

# UNDERGRADUATE LAW REVIEW AT AUBURN UNIVERSITY

## CONTENTS

Barrett v. United States

*Victoria Maisonnave*

Deterrence or Retribution? The Ethical Boundaries of Punitive Damages

*Gracie Blanchard*

Prioritizing Rehabilitation in Juvenile Justice

*Lauren Eades*

Synthetic Nicotine and the FDA

*McKenna Kane*

The Limits of Consular Nonreviewability

*Anna Glaser*

# MASTHEAD

*Editor-in-Chief*

GRACE CRIM

*Managing Editor*

AVERY HILLMAN

*Executive Editors*

AINSLEY BRASWELL, BAILEY GODFREY, CHASE BIGHAM  
EMILY POWDER, MICHAEL DIEGIDIO

*Faculty Advisor*

DR. STEVEN BROWN

*Associate Editors*

ALLY NORTHRIDGE  
AMELIA RIDGWAY  
ANNALISE BRIGGS  
ANNEMARIE HALE  
AUDREY BROWN  
BRENNAN HEMPHILL  
BRIANNA YELDER  
CLARE ALTMAN  
ERIN COSBY  
LUCI WILLIAMS

MIA GRECO  
RACHEL EVANS  
RUBY LIEBSCHUTZ  
SAIGE ROONEY  
SOFIA FORADORI  
SOFIA PUGH  
SYDNEY LADINE  
TAYLOR LOWELL  
VICTORIA MAISONAVVE

## OUR MISSION

The Undergraduate Law Review at Auburn University strives to foster intellectual curiosity, critical thinking, and scholarly discourse among Auburn students interested in the field of law. We aim to provide a platform for aspiring law students to engage in legal research and writing while contributing to meaningful scholarship.

We are committed to promoting diversity, equity, and inclusion within our publication, ensuring that a wide range of perspectives and voices are represented. Through our editorial process, we aim to uphold the highest standards of academic integrity and excellence, while also providing valuable opportunities for students to gain practical experience in legal research, writing, and editing.

Furthermore, we seek to serve as a bridge between undergraduate students and the broader legal community, fostering connections and collaborations that enrich both academic and professional development.

In pursuit of these goals, the Undergraduate Law Review at Auburn University is dedicated to publishing high-quality, thought-provoking pieces that advance understanding of the law and its impact on society.



Barrett  
v.  
United States

Authored by  
*Victoria Maisonavve*

## Legal Background

In 2011, Dwayne Barrett and his accomplices, Jermaine Dore and Taijay Todd, robbed small business owners in New York City. During one of the robberies, Gamar Dafalla was shot and killed by Dore. A vehicle was driven from a motel in the Bronx to a location in Mount Vernon, NY. Here, defendants Liang, Barret, Daffla, and Abdulla sold a customer more than one hundred cartons of untaxed cigarettes for \$10,000. While Ling, the driver of the vehicle, remained in the van along with the aforementioned accomplices, Dore and Todd approached. The duo threatened Liang and his associates. After Abdulla handed over the money, Todd and Dore commandeered the vehicle and drove away with Dafalla still inside. Abdulla proceeded to chase down the van and Dafalla threw the bag of illicit funds to him. Afterwards, Dore shot and killed Dafalla.

Barrett and his accomplices were later charged with seven counts: conspiracy to commit Hobbs Act robbery, using a firearm during conspiracy to commit, substantive Hobbs Act robberies, using firearms in commission of these robberies, and the murder of Gamar Dafalla. Barrett was found guilty and consequently sentenced to ninety years in prison. Barrett argues that he should not be sentenced for both using a firearm to murder the victim during a Hobbs Act robbery and for carrying that same firearm in this instance. The defendant argues that this violates the Due Process Clause of the Fifth Amendment. Most circuit courts have ruled that this would violate double jeopardy, but some have ruled otherwise, leading the case to the Supreme Court.

## Questions Presented

(1) Whether the Double Jeopardy Clause permits two sentences for an act that violates 18 U.S.C. § 924 (c) and 924(j), a question that divides seven circuits but about which the Solicitor General and Petitioner agree.

The American Civil Liberties Union, “ACLU”, is a nationwide non-partisan and non-profit organization interested in fighting for the rights of Americans. The ACLU concerns itself with the outcome of this case since it involves prisoners’ rights and the rights of defendants who are subject to the judicial process. As an amicus, we strongly urge the Court to reverse the lower court ruling of this case, as the Double Jeopardy Clause does not permit two sentences under § 924(c) and § 924(j). The Double Jeopardy Clause of the Fifth Amendment makes it unlawful for a person to be tried twice for the same offense.<sup>1</sup> Under the same constitutional criterion, convicting Barrett of two sentences related to the same crime is unlawful. The rebuttal is that Barrett’s conviction belongs under two different subsections. However, we believe that this still violates double jeopardy. Two sentences under the same section of the United States Code still constitute being tried “twice” for the same offense. Moreover, our position is enforced in legal precedent concerning the same issue.

The U.S. Code violations that are relevant in this case are § 924(c) and (j), two subsections of the same violation. While § 924(c) explicitly states the prison terms for each type of crime committed under § 924, subsection (j) offers more specific prison terms regarding the killing in question and whether it is lawfully considered murder or manslaughter.<sup>2</sup> However, it has been decided before that although § 924(j) offers more sentencing guidelines, a defendant is

---

<sup>1</sup> U.S. Const. amend. V.

<sup>2</sup> 18 U.S.C. § 924(j).

not to be sentenced under both § 924(c) and § 924(j).<sup>3</sup> Not only is sentencing Barrett with two violations of the same section a violation of double jeopardy, but also a violation of United States Code.

While the Second Circuit made its decision regarding the two sentences based on the prior ruling of another case, it did so incorrectly. The rule states that “no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person.”<sup>4</sup> Understanding this rule, as the Court did, Barrett could not be sentenced under § 924(j) while also receiving a term of imprisonment imposed under § 924(c).<sup>5</sup> And while the circuit court ruled that Barrett should be “sentenced separately for his count 6 § 924(c) firearms crime and his count 7 § 924(j) murder crime,” this too has already been decided in another case.<sup>6</sup> This Court has previously ruled that charging a defendant with § 924(c) and § 924(j) as two separate counts for the same act did in fact violate the Double Jeopardy Clause. The Court stated that “[a] federal court could not (for double jeopardy reasons) sentence a person to two consecutive federal prison terms for a single violation of a federal criminal statute, such as § 924(c).”<sup>7</sup> Clearly, Barrett also could not be sentenced for both § 924(c) and (j) violations.

Then there is the question about serving two concurrent death sentences. As stated previously, § 924(c) sentences must run consecutively and not concurrently to other sentences. It has been decided before as well that serving two concurrent death sentences violates double jeopardy.<sup>8</sup> Furthermore, the Court has argued that “where the offenses are the same under the

---

<sup>3</sup> *Lora v. United States*, 599 U.S. 453-59 (2023).

<sup>4</sup> 18 U.S.C. § 924 (c)(1)(D)(ii).

<sup>5</sup> *Lora*, 459-60.

<sup>6</sup> *United States v. Barrett*, 102 F.4th 60, 66 (2nd Cir. 2022).

<sup>7</sup> *United States v. Gonzales*, 520 U.S. 1, 9 (1997).

<sup>8</sup> *United States v. Sanders*, No. 15-31114, 2025 WL 926855, at \*10 (5th Cir. Mar. 27, 2025).

Blockburger test, cumulative sentences aren't permitted unless elsewhere specially authorized by Congress."<sup>9</sup> The *Blockburger* test arose out of a case in which this Court ruled that "the government is prohibited from charging a defendant in a single trial with two distinct statutory provisions for the same act or transaction unless each provision requires proof of a fact which the other doesn't."<sup>10</sup> Following the rule that the courts have been using for almost a century, it is clear that Barrett was wrongly sentenced when the lower courts gave him sentences for both § 924(c) and § 924(j). The *Blockburger* test appears on a variety of cases relating to two different sentences under the same section or subsection. It is clear that the courts of the United States have followed this test, and that the Supreme Court has not had an issue with the *Blockburger* test. Therefore, the rule should still apply in this case.

The Second Circuit argued that Congress intended for § 924(c) and § 924(j) to allow cumulative sentences. However, we strongly disagree.<sup>11</sup> First, the Court argues that the words "cumulative" and "consecutive" mean the same thing in regard to sentencing. However, these two words are not synonymous. Had Congress intended for sentences to run cumulatively, they would have explicitly said so, and other courts' interpretations would have followed that logic. But the Second Circuit appears to be one of the few, if not the only one, with this logic. Simply looking at the definitions of the two words one can see that they mean different things.

"Cumulative" is defined as "taking effect upon completion of another penal sentence."<sup>12</sup>

"Consecutive" is defined as "following one after the other in order."<sup>13</sup> While the two definitions may not seem to have much difference in them, it would cause a very big difference in this case.

---

<sup>9</sup> *Whalen v. United States*, 445 U.S. 684, 693 (1980).

<sup>10</sup> *Blockburger v. U.S.*, 284 U.S. 299, 304 (1932).

<sup>11</sup> *Barrett*, 93.

<sup>12</sup> Merriam – Webster dictionary definition for cumulative.

<sup>13</sup> Merriam – Webster dictionary definition for consecutive.

The Court in *Lora* explicitly stated that a sentence “must run consecutively, not concurrently, in relation to other sentences.”<sup>14</sup> Had Congress intended for the violations to run cumulatively, the Court in *Lora* would have made that distinction clear; however, the Court used the same two words as Congress did. Taking such things into account, it is clear that the lower courts erred in sentencing Barrett to separate sentences relating to the same section of the United States Code.

As explained by this Court, § 924(c) and § 924(j) run separately, not cumulatively, as the circuit court argued. As the court argued, nowhere in either subsection does it say anything about running the sentences together. The circuit court argued in a similar way that the government did in *Lora*; however, this Court dissected the government’s argument in a way that makes it absolutely clear that Congress intended for § 924(c) and § 924(j) to be considered as separate punishments. Furthermore, as mentioned above, the *Blockburger* test would already prohibit these two sentences from running cumulatively. The only way in which the sentences would be allowed to run cumulatively would be if Congress had specifically authorized it, which is not the case. In the plethora of legal precedent regarding these two violations of the United States Code, nowhere has it been mentioned that Congress intended for the two sentences for violations of these two subsections to be run cumulatively.

