

The Supreme Court Update - June 16, 2023

by Brock Huebner

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

United States ex rel. Polansky v. Executive Health Resources, Inc., No. 21-1052:

This case concerned the scope of the government's authority to dismiss a claim under the False Claims Act (FCA). The FCA allows private parties (known as relators) to sue on the government's behalf (known as *qui tam* actions) subject to various restrictions. In this case, a relator filed a *qui tam* action claiming Executive Health Resources helped hospitals overbill Medicare. The government declined to intervene, and the case proceeded for years. Eventually, the government filed a motion under 31 U.S.C. § 3730(c)(2)(A), which provides that "[t]he Government may dismiss the action notwithstanding the objections of the [relator]," so long as the relator received notice and an opportunity for a hearing. The district court granted the request and dismissed the case, and the Third Circuit affirmed. Today, in a 8-1 decision authored by Justice Kagan, the Court held "that the Government may seek dismissal of an FCA action over a relator's objection so long as it intervened sometime in the litigation, whether at the outset or afterward" and also held "that in handling such a motion, district courts should apply the rule generally governing voluntary dismissal of suits: Federal Rule of Civil Procedure 41(a)." Justice Thomas filed a solo dissent, noting, among other things, "substantial arguments that the *qui tam* device is inconsistent with Article II and that private relators may not represent the interests of the United States in litigation." Justice Kavanaugh filed a very short concurrence (joined by Justice Barrett), joining the Court's opinion in full but noting agreement with Justice Thomas that there are "substantial arguments that the *qui tam* device is inconsistent with Article II."

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

Lora v. United States, No. 22-49: This case addressed the extent of trial court judges' discretion in imposing consecutive or concurrent prison sentences under federal criminal sentencing laws. Typically, judges have discretion on whether multiple prison sentences can be served concurrently, but 18 U.S.C. § 924(c) creates an exception that mandates

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consecutive prison terms for offenses under that statute. In this case, the trial court judge sentenced an offender to consecutive sentences after determining that offenses under § 924(j) are also governed by the § 924(c) exception. Today, in a 9-0 decision authored by Justice Jackson, the Court disagreed and vacated the consecutive sentences. The Court held that neither the text nor structure of the law incorporated § 924(c) into § 924(j), and accordingly federal trial courts retain discretion on whether to allow concurrent sentences under § 924(j).

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