High Court Highlights

U.S. Supreme Court 2024-25 Term in Review & What's Next in 2025-26.

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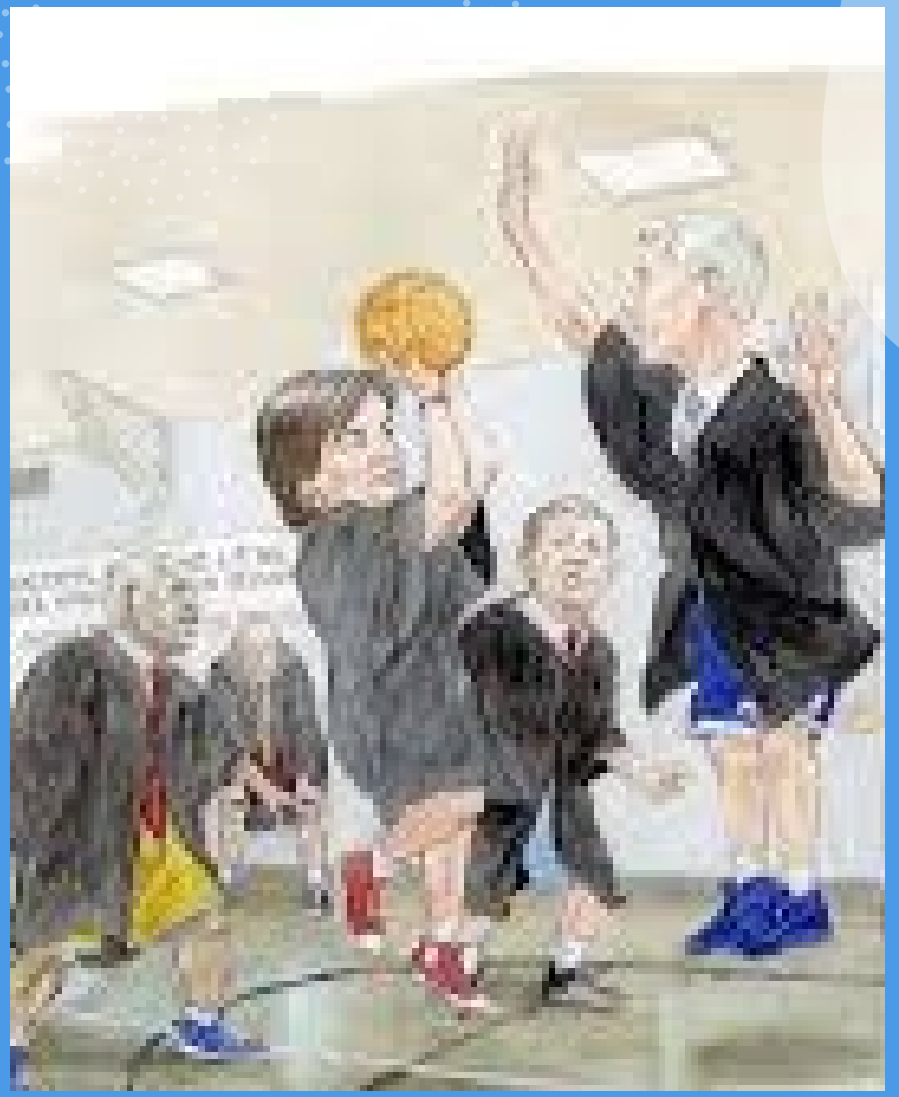


