S.D.N.Y.
18-474-cv
Daniels, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of March, two thousand twenty.

Present:

John M. Walker,
Pierre N. Leval.
Circuit Judges.[1]

Citizens for Responsibility and Ethics in Washington, Restaurant Opportunities Centers United, Inc., Jill Phaneuf, and Eric Goode,

Plaintiffs-Appellants,

v. 18-474

Donald J. Trump, in his official capacity as President of the United States of America,

Defendant-Appellee.

It is hereby ORDERED that the chapter of the panel opinion captioned "Zone of Interests" is amended by deleting the passage from its fourth paragraph (beginning "The district court's analysis erred on the merits . . .") to the end of the chapter. The chapter is further amended in the first and second paragraphs so that they are consistent with the above deletion, and at the end of the chapter by addition of a footnote acknowledging and explaining the deletion. The chapter in amended form shall read as follows:

ii. Zone of Interests

The district court also erred in its reliance on the zone of interests test as a basis for finding lack of jurisdiction. The Supreme Court has recently clarified that the zone

[1] Judge Christopher F. Droney, who was originally part of the panel assigned to hear this case, retired from the Court effective January 1, 2020. The remaining two members of the panel are in agreement regarding this order. *See* 28 U.S.C. § 46(d); 2d Cir. IOP E(b).

of interests test is not a test of subject matter jurisdiction. In *Lexmark Int'l Inc. v. Static Control Components*, the Supreme Court, while acknowledging that past decisions had characterized the zone of interests test as part of a "'prudential' branch of standing," reconsidered the question and clarified both that the "prudential" label is a misnomer and that the test does not implicate Article III standing. 572 U.S. 118, 126–27 (2014). Rather, the Court explained that the test asks whether the plaintiff "has a cause of action under the [law]" on the basis of the facts alleged. *Id.* at 128. The Court emphasized that the test is not "jurisdictional" because "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction." *Id.* at 128 n.4 (internal quotation marks omitted). In *Bank of America v. City of Miami*, 137 S.Ct. 1296 (2017), the Court reaffirmed that the zone of interests test asks whether the complaint states an actionable claim under a statute (and not whether the plaintiff has standing and the court has subject matter jurisdiction). The *City of Miami* majority reiterated that the Article III standing requirements are injury, causation, and redressability, and reinforced *Lexmark*'s essential point that the zone of interests question is "whether the statute grants the plaintiff the cause of action that he asserts." *Id.* at 1302.

Accordingly, while it had previously been appropriate to consider whether plaintiffs fall within the zone of interests in deciding whether a plaintiff has standing and the court has subject matter jurisdiction, the Supreme Court has unambiguously rejected that approach. The district court thus misconstrued the nature of the zone of interests doctrine.[FN]

Footnote — The original published version of this opinion contained, in this chapter, a discussion of the merits of the zone-of-interests question. That discussion was deleted, by order of March 4, 2020, in order that it not serve as a precedent on the question whether the Complaint states a claim upon which relief may be granted. Because, under *Lexmark*, the merits of the zone-of-interests question do not bear on the court's subject matter jurisdiction, that discussion had no pertinence to whether the district court erred in granting the President's motion under Rule 12(b)(1).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court