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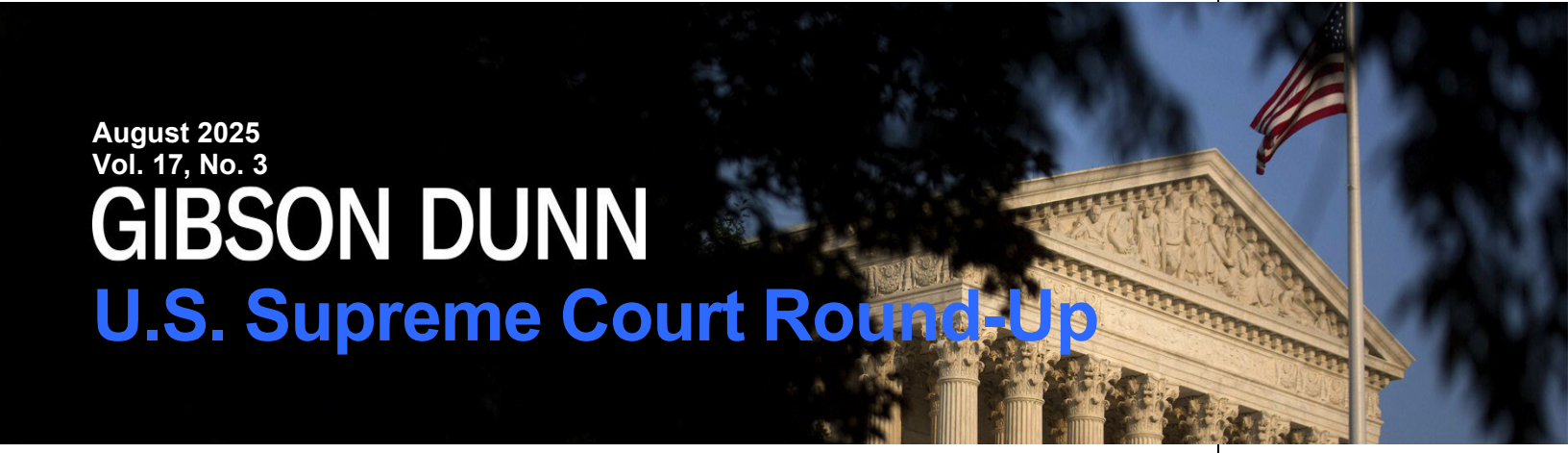

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U.S. Supreme Court Round-Up

October Term 2024

The Supreme Court Round-Up previews upcoming cases, summarizes opinions, and tracks the actions of the Office of the Solicitor General. Each entry contains a description of the case, as well as a substantive analysis of the Court's actions.

Argued Cases

OCTOBER CALENDAR

1. ***Williams v. Reed*, No. 23-191 (Ala., 387 So. 3d 138; cert. granted Jan. 12, 2024; argued Oct. 7, 2024).** The Question Presented is: Whether exhaustion of state administrative remedies is required to bring claims under 42 U.S.C. § 1983 in state court.

   Decided Feb. 21, 2025 (604 U.S. __). Alabama Supreme Court/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Thomas, J., joined in part by Alito, Gorsuch, and Barrett, JJ., dissenting). Petitioners brought Section 1983 claims in Alabama state court alleging that the Alabama Department of Labor unlawfully delayed processing their state unemployment claims. The state trial court dismissed their claims for failure to comply with a state statutory administrative-exhaustion requirement, and the Alabama Supreme Court affirmed on those grounds. The Supreme Court held that this exhaustion scheme created an impermissible "catch-22: Because the claimants cannot sue until they complete the administrative process, they can *never* sue under Section 1983 to obtain an order expediting the administrative process." The statute effectively "immuniz[ed] state officials from a 'particular species' of federal claims,"—namely, "claims of delay in the administrative process"—and thus was preempted by Section 1983. The Court's holding was a "narrow" one, limited to the class of Section 1983 claims alleging delay in the administrative process itself. Justice Thomas dissented. Because states have plenary authority to determine the jurisdiction of their state courts, he thought that the "Court's precedents err to the extent they recognize conflict preemption for 'state-court procedural rules'" perceived to burden the exercise of federal rights in state court. In a portion of the dissent joined by Justices Alito, Gorsuch, and Barrett, Justice Thomas also would have affirmed the Alabama Supreme Court under existing precedent because Alabama's exhaustion requirement does not embody a policy disagreement with federal law.

2. ***Royal Canin U.S.A., Inc. v. Wullschleger*, No. 23-677 (8th Cir., 75 F.4th 918; cert. granted Apr. 29, 2024; argued Oct. 7, 2024).** The Questions Presented are: (1) Whether a post-removal amendment of a complaint can defeat federal question subject matter jurisdiction; and (2) Whether such a post-removal amendment of a complaint precludes a district court from exercising supplemental jurisdiction over the plaintiff's remaining state-law claims pursuant to 28 U.S.C. § 1367.

   Decided Jan. 15, 2025 (604 U.S. __). Eighth Circuit/Affirmed. Justice Kagan delivered the opinion of the unanimous Court. Anastasia Wullschleger's complaint in state court originally asserted claims under both federal and state law, so Royal Canin removed the case to federal court. But when Wullschleger later amended her complaint to delete the federal claims, the Eighth Circuit ordered the case remanded back to state court because there was no longer any basis to keep it in federal court. For cases first filed in federal court, jurisdiction has long been assessed throughout the litigation, so if an amendment eliminates federal claims, the court can no longer exercise supplemental jurisdiction over the remaining state-law claims. But because of the opportunity for gamesmanship, and based on dicta in Supreme Court opinions, in removed cases all other circuits had held that jurisdiction should be assessed at the time of removal without regard to subsequent amendments. The Court sided with the Eighth Circuit. When a plaintiff "eliminates the federal-law claims that enabled removal, leaving only state-law claims behind, the court's power to decide the dispute dissolves." 28 U.S.C. § 1367(a) vests federal courts that have jurisdiction over federal claims with supplemental jurisdiction to hear closely related state claims. Because § 1367(a) "draws no distinction" between cases originally filed in federal court and those removed to federal court, the Court held that the same rule must apply for both originally filed and removed cases. That conclusion, the Court reasoned, was consistent with both congressional and judicial practice recognizing that amendments to complaints "hav[e] the potential to alter jurisdiction." The Court dismissed as dictum the language in its prior cases that seemed to favor the alternative approach. When Wullschleger deleted all federal claims from her complaint, she "deprived" the district court of original jurisdiction and thereby "dissolved" supplemental jurisdiction over the state claims, requiring a remand to state court.

3. ***Bondi v. VanDerStok*, No. 23-852 (5th Cir., 86 F.4th 179; cert. granted Apr. 22, 2024; argued Oct. 8, 2024).** The Questions Presented are: (1) Whether "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive," 27 C.F.R. § 478.11, is a "firearm" regulated by the Gun Control Act of 1968; and (2) Whether "a partially complete, disassembled, or nonfunctional frame or receiver" that is "designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver," *id.* § 478.12(c), is a "frame or receiver" regulated by the Act.

   Decided Mar. 26, 2025 (604 U.S. __). Fifth Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion of the Court (Sotomayor, J., Kavanaugh, J., and Jackson, J., separately concurring) (Thomas, J., and Alito, J., separately dissenting). The Gun Control Act of 1968 ("GCA") imposes certain requirements on importers, manufacturers, and dealers of "firearms," which it defines in 18 U.S.C. § 921(a)(3)(A) to include "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," and in 18 U.S.C. § 921(a)(3)(B) to include "the frame or receiver of any such weapon." In 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") promulgated a Rule regulating weapon-parts kits, which can be converted to

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unserialized and untraceable "ghost guns." Firearms manufacturers, at-home gunsmiths, and others brought an APA challenge to the Rule, contending that it exceeded ATF's statutory authority. The lower courts agreed and vacated the Rule, but the Supreme Court reversed. It characterized respondents' APA claim as a "facial" challenge to ATF's Rule, and therefore reasoned that respondents were required to prove the Rule invalid in *all* potential applications. But the Court concluded that ATF's Rule was valid in at least *some* potential applications, such as the weapon-parts kits at issue. The Court began by analyzing the GCA's statutory terms—"firearm," "frame," and "receiver." It deemed them "artifact nouns," which can refer to "unfinished objects" (such as a "table" purchased at IKEA that is not yet assembled). The Court further noted that the GCA defines "weapon" to include items "readily … converted" to expel projectiles, and thus that it covers items "short of fully operable firearms." The Court reasoned that the statutory terms "frame" and "receiver" should be interpreted in the same manner. And it noted that ATF had also long taken the same position. Turning to the Rule, the Court noted that it was consistent with the GCA in at least some applications, such as respondents' weapon-parts kits (which could be readily converted to functioning pistol frames simply by removing small, plastic tabs). The Court acknowledged that some weapon-parts kits and unfinished frames and receivers "might be so incomplete or cumbersome to assemble" that they fall outside the GCA, but it deemed examination of those other scenarios unnecessary to reject respondents' "facial" challenge. Justice Sotomayor concurred to argue that the Court's holding presented no fair-notice concerns because weapons manufacturers and purchasers have long been subject to serialization requirements. Justice Kavanaugh, by contrast, concurred to emphasize that parts-kit purchasers who did not know that their conduct violated the law should not be prosecuted. Justice Jackson concurred and would have simply deferred to ATF's interpretation. Dissenting, Justice Thomas rejected the majority's assumption that respondents' APA claim should be treated as a "facial" challenge; if so, any rule in excess of statutory authority could survive a challenge so long as it complied with the statute in some instances. He also disputed that the GCA's "readily convertible" standard applies to "frames" and "receivers" (as opposed to "weapons" alone), and argued that an uncompleted receiver cannot simultaneously constitute a "receiver" under the GCA. In his own dissent, Justice Alito likewise disagreed that the "facial" challenge standard for constitutional claims should be imported into the rulemaking context.

4. ***Lackey v. Stinnie*, No. 23-621 (4th Cir., 77 F.4th 200; cert. granted Apr. 22, 2024; argued Oct. 8, 2024).** The Questions Presented are: (1) Whether a party must obtain a ruling that conclusively decides the merits in its favor, as opposed to merely predicting a likelihood of later success, to prevail on the merits under 42 U.S.C. § 1988; and (2) Whether a party must obtain an enduring change in the parties' legal relationship from a judicial act, as opposed to a non-judicial event that moots the case, to prevail under § 1988.

Decided February 25, 2025 (604 U.S. __). Fourth Circuit/Reversed and remanded. Chief Justice Roberts delivered the opinion of the Court (Jackson, J., joined by Sotomayor, J., dissenting). A Virginia law required courts to suspend the licenses of drivers who failed to pay court fines or costs. A class of drivers sued the state under 42 U.S.C. § 1983 and obtained a preliminary injunction against the law's enforcement. But before the case went to trial, the Virginia General Assembly repealed the law. The drivers agreed that the repeal mooted the case but claimed they were "prevailing part[ies]" entitled to attorney's fees under 42 U.S.C. § 1988(b). The Supreme Court held that they were ineligible to recover fees, concluding that a plaintiff "prevails" only when the court "conclusively resolves" his

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claim "by granting enduring judicial relief on the merits that materially alters the legal relationship between the parties." The term "prevailing party," the Court explained, is a "legal term of art" that refers to the party "ultimately prevailing when the matter is finally set at rest." And because a preliminary injunction does not "conclusively resolve the rights of parties on the merits" but merely "temporarily preserves the parties' litigating positions" based on an initial assessment of the *likelihood* of success on the merits, the Court reasoned that obtaining one does not make a plaintiff "prevailing." In dissent, Justice Jackson, joined by Justice Sotomayor, rejected the Court's "categorical preclusion" of fee awards in the preliminary-injunction context and argued that a party "'prevails' for fee-shifting purposes" if they secure an injunction that "effectively resolves the case" and is never reversed.

5. ***Glossip v. Oklahoma*, No. 22-7466 (Okla. Crim. App., 529 P.3d 218; cert. granted Jan. 22, 2024; argued Oct. 9, 2024).** The Questions Presented are: (1) Whether the State's suppression of the key prosecution witness's admission he was under the care of a psychiatrist and failure to correct that witness's false testimony about that care and related diagnosis violate due process; (2) Whether the entirety of the suppressed evidence must be considered when assessing the materiality of *Brady* and *Napue* claims; (3) Whether due process requires reversal, where a capital conviction is so infected with errors that the State no longer seeks to defend it; and (4) Whether the Oklahoma Court of Criminal Appeals' holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment.

   Decided February 25, 2025 (604 U.S. __). Oklahoma Court of Criminal Appeals/Reversed and remanded; new trial ordered. Justice Sotomayor delivered the opinion of the Court (Barrett, J., concurring in part and dissenting in part) (Thomas, J., joined by Alito, J., and in part by Barrett, J., dissenting). Richard Glossip was convicted and sentenced to death for paying Justin Sneed to murder Barry Van Treese. At trial, Sneed admitted to killing Van Treese but testified that Glossip had orchestrated it. Glossip confessed to helping Sneed conceal his crime after the fact but denied any involvement in the murder. Nearly two decades later, the State disclosed eight boxes of previously withheld documents. These documents show that Sneed suffered from bipolar disorder, that a jail psychiatrist prescribed Sneed lithium to treat that condition, and that the prosecution allowed Sneed to falsely testify at trial that he had never seen a psychiatrist. Oklahoma's attorney general conceded that the prosecution's failure to correct Sneed's testimony violated *Napue v. Illinois* and asked the Oklahoma Court of Criminal Appeals ("OCCA") to grant Glossip a new trial. OCCA declined, concluding that there was no *Napue* error and that Oklahoma's Post-Conviction Procedures Act (PCPA) barred Glossip's claims. The Supreme Court held that it had jurisdiction to review OCCA's judgment because OCCA's application of the PCPA depended on its determination that the attorney general's confession of error was "not based in law or fact," which in turn "depended on its determination that no *Napue* violation had occurred." "That was a federal holding," and so OCCA's reliance on the PCPA was not an adequate and independent state-law ground for the judgment. On the merits, the Court held that the prosecution committed a *Napue* violation by knowingly allowing false testimony to go uncorrected. The Court held this *Napue* violation was material because "[h]ad the prosecution corrected Sneed on the stand, his credibility plainly would have suffered," and "[b]ecause Sneed's testimony was the only direct evidence of Glossip's guilt," "the jury's assessment of Sneed's credibility was necessarily determinative." Finally, the Court held that other prosecutorial misconduct, including violation of the rule of sequestration and destruction of evidence, cumulatively undermined the verdict. And "[b]ecause prejudice analysis requires a 'cumulative

evaluation' of all the evidence," the Court ordered a new trial. Justice Gorsuch took no part in the consideration or decision of the case. Concurring in part, Justice Barrett agreed that no independent and adequate state grounds barred review and that OCCA misapplied *Napue*, but would have merely vacated the judgment and left the question of whether to conduct an evidentiary hearing to OCCA. Dissenting, Justice Thomas (joined by Justice Alito and Justice Barrett in part) disagreed with the Court's jurisdictional, merits, and remedial holdings. He would have held the PCPA an adequate and independent state ground for the decision. On the merits, he would have assessed the materiality of the *Napue* violation based on the content of the false testimony and found it immaterial. He would have rejected the claims of additional error as "either procedurally barred, meritless, or both." And on the remedy, he would not have ordered a new trial but remanded to the state court to either clarify the adequacy and independence of state grounds for its decision or to set an evidentiary hearing.

6. ***Medical Marijuana, Inc. v. Horn*, No. 23-365 (2d Cir., 80 F.4th 130; cert. granted Apr. 29, 2024; argued Oct. 15, 2024).** The Question Presented is: Whether economic harms resulting from personal injuries are injuries to "business or property by reason of" the defendant's acts for purposes of civil RICO.

   Decided April 2, 2025 (604 U.S. __). Second Circuit/Affirmed and remanded. Justice Barrett delivered the opinion of the Court (Jackson, J., concurring) (Thomas, J., dissenting) (Kavanaugh, J., dissenting, joined by Roberts, C.J. and Alito, J.). Seeking relief from chronic pain, truck driver Douglas Horn purchased and began taking "Dixie X," a purportedly THC-free product produced by Medical Marijuana, Inc. His employer randomly selected him for a drug test, and he screened positive for THC, leading to his firing. Horn sued Medical Marijuana under the Racketeer Influenced and Corrupt Organizations Act (RICO), which creates a cause of action for "[a]ny person injured in his business or property" by reason of a criminal RICO violation. The Second Circuit held that Horn had been "injured in his business" when he lost his job. In so doing, the Second Circuit rejected the "antecedent personal injury bar" recognized by several circuits, which provides that no RICO action lies for economic loss that results from a personal injury. The Supreme Court agreed that under RICO, a plaintiff can seek damages for business or property loss regardless of whether the loss resulted from a personal injury—thus disavowing the antecedent personal injury bar. But it emphasized other constraints on RICO liability, including the "direct relationship" causation requirement and the requirement of a *pattern* of racketeering activity. Concurring, Justice Jackson emphasized that RICO by its terms "shall be liberally construed to effectuate its remedial purposes." Dissenting, Justice Thomas would have dismissed the case as improvidently granted because the parties disputed whether Horn suffered a personal injury in the first place and, in Justice Thomas's view, had "inadequately briefed" the meaning of "injured in his business or property." Justice Kavanaugh, joined by Chief Justice Roberts and Justice Alito, dissented from the majority's reading of "injured in his business or property," which he read as a term of art to refer to the invasion of legal business rights (*e.g.*, through unfair competition), rather than economic harms derivative of personal injury.

7. ***Bouarfa v. Mayorkas*, No. 23-583 (11th Cir., 75 F.4th 1157; cert. granted Apr. 29, 2024; argued Oct. 15, 2024).** The Question Presented is: Whether a visa petitioner may obtain judicial review when an approved petition is revoked on the basis of nondiscretionary criteria.

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Decided Dec. 10, 2024 (604 U.S. __). Eleventh Circuit/Affirmed. Justice Jackson delivered the opinion of the unanimous Court. Federal law bars judicial review of immigration "decision[s] . . . in the discretion of the Attorney General or the Secretary" of Homeland Security. 8 U.S.C. § 1252(a)(2)(B)(ii). By statute, U.S. Citizenship and Immigration Services ("USCIS") *must* deny immigrant visa petitions filed by American citizens on behalf of their noncitizen spouses if the noncitizen previously sought to secure an immigration benefit through a sham marriage. *Id.* § 1154(c). Once a petition is approved, however, USCIS "may" for "good and sufficient cause, revoke the approval of any petition." *Id.* § 1155. Amina Bouarfa, an American citizen, filed an immigrant visa petition on behalf of her noncitizen husband, Ala'a Hamayel. After initially approving Bouarfa's petition, USCIS uncovered evidence that Hamayel had previously sought a visa through a sham marriage and exercised its discretion under § 1155 to revoke the petition. After the Board of Immigration Appeals affirmed USCIS's sham-marriage determination, Bouarfa sought review in federal court under the Administrative Procedure Act. The Eleventh Circuit affirmed the district court's dismissal, concluding that § 1252(a)(2)(B)(ii) stripped judicial review of the agency's exercise of discretionary authority under § 1155. Resolving a circuit split, the Court affirmed the Eleventh Circuit and held that federal courts lack jurisdiction to review the revocation of a visa petition. The Court explained that § 1155—providing that the agency "may" for "good and sufficient cause, revoke the approval of any [visa] petition"—was a "quintessential grant of discretion." The Court rejected Bouarfa's arguments that the agency practice of revoking approved petitions after making a sham-marriage determination limited the agency's discretion.

8. ***Bufkin v. Collins*, No. 23-713 (Fed. Cir., 75 F.4th 1368; cert. granted Apr. 29, 2024; argued Oct. 16, 2024).** The Question Presented is: Whether the Veterans Court must ensure that the benefit-of-the-doubt rule was properly applied during the claims process in order to satisfy 38 U.S.C. § 7261(b)(1), which directs the Veterans Court to "take due account" of the VA's application of that rule.