The Second Circuit heavily relies on the decision made in *Lora* to justify their conclusion; however, they seem not to have understood exactly what this Court decided. The Second Circuit’s biggest argument against the double jeopardy claim is that Congress “clearly” intended for the sentences to be able to run cumulatively, but this is not the case. This Court made it explicitly clear that § 924(j) does not incorporate § 924(c)’s penalties, “nor triggers the consecutive – sentence mandate.”<sup>15</sup> It is also clear through *Lora* that the Court has already

---

<sup>14</sup> *Lora*, 457.

<sup>15</sup> *Id.* at 462.

considered Congress's intent with the two subsections, reaching the conclusion that Congress did not intend for the subsections to run concurrently, and by extension, cumulatively.<sup>16</sup> Beyond this, the Second Circuit bases another argument on a different case, saying that they very well can infer the intentions of Congress in disregard of *Blockburger* if the intent is clear in the statute or in legal precedent.<sup>17</sup> However, when looking at all the legal precedent and the statutes themselves, the circuit court's argument is once again wrong. Again, there is no legal precedent in which the Court has stated that § 924(c) and § 924(j) can run cumulatively, or that Congress intended them to run cumulatively. Furthermore, the Court and the statute are quite clear with the subsections and the sentencing related to each violation.

Beyond the circuit court's argument of whether or not it can run cumulatively, the question brought to the Court today concerns double jeopardy. Not only does double jeopardy protect individuals from being tried for the same crime twice but it also protects against multiple punishments for the same crime. It is also understood that concurrent sentences cannot be imposed for the same crime without violating double jeopardy. However, where the issue is with regard to one crime being of a lesser offense than another, the Court must determine whether the legislature intended for each violation to be a separate offense.<sup>18</sup> This is where the discussion about cumulative meaning the same as consecutive came from. It is solely based on this interpretation that consecutive means cumulative that the circuit court considers the question of double jeopardy to have no basis. However, as we argued above, the circuit court is wrong on several points concerning the congressional intent of the statute. We still firmly believe that this sentencing would violate Mr. Barrett's double jeopardy protections. The circuit court barely

---

<sup>16</sup> *Id.* at 463-64.

<sup>17</sup> *Garrett v. United States*, 471 U.S. 773 (1985).

<sup>18</sup> U.S. Const. amend. V.

provides any basis as to why they believe that a consecutive – sentence mandate is the same as a cumulative one. What the circuit court does say is that legal precedent makes clear that the courts have never authorized cumulative sentences for the two subsection violations.<sup>19</sup> However, they go on to argue that the decision in *Lora* allows cumulative sentencing, even though that is not specified in *Lora*.

Furthermore, the majority of the circuit courts agree that this sentencing would violate double jeopardy, they all make essentially the same arguments that we have presented above, only the Second Circuit and the Twelfth disagree. The First Circuit argued that, again, had Congress intended for the sentences to run cumulatively, Congress would have said so.<sup>20</sup> In a more recent decision, the Fourth Circuit also agreed with the fact that this would violate double jeopardy, and they also state that Congress had no intent of allowing cumulative punishments regarding § 924(c) and § 924(j), “...we have no trouble in now joining these circuits in holding that the Double Jeopardy Clause prohibits imposition of cumulative punishments for § 924(c) and § 924(j) convictions based on the same conduct.”<sup>21</sup> The Fifth Circuit went so far as to reverse a ruling from a judge who had argued in the same way that the Second Circuit did, “[We] do not see an intent by Congress to impose cumulative punishment under both subsections for the same conduct.”<sup>22</sup> There is no need to go into further detail about each circuit court that agreed with what we argue today. It is clear that the majority of the circuit courts believe that a) Congress did not intend for sentences to run cumulatively under § 924(c) and § 924(j), b) that allowing such sentencing would violate double jeopardy, and c) that having two sentences under the two subsections is a violation of double jeopardy as well.

---

<sup>19</sup> *Barrett*, 91.

<sup>20</sup> *United States v. Garcia – Ortiz*, 657 F.3d 25, 28 (1st Cir. 2011).

<sup>21</sup> *United States v. Palacios*, 982 F.3d 920, 925 (4th Cir. 2020).

<sup>22</sup> *United States v. Gonzales*, 841 F.3d 339, 357 (5th Cir. 2016).

If the majority of the circuit courts can agree on the same arguments that we mentioned in this brief, then one would assume that the Second and Eleventh circuits are wrong in concluding differently, they are, in fact, the odd ones out. The named circuit courts, the First, the Fourth, the Fifth, and the Sixth understood the legal precedent and statutory language in the same way that we do, and in the same way that we urge the Court to understand. Furthermore, the courts in those decisions received the same arguments that the Second and Eleventh Circuits made and found these arguments to be erroneous. These two circuit courts argue that because of the decision in *United States v. Julian*, the double jeopardy argument does not stand. However, the issue in that case was not necessarily a double jeopardy issue, therefore it is irrelevant to the proceedings at hand. Instead, the case involved a defendant being convicted on two § 924(j) counts, but even then, other courts have argued that the Eleventh Circuit wrongly interpreted the statute and would still violate double jeopardy based on their understanding.<sup>23</sup> The Fifth Circuit even goes so far as to say, “The way the case [Julian] was charged actually supports the view that punishment should not be imposed for both a section 924(c) and a section 924(j) violation.”<sup>24</sup> This just goes to show that the Second and Eleventh Circuits were wrong in their understanding of legal precedent and in the intent of Congress regarding the statutes, and if they were already proven wrong multiple times, they can be proven wrong again.

It is our understanding, based on the multitude of legal precedent, the similarity of arguments presented in such cases, and the statutory writing, that the Double Jeopardy Clause does not permit two sentences for an act that violates 18 U.S.C. § 924(c) and § 924(j). This is a conclusion which the majority of the circuit courts and the Solicitor General agree with. It is our understanding that there is no case in which it is mentioned that this can happen, or that Congress

---

<sup>23</sup> *Gonzales*, 357-58.

<sup>24</sup> *Gonzales*, 358.

intended for the sentences to run cumulatively. Furthermore, by just looking at the statutory text it is clear that a defendant must either be sentenced according to § 924(c) or § 924(j), but not both. Therefore, we strongly urge the court to hear our argument and use it when determining the outcome of this case. The question presented to the Court has been in discussion for far too long when there is already so many examples and evidence of how it would violate double jeopardy. If the Court, for once and for all, agrees with our argument and the arguments of the other circuit courts, that would mean that there are countless individuals who have been wrongfully sentenced and have either done their time or are much closer to finishing their sentences. ACLU strongly urges the Court to keep this in consideration because it will affect prisoners' lives and defendants in the future.

Deterrence or Retribution? The Ethical Boundaries of Punitive  
Damages

Authored by  
*Gracie Blanchard*

Punitive damages remain among the most contested and questioned collective mechanisms within civil litigation. While compensatory damages are designed to compensate plaintiffs for tangible losses, punitive damages seek to penalize defendants and discourage severe misconduct. Positioned at the crossroads of legal accountability, ethical judgment, and public perception, punitive damages often provoke much debate. While their primary purpose is to discourage reckless or malicious conduct, the distinction between appropriate punishment and excessive penalty remains difficult to define. This complexity has led to ongoing discussions concerning the appropriate circumstances, methods, and extent of its exercise within law.

The core issue this research addresses is the ethical question of when financial penalties shift from serving as a tenable deterrent to a drastic form of punishment. This paper argues that although punitive damages do play a significant role in the civil justice system, their application must be anchored in ethical proportionality, legal consistency, and factual clarity. The comprehensive discussion surrounding punitive damages is often misshapen and further exacerbated by media sensationalism, which often results in public outrage, further misrepresenting individual cases and indirectly diminishing the underlying legal principles at hand. High-profile lawsuits also often attract scrutiny not solely based on the legal arguments and circumstances presented but also due to their faulty portrayal in the mass media. Such misshaping reduces complex legal cases to simplistic narratives centered on themes of frivolity or absurdity, thereby obscuring the deeper legal and moral inquiries they pose. This report will examine the ethical frameworks that should guide civil punishment by exploring punitive and compensatory damages, assessing the influence of media representation, and analyzing key legal precedents, including *Liebeck v. McDonald's Restaurants*, alongside comparable cases.<sup>25</sup> In doing so, it will break down the ethical principles and applications of punitive damages

---

<sup>25</sup> *Liebeck v. McDonald's Restaurants, P.T.S., Inc.*, No. CV-93-02419, 1995 WL 360309 (N.M. Dist. Aug. 18, 1994), vacated sub nom. *Liebeck v. Restaurants* (N.M. Dist. 1994).

themselves.

Monetary damages are awarded to resolve disputes and reimburse injured parties. These damages can be classified into two categories: compensatory and punitive. While both seek to execute justice, they also serve distinctly different objectives and are managed by different criteria. Compensatory damages are exclusively intended to restore the plaintiff to the financial condition they were in before the event that caused harm or injury. This class of damage addresses tangible losses to which monetary value can well be attributed. Examples include medical expenses, lost wages, property damage, rehabilitation costs, legal fees, and other economic repercussions. Compensatory damages are based on the principles of restitution, not punishment, emphasizing equity and fairness.<sup>26</sup>

In contrast, punitive damages serve a different function. Rather than simply compensating the victim, they are designed to penalize the wrongdoer for particularly reckless, willful, malicious, or negligent acts. Punitive damages aim to dissuade the defendant and others from engaging in similar egregious behaviors. However, they are not awarded in every case, as they are reserved for cases where the defendant's conduct surpasses mere delinquency and enters the domain of moral culpability. Courts commonly establish a higher threshold for specific wrongdoing and often require clear and convincing evidence to justify punitive damages. The calculation of such damages does not necessarily adhere to a rigid formula. Still, courts consider several factors including the reprehensibility of the defendant's conduct, the ratio of punitive to compensatory damages, and comparisons to civil penalties.<sup>27</sup>

This variability has generated substantial ethical discourse. A primary concern within this discussion is the issue of proportionality, specifically when punishment becomes excessive.

---

<sup>26</sup> Doug Rendleman, *Measurement of Restitution: Coordinating Restitution with Compensatory Damages and Punitive Damages*, 68 Wash. & Lee L. Rev. 973 (2011), 6.

<sup>27</sup> Kaitlyn Filip & Kat Albrecht, *Liebeck v. Frivolity: The Contemporary Influence of an Iconic Case*, 4 Corp. & Bus. L.J. 42 (2023), 56-59.

Using financial penalties to send moral messages raises critical ethical questions. At what point does punishment shift from being corrective to vengeful? Should a defendant's wealth affect the size of the award? Is it justifiable to impose millions in damages when the serious harm could be measured in thousands? These questions lie at the heart of the ongoing debate about punitive damages, underlining the all-around concerns about fairness, judicial discretion, and the limits of civil justice.

