

SUMMARY OF
UNITED STATE V. ALVAREZ
9th Circuit Court of Appeals

The Stolen Valor Act (the “Act”) 18 U.S.C. § 704(b):

Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.

Facts:

In 2007, recently-elected Three Valley Water District Board of Directors member Xavier Alvarez delivered his introductory remarks to a joint meeting of neighboring water district boards. His introduction consisted of the following statement:

“I’m a retired marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy. I’m still around.”

Not only had Alvarez never served in any branch of the armed forces or been awarded any military honors, but this was merely one of a constant string of blatant fabrications. In the summer preceding his election, Alvarez was reported to the FBI for claiming to have won the Medal of Honor during the Iranian hostage crisis, purportedly for his bravery in saving the American Ambassador and the Embassy flag. It also appears that Alvarez has, over the years, claimed to be member of the Detroit Red Wings hockey team, a police officer, and the secret husband of a Mexican starlet.

After the FBI obtained a recording of Alvarez’s board meeting remarks, he was indicted in the Central District of California under the Act. His motion to dismiss, claiming that that statute was unconstitutional on its face and as applied to him, was denied. In light of this ruling, Alvarez pleaded guilty, reserving his right to appeal the First Amendment question to the Ninth Circuit. In a 2-1 decision, the Ninth circuit found the Act to be unconstitutional both on its face and as applied to Alvarez. The government’s request for a rehearing by the full Ninth Circuit was denied and this past October the Supreme Court agreed to hear the government’s appeal.

Ninth Circuit Opinion (Milan D. Smith, Circuit Judge):

The Ninth Circuit’s majority opinion rests on the assertion that all speech is presumptively protected by the First Amendment unless it is one of “certain well-defined and narrowly limited classes of speech” which have been found to fall outside of First

Amendment protection. Looking to the Supreme Court's recent decision in U.S. v. Stevens and the categories of unprotected speech it delineated, the Ninth Circuit ultimately found that false speech does not, in and of itself, fall into one of those categories and is therefore subject to full First Amendment scrutiny.

The majority compares the language of the Act to First Amendment exceptions for defamation, fraud, perjury, and other statutes that constitutionally prohibit false statements of fact. However, unlike the Act, the court finds that none of these categories merely prohibit statements of fact because of their falsity, but rather each includes crucial additional requirements that allow them to escape First Amendment scrutiny. For example, in its discussion of defamation law, the court points out a knowledge requirement that is conspicuously absent from the language of Act. Even more important to the court's argument is defamation law's requirement of harm to the reputation of a "natural person." The Act, on the other hand, not only presumes a harm arising from a false statement, with no showing of proof, but the harm is not to the reputation of a legal person but, rather, to a "government institution or symbol." Accordingly, a key distinction to the court between the Act and constitutional statutes that punish certain kinds of false statements is that the Act does so "regardless of any defining context."

In its analysis of Supreme Court precedent regarding the protection afforded false statements of fact, the majority identifies a unifying rationale based on the immediacy and irreparability of harm it creates. These cases, it finds, all deal with situations where the harm done by the false speech is unable to be remedied by further discussion. In contrast, cases like Alvarez are effectively combated by public rebuttal of the false assertions, leaving the reputation of the medals unharmed with "the greatest damage...to the reputations of the liars themselves." While recognizing Congress's strong interest in maintaining the morale of the troops and the dignity of its military honors, the court ultimately finds the criminalization of such false claims to be much too restrictive for the "noble goals" asserted.

Jay S. Bybee, Circuit Judge, dissenting:

The dissent would have found the Act constitutional both on its face and as-applied to Alvarez. This comes as a result of a divergence in the initial stages of the majority's reasoning. While the majority begins with the Stevens categories and unsuccessfully attempts to fit the Stolen Valor Act into one of them, the dissent believes that Supreme Court and Ninth Circuit precedent fully supports the existence of an additional unprotected category wholly defined by the falsity of a statement. While the majority relies on defamation and fraud law to differentiate the Act from those unprotected categories, the dissent views the heightened requirements of defamation and fraud, and the resulting protection of some false speech, as exceptions to the rule that false statements are generally unprotected.

Because the dissent believes that false statements of fact generally fall outside of free speech protection, it would not have applied First Amendment scrutiny to the statute. It would instead have employed a narrowing construction of the statute, reading in a knowledge requirement, and upheld the district court's decision.

The dissent goes on to address the effect of the majority's rationale on Supreme Court obscenity jurisprudence. While, it claims, obscenity may incorporate some

presumed harm in its exclusion from First Amendment protection, it, like the Act, goes nowhere near requiring the kind of proof of harm imagined by the court's opinion. In effect, the dissent argues that, taken to its conclusion, the court's implied requirement of immediate and irreparable harm calls into question First Amendment jurisprudence in even those categories it does not address, including obscenity.