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Lynch v. Dimaya (15-1498)

Court below: *U.S. Court of Appeals for the Ninth Circuit*
Oral argument: Jan. 17, 2017

Question as Framed for the Court by the Parties

Whether 18 U.S.C. § 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States is unconstitutionally vague.

Facts

Respondent James Garcia Dimaya, a citizen of the Philippines, immigrated to the United States as a lawful permanent resident in 1992 at the age of 13. Since entering the country, Dimaya attended high school and community college, and he has held several jobs. On two separate occasions, in 2007 and 2009, Dimaya was convicted in California of first-degree residential burglary and was sentenced to two years in prison.

In 2010, U.S. Attorney General Loretta Lynch brought removal proceedings against Dimaya citing 8 U.S.C. § 1227(a)(2)(A)(iii), which allows for the deportation of noncitizens who are convicted of aggravated felonies. Lynch claimed that, inter alia, both of Dimaya's convictions qualified as aggravated felonies because first-degree burglary in California is a "crime of violence" under the Immigration and Nationality Act (INA), which adopts a definition for "crime of violence" corresponding to 18 U.S.C. § 16. The immigration judge agreed with Lynch that Dimaya's convictions for first-degree burglary satisfied the requirements for "crime of violence," holding that Dimaya could be subject to removal due to the inherently violent nature of the offense and the dual sentences of over a year in prison. After the Board of Immigration Appeals rejected his appeal, Dimaya filed a petition in the United States Court of Appeals for the Ninth Circuit.

While Dimaya's petition was pending in the Ninth Circuit, the Supreme Court ruled in the case of *Johnson v. United States*, 135 S. Ct. 2551 (2015), that the definition of "crime of violence" under the Armed Career Criminal Act's residual clause, which has similarities to that of § 16(b), was void for vagueness. In response to the holding in *Johnson*, the Ninth Circuit concluded that § 16(b)'s definition of "crime of violence" was likewise unconstitutionally vague when used to determine whether prior convictions qualify as aggravated felonies for immigration removal proceedings. In its application of the Due Process Clause's vagueness doctrine, the Ninth Circuit reasoned that the "grave nature" of removal proceedings requires that the court apply a vagueness standard for deportation proceedings that is applicable to the standard used during criminal proceedings. The Ninth Circuit concluded that the "substantial risk" requirement in § 16(b) is "indetermina[te]" as to how a court should measure risk and how much risk is required to categorize a crime as a "crime of violence." The Ninth Circuit remanded Dimaya's removal proceeding to the Board of Immigration Appeals for analysis on the other claims. Lynch appealed the Ninth's Circuit's decision, and the Supreme Court granted the petition for certiorari on Sept. 29, 2016.

Analysis

Are Civil Statutes Governing Deportation Subject to the Standard of Vagueness Applicable to Criminal Laws?

Lynch argues that deportation laws, which are civil rather than criminal matters, are not subject to the vagueness doctrine as it is applied to criminal laws and are instead subject to a less strict version of the doctrine. Further, Lynch asserts that while the Court has analyzed whether civil statutes fail under the vagueness doctrine, these cases, including one challenging an immigration statute, reflect the Court's understanding that the doctrine is less strict in the context of civil cases than in criminal cases. The Court's decision in *Jordan v. De George*, 341 U.S. 223 (1951), reinforces this distinction between the vagueness doctrine in civil and criminal cases, Lynch claims. While the Court in that case analyzed an immigration statute under the standard of vagueness applicable to criminal laws, Lynch asserts that the Court did not hold that the same standard applies to all civil deportation statutes. Lynch also contends that subjecting civil deportation statutes to a less strict vagueness standard still comports with the due process concerns of the vagueness doctrine—providing fair notice of the punishable conduct and avoiding arbitrary enforcement.

Lynch then contends that though the Court has not yet established a vagueness standard for civil cases, its decisions suggest a general principle that is appropriate for deportation proceedings. Under this principle, the Court should consider whether the statute at issue is so unintelligible that it is not a rule at all, Lynch asserts. Lynch then argues that 18 U.S.C. § 16(b) is not unconstitutionally vague under this standard because its language is plainly intelligible, as shown by the fact that lower courts have applied it without concern for over three decades.