In contemporary society, media narratives often influence public perception of justice. High-profile cases, especially those with considerable monetary awards, are often sensationalized to capture the attention of an audience. This trend can lead to misunderstandings of fundamental legal principles and standards, especially concerning punitive damages. The frequent media depiction of plaintiffs as opportunistic or greedy filing lawsuits for trivial grievances has also greatly contributed to the widespread idea of "frivolous lawsuits." Although this generates attention in the media, it conceals civil remedies' fundamental purpose and necessity. Punitive damages in particular are significantly affected by this. When the public encounters news stories about multimillion-dollar verdicts without proper context, the punitive aspect often seems arbitrary, unjustified, or extreme. A prominent example of such media mischaracterization is the 1994 *Liebeck* case.<sup>28</sup> Often reduced in popular culture to a simplified story of an elderly woman who spilled hot coffee on herself and subsequently received millions in settlement, the case's legal complexities are continually overlooked and undermined. Authors Kaitlyn Filip & Kat Albrecht, in their article "*Hot Coffee and Cold Facts: Reconsidering the Liebeck Verdict*" (2023), argue likewise and state that the public's perception of *Liebeck* was shaped less by legal reality and more by media distortion.<sup>29</sup> They emphasize that *Liebeck's*

---

<sup>28</sup> *Liebeck v. McDonald's Restaurants, P.T.S., Inc.*, No. CV-93-02419, 1995 WL 360309 (N.M. Dist. Aug. 18, 1994), vacated sub nom. *Liebeck v. Restaurants* (N.M. Dist. 1994).

<sup>29</sup> Kaitlyn Filip & Kat Albrecht, *Liebeck v. Frivolity: The Contemporary Influence of an Iconic Case*, 4 Corp. & Bus. L.J. 42 (2023), 56-59

lawsuit was far from frivolous, pointing out that the Plaintiff suffered severe, life-altering injuries and that McDonald's had long been aware of the dangers of their excessively hot coffee through prior complaints. Filip and Albrecht ultimately suggest that the case was miscast as a symbol of litigious surplus when, in reality, it served as an example of the civil justice system functioning as intended to hold corporations accountable. Commenting further on their arguments, such distortions do more than just misinform the public. They create a climate where legitimate plaintiffs are painted as opportunistic, diluting the integrity of the legal system itself. Victims may also be discouraged from pursuing justice due to concerns about public humiliation or ridicule. Ultimately, the media's framing of civil cases plays a crucial role in shaping cultural attitudes toward justice. For punitive damages to function as intended, both ethically and effectively, public discourse must be informed, nuanced, and based on substantial evidence.

*Liebeck* has evolved to be a notable example regarding frivolous lawsuits. The underlying truths of *Liebeck*, however, offer a far more severe and ethically convoluted narrative. The case follows the story of Stella Liebeck, a 79-year-old woman, who sustained third-degree burns to her thighs, buttocks, and groin after accidentally spilling a cup of McDonald's coffee in her lap. The coffee was at a temperature of between 180 to 190 degrees Fahrenheit, exceeding the point at which third-degree burns occur. Liebeck underwent skin grafts and was hospitalized for eight days, followed by years of ongoing treatment and health complications. Initially, Liebeck only sought twenty thousand dollars in compensatory damages to address her medical expenses and lost income. However, McDonald's declined to settle. During the trial, evidence revealed that McDonald's had received over 700 complaints concerning the temperature of its coffee causing burns, yet no changes were made by the corporation. The jury initially awarded Liebeck \$200,000 in compensatory damages, which was later reduced to \$160,000 due to her deemed

comparative negligence, in addition to \$2.7 million in punitive damages equivalent to approximately two days' worth of McDonald's coffee sales. A judge later reduced the punitive damages costs to \$480,000 resulting in a final award of roughly \$640,000.<sup>30</sup> The significance of the Liebeck case extends beyond merely the facts alone. The jury concluded that McDonald's engaged in willful misconduct by knowingly placing customers at risk. The punitive damages sought to deter such corporate behavior rather than truly supply justice for Liebeck.

Nevertheless, the public response, largely shaped by media influence, focused on the number of financial awards, which was overexaggerated, rather than the misconduct. This case depicts the broader apprehensions surrounding punitive damages, particularly the debate over what constitutes an appropriately "proportional" punishment. It also emphasizes how media framing can cloud civil verdicts' moral and legal foundations, reducing complex cases to overly simplistic representations and distorting public perceptions of justice.

Other significant cases, like *BMW v. Gore* and *Ford Motor Co. v. Stubblefield*, also help better position punitive damages, especially when it comes to holding corporations accountable for negligent or unethical conduct.<sup>31</sup> Jack M. Beerman's article, *Punitive Damages in the United States (2007)*, offers an in-depth discussion of both cases at length, examining their relevance surrounding punitive damages and their alignment with the code of ethics.<sup>32</sup> In *BMW v. Gore*, the Supreme Court addressed the question of when punitive damages cross the line into excess after a jury awarded \$2 million against BMW for failing to disclose that a new car had been repainted before sale. Although the plaintiff's actual losses were valued at just

---

<sup>30</sup> Rosemary Hartigan, Monica Sava & Daniel T. Ostas, *Critical Thinking and the McDonald's Hot Coffee Case: A Pedagogical Note*, 24 S. L.J. 337 (2014), 11-16.

<sup>31</sup> *Ford Motor Co. v. Stubblefield*, 171 Ga. App. 331, 319 S.E.2d 470 (1984); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996).

<sup>32</sup> Jack M. Beermann, *Punitive Damages in the United States*, 32 DAJV Newsl. 140 (2007), 140-143.

\$4,000, the Court ruled that the punitive award was “grossly excessive,” reinforcing the notion that penalties should be proportionate to the seriousness of the misconduct rather than influenced by the defendant’s wealth or public status. The decision was important in establishing clearer standards for evaluating punitive damages, pushing courts to wager both the fairness of the award and the nature of the wrongdoing involved. However, the Court’s ruling did not reject the value of punitive damages altogether. Rather, it underlined the risk of lack of proper enforcement if penalties are so easily evaded that companies have little incentive to avoid unlawful harmful behavior. This same logic applies to *Liebeck*, where the punitive damages were not designed to enrich the plaintiff but to make an example and hold McDonald’s accountable for knowingly serving dangerously hot coffee despite repeated warnings and prior injury reports. In contrast, *Stubblefield* showed why extensive punitive damages are sometimes justified. Ford was found to have knowingly put consumers at risk by refusing to correct a defective fuel tank design in the Pinto, consequently prioritizing profits over safety. When that defect ultimately cost a customer their life, the amount of punitive damages wasn’t just about compensation but about stating that corporate negligence isn’t acceptable in any capacity or circumstance, specifically in cases such as this. Much like in *Liebeck*, the *Stubblefield* case shows that punitive damages play an essential role in preventing companies from treating ethical lapses like minor business risks. Together, *Liebeck*, *BMW*, and *Stubblefield* highlight the ongoing tension in civil law between awarding fair compensation, setting reasonable boundaries for punitive damages, and ensuring that corporations are held accountable when their actions put the public at risk. While *BMW* cautioned courts against imposing excessive or disproportionate punitive awards, *Stubblefield* demonstrated why significant financial penalties are sometimes the only way to hold corporations responsible for

repeated or reckless misconduct. Cases like *Liebeck* lie at the soul of this debate, illustrating how punitive damages, when applied with care and context, serve as both a security for consumers and an inhibitor against corporate indifference.

Punitive damages are meant to punish wrongdoers and deter harmful behavior. However, the ethical issues surrounding them are far from resolved. While deterrence is an honest goal, it continuously raises the question of how far is too far and what crosses the line. The concept behind punitive damages is to stop bad behavior by striking the defendant with a big penalty. In cases of big corporate negligence, punitive damages can be crucial in forcing companies to fix their mistakes and protect the public. But the penalty must be fair. If it becomes too high, it stops being about deterrence and becomes more like revenge. Deterrence is only ethical if it targets real, harmful patterns and is proportionate to the misconduct. Punitive damages shouldn't be used to punish someone who's already paid compensatory damages for the harm they caused. The key issue is defining what conduct is bad enough to deserve punitive damages. Courts usually look at intentional harm, gross negligence, or flagrant disregard for others' safety. But evidently, applying this consistently is difficult. Much like in *Liebeck*, McDonald's knowingly served coffee at dangerously high temperatures, which ultimately caused considerable harm. Some might argue this isn't bad enough for punitive damages compared to something like fraud or intentional injury.

In contrast, *Stubblefield* shows a more "apparent" case, where the company's repeated negligence led to consumer harm. The conduct was blatant enough that punitive damages were justified. Courts need to have a much more explicit definition and criteria for what constitutes as particularly egregious behavior. Proportionality is another big issue. Courts try to ensure that punitive damages match both the harm done and the defendant's actions. In *BMW*, the Supreme

Court set guidelines to prevent excessive awards. It looks at the seriousness of the defendant's actions, the gap between compensatory damages and punitive damages, and how similar cases have been treated. Proportionality means punitive damages shouldn't go too far. A minor mistake shouldn't lead to a considerable fine, but deliberate misconduct should. Courts must be careful not to let punitive damages become symbolic or excessive.

Another problem is whether punitive damages should have caps. Critics argue caps would stop excessive damages and make the system more predictable. It would also prevent emotionally driven jury decisions. But others say flexibility is necessary. Some cases, like those involving large corporations, need bigger awards to make a point. The key is finding a balance that prevents punishments, while flexibility allows courts to adjust based on the situation.<sup>33</sup>

Finally, punitive damages should not just be about getting back at the defendant. If they are based on anger or emotion, they become too separated from the harm caused and no longer serve their intended purpose. Rather than focusing on vengeance and retaliation, the primary goal should be to deter future misconduct and punish the culprit fairly. When punitive damages go off track, they do much more harm than good, which in turn, ultimately undermines the integrity of the justice system, weakens societal trust, and can lead to unfairly punishing defendants who have already made reparations through compensatory damages. When misapplied, punitive damages risk becoming instruments of emotional retaliation rather than effective deterrence or accountability.

