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Luis v. United States (14-419)

Court below: *U.S. Court of Appeals for the Eleventh Circuit*
Oral argument: Nov. 10, 2015

Issue

May the United States obtain a preliminary injunction under 18 U.S.C. § 1345 to prohibit a defendant from spending assets unrelated to the crime charged without violating a defendant's right to hire an attorney of choice?

Question as Framed for the Court by the Parties

Did a pretrial injunction prohibiting a defendant from spending untainted assets to retain counsel of choice in a criminal case violate the Fifth and Sixth amendments?

Facts

Petitioner Sila Luis provided health care to homebound patients through her two businesses, which she owned and operated. On Oct. 2, 2012, Luis was indicted for paying and conspiring to pay kickbacks for patient referrals and conspiring to defraud Medicare. The United States charged Luis with conspiracy to commit health care fraud, conspiracy to defraud and commit offenses against the United States, paying kickbacks involving federal health care programs, and criminal forfeiture.

Witnesses reported that Luis' businesses had defrauded Medicare from January 2006 to January 2012. The businesses allegedly paid nurses to recruit patients, and the nurses then allegedly gave a portion of those kickbacks to the patients. The businesses also allegedly billed Medicare a total of $45 million for medical services that were either unnecessary or not actually provided to patients.

The United States brought a civil action under 18 U.S.C. § 1345 in the District Court for the Southern District of Florida to restrain $45 million of Luis' assets before the criminal trial, including substitute assets that were not linked to the alleged charges. The court granted a temporary restraining order against the assets, then granted the United States' motion for a preliminary injunction. The court found that the witness reports established probable cause to satisfy § 1345, which allows courts to grant preliminary injunctions to prevent a defendant from alienating property associated with federal health care fraud.

Luis appealed the preliminary injunction order to the Eleventh Circuit of the U.S. Court of Appeals, arguing that the injunction violated her constitutional rights by restraining money that she needed to hire a criminal defense attorney. The Eleventh Circuit affirmed the district court's decision, holding that prior Supreme Court decisions foreclosed Luis' arguments. Luis petitioned for a rehearing en banc, but the Eleventh Circuit denied the petition. The Supreme Court granted a writ of certiorari on June 8, 2015.

Discussion

This case allows the Supreme Court to determine whether the United States can constitutionally obtain a preliminary injunction to prevent a criminal defendant who is facing fraud charges from spending assets not obtained as a result of the fraud. Luis argues that restraining a criminal defendant's untainted assets is a constitutional violation that bars the defendant from hiring the attorney of her choice. The United States asserts that such restraint of a defendant's assets is not unconstitutional if the United States can show that it has probable cause to believe that the assets are forfeitable. The Court's decision could affect forfeiture law and whether defendants may be prohibited from spending certain monetary assets during trial to retain counsel.

Financial Impact on Defendant's Ability To Hire Counsel of Choice

The American Bar Association (ABA), in support of Luis, argues that a preliminary injunction restraining a defendant's assets will prevent her from hiring the defense attorney of her choice. The ABA also asserts that if a hired attorney must withdraw representation due to the defendant's lack of assets, the defendant will have to restart the trial preparation process with a public defender who has no knowledge of the case. The Cato Institute and the DKT Liberty Project contend that restraint of a defendant's untainted assets runs counter to public interest, because it will result in taxpayers funding a public defender rather than the defendant paying for her own attorney.

The United States maintains that its interest in recovering all forfeitable assets overrides a defendant's interest in using those assets for an attorney. The National Conference of State Legislatures (NCSL) claims that full recovery of all forfeitable assets benefits the public interest by disrupting criminal organizations that could otherwise continue committing crimes with those assets. The United States further contends that a defendant will receive an undeserved financial reward if she is permitted to retain "untainted" assets for defense counsel after having spent the illegally obtained assets received from the crime. The United States also argues that a private attorney is not necessarily more effective or trustworthy than an appointed public defender.

Asset Forfeiture Law in the United States

The National Association of Criminal Defense Lawyers (NACDL) argues that the United States' ability to use 18 U.S.C. § 1345 to restrain untainted assets would result in an unintended expansion of criminal forfeiture law. The NACDL asserts that Congress

and the courts purposefully limited the United States' ability to restrain untainted assets, because the government would otherwise have the power to destroy businesses.