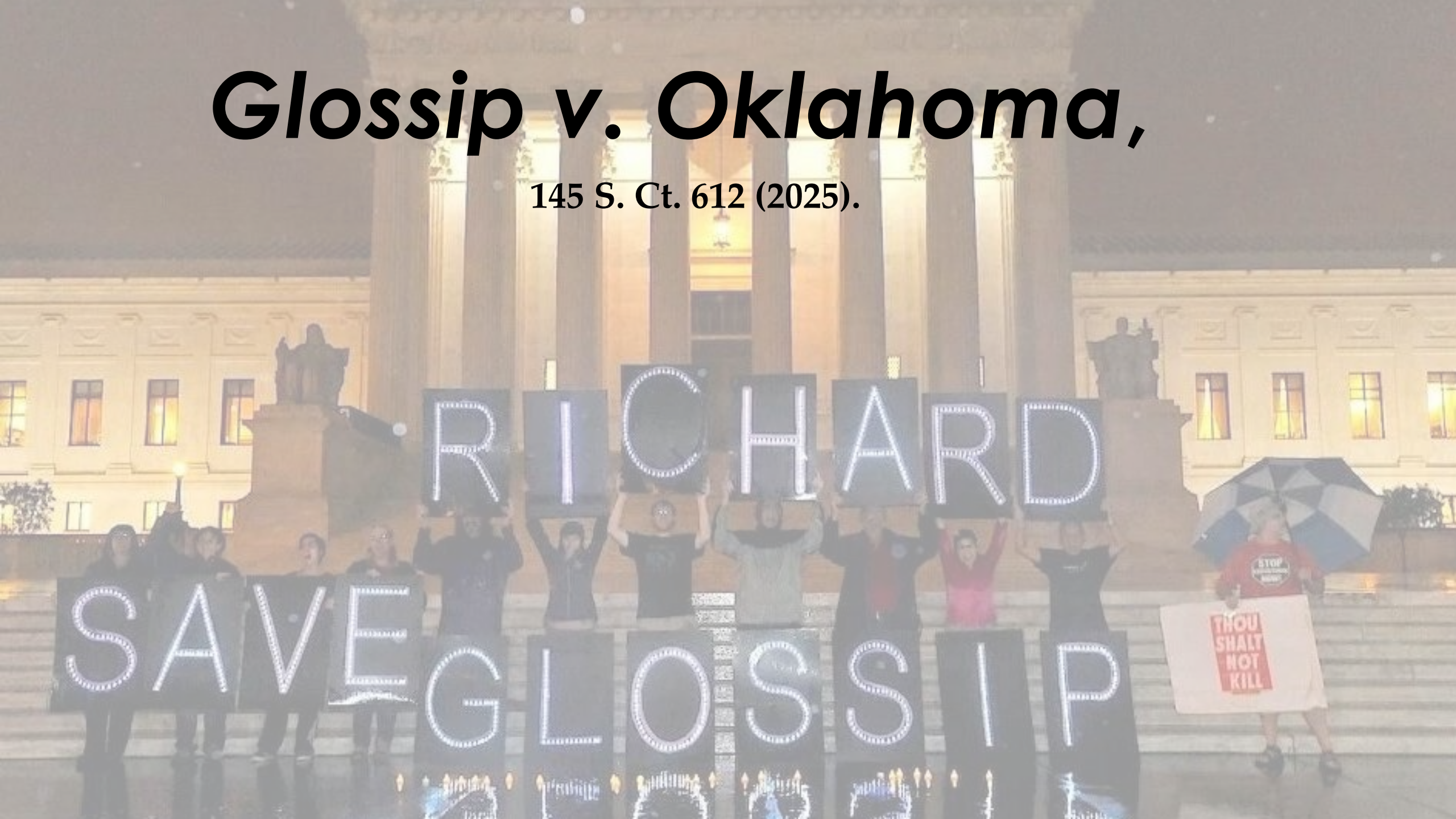
Agenda

1. Review cases from the 2024-25 Term
   - ➢Opinions Issued
   - ➢Pending Cases
2. Look Ahead to the 2025-26 Term
3. Highlight Potential Other Issues
4. Questions

2024-25 Term

Glossip v. Oklahoma,

145 S. Ct. 612 (2025).



Basic Facts

- An Oklahoma jury convicted petitioner Richard Glossip of paying Justin Sneed to murder Barry Van Treese and sentenced him to death.
- At trial, Sneed admitted he beat Van Treese to death, but testified that Glossip had offered him thousands of dollars to do so.
- Glossip confessed he helped Sneed conceal his crime after the fact, but he denied any involvement in the murder.

Procedural History

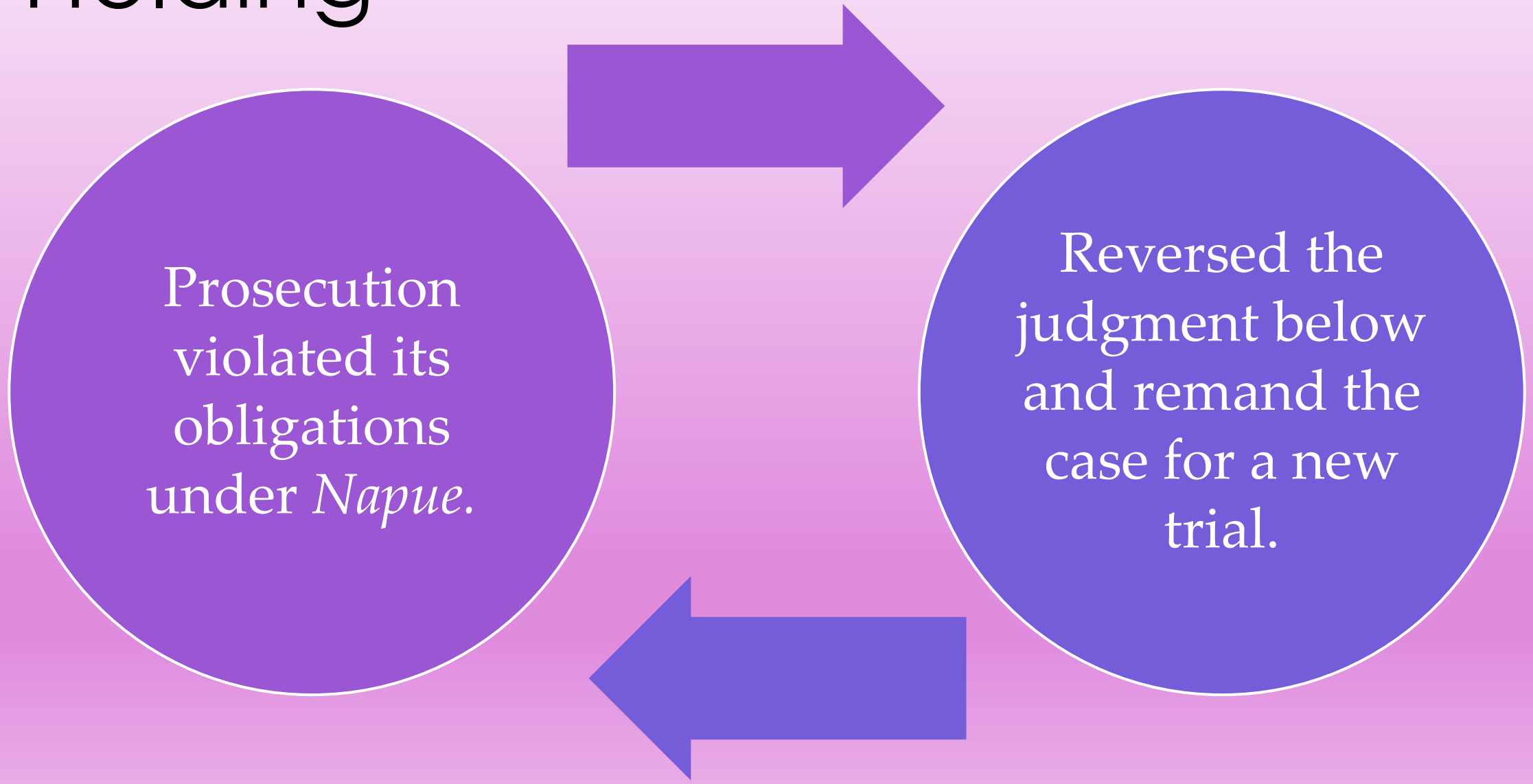
- About 20 years later: The State disclosed eight boxes of previously withheld documents from Glossip's trial, which showed:
  (1)Sneed suffered from bipolar disorder, which, combined with his known drug use, could have caused impulsive outbursts of violence; and
  (2)A jail psychiatrist prescribed Sneed lithium to treat that condition, and that the prosecution allowed Sneed falsely to testify at trial that he had never seen a psychiatrist.

