

## **WINTER 2014 NEWSLETTER**

### **CIVIL RIGHTS LAW UPDATE**

**By Josh Skinner**

#### **United States Supreme Court**

##### ***Hinton v. Alabama*, No. 13-6440 (February 24, 2014)**

Criminal defendant was denied his Sixth Amendment right to counsel where his attorney failed to hire an appropriate forensics expert based on the mistaken belief that state law would not pay a sufficient amount for a properly qualified expert.

Hinton was charged with capital murder in connection with the shooting deaths of individuals during armed robberies. Much of the prosecution's case rested on expert testimony that the bullets from the shootings came from the same gun and that the gun in question had been found at Hinton's home when he was arrested. Hinton's attorney attempted to hire an expert to rebut the expert testimony proffered by the prosecution. However, Hinton's attorney mistakenly believed that Alabama law would only pay up to \$1,000 for the expert testimony. Hinton's attorney could only find one expert who would testify for that sum, but Hinton's attorney did not believe that the "expert" was properly qualified. At trial, the prosecution successfully demonstrated that Hinton's expert lacked the appropriate qualifications, particularly in comparison to the prosecution's experts. Hinton was convicted.

The Court held that Hinton was denied his Sixth Amendment right to counsel because Hinton's attorney's decision to hire the less qualified expert was based on a mistake of law, not on strategy, and the attorney himself believed that the expert was insufficiently qualified for the task. The Court remanded, however, to determine whether the error was prejudicial to Hinton in light of the other testimony presented at trial.

##### ***Plumhoff v. Rickard*, No. 12-1117 (S. Ct. certiorari oral argument March 4, 2014)**

The Supreme Court should decide a new qualified immunity case within the next few months. The Sixth Circuit Court of Appeals denied qualified immunity to police officers on an excessive force claim relating to a high speed chase that resulted in the death of the suspect driver and his passenger. The driver and passenger were shot by the officers and the car crashed into a building shortly thereafter. The Court granted review and set oral argument for March 4, 2014. A decision should be issued by June. The Solicitor General of the United States sought and received leave from the Court to participate in the oral argument.

#### **United States Court of Appeals for the Fifth Circuit**

##### ***Castro v. Cabrera*, No. 13-40017, 2014 U.S. App. LEXIS 1948 (5th Cir. January 30, 2014)**

A federal immigration official did not violate the clearly established rights of individuals seeking entry into the United States for detaining them and interrogating them while the federal officials sought to determine the validity of the facially valid documentation provided by the individuals indicating that they are United States citizens. Consequently, the federal official was entitled to qualified immunity.

Various individuals sought admission to the United States, but were prevented from entering by Cabrera, a federal official. The various individuals all had facially valid documentation indicating that they were United States citizens, but Cabrera detained them for further consideration due to the fact that they indicated that they had been born in the presence of a midwife identified by federal officials as suspicious (the opinion does not specify why the midwife was suspicious, but presumably she is suspected of assisting in the procurement of fraudulent documentation regard place of birth for individuals who are not born in the United States). The individuals seeking entry into the United States were detained for up to ten hours and subject to unspecified threats and insults during interrogation. Some of them ultimately signed statements indicating that the documents were fraudulent.

The individuals seeking admission to the United States filed suit, claiming that Cabrera violated their Fourth Amendment right to be free of unreasonable seizures. Cabrera moved for dismissal, asserting his entitlement to qualified immunity, and the district court granted the motion. The Fifth Circuit affirmed. Insofar as the individuals were foreign nationals, the panel concluded that the Fourth Amendment provided them no protection. Insofar as the individuals actually were United States citizens, Cabrera was entitled to qualified immunity because it was not clearly established that his alleged conduct would have violated the Fourth Amendment.

### **Texas Courts**

***Schraer v. Tex. Health & Human Svcs. Comm'n*, No. 13-12-00702-CV, 2014 Tex. App. LEXIS 1569 (Tex. App. – Corpus Christi February 13, 2014, no pet. h.)**

Chapter 121 of the Texas Human Resources Code, which prohibits the failure to make reasonable accommodations for the disabled in the full use and enjoyment of public facilities, does not waive sovereign immunity.

Schraer, who is deaf, alleged that Commissioner Suehs and the Texas Health & Human Services Commission (the Commission) discriminated against him and failed to reasonably accommodate his disability, in violation of Chapter 121 of the Texas Human Resources Code and Title II of the Americans with Disabilities Act. Suehs and the Commission filed a plea to the jurisdiction, asserting immunity from Schraer's claims. The trial court granted the plea and Schraer appealed. The Court of Appeals affirmed. Of relevance here, the Court held that Chapter 121 claims are barred by sovereign immunity because the statute does not contain a clear and unambiguous waiver of sovereign immunity.