The NCSL counters that allowing a defendant to access forfeitable assets to pay for her criminal defense conflicts with the history and tradition of forfeiture law. The NCSL argues that forbidding the United States from restraining the defendant's assets under § 1345 will prevent the states from protecting their citizens from crime and will inhibit the states' efforts to create their own forfeiture laws. In addition, the NCSL maintains that some criminals will be aware of the proposed distinction between tainted and untainted assets and will therefore spend the tainted assets so that they may later retain any untainted assets in a criminal trial.

Analysis

The parties in this case disagree over the scope of a preliminary injunction barring a defendant from using forfeitable assets. Luis argues that the preliminary injunction can only enjoin tainted assets because she has a right to use the untainted assets to retain counsel. Luis also contends that the standard of proof in a § 1345 pretrial hearing should be higher than probable cause. The United States argues that a court may enjoin both directly forfeitable assets and substitute assets because the United States has the right to use both types of assets to fulfill a criminal judgment. The United States further maintains that the standard of proof in a § 1345 pretrial hearing should be probable cause.

Right To Use Untainted Assets To Retain Counsel of Choice

Luis contends that she has a Sixth Amendment right to use untainted assets to retain counsel of her choice. She argues that although the United States wants to enjoin the untainted assets to fulfill a potential monetary judgment, that reason is insufficient in light of her Sixth Amendment rights.

The United States contends that while the Sixth Amendment does give a defendant the right to counsel, it does not give a right to counsel that the defendant cannot afford. Furthermore, the United States asserts that it has a strong interest in ensuring that assets will be available to compensate the victims of the crime in a criminal monetary judgment.

Treatment of Untainted Assets vs. Tainted Assets

Luis concedes that the United States may enjoin tainted assets without violating the Sixth Amendment under the relation-back doctrine. She asserts that, under this doctrine, the United States has a right to any assets that the defendant obtained from the offense. She argues, however, that the relation-back doctrine does not apply to untainted assets prior to trial; therefore she retains her property right in the untainted assets and may use those assets to retain counsel. Luis further argues that § 1345(a)(2) maintains that if the seized assets contain tainted and untainted assets, then only the tainted assets should be enjoined in the pretrial hearing.

The United States argues that the relation-back doctrine preserves the potential of forfeiture of both directly forfeitable assets and substitute assets. The United States contends that if the directly forfeitable assets are insufficient, a court may use the substitute assets to fulfill a criminal monetary judgment. The United States claims that otherwise, it could not enjoin assets from a defendant who used up the directly forfeitable assets while it could enjoin assets from a defendant who completely used the substitute assets and only retained directly forfeitable assets, leading to "absurd and unfair results." The United States claims that the Court, by following Luis' proposed argument, would be unjustly rewarding a "rapid dissipation of criminal proceeds." The United States contends that § 1345(a)(2) maintains that "property of equivalent value" may be enjoined to ensure that the criminal monetary judgment will be fulfilled. The United States agrees that it does not have a current property interest in the assets, but it argues it does have a right to preserve the future property interest.

Due Process Scrutiny Standard

Luis argues that Fifth Amendment due process requires an adequate hearing before the government restrains her assets. She analogizes her inability to choose counsel to suppression of speech and contends that the same standard of scrutiny should apply to the hearing to determine tainted assets as applies to constitutional speech issues. She argues the United States should be required to apply a standard of proof greater than probable cause to determine whether the United States is likely to obtain a monetary judgment. Luis claims that the correct standard of proof is beyond a reasonable doubt, because that standard will be applied in the criminal trial.

The United States argues that routine actions that remove counsel and their arguments do not violate freedom of speech. Therefore, the United States argues that Luis' inability to hire counsel of her choice is similar to such a removal of counsel and does not violate the First Amendment. The United States contends that Luis' freedom of speech is not implicated, because neither she nor her counsel is restricted from speaking freely in her defense. Furthermore, the United State argues that a First Amendment argument does not bear on questions of procedure, such as the question of the applicable standard of proof. Additionally, the United States argues that the probable cause standard of proof that already applies to directly forfeitable assets should also apply to "property of equivalent value" under § 1345 because "the risk of error is no higher [with substitute assets] than when dealing with directly forfeitable assets."