   Decided March 5, 2025 (604 U.S. __). Federal Circuit/Affirmed. Justice Thomas delivered the opinion of the Court (Jackson, J., joined by Gorsuch, J., dissenting). In resolving veterans' claims for disability benefits, the Department of Veterans Affairs ("VA") is required to "give the benefit of the doubt to the claimant" whenever the evidence on an issue is in "approximate balance." 38 U.S.C. § 5107(b). The Veterans Court, when reviewing VA decisions, must "take due account" of the VA's application of that benefit-of-the-doubt rule. *Id.* § 7261(b)(1). The Supreme Court concluded that because the command to "take due account" "is not a freestanding task but rather an *aspect* of [the] judicial review," the Veterans Court should apply the same standard of review to a benefit-of-the-doubt determination that it would for any other VA determination—"reviewing legal issues de novo and factual issues for clear error." And it reasoned that whether the evidence is in "approximate balance," thereby triggering the benefit-of-the-doubt rule, is "at most," a mixed question of law and fact. But because that mixed question is "predominantly factual," it should be "reviewed only for clear error." In dissent, Justice Jackson, joined by Justice Gorsuch, argued that "take due account" directs the Veterans Court to "determine, without deference, whether the VA properly applied the benefit-of-the-doubt rule," and that the approximate-balance determination is a primarily legal one subject to de novo review.

9. ***San Francisco v. EPA*, No. 23-753 (9th Cir., 75 F.4th 1074; cert. granted May 28, 2024; argued Oct. 16, 2024).** The Question Presented is: Whether the Clean Water Act allows EPA (or an authorized state) to impose generic prohibitions in National Pollutant Discharge Elimination System permits that subject permitholders to

enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform.

Decided March 4, 2025 (604 U.S. __). Ninth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the Court (Barrett, J., joined by Sotomayor, Kagan, and Jackson, JJ., dissenting in part). The Clean Water Act ("CWA") makes it unlawful to discharge pollutants into certain bodies of water without a permit issued by (as relevant here) EPA. EPA may issue permits that impose "any more stringent limitation" that is "necessary to meet . . . or required to implement any applicable water quality standard." 33 U.S.C. § 1311(b)(1)(C). EPA issued a permit to San Francisco, which discharges water—and other materials—into the Pacific Ocean. The permit directly regulated what San Francisco could put into the ocean (an "effluent limitation," not at issue in this case). But it also imposed "end-result" requirements, which hold the city responsible for maintaining the ultimate water quality in its patch of the Pacific. The Court held that § 1311(b)(1)(C) does not allow end-result requirements. It first rejected San Francisco's broader argument that the provision allows *only* effluent limitations, noting that the statute authorizes "any more stringent limitation" and not just "effluent limitations." But the Court agreed with the city on its narrower argument and held that an end-result requirement is not a § 1311(b)(1)(C) "limitation" because such limitations must impose specific requirements on permitholders rather than simply making them responsible for the water's ultimate quality. The statutory text, the Court explained, authorizes a "limitation," which is "a 'restriction or restraint imposed *from without*.'" An end-result requirement imposes no external restriction; it tells the permitholder to obtain an end goal, leaving the permitholder to impose any limitations "on itself." Similarly, the Court reasoned, because an end-result requirement simply restates the water quality standard, it does not "implement" or "meet" that standard, as § 1311(b)(1)(C) requires. The Court further concluded that its plain-text reading was supported by the broader structure of the CWA and by the fact that the EPA's contrary reading of the statute "would undo" Congress's decision in the CWA to shift away from the previous regime, which had been centered on end-result requirements. Justice Barrett, joined by Justices Sotomayor, Kagan, and Jackson, joined the part of the Court's opinion that rejected San Francisco's broader argument. But Justice Barrett also would have rejected its narrower argument, reasoning that an end-result requirement is a "limitation" in the ordinary sense of that word, and it helps to "meet" water-quality standards by making those standards binding.

NOVEMBER CALENDAR

10. ***Wisconsin Bell, Inc. v. United States ex rel. Heath*, No. 23-1127 (7th Cir., 92 F.4th 654; cert. granted June 17, 2024; argued Nov. 4, 2024).** The Question Presented is: Whether reimbursement requests submitted to the E-rate program established by the Federal Communications Commission to provide discounted telecommunications services to schools and libraries—but administered by a private, nonprofit corporation and funded entirely by contributions from private telecommunications carriers—are "claims" under the False Claims Act.

Decided Feb. 21, 2025 (604 U.S. __). Seventh Circuit/Affirmed and remanded. Justice Kagan delivered the opinion of the Court (Thomas, J., joined by Kavanaugh, J., and in part by Alito, J., concurring) (Kavanaugh, J., joined by Thomas, J., concurring). The Education-Rate (E-Rate) program established under the Telecommunications Act of 1996 subsidizes internet and other telecommunications services for schools and libraries across the United States. Those subsidies are financed by telecommunications carriers' payments into a "Universal Service Fund,"

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administered by a private corporation called the Universal Service Administrative Company. The "lowest corresponding price" rule prohibits carriers from charging schools and libraries more than what they would charge a "similarly situated" non-residential customer. Respondent Todd Heath, an auditor of telecommunications bills, sued petitioner Wisconsin Bell under the False Claims Act (FCA), alleging that the company had defrauded the E-Rate program with excessively high fees. Wisconsin Bell contended that reimbursements for those fees from the Universal Service Fund were not "claims" under the FCA because private carriers paid the reimbursements, with the Government playing no more than an intermediary role. The Court disagreed and held that E-Rate reimbursement requests constitute "claims" under the FCA because the Government "provided" (at a minimum) a "portion" of the money from two sources: "delinquent contributions (plus associated interest and penalties) that the FCC and Treasury Department collected from carriers," as well as funds "derived from Justice Department activities." The reimbursement requests thus constituted "claims," because the FCA only "requires . . . that those deposits provide 'any portion'—not the whole—of the sums requested." The Court also concluded that even if the Government were merely an intermediary in the fund transfers, that status would not be dispositive, as "a simple intermediary can sometimes also 'provide' things to a recipient—and the Government, even if viewed only in that light, would do so here." Justice Thomas (joined by Justice Kavanaugh and Justice Alito in part) concurred to agree with the Court's narrow rationale that the government "provided" money by directly contributing sums to the Fund. But he argued that the government's unresolved alternative theories—that the Universal Service Administrative Company is an "agent of the United States," and that the government provides funds by requiring private corporations to contribute—were dubious and would have widespread implications for FCA jurisprudence. Justice Kavanaugh (joined by Justice Thomas) argued in his brief concurrence that the qui tam provisions of the FCA "raise substantial constitutional questions under Article II" that should be considered "in an appropriate case."

11. ***Advocate Christ Medical Center v. Kennedy*, No. 23-715 (D.C. Cir., 80 F.4th 346; cert. granted June 10, 2024; argued Nov. 5, 2024).** The Question Presented is: Whether the phrase "entitled . . . to benefits," used twice in the same sentence of the Medicare Act, means the same thing for Medicare part A and SSI, such that it includes all who meet basic program eligibility criteria, whether or not benefits are actually received.

    Decided Apr. 29, 2025 (605 U.S. ---). D.C. Circuit/Affirmed. Justice Barrett delivered the opinion of the Court (Jackson, J., joined by Sotomayor, J., dissenting). A hospital's entitlement to enhanced Medicare reimbursement depends, in part, on the number of days spent in the hospital by patients who "were entitled to supplementary security income benefits . . . under subchapter XVI." 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I). The Court held that this provision only counts patients who are eligible to receive supplementary security income ("SSI") cash payments during the month of their hospitalization. Subchapter XVI, the Court observed, provides that individuals eligible for (*i.e.*, entitled to) SSI will be "paid benefits by the Commissioner," indicating that SSI benefits are cash benefits. And because eligibility for those benefits is determined on a month-to-month basis, a patient is only "entitled to SSI benefits" if they are eligible for the cash payments in the same month they are hospitalized. The Court rejected the hospitals' broader reading of the provision to reach all patients enrolled in SSI when hospitalized, regardless of whether they are eligible to receive payments that month. That view, the Court held, failed to account for "the specific features of SSI benefits under subchapter XVI," and the statutory

purpose of "better funding hospitals that care for a disproportionate percentage of needy Medicare patients" was not a reason to disregard the "specific means" by which Congress chose to advance that purpose. In dissent, Justice Jackson, joined by Justice Sotomayor, argued that Congress referenced the SSI benefits program in order to "draw from that program's pre-existing pool of individuals," so all those eligible for and enrolled in the SSI program should count.

12. ***E.M.D. Sales, Inc. v. Carrera*, No. 23-217 (4th Cir., 75 F.4th 345; CVSG Dec. 11, 2023; summary reversal recommended May 7, 2024; cert. granted June 17, 2024; argued Nov. 5, 2024).** The Question Presented is: Whether the burden of proof that employers must satisfy to demonstrate the applicability of an FLSA exemption is a mere preponderance of the evidence, as six circuits hold, or clear and convincing evidence, as the Fourth Circuit holds.

Decided Jan. 15, 2025 (604 U.S. __). Fourth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the unanimous Court. The Fair Labor Standards Act of 1938 requires employers to pay their employees a minimum wage and overtime compensation, but also exempts many categories of employees from those requirements. The Act places the burden on the employer to show that an exemption applies, but the circuits disagreed about the standard the employer must meet in making that showing. Six circuits applied the default standard for civil cases (preponderance of the evidence), whereas the Fourth Circuit alone required clear and convincing evidence that an exemption applies. The Supreme Court rejected the Fourth Circuit's approach. As it explained, the preponderance standard is the default standard of proof in American civil litigation and thus is the standard Congress presumptively adopts in civil-litigation statutes. There are three main exceptions to that presumption: (1) if the statute itself establishes a different standard, either through express language or by employing well-known terms that connote a higher standard; (2) if the Constitution requires a higher standard (as with the First Amendment's actual-malice doctrine); or (3) in "uncommon cases" where the government seeks to take "unusual coercive action" that is "more dramatic" than "conventional relief," such as denaturalizing a U.S. citizen. The Court concluded that none of those three exceptions applies to the Fair Labor Standards Act. It likewise rejected the employees' policy arguments for a heightened standard. Even though worker protections implicate weighty interests, the Court has applied the preponderance standard in statutes protecting other weighty interests, like Title VII. FLSA rights are non-waivable, but the Court has applied the preponderance standard to other non-waivable rights under the National Labor Relations Act. The Court remanded for the lower courts to assess whether the employer had met the preponderance standard. Justice Gorsuch, in a brief concurrence, emphasized that diverging from the preponderance standard for policy reasons would inappropriately choose sides in a policy debate, rather than declare the law.

13. ***Monsalvo Velázquez v. Bondi*, No. 23-929 (10th Cir., 88 F.4th 1301; cert. granted July 2, 2024; argued Nov. 12, 2024).** The Question Presented is: Whether, when a noncitizen's voluntary-departure period ends on a weekend or public holiday, is a motion to reopen filed the next business day sufficient to avoid the penalties for failure to depart.

Decided Apr. 22, 2025 (604 U.S. __). Tenth Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion of the Court (Thomas, J., joined by Alito, J., and in part by Kavanaugh and Barrett, JJ., dissenting) (Alito, J., joined by Kavanaugh, J., dissenting) (Barrett, J., joined by Kavanaugh, J., dissenting). The Board of Immigration Appeals can give certain aliens permission to voluntarily depart

the United States within a period of up to "60 days." 8 U.S.C. § 1229c(b)(2). Under the Board's regulations, that deadline is stayed by a motion to reopen filed within the departure period. The Board granted Monsalvo Velázquez a 60-day period to voluntarily depart the United States, ending on a Saturday. Monsalvo filed a motion to reopen his immigration proceedings the following Monday. The Board rejected his motion as untimely, finding that the departure period had expired on Saturday, and the Tenth Circuit agreed. The Supreme Court first concluded that it had jurisdiction because Monsalvo's petition for review raised a "question[] of law" "arising from" his final order of removal. 8 U.S.C. § 1252(a)(1). His removal order required Monsalvo to depart within "60 days," and his petition challenged the Board's interpretation of that phrase. On the merits, the Court reversed, holding that Section 1229c(b)(2) operates to extend a deadline that falls on a weekend or legal holiday to the next business day. The Court reasoned that, since at least the 1950s, immigration regulations have understood "day" to carry a specialized meaning that excluded weekends and holidays where a deadline would otherwise fall on one of those days. Because the statute was enacted "against the backdrop" of that "consistent, longstanding administrative construction," the Court concluded that Section 1229c(b)(2) used "day" in the same way. In dissent, Justice Thomas, joined by Justices Alito, Kavanaugh, and Barrett, argued that the Court should have remanded to allow the Tenth Circuit to consider the jurisdictional question in the first instance. Justice Thomas also contended (joined only by Justice Alito) that jurisdiction extends only to removal-related matters, not to post-removal consequences. Justice Alito, joined by Justice Kavanaugh, dissented to argue on the merits that the 60-day voluntary departure period could not be extended because there was no good reason to depart from "ordinary meaning" and apply a "specialized" definition of "day." Finally, Justice Barrett dissented, joined by Justice Kavanaugh, asserting that the Tenth Circuit lacked jurisdiction because Monsalvo had not challenged any element of his final order of removal; his challenge was only to the Board's refusal to reconsider its denial of his motion to reopen.

14. ***Delligatti v. United States*, No. 23-825 (2d Cir., 83 F.4th 113; cert. granted June 3, 2024; argued Nov. 12, 2024).** The Question Presented is: Whether attempted murder in aid of racketeering, 18 U.S.C. § 1959(a)(5), a crime that requires proof of bodily injury or death, but can be committed by failing to take action, has as an element the use, attempted use, or threatened use of physical force.

Decided March 21, 2025. (604 U.S. __). Second Circuit/Affirmed. Justice Thomas delivered the opinion of the Court (Gorsuch, J., joined by Jackson, J., dissenting). Under 18 U.S.C. § 924(c), a person is subject to a five-year mandatory minimum sentence if he uses or carries a firearm in the course of committing a "crime of violence," which includes any federal felony that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." The government charged Salvatore Delligatti under that provision, asserting that he committed the predicate "crime of violence" of attempted murder under the violent-crimes-in-aid-of-racketeering (VICAR) statute. In turn, VICAR requires proof of an underlying attempted murder under state or federal law, so the government further asserted that Delligatti attempted second-degree murder under New York law. Delligatti was convicted on that theory and sentenced in accordance with Section 924(c). On appeal, he argued that because an attempted murder under New York law can be committed by an act *or* an omission, and because an omission-based homicide does not involve the use of force, a New York attempted second-degree murder—and, by extension, a VICAR offense predicated on it—cannot categorically qualify as a "crime of violence" under Section 924(c). The Second Circuit rejected his argument and upheld his conviction, and the Supreme Court

agreed. The Court drew on precedents establishing that the "use" of "physical force" includes "the knowing or intentional causation of bodily injury"—"even the indirect causation of bodily harm." Because the New York second-degree murder law required that the defendant intentionally cause a death, that sufficed to bring a violation of the law within the ambit of Section 924(c). The Court explained that a person who intentionally causes a death by omission of a legal duty—such as a mother who purposely fails to intervene when her child starts drinking bleach—has still made "use" of physical force (*e.g.*, by taking advantage of the bleach's poisonous effects) "against another" (*e.g.*, by deliberately taking no action so that her child suffers). In dissent, Justice Gorsuch, joined by Justice Jackson, rejected the majority's reading of statutory text and precedent, reasoning that a crime of inaction or omission cannot be a "crime of violence" because that phrase requires actively employing some physical act, knowingly or intentionally, to cause harm.

DECEMBER CALENDAR

15. ***FDA v. Wages and White Lion Investments, L.L.C.*, No. 23-1038 (5th Cir., 90 F.4th 357; cert. granted July 2, 2024; argued Dec. 2, 2024).** The Question Presented is: Whether the court of appeals erred in setting aside FDA's denial of applications for authorization to market new e-cigarette products as arbitrary and capricious.

Decided April 2, 2025 (604 U.S. __). Fifth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the unanimous Court. The Family Smoking Prevention and Tobacco Control Act of 2009 prevents manufacturers from marketing a "new tobacco product" without FDA approval. In 2016, the FDA deemed e-cigarettes "new tobacco products" subject to pre-market authorization, but delayed enforcement so that existing manufacturers could submit authorization applications to the FDA. In 2019, FDA proposed a rule to govern its evaluation of those applications. The FDA's rule stated that applications would be required to contain scientific studies (such as randomized controlled clinical trials), and cross-product comparisons. The FDA also explained that it would prioritize enforcement of flavored, cartridge-based products and that manufacturers would be required to submit their marketing plans for evaluation. In 2020, the respondent manufacturer submitted applications for various non-cartridge e-cigarette products with dessert, candy, and fruit flavors. The FDA denied the applications because (1) the cited studies lacked randomized controlled trials; (2) the applications failed to compare flavored products to tobacco-flavored products; and (3) because young people are more attracted to the flavored products at issue. The FDA also declined to consider the manufacturer's marketing plans. The Fifth Circuit held that the FDA had arbitrarily and capriciously changed the standards used to evaluate applications, but the Supreme Court largely disagreed and vacated the Fifth Circuit's decision. The Court held that the FDA violated no legitimate reliance interests of manufacturers because it had not actually changed positions regarding the governing standards. While the agency had been "feeling its way toward a final stance," it had remained consistent that studies must be sufficiently rigorous, that cross-product comparisons would focus on flavor, and that it remained open to enforcement against non-cartridge-based e-cigarettes (although its focus had been on cartridge-based products). With respect to the FDA's failure to consider marketing plans, the Court remanded for the Fifth Circuit to conduct a fresh harmless-error analysis. Relying on *Calcutt v. FDIC*, the Fifth Circuit had asserted that APA errors are harmless only when the agency would be *required* to take the same action absent the error. The Court clarified, however, that while remand is usually appropriate when an agency misapplies governing law, an error can be harmless when it "had no bearing on the procedure used or the substance of

[the] decision reached." The Court left it to the Fifth Circuit to apply this clarified standard on remand. Justice Sotomayor briefly concurred to suggest that FDA had employed broadly framed standards to provide flexibility for manufacturers, not because it had been "feeling its way toward a final stance."

16. ***United States v. Miller*, No. 23-824 (10th Cir., 71 F.4th 1247; cert. granted June 24, 2024; argued Dec. 2, 2024).** The Question Presented is: Whether a bankruptcy trustee may avoid a debtor's tax payment to the United States under 11 U.S.C. § 544(b)(1)—which permits a trustee to avoid any pre-petition transfer of the debtor's property that would be voidable "under applicable law" outside bankruptcy—when no actual creditor could have obtained relief under the applicable state fraudulent-transfer law outside of bankruptcy.

Decided March 26, 2025 (604 U.S. __). Tenth Circuit/Reversed and remanded. Justice Jackson delivered the opinion of the Court (Gorsuch, J., dissenting). Section 106(a)(1) of the Bankruptcy Code abrogates the federal government's sovereign immunity "with respect to" Section 544. 11 U.S.C. § 106(a)(1). And under Section 544(b)(1), a bankruptcy trustee can set aside—or "avoid"—any transfer of the debtor's assets that would be "voidable under applicable law" (*i.e.*, voidable outside of bankruptcy). 11 U.S.C. § 544(b)(1). Relying on these provisions, a trustee for a Utah-based company sought to use Utah's fraudulent transfer law to avoid certain pre-petition payments made to the IRS. The Court held that his action was barred by sovereign immunity because Section 106(a)'s immunity waiver applies only to the Section 544(b) claim itself, not to "any state-law claims nested within that federal claim." The Court reasoned that immunity waivers generally are "jurisdictional in nature," but reading Section 106(a) not only to provide jurisdiction for a Section 544(b) claim against the government but also to waive immunity for a nestled state-law claim would "alter[] the substantive requirements of the [underlying] claim itself." The Court also pointed to the Bankruptcy Code's text and structure and historical practice, all of which indicated that, because sovereign immunity would bar a creditor from prevailing against the IRS under Utah's fraudulent transfer law *outside* of bankruptcy, Sections 106(a) and 544(b) required the same result *in* bankruptcy. And even if a broader reading of those statutes was textually permissible, the provisions did not use the "unmistakable language" necessary to abrogate sovereign immunity. In a brief dissent, Justice Gorsuch read Section 106(a) to waive sovereign immunity "to an[y] otherwise valid claim," including a valid Section 544(b) claim that relies on state law to supply its "applicable law."