Procedural History

The state conceded that the prosecution's failure to correct Sneed's testimony violated *Napue v. Illinois*, 360 U.S. 264 (1959), which held that prosecutors have a constitutional obligation to correct false testimony.

But the State Appellate Court declined to grant relief because it held that the State's concession was not "based in law or fact."

Holding


Prosecution violated its obligations under *Napue*.
Reversed the judgment below and remand the case for a new trial.

Reasoning

Under *Napue,* a conviction "obtained through use of false evidence" violates the Fourteenth Amendment's Due Process Clause

A Napue violation occurs when prosecution knowingly solicits false testimony or allows it "to go uncorrected when it appeared."

False testimony warrants a new trial if it "may have had an effect on the outcome" - meaning if there is "any reasonable likelihood" it "could have affected the judgment of the jury."

Materiality Analysis

Credibility of the witness	Defense's strategy
➢ Sneed's testimony was the only direct evidence of Glossip's guilt of capital murder. ➢ Had the prosecution corrected Sneed on the stand, his credibility plainly would have suffered.	➢ Sneed's false testimony also "would have been an important fact for the defense to know" that Sneed had been prescribed lithium to treat bipolar disorder. ➢Knowledge of false testimony would have impacted cross-examination.

Delligatti v. United States,

145 S. Ct. 797 (2025).

Issue

Whether causing bodily injury (including by omission rather than action) necessarily involves "use of physical force" under §924(c)

Procedural History

The government charged Delligatti with several offenses, including using/carrying a firearm during a "crime of violence" under §924(c)

The predicate "crime of violence" was attempted murder under VICAR statute (18 U.S.C. §1959(a)(5)), specifically attempted second-degree murder under New York law

On appeal, Delligatti argued omission-based crimes under New York murder law (which can include deaths caused by withholding food/care) do not involve "use of force" required by §924(c)'s elements clause

Holding

The Second Circuit correctly held that causing bodily harm by omission requires the "use of force" under §924(c)

Under Castleman, it's impossible to deliberately cause physical harm without using physical force - this principle extends to §924(c)

There is no exception to this principle when an offender causes bodily injury by omission rather than affirmative act

Reasoning

Castleman established that even indirect methods of harm (like "sprinkling poison") constitute "use of force" when knowingly employed to cause physical harm

Stokeling further provides that indirect causation of bodily harm still requires the use of violent force

Thus, deliberately causing injury necessarily involves the use of force, regardless of the method used

Making "use" of something by deliberate inaction.

A car owner, for example, can "use" the rain to wash his vehicle simply by leaving it parked on the street.

A fugitive can "use" the cover of darkness to hide by lying still at night.

A mother who purposely kills her child by declining to intervene when the child finds bleach and starts drinking it makes "use" of the bleach's poisonous properties to accomplish her unlawful end.

A husband who deliberately abandons his wife to die in the cold "uses the forces" of "the elements" to cause her death.

Rejecting the argument that the phrase "against another" excludes crimes of omission.

The phrase "against another" requires that another person be "the conscious object" of the force used (*Borden*)

The required object of force (another person rather than an animal) and possibly the mens rea (knowingly/intentionally rather than negligently/recklessly)

When an offender deliberately causes bodily harm by omission (i.e., a mother's deliberate refusal to remove bleach from a child), they necessarily make another person the conscious object of physical force

Contextual Analysis

The elements clause defines "crime of violence" in §924(c)(3), and the "ordinary meaning" of this defined term provides important context for interpretation

When interpreting statutory definitions, the Court prefers interpretations that encompass prototypical "crimes of violence" rather than those that exclude them

Intentional murder is the prototypical "crime of violence" and has historically incorporated liability for both acts and omissions

Criminal law widely recognized omission-based violent crimes - in 1986, at least 33 states defined criminally culpable acts to include omission of a legal duty