Conclusion

The Court will determine whether a preliminary injunction under § 1345, preventing a defendant from spending untainted assets to retain counsel, violates the Fifth and Sixth amendments. Luis argues that the preliminary injunction violates the Sixth Amendment because Luis would be unable to use her untainted assets to adequately exercise her right to retain the counsel of her choice. According to Luis, the language of § 1345 does not allow the United States to restrain the spending of untainted assets. Luis also argues that the pretrial § 1345 hearing should use a standard more rigorous than that of probable cause because of the potential constitutional implications that could result. The United States argues that it has a right to enjoin forfeitable assets (which include both tainted and untainted assets) to ensure that a monetary judgment will be fulfilled, provided that the United States can show via probable cause that there will be a monetary judgment. ⊙

Written by Jenna Howarth and Sonia Gupta. Edited by Njeri Chasseau.

Shapiro v. McManus (14-990)

Court below: *U.S. Court of Appeals for the Fourth Circuit*
Oral argument: Nov. 4, 2015

Issue

To what extent may a single-judge district court render a decision on the merits of a claim that is otherwise covered by the Three-Judge Court Act before the case is actually referred to a three-judge panel?

Question as Framed for the Court by the Parties

May a single-judge district court determine that three judges are not required to hear an action that is otherwise covered by 28 U.S.C. § 2284(a), on the ground that the complaint fails to state a claim under Rule 12(b)(6)?

Facts

In 1910, Congress passed the Three-Judge Court Act, requiring that a panel of three judges hear and determine certain allegations of unconstitutional government action. The Act allows parties in such actions to appeal directly to the U.S. Supreme Court. Under § 2284(b)(1) of the Act, a single judge may determine whether three judges are required to hear the action. The three-judge procedure currently applies when a party challenges the constitutionality of congressional redistricting.

In 2011, Maryland enacted a redistricting plan that created several districts, including two noncontiguous segments connected by "narrow orifices or ribbons." In each of these districts, one segment had a far greater population than the other and was "socioeconomically, demographically, and politically inconsistent with the other segment."

Petitioners Stephen M. Shapiro, O. John Benisek, and Maria Pycha (collectively, Shapiro) are Maryland residents. In November 2013, Shapiro filed suit alleging that Maryland's redistricting plan violates the principles of American democracy by dividing voters on the basis of partisan affiliation. Shapiro contends that Maryland violated the First Amendment right to freedom of political association and the Constitution's guarantee to congressional representation. Shapiro filed suit against then-chair of the State Board of Elections, Bobbie S. Mack, and its administrator, Linda Lamone, and requested that a three-judge panel hear the case.

Sitting with a single judge, the U.S. District Court of Maryland dismissed the case for failure to state a claim and held that referral to a three-judge panel was not required. The court relied on *Duckworth v. State Administration Board of Election Law*, where the Fourth Circuit held that pleadings that do not state a claim are insubstantial and are properly dismissed without requiring the three-judge procedure. The court also held that Shapiro's claim that Maryland's redistricting plan abridges representational and voting rights was a nonjudiciable political question.

Shapiro appealed, and the U.S. Court of Appeals for the Fourth Circuit summarily affirmed the decision per curium. On June 8, 2015, the Supreme Court granted certiorari. While this action was pending, David J. McManus replaced Bobbie S. Mack as chair of the State Board of Elections and is substituted in this case as respondent alongside Lamone (collectively, McManus).

Discussion

The Supreme Court has the opportunity to decide the extent of a single-judge district court's authority to determine cases that are covered by the Three-Judge Court Act. Shapiro contends that a single-judge district court may never make determinations on the merits of reapportionment complaints and may only dismiss a claim for jurisdictional deficiencies. McManus counters that a single judge may dismiss cases for failure to state a claim subject to the standards of Rule 12(b)(6). The Supreme Court's resolution of this case will affect the breadth of claims that may be heard by a single-judge district court.

