctrine” and, in turn, due process. First, Johnson argues that because the residual clause is unclear, it prevents people from being informed of what conduct is prohibited. Johnson contends that this is unconstitutional because the due process requires fair notice. Second, Johnson believes that the vagueness of the residual clause leads to arbitrary and subjective interpretations by judges, which raises both due process and Sixth Amendment concerns. Finally, Johnson contends that the ambiguity of the residual clause leads to separation of powers issues. Johnson argues that it should be Congress’s role to specify and fix the language of the residual clause. To keep the clause’s language as is, Johnson argues, would force the Supreme Court to overstep its “bounds of judicial interpretation.”

The United States counters that the residual clause does not raise due process concerns. The United States asserts that the fair notice principle should not apply in

this instance since there is “a higher standard for sentencing provisions”, and the ACCA relates to sentencing. The United States contends that notice should be given to assist the innocent and ordinary citizens—not to assist criminals in choosing to commit an offense that has lesser consequences. Finally, the United States maintains that because the ACCA presents a question of law, arbitrary enforcement of the residual clause is impossible since the district court’s decision is reviewed de novo by an appellate court, and even the Supreme Court.

Conclusion

This case will decide whether the residual clause of the ACCA is unconstitutionally vague. Johnson argues that because the text of the clause is ambiguous and the clause has led to interpretive disparities among courts, it is unconstitutional and violates due process. Nevertheless, the United States counters that even if the language is vague, the standard to find it unconstitutional is high and the residual clause does not meet this threshold. In support of Johnson, the NACDL argues that if the Court finds the clause constitutional, it will continue to be particularly difficult to apply the ACCA to certain offenses, such as inchoate offenses, battery against an officer, and statutory rape. The United States, however, argues that finding the clause unconstitutional and failing to use a categorical approach would lead to a general lack of uniformity amongst the courts. The outcome of this case may implicate the uniformity of sentencing across different states, the interplay of the legislative and judiciary branches, and the ability of people to identify the consequences of certain types of unlawful conduct. ©

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OBERGEFELL V. HODGES (14-556); TANCO V. HASLAM (14-562); DEBOER V. SNYDER (14-571); BOURKE V. BESHEAR (14-574)

Court Below: U.S. Court of Appeals, Sixth Circuit

Oral Argument: April 28, 2015

Does the Fourteenth Amendment require states to license or recognize

same-sex marriages lawfully performed and licensed out-of-state?

For 22 years, Petitioner James Obergefell and his late partner, John Arthur, lived together in a committed relationship in Cincinnati, Ohio, until Arthur's passing on Oct. 22, 2013. On July 11, 2013, Obergefell and Arthur married on a Maryland tarmac. That same day, the newly married couple returned to Cincinnati. In 2013, Obergefell and Arthur's marriage was legally recognized in Maryland and by the federal government as confirmed by the U.S. Supreme Court in *United States v. Windsor*. However, various Ohio state laws forbid same-sex marriage. Following Arthur's passing, and in accordance with Ohio law, Arthur's death record (1) failed to record Obergefell as Arthur's "surviving spouse" and (2) listed Arthur as "unmarried" at the time of his death.

In 2013, Obergefell filed suit against respondent Richard Hodges, director of the Ohio Department of Health. Obergefell argued that Ohio laws failing to recognize out-of-state same-sex marriages are unconstitutional. The district court ruled in favor of Obergefell, and ordered the local Ohio Registrar of death certificates to reject a death certificate for Arthur that failed to record Arthur's marital status as "married" and to list Obergefell as his surviving spouse at the time of death. The district court reasoned that the Fourteenth Amendment protects a "fundamental right to keep existing marital relationships intact" and that Ohio failed to satisfactorily justify its refusal to recognize same-sex marriage under both a heightened intermediate scrutiny review and a less rigorous rational basis review.

On appeal, the U.S. Court of Appeals for the Sixth Circuit reversed the district court ruling.

On Jan. 16, 2015, the U.S. Supreme Court granted certiorari—consolidating this case with *Tanco v. Haslam*, *DeBoer v. Snyder*, and *Bourke v. Beshear*—to determine whether the Fourteenth Amendment requires a state to (1) recognize lawfully licensed same-sex marriages performed out-of-state and (2) grant same-sex marriage licenses.

Discussion

The Supreme Court's decision in this case may clarify whether the Fourteenth Amendment requires states to (1) recog-

nize out-of-state same-sex marriages and (2) license a marriage between same-sex couples. Though only one of the consolidated cases, Obergefell's and Hodges' arguments are generally representative of the views advocated by the parties in *Tanco v. Haslam* and *Bourke v. Beshear* regarding their respective state's laws that do not recognize out-of-state same-sex marriage licenses. DeBoer, the petitioner in a consolidated case, argues that the Court should require states to license same-sex marriage under principles of due process and equal protection. The respondent in DeBoer, Richard Snyder, counters that nothing in the Fourteenth Amendment's history or plain text meaning requires states to license same-sex marriages. The Supreme Court's ruling in these cases—in addition to having potentially profound effects on the rights of same-sex couples—will implicate the rights of those related to them.