Punitive damages remain one of the most debated tools in American civil law as a legal means meant not only to compensate victims but to punish especially reckless or harmful behavior and deter future misconduct. As this paper has reasoned, while punitive damages do, in

---

<sup>33</sup> Beermann, 143-144.

fact, serve a vital role in holding corporations and individuals accountable, their legitimacy rests on careful, ethical, and proportional application and balance. When employed responsibly, these damages act as both a protection for public interest and a careful reminder to powerful entities that the law does not tolerate disregard to human safety. The cases of *Liebeck*, *BMW*, and *Stubblefield* illustrate the ongoing struggle courts encounter in balancing justice, penalty, and deterrence. *Liebeck* exposed how public misapprehension can warp the perception of punitive awards. *BMW v. Gore* underscored the importance of anchoring punitive damages within constitutional limits, cautioning against disproportionate, unchecked jury awards. *Stubblefield* demonstrated why, at times, strong punitive penalties are the only way to confront corporations that show deliberate unconcern for consumer safety. These cases emphasize the need for both discretion and resolve when imposing punitive damages to punish when necessary, but never to cross into extracting a “pound of flesh” for the sake of public outrage or spectacle.

When punitive damages yield in leveling in fairness and proportionality, they risk becoming means of excessive retribution rather than meaningful deterrence. Courts must defend against this, ensuring that punitive awards reflect the nature of the misconduct and the harm inflicted rather than emotions or social coercion. Likewise, the public must be willing to look beyond the media’s captivating allure and recognize that punitive damages prevent future harm, not simply deliver an inflated financial impact. Yet, punitive damages remain essential to civil justice, not merely because they offer the plaintiff a windfall, but because they clearly convey that reckless and dangerous conduct will not go unanswered. Their purpose lies not in exacting vengeance but in the pursuit of prevention.

# Prioritizing Rehabilitation in Juvenile Justice

Authored by  
*Lauren Eades*

## Historical Foundations of Juvenile Justice

The juvenile justice system in the United States has been recognized as distinct from the broader criminal justice system for over 100 years. In this time, the system has evolved to reflect the unique developmental and psychological characteristics of youth that are becoming more known. With this new knowledge, the need to separate juvenile justice from the more widely recognized U.S. justice system is especially prominent. These changes are evident in the recent shift from emphasizing punishment to enhancing rehabilitation efforts and opportunities. However, the need to create a more effective and separate justice system for younger offenders is not new. The first juvenile court statute was enacted in Illinois in 1899, which established a separate court system for minors under the age of sixteen that focused on rehabilitation rather than punishment. Even then, the government started to understand that there needed to be a difference between juveniles and adults when tailoring sentencing.<sup>34</sup> Nonetheless, the juvenile justice system was not as formally developed in the past as it is now. What started as an informal court process hidden away from the public eye with little knowledge of juveniles' needs is now a widely discussed process and a long ongoing debate on the proper way to deal with minors in terms of justice and sentencing.

The U.S. Supreme Court case, *In re Gault*,<sup>35</sup> redefined what was originally established as the juvenile justice system. *Gault* required youths to be granted the same due process rights that the Fourteenth Amendment guarantees to adults when they are charged with delinquency, as well as extending additional constitutional rights to these young individuals. Some of these additions granted to juveniles in the late 1900s included the “beyond a reasonable doubt” clause

---

<sup>34</sup> Cydney Carter, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 *Lincoln Mem'l U. L. Rev.* 78 (2021).

<sup>35</sup> *In re Gault*, 387 U.S. 1 (1967).

and the right against double jeopardy. However, what started as a focus on rehabilitation and quiet punishment took a turn in the 1980s and 1990s, as juvenile crime rates increased, resulting in many states adopting “tough on crime” policies that created harsher punishments for young offenders. This ultimately shifted how the juvenile justice system was originally set up and executed.<sup>36</sup> It is important to note, though, that the new research and studies reverted the juvenile justice system almost entirely back to how it was originally created with a priority on rehabilitation.

The juvenile justice system in the United States must return to its foundational focus on rehabilitation rather than punishment. This understanding is supported by Supreme Court rulings, adolescent brain development research, and successful international models. Meaningful reform—through legislative change, increased federal funding, and the implementation of individualized, developmentally appropriate sentencing—is essential to ensure justice, reduce recidivism, and provide all juvenile offenders the opportunity to grow and reintegrate into society.

The belief that juveniles should be treated differently than adults in the justice system has been widely accepted since 1825, with the establishment of the first juvenile institution, the House of Refuge in New York. For 200 years, the populace has accepted that providing juveniles with a place focused on rehabilitation, care, and education would reform their behaviors and reshape them into functioning citizens who could be properly reintroduced into society. Established so early in the 19th century was a foundation and focus of separate systems and the principle of *parens patriae*, a doctrine that allows the government to intervene and

---

<sup>36</sup> Juvenile Law Center, *Youth Justice System Overview*, <https://jlc.org/youth-justice-system-overview>.

“care” for individuals who cannot act independently.<sup>37</sup> The early juvenile justice system was created and is rooted in this idea and specifically that the state will act as a guardian for juvenile offenders. These developing minds needed and still need care, protection, and the ability to rehabilitate, instead of facing harsh punishments often for the rest of their lives, and the system was a means of achieving that goal.

This way of functioning for the still-developing juvenile justice system remained the same for many years following, and the main changes usually resulted in further rights for these minors in the justice system. 1967 saw the Supreme Court decision *Gault* which gave juveniles due process rights, and only a year later in 1974 came the Juvenile Justice and Delinquency Prevention Act, solidifying various federal protections for juvenile offenders including separating them from adults in custody. It was not until the mid-twentieth century that the priority of rehabilitation moved to punishment. The original mission of the system, which had a true and positive impact on these juveniles, changed when the juvenile justice system was experiencing a turn within the “Tough on Crime” Movement of the 1980s and 1990s. Along with this new belief system came the emergence of harsh sentencing laws, life sentences without parole, and limited rehabilitation opportunities for juvenile offenders.

### **The Supreme Court and the Return to Rehabilitative Justice**

As time passed, the shift from rehabilitation to punishment during the "Tough on Crime" Movement marked a significant setback in juvenile justice. Key Supreme Court decisions in the twenty-first century have reaffirmed the importance of recognizing the developmental differences between juveniles and adults, reviving the idea of prioritizing rehabilitation amongst

---

<sup>37</sup> Cydney Carter, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 *Lincoln Mem'l U. L. Rev.* 78 (2021).

juveniles. These significant rulings have begun to steer the system back to rehabilitative justice, acknowledging that juveniles possess a unique capacity for change. As a result, the necessity for more individualized and compassionate sentencing has become an important focus. Beginning in 2005, a prominent increase in adolescent brain development research has been applied to numerous juvenile cases considering capital punishment. Since there is an increased understanding that juveniles hold a greater capacity for change, the idea of rehabilitation has begun to shape sentencing laws, indicating a shift away from a focus on punishment.<sup>38</sup> *Roper v. Simmons* marked the beginning of this change when the Supreme Court abolished the death penalty for juveniles under the assumption that they held a higher potential for reform and had lesser culpability due to their developmental immaturity.<sup>39</sup> These changes from rulings within the Supreme Court continued with *Graham v. Florida*, where life without parole for juveniles in non-homicide cases was prohibited.<sup>40</sup> This ruling further reinforces the idea that juveniles simply should not face sentences that deny them the possibility of rehabilitation. The *Graham* decision stressed the potential for rehabilitation; however, it was not enough. As Rovner explains:

The *Graham* decision emphasized the importance of giving juvenile offenders a chance to become rehabilitated. These individuals have a substantial capacity for rehabilitation, but many states deny this opportunity: approximately 62% of people sentenced to life without parole as juveniles reported not participating in prison programs in large part due to state prison policies that prohibit their participation or limited program availability.<sup>41</sup>

---

<sup>38</sup> Josh Rovner, *Juvenile Life Without Parole: An Overview*, The Sentencing Project (2021).

<sup>39</sup> *Roper v. Simmons*, 543 U.S. 551 (2005); Cydney Carter, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 Lincoln Mem'l U. L. Rev. 78 (2021).

<sup>40</sup> *Graham v. Florida*, 560 U.S. 48 (2010).

<sup>41</sup> Josh Rovner, *Juvenile Life Without Parole: An Overview*, The Sentencing Project (2021).

Supreme Court cases have initiated important changes; however, further reforms are needed to positively impact juvenile offenders and their experiences incarcerated. As awareness grew that prison programs were inaccessible and ineffective, concern for juveniles in these programs became more understood. Consequently, more cases came to light altering the ways juvenile sentencing functions, how punishment may be applied during their cases, and time served. This disconnect highlights how legal progress must be matched by meaningful access to rehabilitative resources in order to have a real impact.

The Supreme Court's decision in *Miller v. Alabama* continued in altering juveniles' experiences within the justice system.<sup>42</sup> This case established that mandatory life without parole for juveniles violates the Eighth Amendment, reinforcing Justice Kagan's explanation of the importance of adolescent brain development in sentencing considerations. Still, *Miller's* restriction of mandatory life sentences without parole did not prevent states from prosecuting juveniles as adults or obtaining severe sentences that do not include life without parole.<sup>43</sup> *Miller* led to big changes within the United States' juvenile court system. Since 2012, thirty-one states and Washington D.C. revised juvenile sentencing laws which set parole eligibility to fifteen to forty years.<sup>44</sup> The evaluation of *Miller* is crucial because it highlights how the Supreme Court has already played a role in improving juvenile justice but has not addressed all the changes still necessary to prioritize rehabilitation over punishment.

Following the *Miller* ruling came *Montgomery v. Louisiana*.<sup>45</sup> *Montgomery* held that the ruling in *Miller* was retroactive, and the courts applied this to cases that were already final. This

---

<sup>42</sup> *Miller v. Alabama*, 567 U.S. 460 (2012).

<sup>43</sup> Sarah Sewell, *In the Courts: Extending Sentencing Protections for Young Offenders*, 39 Child. Legal Rts. J. 164, (2019).

<sup>44</sup> Josh Rovner, *Juvenile Life Without Parole: An Overview*, The Sentencing Project (2021).

<sup>45</sup> *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

not only ensures that juvenile offenders with mandatory life sentences have the opportunity for resentencing but also emphasizes the need for individual sentencing based on the juveniles' potential for rehabilitation and capacity for change.<sup>46</sup> In all, the new method of application provided hope and legal recourse for hundreds of juvenile offenders who were living without parole across the country. These Supreme Court cases collectively show a clear constitutional trend toward rehabilitation over retribution for juveniles. This gradual shift was essential with the emerging awareness that children are fundamentally different from adults in terms of development, culpability, and capacity for change. This evolving perspective on juvenile development has increasingly influenced how both the United States Supreme Court and state courts approach sentencing decisions for young offenders. The California Supreme Court ruled in *People v. Harris* that courts must consider a youth's age and the hallmark features of adolescence during sentencing, even for discretionary sentences.<sup>47</sup> This was a specific case that reinforces the *Miller* principle that even when life sentences are not mandatory, courts must evaluate factors such as immaturity and potential for rehabilitation before issuing harsh penalties to juveniles. In addition, it illustrates how courts are beginning to integrate a deeper understanding of adolescent development into their sentencing practice.