Competing Constitutional Rights

Shapiro and supporting amici argue that the purpose of the Three-Judge Court Act was to protect citizens' representational and voting rights. For this reason, the Virginia State Conference of the NAACP (NAACP) argues, Congress sought to provide the basic structures of democracy with an extra safeguard. The NAACP expresses concern that allowing a single judge to decide reapportionment cases invites an unacceptably high risk of political bias and the possibility of discrimination. Moreover, the NAACP fears that allowing a single judge to make decisions on the merits would reduce racial, economic, and political minorities' ability to protect their constitutional rights.

Conversely, McManus argues that the purpose of the Act was to protect the sovereignty of the states from overreaching federal judges. McManus argues that Congress feared that federal judges would read their own theories into the states' policies. Therefore, McManus alleges that allowing Shapiro's challenge to move forward would interfere with the experimental policies of several states, offending the ideals of American federalism. McManus contends that Congress chose to maintain the three-judge panel for reapportionment cases precisely because such challenges are essential to a state's ability to function independently.

Judicial Efficiency

Shapiro and supporting amici argue that the Three-Judge Court Act was intended to provide expeditious handling of critical questions. However, Shapiro argues that the Fourth Circuit's interpretation creates burdens for the federal courts, because it incentivizes disputes about how many judges should hear a case. Shapiro and amici fear that these fights will unnecessarily delay decisions on the underlying case. Judicial Watch also notes that election schedules sometimes leave too little time for courts to grant relief for constitutional violations, which would occur more frequently with delayed adjudication. Similarly, professors Joshua Douglas and Michael Solimine contend that many historically important cases and novel legal concepts reached the Court because a three-judge panel heard them.

Conversely, McManus argues that barring a single judge from screening for meritorious claims would increase the federal workload. He asserts that amendments to the Act demonstrate congressional desire to reduce the increase in constitutional cases that resulted from the Act. McManus points out that Congress made a three-judge panel elective by one of the parties and significantly limited its applicability. Moreover, McManus maintains that Congress intended to give single judges the authority to dismiss cases for failure to state a cause of action because this approach reduces the burden of convening three-judge panels for frivolous claims. Accordingly, McManus argues that a single judge's authority to refuse a request for a three-judge panel is procedural rather than jurisdictional and that the Fourth Circuit's approach results in a more effective judiciary.

Analysis

In this case, the Supreme Court will decide

whether a single-judge district court may dismiss a claim otherwise covered by the Three-Judges Court Act on its merits. Shapiro argues that the Act imposes a jurisdictional requirement, therefore limiting a single judge from dismissing such claims for reasons other than lack of jurisdiction or insubstantiality. Additionally, Shapiro argues that *Duckworth* incorrectly read the Act and that such reading contravenes congressional intent. On the other hand, McManus argues that the Act does not impose a jurisdictional requirement, thus allowing a single judge to dismiss such a claim on its merits. Additionally, McManus argues that *Duckworth* best exemplifies the Act's congressional intent.

Does the Three-Judge Court Act Impose a Jurisdictional Requirement?

Shapiro contends that the Three-Judge Court Act requires convening a three-judge panel whenever a party files an action "challenging the constitutionality of the apportionment of congressional districts." Shapiro argues that the text of the statute permits a single judge to dismiss a claim otherwise applicable under the Three-Judge Court Act only for lack of jurisdiction or justiciability in the federal courts. Shapiro contends that the Court has previously held that district courts lack jurisdiction for federal claims considered to be insubstantial. Shapiro argues that if the single judge determines that the claim is not wholly insubstantial, then that judge must refer the claim to a three-judge panel.

McManus argues that the Act authorizes a single judge to dismiss a claim on its merits and maintains that because the Act should be read narrowly, it should not apply when the reasons behind convening a three-judge court do not apply. McManus contends that the text of the Act provides a procedural framework for the disposition of three-judge panels and states that if the Act were a jurisdictional test, the parties would not be permitted to waive the three-judge panel, given that jurisdiction can "never be forfeited or waived." Additionally, McManus argues that once a party requests a three-judge court, the Act authorizes a single judge to decide whether a three-judge court is required. According to McManus, only after a single judge has convened a three-judge court does the Act expressly forbid a single judge to dismiss a claim on its merits.