Dimaya, however, argues that the criminal vagueness standard applies in the deportation context. In support of this argument, Dimaya looks to *Jordan*, in which the Court applied the criminal vagueness standard to a deportation statute because of the grave nature of deportation. Dimaya notes that every circuit court to address this issue has followed *Jordan*. Dimaya further argues that this is the correct vagueness standard in this case because though deportation is a civil matter, § 16(b) is a criminal statute, is part of the criminal code, and has criminal

applications. Dimaya also asserts that deportation laws have severe consequences and punitive characteristics that put them on par with criminal statutes. Dimaya also asserts that vagueness in deportation statutes raises the same due process concerns that underlie vagueness in the criminal context.

Dimaya then argues that the Court should not overrule *Jordan* and apply Lynch's suggested, lesser version of the vagueness standard because if the Court did so in this case, § 16(b) could be valid in deportation proceedings but invalid in criminal proceedings. Though Dimaya concedes that less punitive civil statutes can be subject to a less strict vagueness standard, Dimaya also contends that a single statute with civil and criminal applications, like § 16(b), is either vague or not, across all contexts. In support, Dimaya notes that the Court treats civil and criminal applications of a statute equally when applying the lenity doctrine, from which the vagueness doctrine evolved.

Is 18 U.S.C. § 16(b) Unconstitutionally Vague Under the Criminal Vagueness Standard?

Though Lynch argues that the Court should not apply the criminal vagueness standard to the deportation statute at issue in this case, Lynch also argues that if the Court does decide to apply this standard, § 16(b) is not unconstitutionally vague under it. Lynch contends that three textual features of § 16(b) make its application more precise, predictable, and administrable than the Armed Career Criminal Act (ACCA) residual clause that the Court found to be unconstitutionally vague in *Johnson v. United States*, 135 S. Ct. 2551 (2015). First, Lynch claims that § 16(b) does not ask courts to imagine risks potentially arising after an offense is completed, a critical aspect of the Court's vagueness holding in *Johnson.* Second, Lynch asserts that § 16(b)'s requirement of a risk that physical force may be used while committing an offense is more concrete than the ACCA residual clause's reference to any conduct that could result in physical injury. Third, Lynch claims that because § 16(b) does not contain a list of example crimes, courts applying it will not have to reconcile the different risks entailed in the examples, a task that the *Johnson* Court found to generate confusion. Lynch also argues that § 16(b)'s requirement of a categorical rather than case-specific consideration of the substantial risk of the use of force does not make it unconstitutionally vague because the term "substantial risk" commonly appears in the law, and the requirement does not violate due process.

Dimaya contends, however, that § 16(b) is unconstitutionally vague under the criminal vagueness standard because it has the same features that made the ACCA residual clause unconstitutionally vague in *Johnson*—it requires a determination of what kind of conduct the ordinary case of a crime involves, which is then assessed under an "imprecise" risk standard. Dimaya then notes that in *Johnson*, the government recognized that § 16(b) is equally susceptible to the vagueness objections to the ACCA residual clause and argues that the government's new position on § 16(b) in this case lacks merit. Responding to Lynch's claim of three textual differences between the two statutes, Dimaya first counters that § 16(b)'s "in the course of committing the offense" language does not provide more clarity because the Court has rejected Lynch's interpretation that this language creates a temporal restriction on a court's analysis under it. Dimaya then contends that "physical force" in § 16(b) is at least as vague as "physical injury" in the ACCA residual clause because the Court often treats the terms interchangeably, and Dimaya also argues that "force" is in fact more vague because it may "come and go without a trace" while an injury necessarily leaves an observable condition. Dimaya also asserts that § 16(b)'s lack of specific examples makes it more vague than the ACCA residual clause because this makes it an even broader provision.

Discussion

Risk of Arbitrarily Applying § 16(b)

Lynch argues that the core concern of the vagueness doctrine, namely "to avoid 'arbitrary enforcement' of criminal laws," does not apply with the same force in civil immigration proceedings as it does in criminal proceedings. Lynch contends that immigration proceedings are unique since they involve matters of foreign affairs and national security, areas in which the executive branch has significant oversight. Likewise, Lynch argues that Congress has granted "broad" powers to the executive branch for the administration of deportation proceedings under the Immigration and Nationality Act (INA). Thus, Lynch contends that imposing a more "rigid" interpretation of the vagueness doctrine, comparable to that of criminal proceedings, would go against this power and conflict with the discretion that the attorney general exercises to maintain consistent interpretation and enforcement of the INA.

