## 2021 SCOTUS TERM PREVIEW

This TMI Brief was prepared by Mahogane Reed, John Payton Appellate and Supreme Court Advocacy Fellow.

### Table of Contents

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCOTUS 2021 Term Preview</td>
<td>1</td>
</tr>
<tr>
<td>Thompson v. Clark</td>
<td>2</td>
</tr>
<tr>
<td>New York State Rifle and Pistol Association v. Bruen</td>
<td>4</td>
</tr>
<tr>
<td>United States v. Vello-Madero</td>
<td>6</td>
</tr>
<tr>
<td>Cummings v. Premier Rehab Keller, P.L.L.C.</td>
<td>8</td>
</tr>
<tr>
<td>Dobbs v. Jackson Women’s Health Organization</td>
<td>10</td>
</tr>
</tbody>
</table>
From its inception, the NAACP Legal Defense and Educational Fund, Inc. (LDF) has served on the front lines of civil rights litigation efforts. Only the federal government has litigated more civil rights cases before the Supreme Court. Our goal is to keep our supporters abreast of key developments in civil rights jurisprudence by providing substantive, yet concise, overviews of some of the noteworthy cases before the Court. Of the many cases the Court will hear this term, here we highlight five that present issues related to civil rights. These cases are *Thompson v. Clark; New York State Rifle and Pistol Association v. Bruen; United States v. Vello-Madero; Cummings v. Premier Rehab Keller, PLLC;* and *Dobbs v. Jackson Women’s Health Organization.*

In each case snapshot, we provide the question presented, the background of the case, the key legal issues, the case’s importance to civil rights, and a description of LDF’s amicus brief, if applicable. We hope this summary will be easy to digest and will underscore the importance of the U.S. Supreme Court (and other courts) to our lives and the future of our democracy.
Question Presented:
Whether the rule that a plaintiff must await a favorable termination of their criminal charges before proceeding with a Section 1983 action alleging unreasonable seizure requires the plaintiff to make the burdensome showing that the criminal proceeding “ended in a manner that affirmatively indicates his innocence.”

Background: On January 15, 2014, Larry Thompson, a Navy Veteran and postal worker who lived and worked in Brooklyn, New York, was home and asleep. At approximately 10:00 p.m., his sister-in-law called 911 to report that Mr. Thompson had abused his then-one-week-old daughter. Mr. Thompson’s sister-in-law reported that the baby often cried when Mr. Thompson changed her diaper and had “red rashes” on her buttocks. Officers were dispatched to Mr. Thompson’s home. When officers arrived at his house, Mr. Thompson, unaware of the purpose of their visit and that his sister-in-law had reported him for abuse, refused to let the officers in without a warrant. The officers arrested Mr. Thompson, charged him with resisting arrest and obstructing governmental administration for refusing to let the officers into his home without a warrant. The officers tackled and handcuffed Mr. Thompson, searched his home, and confirmed that the redness on the baby’s buttocks was a diaper rash. The officers arrested Mr. Thompson, charged him with resisting arrest and obstructing governmental administration for refusing to let the officers into his home without a warrant, and jailed him for two days. In the criminal proceedings that followed, Mr. Thompson denied wrongdoing and rejected any plea offer from the prosecution. A few months later, the prosecution dismissed the charges against Mr. Thompson without any plea or compromise, simply stating: “The People are dismissing the case in the interest of justice.”

Mr. Thompson subsequently filed a suit under 42 U.S.C. § 1983, a federal civil rights statute that allows a plaintiff to sue for money damages when a state official violates their constitutional rights. His lawsuit included a claim against the arresting officers for “unreasonable seizure,” a
claim that alleges he was arrested without legal cause, a Fourth Amendment violation. Supreme Court precedent requires that before a plaintiff can pursue their civil suit, the underlying criminal charges must terminate “in favor of the accused.” Heck v. Humphrey, 512 U.S. 477, 484 (1994). At Mr. Thompson’s civil trial, the parties disputed whether Mr. Thompson had shown that the criminal proceedings against him ended with a favorable termination. Relying on the decision of the Second Circuit Court of Appeals in Lanning v. City of Glens Falls, 908 F.3d 19, 22 (2d Cir. 2018), in which the court announced that a “favorable termination” requires a plaintiff to show that the criminal proceeding “ended in a manner that affirmatively indicates his innocence,” the officers argued that Mr. Thompson had not satisfied the favorable termination element because he had not shown that the criminal proceedings ended in a way that affirmatively indicated he was innocent of the crimes charged. Mr. Thompson argued otherwise and urged the district court to adopt the standard used in the Eleventh Circuit, which has held that the “favorable termination” element only requires the plaintiff to show that their criminal proceedings “formally ended in a manner not inconsistent with his innocence.” The trial court reluctantly agreed with the officers, concluding that it was bound by Lanning, and granted the officers judgment as a matter of law. The district court’s decision was affirmed before the Second Circuit, which agreed that under Lanning, Mr. Thompson had not satisfied the favorable-termination element.

