Democratic rights under threat as US Supreme Court opens new term

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In a significant number of cases expected to come before the US Supreme Court this term, democratic rights are in jeopardy. It is anticipated that the docket for the new term will include a case calling into question the landmark 1965 Voting Rights Act, another that may deprive US courts of jurisdiction to hear cases against foreign corporations that are complicit in war crimes, and several other cases whose outcomes could further undermine the constitutional rights of criminal defendants.

The new term opened Monday with oral arguments in *Kiobel v. Royal Dutch Petroleum*, among the more significant cases on the docket. The case centers on whether foreign corporations can be held liable under the 1789 Alien Tort Statute. It was brought by twelve Nigerians from the Ogoni area of the Niger Delta against Royal Dutch Petroleum Co., Shell Transport & Trading Co., and its wholly owned subsidiary Shell Petroleum Development Company of Nigeria Ltd. The plaintiffs, who reside in the US, accused the firm of complicity in "crimes against humanity," torture, executions and other crimes carried out by the Abacha dictatorship between 1992 and 1995.

Royal Dutch Petroleum, no doubt emboldened by a spate of pro-business rulings by the Supreme Court in its previous term and supported by a wide variety of business groups, argued that the Alien Tort Statute should be reinterpreted, overturning decades of precedent, so as not to give American courts jurisdiction over foreign corporations.

At one point, Associate Justice Sonia Sotomayor expressed incredulity with the arguments of the attorney for the corporation. "But you're asking us to overturn our precedents," she exclaimed. "You're--you're basically saying *Filartiga* and *Marcos, Sosa*, they were all wrong," referring to three landmark cases in human rights and international law.

"Is it the case that a modern-day IG Farben would be exempt from the Alien Tort statute?" asked Paul Hoffman, the attorney for the twelve Nigerian victims, referring to the German chemical company that infamously collaborated in the Nazis' extermination of the Jews and other "undesirables."

Monday's arguments were especially noteworthy for the fact that the Obama administration's solicitor general, Donald Verilli, expressly sided with Royal Dutch Petroleum. "[T]here just isn't any meaningful connection to the United States," Verrilli said, agreeing with the attorney for Royal Dutch Petroleum. A decision in the *Kiobel* case is expected no later than June.

Other than the *Kiobel* case, the following are among the potentially significant cases to be addressed in the upcoming term:

Clapper v. Amnesty International, brought by the American Civil Liberties Union, is an important challenge to the new regime of warrantless global wiretaps implemented after September 11, 2001 by the Bush and Obama administrations. The case is noteworthy for the Catch-22 position adopted by the Bush, and later the Obama, administration in the course of litigation. Both administrations argued that, on the one hand, the identity of people who had their phones tapped was a "state secret" and could not be discovered, and, on the other hand, that the plaintiffs had to demonstrate that their communications were, in fact, monitored in order to proceed. In September 2011, the Second Circuit Court of Appeals allowed the ACLU's challenge to proceed. The Obama administration appealed and the Supreme Court last May agreed to hear the case.

Fisher v. University of Texas at Austin involves a white student applicant denied admission to the University of Texas who alleges she was excluded as a result of the school's affirmative action program. The Supreme Court narrowly permitted a similar program at the University of Michigan Law School in a 2003 case entitled *Grutter v. Bollinger*. (See US Supreme Court upholds affirmative action.)

Florida v. Harris and *Florida v. Jardines* concern the permissible use of dogs to conduct searches under the Constitution. The Fourth Amendment prohibits unreasonable searches and seizures and requires police to obtain a warrant.

The issue in *Missouri v. McNeely* is whether it violates the Fourth Amendment if a police officer forcibly obtains a blood sample, without a warrant and without the person's consent, from someone the officer suspects of being drunk while driving.

The Supreme Court will at some point this term decide whether to address issues arising from the reactionary 1996 Defense of Marriage Act, which denies same-sex couples the federal benefits that are available to heterosexual couples.

Finally, cases from several southern states could prompt the court to consider key provisions of the Voting Rights Act of 1965. The Voting Rights Act, which emerged out of the mass Civil Rights movement, was a landmark piece of reform legislation that finally outlawed the discriminatory Jim Crow voting practices that effectively disenfranchised black people in the South.