In contrast, Dimaya argues that the vague language of 18 U.S.C. § 16(b) makes it impossible to apply the definition of "crime of violence" consistently among federal courts. Dimaya notes that federal courts are split on what qualifies as "substantial risk" under § 16(b) and, therefore, disagree on what types of crimes qualify as "crimes of violence." A group of retired Article III judges, filing an amici curiae brief in support of Dimaya, contend that the application of § 16(b) in its current form requires that federal judges base their "enormously consequential" removal decisions on an arbitrary determination under the "ordinary case" approach that is ultimately hypothetical and based on neither the case's concrete facts nor the judge's personal experience. As a result, the National Immigration Project of the National Lawyers Guild, also filing an amici curiae brief in support of Dimaya, concludes that the difficulty in consistently applying § 16(b) has created "profound confusion" resulting in indeterminate decisions, a lack of fair notice, and an unconstitutionally arbitrary application of inconsistent standards.

Effect On Felony Removal Grounds for Noncitizens in Deportation Proceedings

Lynch argues that construing § 16(b) as void for vagueness would adversely affect other immigration statutes. Lynch reasons that limiting the extent to which a judge could find an aggravated felony could possibly allow "dangerous alien criminals" to bypass some of the restrictions enacted to maintain public safety. Lynch contends that immigration officers should be able to immediately remove noncitizens who commit certain serious offenses, such as kidnapping or sexual battery, without discretionary relief. Additionally, Lynch maintains that finding § 16(b) unconstitutionally void would question the application of 8 U.S.C. § 1227(a)(2)(E)(i), which categorizes noncitizen domestic abuse as a "crime of violence" regardless of the length of the noncitizen's sentence.

Dimaya argues that the amount of process that noncitizens receive during removal proceedings is directly tied to how the immigration officer initially reviewing the case interprets § 16(b). The National Immigration Law Center, in support of Dimaya, refers to the Supreme Court's decision in *Galvan v. Press*,

347 U.S. 522 (1954), to argue that noncitizens, as a part of the "American community," are guaranteed the protection of "life, liberty, and property under the Due Process Clause as is afforded to a citizen." Dimaya contends that creating a less arbitrary removal proceeding by finding § 16(b) unconstitutionally vague would have only a minimal impact on the government's ability to remove "dangerous criminal aliens" from the United States. Dimaya reasons that the government can still initiate removal proceedings in cases where there is not an aggravated felony. Full text available at: https://www.law.cornell.edu/supct/cert/15-1498. ⊙

Written by Kara Goad and Elizabeth Sullivan. Edited by Tina Zheng.

Lee v. Tam (15-1293)

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

Oral argument: Jan. 18, 2017

Question as Framed for the Court by the Parties

Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), provides that no trademark shall be refused registration on account of its nature unless, inter alia, it "[c]onsists of … matter which may disparage … persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." The question is: Whether the disparagement provision in 15 U.S.C. § 1052(a) is facially invalid under the Free Speech Clause of the First Amendment.

Facts

On Nov. 14, 2011, Simon Shiao Tam filed an application to register the name of an Asian-American dance-rock band, The Slants, with the U.S. Patent and Trademark Office (USPTO). The Slants seek to reappropriate and take ownership of Asian-American stereotypes to foster a sense of pride in the Asian-American community. The band's lyrics draw from memories of childhood slurs and mocking nursery rhymes for inspiration. For example, the band's album *Slanted Eyes, Slanted Hearts* includes a song called "Sakura, Sakura" where the band turned "hateful rhymes about Asians … into a song about unity and being proud of … heritage." Tam argued that these facts place his band at the heart of First Amendment speech, since the band's lyrics, performances, and name weigh in on cultural and political discussions about race and society.

The trademark examiner found, however, that a substantial composite of people of Asian-American descent might be offended by this term and subsequently denied registration to Tam's mark under § 2(a), the disparagement clause of the Lanham Act. The Trademark Trial and Appeal Board reviewed the examiner's decision, considered both the dictionary meaning of the word and the imagery and contextual symbols of the band's performances, and affirmed the examiner's refusal. Tam appealed this decision on constitutional grounds.