Dissent – Justice Gorsuch

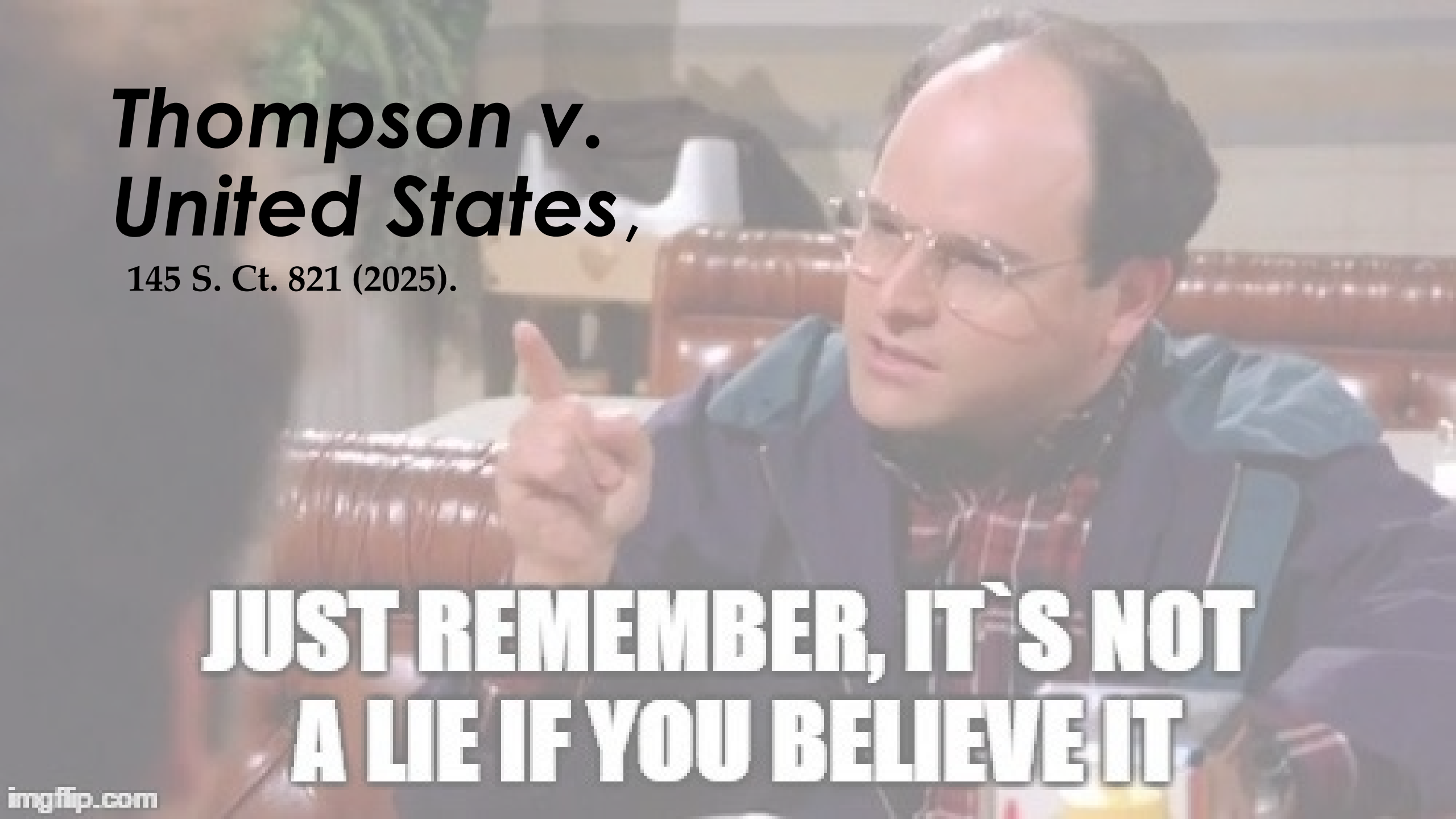
Using the "lifeguard example," Justice Gorsuch argues that crimes of omission (failing to fulfill a legal duty) do not qualify as "crimes of violence" under §924(c)(3)(A)

Explains that the word "use" implies active employment, not "inaction," "inertia," or "nonactivity" (*see Bailey, Voisine*)

Argues that to commit a "crime of violence," one must (1) actively employ (2) a violent physical act (3) knowingly/intentionally to harm another - criteria not met by causing injury through omission

Thompson v. United States,

145 S. Ct. 821 (2025).



Background

Patrick Thompson took out three loans totaling $219,000 from the same bank.

Later, Thompson told the Federal Deposit Insurance Corporation (FDIC) that he had “borrowed ... $110,000” from the bank.

Thompson was indicted under 18 U.S.C. § 1014 for making “false statements “ to the FDIC.

Thompson argued that his statements were not false because he had in fact taken out a loan for $110,000 just as he said.”

Issue

Section 1014 prohibits "knowingly making any false statement or report ... for the purpose of influencing in any way the action of ... the Federal Deposit Insurance Corporation ... upon any ... loan."

