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*United States v. Sineneng-Smith
Opinion Summary and What Community Partners Need to Know*

Summary:

- **What is this case about?** The case is about an existing federal statute that makes it a felony to “encourage or induce” individuals to remain in the U.S. unlawfully. The Ninth Circuit had found that the statute was unconstitutional because it was overbroad and criminalized speech protected by the First Amendment. The United States appealed that decision to the Supreme Court of the United States (“Supreme Court”).
- **How does this case impact Community Partners?** Asian Americans Advancing Justice-AAJC (“Advancing Justice-AAJC”), joined by 33 organizations, [filed an amicus curiae brief \(which is Latin for “friend of the court”\)](#) before the Supreme Court to explain concerns that this statutory provision could chill the everyday work of community-based, advocacy, and social services organizations that often assist undocumented individuals, their families, and their communities. Examples of this type of everyday work include Know Your Rights workshops, providing health care services and emergency funds for undocumented immigrants and families, and social media posts supporting pro-immigrant legislation (see below for more details about the brief).
- **What was the Supreme Court’s decision?** The Supreme Court’s May 7, 2020 decision did not address whether or not the existing federal statute was overbroad and in violation of the First Amendment. Instead, the Supreme Court found that it was improper for the Ninth Circuit to raise, on its own, the question of whether or not this statute was overbroad; this is because the parties in the case had not raised the issue in the lower courts, themselves.
- **What does this decision mean for Community Partners?** The concerns with this statute that Advancing Justice-AAJC and Community Partners raised in its amicus brief remain. The Supreme Court’s opinion did not address the validity of the statute, and it remains on the books. The issue of whether the statute is overbroad and in violation of the First Amendment can still be challenged in future cases. And the Supreme Court’s opinion (discussed in detail below) has language suggesting how it may limit the statute’s application in the future.

Advancing Justice-AAJC’s Amicus Brief

- Advancing Justice-AAJC joined by 33 organizations, [filed an amicus brief before](#) the Supreme Court to address the potential of the statutory provision to chill the everyday

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work of community-based, advocacy, and social services organizations that often assist undocumented individuals, their families, and their communities.

- Advancing Justice-AAJC argued that a statutory provision that could criminalize routine advocacy and services to immigrants is:
 - Overbroad and violates the First Amendment; and
 - That the statutory provision is so vague such that it does not provide fair notice of what speech or conduct constitutes a crime.

Breaking Down the Supreme Court Opinion

- The Defendant-Appellee in this case, Evelyn Sineneng-Smith, was charged with, among other things, violating the statute at issue, which criminalized activity that “encouraged or induced” individuals to enter or remain in the U.S. unlawfully.
- After trial, Defendant Sineneng-Smith was convicted of encouraging and inducing her clients to remain in the United States unlawfully.
- She appealed that decision to the Ninth Circuit but did not specifically raise the argument that the statutory provision was overbroad. *See below for a more detailed discussion of overbreadth.*
- The Supreme Court, in an unanimous opinion by Justice Ginsburg, therefore found that “No extraordinary circumstances justified the [Ninth Circuit’s] takeover of the appeal,” when it ordered briefings from friend-of-the-court organizations to address constitutional issues that were raised neither by Defendant-Appellee Sineneng-Smith nor the Government.
- Rather than addressing the key issue of overbreadth, the Court ruled on procedural grounds and set aside the judgment of the Ninth Circuit.
- The Supreme Court sent the case back to the Ninth Circuit, instructing it to address the arguments that look like the ones initially raised by the parties themselves. Those arguments were about applying the statute to Sineneng-Smith’s actions, rather than the overbreadth of the statute itself.
- In a footnote, Justice Ginsburg’s opinion noted that “[i]n the Government’s view, §1324(a)(1)(A)(iv) should be construed to prohibit only speech facilitating or soliciting illegal activity, thus falling within the exception to the First Amendment for speech integral to criminal conduct.”
 - While the Court did not endorse or provide any opinion on the Government’s view of the statutory provision in any way, an argument could be made that the Government is now limited to this stated view – that only speech “integral to criminal conduct” can be prosecuted under this statutory provision.
 - Alternatively, this footnote may indicate how some Justices may interpret and limit the statute in the future. And as such, judges reviewing future challenges to this statute may be influenced by this footnote and limit the statute’s application to “speech facilitating or soliciting illegal activity.”

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What does it mean for a statute to be overbroad?

- A statute can be overbroad when there are many possible ways to apply the statute to restrict speech that is protected under the First Amendment.
 - While the First Amendment means that the government cannot restrict someone’s expression based on its content, ideas, or message, there are certain types of speech that are not protected under the First Amendment (such as fraud).
 - If a law can be applied to limit speech that is protected by the First Amendment’s right to free expression in a number of ways, that statute reaches too far and violates the First Amendment.
- Here, the Ninth Circuit considered whether the statutory provision itself was unconstitutional on its face, rather than deciding whether applying the statutory provision to Defendant-Appellee Sineneng-Smith’s conduct violated her First Amendment rights.
 - The Ninth Circuit found that the statutory provision itself reached too far and restricted many possible types of protected speech.

Advancing Justice-AAJC remains committed in the fight to protect the rights of immigrant rights advocates, service providers, and community-based organizations and the immigrant communities they serve. Do not hesitate to contact us with your questions and/or concerns.