Key Issues: Section 1983 suits are not only an important method of recovery for constitutional injuries, but also an important accountability measure for all state officials and especially for police officers. The rule adopted by the Second Circuit and applied in this case, effectively requiring plaintiffs to show that they were actually innocent of the crimes charged, undermines both of these purposes. The rule heightens the burden on plaintiffs who were wrongfully arrested and prosecuted, thus making it more difficult for them to recover damages for constitutional wrongs. And the rule allows the government to unilaterally immunize police officers and other state officials who engage in egregious abuses of the criminal legal system by simply dismissing the criminal charges.

Importance as a Matter of Civil Rights: The Second Circuit’s rule sharply curtails constitutional protections against unjustified seizures—a limitation that disproportionately burdens Black people and is inconsistent with Congress’s objectives in enacting Section 1983. LDF filed an amicus brief highlighting the harms the Second Circuit’s burdensome rule would cause Black people—who are more likely than White people to be arrested and to have their criminal charges dismissed without explanation or indication of their innocence.

---

10 Id.
11 Id. at 6.
12 Id.
13 Laskar v. Hurd, 972 F.3d 1278 (11th Cir. 2020).
14 Id. at 6–7.
15 Id. at 9–10.
New York State Rifle and Pistol Association v. Bruen

ARGUMENT DATE: NOVEMBER 3, 2021

QUESTION PRESENTED:
Whether New York’s denial of the petitioners’ applications for unrestricted concealed carry licenses for general self-defense violates the Second Amendment.

Background: In District of Columbia v. Heller, the Supreme Court held that the Second Amendment to the U.S. Constitution guarantees individuals the right to own and possess firearms within the home for self-defense. And in McDonald v. City of Chicago, the Court confirmed that, although the right to own and possess firearms is not unlimited and the government retains some authority to regulate firearm ownership and possession, states and localities are prohibited from outright banning individual gun ownership and possession for self-defense within the home. But the Court did not answer several important questions about the scope of the Second Amendment right to bear arms, including whether the right to own and possess a firearm extends to the right to carry a firearm for general self-defense outside the home, and whether states may limit the right to carry guns—either openly or concealed—when in public spaces.

This case will answer that question in the context of New York’s concealed-carry law. New York’s law requires a person to show “proper cause,” or a special need for self-protection, to carry a concealed firearm outside their home; generalized claims of a need for self-defense without a particularized showing are not sufficient.16 Two of the petitioners applied for an unrestricted concealed-carry license (that would permit them to carry concealed handguns anywhere in the state) based on a general need for self-defense.17 Their applications were denied, and they brought suit challenging the law.18 Their challenges were dismissed in the district court and the Second Circuit.19

17 Id. at 11–13.
18 Id.
19 Id.
**Key Issues:** In interpreting the scope of the Second Amendment right to bear arms, the Court has relied on historical sources from before and after the country’s founding to ascertain the original public understanding of the right and any limitations on it. Thus, the Court will in large part focus on how history has treated states’ efforts to limit the public carrying of firearms. The petitioners argue that historical sources confirm their right to carry handguns in public for general self-defense, while New York has identified several historical sources that heavily favor its right to regulate the public carrying of firearms.

**Importance as a Matter of Civil Rights:** Concealed-carry restrictions and other limitations on the public carrying of firearms have historically been effective measures for reducing firearm violence—the fewer guns there are on the street, the less likely someone will be killed by a gun in public. LDF and the National Urban League filed an amicus brief emphasizing the importance of public-carry limitations and concealed-carry restrictions. The lifesaving impact of concealed-carry restrictions is especially important for Black people—and specifically young Black men—who are disproportionately likely to die from gun violence. Laws that limit concealed-carry licenses to persons with a demonstrable, non-speculative need for imminent self-defense may also prevent violent disputes from escalating into deadly encounters. In street encounters, White persons who have biased-based fears and with concealed-carry weapons pose a significant risk of shooting to Black people and other people of color.
**United States v. Vaello-Madero**

ARGUMENT DATE: NOVEMBER 9, 2021

**QUESTION PRESENTED:**

Whether elderly people, people with impaired sight, and people with disabilities who, by reason of their physical capacities, qualify for Supplemental Security Income (SSI) are deprived of equal protection of the laws under the Fifth Amendment when the United States excludes them from the SSI solely because they reside in Puerto Rico.

