

The Supreme Court - June 18, 2018

The Supreme Court of the United States issued five decisions today:

Gill v. Whitford, No. 16-1161: Twelve Democratic voters in Wisconsin brought a complaint claiming that the state redistricting done under Act 43 was a partisan gerrymander. Four of the plaintiffs alleged they lived in State Assembly districts where Democrats had been “cracked” or “packed,” and all the plaintiffs alleged that they and other Democrats had been harmed statewide by the manipulation of district boundaries. The three-member trial court found for the plaintiffs. Today, the Court vacated and remanded on standing grounds, holding that the plaintiffs’ alleged harm is the dilution of their votes – an injury which is district specific – but that the plaintiffs failed to prove the facts of that injury at trial because they rested their arguments solely on the theory of statewide injury to Wisconsin Democrats.

The Court’s decision is available [here](#).

Besinek v. Lamone, No. 17-333: Several Republican voters brought a claim that in 2011 Maryland’s Sixth Congressional District was gerrymandered to retaliate against them for their political views, but they did not move for a preliminary injunction until May 2017, seeking a new district map by the November 2018 election. The District Court denied the preliminary injunction at the end of August 2017, noting that the plaintiffs’ proposed August date for injunctive relief had already passed, and staying the case in light of this Court’s pending gerrymandering decision in *Gill v. Whitford*. Today, the Court affirmed, holding that even assuming that the plaintiffs were likely to succeed on the merits of their claims, the balance of equities and public interest tilted against their request for a preliminary injunction.

The Court’s decision is available [here](#).

Rosales-Mireles v. United States, No. 16-9493: Petitioner Florencio Rosales-Mireles was sentenced by the District Court to 78 months of imprisonment. It was only on appeal that Rosales-Mireles argued that the Sentencing Guidelines range had been incorrectly

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calculated as 77 to 96 months when it should have been 70 to 87 months. The Court of Appeals applied plain error review, and found there to be an error that was plain and affected Rosales-Mireles' substantial rights. But while Supreme Court precedent permitted the court of appeals to exercise its discretion in such circumstances to correct the error if it "seriously affects the fairness, integrity, or public reputation of judicial proceedings," the Fifth Circuit declined to do so, finding reversal only required when such error would "shock the conscience." The Court today reversed, holding that in the ordinary case, as here, the failure to correct a plain Guidelines error that affects a defendant's substantial rights will seriously affect the fairness, integrity, and public reputation of judicial proceedings.

The Court's decision is available [here](#).

Chavez-Meza v. United States, No. 17-5639: Petitioner Adauto Chavez-Meza's drug-related crime had a Sentencing Guidelines range of 135-168 months, and he was sentenced to 135 months. When the Sentencing Commission later lowered the Guidelines range to 108-135 months, the District Court agreed to modify the sentence to 114 months – not 108 as Chavez-Meza requested. Petitioner appealed, claiming the form certifying the judge had "considered" his motion and "tak[en] into account" the §3553(a) sentencing factors and Guidelines policy statement was inadequate explanation. The Tenth Circuit affirmed. Today, the Court in turn also affirmed, holding that under the precedent established in *Rita v. United States*, 551 U.S. 338 (2007) and *Gall v. United States*, 552 U.S. 38 (2007), the explanation was sufficient.

The Court's decision is available [here](#).

Lozman v. Riviera Beach, No. 17-21: Petitioner Fane Lozman was a vocal critic of the City of Riviera Beach, Florida's plan to use its eminent domain powers along the waterfront, often criticizing the City Council during the public-comment period at city council meetings. Lozman contends that the City Council agreed to a plan to "intimidate" him, which was the reason for his arrest at a subsequent city council meeting after he refused to leave the podium. Lozman sued and the jury found for the City, including on a retaliatory arrest claim. The Eleventh Circuit affirmed, finding that the jury had independently found there was probable cause for Lozman's arrest, and the existence of probable cause defeats a First Amendment claim for retaliatory arrest. The Court today vacated and remanded, holding that on the facts here, Lozman did not need to prove the absence of probable cause to maintain a claim of retaliatory arrest against the City.

The Court's decision is available [here](#).

Today, the Supreme Court granted certiorari in five cases:

Lorenzo v. SEC, No. 17-1077: Whether a misstatement claim under the antifraud provisions of the federal securities laws that does not meet the elements set forth in *Janus Capital Group, Inc., v. First Derivative Traders*, 564 U.S. 135 (2011) can be repackaged and pursued as a fraudulent scheme claim.

Apple, Inc. v. Pepper, No. 17-204: Whether consumers may sue for antitrust damages anyone who delivers goods to them, even where they seek damages based on prices set by third parties who would be the immediate victims of the alleged offense.

Sturgeon v. Frost, No. 17-949: Whether the Alaska National Interest Lands Conservation Act prohibits the National Park Service from exercising regulatory control over State, Native Corporation, and private land physically within the boundaries of the National Park System in Alaska.

Garza v. Idaho, No. 17-1026: Does the “presumption of prejudice” recognized in *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), apply where a criminal defendant instructs his trial counsel to file a notice of appeal but trial counsel decides not to do so because the defendant’s plea agreement included an appeal waiver?

Timbs v. Indiana, No. 17-1091: Whether the Eighth Amendment’s Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment.