



Written by [Warren Mass](#) on May 11, 2020

## SCOTUS Overturns Ninth Circuit's Ruling Against Federal Immigration Law

In a unanimous ruling handed down on May 7, the Supreme Court was critical of the Ninth Circuit's handling of a case that involved the conviction of an "immigrant consultant" at a jury trial for violating the statute criminalizing, encouraging, or inducing a foreigner to illegally enter the United States or remain in the United States.



The defendant in the case, Evelyn Sineneng-Smith, of San Jose, California, was convicted back in 2015 of violating 8 USC 1324: "Bringing in and harboring certain aliens."

The case before the Supreme Court — *United States v. Sineneng-Smith* — stemmed from Sineneng-Smith's criminal prosecution for which she was sentenced to 18 months in prison. Sineneng-Smith's attorneys appealed the conviction and a three-judge panel of the Ninth Circuit Court of Appeals ruled in 2018 that the federal law she was convicted of breaking violates the First Amendment by abridging speech that is constitutionally protected.

The federal government subsequently appealed the Ninth Circuit's ruling to the Supreme Court.

The decision was written for the High Court by Justice Ruth Bader Ginsburg, and not only vacated the Ninth Circuit court's decision but also criticized its judges for "drastically" straying from judicial norms. It faulted the appeals court for raising the issue and requesting friend-of-the-court briefs on it, rather than simply responding to the arguments from the parties.

The decision stated the since the Ninth Circuit's reversal of the conviction was not based on arguments presented by Sineneng-Smith's defense, but by third party arguments submitted to the panel of judges, the appeals court exceeded its authority by injecting an argument not made by the defendant herself.

"The appeals panel departed so drastically from the principle of party presentation as to constitute an abuse of discretion," instead of "adjudicating the case presented," as established in *Greenlaw v. United States*, noted the decision.

Ginsburg wrote: "In the ensuing do over of the appeal, counsel for the parties were assigned a secondary role.... Courts are essentially passive instruments of government. They do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties.... No extraordinary circumstances justified the panel's takeover of the appeal. Sineneng-Smith herself had raised a vagueness argument and First Amendment arguments homing in on her own conduct, not that of others.... A court is not hidebound by the precise arguments of counsel, but the Ninth Circuit's radical transformation of this case goes well beyond the pale."

While U.S. immigration law allows an alien to adjust status to that of lawful permanent resident if the



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alien has been admitted or paroled into the United States and is eligible for an immigrant visa that is available to the applicant when the application is filed, in this case Sineneng-Smith knew that her clients could not meet the deadline for filing an application for a labor certification required for relief and charged each client \$5,900 to file an application with the Department of Labor and another \$900 to file with U. S. Citizenship and Immigration Services. For her services, she collected more than \$3.3 million from her unsuspecting clients.

*Warren Mass has served The New American since its launch in 1985 in several capacities, including marketing, editing, and writing. Since retiring from the staff several years ago, he has been a regular contributor to the magazine. Warren writes from Texas and can be reached at [wmass@thenewamerican.com](mailto:wmass@thenewamerican.com).*



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