THE RIGHTS OF CHILDREN OF SAME-SEX COUPLES

Obergefell and supporting amici argue that Ohio's recognition bans diminish the rights of children of same-sex parents by depriving them of legal, financial, and societal benefits. The Family Equality Council contends that the legalization of same-sex marriage has provided "powerful emotional and psychological benefits" for tens of thousands of children in America. Similarly, the American Psychological Association (APA) maintains that hundreds of studies confirm that important factors—parental warmth, consistency, and security—do not depend on a parent's gender or sexual orientation. The APA highlights scientific studies confirming that same-sex parents are equally as capable as heterosexual parents and that the children of same-sex and heterosexual couples are equally psychologically healthy.

Hodges and supporting amici, however, argue that reversing Ohio's recognition ban would threaten biological parents' rights to determine how to rear their children. Alabama Governor Bentley (Bentley) argues that extending legal recognition to same-sex couples would be detrimental because father-child relationships are non-existent absent heterosexual marriages. Bentley contends that children's rights can only be achieved after a heterosexual marriage "formally bind[s] the husband-

father to his wife and child, and impos[es] on him the responsibilities of fatherhood." Similarly, the Ruth Institute argues that the public purpose of marriage is to preserve biological parent-child relationships by binding natural mothers and fathers to their children. The Ruth Institute fears that a ruling for Obergefell would detach "the biological definition of 'parent' from its legal definition" by disparaging natural parents' legal status and jeopardizing children's rights to know their natural parents.

DO ALTERNATIVE LEGAL UNIONS GRANT SUFFICIENT LEGAL PROTECTION?

The American Bar Association (ABA) argues that legal substitutes to marriage are inadequate ways to re-create rights and obligations automatically created through marriage. The ABA contends that examples of rights that many same-sex couples cannot adequately exercise without recognition of same-sex marriage include: inheriting, directing the burial of a partner's remains, making medical decisions on behalf of one's partner, and childrearing. The ABA contends that even with adequate legal counsel, same-sex couples who cannot marry will never enjoy the same presumption of legal parenthood.

However, Idaho Gov. "Butch" Otter counters that alternative arrangements for people who identify as gay—single parenting, step parenting, cohabitation, or adoption—provide enormous societal benefits. Relatedly, in *Bourke v. Beshear*, one of the consolidated cases, respondent Kentucky Gov. Steve Beshear argues that same-sex couples may face no additional burden than some heterosexual couples. As an example, Beshear notes that heterosexual marriage between first cousins is legal in California but not in Kentucky.

Analysis

The Supreme Court will contemplate whether the Fourteenth Amendment requires a state to recognize lawfully licensed, out-of-state same-sex marriages. Though only one of the consolidated cases, Obergefell's and Hodges' arguments are representative of the general views, advocated by the parties in *Tanco v. Haslam* and *Bourke v. Beshear*, regarding their respective state's laws that do not recognize out-of-state same-sex marriage licenses. Obergefell contends that Hodges cannot defend Ohio's marriage-recognition

laws under *United States v. Windsor* or under the applicable heightened scrutiny standard. However, Hodges counters that the Windsor ruling permits Ohio's decision not to recognize out-of-state marriages and protects various rationales, such as local democracy. Additionally, in a consolidated case, Deboer argues that the Constitution demands that the Court require states to license same-sex marriage under principles of due process and equal protection. However, Snyder counters that nothing in the Fourteenth Amendment's history or plain text requires states to license same-sex marriage.

ARE OHIO'S MARRIAGE RECOGNITION LAWS CONSTITUTIONAL UNDER WINDSOR?

Obergefell argues that Ohio's marriage recognition laws are unconstitutional under the Supreme Court's ruling in Windsor. Obergefell explains that the Windsor Court found the Defense of Marriage Act (DOMA) unconstitutional because the "design, purpose, and effect" of DOMA was to "single[] out 'same-sex marriages made lawful by ... the States[] for 'restrictions and disabilities.'" Obergefell believes that the plain text of Ohio's recognition laws similarly—and unconstitutionally—"single out" same-sex couples. Additionally, Obergefell emphasizes that the Windsor Court struck down DOMA because the "practical effect" of that law was to disadvantage and stigmatize lawful same-sex marriages. Like DOMA, Obergefell contends, the Ohio recognition laws interfere with same-sex married couples' and their families' personal matters (such as amassing legal documents that heterosexual couples do not need).