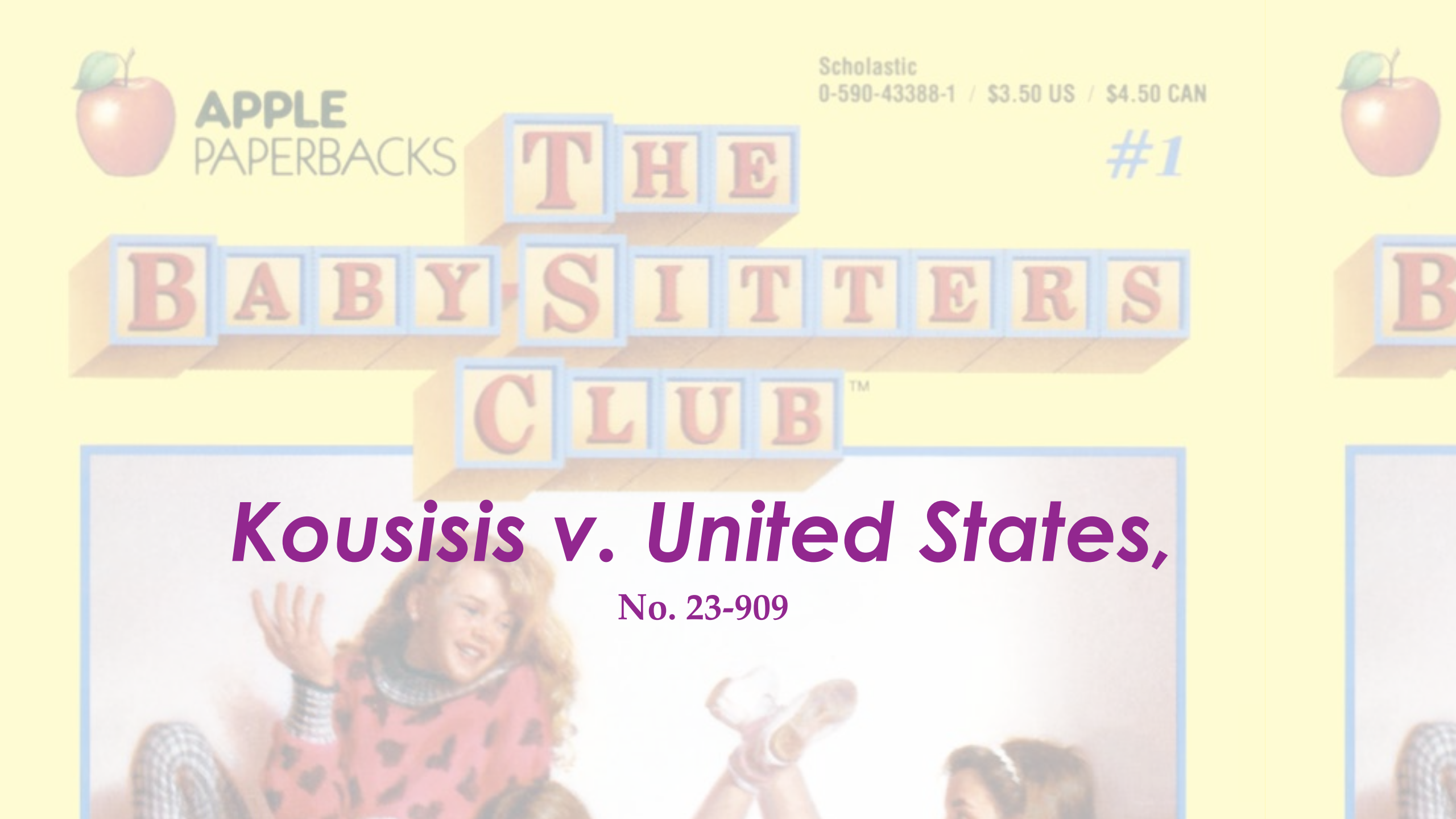
Question Presented: Whether a misleading, yet true statement can qualify as a false statement under 18 U.S.C. § 1014.

Holding and Reasoning

- False and misleading are distinct concepts - a misleading statement can be true, while a false statement is not true
- The plain text of §1014 criminalizes "false statements" only, not statements that are misleading but true
- Adding "any" before "false statement" is "expansive" but not "transformative" - the statement must still be false
- Statutory context confirms this interpretation - many other Title 18 statutes explicitly include both "false" and "misleading," indicating Congress intentionally chose to criminalize only false statements in §1014

Ordinary Speech v. Statutory Construction

- In casual conversation, people use many overlapping words to describe shady statements: false, misleading, dishonest, deceptive, literally true, and more.
- But only one of those words appears in the statute.
- Section 1014 does not criminalize statements that are misleading but true.
- Thus, it is not enough that a statement is misleading. It must be “false.”



Kousisis v. United States,

No. 23-909

Question Presented

Whether a scheme to induce a transaction in property through deception, but which contemplates no harm to any property interest, constitutes a scheme to defraud under the federal wire fraud statute, 18 U.S.C. § 1343.

Facts and Procedural History

The government charged Kousisis and Alpha Painting with wire fraud for fraudulently inducing PennDOT to award DOT-funded contracts

Contracts required winning bidders to use "disadvantaged business enterprises" (DBEs), but defendants allegedly used a DBE as a pass-through that didn't actually supply materials

The scheme never threatened economic harm to PennDOT, which received the repairs it paid for with quality workmanship and materials

The government's trial theory focused on "non-financial" harm to PennDOT's DBE program rather than monetary losses

Main Argument

Text, design, structure of wire fraud statute, and Court precedent foreclose the "fraudulent inducement" theory of prosecution

Gov. theory is egregiously overbroad - it applies to any deceptive statement to induce someone to part with property, even if they receive what they paid for

Babysitter Hypothetical: If a babysitter lies about using earnings for college or helping a brother (while providing quality childcare), this would qualify as wire fraud under the inducement theory

Oral Argument

Justices tested both sides' arguments with hypotheticals, including Justice Sotomayor's scenario about hiring a certified plumber but receiving a non-certified handyman

Justice Gorsuch asked if a babysitter who promises to use earnings for college but spends it on a Mexico trip

Justice Jackson proposed a scenario where a family specifically seeks a Christian babysitter due to religious importance, and someone falsely claims to have this characteristic

Recent Precedent

Justice Alito addressed the "cloud or fog" hanging over the case - the suggestion that recent Court decisions (*Skilling, Ciminelli, Kelly, McDonnell*) reflect hostility toward federalization of white-collar prosecutions

He questioned whether these decisions represent a general attitude that white-collar prosecutions should be handled in state courts rather than being based on specific statutory language

Hewitt v. United States; Duffey v. United States,

Nos. 23-1002; 23-1150.