**Background:** Jose Luis Vaello-Madero, a United States citizen who was born in Puerto Rico, was living in New York when he suffered a serious illness that left him unable to support himself. He applied for and began receiving SSI. A year later, he moved to Puerto Rico to be closer to his family. Three years later, the Social Security Administration (SSA), which is responsible for administering the SSI benefits program, notified Mr. Vaello-Madero that it was revoking his SSI benefits. The SSA explained that because Mr. Vaello-Madero had established residency in Puerto Rico, he was deemed to be “outside the United States” for purposes of SSI. The United States sued Mr. Vaello-Madero, seeking to recover more than $28,000 in overpayments. Mr. Vaello-Madero disputed this liability and argued that denying SSI to eligible citizens solely because they live in Puerto Rico violated the Fifth Amendment. The district court agreed and held that Congress cannot deny SSI benefits to otherwise-eligible individuals simply because they reside in Puerto Rico. The First Circuit Court of Appeals affirmed, holding that there was no rational basis for excluding otherwise-eligible Puerto Rico residents from SSI.

---

21 Id.
22 Id.
23 Id.
24 Id. at 18.
25 Id.
26 Id. at 18–19.
27 Id. at 19.
**Key Issues:** This case raises the questions of what standard of judicial scrutiny applies to Congress’s exclusion of residents of Puerto Rico and other United States territories from the SSI Program and whether the exclusion of Puerto Rico survives judicial scrutiny. The United States maintains that Congress may, consistent with the Constitution, treat a United States territory and its residents differently than the 50 states and their residents if it has a rational basis to do so. Mr. Vaello-Madero argues that the exclusion of Puerto Rico and other territories from the SSI Program is not just exclusion of a territory, but exclusion of a politically powerless group of Black and brown people that, under Supreme Court precedent, requires heightened scrutiny for laws that make distinctions based on race or any other protected class. Mr. Vaello-Madero urges the Court to apply heightened scrutiny in reviewing this law and argues that the law fails under that standard.

**Importance as a Matter of Civil Rights:** For decades, residents of Puerto Rico and other territories have been deemed United States citizens. However, Puerto Ricans, who are predominantly brown people, have been denied political power in the United States Congress and are otherwise treated as second-class citizens. This case has the potential to change the unbalanced relationship between Puerto Rico and Congress, which effectively is unaccountable to all U.S. territories.
QUESTION PRESENTED:
Whether the right to recover compensatory money damages under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., which prohibits discrimination on the basis of disability by recipients of federal funds, includes compensation for emotional distress and other non-economic harms.

Background: Section 504 of the Rehabilitation Act, like Title IX of the Education Amendments of 1972, 20 U.S.C. § 1687, et seq., which prohibits discrimination on the basis of sex by recipients of federal financial assistance, is modeled on Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq. Title VI was enacted as part of the landmark Civil Rights Act of 1964. Title VI prohibits recipients of federal financial assistance—including schools, police departments, and government contractors who receive funding from the federal government to operate—from discriminating based on race, color, or national origin. The purpose of Title VI was to ensure that public funds, to which all taxpayers contribute, not be spent in a fashion that encourages, entrenches, or subsidizes racial discrimination.

If a recipient of federal financial assistance is found to have discriminated in violation of Title VI, Title IX, or Section 504, not only can the federal agency providing the assistance terminate funding, but aggrieved individuals may sue for appropriate relief in federal court, including money damages.

Petitioner Jane Cummings, who is deaf and legally blind, communicates primarily in American Sign Language (ASL). On the recommendation of her doctor, Ms. Cummings presented to Premier Rehab for treatment for a work injury and chronic chest pain. Ms. Cummings requested that Premier Rehab provide an ASL interpreter and explained that her disabilities prevented her from communicating through other methods. However, Premier Rehab refused to provide an interpreter. Ms. Cummings later saw a second doctor, who again referred her to Premier Rehab. Ms. Cummings contacted Premier two more