The appeal first went before a federal circuit panel that considered whether the term "the slants" could fall under a dictionary definition that does not refer to people of Asian-American descent. The panel found that, from Tam's own remarks, the band's name was widely understood as referring to people of Asian-American descent. The panel looked at an article in which Tam explained that he came up with the band's name because "one of the first things people say is that we have slanted eyes" and looked at the band's Wikipedia page, which stated that the name is "derived from an ethnic slur for Asians."

The panel then looked at the "derogatory," "demeaning," and "crippl[ing]" nature of the term based on news articles and blog posts. The panel also noted a brochure published by the Japanese American Citizens League, which stated that the term was "a derogatory term" used to "cripple the spirit." Satisfied that the mark was disparaging under the dictionary and public poll evidentiary standards used to determine the application of § 2(a), the panel held that binding precedent in *In re McGinley*, 660 F.2d 481 (1981), which held that trademark registration did not implicate the First Amendment because the owners of unregistered marks were not barred from using these marks, foreclosed Tam's constitutional claim.

Upon an en banc rehearing, the Federal Circuit Court of Appeals determined that the disparagement clause was a viewpoint-based restriction on free speech rights and applied strict scrutiny to find that it was facially unconstitutional.

Tam's case raises many of the same issues as those raised by the Washington Redskins in their challenge of the USPTO's denial of their renewal application for their mark, which is being decided by the Fourth Circuit. The Fourth Circuit has temporarily suspended the Washington Redskins' case until the Supreme Court has ruled in this case.

Analysis

Whether the Disparagement Clause is a Law That Defines Eligibility for a Government Program or Restricts Speech

Petitioner Michelle K. Lee, the undersecretary of commerce for intellectual property and director of the USPTO, argues that the disparagement clause is not a law that restricts speech but one that defines eligibility for a government program: federal trademark registration. Lee asserts that because trademarks serve a commercial purpose by identifying the source of goods and services, trademarks are commercial speech and entitled to less protection under the First Amendment. Lee analogizes restrictions on trademark registration eligibility to government participation in license plate production and union dues collection. Lee notes that the Court has found that license plate production and union dues collection are private speech that take place on a government platform and bear the stamp of approval by the government; therefore, the government has a right to decline to incorporate certain messages into these communications. Lee further compares trademark registration with license plate production, noting that user fees fund both programs and that users are still subject to restrictions on eligibility for government benefits.

Respondent Tam counters that the disparagement clause is a law that restricts speech. Tam asserts that Lee's characterization of the disparagement clause as government subsidy, government speech, or purely commercial speech is misguided. Tam argues that trademark registration is not a subsidy because there is no exchange of funds. Tam also refutes that trademarks can be regulated as purely commercial speech because trademarks are both expressive and commercial, and a mark's expressive elements cannot be separated from its commercial elements. Tam warns that classifying trademark registration as a government program would give the government expansive power to leverage government aid as a means of restricting speech. Tam also claims that Lee's comparison of license plates and union dues to trademark registration is not compelling because unlike these types of government speech, trademarks do not communicate messages from the government, the government does

not necessarily agree with the message of the mark, the content of trademarks are not within the control of the government, and the public does not understand trademarks to be government speech.

Whether the Court Should Apply Strict Scrutiny or a Lesser Level of Scrutiny

Because Lee asserts that federal trademark registration is a government program, Lee argues that Congress is entitled to broader authority "to encourage actions deemed to be in the public interest" by defining the parameters of the program. Because the disparagement clause is within Congress' power to further its policy objectives, Lee maintains that the Court should not apply strict scrutiny but should use a lesser level scrutiny instead. Lee states that the disparagement clause's restriction of benefits passes this lesser level of scrutiny because the government has two legitimate interests: (1) limiting what the federal government associates itself with, and (2) encouraging the use of non-disparaging trademarks in commerce.

Tam, on the other hand, argues that federal trademark registration is not a government program and so should be subject to strict scrutiny. According to Tam, the government fails to meet either prong of the test for strict scrutiny. First, the government cannot demonstrate a compelling interest because the Court previously rejected shielding the public from offensive language and protecting the public from disgust as a compelling interest. Second, Tam asserts that the disparagement clause is not narrowly tailored because it only indirectly serves the government's stated purpose.