Issue

Whether the First Step Act's sentencing reduction provisions apply to a defendant originally sentenced before the Act's enactment, but resentenced after enactment due to vacated conviction

Under section 403(b) of the FSA, section 403(a) applies to offenses committed pre-enactment whose sentencing occurs after enactment

Question here is whether "a sentence for the offense" includes a sentence that was pronounced before the Act's date but later vacated

Background

Section 403 of the FSA addresses "sentence stacking" by amending §924(c) to clarify that 25-year mandatory minimums apply only after a prior conviction "has become final," effectively overruling *Deal*

Without stacked sentences, first-time offenders with multiple §924(c) violations receive consecutive five-year minimums rather than one five-year plus multiple 25-year sentences

Congress extended §403(a) relief through §403(b) to defendants whose sentences "had not been imposed" as of December 21, 2018 (enactment date)

The key question is whether a vacated sentence (requiring resentencing after the Act's enactment) qualifies as a sentence that "has not been imposed" under §403(b)

Factual and Procedural History

Tony Hewitt was originally sentenced to 355 years (later 305 years) for bank robberies, mostly from stacked §924(c) sentences requiring mandatory 25-year terms

After the Supreme Court's Davis ruling invalidated §924(c)'s "residual clause," Hewitt's conspiracy-based convictions were vacated, requiring complete resentencing

At resentencing, Hewitt argued the First Step Act should apply - reducing his mandatory minimum from 105 years to 25 years for the remaining §924(c) counts

Despite the government eventually agreeing with Hewitt, the district court ruled the Act didn't apply because his original sentence was "not vacated for purposes of the statute," sentencing him to 165 years (105 from stacked §924(c) counts)

Main Argument

Congress drafts statutes against background legal principles - when a sentence is vacated, it's treated as a "nullity ab initio" (as if it never existed)

An invalid pre-Act sentence cannot be considered "a sentence" that "has been imposed" as of the First Step Act's enactment date

The term "sentence" can refer to either the historical fact of pronouncement or the continuing existence of the judgment - context determines meaning

If someone asks whether "a sentence has been imposed" on a person awaiting resentencing after vacatur, the natural answer would be "no" - the same logic applies to the First Step Act language

Amicus Argument

- A "sentence" is defined as "the judgment that a court formally pronounces after finding a criminal defendant guilty" (Black's Law Dictionary)
- Congress chose not to limit the types of sentences that would prevent retroactivity, using the indefinite article "a" which points to a nonspecific object in common usage
- This means any type of sentence imposed for an offense counts toward this determination, even if it was subsequently vacated

Esteras v. United States,

No. 23-7483

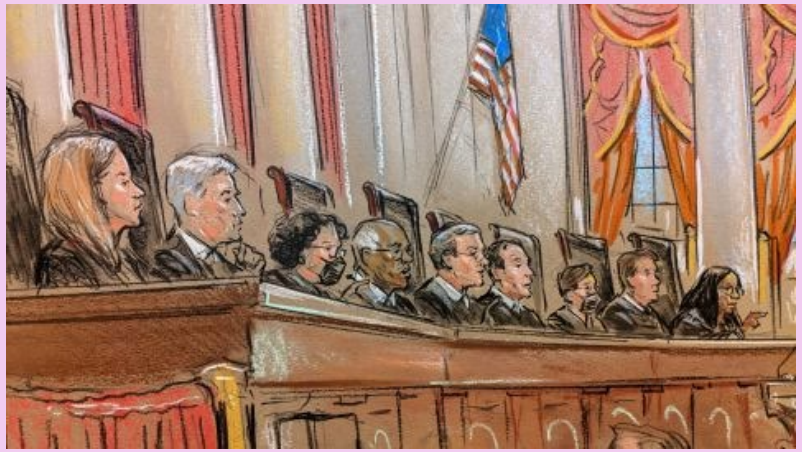
Background and Issue

The supervised-release statute, 18 U.S.C. § 3583(e), lists factors from 18 U.S.C. § 3553(a) for a court to consider when terminating, modifying, or revoking supervised release.

Congress omitted the factors set forth in Section 3553(a)(2)(A)—the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

Question Presented: Whether a district court may rely on the Section 3553(a)(2)(A) factors when revoking supervised release.

Oral Argument Highlights



- **Justice Alito:** Questioned how judges could consider "nature and circumstances of the offense" without considering its seriousness, using a bank robbery example with terrorized employees and a customer suffering a heart attack
- **Justice Gorsuch**: Challenged the petitioner's argument by asking: “In what world does [someone sent back to prison for violating supervised release] think he's not being punished?”
- **Justices Sotomayor and Kavanaugh:** Discussed whether this was a "magic words" requirement, with Kavanaugh suggesting "punish" or "punishment" were the only “reverse magic words“