### **The Role of Adolescent Brain Development in Sentencing**

To build on the momentum that the United States has begun to change its sentencing dynamics, scientific research on adolescent brain development has become one of the strongest arguments in favor of the trend of rehabilitation over punishment for juvenile offenders. Due to

---

<sup>46</sup> Josh Rovner, *Juvenile Life Without Parole: An Overview*, The Sentencing Project (2021).

<sup>47</sup> *People v. Harris*, 60 Cal. App. 5th 939 (Cal. Ct. App. 2021); Sarah Sewell, *FEATURED PRACTICE PERSPECTIVE: In the Courts: Extending Sentencing Protections for Young Offenders*, 39 Child. Legal Rts. J. 164 (2019).

the fact that adolescent brains are not fully developed until the mid-to-late 20s, they are more prone to impulsive behavior and poor decision-making.<sup>48</sup> Adolescents simply lack the ability to fully understand the consequences of their behavior and still have a capability for change. The greater neuroplasticity present in juveniles means they can adapt and develop better decision-making skills over time. This distinction underscores the importance of rehabilitation for juvenile offenders. Punitive measures, such as life sentences, fail to account for their diminished culpability and encourage negative behavior, while rehabilitative measures can take advantage of juveniles' capacity for change and focus on positive effects such as education, therapy, and skill-building. It has been proven that rehabilitative programs, such as counseling, education, and vocational training, all lead to a reduced rate of recidivism among juveniles. Simply incarcerating them in facilities geared towards adults and sentencing them in punitive manner often increases their likelihood of reoffending due to exposure to hardened criminals and a lack of rehabilitative support and education.<sup>49</sup> Brain science proves how rehabilitation, which aligns with both ethical and legal principles, can ensure that juvenile justice policies prioritize personal growth and reintegration rather than permanent punishment.

### **Challenges to Implementing Rehabilitative Justice**

The need for rehabilitation is evident and has been positively changing throughout the years, but that's not to say it hasn't come without challenges. Numerous questions have been raised about the appropriate application of rehabilitation over punishment. One of the most debated issues is whether this shift demands equal application to violent and non-violent

---

<sup>48</sup> "The Teen Brain: 7 Things to Know." Nat'l Inst. of Mental Health (2023), <https://www.nimh.nih.gov/health/publications/the-teen-brain-7-things-to-know>.

<sup>49</sup> Ronal W. Serpas & Taryn A. Merkl, *Improve Juvenile Justice*, in *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, Brennan Center for Justice (2020).

juvenile offenders. The United States justice system has multiple harsh policies in place in order to keep society productive. Mandatory minimum sentencing laws and the “Three Strike” rule are just some issues that have led to the placement of juveniles in adult facilities for life. Housing juveniles in adult prisons holds very serious consequences on their developing minds such as higher potential for reincarceration, exposure to violence, and limited access to rehabilitation efforts.<sup>50</sup> While some argue that violent offenses warrant disqualifying youth from rehabilitative consideration, recent Supreme Court rulings and psychological research challenge the belief that they should be excluded. These developments suggest that even juveniles convicted of serious crimes possess a unique capacity for change. Yet, resources to provide these positive rehabilitation measures to all juveniles remain extremely limited. The 2000s have seen a decline in federal funding, and since 2002, funding for juvenile justice programs has dropped from \$565 million to \$320 million.<sup>51</sup> This reduction has greatly weakened support for state and local rehabilitation efforts that are being put in place.

To create positive change, advocacy for rehabilitation at the federal level must increase. Moreover, not only has there been a decline in federal funding, but in federal leadership too. Recent years have shown the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has scaled back operations, relaxed racial disparity reporting requirements, and provided little guidance on Juvenile Justice Reform Act implementation.<sup>52</sup> These problems demonstrate a need for increased investment at both federal and state levels. Congress should fund the changes stated by the Juvenile Justice Delinquency Prevention Act (JJDP) and reinstate Juvenile

---

<sup>50</sup> Ronal W. Serpas & Taryn A. Merkl, *Improve Juvenile Justice*, in *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, Brennan Center for Justice (2020).

<sup>51</sup> Ronal W. Serpas & Taryn A. Merkl, *Improve Juvenile Justice*, in *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, Brennan Center for Justice (2020).

<sup>52</sup> Office of Juvenile Justice & Delinquency Prevention, *Research and Statistics*, <https://ojjdp.ojp.gov/research-statistics>.

Accountability Block Grants to support diversion and rehabilitation programs. Expanding these grant programs can help states raise the age of criminal responsibility, invest in alternatives to incarceration, and enhance rehabilitation services.<sup>53</sup>

### **Scholarly Advocacy and Global Perspectives**

Not only is this shift away from punitive approaches and toward rehabilitation supported by policy research, but it is also backed by many legal scholars. Elizabeth Scott and Laurence Steinberg, for example, have argued for a juvenile justice system grounded in developmental science—specifically, how children grow and are influenced.<sup>54</sup> The adolescent brain’s plasticity, heightened sensitivity to risk, and capacity for change underscore the need for a tailored legal response. Scott and Steinberg’s work in rethinking juvenile justice has contributed to the foundation of many U.S. Supreme Court rulings, including *Roper*, *Graham*, and *Miller*, each emphasizing the diminished culpability of youth.<sup>55</sup> Since the emergence of these landmark cases, scholars have proposed a variety of reforms, such as eliminating juvenile life without parole and investing further in restorative justice and individualized treatment programs.<sup>56</sup> While these proposals have started influencing legislation and practice, there is still a long way to go toward full implementation. Legal scholars have also called for the United States to examine justice systems abroad centered on child development, such as those in Germany and Norway, which

---

<sup>53</sup> Ronal W. Serpas & Taryn A. Merkl, *Improve Juvenile Justice*, in *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, Brennan Center for Justice (2020).

<sup>54</sup> Elizabeth Scott & Laurence Steinberg, *Rethinking Juvenile Justice*, 58 *The Journal of Law & Education* 319, 324 (2007).

<sup>55</sup> *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>56</sup> Jodi S. Quas et al., *Restorative Justice for Juvenile Offenders: Examining the Effects of Restorative Justice Programs*, 34 *Crime & Delinquency* 273 (2016).

have proven successful.<sup>57</sup> These scholarly discussions will continue until meaningful and beneficial change is achieved.

### **Policy Proposals for a Future of Rehabilitation**

There are over 48,000 children currently confined in juvenile facilities.<sup>58</sup> They deserve a chance at rehabilitation and reintegration when there is extensive research and proof that these measures work. Increasing the expanse of rehabilitative programs, legal safeguards to excessive sentencing, age-appropriate correctional treatment, and individualized sentencing policies will be beneficial to all these juveniles facing incarceration. The application of these ideas would lead to a more productive and beneficial justice system that serves not only those individuals who are incarcerated but society as a whole. Many states have initiated alternatives to arrests, which have had positive results within those already in the system. Programs such as community-based sanctions like family counseling, apology letters, community impact statements, and restitution are present all over the United States today. Still, the lack of funding and enforcement has made the US stuck in its old ways, with high juvenile incarceration rates still existing. Prioritizing education, treatment, support, and engagement in youth will provide a solution to the biggest problem in the US justice system— incarceration.<sup>59</sup> US courts must expand programs that will benefit juveniles within the system. Child psychologists and experts ought to be informed of decisions in juvenile cases, and detention centers need to be replaced with smaller facilities that can provide these programs for these children.

---

<sup>57</sup> Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice*, 25 Harvard Law Review 1377, 1395-97 (2012).

<sup>58</sup> Cydney Carter, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 Lincoln Mem'l U. L. Rev. 78 (2021).

<sup>59</sup> *Id.*

These solutions that should be applied in the United States do not just come from ideas and possible solutions. They are employed throughout other countries and have proven beneficial and have shown positive growth and change within their juvenile offenders. The International Covenant on Civil and Political Rights states, “in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”<sup>60</sup> Bosnia and Herzegovina offer a compelling model for how juvenile justice systems can prioritize rehabilitation over punishment. Their Criminal Procedure Code emphasizes mental development, sensitivity, and personal characteristics of minors to prioritize rehabilitation after criminal proceedings. They take into account Minors' history, living conditions, mental conditions, and age when deciding proper punishment, with a priority of what will benefit them most. It is rare for imprisonment to be decided in these countries, with only extreme cases between 1 to 10 years sentences.<sup>61</sup> This framework benefits both the juvenile and society by reducing recidivism, promoting accountability through support, and acknowledging the capacity for growth and change. Additionally, Germany’s youth courts law provides a guideline that can be referenced by the United States on positive rehabilitation priority and the results. Their three main categories of consequence include supervisory measures with supervisory assistance if necessary, small disciplinary measures only including reprimands and conditions, and third is a youth penalty of 6 months to a maximum of 10 years. Germany also prioritizes looking into juveniles' life/family background, development, psychological, emotional, and character background. Additionally, their youth court has specific formation and

---

<sup>60</sup> Cydney Carter, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 *Lincoln Mem'l U. L. Rev.* 78 (2021).

<sup>61</sup> *Id.*

assistance from the Youth Court Assistance Service, which prioritizes children's needs.<sup>62</sup> The United States could benefit significantly from incorporating similar standards of these two countries that weigh rehabilitative potential and developmental maturity more heavily when deciding sentences. Applying legal reforms to ensure the entire United States follows rehabilitative methods similar to these countries would prove to make a positive impact on juvenile incarceration and justice experiences.

### **Conclusion: Ensuring Justice Through Rehabilitation**

In America, nearly 2,000 children are arrested each day. With a system focused on punitive measures rather than rehabilitation, there is no time to delay meaningful reform. The juvenile justice system simply must prioritize rehabilitation over retribution, ensuring every child has the chance to learn, change, and reintegrate into society. To put it simply, a child's worst mistake should not define their entire future.

The juvenile justice system was founded on the principles of rehabilitation, with an understanding of juveniles' capacity for change. Recent scientific advancements in understanding adolescent brain development have only further proven this belief that individualized sentencing and compassion towards these offenders need to be shown. The Supreme Court has also played a critical role in reshaping the juvenile justice system in an attempt to bring the system back into a focus of rehabilitation. Landmark cases like *Roper*, *Graham*, *Miller*, and *Montgomery* show a clear shift towards protecting the rights and prioritizing juvenile offenders' futures. However, even with the changes made with these supreme court cases, more changes are still necessary to move the system forward and rid the system of problems with policy and practice.