The *Duckworth* Precedent

Shapiro contends that the Act's structure proves that the holding in *Duckworth v. State Admin. Bd. of Election Laws* was erroneous**.** Shapiro states that *Duckworth* contravenes the Act's structure in two ways. First, Shapiro contends that *Duckworth* undercuts the division that Congress intended to create between the responsibilities of a single-judge and a three-judge court. Shapiro argues that § 2284(b)(3) of the Act provides that a single judge may not "enter judgment on the merits." If a single judge were permitted to dismiss a case for failing to state a claim, Shapiro argues, then the dismissal would frustrate § 2284(b)(3)'s distribution of authority. Second, Shapiro maintains that allowing a single judge to dismiss a claim on its merits would render the Act's appellate review scheme illogical. Shapiro maintains that if a single judge dismissed a claim on its merits and the injured party appealed, the court of appeals would then have to decide the merits of the claim. Shapiro argues that if the court of appeals were to find the claim meritorious, then the same court would render a decision on the merits of a claim over which, according to § 1253, it has no jurisdiction.

McManus argues that, even if the Court rejects the *Duckworth* standard, the Court should still arrive at the same conclusion as the *Duckworth* court in holding that the plaintiffs' claims are insubstantial. McManus notes that Shapiro previously conceded that the redistricting plan did not prohibit participation in political parties or frustrate the structure and activities of such parties. Moreover, McManus argues that Shapiro's First Amendment claims cannot be separated from Shapiro's amended claims, which Shapiro abandoned. Significantly, McManus claims, the Court treats "various constitutional theories as a single set" when a single element of a state's reapportionment allegedly violates several constitutional provisions. McManus argues that the complaint, viewed in its entirety, is barred because the Court has already considered and rejected similar complaints.

Statutory Purpose and Administrative Effect

Shapiro maintains that *Duckworth* contradicts the statutory purpose of the Act. First, Shapiro contends that Congress meant for the Act to reduce the individual biases and predilections of a single judge in politically sensitive matters. Shapiro argues that, by convening three-judge courts, Congress intended to insulate the judiciary from local influences. Second, Shapiro maintains that Congress intended for the rapid resolution of apportionment claims under the Act by allowing a direct appeal to the Supreme Court. Shapiro contends that a claim dismissed on its merits by a single judge would have to be appealed to a court of appeals as opposed to the Supreme Court and would add an additional layer of litigation. Moreover, Shapiro argues that *Duckworth* runs afoul of the Supreme Court's preference for "clear jurisdictional tests" and administrative simplicity. Shapiro maintains that the Act was meant to serve as a jurisdictional statute that defines the jurisdictional line between a single-judge and three-judge court. Shapiro argues that a "complex jurisdictional test," such as the *Duckworth* test allowing a single judge to dismiss claims on their merits, would complicate claims and significantly extend litigation time on jurisdictional matters.

McManus argues that *Duckworth* best exemplified Congress' reasoning for creating the Three-Judge Court Act. McManus states that Congress intended for the Act to protect state sovereignty from the intrusion of individual federal judges while promoting the public's confidence in federal courts. McManus argues that the political nature of reapportionment cases required convening three-judge courts to stop lone federal judges from implementing their own districting plans. McManus claims that allowing all reapportionment cases to be heard by three-judge courts, regardless of their merits, would contravene the statute's purpose of reducing state disruption in applying its laws. Moreover, McManus argues that few cases would be affected by the additional litigation time that *Duckworth* imposes, and the extended litigation "would be more than justified by the overall savings to judicial economy" from decreasing the number of three-judge courts. McManus also claims that litigation would not increase under a substantiality test because plaintiffs seeking a reversal of a wrongly dismissed complaint must go to the court of appeals regardless.

