

The Supreme Court - June 28, 2021

Today, the Supreme Court of the United States issued the following two *per curiam* decisions:

Pakdel v. City and County of San Francisco, No. 20-1212: Petitioners are partial owners of a multiunit residential building in San Francisco that they originally purchased as part of a tenancy-in-common. The petitioners and other owners desired to convert their tenancy-in-common into a more traditional condominium arrangement, which the City of San Francisco permitted upon the condition that non-occupant owners who rented out their units agreed to offer their tenants a lifetime lease. Petitioners agreed to offer a lifetime lease to their tenant, and the city approved the conversion. Months later, however, the petitioners requested that the city excuse them from the lifetime lease or compensate them for the same. The city refused, and notified petitioners that failure to execute the lifetime lease could result in an enforcement action. The petitioners then filed a §1983 action alleging that the lifetime-lease requirement was an unconstitutional regulatory taking. The Ninth Circuit affirmed the District Court's dismissal on the basis that the takings claim was unripe because the petitioners never obtained a truly "final" decision, since their request for an exemption was made belatedly without timely seeking one through the prescribed procedures. Today, in a *per curiam* opinion, the Court unanimously vacated and remanded, holding that while federal court review of a regulatory takings claim requires a "final" decision by the government, that requirement had been met here, and the Ninth Circuit's contrary finding was at odds with the Court's settled rule in *Knick v. Township of Scott*, 588 U.S. ___ (2019), that exhaustion of state remedies is *not* a prerequisite to an action under §1983.

View the Court's [decision](#).

Lombardo v. St. Louis, No. 20-391: In 2015, Nicholas Gilbert was arrested by St. Louis police for trespassing and failure to appear for a traffic ticket and placed in a holding cell. When officers saw Gilbert apparently trying to hang himself, three officers entered the cell. After Gilbert kicked and struggled with them, calls were made for additional

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assistance, resulting in six officers in the cell, Gilbert being handcuffed and placed in leg irons, and then moved to a prone position with at least one officer applying pressure to Gilbert's back and torso. Gilbert told officers, "It hurts. Stop," and after 15 minutes in this position, Gilbert's breathing became abnormal and he stopped struggling. Resuscitation efforts were attempted, and after an ambulance transported Gilbert to the hospital, he was pronounced dead. Gilbert's parents brought an excessive force claim against the officers under §1983. The District Court granted summary judgment to the officers on the basis that they had not violated a clearly established right at the time of the incident. The Eighth Circuit affirmed, but on the separate ground that the officers had not applied unconstitutionally excessive force. Although the Eighth Circuit cited to the fact-specific factors courts are to consider in determining whether an officers actions were "objectively reasonable" under *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015), the Court cited Eighth Circuit precedent for the proposition that "use of a prone restraint is not objectively unreasonable when a detainee actively resists officer directives and efforts to subdue the detainee," and characterized distinguishing facts as "insignificant." The Court today, in a *per curiam* opinion, held that it was unclear whether the Eighth Circuit had adopted a *per se* constitutional rule, which would contravene the careful, context-specific analysis required by the Court's excessive force precedent, and vacated and remanded to give the Eighth Circuit the opportunity to clearly employ the proper fact-specific analysis in the first instance. Justice Alito dissented, joined by Justices Thomas and Gorsuch, on the basis that the Court should not have issued a summary disposition, but instead should have had the case fully briefed and argued to the Court.

View the Court's [decision](#).

Today, the Supreme Court of the United States granted certiorari in two cases:

Austin, Texas v. Reagan National Advertising, No. 20-1029: This case addressing the City of Austin's regulation of digitized signs presents the question of whether the city code's distinction between on- and off-premise signs is a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*, 576 U.S. 155 (2015)?

Patel v. Garland, No. 20-979: Whether 8 U.S.C. §1252(a)(2)(B)(i) precludes judicial review of non-discretionary determinations underlying the determination of the Board of Immigration Appeals that petitioner is inadmissible to the United States for permanent residence and therefore ineligible for adjustment of status under 8 U.S.C. §1255(i).