---

<sup>62</sup> Cydney Carter, *Juvenile Justice: How the Theory of Rehabilitation Influences Procedural Protections and Punishment in Juvenile and Criminal Courts*, 8 *Lincoln Mem'l U. L. Rev.* 78 (2021).

The juvenile justice system is on its way to truly honoring the rehabilitative measures that must consistently be provided to juvenile offenders. In order to accomplish this feat change must be made and policymakers must act. This includes steps such as expanding access to community-based rehabilitation programs, ensuring developmentally appropriate treatment for all youth, and enacting legislative reforms that limit excessively harsh sentencing. Only once these changes are in place will the juvenile justice system truly be fair, providing juvenile offenders opportunities for change and a second chance to become a functioning member of society.

# Synthetic Nicotine and the FDA

Authored by  
*McKenna Kane*

Synthetic nicotine is a form of nicotine that is made in a lab rather than being extracted from tobacco plants, newly popular amidst the emerging universal understanding that smoking natural tobacco is unhealthy. However, legality surrounding the health and regulations of this product is just as pressing. Unlike traditional nicotine products, derived from tobacco plants, these products are made fully in laboratories and are often marketed as a “tobacco-free” alternative. However, that marketing distinction does not properly reflect the lack of difference for one's health between the two. This argument is pressing in light of divergent rulings in the Fifth and Ninth Circuit Courts of Appeals.

The Ninth Circuit held that synthetic nicotine products fall under the legal jurisdiction of the FDA, given the similar health risks and usage patterns of e-cigarettes to traditional tobacco products.<sup>63</sup> The Fifth Circuit held a more nuanced decision, examining the differences between the two forms of nicotine, and decided that transitioning to more tailored regulatory approaches for approving these products is more appropriate.<sup>64</sup> This decision led to further legal ambiguity on this issue. Public health regulations as well as economic interest are two general results of these cases that need to be properly understood.

While evaluating the implications of these decisions, this essay will argue in alignment with the Ninth Circuit’s interpretation stating that the FDA should retain regulatory authority over synthetic nicotine products to ensure consistent public safety standards and protect consumer health. While the Fifth Circuit raises important concerns about overreach and innovation, the health consequences of unregulated synthetic nicotine, particularly among the targeted youth audience, should not be ignored. Rather than aiming to

---

<sup>63</sup> *Lotus Vaping Technologies, LLC v. United States Food and Drug Administration*, 73 F.4th 657 (9th Cir. 2023).

<sup>64</sup> *Wages and White Lion Investments, L.L.C. v. United States Food and Drug Administration*, 16 F.4th 1130 (5th Cir. 2021).

ban e-cigarettes and other like products, this position advocates for more testing, oversight, and accountability by both the companies and the government. The stakes of this legal debate extend beyond vaping and into the heart of how federal agencies adapt to technological change. In the sections that follow, this paper will examine the circuit split in depth, consider public health and economic implications, while ultimately arguing for a regulatory framework that prioritizes safety and clarity in the marketplace.

To begin, understanding the circuit split is crucial. Samuel Bagenstos published a write-up of the Ninth Circuit's decision in which he shared that the *Lotus Vaping Technologies* case was pertaining to the speed of the FDA processes and not the actual laws at hand.<sup>65</sup> This case was dealing with whether or not the FDA went through the entire PMTA process quickly enough, and if they fairly evaluated the ability for the Lotus company's nicotine, e-cigarette, product to be on the shelves. The current Premarket Tobacco Product Application (PMTA) process for nicotine testing ensures that new tobacco products are safe. By forcing companies to go through rigorous reviews of scientific data, including testing for nicotine content, harmful constituents, and stability, the products that are placed on shelves are as safe as can be. Lotus was hoping for their nicotine product to be on the shelves at a more rapid rate than the FDA was approving them, and they took the FDA to court over the lost revenue for that lost time. This argument brought forth larger ideas regarding the FDA's role in the process of putting a nicotine product on the shelf, but it is important to understand that that is not the initial reason for the case. This argument surrounding the FDA's role in regulating these products then incited the *Wages* case.<sup>66</sup> This decision took place in the Fifth Circuit, where *Wages vs White Lion* attempted to put a new flavored e-cigarette on the market and was denied by the FDA as the

---

<sup>65</sup> *Lotus*, 73 F.4th 657.

<sup>66</sup> *Wages*, 16 F.4th 1130.

companies listed “research” for the product was all in literature reviews as opposed to scientific reviews. That legislature, while very similar to many of the other regulations in place by the FDA, was never explicitly written in their PMTA regulations and thus the company felt blindsided and as if the FDA was “making up PMTA requirements.”<sup>67</sup> This decision supplies a more structured argument siding against the FDA, claiming that the health regulations, standards, and processes need to be altered for products including synthetic nicotine and not tobacco, and that the FDA must step away from regulating them as there are very few current written legislatures about that genre of product.

The Ninth Circuit decision should be standard, as it focuses on public health considerations. The FDA's primary job is to protect public health by ensuring the safety, efficacy, and security of various products. Tobacco products are one of those consumable goods that the FDA is responsible for monitoring. Cigarettes, the most common natural tobacco product on the market, are proven to cause a multitude of health problems due to the more than 7,000 chemicals they contain. Specifically, cigarette smoke is linked to increased risk of cancer, heart disease, lung diseases, and other health complications as the chemicals inside are toxic and extremely carcinogenic. Synthetic nicotine products, while different in production, have nearly all of the same chemical structures and effects as plant-produced tobacco.<sup>68</sup> So, like tobacco products, it is the FDA’s job to ensure that consumers are as safe as possible when purchasing these similarly harmful goods. Synthetic nicotine pens and vapes are oftentimes marketed for younger smoking audiences. The brightly colored packaging, fun names, and fruity flavors are

---

<sup>67</sup> Newton, Craig. “Food and Drug Administration v. Wages and White Lion Investments, L.L.C.” *LII / Legal Information Institute*, Dec. 2024, [www.law.cornell.edu/supct/cert/23-1038](http://www.law.cornell.edu/supct/cert/23-1038).

<sup>68</sup> Baker, John. “Synthetic Nicotine vs Natural Nicotine: Everything You Need to Know.” *Labstat International Inc*, 14 Mar. 2022, [labstat.com/understanding-synthetic-nicotine-and-how-it-is-regulated-in-canada/](http://labstat.com/understanding-synthetic-nicotine-and-how-it-is-regulated-in-canada/).

all enticing for the vulnerable audience of adolescents and young adults in a way that blandly boxed and simply smoke flavored cigarettes are not. “Over 2.1 million youth, including 10% of high schoolers, reported e-cigarette use in 2023, with 90% preferring flavored products. The Groups contend that a broad range of flavors drives e-cigarette popularity among minors, leading to nicotine addiction and health risks such as lung and heart issues, cognitive impairment, and a greater chance of smoking combustible cigarettes”<sup>69</sup> In the Fifth Circuit case, the petitioning company claimed that their marketing did not directly call out any audience, so it is not their responsibility who buys their product.<sup>70</sup> While true, that logic does not go against the FDA either as it is not the FDA’s responsibility to control intent, instead to monitor and regulate the products that are available for consumers. E-cigarettes, regardless of the age they are marketed for, are accessible to all legal adults and should be regulated as such. “The FDA argues that it has consistently found that no marketing measures for e-cigarettes effectively curb youths’ use of dangerous smoking products, so they must regulate them all alike.”<sup>71</sup> Natural tobacco products do not market the same way that synthetic products do, so the argument that the marketing should follow the same regulations is poorly thought through. Because synthetic nicotine is new on the market, regulators are rapidly updating requirements as the technology evolves.

One of the most pressing, yet overlooked, aspects of the synthetic nicotine debate is the economic impact of regulating, or failing to regulate, these products. On one hand, regulation can impose immediate burdens on manufacturers and reduce the short-term profitability of

---

<sup>69</sup> Id.

<sup>70</sup> *Wages*, 16 F.4th 1130.

<sup>71</sup> Baker, John. “Synthetic Nicotine vs Natural Nicotine: Everything You Need to Know.” *Labstat International Inc*, 14 Mar. 2022, [labstat.com/understanding-synthetic-nicotine-and-how-it-is-regulated-in-canada/](https://labstat.com/understanding-synthetic-nicotine-and-how-it-is-regulated-in-canada/).

vaping companies. The FDA may require companies to complete additional testing before placing products on consumers' shelves. On the other hand, if lawmakers fail to regulate synthetic nicotine, public health spending, tax revenue, and the broader economic stability of health-related markets will suffer long-term consequences. The intersection of public health costs, market volatility, and weakened regulatory frameworks exposes a dangerous precedent if the FDA is stripped of its authority in this arena. As Newton outlines in his analysis of *Wages*, the Fifth Circuit's decision not only challenged the FDA's current regulatory framework, but also created a gray area in which synthetic nicotine could escape taxation and quality control measures that are typically applied to tobacco-derived nicotine.<sup>72</sup> This ambiguity undermines predictable tax revenue streams that governments, locally through federally, rely on. Nicotine products are traditionally taxed due to their health-related costs and addictive nature, and governments have adopted numerous initiatives to curb consumers' purchases and regulate companies' production. Without clear classification under FDA authority, synthetic nicotine products may continue to evade excise taxes, diminishing the financial deterrent these taxes provide while undercutting funds that support anti-smoking programs and similar public health initiatives. Moreover, when regulators fail to standardize requirements, the market becomes increasingly unpredictable. The vaping industry, already volatile, becomes even more unpredictable when federal oversight is inconsistent or disputed. When manufacturers cannot determine whether their products will be deemed legal, taxed, or regulated in the near future, long-term planning becomes nearly impossible. This instability disincentivizes ethical research and development in favor of rapid, profit-driven product releases that can exploit regulatory gaps. In simpler terms, companies could make already

---

<sup>72</sup> Newton, Craig. "Food and Drug Administration v. Wages and White Lion Investments, L.L.C." *LII / Legal Information Institute*, Dec. 2024, [www.law.cornell.edu/supct/cert/23-1038](http://www.law.cornell.edu/supct/cert/23-1038).

harmful products even more dangerous if they avoid required research and testing.

