

Supreme Court faces cases on a cross, juveniles

Patricia Zapor Catholic News Service | Oct. 5, 2009



U.S. Supreme Court Justice Sonia Sotomayor talks with Washington Archbishop Donald W. Wuerl following the 56th annual Red Mass at the Cathedral of St. Matthew the Apostle in Washington Oct. 4.

WASHINGTON -- The Supreme Court opened its 2009 term Oct. 5 with a new justice and cases dealing with at least one religious rights issue -- about a cross on a war memorial in a federal preserve -- and other cases about the circumstances leading to deportation, about an immigrant in detention being denied medical care and several dealing with the sentencing of convicted criminals.

The court also agreed to take another case about gun rights, following last term's ruling that overturned a Washington municipal ordinance prohibiting gun ownership.

Among the court's first actions [was to decline to consider](#) [1] an appeal by the Diocese of Bridgeport, Conn., concerning the release of thousands of pages of documents from settled lawsuits over charges of sexual abuse by priests. In a lengthy list of cases the court declined to accept was the diocese's request that the court reverse the Connecticut Supreme Court's May order that the diocese release some of the documents to four daily newspapers.

Since 2002, The New York Times, the Hartford Courant, the Boston Globe and The Washington Post have sought access to more than 12,000 pages of depositions, exhibits and legal arguments in 23 lawsuits involving six priests from the Bridgeport Diocese.

Also among the 90 pages of case lists the court declined to take were those asking the court to require the state of Illinois to offer "Choose Life" license plates; challenging the way the death penalty is imposed in Louisiana and Illinois; and challenging Florida's requirement for schoolchildren to participate in the Pledge of Allegiance in class.

Justice Sonia Sotomayor's first day on the court actually came in September, when the justices reheard an election campaign spending law case carried over from the 2008 term. But her first day during a regular session Oct. 5 started with cases dealing with a question over attorney-client privilege and with the interrogation of a criminal suspect.

Sotomayor was confirmed to the court this summer, replacing retired Justice David Souter. The New York native is the sixth Catholic currently sitting on the nine-member court. The child of parents who moved from Puerto Rico, she's also the first Hispanic and just the third woman justice in the history of the high court.

In the first week of the new term, the court will hear Oct. 7 *Salazar v. Buono*, which challenges the 9th U.S. Circuit Court of Appeals decision ordering the federal government to no longer permit a cross, erected as a war memorial in 1934, to be displayed on public land.

The Veterans of Foreign Wars put a cross on a rock in an isolated part of the 1.6 million-acre Mojave National Preserve in San Bernardino County, Calif., as a memorial to those killed in World War I. The monument, which has been replaced several times by private organizations or individuals, is quite remote, visible only from a little-used side road.

But a retired National Park Service employee, Frank Buono, challenged the cross's placement on federal land. Lower courts agreed with his argument that its presence in the reserve gives the inappropriate impression of government endorsement of a religious message. The cross remains on the rock but has been covered since the court ruling.

The case has attracted amicus, or friend of the court, briefs weighing in on one side or the other from dozens of groups representing religious, First Amendment, civil rights and veterans organizations, as well as those representing atheists, military and some police organizations.

An act of Congress in response to Buono's lawsuit and other challenges provided for the land where the cross stands to be transferred to private ownership in a swap. The lower courts stopped that exchange from taking place, arguing that a "doughnut hole" of private land amid a vast tract of government property would not appear any different to a passer-by, who might conclude it was a federally sanctioned display.

The question of prison sentences for juveniles has also attracted interest from church-related organizations. Joe Harris Sullivan and Terrance Jamar Graham were both sentenced by Florida courts to life imprisonment without parole, for crimes committed when they were 13 and 17, respectively.

In separate cases being heard jointly by the court Nov. 9, Sullivan and Graham challenge their sentences as cruel and unusual punishment. A 2005 Supreme Court ruling struck down the death penalty for juveniles, finding in part that for young people, with more limited judgment than adults, the practice constitutes cruel and unusual punishment.

Among the groups advocating for the life sentences to be overruled are former juvenile offenders -- including actor Charles Dutton, who first went to juvenile reform school at 13 and to prison for manslaughter at 17 -- who argue that they are examples of the value of giving juveniles the chance to turn their lives around.

The American Catholic Correctional Chaplains Association is one of two dozen faith groups and religious leaders that submitted another brief arguing to overturn life sentences for juveniles.

A case being followed by immigrants' advocates, many of whom are in Catholic and other faith-group-sponsored legal services offices, seeks to hold federal medical workers responsible for the care of a man whose cancer was allowed to advance untreated. Despite his complaints of pain, Francisco Castaneda, a Salvadoran immigrant, went untreated so long when he was in a California prison and then in federal immigration detention that he died at age 36, shortly after his release when a doctor finally diagnosed penile cancer.

The cases, *Migliaccio v. Castaneda* and *Henneford v. Castaneda*, also paired by the court, challenge the Federal

Tort Claims Act, which bars damages against individuals working for the federal government and otherwise limits claims for negligence against the government. The paired case will be heard after the first of the year.

In the last few years, news reports have uncovered dozens of deaths and many other claims of poor medical care in immigration detention. Late in the Bush administration and again since President Barack Obama took office, changes in procedures and new oversight systems have been announced for how immigrants are treated in detention.

Two other cases deal more directly with immigration. *Padilla v. Kentucky* raises the question of whether immigrants must be provided with advice about the possible ramifications of criminal cases on their immigration status. It revolves around a Honduran immigrant's criminal charges for drug-related crimes and his subsequent deportation proceedings.

On the advice of his attorney, Jose Padilla, a legal immigrant and veteran of the U.S. military, pleaded guilty to criminal charges. Although his attorney told him otherwise, the guilty plea triggered deportation proceedings. The court will be asked to consider the obligations of legal counsel in such cases and whether the faulty advice of Padilla's attorney constitutes grounds for setting aside his guilty plea. The case will be heard Oct. 13.

In *Kucana v. Holder*, being argued Nov. 10, the court will be asked to evaluate the oversight procedures for government decisions in immigration cases.

Rulings in all the cases are expected before the court adjourns next summer.

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