17. ***Hungary v. Simon*, No. 23-867 (D.C. Cir., 77 F.4th 1077; cert. granted June 24, 2024; argued Dec. 3, 2024).** The Questions Presented are: (1) Whether historical commingling of assets suffices to establish that proceeds of seized property have a commercial nexus with the United States under the expropriation exception to the Foreign Sovereign Immunities Act; (2) Whether a plaintiff must make out a valid claim that an exception to the Foreign Sovereign Immunities Act applies at the pleading stage, rather than merely raising a plausible inference; and (3) Whether a sovereign defendant bears the burden of producing evidence to affirmatively disprove that the proceeds of property taken in violation of international law have a commercial nexus with the United States under the expropriation exception to the Foreign Sovereign Immunities Act.

Decided Feb. 21, 2025 (604 U.S. __). D.C. Circuit/Vacated and remanded. Justice Sotomayor delivered the unanimous opinion of the Court. The Foreign Sovereign Immunities Act ("FSIA") sets out a number of exceptions to foreign sovereign immunity that, if satisfied, permit bringing suit against a foreign state or its agency or

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instrumentality. One of those, the expropriation exception, permits suit when "rights in property taken in violation of international law are in issue" and when "that property or any property exchanged for such property" either (1) "is present in the United States in connection with a commercial activity carried on in the United States by the foreign state," or (2) "is owned or operated by an agency or instrumentality of the foreign state" that is "engaged in commercial activity in the United States." 28 U.S.C. § 1605(a)(3). Plaintiffs, survivors of the Hungarian Holocaust and their heirs, alleged that Hungary's government and national railway robbed Hungarian Jews of their property, liquidated that property, and deposited the proceeds into the Hungarian treasury where they were commingled with other funds, and decades later Hungarian treasury funds were used for commercial activities in the United States, which the Plaintiffs argued sufficed for them to bring suit against Hungary for damages. The Supreme Court held that the plaintiffs' bare "commingling" theory does not satisfy the "commercial nexus" requirement of Section 1605(a)(3). Instead, plaintiffs must plausibly allege "some facts that enable the reasonable tracing of th[e] proceeds [from expropriated property] to the United States." Under the text and history of the FSIA, there is no basis to treat cash differently from tangible property—all are subject to a tracing requirement. To satisfy tracing when expropriated property has been converted to cash, for example, plaintiffs could point to an account within the United States holding the proceeds from the sale of seized property, or allege that soon after commingling, the foreign state spent all funds from the commingled account—or at least more of the funds than are unrelated to the expropriation—in the United States as part of commercial activity.

18. ***United States v. Skrmetti*, No. 23-477 (6th Cir., 83 F.4th 460; cert. granted June 24, 2024; argued Dec. 4, 2024).** The Question Presented is: Whether Tennessee Senate Bill 1, which prohibits all medical treatments intended to allow "a minor to identify with, or live as, a purported identity inconsistent with the minor's sex" or to treat "purported discomfort or distress from a discordance between the minor's sex and asserted identity," Tenn. Code Ann. § 68-33-103(a)(1), violates the Equal Protection Clause of the Fourteenth Amendment.

Decided June 18, 2025 (605 U.S. __). Sixth Circuit/Affirmed. Chief Justice Roberts delivered the opinion of the Court (Thomas, J., concurring) (Barrett, J., joined by Thomas, J., concurring) (Alito, J., concurring in part and concurring in the judgment) (Sotomayor, J., dissenting, joined by Jackson, J., and Kagan, J., in part) (Kagan, J., dissenting). In 2023, Tennessee enacted SB1, which prohibits healthcare providers from prescribing, administering, or dispensing puberty blockers or hormones to any minor for the purpose of (1) enabling the minor to identify with or live a purported identity inconsistent with the minor's biological sex, or (2) treating purported discomfort or distress from a discordance between the minor's biological sex and asserted identity. However, the law permits healthcare providers to administer puberty blockers or hormones to treat a minor's congenital defect, early puberty, disease, or physical injury. Challengers argued that the law represents an impermissible sex-based classification and classifies on the basis of transgender status, which they argued should be elevated to a quasi-suspect class under the Equal Protection Clause. The Sixth Circuit rejected their challenge, and the Supreme Court affirmed. The Court explained that rather than classifying on the basis of sex, SB1 classifies on the basis of the age and the medical reason for the use of puberty blockers or hormones, which apply equally to both sexes. For similar reasons, the Court rejected petitioners' argument that SB1 classifies on the basis of transgender status. While only transgender patients seek treatment for gender dysphoria, SB1 classifies on the basis of the diagnosis rather than the patient, and a transgender patient could still seek puberty blockers to treat conditions other than gender

dysphoria. Moreover, the plaintiffs did not argue that SB1's provisions were "mere pretexts designed to effect an invidious discrimination against transgender individuals." Because neither sex nor transgender status was the "but-for cause" of an individual's inability "to obtain testosterone," the Court reasoned that *Bostock v. Clayton County* would not change this analysis even if it governed equal-protection challenges (which the Court declined to decide). Finally, the Court concluded that SB1 survives rational-basis review, given the state's legitimate health-and-safety objectives and scientific uncertainty surrounding gender-transition treatment. Justice Thomas concurred to argue that the Court should affirmatively hold that *Bostock* does not govern equal-protection challenges and also criticized "self-proclaimed experts" who would displace state prerogatives to enact health measures in light of scientific uncertainty. Justice Barrett, joined by Justice Thomas, concurred to argue that transgender status is not a suspect classification because it is not an immutable characteristic shared by a discrete and insular minority. Justice Alito, concurring in part and in the judgment, would have assumed that SB1 classifies on the basis of transgender status, but agreed with Justice Barrett that such status does not merit heightened scrutiny. He also would have held that *Bostock* does not apply to the Equal Protection clause. Justice Sotomayor, joined by Justice Jackson and in part by Justice Kagan, in dissent would have held that SB1 comprises both a sex-based and transgender-based classification, would have deemed the latter a quasi-suspect class, and would have invalidated SB1 under intermediate scrutiny. Justice Kagan, in dissent, agreed with Justice Sotomayor that heightened scrutiny applied in principle but would have remanded for the lower courts to conduct a heightened-scrutiny analysis in the first instance.

19. ***Kousisis v. United States*, No. 23-909 (3d Cir., 82 F.4th 230; cert. granted June 17, 2024; argued Dec. 9, 2024).** The Questions Presented are: (1) Whether deception to induce a commercial exchange can constitute mail or wire fraud, even if inflicting economic harm on the alleged victim was not the object of the scheme; (2) Whether a sovereign's statutory, regulatory, or policy interest is a property interest when compliance is a material term of payment for goods or services; and (3) Whether all contract rights are "property."

Decided May 22, 2025 (605 U.S. __). Third Circuit/Affirmed. Justice Barrett delivered the opinion of the Court (Thomas, J., concurring) (Gorsuch, J., concurring in part and concurring in the judgment) (Sotomayor, J., concurring in the judgment). Petitioners secured two government painting contracts after representing that they would purchase their painting supplies from a disadvantaged business that performed a "commercially useful function." That representation was false. Although their work satisfied expectations, petitioners used a disadvantaged business only as a "pass-through" after obtaining their supplies from another source. When that scheme was discovered, petitioners were indicted and convicted for wire fraud under 18 U.S.C. § 1343. Petitioners challenged their convictions on the ground that they did not intend to cause their victim "net pecuniary loss." The Court rejected that theory and held that Section 1343 covers fraudulent-inducement schemes—that is, schemes in which fraudsters "us[e] falsehoods to induce a victim to enter into a transaction"—even if the fraudsters do not intend to cause "economic loss." It also explained that Section 1343's text does not address economic loss and is consistent with liability for fraudulent-inducement schemes. It also explained that there was no well-established, common-law understanding that fraud required economic loss when Congress enacted the statute. The Court further held that fraud's injury requirement is satisfied whenever a victim parts with money or property and explained that materiality (which petitioners did not contest) would serve as a "principled basis for distinguishing everyday misstatements from actionable fraud" in

future cases. Justice Thomas concurred to express skepticism that the misrepresentations at issue were material. Justice Gorsuch, concurring in part and in the judgment, criticized the Court for suggesting that the injury requirement is satisfied whenever the victim "parts with any money or property"; he would have held that there is injury only when the victim does not receive "the benefit of his bargain." Justice Sotomayor, concurring in the judgment, would have rejected the economic-loss rule on the ground that "promising one thing and delivering something materially different" is a "classic scheme to defraud," but would not have addressed fraudulent-inducement schemes more broadly. She also argued that the misrepresentations at issue were plainly material under the government's standard.

20. ***Feliciano v. Department of Transportation*, No. 23-861 (Fed. Cir., 2023 WL 3449138; cert. granted June 24, 2024; argued Dec. 9, 2024).** The Question Presented is: Whether a federal civilian employee called or ordered to active duty under a provision of law during a national emergency is entitled to differential pay even if the duty is not directly connected to the national emergency.

    Decided Apr. 30, 2025 (605 U.S. __). Federal Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion of the Court (Thomas, J., joined by Alito, Kagan, and Jackson, JJ., dissenting). Federal civilian employees serving as military reservists are entitled to receive "differential pay"—which compensates for the difference between their military and civilian salaries—in certain circumstances, including when called to active duty "during a national emergency." 5 U.S.C. § 5538(a); 10 U.S.C. § 101(a)(13)(B). Feliciano, an air traffic controller with the Federal Aviation Administration, was called to active duty with the Coast Guard in support of several operations, including Operations Iraqi Freedom and Enduring Freedom. Feliciano did not receive differential pay, and the Merit Systems Protection Board rejected his claim for such pay. The Federal Circuit agreed with the Board, concluding that differential pay is available when a national emergency is ongoing *and* there is a "substantive connection" between the emergency and the individual's service. The Supreme Court reversed, holding that a federal civilian employee is entitled to differential pay if his service temporally coincides with a declared national emergency, whether or not his service was substantively connected to the emergency. The Court reasoned that the word "during" normally references a temporal link and means "contemporaneous with"; it does not generally suggest a substantive connection. Contextual clues supported this conclusion; for example, several statutes use more expansive phrases—like "during and because of"—to clearly indicate the requirement of both a temporal and substantive link. Justice Thomas dissented, joined by Justices Alito, Kagan, and Jackson, arguing that, read in context, the phrase "during a national emergency" applies only if the call to duty arises in the course of an operation responding to a national emergency.

21. ***Seven County Infrastructure Coalition v. Eagle County*, No. 23-975 (D.C. Cir., 82 F.4th 1152; cert. granted June 24, 2024; argued Dec. 10, 2024).** The Question Presented is: Whether the National Environmental Policy Act requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

    Decided May 29, 2025 (605 U.S. __). D.C. Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Sotomayor, J., joined by Kagan and Jackson, JJ., concurring in the judgment) (Gorsuch, J., recused). The National Environmental Policy Act (NEPA) requires federal agencies to prepare an environmental impact statement (EIS) for certain federally built, funded, or approved infrastructure projects. The EIS must address the significant environmental effects

of the project and identify feasible alternatives that could mitigate those effects. Here, the U.S. Surface Transportation Board approved a proposal for the construction of a railroad line in Utah. But the D.C. Circuit vacated the Board's approval and the accompanying EIS because the EIS failed to sufficiently consider the environmental effects of projects separate from the railroad line itself, such as increased oil drilling and refining that the new railroad could facilitate. The Supreme Court reversed, holding that the D.C. Circuit (1) did not afford the Board the "substantial judicial deference required in NEPA cases," and (2) misconstrued NEPA to require the Board to consider the environmental effects of upstream and downstream projects that were separate in time or place from the railway. On the first point, the Court noted that the "bedrock," "central principle of judicial review in NEPA cases is deference," because "NEPA is a purely procedural statute" that "imposes no substantive constraints on the agency's ultimate decision," and the Administrative Procedure Act's deferential arbitrary-and-capricious standard governs the agency's decision. As a result, courts "should afford substantial deference" to an agency's choices both "about the depth and breadth of its inquiry," including what environmental impacts and feasible alternatives to consider, and "about the length, content, and level of detail of the resulting EIS." Moreover, because the "ultimate question" is whether the "agency's final decision was reasonable and reasonably explained," courts should not necessarily vacate an agency's ultimate approval based on deficiencies in the EIS, "at least absent reason to believe that the agency might disapprove the project if it added more to the EIS." The Court deemed its decision a necessary "course correction" to lower courts' tendency to hinder developmental projects through "overly intrusive (and unpredictable) review in NEPA cases." On the second point, the Court reasoned that "the textually mandated focus of NEPA is the 'proposed action'—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration." Accordingly, in this case, "NEPA does not require the agency to evaluate the effects" of increased oil drilling and refining that the railroad line could facilitate. Justice Sotomayor, joined by Justices Kagan and Jackson, concurred in the judgment, concluding that "under its organic statute, the Board had no authority to reject petitioners' application on account of the harms third parties would cause with products transported on the proposed railway."

22. ***Dewberry Group, Inc. v. Dewberry Engineers Inc.*, No. 23-900 (4th Cir., 77 F.4th 265; cert. granted June 24, 2024; argued Dec. 11, 2024).** The Question Presented is: Whether an award of the "defendant's profits" under the Lanham Act, 15 U.S.C. § 1117(a), can include an order for the defendant to disgorge the distinct profits of legally separate non-party corporate affiliates.

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Decided Feb. 26, 2025 (604 U.S. __). Fourth Circuit/Vacated and remanded. Justice Kagan delivered the opinion for a unanimous Court. The Lanham Act allows prevailing trademark plaintiffs to recover, "subject to the principles of equity," the "defendant's profits," as well as any damages caused by the infringement. 15 U.S.C. § 1117(a). If the court finds that this "recovery based on profits is either inadequate or excessive," it "may in its discretion enter judgment for such sum as [it] shall find to be just, according to the circumstances of the case." *Ibid.* The district court held Dewberry Group liable for infringing a trademark owned by the similarly named Dewberry Engineers, and it ordered Dewberry Group to disgorge nearly $43 million in profits that were realized only by Dewberry Group's legally distinct corporate affiliates, which were not parties to the case. A divided panel of the Fourth Circuit affirmed, holding that it was appropriate to treat Dewberry Group and its affiliates "as a single corporate entity" for purposes of awarding a profits-based remedy. The

Supreme Court vacated the award. As it explained, the Lanham Act permits courts to order the disgorgement only of the "defendant's" profits, not of profits realized by non-party affiliates. That limitation comports with the "bedrock" principle of corporate separateness, under which courts must respect the line between distinct corporations unless there are grounds to pierce the corporate veil. And the Court rejected Dewberry Engineer's defense of the award under the provision permitting an award of a "just" sum, holding that this provision "cannot justify ignoring the distinction between a corporate defendant . . . and its separately incorporated affiliates." The Court thus vacated and remanded for a new award proceeding. Justice Sotomayor concurred, arguing that "principles of corporate separateness do not blind courts to economic realities," and thus that courts may consider the profits of a defendant's affiliates to be the "defendant's profits" where there is evidence of a "non-arm's length relationship" or indirect benefits conferred to the defendant.

JANUARY CALENDAR

23. ***TikTok, Inc. v. Garland*, No. 24-656 (D.C. Cir., 122 F.4th 930; cert. granted Dec. 18, 2024; argued Jan. 10, 2025), consolidated with *Firebaugh v. Garland*, No. 24-657 (D.C. Cir., 122 F.4th 930; cert. granted Dec. 18, 2024; argued Jan. 10, 2025).** The Question Presented is: Whether the Protecting Americans from Foreign Adversary Controlled Applications Act, as applied to petitioners, violates the First Amendment.

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Decided Jan. 17, 2025 (604 U.S. __). D.C. Circuit/Affirmed. Per curiam opinion (Sotomayor, J., concurring in part and concurring in judgment) (Gorsuch, J., concurring in judgment). The Protecting Americans from Foreign Adversary Controlled Applications Act prohibits U.S. companies from providing services to distribute, maintain, or update the social media platform TikTok unless the app's U.S. operations are severed from Chinese control. TikTok Inc., the American company that runs TikTok in the United States, and ByteDance Ltd., TikTok Inc.'s Chinese-connected ultimate parent company, claimed that the law violates their First Amendment rights, as did a group of TikTok users and creators. The Court held that the Act did not violate any of the challengers' First Amendment rights. It assumed without deciding that the Act was a "regulation of non-expressive activity that disproportionately burdens those engaged in expressive activity," triggering First Amendment review, though the Court noted that it had not "articulated a clear framework" for this area. The Court held that the Act was "facially content-neutral" and "justified by a content-neutral rationale" and thus subject to intermediate scrutiny. The Act focused on TikTok "due to a foreign adversary's control over the platform" and not based on the content of any speech on TikTok, and the government provided a content-neutral justification for the Act—preventing China from collecting data from U.S. TikTok users. The Court then concluded that the Act passed intermediate scrutiny. The Act's aim of ensuring that China does not "leverag[e] its control over ByteDance Ltd. to capture the personal data" of "tens of millions of U.S. TikTok users" was indisputably an important government interest. And the Act was "sufficiently tailored" to address that interest, since it barred China from accessing U.S. TikTok users' data while still allowing TikTok to operate in the United States if ByteDance divested from it. The Court did not need to evaluate TikTok's proposed regulatory alternatives given the "latitude" afforded the "Government to design regulatory solutions to address content-neutral interests." Because the data collection rationale sufficed to sustain the Act, and the record showed that Congress "would have passed" the Act based on that "justification alone," the Court declined to decide whether the other rationale for the Act—preventing a foreign adversary from using its control over TikTok's recommendation algorithm to "alter the content on the

platform in an undetectable manner"—would pass muster. Justice Sotomayor would have held, rather than assumed, that the Act implicates the First Amendment. Justice Gorsuch opined that even under strict scrutiny, the Act was narrowly tailored to advance a compelling interest of preventing China from collecting Americans' personal information.

24. ***Hewitt v. United States*, No. 23-1002 (5th Cir., 92 F.4th 304; cert. granted July 2, 2024; argued Jan. 13, 2025), consolidated with *Duffey v. United States*, No. 23-1150 (5th Cir., 92 F.4th 304; cert. granted July 2, 2024; argued Jan. 13, 2025).** The Question Presented is: Whether the First Step Act's sentencing reduction provisions apply to a defendant originally sentenced before the First Step Act's enactment when that original sentence is judicially vacated and the defendant is resentenced to a new term of imprisonment after the First Step Act's enactment.

Decided June 26, 2025 (606 U.S. __). Fifth Circuit/Reversed and remanded. Justice Jackson delivered the opinion of the Court with respect to Parts I, II, and III of the opinion, and was joined by Justices Sotomayor and Kagan as to Parts IV and V (Alito, J., dissenting, joined by Thomas, Kavanaugh, and Barrett). Prior to 2018, first-time offenders convicted of possessing a firearm during the commission of other crimes were subject to "stacked" minimum sentences of twenty-five years. In 2018, the First Step Act lowered this minimum sentence to five years and applied the reduction retroactively to any case in which a sentence "has not been imposed as of [the] date of enactment." Petitioners had been sentenced under the old regime but had their sentences vacated after the Act's enactment. At resentencing, the district court imposed the twenty-five year minimum sentences, reasoning that that the prior sentences had already been imposed at the time of enactment, so the new regime did not apply retroactively to petitioners. The Fifth Circuit affirmed, but the Supreme Court reversed. The Court explained that a sentence "has been imposed" if, and only if, the sentence remained extant at the time of the First Step Act's enactment. But vacatur of a sentence makes it void ab initio and in effect as if had not "been imposed." Because "the law acts as though the vacated order never occurred," no legally valid sentence had been imposed at the time of petitioners' resentencing. Thus, the First Step Act's five-year-minimum regime applied to them retroactively. Dissenting, Justice Alito criticized the Court for construing the retroactivity provision "to mean that *any* defendant whose sentence is vacated at *any* time and for *any* reason may claim . . . [a] reduced mandatory minimum." He explained that the present-perfect tense (*i.e.*, "has … been imposed as of [the] date of enactment") could be interpreted either as signaling that a sentence was imposed as a historical fact *or* that a legally valid sentence continued to be in force on the First Step's enactment date. In either event, the Act did not apply retroactively to petitioners because they had been sentenced as a historical fact and that sentence was legally valid at the time the First Step Act was passed. He also argued that the majority's vacatur principle was inconsistent with the Court's precedent and the Sentencing Reform Act and was not incorporated into the First Step Act.

