

The Supreme Court on Immigration

By Jerry Grzeca and John Sesini
October 2012



October began the latest term of the Supreme Court of the United States (SCOTUS). Last year saw one of the highest profile immigration cases from the Supreme Court in recent memory. And while this year may not offer as spectacular a show, the Court will undoubtedly leave its mark on immigration laws before its term ends next summer.

Last year, SCOTUS issued important decisions touching on many aspects of immigration law. The highest profile case was *Arizona vs. United States*, in which the Court struck down several important provisions of Arizona's harsh 2010 immigration bill. But that was not all. In total, the Court ruled on five immigration cases, three of which, including *Arizona*, reaffirmed or strengthened immigrant rights.

In one of the first cases of this term, the Court heard an argument about an alleged drug trafficking offense. In *Moncrieffe vs. Holder*, a young Jamaican man, a permanent resident since age three, was convicted of possession of marijuana with intent to distribute in Georgia. The government alleged that this offense was an "aggravated felony." Not necessarily, he argued. If, hypothetically, he had only been sharing a small amount of marijuana with a friend, the offense would have been a federal misdemeanor. Therefore, the mere fact that he was convicted of that offense did not mean that he was an aggravated felon.

The Courts below disagreed. They held that Mr. Moncrieffe could avoid an aggravated felony charge only if he could prove that he had *actually possessed* a small amount of marijuana and had intended to share it with friends.

The argument seems hyper-technical, but it has broad practical implications. Under the current rule, immigrants like Mr. Moncrieffe have to prove their innocence to prevent deportation: a difficult task under the best circumstances. But these immigrants are also subject to mandatory detention, so they must prove their case from behind bars, and many do not have attorneys.

Next, the Court will decide a case that has spun off of its well-known 2010 *Padilla* case. In *Padilla*, the Court ruled that immigrants have a right to be informed of the immigration consequences of a criminal conviction before they plead guilty to that offense. Many Courts around the country ruled that this right only applied in future guilty pleas, not to ones that had been entered into before the Court's 2010 *Padilla* decision. In *Chaidez vs. US* the Court will have to decide if the rights in *Padilla* also apply to guilty pleas which had been entered into before 2010.

As of today, those are the only immigration cases scheduled to be heard by SCOTUS. But the years docket is not fully set. One of the issues that may yet come up involves the marriage of same-sex couples. Some court watchers believe that a decision may be made this year that would dramatically affect the rights of same-sex couples. An expansion of protections could have a great impact on immigration laws, which currently recognize only those marriages between a man and a woman. A decision on whether or not to hear such a case will be made (probably not coincidentally) after this November's elections.

Many questions remain, but for information or updates about the Supreme Court's 2012 term, or for information about any other immigration matter, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.

Milwaukee: 414-342-3000
Madison: 608-234-5004
Green Bay: 888-471-1400

GRZECA LAW GROUP, S.C.
1434 West State Street
Milwaukee, WI 53233

www.grzecalaw.com
clients@grzecalaw.com