

The Supreme Court - May 24, 2021

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

Guam v. United States, No. 20-382: The Territory of Guam and the United States have been involved in a long-running dispute over clean-up-related costs regarding the Ordot Dump, which was first constructed and used by the Navy, and later ceded to Guam which used the dump as a public landfill. The Environmental Protection Agency (“EPA”) later brought suit against Guam related to the dump under the Clean Water Act, which resulted in a 2004 consent decree under which Guam paid a civil penalty and agreed to close and cover the dump. Over a decade later, Guam sued the United States under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), for claims of cost-recovery under §107(a) and for contribution under §113(f). The D.C. Circuit found that Guam had possessed a CERCLA contribution claim based on the 2004 consent decree, but that the claim was time-barred. Moreover, the D.C. Circuit held that a party eligible to pursue contribution under §113(f) cannot assert a cost-recovery claim under §107(a), and thus found that Guam had no available remedy. Guam, in an effort to resuscitate its §107(a) claim, reversed course and contended that it never possessed a CERCLA contribution claim, because a claim under §113(f) must seek contribution related to a CERCLA-specific liability, rather than one under a broader array of settlements involving environmental liability. Today, the Court reversed, agreeing with Guam and holding that CERCLA contribution requires resolution of a CERCLA-specific liability. Justice Thomas issued the Court’s unanimous opinion.

View the Court’s [decision](#).

United States v. Palomar-Santiago, No. 20-437: Respondent Refugio Palomar-Santiago was removed from the United States based on his felony conviction for driving under the influence (“DUI”). After his removal, the Court held in another case that offenses like the DUI conviction are not a removable offense. When Palomar-Santiago later returned to the United States and was indicted on one count of unlawful reentry in violation of 8 U.S.C. §1326(a), he defended against the charge by contending that his

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earlier removal order was invalid based upon the Court's subsequent precedent. Section 1326(d) limits the circumstances under which a defendant may bring such a collateral attack to the underlying deportation order to when (1) all administrative remedies were exhausted; (2) the deportation proceedings improperly deprived the individual of the opportunity for judicial review; and 3) the entry of the deportation order was fundamentally unfair. The District Court and Ninth Circuit found for Palomar-Santiago, concluding that the first two requirements of §1326(d) were excused because Palomar-Santiago's felony conviction had not made him removable. The Court today reversed, holding that each of the three statutory requirements in §1326(d) for bringing a collateral attack on a prior deportation order are mandatory. Justice Sotomayor issued the Court's unanimous opinion.

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