***Digital Realty Trust, Inc. v. Somers***

PETITIONER: Digital Realty Trust, Inc.

RESPONDENT: Paul Somers

DOCKET NO. 16-1276

LOWER COURT: United States Court of Appeals for the Ninth Circuit

GRANTED: Jun 26, 2017

**FACTS**

Paul Somers worked as Vice President of Digital Realty Trust from 2010 to 2014. According to his complaint, Somers filed several reports to senior management regarding possible securities law violations by the company, after which reports the company fired him. He did not report his concerns to the Securities and Exchange Commission (SEC) before he was terminated. Somers then sued Digital Realty, alleging violations of state and federal laws, including Section 21F of the Exchange Act, which includes the anti-retaliation protections created by the Dodd-Frank Act. Digital Realty sought to dismiss the Section 21F claim on the ground that, because Somers did not actually report the possible violations to the SEC, he was not a "whistleblower" as defined in the Act and thus not entitled to protection under its provisions.

The Fifth Circuit in 2013 had strictly applied the Act's definition of "whistleblower" to the anti-retaliation provision, while the Second Circuit, finding the statute itself ambiguous and applying Chevron deference to the SEC's reasonable interpretation of it, had held in 2015 that the provision extends to all those who make disclosures of suspected violations, regardless of whether the disclosures are made internally or to the SEC. The district court in this case followed the Second Circuit's approach and denied Digital Realty's motion to dismiss. The Ninth Circuit affirmed the district court's decision.

**Legal issue**

Does the anti-retaliation provision for "whistleblowers" in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 extend protection to individuals who have not reported alleged misconduct to the Securities and Exchange Commission and thus fall outside the act’s definition of "whistleblower"?

***Trump v. International Refugee Assistance Project***

PETITIONER Donald J. Trump

RESPONDENT International Refugee Assistance Project

DOCKET NO. 16-1436

LOWER COURT United States Court of Appeals for the Fourth Circuit

GRANTED: Jun 26, 2017

ORAL ARGUMENT SET: Oct 10, 2017

**Facts of the case**

On January 27, 2017, President Donald Trump signed Executive Order No. 13,769 (EO-1), which, among other things, suspended entry for 90 days of foreign nationals from seven countries identified by Congress or the Executive as presenting heightened terrorism-related risks. EO-1 was immediately challenged in federal district court, and the judge entered a nationwide temporary restraining order enjoining enforcement of several of its provisions. A panel of the Ninth Circuit denied the government's emergency motion to stay the order pending appeal. Rather than continuing to litigate the matter, the government announced that it would revoke that order and issue a new one.

On March 9, 2017, President Trump issued Executive Order No. 13,780 (EO-2). Section 2(c) of EO-2 directs that entry of nationals from six of the seven countries designated in EO-1 be suspended for 90 days from the effective date of the order, citing a need for time to establish adequate standards to prevent infiltration by foreign terrorists. Section 6(a) directs that applications for refugee status and travel of refugees into the United States under the United States Refugee Admissions Program (USRAP) be suspended for 120 days from the effective date "to review the adequacy of USRAP application and adjudication procedures." Section 6(b) suspends the entry of any individual under USRAP once 50,000 refugees have entered the United States in fiscal year 2017. The effective date of the order is March 16, 2017.

The case before the Court represents two consolidated cases. In the first, federal district court in Maryland issued a nationwide preliminary injunction barring the government from enforcing Section 2(c) against any foreign national seeking entry to the United States. In the second, a federal district court in Hawaii issued a nationwide preliminary injunction barring enforcement of all of Section 2, as well as Section 6. The Fourth Circuit, sitting en banc, largely upheld the the lower court's injunction as to Section 2(c), finding that one of the plaintiffs was likely to succeed on the merits of his Establishment Clause claim. The Ninth Circuit shortly thereafter largely upheld the Hawaii district court's injunction, finding that the key provisions of EO-2 likely exceeded the president's authority under the Immigration and Nationality Act.

On June 14, just before Section 2(c) of EO-2 was by its terms set to expire, President Trump issued a memorandum to Executive Branch officials declaring the effective date of each enjoined provision of EO–2 to be the date on which the injunctions in these cases “are lifted or stayed with respect to that provision." The government sought review in both cases, making arguments both on the merits of the cases and on procedural issues.

**LEGAL ISSUES**

Are respondents' challenges to the temporary suspension of entry of aliens abroad under Section 2(c) of Executive Order No. 13,780 justiciable?

Does Section 2(c)'s temporary suspension of entry violate the Establishment Clause of the First Amendment?

Is the global injunction, which was the relief granted based on alleged injury to an individual plaintiff, impermissibly overbroad?

**Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission**

PETITIONER: Masterpiece Cakeshop, Ltd.; and Jack C. Phillips

RESPONDENT: Colorado Civil Rights Commission; Charlie Craig; and David Mullins

DOCKET NO. 16-111

LOWER COURT: Colorado State appellate court

GRANTED: Jun 26, 2017

**Facts of the case**

In July 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop in Lakewood, CO, and requested that its owner, Jack C. Phillips, design and create a cake for their wedding. Phillips declined to do so on the grounds that he does not create wedding cakes for same-sex weddings because of his religious beliefs. Phillips believes that decorating cakes is a form of art through which he can honor God and that it would displease God to create cakes for same-sex marriages.

Craig and Mullins filed charges of discrimination with the Colorado Civil Rights Division, alleging discrimination based on sexual orientation under the Colorado Anti-Discrimination Act (CADA), §§ 24-34-301 to -804, C.R.S. 2014. After the Division issued a notice of determination finding probable cause, Craig and Mullins filed a formal complaint with the Office of Administrative Courts alleging that Masterpiece discriminated against them in a place of public accommodation in violation of CADA.

The Administrative Law Judge issued a written order finding in favor of Craig and Mullins, which was affirmed by the Colorado Civil Rights Commission. On appeal, the Colorado Court of Appeals subsequently affirmed the Commission's ruling.

**Question**

Does the application of Colorado's public accommodations law to compel a cake maker to design and make a cake that violates his sincerely held religious beliefs about same-sex marriage violate the Free Speech or Free Exercise Clauses of the First Amendment?