Whether Denying the Benefits of Federal Trademark Registration Restricts Speech

Lee argues that the disparagement clause does not restrict speech but only denies the benefits of federal trademark registration to certain marks. Lee asserts that because mark owners, like Tam, are still able to use the terms they sought to trademark, the disparagement clause does not restrict speech. Lee underscores the remedies available to unregistered marks under common law and federal trademark law. Lee further argues that any changes in speech in response to the disparagement clause does not constitute an impermissible chilling effect but are instead the permissible effects of congressional policy. Lee maintains that every government program, including federal trademark registration, necessarily affects private behavior and that to find such changes unconstitutional would invalidate Congress' power to legislate. Lee supports the validity of these effects on speech by comparing the disparagement clause to other constitutional laws that constrain the content of private speech, such as libel, threats, or fighting words, and to other provisions of the Lanham Act that forbid immoral, deceptive, or scandalous speech.

In contrast, Tam argues that even if the disparagement clause is part of a government program, it impermissibly restricts speech. Tam admits that the mark owners are able to spread their message without formal protection, but asserts that the denial of benefits, like constructive notice of ownership, prima facie evidence of ownership, and a certificate of ownership, amounts to a burden on private speech, especially in the context of music. Tam contends that these restrictions will have a chilling effect on speech because owners will avoid using potentially disparaging speech to avoid the burden of being denied trademark registration. Tam contends that disparaging content and dissenting opinions are a fundamental part of the First Amendment's protections and that this speech cannot be afforded less protection because it shares common features with speech that is permissibly restricted. Tam questions the utility of comparing the disparagement clause to other laws like libel, threats, or fighting words by contrasting the narrow and defined parameters of these laws with the subjectivity and vagueness inherent in the disparagement clause.

Discussion

Whether Trademarks Should Be Treated as Expressive or Commercial Speech

The American Civil Liberties Union et al., supporting Tam, argue that the disparagement clause of the Lanham Act allows the government to engage in unacceptable censorship by regulating the private speech of trademarks based on viewpoint. Additionally, San Francisco Dykes on Bikes Women's Motorcycle Contingent Inc., a lesbian motorcycle club committed to fighting the notion that "dyke" is a disparaging term, argues that it "adopted its trademarked name as a form of political speech" and that denying registration to groups seeking to reappropriate disparaging terms poses a clearly impermissible restriction on political speech.

On the other hand, a group of law professors, in support of Lee, argue that federal trademark registration should not be treated as "a punishment for speech" but "a government program awarding rights to control commercial speech to one private party." The law professors note that any expressive functions can be separated from a mark's commercial functions. Similarly, Amanda Blackhorse and other Native American individuals who advocated the enforcement of the disparagement provision against the trademark held by the Washington Redskins, focus on trademarks' commercial functions. Blackhorse argues that trademarks are fundamentally exclusionary property rights regulated under the Commerce Clause and do not implicate the free speech rights of anyone seeking to register a disparaging mark.

The Role of Government

The American Center for Law and Justice, in support of Tam, cautions that defining federal trademark registration as government speech would give the USPTO a discretionary power to refuse to register any trademark, not just those that it deems to be disparaging. The Alliance Defending Freedom, also supporting Tam, suggests that each trademark that comes before the government for registration would be subject to whether any individual government official finds the view of that trademark to be disparaging.

Blackhorse, however, argues that without the disparagement clause, the government would be obligated to register offensive marks and ugly racial caricatures, thereby giving government endorsement to racism and bigotry. Lee further points out that allowing trademark registration of such disparaging marks would obligate the government to dedicate economic resources, including taxpayer dollars, to enforce the exclusive rights of individuals to use disparaging terms.

Whether the Standard for Disparagement Clause Application Should Be Clarified

Dykes on Bikes argues that the current disparagement clause standard is applied arbitrarily and inconsistently. Dykes on Bikes argues that a standard that depends on the identity, intention, or tone of the speaker; the dictionary used by the court; and the personal opinions of people polled will always be arbitrarily applied and will prevent

citizens from enjoying freedoms guaranteed by the Constitution. Tam suggests that, because a fair and objective standard cannot be established for this subjective, case-by-case determination, the current standard ought to be abolished completely.

Lee argues that the current, arbitrary standard is appropriate in this particular situation because parties seeking trademark registration do not stand to lose anything as a result of an unclear standard. Blackhorse admits that the Constitution demands clarity in standards surrounding prohibitions or deprivations in order to give affected parties better notice, but maintains that this strict notice standard is not necessary when the government is granting a privilege. Full text available at: https://www.law.cornell.edu/supct/cert/15-1293. ⊙

Written by Alla Khodykina and Rachael E. Hancock. Edited by Jessica S. Kim.