The Voting Rights Act provides for aggressive federal oversight of those areas of the country with the most infamous history of discriminatory voting practices, and has long been a thorn in the

side of the most reactionary elements in the political establishment. In 2009, Chief Justice John G. Roberts declared that “things have changed in the South” and that the continued enforcement of certain provisions of the Voting Rights Act raised “serious constitutional questions.” This was generally understood to mean that he would welcome a case attacking the Voting Rights Act.

Any Supreme Court decision overturning or weakening the Voting Rights Act would be a significant blow to historic democratic protections and would open the door to attacks on other reform legislation from the Civil Rights period.

As important as what cases the Supreme Court will decide to hear is what cases it will decline to hear. The US government is increasingly operating outside the boundaries of previously settled law. Everywhere one turns, the Constitution and centuries of legal precedent are being trampled underfoot.

The government is engaged in undeclared warfare around the globe, in which countless innocent people are being killed. Assassinations, including of US citizens, take place on a regular basis. The government kidnaps, jails and tortures its opponents without trial at secret “black sites” around the world as well as at prison camps in Guantanamo, Cuba and Afghanistan. An expansive and illegal domestic spying program is ongoing, and armed drones are flying over the US mainland. The doors of targeted political activists are being smashed in with battering rams.

The infrastructure of a police state is being erected. Yet the docket for the upcoming term is striking for the absence, with one or two exceptions, of any cases that could pose a meaningful challenge to the lawlessness of the political establishment. The attention of the current Supreme Court, one of the most right-wing in the history of the country, is focused on weakening or eliminating those rights that remain from earlier periods in American history, going back to the Bill of Rights itself.

The Supreme Court is not obliged to hear every case that is appealed from the lower federal courts. It grants petitions for review of particular cases, called petitions for writ of certiorari, by a vote of four of the nine justices. If only three or fewer justices wish to hear a case, it is never heard and the decision of the lower court is allowed to stand.

While this process receives little or no media attention, it is the mechanism by which the Supreme Court disposes of the vast majority of cases. It enables the court to keep egregiously unconstitutional conduct about which there is general agreement in the political establishment out of the spotlight.

For example, in June of this year the Supreme Court denied certiorari petitions from Guantanamo prisoners whose petitions for habeas corpus (i.e., for judicial review of their imprisonment) were denied by lower federal courts. The Supreme Court simultaneously refused to hear an appeal by Jose Padilla, a US citizen who was imprisoned and tortured in a military brig in the US by the Bush administration. Padilla’s appeal was thrown out by a lower federal court. (See US Supreme Court rejects appeals by Guantanamo detainees and Jose Padilla.)

The court's 2011 term resulted in a host of reactionary rulings, and no less can be expected from the 2012 term. One study found that of the 14 cases in which business interests were represented in the 2011 term, 12 cases resulted in a decision in favor of business interests.

Particularly since *Bush v. Gore* in 2000, in which a Republican majority on the Supreme Court halted a vote count in Florida and handed the presidency to George W. Bush, and more recently in *Citizens United*, which opened the floodgates on corporate campaign bribes, the Supreme Court has been moving at an accelerating pace to shred existing democratic protections.

Listed below are WSWS articles dealing with the major decisions of the Supreme Court’s 2011 term.

The legal implications of the Supreme Court ruling on the Obama health care law
9 July 2012

A barbarous dissent: The US Supreme Court in Miller v. Alabama
28 June 2012

Arizona v. United States: Supreme Court unanimously upholds antidemocratic attack on immigrant workers
26 June 2012

US Supreme Court rejects appeals by Guantanamo detainees and Jose Padilla
13 June 2012

Unanimous US Supreme Court expands reactionary “qualified immunity” doctrine
19 April 2012

The Obama administration and the Supreme Court decision on strip searches
5 April 2012

US Supreme Court sanctions strip searches even for minor infractions
3 April 2012

US Supreme Court issues reactionary rulings on warrants and interrogations
20 March 2012