Conclusion

The Supreme Court will decide the scope of authority given to a single judge in cases that are otherwise referable to a three-judge panel. Shapiro argues that granting single-judge courts the ability to dismiss reapportionment claims on the merits contravenes the Three-Judge Court Act. McManus counters that the Act's text explicitly confers this power to

single-judge courts, which comports with the statute's purpose of decreasing the stress on federal courts. The Supreme Court's ruling in this case will have significant implications on Americans' ability to challenge the constitutionality of election laws. ⊙

Written by Mark Denton and Reymond Yammine. Edited by Cesar Sanchez.

Spokeo Inc. v. Robins (13-1339)

Court below: *U.S. Court of Appeals for the Ninth Circuit*
Oral argument: Nov. 2, 2015

This case presents the Supreme Court with an opportunity to decide whether plaintiffs may file lawsuits in federal court simply by showing that a defendant violated a federal statute. On one hand, Spokeo Inc. argues that Article III of the U.S. Constitution requires the plaintiff to show that he was sufficiently harmed by the violation of the statute. On the other hand, Robins contends that although he might not meet the injury-in-fact requirement, he was in fact harmed by the incorrect information that was listed on Spokeo Inc.'s website. According to Robins, the fact that Congress created a private right of action in the Fair Credit Reporting Act, combined with the fact that Spokeo Inc. violated the statute, is enough to file a lawsuit. The Supreme Court's decision in this case will implicate class-action lawsuits involving large corporations, as well as potentially alter the likelihood that corporations will settle claims to prevent significant financial consequences. Full text available at www.law.cornell.edu/supct/cert/13-1339. ⊙

Foster v. Chatman (14-8349)

Court below: *Supreme Court of Georgia*
Oral argument: Nov. 2, 2015

This case presents the Supreme Court with an opportunity to determine whether the Georgia courts erred in determining that the prosecution's peremptory challenges were not based on race discrimination. Petitioner Timothy Tyrone Foster contends that he was denied due process and the right to an impartial jury, because the prosecution used peremptory challenges to strike black jurors on the basis of race. Foster argues that the prosecution's jury selection notes demonstrate intent to exclude black jurors from the jury and that the prosecution's purported reasons for striking the black prospective jurors are insufficient in light of the corresponding notes. Respondent Bruce Chatman counters that the prosecution established sufficient justification for striking each prospective black juror and that the notes were prepared in anticipation of a *Batson* challenge. The Supreme Court's decision in this case will provide greater clarity as to what constitutes a violation under *Batson v. Kentucky*. Full text available at www.law.cornell.edu/supct/cert/14-8349. ⊙

Torres v. Lynch (14-1096)

Court below: *U.S. Court of Appeals for the Second Circuit*
Oral argument: Nov. 3, 2015

The Supreme Court will consider whether a state offense that is "described in" a federal criminal statute must meet all elements of the statute, including jurisdictional requirements, to constitute an aggravated felony. Petitioner Jorge Luna Torres argues that under the plain meaning of the aggravated felony definition, the New York offense of arson is not described in the federal arson offense, because it does not satisfy the federal statute's interstate commerce requirement. But U.S. Attorney General Loretta Lynch contends that it is reasonable to interpret that a state offense may constitute an aggravated felony under the relevant federal offense, even if the conduct does not meet a jurisdictional element. The Court's ruling will clarify the definition of "aggravated felony" and impact the relationship between immigration law and criminal law, particularly with respect to immigrants facing deportation. Full text available at www.law.cornell.edu/supct/cert/14-1096. ⊙

Lockhart v. United States (14-8358)

Court below: *U.S. Court of Appeals for the Second Circuit*
Oral argument: Nov. 3, 2015

Under 18 U.S.C. § 2252(b)(2), a mandatory minimum sentence is imposed on a defendant with a prior state conviction relating to "aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." In this case, the Supreme Court will decide whether the clause "involving a minor or ward" modifies only "abusive sexual conduct" or the entire series of terms preceding it. The convicted offender, Avondale Lockhart, urges the Court to adopt the series-qualifier principle of statutory interpretation by applying "involving a minor or ward" to the entire preceding series of terms contained in § 2252(b)(2). Lockhart contends that because his prior state conviction does not involve a minor or ward, he does not qualify for § 2252(b)(2)'s 10-year mandatory minimum sentence. However, the United States argues that the Court should interpret ¶ 2252(b)(2) using the last-antecedent rule by applying "involving a minor or ward" only to the immediately preceding clause, "abusive sexual conduct," thereby upholding Lockhart's jail sentence. The Court's decision will determine the scope of offenses covered by mandatory minimum sentences under 18 U.S.C. § 2252(b)(2) and could impact the degree of protection afforded to federal defendants with prior state convictions. Full text available at www.law.cornell.edu/supct/cert/14-8358. ⊙

