Criminal Law: Two Professors Have Roles in High-Level Federal Court Cases

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Recommended Citation
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Two SUNY Buffalo Law School professors have brought their expertise in criminal law to bear on major cases that may reach the highest levels of the federal judiciary.

Associate Professor Anthony O’Rourke served as counsel to a group of 13 professors, including his colleague Associate Professor Rick Su, who filed an amici curiae brief in an Arizona immigration case on appeal to the U.S. Court of Appeals, Ninth Circuit. SUNY Distinguished Professor Guyora Binder, who also serves as the Law School’s vice dean for research and faculty development, joined with Stanford Law School Professor Robert Weisberg in submitting an amicus brief in a death penalty case on appeal to the U.S. Supreme Court.

In the Arizona case, Lopez-Valezuela v. Maricopa County, O’Rourke drafted and filed a 26-page brief in support of the American Civil Liberties Union’s en banc petition. The case challenges an Arizona law that categorically denies bail to undocumented immigrants who are charged with a crime.

The law in question, called Proposition 100, requires judges to deny bail for a range of offenses to any person who “has entered or remained in the country illegally.” The brief argues that the law impermissibly curtails defendants’ due-process rights, and that a lower court erred in ruling that the liberty restrictions imposed by the law “were not excessive in relation to the goal of managing flight risk.”

Proposition 100, the brief argues, “selectively targets a politically unpopular class of individuals and categorically denies them a right provided to others who are charged with identical offenses.” It goes on to say that “while other state laws categorically deny bail only in cases involving particularly serious crimes,” the Arizona law “covers an exceptionally broad range of felonies.” For these reasons, the brief contends, Proposition 100 constitutes a “historically exceptional” restriction on the liberty that is unconstitutional under the Fourteenth Amendment’s Due Process Clause.

The other case, Watkins v. California, turns on whether a defendant can be sentenced to death for committing felony murder without proof of any culpable mental state when the defendant kills in the commission of certain felonies. Previous Supreme Court decisions have established that accomplices in such felony murders cannot be sentenced to death without proof of intent to kill or reckless indifference to human life. The appeal seeks to determine whether that standard should apply to actual killers, not just accomplices in the crime.

“Not a lot of cases come up where someone is sentenced to death for what may have been an accidental killing,” Binder says, “but this is one case where the issue does arise. It’s an issue that death penalty litigators have known was out there for a long time, and the hope is that the court will give some clarity as to how these standards should be applied.”