25. ***Stanley v. City of Sanford*, No. 23-997 (11th Cir., 83 F.4th 1333; cert. granted June 24, 2024; argued Jan. 13, 2025).** The Question Presented is: Whether, under the Americans with Disabilities Act, a former employee—who was qualified to perform her job and who earned post-employment benefits while employed—loses her right to sue over discrimination with respect to those benefits solely because she no longer holds her job.

Decided June 20, 2025 (606 U.S. __). Eleventh Circuit/Affirmed. Justice Gorsuch delivered the opinion of the Court with respect to Parts I and II, and an opinion with respect to Part III joined by Justices Alito, Sotomayor, and Kagan (Thomas, J., joined by Barrett, J., concurring in part and concurring in the judgment) (Sotomayor, J., concurring in part and dissenting in part) (Jackson, J., dissenting, joined by Sotomayor J. as to Parts III and IV, except for n.12). Karyn Stanley worked as a firefighter for the City of Sanford, Florida. When she was hired, the City offered health insurance until age 65 for those with 25 years of service and those who retired earlier due to disability. In 2003, the city changed the policy to provide health insurance up to age 65 only for retirees with 25 years of service, while those who retired earlier due to disability would receive just 24 months of coverage. In 2018, Stanley was forced to retire as a result of Parkinson's disease. She sued the City, alleging that differential treatment for those who retire early due to disability violates the Americans with Disabilities Act (ADA). The Eleventh Circuit held the ADA inapplicable, and the Supreme Court affirmed. Section 12112(a) of the ADA makes it unlawful to discriminate against a "qualified individual," defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Given the use of the present tense, the Court construed the ADA to apply only to individuals that hold or are seeking a job—not to those like Stanley who have retired. Writing for himself and three Justices, Justice Gorsuch rejected the alternative argument that the 2003 policy change was discriminatory against Stanley during the period between 2016–2018 in which she was still employed but had been diagnosed with a disability. Although Justice Gorsuch made it clear that future plaintiffs could bring challenges regarding discrimination that occurred while they were still employed, Stanley disclaimed this theory before the Eleventh Circuit and did not plead sufficient facts to support it in her complaint. Justice Thomas, concurring in part and in the judgment, and joined by Justice Barrett, wrote to express frustration with the "increasingly common practice of litigants urging this Court to grant certiorari to resolve one question, and then, after we do so, pivoting to an entirely different question." Justice Sotomayor, in partial dissent, agreed with Justice Jackson that a "prohibition on disability discrimination does not cease the day an employee retires," noted that "[t]here is good reason to think that Stanley herself was subject to the allegedly discriminatory policy at issue here while she was both disabled and employed," but agreed with the plurality that Stanley forfeited that theory. Justice Jackson in dissent would have reached Stanley's alternative theory, would have held that she was discriminated against by the policy change during her employment, and would have further held that retirement does not establish a "temporal limit" protecting employers from ADA liability for post-employment discrimination.

26. ***Thompson v. United States*, No. 23-1095 (7th Cir., 89 F.4th 1010; cert. granted Oct. 4, 2024; argued Jan. 14, 2025).** The Question Presented is: Whether 18 U.S.C. § 1014, which prohibits making a "false statement" for the purpose of influencing certain financial institutions and federal agencies, also prohibits making a statement that is misleading but not false.

Decided Mar. 21, 2025 (604 U.S.__). Seventh Circuit/Vacated and remanded. Chief Justice Roberts delivered the opinion of the unanimous Court (Alito, J., and Jackson, J., separately concurring). Patrick Thompson took out three bank loans totaling $219,000. Later, after the bank failed and the Federal Deposit Insurance Corporation ("FDIC") took over collection of the loans, he told a loan servicer that he had "borrowed . . . $110,000" and had "no idea" where his larger balance "comes from." Based on those statements, Thompson was convicted of violating 18 U.S.C. § 1014, which prohibits "knowingly mak[ing] any false statement or report" for the purpose of

influencing the FDIC's action "upon any . . . loan." Thompson argued that his statements were not illegal because they were "literally true, even if misleading." But the district court and the Seventh Circuit held that Section 1014 permits convictions for statements that are "misleading," whether or not they are false. The Supreme Court rejected that interpretation, reasoning that the statutory text uses only the word "false"—and not the word "misleading"—and "at least some misleading statements are not false." Section 1014's use of only "false," the Court noted, differed from the many other criminal statutes that expressly use both "false" and "misleading" to cover both types of statements. The Court then remanded for the lower courts to determine whether a reasonable jury could find that Thompson's statements were false. In their concurrences, Justice Alito and Justice Jackson each noted that because the jury instructions had correctly asked whether Thompson's statements were false, his conviction could be upheld so long as any reasonable jury could have concluded beyond a reasonable doubt that the statements were false.

27. ***Waetzig v. Halliburton Energy Services, Inc.*, No. 23-971 (10th Cir., 82 F.4th 918; cert. granted Oct. 4, 2024; argued Jan. 14, 2025).** The Question Presented is: Whether a Rule 41 voluntary dismissal without prejudice is a "final judgment, order, or proceeding" under Rule 60(b).

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Decided February 26, 2025 (604 U.S. __). Tenth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the unanimous Court. Gary Waetzig sued his employer, Halliburton, in district court, but later acknowledged that he was required to arbitrate his claim. Instead of asking the court to stay the case pending arbitration, Waetzig dismissed his case without prejudice under Federal Rule of Civil Procedure 41(a). Later, after losing in arbitration, Waetzig moved to reopen his district-court case under Rule 60(b), which allows a court to "relieve a party . . . from a final judgment, order, or proceeding." The district court granted the motion and vacated the award on procedural grounds, but the Tenth Circuit deemed the Rule 60(b) motion improper. The Supreme Court sided with Waetzig, holding that a Rule 41(a) voluntary dismissal without prejudice qualifies as a "final . . . proceeding" under Rule 60(b). The Court declined to reach Halliburton's argument that the district court lacked jurisdiction over Waetzig's motion to vacate, holding that the Rule 60(b) question needed to be resolved first. On that front, the Court held that a Rule 41(a) dismissal, like any other, "terminates the case," so it is "final." The Court declined to apply the finality rule that applies when determining if a district court's decision can be appealed—which requires that the case be resolved *on the merits*—because finality in that context serves different purposes than in the Rule 60(b) setting. A Rule 41(a) dismissal is a "proceeding" under Rule 60(b) because that term is broad enough to encompass "all formal steps taken in an action."

28. ***Free Speech Coalition, Inc. v. Paxton*, No. 23-1122 (5th Cir., 95 F.4th 263; cert. granted July 2, 2024; argued Jan. 15, 2025).** The Question Presented is: Whether the court of appeals erred as a matter of law in applying rational-basis review to a law burdening adults' access to sexual materials, instead of strict scrutiny.

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Decided June 27, 2025 (606 U.S. __). Fifth Circuit/Affirmed. Justice Thomas delivered the opinion of the Court (Kagan, J., joined by Sotomayor and Jackson, JJ., dissenting). Texas enacted a law requiring certain commercial websites publishing sexually explicit content that is obscene to minors to verify that visitors are at least 18 years old, using commercial methods that rely on government-issued IDs or transactional data. Representatives of the pornography industry challenged the law under the First Amendment, arguing that the age-verification requirement impermissibly burdened the right of adults to access speech covered by the law. The

district court enjoined the law, concluding that it failed strict scrutiny, but the Fifth Circuit reversed, holding that the law was subject only to rational-basis review and passed muster under that standard. The Supreme Court affirmed but on different grounds: It held that the Texas law triggered, and survived, intermediate scrutiny because it only incidentally burdened adults' protected speech. The Court explained that there is no constitutional right to obscene speech, and state laws banning material that is obscene are generally subject "to rational-basis review." Nonetheless, there are two types of obscene content: content that is obscene "from the perspective of 'the average' adult," and content that is "obscene from a child's perspective." "States can impose greater limits on children's access to sexually explicit speech than they can on adults' access." Under the Court's precedent, banning adult access to materials that are only obscene as to minors triggers strict scrutiny. But "[s]tates' traditional power to prevent minors from accessing speech that is obscene from their perspective" includes the power to require age verification before granting access to such speech. "[A]dults have no First Amendment right to avoid age verification." The Court concluded that Texas's law, which directly regulates unprotected activity (*i.e.*, minors' access to material that is obscene as to them) and only incidentally burdens protected activity (*i.e.*, adults' access to speech that is protected as to them), triggers intermediate scrutiny. The Court then held that the Texas law "readily satisfie[d]" intermediate scrutiny; it advanced the important interest in shielding children from sexually explicit content, and it was sufficiently tailored to that interest because it allowed users to prove their ages through established verification methods. In dissent, Justice Kagan, joined by Justices Sotomayor and Jackson, argued that the Texas law should have been subject to strict scrutiny because it burdened the right of adults to access a category of speech that is protected for them.

29. ***FDA v. R.J. Reynolds Vapor Co.*, No. 23-1187 (5th Cir., 2024 WL 1945307; cert. granted Oct. 4, 2024; argued Jan. 21, 2025).** The Question Presented is: Whether under the statute permitting review of the FDA's denial of authorization for a new tobacco product, 21 U.S.C. § 387l(a)(1), a manufacturer may file a petition for review in a circuit (other than the D.C. Circuit) where it neither resides nor has its principal place of business, if the petition is joined by a seller of the manufacturer's products that is located within that circuit.

Decided June 20, 2025 (606 U.S. __). Fifth Circuit/Affirmed and remanded. Justice Barrett delivered the opinion of the Court (Jackson, J., joined by Sotomayor, J., dissenting). The Tobacco Control Act of 2009 authorizes "any person adversely affected" by the FDA's denial of authorization to sell tobacco products to petition for review under the APA in either the D.C. Circuit or the circuit in which the adversely affected person has its principal place of business. 21 U.S.C. § 387*l*(a)-(b). Here, the FDA denied approval for certain e-cigarette products of a manufacturer based in the Fourth Circuit. Rather than file a petition for review in that circuit, the manufacturer filed a joint petition in the Fifth Circuit with retailers of the e-cigarettes, all of whom were based there. The FDA moved to dismiss the petition for improper venue, arguing that only the manufacturer was "adversely affected" by the original denial. The Fifth Circuit rejected that argument, and the Supreme Court agreed. It held that the retailers could sue under the Act—and that venue in the Fifth Circuit was therefore proper—because they have an interest falling into the zone of interests protected by the Act. The Court has interpreted the term "adversely affected" to cover anyone "arguably within the zone of interests" protected by a statute. The retailers fell within that zone because, in the event of an FDA denial, they would lose the ability to sell the product at issue and to profit from those sales. The Court also relied on the breadth of Section 387*l*'s "any person" language to signal Congress's

intent to allow more than just the manufacturer to petition for review. In dissent, Justice Jackson, joined by Justice Sotomayor, argued that the authorization process involves only manufacturers, and "retailers have no rights and play no role" in it; thus, the only persons whose interests need to be protected are the manufacturers. She also noted that a different provision of the Act allows only a manufacturer to challenge the FDA's withdrawal of a previous approval. For Justice Jackson, that provision indicates that Congress intended for only manufacturers to bring suits when the FDA denies approval in the first instance.

30. ***McLaughlin Chiropractic Associates, Inc. v. McKesson Corporation*, No. 23-1226 (9th Cir., 2023 WL 7015279; cert. granted Oct. 4, 2024; argued Jan. 21, 2025).** The Question Presented is: Whether the Hobbs Act, 28 U.S.C. § 2342(1), requires a district court to accept the FCC's legal interpretation of the Telephone Consumer Protection Act.

Decided June 20, 2025 (606 U.S. __). Ninth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Kagan, J., joined by Sotomayor and Jackson, JJ., dissenting). The Telephone Consumer Protection Act (TCPA) prohibits businesses from, among other things, sending unsolicited advertisements to any "telephone facsimile machine." 47 U.S.C. § 227(a)(3), (b)(1)(C). McLaughlin Chiropractic Associates, a medical practice, sued McKesson Corporation for sending unsolicited fax advertisements. While the case was pending, the Federal Communications Commission ("FCC") issued a declaratory ruling determining that online fax services are not telephone facsimile machines. The district court deemed that ruling binding and ruled for McKesson on claims involving online fax services, and the Ninth Circuit affirmed. The courts reasoned that the Hobbs Act provides for "exclusive jurisdiction" in the courts of appeals to "determine the validity of" FCC orders in pre-enforcement judicial review, 28 U.S.C. § 2342(1), so district courts cannot question the validity of FCC final orders by, for instance, departing from the FCC's interpretations of the TCPA. The Supreme Court reversed, holding that the Hobbs Act "does not preclude district courts in enforcement proceedings from independently assessing whether an agency's interpretation of the relevant statute is correct." The Court reasoned that, where a statute allows for pre-enforcement review but is silent on whether a party can challenge the agency's legal interpretation in subsequent enforcement proceedings, the default rule is that the court in the enforcement proceeding must decide whether the agency's interpretation is correct. The Court grounded that default rule in the duty of courts to interpret the law for themselves, as recognized in *Loper Bright Enterprises v. Raimondo*, and the presumption of judicial review, which generally allows parties to challenge an agency's rule or order in enforcement proceedings. That default rule can be overcome, the Court explained, if Congress "clearly" states its intent to preclude judicial review in enforcement proceedings, as it has done in other statutory schemes such as the Clean Water and Clean Air Acts. But because the Hobbs Act merely provides for "exclusive jurisdiction" to entertain pre-enforcement challenges to FCC actions, without expressly addressing enforcement proceedings, a court hearing an enforcement proceeding must decide for itself whether the FCC's interpretation is correct, with "appropriate respect" to the FCC's view. Justice Kagan, joined by Justices Sotomayor and Jackson, dissented, arguing that the Hobbs Act's text and precedent preclude litigants from challenging the statutory validity of agency action in enforcement proceedings. The Court's decision makes it significantly easier to challenge the validity of agency rules and orders in civil enforcement proceedings—even those brought years after the rule or order was issued.

31. ***Barnes v. Felix*, No. 23-1239 (5th Cir., 91 F.4th 393; cert. granted Oct. 4, 2024; argued Jan. 22, 2025).** The Question Presented is: Whether courts should look only to "the moment of the threat" when evaluating an excessive force claim under the Fourth Amendment.

Decided May 15, 2025 (605 U.S. __). Fifth Circuit/Vacated and remanded. Justice Kagan delivered the opinion of the Court. (Kavanaugh, J., joined by Thomas, Alito, and Barrett, JJ., concurring). During a traffic stop for outstanding toll violations, Officer Roberto Felix, Jr. ordered Ashtian Barnes to step out of his vehicle; Barnes instead turned the ignition back on and began to drive the car forward. Felix jumped onto the open doorsill of the moving car and fired his gun, hitting and killing Barnes. Barnes's mother brought suit against Felix alleging excessive force in violation of the Fourth Amendment. The district court and the Fifth Circuit ruled for Felix, applying circuit precedent that assesses the excessiveness of force based only on whether the officer was in danger at "the moment of the threat" that prompted the use of force and bars consideration of all preceding events. The Supreme Court rejected the "moment-of-threat" rule, explaining that the reasonableness of an officer's use of force always must be evaluated based on the totality of the circumstances, including the severity of the crime, the officer's actions, and the suspect's conduct. The moment-of-threat rule, by limiting the time and circumstances a court can consider, improperly restricts the totality analysis by failing to account for crucial context preceding the use of force. The Court emphasized that weighing events from before the moment of force could benefit either party, depending on the case. It sent the case back to the Fifth Circuit without deciding whether or how an officer's "creation of a dangerous situation" affects the reasonableness of force. In concurrence, Justice Kavanaugh, joined by Justices Thomas, Alito, and Barrett, highlighted the dangers officers face when they conduct traffic stops, especially when the driver pulls away mid-stop.

32. ***Cunningham v. Cornell University*, No. 23-1007 (2d Cir., 86 F.4th 961; cert. granted Oct. 4, 2024; argued Jan. 22, 2025).** The Question Presented is: Whether a plaintiff can state an ERISA claim by alleging that a plan fiduciary engaged in a transaction constituting a furnishing of goods, services, or facilities between the plan and a party in interest, as proscribed by 29 U.S.C. § 1106(a)(1)(C), or whether a plaintiff must plead and prove additional elements and facts not contained in the provision's text.

Decided April 17, 2025 (604 U.S. __). Second Circuit/Reversed and remanded. Justice Sotomayor delivered the unanimous opinion of the Court (Alito, J., joined by Thomas and Kavanaugh, JJ., concurring). Section 1106(a)(1)(C) of the Employment Retirement Income Security Act ("ERISA") prohibits a plan fiduciary from "caus[ing] the plan to engage in a transaction" that the fiduciary "knows or should know … constitutes a direct or indirect … furnishing of goods, services, or facilities" between the plan and a "party in interest," including a service provider for the plan. 29 U.S.C. § 1106(a)(1)(C); *see id.* § 1002(a)(14)(B). But that restriction applies "[e]xcept as provided in section 1108," which exempts, among other things, "reasonable arrangements with" a plan service provider "for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor." *Id.* § 1108(b)(2)(A). The Court held that, to state a prohibited-transaction claim under Section 1106(a)(1)(C) at the pleadings stage, a plaintiff need only allege the elements set out in that provision and need not allege facts negating Section 1108's exemptions. The Court relied on the presumption that the burden of proving an exemption falls on the party invoking it, and on the fact that the Section 1108

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exemptions are written in the format of affirmative defenses, which ordinarily must be proven by defendants. The Court acknowledged, however, that this scheme raises "serious concerns" for ERISA plans and fiduciaries given the ubiquity of service transactions in the plan-administration context. To that end, the Court highlighted several tools that district courts can deploy to "screen out meritless claims," such as requiring plaintiffs to file a reply to the answer alleging facts to negate a Section 1108 exemption and dismissing actions that do not clear that bar, dismissing suits that do not allege an Article III injury, ordering expedited or limited discovery, issuing Rule 11 sanctions, and invoking ERISA's cost-shifting provision. Justice Alito, joined by Justices Thomas and Kavanaugh, concurred to recognize that the Court's decision could cause "untoward practical results" and to urge district courts to use safeguards such as requiring plaintiffs to file post-answer replies to quickly dispose of cases barred by one of the Section 1108 exemptions.

FEBRUARY CALENDAR

33. ***Gutierrez v. Saenz*, No. 23-7809 (5th Cir., 93 F.4th 267; cert. granted Oct. 4, 2024; argued Feb. 24, 2025).** The Question Presented is: Whether Article III standing requires a particularized determination that a specific state official will redress the plaintiff's injury by following a favorable declaratory judgment.

Decided June 26, 2025 (606 U.S. __). Fifth Circuit/Reversed and remanded. Justice Sotomayor delivered the opinion of the Court (Roberts, C.J., joined by Kagan, Kavanaugh, Jackson, JJ.) (Barrett, J., concurring in part and concurring in the judgment.) (Alito, J., joined by Thomas and Gorsuch, JJ., dissenting) (Thomas, J., dissenting separately). Texas Article 64 offers convicted individuals potentially exculpatory DNA testing under certain circumstances. Gutierrez—a man convicted of capital murder for his role in a robbery that resulted in death—sought Article 64 testing. A Texas appellate court repeatedly denied testing because it concluded that even if Gutierrez's DNA was not on the tested items, it would not exonerate Gutierrez (who still would have been a party to the robbery resulting in death). Gutierrez then filed suit against the district attorney under 42 U.S.C. § 1983, seeking declaratory and injunctive relief and claiming that denial of testing abridged his due-process rights. The district court granted a declaratory judgment that the denial of testing was fundamentally unfair, but the Fifth Circuit vacated the declaratory judgment, reasoning that it could not redress Gutierrez's asserted injury, as the declaratory judgment would be unlikely to make the prosecutor reverse course and order testing. The Supreme Court, in turn, reversed, holding that Gutierrez had standing to pursue the claim. Relying heavily on *Reed v. Goertz*, 598 U.S. 230 (2023), the Court faulted the Fifth Circuit's analysis for two reasons. *First*, the Court observed that individuals possess a liberty interest in "demonstrating [their] innocence with new evidence under state law." *Second*, the Court opined that the Fifth Circuit erroneously "transform[ed] the redressability inquiry into a guess as to whether a favorable court decision" would ultimately yield a favorable outcome by causing "the prosecutor to turn over the evidence." For redressability, it was enough that the district court's conclusion about Article 64's inconsistency with Due Process would eliminate the prosecutor's reliance on the statute as "a reason for denying DNA testing." According to the Court, the potential existence of "another reason … to deny [the plaintiff's] request … [did] not vitiate his standing to argue that the cited reasons violated his rights under the Due Process Clause." Concurring in the judgment, Justice Barrett argued that the Court should have reversed based solely on the Fifth Circuit's failure to consider all relief requested in Gutierrez's complaint. Dissenting, Justice Alito (joined by Justices Thomas and Gorsuch) argued that the majority distorted the *Reed* standard and that Gutierrez could not show his injury would be redressed given the

Texas courts' multiple independent grounds for denying DNA testing. Justice Thomas separately dissented to argue that the "Court [had] no business intervening in this case in the first place" since, in his view, the Due Process Clause does not endow individuals with any liberty interest in procedures that states voluntarily create.

