

Williams v. Obama

782 U.S. 986 (2014)

Vote: 6-3

JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

As always when considering a case brought to the Supreme Court it is important to take a moment to see if the plaintiff has standing. In this case three families whose family members were directly impacted by the Overseas Prison Oversight Law have brought a case against the President. These families have suffered an injury, unique to their situation that makes them individually positioned to challenge the law. Their family members were tortured and interrogated under this law. There is also ability to redress their grievances whether it be some kind of compensation for damages or the immediate release of their family members. It would appear that the families do have standing to continue with their case.

This case is particularly of interest because the plaintiffs are suing the President. Cases involving the President of the United States are often tricky to maneuver correctly. President Obama is given several executive privileges as the leader of the free world. One of these privileges is executive immunity. *Mississippi v. Johnson* (1867) tackles the issue of executive immunity pertaining to the President's executive actions while in office. The Supreme Court looked at Article II, Section 3 of the Constitution which states, the President "shall take Care

that the Laws be faithfully executed.” The Court decided that if the President performed an executive act that allowed for discretion he or she should not be sued for that act. *Mississippi v. Johnson* also clarifies that the enforcement of a statute is without a doubt an executive action. President Obama’s enforcement of the Overseas Prison Oversight Law is part of his duty as President and the Court has no jurisdiction over the President’s official duties. The Supreme Court does not allow the families to sue President Obama because of executive immunity, but they do have a right to challenge the constitutionality of the Overseas Prison Oversight Law.

The first section of the Overseas Prison Oversight Law creates a new agency to oversee all prisons and interrogation centers overseas. It is certainly within Congress’s rights to create agencies as it sees fit. The issue arises concerning the jurisdiction of this agency. The Overseas Prison Agency has been given the task of balancing “concerns for civil liberties and national security.” The issue of concerns for civil liberties lies with the judicial branch. Likewise, the power to consider national security is vested in the executive branch, yet the agency was created by the legislative branch. Upon reading the first section of the law it seems odd that Congress has created an agency to operate outside its powers. *Buckley v. Valeo* (1976) deals with a similar case. The Court upheld that the Federal Election Commission which Congress created was unconstitutionally structured based upon the appointments clause because the officials should have been appointed by the President rather than Congress itself. While the first section of the Overseas Prison Oversight Law does not specifically state how each member of the Overseas Prison Agency is appointed, it does allude to the fact that Congress has breached the boundaries of its role as the legislative body. It would appear that the creation of the agency is indeed unconstitutional.

The second and third part of the Overseas Prison Oversight Law speaks directly to the appointment and removal of the head of the new agency. Under the new law, the head of the agency is to be appointed by the Secretary of Defense and confirmed by the Senate. Article II, Section 2 of the Constitution details the appointments of executive officials. Based on this clause, the Supreme Court came up with a test to see if an officer should be appointed by the President or by Congress. They drew a distinction between principal officers and inferior officers in the case of *Morrison v. Olson* (1988). Principal Officers needed to be appointed by the President and approved by the senate, while Inferior Officers could be appointed through Congress's discretion by the executive branch, judicial branch, or department heads. Judge Rehnquist defined the four prongs of the test as follows. He looked at who could remove the officer, the range of their duties, the officer's jurisdiction, and the tenure of the officer. Additionally, a functional analysis of the position and its impact on the President's abilities to perform his duties can be included in the test.

Applying this test to the current case, the first prong of the test is very clearly defined. The Secretary of State and the Chief Justice of the Supreme Court have the ability to remove the Head of the Overseas Prison Agency. The Constitution does not speak much, if at all, to the removal powers of the President. However, there were several Supreme Court cases that attempted to define more clearly the role of the President when removing executive officers. While *Myers v. United States* (1926) gave the President supreme power to remove officers, *Humphrey's Executor v. United States* (1935) limited this power. In this case the justices agreed that Congress had the right to restrict the President's power to remove commissioners serving on administrative agencies. Then the next step is to decide if the Overseas Prison Agency

qualifies as an administrative agency. If the officials are involved in administrative rulemaking and enforcement and do not have purely executive power, then the agency is considered administrative. The Overseas Prison Agency seems to have quasi-judicial tasks as well as quasi-executive tasks. They are also tasked with regulating overseas prisons and enforcing the Overseas Prison Oversight Law. Since the agency wasn't organized under the President's command it makes sense for Congress to be able to decide who has removal power of the head of the Overseas Prison Agency, thus passing the first part of the test.