Bruce v. Samuels Jr., et al. (14-844)

Court below: *U.S. Court of Appeals for the D.C. Circuit*
Oral argument: Nov. 4, 2015

The Supreme Court will decide whether § 1915(b)(2) of the Prison Litigation Reform Act requires prisoners who file multiple actions in forma pauperis to pay a monthly installment on a "per-prisoner" basis, where prisoners owe no more than 20 percent of their preceding month's income, regardless of the number of cases for which they owe filing fee; or on a "per-case" basis, where a prisoner must pay 20 percent of her preceding month's income for each case for which she owes a filing fee. Federal prisoner Antoine Bruce argues that the monthly payments should be calculated on a per-prisoner basis, while Federal Bureau of Prisons Director Charles E. Samuels Jr. argues that the payments should be calculated on a per-case basis. The parties diverge sharply in their interpretations of the text of the statute, congressional intent, the statute's purposes, and the constitutional-avoidance canon. The Court's ruling will resolve a circuit split between the Second, Third, and Fourth circuits, which apply a per-prisoner cap, and the Fifth, Seventh, Eighth, and Tenth circuits, which apply a per-case cap. Additionally, the case will impact prisoners' access to the courts and administrative costs associated with prisoner cases. Full text available at www.law.cornell.edu/supct/cert/14-844. ⊙

Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan (14-723)

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

Oral argument: Nov. 9, 2015

The Supreme Court will determine whether it is "appropriate equitable relief" under the Employee Retirement Income Security Act of 1974 (ERISA) to require a person to reimburse his benefits plan for medical expenses even though his settlement proceeds are dissipated. ERISA governs the administration of private pension funds. ERISA § 502(a)(3) provides that "[a] civil action may be brought … by … [a] fiduciary … to obtain … appropriate equitable relief." Robert Montanile received a $500,000 settlement in connection with injuries he sustained when he was in an accident with a drunk driver. Pursuant to an agreement, the board of trustees (Board) of Montanile's insurance plan sought to recover $120,044.02 from the settlement proceeds to reimburse the plan for covering Montanile's medical expenses. When the parties were unable to settle, the Board sued Montanile under § 502(a)(3). But Montanile argues that reimbursement is not an appropriate equitable remedy here, because his settlement fund has been dissipated and an equitable lien by agreement can only be enforced against identifiable property and not Montanile's general assets. The Board maintains that reimbursement is appropriate equitable relief, because the insurance plan has a reimbursement provision requiring Montanile to repay medical expenses. The Board contends that dissipation of the settlement fund does not nullify the insurance plan's reimbursement provision. The Court's decision in this case could change benefit plans' method of reimbursement and may cause beneficiaries to incur additional costs. Full text available at www.law.cornell.edu/supct/cert/14-723. ⊙

Kingdomware Technologies Inc. v. United States of America (14-916)

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

Oral argument: Nov. 9, 2015

The Supreme Court will consider whether the 2006 Veterans Act always requires the Department of Veteran Affairs (VA) to award its contracts to veteran-owned small businesses. Kingdomware, a veteran-owned small business, maintains that the language, purpose, and history of the Veterans Act verify that the requirement is mandatory. The United States, as respondent, maintains that the Veterans Act's contract-awarding procedure does not apply when the VA places orders under pre-existing Federal Supply Schedule contracts. Further, the United States asserts that the VA's interpretation of the Veterans Act is reasonable and warrants judicial deference. The Court's decision in this case could significantly affect the business opportunities available to veterans and the VA's ability to provide efficient and cost-effective services. Full text available at www.law.cornell.edu/supct/cert/14-916. ⊙

Tyson Foods Inc. v. Bouaphakeo, et al. (14-1146)