34. ***Esteras v. United States*, No. 23-7483 (6th Cir., 88 F.4th 1163; cert. granted Oct. 21, 2024; argued Feb. 25, 2025).** The Question Presented is: Whether a district may rely on the factors set forth at 18 U.S.C. § 3553(a)(2)(A)—the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense—when revoking supervised release, even though Congress excluded those factors from the supervised-release statute's list of factors, 18 U.S.C. § 3583(e).

Decided June 20, 2025 (606 U.S. __). Sixth Circuit/Vacated and remanded. Justice Barrett delivered the opinion of the Court (Sotomayor, J., joined by Jackson, J., concurring in part and concurring in the judgment) (Jackson, J., concurring in part and concurring in the judgment) (Alito, J., joined by Gorsuch, J., dissenting). A federal criminal defendant may receive both jail time and a supervised-release term. To determine the appropriate sentence, a district court must consider ten factors set forth in 18 U.S.C. § 3553(a). One of those factors is Section 3553(a)(2)(A), which speaks to the retributive purpose of punishment and identifies "the need for the sentence imposed" "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." When determining whether and how long a supervised-release term is warranted, the court, under Section 3583(c), must consider eight of the ten Section 3553(a) factors—not including Section 3553(a)(2)(A). And under Section 3583(e), the same eight Section 3553(a) factors govern when a federal court decides whether to revoke a supervised release term. The Court held that district courts cannot consider Section 3553(a)(2)(A) when revoking supervised release. Under the well-established canon of statutory interpretation—"*expressio unius est exclusion alterius*," the expression of one excludes another not mentioned—the omission of Section 3553(a)(2)(A) from Section 3583(e)'s list of factors means that Congress did not intend courts to consider that factor. The Court also explained that, for purposes of Section 3553(a)(2)(A), "the 'offense' is the underlying crime of conviction, not the violation of the supervised-release conditions," and so Congress meant to preclude courts from considering retribution for the original offense in revocation hearings. Justice Sotomayor, joined by Justice Jackson, joined the Court's opinion except for the part about what "offense" in Section 3553(a)(2)(A) means; she would have held that retribution for either the original offense or the supervised-release violation is off-limits. Justice Jackson's solo concurrence made a similar point. Justice Alito, joined by Justice Gorsuch, dissented, contending that the Court's interpretation would require sentencing judges to "engage in mind-bending exercises." He rejected the Court's "aggressive" use of the *expressio unius* canon and argued that the better inference is that Section 3583(e) "sets out an exclusive list of mandatory factors" but does not prohibit consideration of other factors such as Section 3553(a)(2)(A).

35. ***Perttu v. Richards*, No. 23-1324 (6th Cir., 96 F.4th 911; cert. granted Oct. 4, 2024; argued Feb. 25, 2025).** The Question Presented is: Whether, under the Prison Litigation Reform Act, prisoners have a right to a jury trial concerning their exhaustion of administrative remedies when disputed facts regarding exhaustion are intertwined with the underlying merits of their claim.

Decided June 18, 2025 (605 U.S. __). Sixth Circuit/Affirmed. Chief Justice Roberts delivered the opinion of the Court (Barrett, J., joined by Thomas, Alito, and Kavanaugh, JJ., dissenting). The Prison Litigation Reform Act ("PLRA") requires prisoners suing under 42 U.S.C. § 1983 to first exhaust available administrative remedies. But exhaustion is not required when a prison administrator threatens inmates and prevents them from using prison grievance procedures. Kyle Richards sued Thomas Perttu, a prison employee, under Section 1983, and alleged that Perttu had sexually harassed him, destroyed grievance forms Richards had tried to file, and threatened to kill Richards if he filed more. Richards raised, among other claims, a First Amendment claim that hinged on Perttu's destruction of the grievance forms and accompanying threats. The district court held that Richards failed to exhaust because he lacked credible evidence that Perttu destroyed evidence. But the Sixth Circuit reversed, holding that Richards had been entitled to a jury trial under the Seventh Amendment on the exhaustion issue because resolving it would also resolve a fact question relevant to the merits of his First Amendment claim. The Supreme Court affirmed but did not reach the question whether the Seventh Amendment required a jury trial in such circumstances. Instead, the Court held that the PLRA itself mandates a jury trial on exhaustion when it is intertwined with the merits. Because exhaustion is a standard affirmative defense that goes to the jury, the PLRA's silence on whether a jury trial on exhaustion is required was "strong evidence" that it maintained the "usual practice," at the time of the PLRA's enactment, of allowing a jury "to resolve factual disputes that are intertwined with the merits at the merits stage." Justice Barrett, joined by Justices Thomas, Alito, and Kavanaugh, dissented, criticizing the majority for deciding the case on a ground not raised by the parties or considered below. On the merits of the Seventh Amendment issue, Justice Barrett would have held that there is no historical support for a right to a jury trial just because a factual dispute about exhaustion is intertwined with the merits of a claim.

36. ***Ames v. Ohio Department of Youth Services*, No. 23-1039 (6th Cir., 87 F.4th 822; cert. granted Oct. 4, 2024; argued Feb. 26, 2025).** The Question Presented is: Whether, in addition to pleading the other elements of Title VII, a majority-group plaintiff must show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."

Decided June 5, 2025 (605 U.S. __). Sixth Circuit/Vacated and remanded. Justice Jackson delivered the unanimous opinion of the Court (Thomas, J., joined by Gorsuch, J., concurring). Title VII prohibits employers from discriminating against employees on the basis of race, color, religion, sex, or national origin. To make out a prima facie case of disparate treatment under Title VII, a plaintiff must "produc[e] enough evidence to support an inference of discriminatory motive." In the Sixth Circuit (and in several other circuits), a plaintiff who was a member of a "majority group" also needed to show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority." The Supreme Court rejected that rule, reasoning that Title VII's text "draws no distinctions between majority-group plaintiffs and minority-group plaintiffs" but rather "establish[es] the same protections for every 'individual.'" And the Court's precedents make clear that Title VII prohibits discrimination based on membership in any group, majority or minority. As a result, subjecting certain plaintiffs to a "heightened evidentiary standard," as the Sixth Circuit had, "cannot be squared" with Title VII doctrine. Justice Thomas, joined by Justice Gorsuch, concurred to assert that the "background circumstances" rule was an illegitimate "judge-made construct" that was hard to administer due to the challenge of determining "whether a particular person falls into a majority or minority group." Justice Thomas also called for reconsidering another judge-made rule—the *McDonnell Douglas* burden-shifting

framework for evaluating Title VII claims—because it "lacks any basis in the text of Title VII and has proved difficult for courts to apply."

37. ***CC/Devas (Mauritius) Limited v. Antrix Corp. Ltd.*, No. 23-1201 (9th Cir., 2023 WL 4884882; cert. granted Oct. 4, 2024; argued Mar. 3, 2025), consolidated with *Devas Multimedia Private Limited v. Antrix Corp. Ltd.*, No. 24-17 (9th Cir., 2024 WL 1945307; cert. granted Oct. 4, 2024; argued Mar. 3, 2025).** The Question Presented is: Whether plaintiffs must prove minimum contacts before federal courts may assert personal jurisdiction over foreign states sued under the Foreign Sovereign Immunities Act.

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Counsel for Petitioners CC/Devas (Mauritius) Limited, et al.

Partner
Jacob T. Spencer

Decided June 5, 2025 (605 U.S. __). Ninth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the unanimous Court. The Foreign Sovereign Immunities Act (FSIA) provides that "[p]ersonal jurisdiction over a foreign state shall exist" whenever (1) an exception to foreign sovereign immunity applies, and (2) the foreign defendant has been properly served. 28 U.S.C. § 1330(b). A privately owned Indian telecommunications company (Devas) engaged in arbitration with a company organized under Indian law and owned by the Republic of India (Antrix) to resolve a contract dispute. After Devas prevailed, it sought to confirm the resulting arbitral award in the United States. The district court confirmed the award, but the Ninth Circuit later reversed for lack of personal jurisdiction, holding that, although the two conditions under § 1330(b) were satisfied, "personal jurisdiction under the FSIA" also requires establishing "minimum contacts" with the United States under the due-process test set out in *International Shoe Co. v. Washington*, and Antrix lacked sufficient contacts. The Court reversed, holding that "[t]he text and structure of the FSIA demonstrate that Congress did not require 'minimum contacts' over and above the contacts already required by the Act's enumerated exceptions to foreign sovereign immunity." The text "imposes two substantive requirements—one related to subject-matter jurisdiction, the other related to service of process"—and does not include "any reference to 'minimum contacts.'" Rather, the Court noted, "the FSIA's immunity exceptions themselves require varying degrees of suit-related domestic contact before a case may proceed." The Court rejected the Ninth Circuit's contrary approach—which was based on a "strange" reading of one of the immunity exceptions and on legislative history—as inconsistent with the FSIA's plain text and with the statutory structure, which "deliberately tie[s] . . . together" immunity, subject-matter jurisdiction, and personal jurisdiction. The Court declined to consider Antrix's alternative arguments that the Fifth Amendment's Due Process Clause requires minimum contacts, that Devas's claims do not fall within the FSIA's arbitration exception, and that the suit should be dismissed under *forum non conveniens*.

38. ***BLOM Bank SAL v. Honickman*, No. 23-1259 (2d Cir., 2024 WL 852265; cert. granted Oct. 4, 2024; argued Mar. 3, 2025).** The Question Presented is: Whether Rule 60(b)(6)'s stringent standard applies to a post-judgment request to vacate for the purpose of filing an amended complaint.

Decided June 5, 2025 (605 U.S. __). Second Circuit/Reversed and remanded. Justice Thomas delivered the opinion of the Court (Jackson, J., concurring in part and concurring in the judgment). Federal Rule of Civil Procedure 60(b) enumerates five circumstances in which a district court may relieve a party from a final judgment and contains a "catchall provision," Rule 60(b)(6), that permits such relief "for any other reason that justifies relief"—consistently understood to only be met by "extraordinary circumstances." Victims and families of attacks carried out by Hamas sued an international bank that had allegedly provided financial services to Hamas affiliates. The district court dismissed with prejudice for failure to state a claim; the

Second Circuit held that the district court applied too stringent a standard but still affirmed. The plaintiffs then moved to vacate the judgment under Rule 60(b)(6), but the district court held that the Second Circuit's clarification of the law was not an "extraordinary circumstance[]." The Second Circuit disagreed and held that when parties seek Rule 60(b) relief for the purposes of amending their complaint, district courts must balance the "finality" rationale underlying Rule 60(b) against the "liberal amendment policy" enshrined in Rule 15(a). The Supreme Court reversed, ruling that a party seeking relief under Rule 60(b)(6) "must always demonstrate 'extraordinary circumstances' justifying relief" no matter "what [they] intend[] to do if [their] case is reopened." Even plaintiffs seeking to replead "must first satisfy Rule 60(b) on its own terms" *before* the liberal amendment standard of Rule 15(a) becomes applicable, the Court reasoned, since holding otherwise would "conflate[] [the appropriate] order of operations and dilute[] Rule 60(b)(6)'s well-established standard." The Court also faulted the Second Circuit for failing to review the district court's decision to deny the Rule 60(b) motion with sufficient deference. Justice Jackson concurred separately in part and in the judgment, joining in much of the Court's analysis but rejecting the district court's view that relief was unwarranted because the plaintiffs chose to appeal the original dismissal rather than amend their complaint.

39. ***Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, No. 23-1141 (1st Cir., 91 F.4th 511; cert. granted Oct. 4, 2024; argued Mar. 4, 2025).** The Questions Presented are: (1) Whether the production and sale of firearms in the United States is the "proximate cause" of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico; and (2) Whether the production and sale of firearms in the United States amounts to "aiding and abetting" illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.

Decided June 5, 2025 (605 U.S. __). First Circuit/Reversed and remanded. Justice Kagan delivered the opinion of the unanimous Court (Thomas, J., and Jackson, J., separately concurring). The Government of Mexico sued several American firearms manufacturers, alleging that they failed to exercise reasonable care in their sales of firearms, which ended up in the hands of Mexican cartel members. The manufacturers moved to dismiss, asserting that Mexico's lawsuit was barred by the Protection of Lawful Commerce in Arms Act, which generally prohibits suits against firearms manufacturers for another person's unlawful use of a firearm, except when the plaintiff shows that the manufacturer "knowingly violated" a firearms statute, or aided and abetted another's firearms offense, and thereby proximately caused the plaintiff's harm. The First Circuit, accepting Mexico's theory that the manufacturers aided and abetted illegal sales by firearms dealers to the cartels, permitted the suit to proceed. The Supreme Court reversed, concluding that Mexico's complaint does not "plausibly allege" that gun manufacturers "aided and abetted gun dealers' unlawful sales of firearms to Mexican traffickers." Despite recognizing that the manufacturers could perhaps "do more than they do" to identify the "rogue dealers" and "cut off their supply of guns," the Court explained that mere "nonfeasance" is not enough to establish aiding-and-abetting liability when "the manufacturers treat rogue dealers just the same as they do law-abiding ones." The Court emphasized that Mexico had not alleged any specific unlawful sales by specific dealers; that the manufacturers did not do anything to "actively stimulat[e]" the alleged unlawful sales (as compared to lawful sales); and that the manufacturers were insulated from the dealers by "middlemen distributors, whom Mexico has never claimed lack independence." Justice Thomas concurred to suggest that the Act might bar a lawsuit until there has been an earlier adjudicatory "*finding* of guilt or liability" for the

predicate "violation"; otherwise, manufacturers would be forced to litigate their criminal liability in civil proceedings, without traditional criminal-procedural protections. Justice Jackson, in her concurrence, emphasized that Mexico's complaint failed to plead any *specific* underlying statutory violations, irrespective of any aiding-and-abetting liability.

40. ***Nuclear Regulatory Commission v. Texas*, No. 23-1300 (5th Cir., 78 F.4th 827; cert. granted Oct. 4, 2024; argued Mar. 5, 2025), consolidated with *Interim Storage Partners, LLC v. Texas*, No. 23-1312 (5th Cir., 78 F.4th 827; cert. granted Oct. 4, 2024; argued Mar. 5, 2025).** The Questions Presented are: (1) Whether the Hobbs Act, 28 U.S.C. § 2341 et seq., which authorizes a "party aggrieved" by an agency's "final order" to petition for review in a court of appeals, 28 U.S.C. § 2344, allows nonparties to obtain review of claims asserting that an agency order exceeds the agency's statutory authority; and (2) Whether the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., permit the Nuclear Regulatory Commission to license private entities to temporarily store spent nuclear fuel away from the nuclear reactor sites where the spent fuel was generated.

Decided June 18, 2025 (605 U.S. __). Fifth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Gorsuch, J., dissenting, joined by Thomas and Alito, JJ.). The Hobbs Act permits "any party aggrieved" by a licensing decision of the Nuclear Regulatory Commission ("NRC") to seek review of that decision in a United States Court of Appeals. 28 U.S.C. § 2344. After a business applied for a license to build a private off-site storage facility for spent nuclear fuel, an entity called Fasken unsuccessfully sought to intervene in the licensing proceeding. The NRC eventually granted the license, and the State of Texas and Fasken sued in the Fifth Circuit, arguing that the NRC did not have the statutory authority to issue the license. Concluding that Texas and Fasken could challenge the agency action as outside the agency's authority, regardless of whether they qualified as aggrieved parties, the Fifth Circuit reached the merits and vacated the license. The Supreme Court reversed, holding that the Atomic Energy Act provided the exclusive conditions for qualifying as a party in a licensing proceeding—requiring that one be a license applicant or an intervenor in a proceeding to obtain party status. It is not enough to submit comments or attempt to intervene in a licensing proceeding. And the Court reasoned that Fasken could not use a Hobbs Act suit to collaterally attack the merits of the Commission's decision to deny its intervention, a decision which was separately reviewed and upheld by the D.C. Circuit on appeal. Finally, Texas and Fasken could not circumvent the Hobbs Act's "aggrieved party" requirement by casting their statutory claims as challenges to ultra vires agency action. Because Texas and Fasken were not parties to the licensing proceeding, they were not entitled to judicial review of the NRC's licensing decision. Dissenting, Justice Gorsuch, joined by Justices Thomas and Alito, argued that Texas and Fasken qualified as parties under the Hobbs Act because they participated in the environmental review portion of the NRC's licensing proceeding.

MARCH CALENDAR

41. ***Riley v. Bondi*, No. 23-1270 (4th Cir., 2024 WL 1826979; cert. granted Nov. 4, 2024; argued Mar. 24, 2025).** The Questions Presented are: (1) Whether the 30-day deadline in 8 U.S.C. § 1252(b)(1) for filing a petition for review of an order of removal is jurisdictional; and (2) Whether a noncitizen satisfies the deadline in Section 1252(b)(1) by filing a petition for review challenging an agency order denying

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withholding of removal or protection under the Convention Against Torture within 30 days of the issuance of that order.

Decided June 26, 2025 (606 U.S. __). Justice Alito delivered the opinion of the Court (Thomas, J., concurring) (Sotomayor, J., joined by Kagan and Jackson, JJ., and in part by Gorsuch, J., dissenting in part). Under the Immigration and Nationality Act ("INA"), aliens convicted of aggravated felonies are subject to expedited removal proceedings, in which an immigration officer determines the alien's deportability and issues a Final Administrative Removal Order ("FARO"). At that point, the alien can still pursue statutory withholding or protection under the Convention Against Torture ("CAT")—country-specific relief preventing the alien from being removed to a particular country without affecting the validity of the removal order. If the alien is found to have a reasonable fear of persecution or torture, the alien is entitled to "withholding-only" proceedings in the immigration courts. The INA allows an alien to petition for judicial review "not later than 30 days after the date of the final order of removal," 8 U.S.C. § 1252(b)(1), and the courts of appeals disagreed about how that deadline operates when an alien enters withholding-only proceedings. Although review of a withholding determination can only occur as part of review of a final order of removal, *id.* § 1252(a)(4), the Court held that an order denying deferral of removal in withholding-only proceedings is not a final order of removal, and thus a petition for review of a FARO must be filed within 30 days of the FARO, even if withholding proceedings are still ongoing. The Court reasoned that a FARO determines that an alien is removable and orders his removal, without further administrative review, and so it is the final order of removal. And because an order denying withholding relief only affects *where* an alien can be removed to, not *whether* he can be removed, it is not a final removal order, and it does not affect the validity of—or the finality of—the FARO. The Court then held that the 30-day deadline to petition for review is non-jurisdictional, applying a line of cases holding that procedural rules such as timing deadlines do not affect a court's jurisdiction unless Congress clearly indicates otherwise. Because the government declined to seek dismissal based on the timing issue in this case, the Court remanded for further proceedings. Justice Thomas concurred to suggest a different reason why a court of appeals may lack jurisdiction over a petition for review from an order denying withholding relief: The INA only permits review of such orders "as part of the review of a final order of removal." In dissent, Justice Sotomayor, joined by Justices Kagan and Jackson and in part by Justice Gorsuch, agreed that the 30-day deadline was not jurisdictional but argued that "removal orders do not become final until withholding-only proceedings are complete."