EXECUTIVE SUMMARIES

Nelson v. Colorado (15-1256)

Court below: *Colorado Supreme Court*
Oral argument: Jan. 9, 2017

This case presents the Supreme Court with an opportunity to decide the constitutionality of a statute requiring a defendant to initiate a civil case to obtain reimbursement of costs, fees, and restitution after the reversal of conviction of a crime. This case arises out of Shannon Nelson's conviction for sexual assault, which was overturned after she served prison time and paid various fees. The Colorado Supreme Court found that due process did not require a refund because a defendant could receive compensation by filing a civil suit under the Exoneration Act. Nelson argues that Colorado's requirement improperly places the burden of proof on the defendant to prove his or her innocence in order to recover fees paid for a conviction that was later overturned. Colorado asserts that Nelson did not necessarily have an automatic right to the refund of her criminal penalties and that, even if she did, Colorado's requirement satisfies due process. This case poses questions about a state's ability to affect the presumption of innocence through statutes that influence the scope of due process. Full text available at: https://www.law.cornell.edu/supct/cert/15-1256. ⊙

Lewis v. Clarke (15-1500)

Court below: *Connecticut Supreme Court*
Oral argument: Jan. 9, 2017

With *Lewis v. Clarke*, the Supreme Court will venture into the relatively unfamiliar legal territory of tribal sovereign immunity for individuals employed by Indian tribes. The case arises out of an automobile accident between Brian and Michelle Lewis and William Clarke, an employee of the Mohegan Sun Casino, which is owned by the Mohegan tribe. In a lawsuit brought by the Lewises, Clarke successfully convinced the Connecticut Supreme Court that he was entitled to tribal sovereign immunity. The Lewises argue that sovereign immunity does not apply when a tribal employee is sued in his individual capacity because the finances of the tribe are not formally at risk. Clarke counters that the finances of the tribe are at risk in this suit, and thus, the sovereign immunity of the tribe should extend to him because he was acting within the scope of his tribal employment. To some, the voyage of Lewis and Clarke into the obscure realm of tribal sovereign immunity for individuals imperils tribal coffers; to others, the regulatory power of the states is at stake. Full text available at: https://www.law.cornell.edu/supct/cert/15-1500. ⊙

Expressions Hair Design v. Schneiderman (15-1391)

Court below: *U.S. Court of Appeals for the Second Circuit*
Oral argument: Jan. 10, 2017

The Court must consider whether New York's surcharge ban that requires merchants to label price differences as a cash discount rather than a credit-card surcharge unconstitutionally restricts speech. Petitioners Expressions Hair Design et al. argue that criminalizing truthful speech about credit-card costs violates the First Amendment because it prevents the free flow of accurate ideas among the public. Eric T. Schneiderman, in his official capacity as attorney general of the state of New York, on the other hand, asserts that the law regulates conduct and not speech; thus, the price controls fall outside of the ambit of the First Amendment entirely. The outcome of this case will impact how a state can restrict the actions and language of merchants with respect to different forms of payments by consumers. Full text available at: https://www.law.cornell.edu/supct/cert/15-1391. ⊙

Goodyear Tire & Rubber Co. v. Haeger (15-1406)

Court below: *U.S. Court of Appeals for the Ninth Circuit*
Oral argument: Jan. 10, 2017

Respondents Leroy Haeger et. al were injured during a vehicle accident as a result of a failed tire, which was manufactured by petitioner Goodyear Tire & Rubber Co. After the case settled, the Haegers discovered that Goodyear did not disclose several tests that it performed on the tire; the Haegers then moved the court to sanction Goodyear for its discovery misconduct. The district court relied on its inherent powers to sanction Goodyear and its counsel. Goodyear argues that the Supreme Court should limit inherent authority sanctions to those fees and costs directly caused by the claimed misconduct. The Haegers argue that although compensatory damages must be causally linked to the sanctioned misconduct, when the sanctionable misconduct is not limited to a single, discrete instance, but instead is so pervasive as to undermine or affect the whole litigation, an award of the entire amount of attorney's fees and costs incurred by the party who is victim to the misconduct may be appropriate to compensate that party. The outcome of this case could potentially affect the scope of district courts' inherent power to impose sanctions for discovery misconduct, when the courts cannot rely on the rules or other statutory authority. The case will show whether a more exacting causation standard or a more discretionary standard should be used by the district court to impose sanctions under its inherent powers. Full text available at: https://www.law.cornell.edu/supct/cert/15-1406. ⊙

