

The Supreme Court Update - March 20, 2024

by Ian Blodger, Jessica M. Leano, and Brock Huebner

On March 19, 2024, the Supreme Court of the United States issued two decisions:

FBI v. Fikre, 22-1178: This case addresses when the “voluntary cessation of a challenged practice” renders a lawsuit moot. Yonas Fikre, a U.S. citizen, alleged he was unlawfully placed on the federal No Fly List after he refused to serve as an FBI informant against members of his religious community. Fikre sued the U.S. government, seeking relief including a declaration that the government violated his rights and an injunction to prevent the government from keeping him on the No Fly List. The government subsequently removed Fikre from the No Fly List and argued Fikre’s lawsuit should be dismissed as moot. The district court agreed, but the Ninth Circuit reversed and determined that neither the removal of Fikre from the No Fly List, nor the government’s declaration that Fikre would not be placed back on the list “based on the currently available information” was sufficient to demonstrate mootness. Today, in a 9-0 opinion authored by Justice Gorsuch, the Court affirmed the Ninth Circuit and held that the government’s actions and declaration fall short of the “formidable burden” to demonstrate it “cannot reasonably be expected to do again in the future what it is alleged to have done in the past.” Justice Alito (joined by Justice Kavanaugh) issued a short concurrence clarifying that the disclosure of classified information is not required to show mootness.

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

Wilkinson v. Garland, No. 22-666: This case concerns the reviewability of an Immigration Judge’s (“IJ”) determination for whether a non-permanent resident’s removal “would result in exceptional and extremely unusual hardship” to an immediate family member who is a U.S. citizen or lawful permanent resident under 8 U.S.C. § 1229b(b)(1) (D). Situ Kamu Wilkinson applied for cancellation of his removal, arguing it would result in “exceptional and extremely unusual hardship” to his son, a U.S. citizen who suffers from a serious medical condition and relies on him for emotional and financial support. An IJ held that Wilkinson did not satisfy the “exceptional and extremely unusual hardship” standard, and the Board of Immigration Appeals affirmed. The Third Circuit

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dismissed Wilkinson's petition for review, holding that because an IJ's hardship determination is "discretionary," it lacks jurisdiction to review it. Recognizing that the Courts of Appeal are split on this issue, the Court, in a decision authored by Justice Sotomayor, held that the application of the "exceptional and extremely unusual hardship" standard to a given set of facts is reviewable as a question of law under 8 U.S.C. § 1252(a)(2)(D). The Court reversed the Third Circuit's decision on jurisdiction, vacated the judgment, and remanded for further proceedings consistent with its decision. Justice Jackson concurred in the judgement. Justice Roberts dissented and joined in a dissent filed by Justice Alito (also joined by Justice Thomas).

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