42. ***EPA v. Calumet Shreveport Refining, LLC*, No. 23-1229 (5th Cir., 86 F.4th 1121; cert. granted Oct. 21, 2024; argued Mar. 25, 2025).** The Question Presented is: Whether venue for challenges by small refineries to the EPA's denial of exemptions from the Clean Air Act's Renewable Fuel Standard program lies exclusively in the D.C. Circuit because the agency's denial actions are "nationally applicable" or, alternatively, are "based on a determination of nationwide scope or effect." 42 U.S.C. § 7607(b)(1).

Decided June 18, 2025 (605 U.S. __). Fifth Circuit/Vacated and remanded. Justice Thomas delivered the opinion of the Court (Gorsuch, J., joined by Roberts, C.J., dissenting). Challenges to "nationally applicable" final EPA actions under the Clean Air Act ("CAA") must be heard by the D.C. Circuit, while "locally or regionally applicable" actions must be challenged in the regional court of appeals. 42 U.S.C. § 7607(b)(1). But if a "locally or regionally applicable action" is "based on a determination of nationwide scope or effect" and the EPA "finds and publishes that

such action is based on such a determination," then the action must be reviewed by the D.C. Circuit. *Ibid.* Here, the EPA issued two omnibus notices denying 105 small crude oil refineries' requests for exemption from the requirements of the CAA's renewable fuel program. The EPA concluded that none of the refineries were eligible for the exemption because they did not show the "disproportionate economic hardship" required under the statute, as interpreted by the EPA. It also determined that the exemption denials could be challenged only in the D.C. Circuit. After some of the refineries brought suit, the Fifth Circuit—splitting with most other circuits—held that venue was proper in the regional circuits because the petitions for review from the denial notices concerned only "locally or regionally applicable" actions and their legal effect was not nationwide. The Supreme Court reversed. It explained that the relevant "action" under § 7607(b)(1) is identified "by reference to the substantive authority under which EPA is acting" (*i.e.*, how the CAA "fram[es]" the relevant action), "regardless of how EPA chooses to package its decisions in the Federal Register." And whether that action applies nationally or just locally or regionally depends on whether it "applies throughout the entire country, or only to particular localities or regions." Applying those principles, the Court agreed with the Fifth Circuit that the denials were "locally or regionally applicable" actions because each refinery's petition denial was an individual exercise of EPA authority under the CAA's renewable-fuel program, and the denial only applied to the refinery at issue. But, turning to the second part of the inquiry, the Court explained that an EPA action is "based on a determination of nationwide scope or effect" if, on a de novo assessment of EPA's action, the court of appeals concludes that "a justification of nationwide breadth is the primary explanation for and driver of" the action. And here, the "primary driver[s]" of the EPA's denials were its interpretation of the renewable fuel program's "economic hardship" requirement and its theory of economic harm—both of which applied throughout the country and therefore had a "nationwide scope or effect." In dissent, Justice Gorsuch, joined by Chief Justice Roberts, argued that the exception should only apply if the CAA's substantive provisions require the EPA to make a nationwide "determination" when it takes the action subject to review; because the exemption denials are refinery-specific under the CAA, they do not call for a "determination of nationwide scope or effect."

43. ***Oklahoma v. EPA*, No. 23-1067 (10th Cir., 93 F.4th 1262; cert. granted Oct. 21, 2024; argued Mar. 25, 2025), consolidated with *PacifiCorp v. EPA*, No. 23-1068 (10th Cir., 93 F.4th 1262; cert. granted Oct. 21, 2024; argued Mar. 25, 2025).** The Question Presented is: Whether the Environmental Protection Agency's disapproval of a State Implementation Plan may only be challenged in the D.C. Circuit under 42 U.S.C. § 7607(b)(1) if EPA packages that disapproval with disapprovals of other States' plans and purports to use a consistent method in evaluating the state-specific determinations in those plans.

Decided June 18, 2025 (605 U.S.__). Tenth Circuit/Reversed and remanded. Justice Thomas delivered the opinion of the Court (Gorsuch, J., joined by Roberts, C.J., concurring in judgment). This case, like *Calumet Shreveport Refining*, involved a question about the Clean Air Act ("CAA")'s venue provision, 42 U.S.C. § 7607(b)(1). After the EPA revised its air quality standards, each state submitted a "State implementation plan" ("SIP") to the agency to outline proposals for complying with the new standards. The EPA rejected 21 States' SIPs and published its disapprovals in a single Federal Register rule. It explained that it had individually applied the same four-step framework to evaluate each State's SIP "on its own merits," but then stated that its disapprovals could be reviewed only in the D.C. Circuit. When states and industry groups nonetheless sued in regional circuits, the Tenth Circuit—parting with most other circuits—held that Oklahoma's and Utah's challenges belonged in the

D.C. Circuit because EPA's disapproval of the 21 SIPs was a single nationally applicable action that applied a uniform analysis. The Supreme Court reversed, holding that venue was proper in the regional circuits under the framework it had just announced in *Calumet Shreveport Refining*. The Court first concluded that each disapproval was a distinct action. Although the EPA packaged multiple disapprovals together in an omnibus rule, the CAA specifically identifies an individual SIP approval as a locally or regionally applicable action, and the same provision authorizes the EPA to issue both approvals and disapprovals, so they should be treated identically. And the disapprovals here were locally or regionally applicable, the Court held, since each "on its face applie[d] only to the State that proposed the SIP." The Court also concluded that the disapprovals did not rest on a "determination of nationwide scope or effect," but rather on a "predominantly fact-intensive, state-specific analysis," and so had to be challenged in the regional circuits. Justice Gorsuch, joined by the Chief Justice, concurred in the judgment, agreeing with the Court's holding but "arriv[ing] at that conclusion" based on his *Calumet Shreveport Refining* dissent.

44. ***FCC v. Consumers' Research*, No. 24-354 (5th Cir., 109 F.4th 743; cert. granted Nov. 22, 2024; argued Mar. 26, 2025), consolidated with *Schools, Health & Libraries Broadband Coalition v. Consumers' Research*, No. 24-422 (5th Cir., 109 F.4th 743; cert. granted Nov. 22, 2024; argued Mar. 26, 2025).** The Questions Presented are: (1) Whether Congress violated the nondelegation doctrine by authorizing the Federal Communications Commission to determine, within the limits set forth in 47 U.S.C. § 254, the amount that providers must contribute to the universal service fund; (2) Whether the Commission violated the nondelegation doctrine by using the financial projections of a private company serving as the Fund's administrator in computing universal service contribution rates; (3) Whether the combination of Congress's conferral of authority on the Commission and the Commission's delegation of administrative responsibilities to the private administrator violates the nondelegation doctrine; and (4) Whether this case is moot in light of the challengers' failure to seek preliminary relief before the Fifth Circuit.

Decided June 27, 2025 (606 U.S. __). Fifth Circuit Reversed/Remanded. Justice Kagan delivered the opinion of the Court (Kavanaugh, J., concurring) (Jackson, J., concurring) (Gorsuch J., joined by Thomas and Alito, J.J., dissenting). The Communications Act of 1934 instructs the FCC to manage the Universal Service Fund, a fund designed to "preserve and advance access" to basic, quality telecommunication services at just, reasonable, and affordable rates. 47 U.S.C. § 254(d). Carriers of interstate telecommunications services must "contribute" to that Fund at a rate (the "contribution factor") the FCC sets. The FCC set up a private, not-for-profit corporation called the Universal Service Administrative Company (the "Administrator") to assist in administration of the Fund. In addition to managing the Fund's daily operations, the Administrator produces and submits financial projections to the FCC about the Fund's expenses and carriers' revenue. The FCC approves and publishes those projections to create the contribution factor. Consumers' Research and others filed comments with the FCC, requesting that the contribution factor be reduced to zero percent. Consumers' Research argued that the Universal Service Fund violated the public and private nondelegation doctrines, given the FCC's unbridled authority to set the contribution factor and the private Administrator's role in producing the projections used to determine the contribution factor. The Fifth Circuit agreed that the combination of delegations was unconstitutional, but the Supreme Court reversed. Writing for the Court, Justice Kagan held that giving the FCC the power to decide how much carriers must pay into the Fund was constitutional. The Constitution does not require Congress to set objective, numerical limits or caps when empowering an agency to raise revenue through taxes

or fees. It was enough that Congress set "ascertainable and meaningful guideposts" to guide the FCC. Congress authorized the FCC to collect "sufficient" amounts for the Fund, which the Court interpreted as creating both a floor and a ceiling, and Congress specified the objectives and programs the Fund should support. The Court further concluded that the Administrator's role in making the projections used to set the contribution factor did not violate the private nondelegation doctrine because the FCC retained decision-making power over the Administrator's recommendations. Finally, the Court concluded that public and private delegations of power that are independently constitutional do not become unconstitutional when "stacked" because the two doctrines "do not operate on the same axis," and "[t]wo wrong claims do not make one that is right." Concurring, Justice Kavanaugh opined that he agreed with retaining the Court's "intelligible principle" test and explained that delegations to executive agencies are less constitutionally problematic than delegations to independent agencies. Justice Jackson concurred to "express [her] skepticism" about the private nondelegation doctrine. Dissenting, Justice Gorsuch, joined by Justices Thomas and Alito, concluded that the universal-service regime violated the public nondelegation doctrine because Congress impermissibly "besto[wed] on a federal agency the taxing power."

45. ***Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, No. 24-154 (Wis., 3 N.W.3d 666; cert. granted Dec. 13, 2024; argued Mar. 31, 2025).** The Question Presented is: Whether a state violates the First Amendment's Religion Clauses by denying a religious organization an otherwise-available tax exemption because the organization does not meet the state's criteria for religious behavior.

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Decided June 5, 2025 (605 U.S. __). Wisconsin Supreme Court/Reversed and remanded. Justice Sotomayor delivered the opinion of the unanimous Court (Thomas, J., and Jackson, J., separately concurring). Wisconsin exempts nonprofit organizations that are both "operated, supervised, controlled, or principally supported by a church" and "operated primarily for religious purposes" from paying taxes into its unemployment compensation system. Wis. Stat. §108.02(15)(h)(2). The Catholic Charities Bureau, Inc., the social ministry arm of a Wisconsin diocese of the Roman Catholic Church, provides charitable services to the poor and disadvantaged. Wisconsin denied Catholic Charities' request to invoke the religious-employer tax exemption. The Wisconsin Supreme Court upheld the denial by concluding that Catholic Charities was not operated for a religious purpose because it neither proselytized nor limited its charitable services to Catholics—put differently, it held that Catholic Charities did not engage in typically religious activities. The U.S. Supreme Court reversed, holding that the Wisconsin Supreme Court's decision violated the First Amendment "by differentiating between religions based on theological lines." Eligibility for the tax exemption "turns on inherently religious choices": Nonprofits that engage in the same religiously motivated acts of charity as Catholic Charities ***and*** proselytize when doing so can qualify for the exemption, but Catholic Charities does not qualify because its Catholic doctrine prohibits "'misus[ing] works of charity for purposes of proselytism.'" This disparate treatment, the Court held, was "textbook denominational discrimination" subject to strict scrutiny, and Wisconsin could not clear the "high bar" of justifying the law under that standard. Justice Thomas concurred to highlight that the Wisconsin Supreme Court's decision also violated the church autonomy doctrine by treating Catholic Charities as separate from the diocese contrary to church law. Justice Jackson wrote separately to argue that the Federal Unemployment Tax Act differs in scope and does not raise the same constitutional concerns as the Wisconsin law.

46. ***Rivers v. Guerrero*, No. 23-1345 (5th Cir., 99 F.4th 216; cert. granted Dec. 6, 2024; argued Mar. 31, 2025).** The Question Presented is: Whether 28 U.S.C. § 2244(b)(2), which bars the filing of a "second or successive habeas corpus application," applies (i) only to habeas filings made after a prisoner has exhausted appellate review of his first petition, (ii) to all second-in-time habeas filings after final judgment, or (iii) to some second-in-time filings, depending on a prisoner's success on appeal or ability to satisfy a seven-factor test.

Decided June 12, 2025 (605 U.S. __). Fifth Circuit/Affirmed. Justice Jackson delivered the opinion for a unanimous Court. An inmate bringing a federal habeas petition must clear certain procedural hurdles if it is his "second or successive" petition. 28 U.S.C. § 2244(b). After Danny Rivers's first habeas petition was denied—but before he had exhausted the appeals process—he filed another petition, which the district court and Fifth Circuit deemed "second or successive." The Supreme Court affirmed, holding that a second or successive habeas application is one that is filed after a district court enters a final judgment and seeks either to relitigate previously resolved claims or introduces new grounds for relief. Thus, a new habeas application that is filed after final judgment but before the resolution of an appeal of that judgment is still a second or successive filing and must comply with § 2244(b)'s procedural requirements. The Court declined to resolve Rivers's argument, which he raised for the first time before the Court, that a motion to amend an initial habeas petition under Rule 15 should not be construed as a new application subject to § 2244.

47. ***Fuld v. Palestine Liberation Organization*, No. 24-20 (2d Cir., 82 F.4th 74; cert. granted Dec. 6, 2024; argued Apr. 1, 2025), consolidated with *United States v. Palestine Liberation Organization*, No. 24-151 (2d Cir., 82 F.4th 74; cert. granted Dec. 6, 2024; argued Apr. 1, 2025).** The Question Presented is: Whether 18 U.S.C. § 2334(e)(1)—which provides that the Palestine Liberation Organization and the Palestinian Authority "shall be deemed to have consented to personal jurisdiction" in certain terrorism-related civil suits if they: (a) made payments to designees or family members of terrorists who injured or killed U.S. nationals, or (b) maintained certain premises or conducted particular activities in the United States—complies with the Due Process Clause of the Fifth Amendment.

Decided June 20, 2025 (606 U.S. __). Second Circuit/reversed and remanded. Chief Justice Roberts delivered the opinion of the Court (Thomas, J., concurring in the judgment, joined in part by Gorsuch, J.). The Anti-terrorism Act of 1990 (ATA) creates a federal civil damages action for U.S. nationals injured or killed by acts of terrorism. The Promoting Security and Justice for Victims of Terrorism Act (PSJVTA), in turn, provides that the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) shall be deemed to have consented to personal jurisdiction in ATA cases when they either pay salaries to imprisoned terrorists (or the families of deceased terrorists), or establish or maintain facilities on U.S. soil. Petitioners invoked this consent provision to sue the PLO and PA for terrorist attacks abroad. The Second Circuit deemed the PSJVTA's consent provision inconsistent with the "minimum contacts" standard the Supreme Court has detailed under the Fourteenth Amendment, believing that standard equally applicable to the Fifth Amendment (which regulates jurisdiction created by federal statutes, as in petitioners' suits). The Supreme Court disagreed and upheld the PSJVTA as applied. It rejected respondents' and the Second Circuit's view that the Fifth and Fourteenth Amendments embody the same personal-jurisdiction standard. While the Fourteenth Amendment standard is designed to confine states to their legitimate spheres of jurisdiction, thus protecting interstate federalism, no such concerns apply when a

federal statute creates federal jurisdiction—which may be nationwide or extraterritorial. The Supreme Court declined to resolve whether the Fifth Amendment places any limits on federal jurisdiction, such as, a "reasonableness" requirement, but held that the PSJVTA does not exceed any theoretical limit. Because the PSJVTA ties jurisdiction to acts that implicate serious United States foreign policy concerns—thus creating a "meaningful relationship" to the United States—the consent provision survives the Fifth Amendment's more flexible analysis. Justice Thomas, joined in part by Justice Gorsuch, concurred in the judgment. Writing for himself, he would have held that the PLO and PA are not "persons" under the Fifth Amendment, given that they are akin to foreign nations or U.S. territories, which the Court has previously held not to be "persons." Joined by Justice Gorsuch, he also argued that the Fifth Amendment as originally understood places no limits on federal jurisdiction. The only theoretical limits derive from general principles of international law, which are defeasible by (as here) a federal statute.

48. ***Medina v. Planned Parenthood South Atlantic*, No. 23-1275 (4th Cir., 95 F.4th 152; cert. granted Dec. 18, 2024; argued Apr. 2, 2025).** The Question Presented is: Whether the Medicaid Act's any-qualified-provider provision unambiguously confers a private right upon a Medicaid beneficiary to choose a specific provider.

Decided June 26, 2025 (606 U.S. __). Fourth Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion of the Court (Thomas, J., concurring) (Jackson, J., joined by Sotomayor and Kagan, JJ., dissenting). The Medicaid Act's free-choice-of-provider provision, also called the any-qualified-provider provision, requires state Medicaid plans to ensure that "any individual eligible for medical assistance … may obtain" it "from any [provider] qualified to perform the service … who undertakes to provide" it. 42 U.S.C. § 1396a(a)(23)(A). Petitioners sued a South Carolina official under 42 U.S.C. § 1983 for allegedly violating that provision after the State barred Planned Parenthood from participating in the State's Medicaid program. The Fourth Circuit concluded that the any-qualified-provider provision was enforceable under Section 1983, but the Supreme Court disagreed and reversed. Because Congress's spending power is not enumerated, federal-state agreements made under the spending power are akin to treaties "between two sovereignties," and typically only enforceable by Congress. Under *Gonzaga University v. Doe*, 536 U.S. 273 (2002), and *Health & Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166 (2023), legislation enacted under the spending power creates enforceable individual rights only if its language does so clearly and unambiguously, and with "an unmistakable focus" on individuals. This "demanding bar" is satisfied only in "atypical" cases. The Court held that the language of the any-qualified-provider provision, as well as its location in a long list of components that state Medicaid plans must have, show that the provision imposes a requirement on states rather than conferring a right on individual patients. Thus, the proper remedy for state violations is for the federal government to withhold funding. Justice Thomas wrote separately, agreeing with the Court's analysis and calling for a broader reassessment of what counts as a "right" under § 1983. Justice Jackson, joined by Justices Sotomayor and Kagan, dissented, arguing that the free-choice-of-provider provision is unmistakably focused on individuals eligible for Medicaid and that its mandatory language shows Congress intended for it to be binding and enforceable.

APRIL CALENDAR

49. ***Kennedy v. Braidwood Management, Inc.*, No. 24-316 (5th Cir., 104 F.4th 930; cert. granted Jan. 10, 2025; argued Apr. 21, 2025).** The Questions Presented are: (1) Whether the court of appeals erred in holding that the structure of the Department

of Health and Human Services' (HHS) U.S. Preventive Services Task Force violates the Appointments Clause; and (2) Whether the court of appeals erred in declining to sever the statutory provision that it found to unduly insulate the Task Force from the HHS Secretary's supervision.

Decided June 27, 2025 (606 U.S. __). Fifth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Thomas, J., joined by Alito and Gorsuch, J.J., dissenting). The Preventative Services Task Force, initially created in 1984 by the Department of Health and Human Services (HHS) and codified in 1999, is tasked with formulating and publishing evidence-based recommendations regarding preventative healthcare services. Although that role initially was only advisory, the Affordable Care Act has since required insurers to cover some of the recommended services at no cost to the insured. Previously, an HHS agency official appointed the Task Force's members, but in 2023, while this suit challenging the Task Force as a violation of the Appointments Clause was pending, the Secretary of HHS began directly appointing the 16 current members of the Task Force. The Fifth Circuit held that the Task Force's members are principal officers who must be appointed by the President with the advice and consent of the Senate. The Supreme Court disagreed and reversed, concluding that the Task Force's members are inferior officers because their work is "directed and supervised" by the Secretary, a principal officer. The Court read the relevant statutes to permit the Secretary to directly appoint Task Force members, and to remove them at will. Analogizing to *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010), *Edmond v. United States*, 520 U.S. 651 (1997), and *Ex parte Hennen*, 38 U.S. (13 Pet.) 230 (1839), the Court held that this at-will removal authority enables the Secretary to effectively "supervise and direct" the Task Force members, providing a "strong indication" that they are inferior officers. Additionally, the Court concluded that the Secretary had "statutory power to directly review and block Task Force recommendations before they take effect." Citing *United States v. Arthrex*, 594 U.S. 1 (2021), the Court held that this authority "confirm[ed] that the Task Force members are inferior officers." Justice Thomas, joined by Justices Alito and Gorsuch, dissented. Justice Thomas would have remanded for the Fifth Circuit to decide an antecedent statutory question: whether the Secretary was authorized to appoint the Task Force's members in the first place. "If forced to decide" that question, Justice Thomas would have held that Congress had not clearly given the Secretary this appointment authority, and so the Court should assume—as a "default rule"—that nomination by the President and confirmation by the Senate was statutorily required.