Hodges counters that Windsor does not require states to recognize out-of-state same-sex marriages. Hodges resists extending the Windsor Court's interpretation of the Fifth Amendment (invalidating DOMA) to reading a "freestanding marriage-recognition right" into the Fourteenth Amendment. Such a reading, Hodges claims, violates the Full Faith and Credit Clause and the "public-policy exception," the latter of which permits states to not "apply another State's law in violation of its own legitimate public policy." Hodges explains that the Fourteenth Amendment, a more "generalized" source of constitutional protection, cannot create a fundamental right (such as mar-

riage recognition) if the Full Faith and Credit Clause (a more specific and explicit source) does not recognize such a right.

DO OHIO'S MARRIAGE RECOGNITION LAWS SATISFY THE APPLICABLE STANDARD OF REVIEW?

Obergefell argues that Ohio's recognition laws are subject to heightened scrutiny because they discriminate based on sexual orientation and gender. In the alternative, Obergefell argues that Ohio's marriage recognition laws fail to satisfy rational basis review because Obergefell rejects the notion that "a state majority's desire to withhold marriage rights from same-sex couples ... 'bear[s] a rational relationship to an independent and legitimate legislative end.'"

Hodges counters that Ohio's recognition laws do not warrant heightened scrutiny because they do not infringe a "fundamental right" or discriminate against a "suspect" class. To support his position, Hodges contends that "the right to marry has never included same-sex marriage." Hodges also maintains that Ohio's recognition laws are gender neutral because Obergefell has failed to show that Ohio "enacted the law with discriminatory intent toward one gender." In the context of rational-basis review, Hodges maintains that Ohio has multiple rational grounds for its refusal to recognize lawful out-of-state same-sex marriages, including preserving the "democratic choice" of the state's legislature and citizens.

DOES THE FOURTEENTH AMENDMENT REQUIRE STATES TO GRANT SAME-SEX MARRIAGE LICENSES?

Deboer contends that the Fourteenth Amendment demands that states license same-sex marriage.

More specifically, in addition to the equal protection arguments (somewhat similar to Obergefell's arguments in favor of a heightened standard of review), Deboer submits that restricting the right of same-sex couples to marry violates the long-recognized, fundamental freedom to marry, which is a potential violation of substantive due process.

In opposition, however, Snyder counters that nothing in the Fourteenth Amendment's history or plain text meaning requires states to license same-sex marriage. Snyder maintains that rather

than the Court vis-à-vis the Constitution requiring states to license same-sex marriage, states—through popular vote, state constitutional amendments, or statutes—are the appropriate democratic processes for licensing same-sex marriage. Finally, in addition to disagreeing with Deboer regarding equal protection violations, in response to Deboer's due process argument, Snyder submits that "[t]here is no substantive-due-process right to a particular marriage definition."

Conclusion

In this case, the Supreme Court may decide whether the Fourteenth Amendment mandates that a state recognize legally licensed same-sex marriages performed out-of-state. Obergefell argues that Ohio's failure to recognize same-sex marriage is unconstitutional and inconsistent with Windsor. Hodges counters that in accordance with Windsor and federalism principles, states have the authority to ban recognition of lawfully performed same-sex marriages performed in another state. The Court may also determine whether the Constitution requires a state to license same-sex marriage without that state licensing same-sex marriage on its own terms. Deboer contends that the Fourteenth Amendment demands that states license same-sex marriage. However, Snyder argues that the judiciary is not the appropriate means for states to license same-sex marriage; rather, states may approve same-sex marriage through popular vote or legislative action. The Supreme Court's decision in these cases may have significant implications on the rights of same-sex individuals and their children. ☺

Written by Alice Chung and Allison Eitman. Edited by Daniel Rosales.

GLOSSIP V. GROSS (14-7955)

Court Below: U.S. Court of Appeals, Tenth Circuit

Oral Argument: April 29, 2015

The U.S. Supreme Court will determine three issues: (1) whether a state violates the Eighth Amendment when the state uses a three-drug protocol for executions, where the first drug does not always relieve the prisoner from pain and or put the prisoner in a deep state of unconsciousness; (2) whether *Baze v. Rees* is the proper

standard for obtaining a stay of execution; and (3) whether a prisoner challenging a state's lethal injection protocol is required to establish the availability of alternative drugs. Glossip contends that midazolam is incapable of reliably rendering prisoners unconscious and creates a substantial risk of harm that violates the Eighth Amendment, that the standard for obtaining a stay of execution should continue to be "a significant possibility of success on the merits" as established in *Baze*, and that prisoners should not be required to establish the availability of alternative drugs. Gross counters that using midazolam does not create a substantial risk of harm since it is highly likely to render prisoners unconscious and insensate, that *Baze* clearly established a heightened stay request standard, and that establishing the availability of alternative drugs is required post-*Baze*. The Supreme Court's decision will potentially affect the availability of certain execution methods as well as address the acceptability of lethal injection protocols that potentially result in a lingering and painful death. Full text available at: www.law.cornell.edu/supt/cert/14-7955. ☉

Written by Michael Duke and Edward Flores. Edited by Oscar Lopez.