29 Id.
30 Id.
31 Id.
times, each time requesting that Premier Rehab supply an ASL interpreter, but Premier refused to provide that accommodation. Ms. Cummings was ultimately forced to seek care elsewhere. Ms. Cummings sued Premier in federal district court. She alleged that Premier Rehab violated the Rehabilitation Act, both directly and as incorporated by the Affordable Care Act. Ms. Cummings sought damages for the “humiliation, frustration, and emotional distress” she suffered as a result of Premier Rehab’s actions. On Premier Rehab’s motion, the district court dismissed Ms. Cummings’s complaint because, the district court concluded, “[d]amages for emotional distress are unrecoverable” under the Rehabilitation Act and Ms. Cummings sought no other damages. The Fifth Circuit Court of Appeals affirmed, concluding that because emotional distress damages are generally only available where a person is on notice that they might be responsible for such damages, and because federal financial recipients are not on notice that they might be liable for emotional distress damages, Ms. Cummings could not recover.

**Key Issues:** The Supreme Court has previously held that victims of discrimination may recover compensatory damages under Title VI and similar anti-discrimination provisions. Given the contractual nature of federal financial recipients’ agreement to not discriminate, a key part of the Court’s analysis has been whether the type of damages sought are a traditional remedy available in suits for breach of contract. Whether federal financial recipients are “on notice” that remedies under Title VI and related anti-discrimination statutes include emotional distress damages as a type of compensatory damages will be at the heart of the Court’s consideration of the question.

**Importance as a Matter of Civil Rights:** Intentional race discrimination has long been characterized as one of the gravest harms in our society. It typically inflicts emotional and other stigmatic injury, and victims of such discrimination have traditionally been permitted to recover for these injuries. Similarly, sex discrimination causes serious non-economic injuries that courts have typically deemed compensable. LDF, the ACLU, and the National Women’s Law Center filed an [amicus brief] emphasizing this point and urging the Court to affirm that emotional distress damages are an available remedy under Title VI and other anti-discrimination statutes that incorporate Title VI remedies.

---

32 Id.
33 Id.
34 Id. at 9.
35 Id.
36 Id.
37 Id.
38 Id. at 9–10.
**Dobbs v. Jackson Women’s Health Organization**

**ARGUMENT DATE: DECEMBER 1, 2021**

**QUESTION PRESENTED:**

Whether all prohibitions on elective abortions before 24 weeks into a pregnancy are unconstitutional.

**Background:** In *Roe v. Wade*, the Supreme Court established that under the Fourteenth Amendment, which protects a person’s liberty interest against state deprivation without due process of law, a person has a right to choose to have an abortion before viability—that is, before approximately 24 weeks into a pregnancy. The Court concluded that when a pregnancy reached viability, state interests in the life of the fetus are high enough to permit states to prohibit abortions. In *Planned Parenthood v. Casey*, the Court affirmed the holding of *Roe* and recognized a constitutional right to decide to have an abortion before viability and to obtain it without undue interference from the state.

In 2018, Mississippi passed a law that, with few exceptions, prohibits elective abortions where the fetus has reached 15 weeks.40 Shortly after the law was passed, Jackson Women’s Health Organization—the only licensed abortion clinic in Mississippi—sued the State and sought an immediate order restraining the law’s enforcement.41 The district court first preliminarily, and then permanently, enjoined the law, holding that the 15-week ban was unconstitutional in light of *Roe* and *Casey*.42 The Fifth Circuit Court of Appeals unanimously affirmed, explaining that the Supreme Court’s precedents have repeatedly affirmed a woman’s right to choose an abortion before viability.43

---

41 Id. at 6–7.
42 Id. at 7–8.
43 Id. at 8.
Key Issues: Roe and Casey have been binding Supreme Court precedent for nearly 50 years, and the holdings of those cases have been repeatedly affirmed and reaffirmed by the Court. Under the principle of stare decisis, a legal doctrine that requires the Supreme Court to follow its own previous decisions under most circumstances, the Supreme Court should hold that Mississippi’s law prohibiting abortions before viability violates Roe and Casey. However, the Court, now occupied by justices who have publicly disagreed with the Court's abortion case law, is poised to overturn its prior precedent to, at a minimum, give states more latitude to regulate abortion care for pregnant people.

Importance as a Matter of Civil Rights: Since Roe was decided, Black and low-income people have disproportionally relied on the viability line and the right to abortion recognized in Roe. Thus, should the Court disregard years of precedent and overrule Roe, these same groups of people will be the most impacted. The Leadership Conference on Civil and Human Rights and the Lawyers’ Committee for Civil Rights Under Law made these important points in an amicus brief, which LDF and other civil rights and racial justice organizations joined. Access to abortion is associated with educational and economic advancement, and the denial of that right can have severe economic and other adverse life consequences on the people affected.