50. ***Parrish v. United States*, No. 24-275 (4th Cir., 74 F.4th 160; cert. granted Jan. 17, 2025; argued Apr. 21, 2025).** The Question Presented is: Whether a litigant who files a notice of appeal after the ordinary appeal period expires must file a second, duplicative notice after the appeal period is reopened.

Decided June 12, 2025 (605 U.S. __). Fourth Circuit/Reversed and remanded. Justice Sotomayor delivered the opinion of the Court (Jackson, J., joined by Thomas, J., concurring) (Gorsuch, J., dissenting). The petitioner, Donte Parrish, was an inmate whose federal lawsuit against the United States was dismissed. Parrish did not receive notice of the dismissal until several months later, after the time for filing a notice of appeal had expired. Parrish wrote to the Court of Appeals explaining what had happened and attempting to notice his appeal. The Court of Appeals, observing that the notice was untimely, remanded to the district court, which construed the untimely notice as a motion to reopen the time to appeal under 28 U.S.C. § 2107(c). That statute allows a court to reopen a new 14-day window during which a notice of

appeal may be filed. Parrish argued that his untimely notice of appeal, which had been construed by the district court as being a motion to reopen the time to appeal, could also serve as a timely (if early) notice of appeal during the reopened window. The Fourth Circuit disagreed, holding that Section 2107(c) requires that the noticed appeal be filed during the reopened 14-day window. Because Parrish had only filed the one document, the Fourth Circuit dismissed his appeal. The Supreme Court reversed. Writing for the majority, Justice Sotomayor noted that absent evidence to the contrary, Congress legislates against common-law principles, and that under the common-law rule, an early notice of appeal is deemed to ripen once the window for a notice of appeal opens. The Court further noted that in related contexts, there is a well-established rule that premature notices of appeal relate forward, and that nothing in the text of Section 2107(c) indicates congressional intent to displace that principle. The Court further rejected the Fourth Circuit's contention that the single document Parrish had submitted could not function as both the document that precedes the district court's reopening of the appeal period and the document which notices an appeal within that 14-day period. Justice Jackson, joined by Justice Thomas, concurred in the judgment, arguing that rather than invoking the notion of relation forward, the case should have been resolved by construing Parrish's letter as a request for a reopening of the window to appeal and, concurrently, a notice of appeal, to be docketed, conditional on the motion's being granted. Justice Gorsuch, in dissent, explained that he would have dismissed the case as improvidently granted because the issues were the result of how the Appellate Rules had been drafted, and because the relevant Rule was being reexamined, the Court should have left to the Rules Committee the task of resolving the issues created by the Rule in its present form.

51. ***Mahmoud v. Taylor*, No. 24-297 (4th Cir., 102 F.4th 191; cert. granted Jan. 17, 2025; argued Apr. 22, 2025).** The Question Presented is: Whether public schools burden parents' religious exercise when they compel elementary-school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out.

Decided June 27, 2025 (606 U.S. __). Fourth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the Court (Thomas, J., concurring) (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting). Montgomery County, Maryland introduced "LGBTQ+-inclusive" storybooks into the public-school curriculum for kindergarten through fifth grade and refused to notify parents when the books would be taught or permit them to excuse their children from the instruction. The Court held that the school board's introduction of the storybooks, combined with its decision to withhold notice and opt outs, "substantially interfere[d] with the religious development" of the parents' children and thus burdened the right of the parents to "direct the religious upbringing of their children," as recognized in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Per the Court, the storybooks' "unmistakably normative" view of sex and gender issues, coupled with the "potentially coercive nature of classroom instruction," presented "a very real threat" of undermining a parent's contrary religious instruction. And under *Yoder*, that burden, even if imposed incidentally as part of a neutrally and generally applicable law, triggered strict scrutiny. The Court held that the school board's policies could not satisfy that standard. The board undermined its interest in minimizing classroom disruption by allowing opt-outs in other circumstances, and any administrability issues with the opt-outs were self-inflicted since the board could package the books into a discrete unit. Nor could the board "stigmatiz[e] and isolat[e]" religious students in order to "rescue [other] students from stigma and isolation." As a result, the policies violated the Free Exercise Clause, and the parents were entitled to

preliminary injunctive relief. Justice Thomas concurred to emphasize that sexuality- and gender-related lessons lacked a "historical pedigree" to justify their use, and to cast the no-opt out curriculum as an improper attempt to instill "ideological conformity" among students. Justice Sotomayor, joined by Justices Kagan and Jackson, dissented, arguing that the majority's opinion undermined the "civic vitality" created by a curriculum that exposes children to "ideas and concepts that may conflict with their parents' religious beliefs."

52. ***Commissioner of Internal Revenue v. Zuch*, No. 24-416, (3d Cir., 97 F.4th 81; cert. granted Jan. 10, 2025; argued Apr. 22, 2025).** The Question Presented is: Whether a proceeding under 26 U.S.C. § 6330 for a pre-deprivation determination about a levy proposed by the Internal Revenue Service to collect unpaid taxes becomes moot when there is no longer a live dispute over the proposed levy that gave rise to the proceeding.

Decided June 12, 2025 (605 U.S. __). Third Circuit/Reversed and remanded. Justice Barrett delivered the opinion of the Court (Gorsuch, J., dissenting). The Tax Code authorizes the IRS to levy on a taxpayer's property to collect unpaid taxes. 26 U.S.C. § 6331(a). Before the levy goes forward, however, the taxpayer has the right to a hearing at which she can dispute issues related to the levy. After the hearing officer renders a "determination" on whether the levy may proceed, the taxpayer can seek appellate review in the United States Tax Court. While Petitioner's appeal was pending before the Tax Court, she overpaid her taxes. The IRS applied the overpayments to her outstanding tax liability, eliminating any justification for the levy. The government argued that the Tax Court appeal was moot, and the Tax Court agreed. On further appeal, however, the Third Circuit reversed. It reasoned that Petitioner could still raise "challenges to the existence or amount of the underlying tax liability," and that a declaration in Petitioner's favor could be preclusive in a future refund proceeding. The Supreme Court, in turn, disagreed and reversed the Third Circuit. Writing for the Court, Justice Barrett explained that the statutory provision conferring jurisdiction on the Tax Court provides that it "shall have jurisdiction" to "review" a "determination" made by an appeals officer in a collection proceeding. That "determination" is simply whether a levy may go forward. Thus, when there is no longer a proposed levy, there is no adverse determination of which the taxpayer may seek review in the Tax Court. The Tax Court thus properly concluded that it lacked jurisdiction to resolve questions about Petitioner's disputed tax liability. Dissenting, Justice Gorsuch argued that the Tax Court could review the full scope of a "determination," including its resolution of a taxpayer's unpaid tax or underlying tax liability. More broadly, he warned that the Court's decision created a roadmap for the IRS to evade Tax Court review, as it could drop a levy any time the Tax Court seemed inclined to agree with a taxpayer.

53. ***Diamond Alternative Energy, LLC v. Environmental Protection Agency*, No. 24-7 (D.C. Cir., 98 F.4th 288; cert. granted Dec. 13, 2024; argued Apr. 23, 2025).** The Question Presented is: Whether a party may establish the redressability component of Article III standing by relying on the coercive and predictable effects of regulation on third parties.

Decided June 20, 2025 (606 U.S. __). D.C. Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Sotomayor, J., and Jackson, J., separately dissenting). The Environmental Protection Agency ("EPA") approved California regulations requiring automakers to reduce the proportion of the cars they sell that are powered by gasoline and other liquid fuels. Fuel producers sued, seeking to invalidate the EPA's approval of the regulations. The D.C. Circuit held

that they lacked Article III standing, but the Supreme Court reversed. The Court agreed with the parties that the fuel producers suffered an injury in fact—decreased purchases of liquid fuels—that were likely caused by the EPA's approval of the regulations, which seek to reduce consumption of those fuels. As to redressability, the Court held, based on "commonsense economic principles" and record evidence, it was likely that the fuel producers would generate more revenue from additional fuel sales if the regulations were invalidated, redressing at least some of their monetary injuries. The Court found some "force" in, but declined to resolve, the fuel producers' argument that they were the object of the regulations—such that the standing analysis would be more straightforward—because the regulations restrict the use of the producers' products. Regardless, the Court reasoned, the likely effect of invalidating the regulations was an increase in gasoline-powered automobiles, and thus more sales of liquid fuels by the producers. The Court rejected the EPA and California's argument that the new vehicle market has evolved to the point that demand for electric and hybrid vehicles would cause the same reduction in demand for liquid fuels, even without the regulations. To the Court, that reasoning was implausible; the whole point of the regulations was to increase the use of electric vehicles, and the record evidence (including the EPA's and California's own estimates) indicated that the regulations themselves were likely to affect the sale of liquid fuels. Accordingly, the Court refused to require the fuel producers to provide additional evidence (like affidavits from economists or automakers). In dissent, Justice Sotomayor argued that the D.C. Circuit's decision rested in part on a factual error about how long California's regulations would apply, and so the Court should have simply corrected that error and remanded back to the D.C. Circuit. Justice Jackson also dissented, arguing that the Court should not have resolved the standing question given uncertainty about whether the EPA would maintain the waiver, and that the Court's decision was "inconsistent" with other precedents and furthered an "unfortunate perception" that the Court is "overly sympathetic to corporate interests."

54. ***A.J.T., By and Through Her Parents, A.T. & G.T. v. Osseo Area Schools, Independent School District No. 279*, No. 24-249 (8th Cir., 96 F.4th 1058; cert. granted Jan. 17, 2025; argued Apr. 28, 2025).** The Question Presented is: Whether the Americans with Disabilities Act and Rehabilitation Act require children with disabilities to satisfy a uniquely stringent "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education.

Decided June 12, 2025 (605 U.S. __). Eighth Circuit/Vacated and remanded. Chief Justice Roberts delivered the opinion of the unanimous Court (Thomas, J., joined by Kavanaugh, J., concurring) (Sotomayor, J., joined by Jackson, J., concurring). Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act provide remedies for individuals who are denied public benefits based on disability. In the education setting, the Individuals with Disabilities Education Act ("IDEA") offers federal funds to states that agree to provide a "free appropriate public education" to children with disabilities. 20 U.S.C. § 1412(a)(1)(A). In suits for compensatory damages under the ADA or Rehabilitation Act, the courts of appeals generally require that a plaintiff show intentional discrimination, typically by proving the defendant's "deliberate indifference" to a statutory violation. Five circuits, however, adopted a "uniquely stringent" standard in the educational services context, requiring disabled students to show that educators acted with "bad faith or gross misjudgment." The Supreme Court rejected that approach, holding that "ADA and Rehabilitation Act claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts." The Court found no basis in the statutory text for offering less protections to certain kinds of plaintiffs bringing certain kinds of claims. The Court traced the heightened standard

to a couple of 1980s decisions where courts—including the Supreme Court—held that the alternative remedies available under the IDEA suggested that "something more" was required to seek further relief under the ADA and Rehabilitation Act. But Congress subsequently clarified that the IDEA did not limit the remedies available under the ADA and Rehabilitation Act, undercutting the reasoning of those cases. The Court declined to consider whether the "bad faith or gross misjudgment" standard should apply to *all* disability-based discrimination claims because that issue was not decided below or fully presented to the Court. Justice Thomas, joined by Justice Kavanaugh, concurred to express his "willingness to consider," "in an appropriate case," the questions the respondent raised regarding the appropriate standard for ADA and Rehabilitation Act claims, such as whether it is appropriate to require a showing of intentional discrimination to obtain injunctive relief. Justice Sotomayor, joined by Justice Jackson, also wrote separately to assert that the respondent was wrong to claim that the "bad faith or gross misjudgment" standard should apply universally.

55. ***Soto v. United States*, No. 24-320 (Fed. Cir., 92 F.4th 1094; cert. granted Jan. 17, 2025; argued Apr. 28, 2025).** The Question Presented is: Whether, given the Federal Circuit's holding that a claim for compensation under 10 U.S.C. § 1413a is a claim "involving … retired pay" under 31 U.S.C. § 3702(a)(I)(A), 10 U.S.C. § 1413a provides a settlement mechanism that displaces the default procedures and limitations set forth in the Barring Act.

Decided June 12, 2025 (605 U.S. __). Federal Circuit/Reversed and remanded. Justice Thomas delivered the opinion for a unanimous Court. The Barring Act, 31 U.S.C. § 3702, establishes default procedures for claims against the United States. When "another law" confers authority to settle such claims, however, that other law will displace the Barring Act's mechanisms. In 2002, Congress enacted a program providing for "Combat-Related Special Compensation" (CRSC). 10 U.S.C. § 1413a. The CRSC statute allowed combat-disabled veterans to continue receiving certain compensation that veterans would ordinarily forfeit by accepting disability benefits. Petitioner Simon Soto, a 100% disabled Marine veteran, applied for CRSC benefits in 2016. His application was denied on grounds that his application exceeded the Barring Act's six-year statute of limitations to file claims. Soto filed a class action arguing that the CRSC statute was "another law" whose settlement mechanism displaced that of the Barring Act. Writing for a unanimous Court, Justice Thomas explained that even though the CRSC statute did not use certain "magic words" explicitly conferring settlement authority displacing the Barring Act, the "text, context, and structure of the entire statutory scheme" of the CRSC statute supported the inference that the new law was a comprehensive statutory mechanism intended by Congress to displace the default settlement procedures prescribed by the Barring Act. For example, the statute granted various secretaries of the armed forces authority to pay eligible claimants "a monthly amount determined under the statute's terms." The statute also granted various secretaries the power to make an initial determination about eligibility. Examining these provisions in concert, the Court held that "the statute establishes a unique, self-contained, comprehensive compensation scheme that authorizes the Secretary concerned to determine both the validity of CRSC claims and the amount due on them, thus creating a separate settlement mechanism that displaces the Barring Act's default procedures."

56. ***Martin v. United States*, No. 24-362 (11th Cir., 2024 WL 1716235; cert. granted Jan. 27, 2025; argued Apr. 29, 2025).** The Questions Presented are: (1) Whether the Constitution's Supremacy Clause bars claims under the Federal Tort Claims Act when the negligent or wrongful acts of federal employees have some nexus with

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furthering federal policy and can reasonably be characterized as complying with the full range of federal law; and (2) Whether the discretionary-function exception is categorically inapplicable to claims arising under the law enforcement proviso to the intentional torts exception.

Decided June 12, 2025 (605 U.S. __). Eleventh Circuit/Vacated and remanded. Justice Gorsuch delivered the opinion of the Court (Sotomayor, J., joined by Jackson, J., concurring). The Federal Tort Claims Act ("FTCA") waives the federal government's sovereign immunity for certain torts committed by federal employees, subject to thirteen exceptions that reinstate immunity. The "intentional-tort exception," 28 U.S.C. § 2680(h), generally bars claims for a swath of intentional torts, but that provision also includes the "law enforcement proviso," which permits claims based on certain intentional torts committed by "investigative or law enforcement officers." Meanwhile, the "discretionary-function exception," § 2680(h), bars claims tied to a "discretionary function or duty" of a federal agency or employee. In executing warrants, FBI officers mistakenly raided the wrong home, and the occupants sued. The Eleventh Circuit allowed the plaintiffs' intentional tort claims to proceed under the law enforcement proviso, viewing it as overriding the other Section 2680 exceptions, including the discretionary-function exception. Nonetheless, the Eleventh Circuit held plaintiffs' claims barred under the Supremacy Clause because the officers' actions had some nexus with furthering federal policy and reasonably complied with federal law. The Supreme Court rejected both features of the Eleventh Circuit's "distinctive" approach. It first held that the law enforcement proviso overrides only the intentional-tort exception in Section 2680(h) and not the discretionary-function exception in Section 2680(a) or the other exceptions in Section 2680. Because the proviso is "housed in" and "folded . . . into" the intentional-tort exception, the Court reasoned, it is best understood simply to limit the application of that exception. The Court also held that the Supremacy Clause is not a defense to an FTCA suit. The FTCA itself is the supreme federal law in this domain; because it incorporates state law as the liability standard, there is typically no conflict between federal and state law for the Supremacy Clause to resolve. And because Congress made the United States liable when a *private individual* would be liable under state law, it would make no sense to allow the government to evade liability because an officer acted pursuant to his *official duties*. The Court concluded by holding that the plaintiffs' intentional-tort claims are not barred by the intentional-tort exception and remanding to the Eleventh Circuit to determine whether the discretionary-function exception nonetheless bars either their intentional-tort or negligence claims. Justice Sotomayor, joined by Justice Jackson, concurred to opine that "there is reason to think" that the discretionary-function exception does not bar the plaintiffs' claims.

57. ***Oklahoma Statewide Charter School Board v. Drummond*, No. 24-394 (Supreme Court of Oklahoma, 558 P.3d 1; cert. granted Jan. 24, 2025; argued Apr. 30, 2025; affirmed by an equally divided Court May 22, 2025), consolidated with *St. Isidore of Seville Catholic Virtual School v. Drummond*, No. 24-396 (Supreme Court of Oklahoma, 558 P.3d 1; cert. granted Jan. 24, 2025; argued Apr. 30, 2025; affirmed by an equally divided Court May 22, 2025).** The Questions Presented are: (1) Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students; and (2) Whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state's charter-school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

58. ***Trump v. CASA, Inc.*, No. 24A884 (D. Md., 763 F. Supp. 3d 723; application for partial stay of injunction filed Mar. 13, 2025; argued May 15, 2025), consolidated with *Trump v. Washington*, No. 24A885 (W.D. Wash., 765 F. Supp. 3d 1142; application for partial stay of injunction filed Mar. 13, 2025; argued May 15, 2025), and *Trump v. New Jersey*, No. 24A886 (D. Mass., 766 F. Supp. 3d 266; application for partial stay of injunction filed Mar. 13, 2025; argued May 15, 2025).** The Question Presented is: Whether the Court should stay the district courts' nationwide preliminary injunctions prohibiting enforcement of the President's January 20, 2025 Executive Order concerning birthright citizenship, except as to the individual plaintiffs and the identified members of the organizational plaintiffs (and, if the Court concludes that States are proper litigants, as to individuals who are born or reside in those States).

Decided June 27, 2025 (606 U.S. __). District of Maryland, Western District of Washington, and District of Massachusetts/Applications to partially stay injunctions granted. Justice Barrett delivered the opinion of the Court (Thomas, J., joined by Gorsuch, J., concurring) (Alito, J., joined by Thomas, J., concurring) (Kavanaugh, J., concurring) (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting) (Jackson, J., dissenting). Individuals, organizations, and states sued to enjoin President Trump's executive order denying birthright citizenship to persons who were born to parents illegally present in, or lacking permanent resident status in, the United States. Three district courts enjoined the government from applying the executive order to anyone in the country, and the courts of appeals refused to stay the injunctions. The Supreme Court granted the government's requests to partially stay the injunctions "to the extent that [they] are broader than necessary to provide complete relief to each plaintiff with standing to sue." The Court held that universal injunctions—which prohibit enforcement of a law or policy against anyone—likely exceed the equitable powers of the federal courts. Neither the High Court of Chancery in England, nor courts in America from the Founding through the 20th century, issued universal relief extending beyond the parties to the case; while courts could grant "complete relief" to the plaintiff, which could incidentally benefit nonparties, the relief had to be "party-specific." Because the universal injunction lacks a "historical pedigree," the Court concluded that it falls "outside the bounds of a federal court's equitable authority" under the Judiciary Act of 1789. Turning to the case at hand, the Court held that enjoining enforcement of the executive order as to individual plaintiffs "will give th[ose] plaintiff[s] complete relief," but it instructed the lower courts to consider whether the state plaintiffs could obtain complete relief from the financial and administrative burdens of the executive order without a blanket ban on enforcement of the order. As to the other stay factors, the Court concluded that the government suffers irreparable injury when a court "prevents the Government from enforcing its policies against nonparties." The Court rejected the argument that it had to consider the government's likelihood of success on the underlying constitutional merits of the executive order, since it had found the government likely to succeed on the merits of the scope of injunction question. And the balance of equities did not counsel a different result, since the respondents would "remain protected by the preliminary injunctions." Justice Thomas, joined by Justice Gorsuch, concurred separately to emphasize that courts should not "replicat[e] the problems of universal injunctions under the guise of granting complete relief." Justice Alito, joined by Justice Thomas, concurred to note that "rigorous and evenhanded enforcement" of third-party standing rules and Rule 23's procedural limitations on class actions was necessary to prevent "loophole[s]" to the Court's decision. And Justice Kavanaugh's concurrence asserted that the ruling would not "affect [the] Court's vitally important

responsibility" to resolve "the interim legal status of major new federal statutes and executive actions." In dissent, Justice Sotomayor, joined by Justices Kagan and Jackson, argued that the executive order was "patently unconstitutional" and that courts had the power to enjoin it universally consistent with their authority "to do complete justice, including through flexible remedies." Finally, Justice Jackson dissented, asserting that the Court's decision was "an existential threat to the rule of law." The Court's decision forecloses one commonly used avenue for obtaining broad relief from federal and state laws and policies, but it leaves open other potential avenues—including class actions and the Administrative Procedure Act.