HORNE V. U.S. DEPARTMENT OF AGRICULTURE (14275)

Court Below: U.S. Court of Appeals for the Ninth Circuit
Oral Argument: April 22, 2015

This case presents the U.S. Supreme Court with the opportunity to clarify what constitutes a taking. The Hornes argue that the Marketing Order, requiring raisin handlers to deliver a reserve portion of a growers' crop to the government, constitutes a categorical taking under the Fifth Amendment. The U.S. Department of Agriculture, on the other hand, argues that the reserve requirement is simply a time-use limitation that is lawful and does not require just compensation under the Fifth Amendment. This case will have important implications for property owners generally and will affect the government's options regarding how to regulate agriculture in ways to protect producers and consumers. Full text available at: www.law.cornell.edu/supt/cert/14-275. ☉

Written by Andrew Huynh and Mary Beth Picarella. Edited by Jacob Brandler.

KINGSLEY V. HENDRICKSON (146368)

Court Below: U.S. Court of Appeals for the Seventh Circuit

Oral Argument: April 27, 2015

The U.S. Supreme Court will decide whether a pretrial detainee's § 1983 excessive force claim requires a showing that the force used by the state actor was objectively unreasonable and that the use of force was deliberate. Petitioner Michael Kingsley argues that an excessive force claim brought by a pretrial detainee requires only a showing that the force used was objectively unreasonable. Respondents, represented by Stan Hendrickson, argue that an excessive force claim brought by a pretrial detainee requires a showing of the state actor's subjective intent to be reckless or deliberate. The Court's decision will impact the means by which pretrial detainees bring excessive-force claims and the policies that govern prisons. Full text available at: www.law.cornell.edu/supt/cert/14-6368. ☉

Written by Neil O'Donnell and Agbekgo Petty. Edited by Gabriella Bensusan.

MATA V. HOLDER (14185)

Court Below: U.S. Court of Appeals for the Fifth Circuit

Oral Argument: April 29, 2015

The U.S. Supreme Court will determine whether the courts of appeals have jurisdiction to review a noncitizen's request that the Board of Immigration Appeals (BIA) equitably toll the 90-day filing deadline on the noncitizen's motion to reopen the noncitizen's removal proceeding due to ineffective assistance of counsel. Peterson, arguing by Court appointment in support of the lower court's judgment, argues that the Fifth Circuit properly characterized Mata's request to reopen his removal proceeding as an invitation for the BIA to reopen the proceeding sua sponte and that the Fifth Circuit lacks jurisdiction to review the BIA's discretionary decision. However, Mata contends that the Fifth Circuit erred in construing his request for equitable tolling as a request for the BIA to reopen the proceeding sua sponte and that Congress specifically grants courts of appeals the

jurisdiction to review final orders of removal and BIA decisions on motions to reopen via statute. Holder agrees with Mata that the Fifth Circuit mischaracterized Mata's request to reopen and that Congress provided courts of appeals a statutory basis upon which to review final orders of removal and BIA decisions on motions to reopen. Holder further contends that courts should apply a deferential abuse-of-discretion standard in reviewing agency determinations. The Supreme Court's ruling implicates the due process rights of noncitizens and the fairness and substantive legality of the immigration system. Full text available at www.law.cornell.edu/supt/cert/14-185. ☉

Written by Aida Nieto and Cesar Sanchez. Edited by Paul Kang.

MCFADDEN V. UNITED STATES (14378)

Court Below: U.S. Court of Appeals for the Fourth Circuit

Oral Argument: April 21, 2015

The U.S. Supreme Court will determine whether—to obtain a conviction under the Analogue Act—the government must prove the defendant had knowledge that a substance the defendant was distributing was a controlled substance analogue. McFadden claims that under the Analogue Act, the government must prove a defendant's knowledge of the illegal nature of a substance by showing that the defendant knew the substance was substantially similar to a controlled substance. The United States agrees with McFadden in that Analogue Act violations can be proven by demonstrating the defendant's knowledge of the illegal nature of a substance, but the United States counters that knowledge of illegality can be proven through circumstantial evidence. The Supreme Court's decision will clarify a long-standing circuit split over the mens rea requirement the government must satisfy to prosecute Analogue Act violations, which will have further implications on the government's ability to target street-level dealers under the Analogue Act. Full text available at www.law.cornell.edu/supt/cert/14-378. ☉

Written by Jee H. Kim and Mateo de la Torre. Edited by Oscar Lopez.