Oral Argument Highlights
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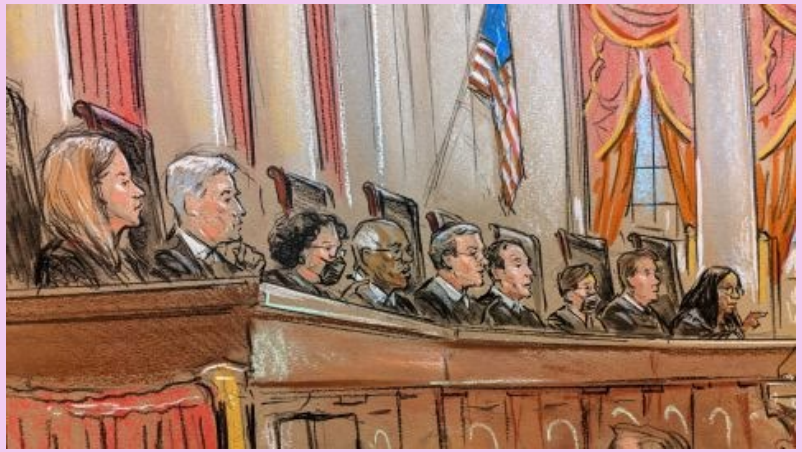
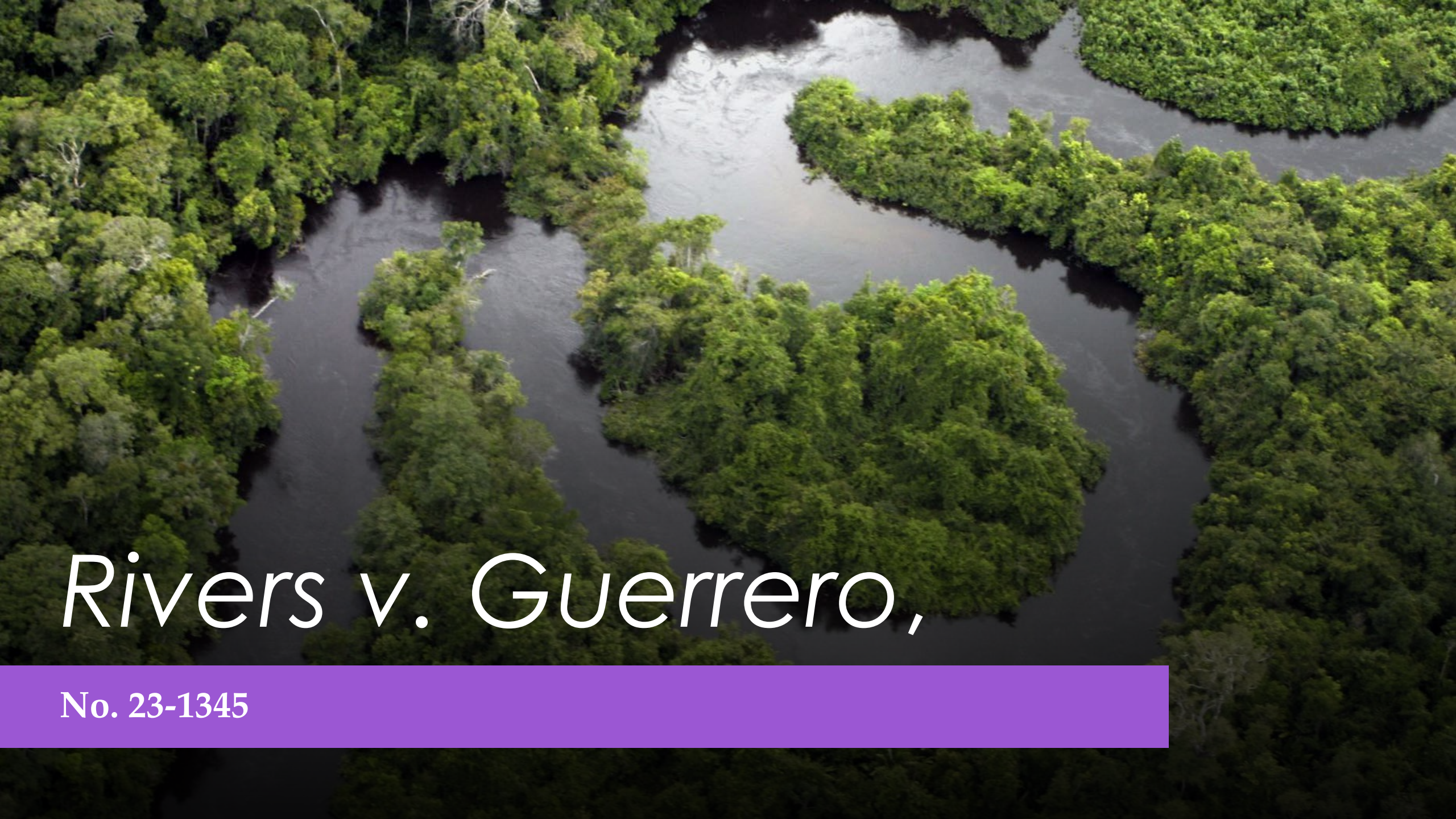


Justice Barrett:

"Ms. Hansford, let me ask you a question that you probably won't like, but it's just a hypothetical. If, hypothetically, the government loses, are there pitfalls that you would want us to take into account in writing an opinion in favor of the Petitioner?"



Rivers v. Guerrero,

No. 23-1345

Background

Under federal habeas law, a prisoner "always gets one chance to bring a federal habeas challenge to his conviction," *Banister v. Davis*, 590 U.S. 504, 509 (2020).

After that, prisoners who file a "second or successive habeas corpus application" must satisfy the stringent gatekeeping requirements of 28 U.S.C. §2244(b)(2).

Issue

Here, petitioner sought to amend his initial habeas application under Federal Rule of Civil Procedure 15 while it was pending on appeal. The Fifth Circuit deemed that filing a second or successive application, subject to §2244(b).

Oral Argument: Justices questioned the procedural viability of amending a habeas petition during an appeal

- **Justice Gorsuch**: “I've never heard of being able to amend my complaint when I'm on appeal”
- **Justice Jackson**: Questioned the petitioner's argument that a habeas claim can be amended during the pendency of an appeal, asking for clarification about when §2244(b) restrictions would apply
- **Justice Sotomayor**: Highlighted that in normal civil litigation, district courts lack inherent power to grant a motion to amend between final judgment and appeal

2025-26 Term

Bowe v. United States,

No. 24-5438

Key Differences Between State and Federal Prisoner Post-Conviction Relief

State prisoners (§2254)

- Must meet two gatekeeping requirements for second/successive petitions:
  - **Previously presented claims are automatically dismissed**
  - New claims must involve retroactive constitutional rules or compelling evidence of innocence

Federal prisoners (§2255)

