The Supreme Court - March 22, 2018

The Supreme Court of the United States issued two decisions yesterday:

Marinello v. United States, No. 16-1144: Petitioner Carlo Marinello was indicted in 2012 for violating criminal tax laws following investigations between 2004-2009 into Marinello's tax activities that the IRS opened, closed, and then reopened. Marinello was charged with violating the Internal Revenue Code's "Omnibus Clause," which forbids "corruptly or by force," to "endeavor[r] to obstruct or imped[e] the due administration of this title." 26 U.S.C. §7212(a). The Government claimed Marinello had engaged in at least one of eight different activities, including failing to maintain corporate books, failing to provide his tax accountant with complete and accurate data, and others. Marinello was convicted without the District Court instructing the jury to find that Marinello knew he was under investigation and that he intended to corruptly interfere with that investigation. Marinello appealed to the Second Circuit, arguing that the Government needed to show he had interfered with a "pending IRS proceeding," like a particular investigation. The Second Circuit rejected that argument. Yesterday, the Court reversed, holding that "due administration of [the Tax Code]" does not cover routine administrative procedures that are near-universally applied to all taxpayers, such as the ordinary processing of income tax returns, but instead refers to specific interference with targeted governmental tax-related proceedings, such as a particular investigation or audit.

The Court's decision is available here.

Ayestas v. Davis, No. 16-6795: Petitioner Carlos Ayestas was convicted of murder and sentenced to death in a Texas court. For the first time on federal habeas review, Ayestas argued ineffective assistance of counsel at trial because his attorneys overlooked evidence of mitigating circumstances that could have impacted his death sentence. Ayestas filed a motion under 18 U.S.C. §3599(f) for funding to investigate his trial counsel's and state habeas counsel's ineffective assistance, under which funding may be authorized "[u]pon a finding that investigative, expert, or other services are reasonably

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necessary for the representation of the defendant.” The District Court denied the request, applying a “substantial need” standard, which required in part that the funding request be supplemented with a viable constitutional claim that is not procedurally barred. The Fifth Circuit refused to issue a certificate of appealability. The Court yesterday vacated and remanded, holding that the interpretation of §3599(f) that was applied is not a permissible reading of the “reasonably necessary” standard.

The Court's decision is available here.