While this circuit split is important for understanding synthetic nicotine regulation and the FDA's role in that regulation, it also reaches deeper into the question of what taking away FDA powers would mean for broader legislation. James Rich, writing for the *Columbia Business Law Review*, warns that allowing courts to undermine FDA processes opens the door for broader deregulatory trends that may not only impact nicotine products but extend to other consumables, drugs, and public health tools; his analysis emphasizes how the erosion of the FDA's authority in this case could inspire similar legal arguments across various industries, jeopardizing everything from food safety to pharmaceutical approvals.<sup>73</sup> The weakening of centralized regulation in one instance can easily metastasize, particularly when courts set precedents that invite further challenges to well-established regulatory norms. These broader legal consequences are deeply intertwined with the economic ones. If companies anticipate a regulatory environment where courts overturn or question agency decisions, they may reduce compliance efforts, and regulators may enforce standards less consistently. That means that if companies believe that legislation may be quick to change, or not likely enforced, they may stop following the rules or insist that they be changed to fit the company's "best interest." This would dramatically alter the cost-benefit calculus for health-focused industries, incentivizing noncompliance in favor of market strategies that rely on speed as opposed to quality. The long-term outcome is not only a less safe marketplace but also a more economically fragile one. One where unregulated products could lead to higher healthcare costs, rising insurance premiums, and increased public spending on unhealthy and addictive substances. Preserving

---

<sup>73</sup> Rich, James. "The Future of Chenery II: Potential Implications from FDA v. Wages and White Lion, L.L.C. | Columbia Business Law Review." *Columbia.edu*, 2024, journals.library.columbia.edu/index.php/CBLR/announcement/view/741. Accessed 5 Mar. 2025.

FDA authority ensures economic predictability, protects public revenue, and safeguards a framework that has historically protected consumers from harm.

One of the central arguments in *Wages* is that synthetic nicotine is fundamentally different from traditional tobacco because it is not derived from the tobacco plant.<sup>74</sup> Therefore, in this case before the Fifth Circuit, author and attorney Lyle Cayce argues that it should not fall under the same regulatory framework originally designed for tobacco-based products. This perspective calls for the development of new, more tailored legislation that distinguishes between plant-based and lab-made nicotine, suggesting that existing FDA rules are outdated or misapplied in the context of modern innovations. While that argument seems logical up front, as previously mentioned, plant-based and lab-made tobacco share nearly all of the same health dangers. All nicotine molecules, regardless of source, have the same chemical structure:  $C_{10}H_{14}N_2$ .<sup>75</sup> This means that the smoke, when ingested, affects human lungs, throat, mouth, and overall body in the same way. E-cigarette companies emphasize this similarity while marketing their products, claiming they produce the same feeling as cigarettes, yet those same companies will downplay that fact when dealing with legislation. Furthermore, this argument is faulty because it relies on outdated legislation to regulate brand new technologies. The argument that *Wages* uses claiming that the FDA should not be allowed to change their legislation would mean that all new technologies would fall through.<sup>76</sup> That loophole would very quickly be abused by vaping companies if the FDA does not have proper authority to step in. Additionally, the FDA's rules and regulations for other consumable goods are allowed to change, so why would nicotine

---

<sup>74</sup> *Wages*, 16 F.4th 1130.

<sup>75</sup> Baker, John. "Synthetic Nicotine vs Natural Nicotine: Everything You Need to Know." *Labstat International Inc*, 14 Mar. 2022, [labstat.com/understanding-synthetic-nicotine-and-how-it-is-regulated-in-canada/](https://labstat.com/understanding-synthetic-nicotine-and-how-it-is-regulated-in-canada/).

<sup>76</sup> *Wages*, 16 F.4th 1130.

be any different? In the last five years, the FDA has made several significant regulatory changes, including updates to the nutrition facts labels for example. The concern for public awareness, as well as overall education, towards ingredients and macros has changed drastically in the past few years, resulting in the legislation surrounding that issue changing as well. As our world changes, on the shelf and otherwise, our legislation should follow.

The ongoing circuit split between *Wages* and *Lotus Vaping Technologies* highlights a significant moment in the evolution of regulatory law, public health policy, and the legal treatment of synthetic substances.<sup>77</sup> The larger question, throughout this circuit split and paper, is whether the FDA should have regulatory power over synthetic nicotine in the same manner as traditional nicotine sources, like plant-derived tobacco. The answer, as supported by the Ninth Circuit's ruling in *Lotus Vaping Technologies*, must be yes.<sup>78</sup> While the regulations may differ as the two products are marketed and made in varying ways, the FDA should have oversight powers for both of them. Granting the FDA regulatory authority over synthetic nicotine products is not only legally consistent with the agency's public health mandate but also in the best economic and social interest of our society as a whole. As the concerns for public health with this new form of nicotine are nearly identical to those of traditional, plant-derived alternatives, they should be treated the same way.

Regardless of its source, nicotine remains a highly addictive substance with known adverse health outcomes. Flavored cartridges, colorful packaging, and misleading "tobacco-free" labels are all parts of the design for products containing synthetic nicotine that are marketed in ways that appeal to younger users. The marketing creates the illusion of safety for these vulnerable audiences, while exposing users to the same long-term health consequences as other

---

<sup>77</sup> *Wages*, 16 F.4th 1130; *Lotus Vaping Technologies*, 73 F.4th 657.

<sup>78</sup> *Lotus Vaping Technologies*, 73 F.4th 657.

tobacco products like cigarettes. The Fifth Circuit's insistence on a regulatory distinction based solely on the origin of the substance ignores the realities, both medical and behavioral, of how these products function. By focusing on the makeup of the substance rather than the public health outcome, the Fifth Circuit opens the door to future exploitation by manufacturers seeking to evade regulation through technicalities. Aside from ensuring the health of the public, the entire job of the FDA, taking powers away from them would also cause immense economic disruption. Regulation ensures that nicotine products are taxed and monitored in ways that contribute to the overall government revenue as well as properly protect consumers. In the absence of such oversight, companies can undercut health standards to maximize profits. This would ultimately lead to increased healthcare costs and higher rates of addiction. Weakening the FDA's authority in this case not only jeopardizes the future of nicotine regulation but also threatens the integrity of administrative oversight across other sectors as well. If companies can successfully argue that chemically similar products should be treated differently due to their production method, or that new technologies deserve a legal 'pass' as there has not been prior legislation for them, it sets a dangerous precedent. One that could unravel protections in many fields and with numerous policies. Additionally, concerns about economic innovation and small business viability do not justify a retreat from safety standards. Regulation does not mean prohibition, and the FDA is not—and has never been—looking to take away these products. It simply ensures that the products being sold have been tested and vetted for consumer use, ensuring public safety in the way that fulfills the FDA's function. Allowing a market to grow without adequate safeguards may seem beneficial in the short term, but the long-term costs, in both health outcomes and public expenditure, will far outweigh any temporary economic gain.

In conclusion, the FDA must be granted the authority to regulate synthetic nicotine in

the same ways as it does tobacco-derived nicotine. The Ninth Circuit's ruling in *Lotus Vaping Technologies* provides the more reasonable, health conscious, and economically sustainable path forward.<sup>79</sup> Regulation rooted in science, safety, and consistency is not only a legal necessity, but a moral one, aimed at protecting consumers and preserving the public trust in federal health agencies.

---

<sup>79</sup> *Lotus Vaping Technologies*, 73 F.4th 657.

# The Limits of Consular Nonreviewability

Authored by  
*Anna Glaser*

The United States immigration system denies thousands of spousal visas each year. This strikes at the heart of due process and raises serious constitutional questions, now before the Supreme Court in *Department of State v. Muñoz*.<sup>80</sup> In immigration law, the principle of consular nonreviewability prevents courts from reviewing the federal government's decision to grant or deny a visa. When a United States citizen is therefore unable to have their foreign spouse join them in the United States, this calls into question just how much value the government places on the right to marry. *Muñoz* questions whether a United States citizen can challenge their alien spouse's visa denial if it burdens the citizen's constitutional rights by depriving them of a protected liberty interest without due process. This case raises a central question: Does a citizen have a constitutionally protected interest in their spouse being denied entry to the United States? The Supreme Court's ruling in *Muñoz* exposes a critical flaw in United States immigration law—spousal visa applications can be denied without explanation, undermining transparency, due process, and the fundamental right to marriage. Reform is necessary to protect the rights of United States citizens and their spouses.

The inability of United States citizens to directly challenge or appeal visa denials directly impacts their marriages and, consequently, their constitutional rights, bringing family law into the equation. As it states, family law deals with legally recognized familial relationships and the process of determining the legal rights of family members.<sup>81</sup> The intersection between spousal visas and family law emphasizes the inconsistencies of United States policy. When immigration procedures interfere with the legal recognition of marriages or prevent families from living together, they blur the lines between immigration enforcement and family law. These two areas of law, though often treated as separate, directly influence one another in practice.

As a result, immigration decisions that appear administrative or procedural can carry deep

---

<sup>80</sup> *Department of State v. Muñoz*, 602 U.S. \_\_\_, 144 S. Ct. 1812 (2024).

<sup>81</sup> Abrams, *Immigration Law and the Regulation of Marriage*, 91 Minn. L. Rev. 1625 (2007).

consequences for the legal rights and protections afforded to families. This overlap reveals a system in which immigration policy has the power to redefine family boundaries, often without meaningful legal recourse for those affected. For example, Deferred Action for Childhood Arrivals (DACA) was established in 2012, allowing individuals brought to the United States illegally as children to obtain higher education, work permits, and state-subsidized benefits. The Trump administration attempted to rescind DACA; however, the Supreme Court blocked its rescission, citing that it should not be a priority for removal based on humanitarian concerns.<sup>82</sup> The Trump administration responded by partially suspending the program by refusing new requests. Later, President Biden issued a “Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction,” which reversed President Trump’s efforts to build a wall between Mexico and the United States. These policy reversals offer another example of the reform needed in the United States immigration system.

Each year, thousands of people must rely on the spousal visa process to become a lawful, permanent resident in the United States. In 2022, of more than a million people who obtained lawful permanent residence status, forty percent did so as immediate relatives of United States citizens.<sup>83</sup> These numbers underscore the significant role that family-based immigration, particularly through spousal visas, plays in the overall immigration framework. For many, the spousal visa process represents not only a means of obtaining legal status but also a crucial step in maintaining family integrity within the bounds of the law. Applicants must apply to the State Department to obtain both temporary non-immigrant and permanent immigrant visas. The final step in this process is a consular interview, wherein the State Department can either approve a visa, request more information, or deny a visa. Upon denying a visa, the officer must cite the legal

---

<sup>82</sup> *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. \_\_\_, 140 S. Ct. 1891 (2020).