- Face different requirements:
  - **No automatic dismissal of previously presented claims**
  - Only need to satisfy one of two conditions: new retroactive constitutional rule or newly discovered evidence (with less stringent standards than for state prisoners)

Key Point

Both require three-judge panel authorization before filing, but §2255(h) only borrows §2244's procedural requirements (filing process, 30-day timeline) without incorporating the substantive restrictions on previously presented claims

Question Presented

Key issue: Whether §2244(b)(1)'s bar on previously presented claims applies to federal prisoners' §2255 motions

Secondary issue: Whether §2244(b)(3)(E)'s certiorari-stripping provision applies to §2255 authorization decisions

Main Arguments

- Government concedes error: §2244(b)(1) doesn't apply to §2255 motions by plain text; Congress deliberately omitted similar language from §2255(h)
- Even if certiorari-stripping applied to §2255 motions, it wouldn't cover jurisdictional dismissals like this case

Barrett v. United States,

No. 24-5774

Question Presented

Whether the double jeopardy clause of the Fifth Amendment permits two sentences for an act that violates 18 U.S.C. § 924(c) and (j).

Background

Lora held that the consecutive-sentence requirement in §924(c)(1)(D)(ii) does not apply to sentences imposed under §924(j)

The appeals court used Lora to support the view that §924(c) and §924(j) are separate offenses for which Congress authorized cumulative punishments

Accordingly, the court instructed the district court to impose two separate sentences:

(1) A sentence under §924(c) following its sentencing requirements (including mandatory minimums and consecutive sentencing); and

(2) A separate sentence for the §924(j) conviction without applying §924(c)'s mandatory provisions.

Ellingburg v. United States,

No. 24-482

Background

- Ellingburg committed a bank robbery in December 1995 (while the Victim Witness Protection Act was in effect) and was sentenced in November 1996 to 322 months imprisonment and $7,567.25 in restitution
- Under the VWPA, his restitution liability expired after 20 years (November 2016), but the government continued withdrawing money from his prison account after this date
- After release in 2022, Ellingburg challenged these continued collections, arguing that applying the Mandatory Victims Restitution Act's extended liability period would violate the Ex Post Facto Clause
- The Eighth Circuit ruled restitution is a civil remedy (not penal), so the Ex Post Facto Clause doesn't apply - contradicting a two-judge concurrence noting this conflicts with Paroline v. United States (2014), which held restitution "serves punitive purposes"

Issue

Whether criminal restitution ordered under the Mandatory Victims Restitution Act (MVRA) is penal/punitive for purposes of the Ex Post Facto Clause

The Ex Post Facto analysis involves two steps: (1) determining if a law is penal and (2) assessing if retroactive application disadvantages the offender by altering criminal definitions or increasing punishment

Circuit Split

Four circuits (Third, Fifth, Sixth, Eleventh) have held restitution under MVRA is penal, meaning retroactive application could violate the Ex Post Facto Clause

Two circuits (Seventh and Eighth) hold the opposite view, considering MVRA a civil remedy outside Ex Post Facto protections

Five additional circuits have determined MVRA restitution is penal in other contexts, reinforcing the need for Supreme Court resolution

Potential Next Issue

- Whether the Sixth Amendment reserves to juries the determination of any fact underlying a criminal restitution order.
  - *See Shah v. United States*, No. 24-25.

Villarreal v. Texas,

No. 24-557

Background

- Villarreal was on trial for murder and was the only defense witness during the guilt phase of his trial
- The court declared a 24-hour recess in the middle of Villarreal's testimony due to an administrative commitment
- The judge instructed Villarreal and his attorneys to "pretend that Mr. Villarreal is on the stand" during the recess, effectively limiting their ability to discuss his testimony
- After resuming testimony approximately 24 hours later, Villarreal was convicted of murder and sentenced to 60 years in prison

Issue

- In *Geders v. United States*, 425 U.S. 80 (1976), the Court unanimously held that a trial court abridges the defendant's Sixth Amendment right to counsel by barring the defendant from conferring with his counsel during an overnight recess that takes place in the middle of the defendant's testimony.
- **Question Presented**: Whether a trial court abridges a defendant's Sixth Amendment right to counsel by prohibiting the defendant and his counsel from discussing the defendant's testimony during an overnight recess.

Other Percolating Issues

- Second Amendment
- Fourth Amendment and Technology
- Confrontation and *Crawford*
- Mens Rea/Statutory Interpretation
- Supervised Release/Stat Max

Compassionate Release:

Rutherford v. United States, 120 F.4th 360 (3rd Cir. 2024); *Carter v. United States*, 24-860

See also United States v. Jones, -- F.4th --, 2025 WL 1154856 (6th Cir. April 21, 2025).

- Whether, as four circuits permit but six others prohibit, a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).
  - The First, Fourth, Ninth, And Tenth Circuits Allow Sentencing Courts to Consider Nonretroactive Changes In Law.
  - The Third, Fifth, Sixth, Seventh, Eighth, And D.C. Circuits Forbid Compassionate Release Based Even Partly On Nonretroactive Changes In Law

Section 2113(a) – Bank Robbery

Divisibility

- Applies to one who "by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to a specified financial institution "
- ***United States v. Burwell*, 122 F.4th 984 (D.C. Cir. 2024)**: Held that unarmed bank robbery in violation of 18 U.S.C. § 2113(a) does not categorically qualify as a "crime of violence" under 18 U.S.C. § 924(c), holding that "extortion" is another "means" of committing bank robbery.
- ***United States v. Armstrong*, 122 F.4th 1278, 1287 (11th Cir. 2024)**: "We conclude that § 2113(a) is a divisible statute that prohibits two distinct offenses: bank robbery and bank extortion."

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