Cases Dismissed as Improvidently Granted

1. ***Facebook, Inc. v. Amalgamated Bank*, No. 23-980 (9th Cir., 87 F.4th 934; cert. granted June 10, 2024; argued Nov. 6, 2024; dismissed as improvidently granted Nov. 22, 2024).** The Question Presented is: Whether risk disclosures are false or misleading when they do not disclose that a risk has materialized in the past, even if that past event presents no known risk of ongoing or future business harm.

2. ***NVIDIA Corp. v. E. Ohman J:or Fonder AB*, No. 23-970 (9th Cir., 81 F.4th 918; cert. granted June 17, 2024; argued Nov. 13, 2024; dismissed as improvidently granted Dec. 11, 2024).** The Questions Presented are: (1) Whether plaintiffs seeking to allege scienter under the Private Securities Litigation Reform Act based on allegations about internal company documents must plead with particularity the contents of those documents; and (2) Whether plaintiffs can satisfy the Act's falsity requirement by relying on an expert opinion to substitute for particularized allegations of fact.

3. ***Laboratory Corporation of America Holdings v. Davis*, No. 24-304 (9th Cir., 2024 WL 489288; cert. granted Jan. 24, 2025; argued Apr. 29, 2025; dismissed as improvidently granted June 5, 2025)** (Kavanaugh, J., dissenting). The Question Presented is: Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury.

Cases To Be Argued Next Term

1. ***Louisiana v. Callais*, No. 24-109 (W.D. La., 732 F. Supp. 3d 574; probable jurisdiction noted Nov. 4, 2024; argued Mar. 24, 2025; set for reargument June 27, 2025), consolidated with *Robinson v. Callais*, No. 24-109 (W.D. La., 732 F. Supp. 3d 574; probable jurisdiction noted Nov. 4, 2024; argued Mar. 24, 2025; set for reargument June 27, 2025).** The Question Presented is: Whether the three-judge district court erred in concluding that Louisiana Senate Bill 8, which created a second majority-minority congressional district in response to previous Voting Rights Act litigation, was an unconstitutional racial gerrymander.

2. ***Department of Education v. Career Colleges and Schools of Texas*, No. 24-413 (5th Cir., 98 F.4th 220; cert. granted Jan. 10, 2025).** The Question Presented is: Whether the court of appeals erred in holding that the Higher Education Act of 1965

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does not permit the assessment of borrower defenses to repayment before default, in administrative proceedings, or on a group basis.

3. ***Bowe v. United States*, No. 24-5438 (11th Cir., 2024 WL 4038107; cert. granted Jan. 17, 2025).** The Questions Presented are: (1) Whether 28 U.S.C. § 2444(b)(1) applies to a claim presented in a second or successive motion to vacate under 28 U.S.C. § 2255; and (2) Whether 28 U.S.C. § 2244(b)(3)(E) deprives this Court of certiorari jurisdiction over the grant or denial of an authorization by a court of appeals to file a second or successive motion to vacate under 28 U.S.C. § 2255.

4. ***Barrett v. United States*, No. 24-5774 (2d Cir., 102 F.4th 60; cert. granted Mar. 3, 2025).** The Question Presented is: Whether the double jeopardy clause of the Fifth Amendment permits two sentences for an act that violates 18 U.S.C. § 924(c) and (j).

5. ***Berk v. Choy*, No. 24-440 (3d Cir., 2024 WL 3534482; cert. granted Mar. 10, 2025).** The Question Presented is: Whether a state law providing that a complaint must be dismissed unless it is accompanied by an expert affidavit may be applied in federal court.

6. ***Chiles v. Salazar*, No. 24-539 (10th Cir., 116 F.4th 1178; cert. granted Mar. 10, 2025).** The Question Presented is: Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the free speech clause of the First Amendment.

7. ***Ellingburg v. United States*, No. 24-482 (8th Cir., 113 F.4th 839; cert. granted Apr. 7, 2025).** The Question Presented is: Whether criminal restitution under the Mandatory Victim Restitution Act (MVRA) is penal for purposes of the Ex Post Facto Clause.

8. ***Villareal v. Texas*, No. 24-557 (Tex. Crim. App., 707 S.W.3d 138; cert. granted Apr. 7, 2025).** The Question Presented is: Whether a trial court abridges the defendant's Sixth Amendment right to counsel by prohibiting the defendant and his counsel from discussing the defendant's testimony during an overnight recess.

9. ***United States Postal Service v. Konan*, No. 24-351 (5th Cir., 96 F.4th 799; cert. granted Apr. 21, 2025).** The Question Presented is: Whether a plaintiff's claim that she and her tenants did not receive mail because U.S. Postal Service employees intentionally did not deliver it to a designated address arises out of "the loss" or "miscarriage" of letters or postal matter under the Federal Tort Claims Act.

10. ***The Hain Celestial Group, Inc. v. Palmquist*, No. 24-724 (5th Cir., 103 F.4th 294; cert. granted Apr. 28, 2025).** The Question Presented is: Whether a district court's final judgment as to completely diverse parties must be vacated when an appellate court later determines that it erred by dismissing a non-diverse party at the time of removal.

11. ***Fernandez v. United States*, No. 24-556 (2d Cir., 104 F.4th 420; cert. granted May 27, 2025).** The Question Presented is: Whether a combination of "extraordinary and compelling reasons" that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255.

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12. ***Bost v. Illinois State Board of Elections*, No. 24-568 (7th Cir., 114 F.4th 634; cert. granted June 2, 2025).** The Question Presented is: Whether petitioners, as federal candidates, have pleaded sufficient factual allegations to show Article III standing to challenge state time, place, and manner regulations concerning their federal elections.

13. ***Case v. Montana*, No. 24-624 (Mont., 553 P.3d 985; cert. granted June 2, 2025).** The Question Presented is: Whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring, or whether the emergency aid exception requires probable cause.

14. ***The GEO Group, Inc. v. Menocal*, No. 24-758 (10th Cir., 2024 WL 4544184; cert. granted June 2, 2025).** The Question Presented is: Whether an order denying a government contractor's claim of derivative sovereign immunity is immediately appealable under the collateral order doctrine.

15. ***Hencely v. Fluor Corp.*, No. 24-924 (4th Cir., 120 F.4th 412; cert. granted June 2, 2025).** The Question Presented is: Whether *Boyle v. United Technologies Corp.* should be extended to allow federal interests emanating from the Federal Tort Claims Act's combatant activities exception to preempt state tort claims against a government contractor for conduct that breached its contract and violated military orders.

16. ***Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (6th Cir., 109 F.4th 438; cert. granted June 6, 2025).** The Question Presented is: Whether Federal Rule of Civil Procedure 60(c)(1) imposes any time limit to set aside a void default judgment for lack of personal jurisdiction.

17. ***Rutherford v. United States*, No. 24-820 (3d Cir., 120 F.4th 360; cert. granted June 6, 2025), consolidated with *Carter v. United States*, No. 24-860 (3d Cir., 2024 WL 5339852; cert. granted June 6, 2025).** The Question Presented is: Whether a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

18. ***Hamm v. Smith*, No. 24-872 (11th Cir., 2024 WL 4793028; cert. granted June 6, 2025).** The Question Presented is: Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim.

19. ***First Choice Women's Resource Centers, Inc. v. Platkin*, No. 24-781 (3d Cir., 2024 WL 5088105; cert. granted June 16, 2025).** The Question Presented is: Whether, when the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, a federal court in a first-filed action is deprived of jurisdiction because those rights must be adjudicated in state court.

20. ***Chevron USA Inc. v. Plaquemines Parish, Louisiana*, No. 24-813 (5th Cir., 103 F.4th 324; cert. granted June 16, 2025).** The Questions Presented are: (1) Whether a causal-nexus or contractual-direction test survives the 2011 amendment to the federal-officer removal statute, which provides federal jurisdiction over civil actions against "any person acting under [an] officer" of the United States "for or relating to any act under color of such office"; and (2) whether a federal contractor can remove to federal court when sued for oil-production activities undertaken to fulfill a federal oil-refinement contract.

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21. ***Landor v. Louisiana Department of Corrections & Public Safety*, No. 23-1197 (5th Cir., 82 F.4th 337; CVSG Oct. 7, 2024; cert. recommended May 7, 2025; cert. granted June 23, 2025).** The Question Presented is: Whether an individual may sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq.

22. ***M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, No. 23-1209 (D.C. Cir., 92 F.4th 316; CVSG Oct. 7, 2024; cert. recommended May 27, 2025; cert. granted June 30, 2025).** The Question Presented is: Whether 29 U.S.C. § 1391's instruction to compute withdrawal liability "as of the end of the plan year" requires the plan to base the computation on the actuarial assumptions most recently adopted before the end of the year, or allows the plan to use different actuarial assumptions that were adopted after, but based on information available as of, the end of the year.

23. ***Cox Communications, Inc. v. Sony Music Entertainment*, No. 24-171 (4th Cir., 93 F.4th 222; CVSG Nov. 25, 2024; cert. recommended May 27, 2025; cert. granted June 30, 2025).** The Questions Presented are: (1) Whether the Fourth Circuit erred in holding that a service provider can be held liable for "materially contributing" to copyright infringement merely because it knew that people were using certain accounts to infringe and did not terminate access, without proof that the service provider affirmatively fostered infringement or otherwise intended to promote it; and (2) Whether the Fourth Circuit erred in holding that mere knowledge of another's direct infringement suffices to find willfulness under 17 U.S.C. § 504(c).

24. ***FS Credit Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345 (2d Cir., 2024 WL 3174971; CVSG Jan. 13, 2025; cert. recommended May 22, 2025; cert. granted June 30, 2025).** The Question Presented is: Whether Section 47(b) of the Investment Company Act, 15 U.S.C. § 80a-46(b), creates an implied private right of action.

25. ***Urias-Orellana v. Bondi*, No. 24-777 (1st Cir., 121 F.4th 327; cert. granted June 30, 2025).** The Question Presented is: Whether a federal court of appeals must defer to the BIA's judgment that a given set of undisputed facts does not demonstrate mistreatment severe enough to constitute "persecution" under 8 U.S.C. § 1101(a)(42).

26. ***Enbridge Energy, LP v. Nessel*, No. 24-783 (6th Cir., 104 F.4th 958; cert. granted June 30, 2025).** The Question Presented is: Whether district courts have the authority to excuse the 30-day procedural time limit for removal in 28 U.S.C. § 1446(b)(1).

27. ***Rico v. United States*, No. 24-1056 (9th Cir., 2025 WL 720900; cert. granted June 30, 2025).** The Question Presented is: Whether the fugitive-tolling doctrine applies in the context of supervised release.

28. ***NRSC v. FEC*, No. 24-621 (6th Cir., 117 F.4th 389; cert. granted June 30, 2025).** The Question Presented is: Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communications" as defined in 11 C.F.R. § 109.37.

29. ***Little v. Hecox*, No. 24-38 (9th Cir., 104 F.4th 1061; cert. granted July 3, 2025).** The Question Presented is: Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the Equal Protection Clause of the Fourteenth Amendment.

30. ***West Virginia v. B.P.J.*, No. 24-43 (4th Cir., 98 F.4th 542; cert. granted July 3, 2025).** The Questions Presented are: (1) Whether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth; and (2) Whether the Equal Protection Clause prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth.

31. ***Olivier v. City of Brandon*, No. 24-993 (5th Cir., 2023 WL 5500223; cert. granted July 3, 2025).** The Questions Presented are: (1) Whether, as the Fifth Circuit holds in conflict with the Ninth and Tenth Circuits, this Court's decision in *Heck v. Humphrey* bars § 1983 claims seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional; (2) Whether, as the Fifth Circuit and at least four others hold in conflict with five other circuits, *Heck v. Humphrey* bars § 1983 claims by plaintiffs even where they never had access to federal habeas relief.

32. ***Galette v. New Jersey Transit Corporation*, No. 24-1021 (Pa., 332 A.3d 776; cert granted July 3, 2025), consolidated with *New Jersey Transit Corporation v. Colt*, No. 24-1113 (N.Y., 2024 WL 4874365; cert granted July 3, 2025).** The Question Presented is: Whether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes.

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Pending Petitions With Calls For The Views of The Solicitor General ("CVSG")

1. ***Wye Oak Technology, Inc. v. Republic of Iraq*, No. 24-759 (D.C. Cir., 109 F.4th 509; CVSG Apr. 28, 2025).** The Question Presented are: (1) Whether, in a breach of contract case under the FSIA's third clause, it is sufficient to prove a "direct effect" in the United States applying traditional causation principles, as four circuits have held, or whether courts must make an additional finding that the contract at issue established or necessarily contemplated the United States as a place of performance, as six circuits have held; and (2) Whether the "act performed in the United States" giving rise to jurisdiction in an action under the FSIA's second clause must be an "act" by the foreign sovereign, as the D.C. Circuit has held, or whether the FSIA's text contains no such limitation, as the Fourth Circuit has held.

2. ***Exxon Mobil Corporation v. Corporación Cimex, S.A. (Cuba)*, No. 24-699 (D.C. Cir., 111 F.4th 12; CVSG May 5, 2025).** The Question Presented is: Whether the Helms-Burton Act abrogates foreign sovereign immunity in cases against Cuban instrumentalities, or whether parties proceeding under that act must also satisfy an exception under the Foreign Sovereign Immunities Act.

3. ***Agudas Chasidei Chabad of United States v. Russian Federation*, No. 24-909 (D.C. Cir., 110 F.4th 242; CVSG June 2, 2025).** The Question Presented is: Whether a "foreign state" lacks immunity from U.S. jurisdiction under the Foreign Sovereign Immunities Act if either U.S.-nexus test in 28 U.S.C. § 1605(a)(3) is met, *i.e.*, the property (1) "is present in the United States in connection with a commercial activity carried on in the United States by the foreign state," or it (2) "is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States," or instead a "foreign state" loses its immunity only if the first U.S.-nexus test is met—*i.e.*, if the expropriated property, or property exchanged for it, is found in the United States.

4. ***Duke Energy Carolinas, LLC v. NTE Carolinas II, LLC*, No. 24-917 (4th Cir., 111 F.4th 337; CVSG June 2, 2025).** The Question Presented is: Whether a plaintiff can prevail on a monopolization claim under Section 2 of the Sherman Act by aggregating multiple distinct, independently lawful acts into an unlawful whole.

5. ***The Hertz Corp. v. Wells Fargo Bank, N.A.*, No. 24-1062 (3d Cir., 120 F.4th 1181; CVSG June 2, 2025).** The Question Presented is: Whether an unwritten pre-Code exception overrides the Bankruptcy Code's express statutory text and allows creditors in solvent-debtor cases to recover amounts that the Code explicitly disallows.

6. ***Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*, No. 24-889 (Fed. Cir., 104 F.4th 1370; CVSG June 23, 2025).** The Questions Presented are: (1) Whether, when a generic drug label fully carves out a patented use, allegations that the generic drugmaker calls its product a "generic version" and cites public information about the branded drug (*e.g.*, sales) are enough to plead induced infringement of the patented use; and (2) whether a complaint states a claim for induced infringement of a patented method if it does not allege any instruction or other statement by the defendant that encourages, or even mentions, the patented use.

CVSG: Petitions In Which The Solicitor General Opposed Certiorari

1. ***Zilka v. City of Philadelphia*, No. 23-914 (Pa., 304 A.3d 1153; CVSG June 10, 2024; cert opposed Dec. 9, 2024; cert. denied Jan. 13, 2025).** The Question Presented is: Whether the Commerce Clause requires states to consider a taxpayer's burden in light of the state tax scheme as a whole when crediting a taxpayer's out-of-state tax liability as the West Virginia and Colorado Supreme Courts have held and this Court has suggested, or permits states to credit out-of-state, state, and local tax liabilities as discrete tax burdens, as the Pennsylvania Supreme Court held below.

2. ***Sunoco LP v. City and County of Honolulu*, No. 23-947 (Haw., 537 P.3d 1173; CVSG June 10, 2024; cert. opposed Dec. 10, 2024; cert. denied Jan. 13, 2025), consolidated with *Shell PLC v. City and County of Honolulu*, No. 23-952 (Haw., 537 P.3d 1173; CVSG June 10, 2024; cert. opposed Dec. 10, 2024; cert. denied Jan. 13, 2025).** The Question Presented is: Whether federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse gas emissions on the global climate.

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3. ***Walen v. Bergum*, No. 23-969 (D.N.D., 700 F. Supp. 3d 759; CVSG June 10, 2024; dismissal of appeal in part and summary affirmance in part recommended Dec. 10, 2024; appeal dismissed in part and judgment affirmed in part Jan. 13, 2025).** The Questions Presented are: (1) Whether the district court erred by applying the incorrect legal standard when deciding that the legislature had good reasons and a strong basis to believe the subdistricts were required by the Voting Rights Act (VRA); (2) Whether the district court erred by improperly weighing the evidence and granting inferences in favor of the moving party at summary judgment instead of setting the case for trial; and (3) Whether the district court erred when it found that the legislature's attempted compliance with Section 2 of the VRA can justify racial sorting of voters into districts.

4. ***Alabama v. California*, No. 22O158 (Original Jurisdiction; CVSG Oct. 7, 2024; leave to file bill of complaint opposed Dec. 10, 2024; leave to file bill of complaint denied Mar. 10, 2025).** The Question Presented is: Whether States may constitutionally seek to impose liability or obtain equitable relief premised on either emissions by or in nonconsenting States or the promotion, use, and/or sale of traditional energy products in or to nonconsenting States.

5. ***Mulready v. Pharmaceutical Care Management Association*, No. 23-1213 (10th Cir., 78 F.4th 1183; CVSG Oct. 7, 2024; cert. opposed May 27, 2025; cert. denied June 30, 2025).** The Questions Presented are: (1) Whether ERISA preempts state laws that regulate Pharmacy Benefit Managers by preventing them from cutting off rural patients' access, steering patients to favored pharmacies, excluding pharmacies willing to accept their terms from preferred networks, and overriding State discipline of pharmacists; and (2) Whether Medicare Part D preempts state laws that limit the conditions Pharmacy benefit Managers may place on pharmacies' participation in their preferred networks.

6. ***Fiehler v. Mecklenburg*, No. 23-1360 (Supreme Court of Alaska, 538 P.3d 706; CVSG Jan. 13, 2025; cert. opposed May 27, 2025; cert. denied June 30, 2025).** The Question Presented is: Whether a court has the power to disregard evidence of the location of a water boundary from a federal survey based on subsequent evidence of the body of water's location.

7. ***Borochov v. Islamic Republic of Iran*, No. 24-277 (D.C. Cir., 94 F.4th 1053; CVSG Jan. 13, 2025; cert. opposed May 27, 2025; cert. denied June 30, 2025).** The Question Presented is: Whether the Foreign Sovereign Immunities Act's terrorism exception extends jurisdiction to claims arising from a foreign state's material support for a terrorist attack that injures or disables, but does not kill, its victims.

Supreme Court Statistics

Gibson Dunn has a longstanding, high-profile presence before the Supreme Court of the United States, appearing numerous times in the past decade in a variety of cases. Twelve current Gibson Dunn lawyers have argued before the Supreme Court, and during the Court's ten most recent Terms, the firm has argued a total of 29 cases, including closely watched cases with far-reaching significance in the areas of intellectual property, securities, separation of powers, and federalism. Moreover, although the grant rate for petitions for certiorari is below 1%, Gibson Dunn's petitions have captured the Court's attention: Gibson Dunn has persuaded the Court to grant over 40 petitions for certiorari since 2006.

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