Endrew F. v. Douglas County School District (15-827)

Court below: *U.S. Court of Appeals for the Tenth Circuit*
Oral argument: Jan. 11, 2017

This case will decide what unified standard public schools must provide students under the Individuals with Disabilities Education Act (IDEA). IDEA requires schools in receipt of federal funds to provide an Individualized Education Program (IEP) for each student with a disability. The IEP must comply with each student's right to Free Appropriate Public Education (FAPE). Should the school district fail to comply, parents are permitted to enroll their child into private school and seek reimbursement

from the school district. Endrew F. argued that the Douglas County (Fla.) School District did not provide Endrew, a child with autism, the appropriate level of educational care because Endrew did not make any meaningful progress with his IEP. The Douglas County School District responded that Endrew's receipt of some educational benefit was sufficient to satisfy the FAPE standard and, thus, is not a violation of the IDEA. The Supreme Court will likely resolve the circuit conflict between the "meaningful educational benefit" standard adopted by some courts of appeals and the "merely more than de minimis" educational benefit standard that the Tenth Circuit maintained. Full text available at: https://www.law.cornell.edu/supct/cert/15-827. ☉

Midland Funding v. Johnson (16-348)

Court below: *Texas Court of Criminal Appeals*
Oral argument: Jan. 17, 2017

This case provides the Supreme Court with the opportunity to resolve a conflict over the interplay between the Fair Debt Collection Practices Act (FDCPA) and the Bankruptcy Code. The parties disagree over whether a creditor may file an accurate proof of claim for a time-barred debt in a bankruptcy proceeding. Petitioner Midland Funding LLC argues that the Bankruptcy Code creates a right to file time-barred claims and that filing such claims does not violate the FDCPA. Midland Funding asserts that filing claims for time-barred debts helps to fulfill the objectives of the Bankruptcy Code, such as collectively addressing all claims against the bankruptcy estate. Respondent Aleida Johnson argues alternatively that filing time-barred claims is an unfair, misleading practice that violates the FDCPA and does nothing to further the goals of the bankruptcy process. Johnson contends that creditors file stale claims solely in hopes of taking advantage of malfunctions in the legal process and that these claims waste judicial resources. Full text available at: https://www.law.cornell.edu/supct/cert/16-348. ☉

Ziglar v. Abbasi (15-1358)

Court below: *U.S. Court of Appeals for the Ninth Circuit*
Oral argument: Nov. 30, 2016

This case first asks the Supreme Court to determine whether noncitizens' claims against government officials who arrested them in connection with the Sept. 11, 2001, attacks and subjected them to harsh conditions during their detention arose in a "new context" under *Bivens v. Six Unknown Named Agents*. Second, it asks whether the government officials were erroneously denied qualified immunity, which would preclude the government officials' liability for their involvement in the noncitizens' arrest and detention. Third, this case asks whether the pleading requirements of *Ashcroft v. Iqbal* are satisfied where the pleading relies on hypothetical scenarios and assumed discriminatory intent. James W. Ziglar, the petitioner, argues that a *Bivens* remedy is not applicable in this case because *Bivens* applies to individual government officials' behavior, not policy concerns such as national security and immigration. Ziglar also argues that the government officials' actions were reasonable within the context, given the national security concerns, and that the government officials should, therefore, be precluded from liability for their actions. Lastly, Ziglar argues that the respondent Ahmer Iqbal Abbasi failed to demonstrate sufficient evidence to support his claim against the government officials. Meanwhile, Abbasi argues that harsh treatment in federal detention is not a new context under *Bivens*, that government officials are aware that the Equal Protection Clause categorically prohibits race-based government action, and that Abbasi's claim satisfied *Iqbal's* facial plausibility standard. The Supreme Court's decision in this case will impact the balance between government officials' qualified immunity and detained noncitizens' constitutional rights. Full text available at: https://www.law.cornell.edu/supct/cert/15-1358. ☉