The second and third prong of the test covers the range of duties and the jurisdiction of the Head of the Overseas Prison Agency. There is much ambiguity in the role of the Head of Overseas Prison Agency. The law does not describe the duties of the officer, but it does say that the agency should protect civil liberties and national security. It would appear that there is a wide range of duties that the Head of the Overseas Prison Agency can perform. It would seem their jurisdiction is also unlimited. While they are tasked with overseeing "foreign combatants suspected of terrorism," it is not made clear what this means and how far the officer is allowed to go with these privileges. It would seem that the Head of the Overseas Prison Agency is beginning to tread into the powers of the executive and judicial branch. In *Bowsher v. Synar* (1986) the court clearly stated that Congress could not encroach on executive or judicial authority. Congress can only enact laws, after that their authority ends. Accordingly the position does not pass the second and third prongs of this test.

The fourth part of the test mentions the tenure of the officer. The Overseas Prison Oversight Law makes no reference to the tenure of the Head of Overseas Prison Agency. Since

no limit is placed on the length of the officer's term it is clear that the Overseas Prison Oversight Law does not pass the fourth prong on the test. At times a functional analysis is also done on the law. How much will this officer impede on the powers of the President? Will this act provide Congress a way to increase its power to the detriment of the President? The Head of the Overseas Prison Agency has the ability to go over the head of the President and deal with suspected terrorists as they see fit. Since they do not report directly to the President, this also gives Congress and the Judiciary implicit power to control national security which is under executive jurisdiction.

Based on this five prong test, it would appear that the office of the Head of the Overseas Prison Agency is a principal office, rather than an inferior office. Because of the duties and jurisdiction, the tenure of the office, and the impact of the office on presidential power, it would appear that the President should appoint the Head of the Overseas Prison Agency as confirmed by the Senate. The President should also have removal powers, with the approval of the Senate.

There is one final issue to discuss pertaining to this case: executive privilege of presidential confidentiality. In the case of *United States v. Nixon* (1974) Justice Burger delivered the opinion of the court. Justice Burger declared that due process of law in a criminal investigation came before the President's general interest in confidentiality. In this case there is a more than a general interest in confidentiality. The documents that the family requested could likely contain knowledge related to the national security of the country, which must come first. The President was also acting within the law and therefore the documents are not hiding

anything of criminal nature. In this case the court would uphold the President's executive privilege of confidentiality.

We hold that the case against President Obama be dismissed due to executive immunity. We also discern the Overseas Prison Oversight Law as unconstitutional concerning the creation of the Overseas Prison Agency and the appointment of its Head. At this point the President is not required to release any documents concerning the interrogations due to presidential confidentiality.

It is so ordered.

The Court's decision in *Williams v. Obama* will have a significant impact on the President's ability to conduct the "War on Terror." The President now has close to supreme control over how overseas prisons will be handled. Should a new law be passed to create an Overseas Prison Agency that is appointed by the President and confirmed by the Senate, the President will be able to shape the structure and vision of the agency. The President will have the ability to remove the Head of the Overseas Prison Agency should they stray from the President's strategy for the War on Terror. The President now can handle terrorists as he sees fit. If certain interrogation techniques need to be used for the betterment of national security, the President has the right to do so. This could allow the President to move quickly as he works to prosecute the "War on Terror" and provide for the safety of Americans as quickly as possible. This case also sets a precedent for a strong case for executive privileges of the president, which will surely come into play as the "War on Terror" continues.

Works Cited

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