<sup>83</sup> Stuebner, *Consular Nonreviewability After Department of State v. Muñoz: Requiring Factual and Timely Explanations for Visa Denials*, 124 Colum. L. Rev. 2413 (2024).

provision that made the applicant ineligible; however, this only applies when the reason is a terrorism or national security concern.<sup>84</sup> This means, aside from these extremes, many applicants have no idea why their visas were denied. The doctrine of consular nonreviewability prevents courts from examining the substance of a visa denial, allowing review only in the rare instance where a consular officer provides a justification.

In practice, this means that courts will not revisit visa decisions, even when no explanation is offered. The Supreme Court has justified this by asserting that immigration policy falls within the authority of Congress, placing such matters beyond the reach of judicial oversight. *Muñoz* comes in direct conflict with the doctrine of consular nonreviewability as it is an unfair system that only perpetuates legal challenges in the area of immigration law. Assuming that the government, not giving a reason as to why they denied the spouse's visa satisfies the demands of procedural due process, the government could then invoke the doctrine of consular nonreviewability to shield its decision from further judicial inquiry because it has submitted a "facially legitimate and bona fide reason" for the visa denial.<sup>85</sup>

This doctrine, which limits judicial oversight of consular decisions made abroad, effectively places visa determinations beyond the reach of constitutional scrutiny. In essence, a "facially legitimate and bona fide reason" is a very low standard for the Court in which to limit its review in order to consider whether the consular officer made a seemingly apparent decision in good faith. Because courts defer so heavily to the executive in immigration matters, this threshold allows the government to avoid explaining or justifying decisions that may have life-altering consequences for citizens and their spouses. The impact of this is that United States citizens cannot challenge or appeal visa denials affecting their marriage. As a result, the constitutional right to marriage becomes vulnerable to administrative discretion with limited opportunity for

---

<sup>84</sup> Stuebner, *supra* note 4, at 2420.

<sup>85</sup> *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972).

judicial remedy or accountability.

In 2010, *Muñoz* began prompting questions about the current state of immigration law and its role in protecting the fundamental right to marriage granted in the United States. Sandra Muñoz, a United States citizen, married Luis Asencio-Cordero, from El Salvador, who was unlawfully present in the United States. Immediately after their marriage, Muñoz filed a relative visa petition for her husband. The United States Citizenship and Immigration Services approved his petition, so Asencio-Cordero went to the United States Consulate in El Salvador for an immigrant visa application interview. However, in December of 2015, his immigrant visa was denied as allowed by 8 U.S.C. § 1182(a)(3)(A)(ii): “a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in... [an] unlawful activity.”<sup>86</sup>

The Department declined to provide more specific information on the reason for denial, so a few years later Muñoz and Asencio-Cordero sought judicial review of the visa denial in federal court in January 2017. Muñoz contended that her Fifth Amendment right of due process was violated through her husband’s visa denial, thereby depriving her of her protected liberty interest of living with her spouse in the United States. Due to this, Muñoz could invoke the exception to the doctrine of consular nonreviewability, since she claimed a constitutional right was violated. In the discovery phase of litigation, the government released the report stating the reason for the denial: Asencio-Cordero was a member of a known criminal organization. After applying the principle of consular nonreviewability, the district court ruled in favor of the government defendants on all of the Plaintiff’s claims.

However, the Ninth Circuit Court of Appeals overturned and sent the district court's decision back for further review. It was deemed that the government failed to comply with the demands of procedural due process by failing to provide the constitutionally required notice within

---

<sup>86</sup> 8 U.S.C. § 1182(a)(3)(A)(ii).

a reasonable time period after his visa denial. The court released the notice only three years later, beyond what was deemed a reasonable time period. Furthermore, the Ninth Circuit determined that the denial of an immigrant visa to the spouse of a United States citizen does deprive them of their right to enjoy the benefits of their marriage and to live in the country of their citizenship (the United States). Following this judgment, the Department of State petitioned the Supreme Court to review the Ninth Circuit's decision. The Supreme Court granted certiorari.

The government petitioners argued that the doctrine of consular nonreviewability bars judicial review of the denial of the visa, as Muñoz lacks a constitutionally protected liberty interest in her spouse's application.<sup>87</sup> Furthermore, they argued that Asencio-Cordero's visa application relies solely on his ability to demonstrate his admissibility to the satisfaction of a consular officer, which does not implicate his wife's fundamental marriage rights. Therefore, even if Muñoz did possess a constitutionally protected interest, the government's denial of a visa on security-related grounds does not require it to provide more justification than a mere citation.

The respondents argued that the denial of Asencio-Cordero's visa does, in fact, directly implicate Muñoz's right to marriage, which entails the right to live in the same country as one's spouse. Additionally, the respondents argue that the Fifth Amendment's due process clause required the federal government to provide Muñoz with a summary of the factual reasons for the visa denial. This summary must be sufficient to allow her an opportunity to respond, instead of a succinct, generally worded provision which rendered the visa applicant inadmissible on the grounds of unlawful activity. Finally, on June 21, 2024, the Supreme Court ruled that United States citizens lack a constitutionally protected interest in their noncitizen spouse's admission into the United States.<sup>88</sup>

Justice Barrett explains that the reasoning behind this decision was supported by the Fifth

---

<sup>87</sup> *Muñoz*, 144 S. Ct. at 1815.

<sup>88</sup> *Id.* at 1840.

Amendment's Due Process Clause, which "provides heightened protection against government interference with certain fundamental rights and liberty interests."<sup>89</sup> Therefore, Muñoz's asserted right to have her noncitizen spouse admitted to the United States did not qualify as a fundamental liberty interest. The Supreme Court could therefore reverse the lower court's judgment to the contrary, as such a right was not "deeply rooted in this Nation's history and tradition."<sup>90</sup> Muñoz lacked a fundamental liberty interest that would allow her to invoke an exception to the doctrine of consular nonreviewability, so the State Department's denial of her husband's visa application was not subject to judicial review.<sup>91</sup> In a separate concurring opinion, Justice Gorsuch writes the Court need not rule on whether Muñoz had a constitutionally protected liberty interest in her spouse's application because the federal government complied with the demands of due process during litigation by giving the reason for the visa application denial.<sup>92</sup> However, Justices Sotomayor, Kagan, and Jackson dissented, saying that excluding a United States citizen's noncitizen spouse violates the citizen's right to live with their spouse in the United States. Therefore, the government must provide Muñoz with at least a legitimate and bona fide reason for her husband's exclusion.<sup>93</sup>

*Department of State v. Muñoz* brings forth concerns over the effects of marriage rights and due process. The Supreme Court recognized marriage as a constitutionally protected right in *Obergefell v. Hodges*.<sup>94</sup> Furthermore, in *Obergefell*, the Court recognized that the right to marry is deeply tied to personal freedom and human dignity. It supports the foundation of committed partnerships, protects the well-being of families and children, and reflects core values like love and commitment.<sup>95</sup> Therefore, visa denials without explanation effectively interfere with this right.

---

<sup>89</sup> *Id.* at 1815.

<sup>90</sup> *Id.*

<sup>91</sup> *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972).

<sup>92</sup> *Muñoz*, 144 S. Ct. 1812.

<sup>93</sup> *Id.* at 1831 (Sotomayor, J., dissenting).

<sup>94</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>95</sup> *Id.* at 645.

Furthermore, there is a blatant lack of transparency in visa applications, which is a due process violation for United States citizens involved. Individuals have a right to know why a government decision affects their lives. Since spousal visa denials remain completely nontransparent, this makes it impossible to either correct errors or petition the court for review. Consequently, this creates opportunities for bias, inconsistencies, and wrongful denials, which can have a disproportionate impact on certain groups more than others. Couples from certain countries face higher rates of denials without explanation. During the Trump administration, a decree restricting entry to the United States of individuals from several Muslim-majority countries was implemented.<sup>96</sup> While President Biden reversed this by issuing a “Proclamation on Ending Discriminatory Bans on Entry to the United States,” the issue of implicit bias is ever present in society.<sup>97</sup> Implicit biases are the driving factors behind many of these wrongful denials. This type of bias refers to unconscious attitudes or stereotypes that affect a person’s understanding, actions, and decisions. These biases occur automatically and can influence behavior without the individual being aware of them. Same-sex and interracial couples may experience implicit bias in visa decision-making more than other groups. Additionally, the current system particularly disadvantages marginalized and lower-income applicants who may not have the resources to reapply multiple times. These factors highlight the crucial need for reform and why the visa application system should allow for review of decisions.

Reform could be achieved in a few simple ways to begin the process of making visa applications more just. Requiring written explanations for spousal visa denials would allow for greater transparency, granting couples the ability to understand and address the reasons for denials. Written explanations also force more thoughtful decisions, rather than perpetuating stereotypes and implicit bias. Secondly, establishing a limited judicial review system would create the ability for petitioners to have their decision re-examined by a judge. Making these

---

<sup>96</sup> Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>97</sup> Proclamation No. 10141, 86 Fed. Reg. 7005.

changes would improve the balance between national security and family unity. Although the Supreme Court rejected the Ninth Circuit’s “factual and timely” notification requirement, Congress can instruct consular officers to provide such notices for visa denials.<sup>98</sup> While security concerns matter, unlimited discretion undermines fairness and legal protections. Often, consular officers rely on law enforcement databases to make determinations; however, these databases are not updated frequently and may contain errors. Combined with the lack of requirement for a consular officer to give a reason for the denial, makes it worth questioning the logic of granting unelected officers such unchecked authority. A more balanced approach is needed to ensure due process while maintaining immigration enforcement.

*Muñoz* exposes a critical flaw in United States immigration law: spousal visa applications can be denied without explanation, depriving United States citizens of due process and undermining the fundamental right to marriage. These indistinct and arbitrary denials do more than frustrate administrative processes—they inflict real harm on families and erode the constitutional protections that should apply even at the border. Allowing immigration policies to interfere with fundamental family relationships without oversight reflects a broader breakdown in the balance between enforcement and individual rights. This tension highlights the urgent need to recognize how immigration decisions can carry consequences well beyond administrative boundaries, especially when they directly affect constitutionally protected relationships.

As the Court confronts the implications of this case, it becomes clear that both legislative and judicial action are urgently needed. Reform must ensure that visa denials affecting fundamental rights are subject to meaningful review, so that fairness, transparency, and constitutional accountability are no longer absent from immigration law. Otherwise, the growing disconnect between immigration enforcement and family law will continue to place families in

---

<sup>98</sup> Stuebner, *supra* note 4, at 2420.

precarious legal and emotional positions, caught in the uncertainty of a system that fails to protect their most basic rights.