

The Supreme Court - March 24, 2020

Yesterday, the Supreme Court of the United States issued the following five opinions:

Comcast Corp. v. National Assn. of African American-Owned Media, No. 18-1171:

An African American-owned television-network operator, Entertainment Studios Network (“ESN”), unsuccessfully tried to have Comcast carry its channels. Comcast refused, citing lack of demand for ESN’s programming, bandwidth constraints, and its preference for news and sports programming ESN did not offer. ESN and the National Association of African American-Owned Media brought suit alleging a violation of 42 U.S.C. §1981(a), which guarantees “[a]ll persons . . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” The district court granted Comcast’s motion to dismiss, holding that ESN’s pleadings failed to plausibly show that, but for racial animus, Comcast would have contracted with ESN. The Ninth Circuit reversed, holding that the plaintiff must only plead facts plausibly showing that race played “some role” in the defendant’s decision-making. The Court vacated and remanded, holding that a plaintiff bringing a claim under §1981 must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right. Justice Gorsuch authored the Court’s opinion. Justice Ginsburg filed an opinion concurring in part and concurring in the judgment.

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

Allen v. Cooper, No. 18-877: Congress passed two laws decades ago that sought to remove States’ sovereign immunity from patent and copyright infringement suits. The Court in *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U. S. 627 (1999), held that provision in the patent statute lacked a valid constitutional basis, but did not address the copyright law. Here, that issue reached the Court after petitioner Frederick L. Allen brought suit against the State of North Carolina for allegedly posting and publishing videos and photos Allen had taken of a shipwreck without his permission. North Carolina moved to dismiss on sovereign immunity grounds, but Allen opposed citing the abrogation provision in the Copyright Remedy Clarification Act of

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1990. The district court found for Allen, acknowledging *Florida Prepaid*, but holding that decision only precluded Congress from using its Article I powers to take away a State's sovereign immunity, and did not foreclose Congress's use of Section 5 of the Fourteenth Amendment to do the same. The Fourth Circuit reversed. The Court affirmed, holding that *Florida Prepaid* compels that Congress lacked authority to abrogate the States' sovereign immunity from copyright infringement suits in the Copyright Remedy Clarification Act of 1990, under either Article I or Section 5 of the Fourteenth Amendment. Justice Kagan delivered the Court's opinion, in which Justices Thomas, Breyer, and Ginsburg concurred.

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

Guerrero-Lasprilla v. Barr, No. 18-776: This case addresses the scope of appellate review in immigration removal proceedings. While the Immigration and Nationality Act provides for judicial review of a final Government order directing the removal of an alien from this country, 8 U.S.C. §152(a), where the removal rests upon the alien having committed certain crimes, §1252(a)(2)(C), the Limited Review Provision limits the scope of review to only "constitutional claims or questions of law," §1252(a)(2)(D). Here, petitioners Pedro Pablo Guerrero-Lasprilla and Ruben Ovalles asked the Board of Immigration Appeals to reopen their removal proceedings, asking that the 90-day time limit for them to do so that had already expired be equitably tolled under Fifth Circuit precedent. The Board denied the requests, ruling the petitioners had failed to demonstrate the required due diligence. The Fifth Circuit, in turn, denied their petition for review, concluding the due diligence issue was a factual question over which the court lacked jurisdiction under the Limited Review Provision. The Court vacated and remanded, holding that the phrase "questions of law" in the Limited Review Provision includes courts' jurisdiction to review the application of a legal standard to undisputed or established facts. Justice Breyer authored the Court's opinion. Justice Thomas and Justice Alito dissented.

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

Kahler v. Kansas, No. 18-6135: Kansas, unlike many other States, will not wholly exonerate a defendant on the grounds that his mental illness prevented him from recognizing his criminal act as morally wrong. Instead, Kansas permits a defendant to invoke mental illness to show he lacked the requisite intent for a crime, or following conviction to justify reduced imprisonment or commitment to a mental health facility. Petitioner James Kahler was charged and convicted of capital murder over his objections that allowing the conviction of a mentally ill person who cannot tell the difference between right and wrong is unconstitutional. The Kansas Supreme Court likewise rejected Kahler's argument. The Court affirmed, holding that the Constitution's Due Process Clause does not compel the acquittal of any defendant who, because of mental illness, could not tell right from wrong when committing his crime. Justice Kagan delivered the Court's opinion. Justice Breyer dissented, joined by Justice Ginsburg and Justice Sotomayor.

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

Davis v. United States, No. 19-5421: Petitioner Charles Davis argued for the first time in his appeal to the Fifth Circuit that the District Court had erred in ordering his federal criminal sentence to run consecutively rather than concurrently to any state sentence that might be imposed in pending state charges. While arguments not raised in the district court are generally reviewable for plain error under Federal Rule of Criminal Procedure 52(b), the Fifth Circuit refused to entertain the argument at all under Fifth Circuit precedent holding that “[q]uestions of fact capable of resolution by the district court upon proper objection at sentencing can never constitute plain error.” The Court vacated and remanded in a *per curiam* opinion, holding that there is no legal basis for the Fifth Circuit’s practice of declining to review certain unpreserved factual arguments for plain error.

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