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

Oral argument: Nov. 10, 2015

The Supreme Court will determine whether class certification or collective action may proceed under Federal Rule of Civil Procedure 23(b)(3) or the Fair Labor Standards Act (FLSA) when liability determinations and damage calculations will turn on statistical analysis that assumes all class members, regardless of actual differences between them, are identical to a statistical average. The Court will also consider whether Rule 23(b)(3) or the FLSA permits class or collective action when the putative class contains uninjured members without legal rights to damages. Tyson argues that the use of statistical averages masks differences between class members that not only create individual questions of law and fact but also result in uninjured class members being awarded damages. Additionally, Tyson argues that the use of statistical averages also prevents it from raising defenses that it would otherwise be entitled to employ. But Bouaphakeo claims that Tyson's failure to keep statutorily required records of the amount of time that employees worked necessitated the use of statistical analysis, and such use was necessary and proper to prove liability and damages through a just and reasonable inference. Bouaphakeo further contends that uninjured class members were not awarded damages and that Tyson was not prevented from raising defenses. The Court's decision may affect litigation costs for businesses, economic growth, and the use of statistical analysis in class action proceedings. Full text available at www.law.cornell.edu/supct/cert/14-1146. ⊙

Musacchio v. United States (14-1095)

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

Oral argument: Nov. 30, 2015

The Supreme Court will consider whether the United States must prove elements of a crime not contained in the relevant criminal statute but included in an erroneous jury instruction if the government failed to object to that instruction at trial. The Court will also consider whether an appellate court may review a statute-of-limitations defense not raised at trial. Michael Musacchio was convicted of conspiracy to access a computer system without authorization. According to the relevant statute, the United States had to demonstrate "Musacchio had agreed to make unauthorized access or exceed authorized access" of a computer system. However, the trial court's jury instructions stated that the jury must find that Musacchio "intentionally access[ed] a protected computer without authorization and exceed[ed] authorized access." Neither Musacchio nor the United States objected to the instruction. On appeal, Musacchio challenged the sufficiency of the government's evidence. Musacchio contends that the law-of-the-case doctrine requires the United States to prove the elements of the crime as described in the jury instructions, even when the jury instructions were erroneous and imposed a heightened burden on the government. Musacchio also argues that a statute-of-limitations defense not raised at trial is reviewable on appeal. The United States contends that the law-of-the-case doctrine is inapplicable, because the jury instructions were patently erroneous, and the proper statutory elements were stated in the indictment. The United States further argues that Musacchio waived his statute-of-limitations defense by

failing to raise it at trial. The Court's decision in this case may affect the government's prosecutorial power, the fairness of trials, and the availability of statute of limitations defenses. Full text available at www.law.cornell.edu/supct/cert/14-1095. ⊙

Green v. Brennan (14-613)

Court below: *U.S. Court of Appeals for the Tenth Circuit*
Oral argument: Nov. 30, 2015

Federal employees wishing to file a discrimination lawsuit under Title VII of the Civil Rights Act of 1964 must exhaust their administrative remedies before proceeding to federal court. The first step in that process is contacting an Equal Employment Opportunity counselor (EEOC) and reporting the charge within 45 days of the matter alleged to be discriminatory. Green, a U.S. Postal Service employee, alleges that he was constructively discharged after being forced to retire. Green contacted an EEOC to report the alleged discrimination within 45 days of his formal retirement. The issue before the Court is when the 45-day filing period begins to run. The Tenth Circuit ruled that the filing period begins to run when the last allegedly discriminatory act occurred, which in Green's case was more than 45 days before Green contacted the EEOC. Green argues that the filing period begins to run when the employee actually resigns following a discriminatory act. Postmaster General Brennan maintains that the filing period begins to run when the employee either actually resigns or gives the employer a notice of resignation, which may occur before the actual resignation. Court-Appointed Amica Catherine M.A. Carroll agrees with the Tenth Circuit's holding. This case will impact the rule that courts use when applying Title VII and the balance between employees' need to access the courts and employers' need for repose from impending lawsuits. Full text available at www.law.cornell.edu/supct/cert/14-613. ⊙