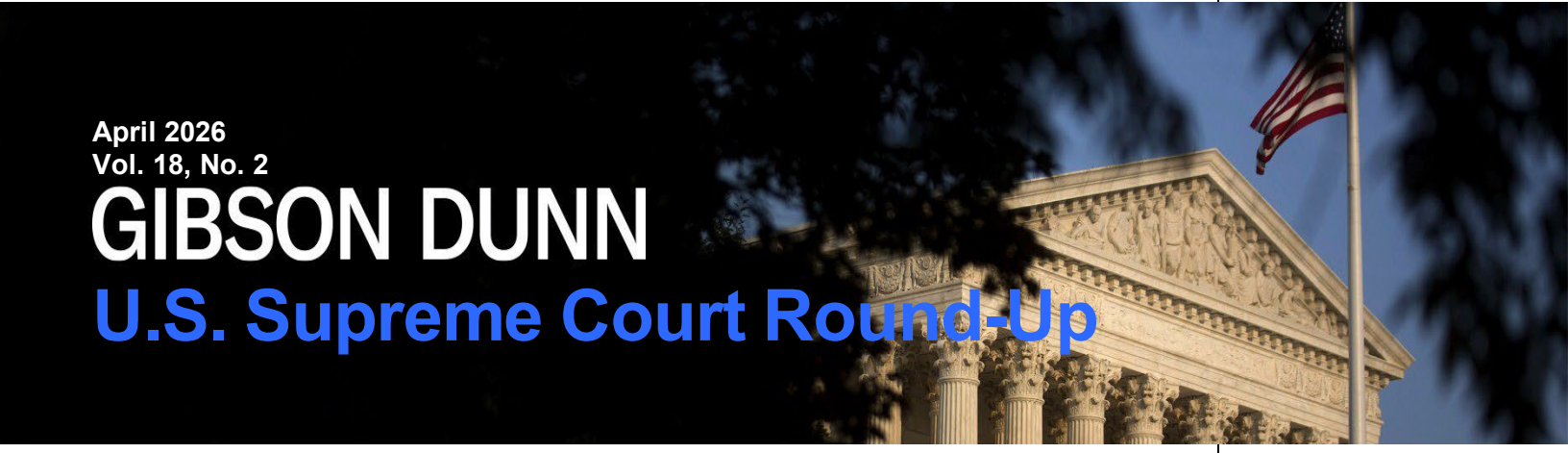
April 2026
Vol. 18, No. 2

GIBSON DUNN
U.S. Supreme Court Round-Up



October Term 2025

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. ***Villarreal v. Texas*, No. 24-557 (Tex. Crim. App., 707 S.W.3d 138; cert. granted Apr. 7, 2025; argument on Oct. 6, 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.

   Decided Feb. 25, 2026 (607 U.S. __). Texas Court of Criminal Appeals/Affirmed. Justice Jackson delivered the opinion of the Court (Alito, J., concurring) (Thomas, J., joined by Gorsuch, J., concurring in the judgment). Daniel Villarreal testified at his own trial, but his testimony was interrupted by a 24-hour overnight recess. The trial judge instructed Villarreal's attorneys not to "manage his testimony" but permitted them to confer with Villarreal about other topics. Villarreal's counsel complied. Villarreal resumed his testimony the next day and was later convicted. On appeal, he argued that the trial court's order—by restricting his ability to confer with his counsel during the overnight recess—violated his Sixth Amendment right to counsel. The Supreme Court disagreed, holding that a court does not violate the Sixth Amendment by imposing a qualified conferral order during a mid-testimony overnight recess if that order prohibits only discussion of the defendant's ongoing testimony. The Court explained that when a defendant testifies, he assumes the position of a witness—which comes with the inability to receive advice from counsel aimed at influencing his testimony. The Court's previous cases had held that a court may not entirely prevent a testifying defendant from conferring with his lawyer during an overnight recess—but may prevent him from conferring with his lawyer during a brief daytime mid-testimony recess (where the discussion is almost certain to concern the defendant's ongoing testimony). The order in Villarreal's case was consistent with those precedents, the Court explained, and with the traditional practice of witness sequestration, because it allowed Villarreal to discuss all matters of trial strategy other than his own ongoing testimony, and thus it balanced Villarreal's Sixth

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Amendment right against the truth-seeking function of the trial. Justice Alito concurred to explain that courts can permissibly restrict mid-testimonial discussions to prevent counsel from improving or shaping the defendant's testimony. Justice Thomas, joined by Justice Gorsuch, concurred only in the judgment, agreeing that the trial court's order complied with the Court's precedents but disagreeing with the Court's expansion of those precedents to recognize a constitutional right to discussion of testimony so long as that discussion is incidental to other topics.

2. ***Berk v. Choy*, No. 24-440 (3d Cir., 2024 WL 3534482; cert. granted Mar. 10, 2025; argument on Oct. 6, 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.

Decided Jan. 20, 2026 (607 U.S. __). Third Circuit/Reversed and remanded. Justice Barrett delivered the opinion of the Court (Jackson, J., concurring in the judgment). Under Delaware law, a plaintiff cannot sue for medical malpractice (indeed, his suit cannot be docketed) unless his complaint is "accompanied" by an "affidavit of merit" signed by a medical professional that states that there are "reasonable grounds" to believe that the defendants committed health-care medical negligence. Del. Code, tit. 18, § 6853(a)(1). Harold Berk sued for medical malpractice based on diversity jurisdiction in federal court, but the district court dismissed his suit for failing to timely provide an affidavit of merit, and the Third Circuit affirmed. The Supreme Court reversed, holding that § 6853 does not apply in federal court. When a Federal Rule of Civil Procedure answers a disputed issue in federal court, it governs over any contrary state law (even a state law that would qualify as substantive under the *Erie* doctrine)—so long as the rule "really regulates" procedure and thus is a valid rule under the Rules Enabling Act. The Court concluded that Rule 8 answers the relevant question—whether Berk's lawsuit may be dismissed because his complaint was not accompanied by an expert affidavit—in the negative. Rule 8 sets out the requirements for pleadings in federal court and requires no more than "a short and plain statement of the claim showing that [a plaintiff] is entitled to relief." It thus establishes that evidence of a claim is not required "at the outset of litigation"—a principle reinforced by Rule 12's prohibition on considering "matters outside the pleadings" when assessing a motion to dismiss for failure to state a claim. And because Rule 8 really regulates procedure, it is valid and governs in federal court. Delaware's affidavit requirement therefore does not apply. Justice Jackson concurred in the judgment, arguing that § 6853 conflicts not with Rule 8 but with Rule 3, under which a plaintiff can "commence[]" a civil action by "filing a complaint"—without any need for an affidavit.

3. ***Chiles v. Salazar*, No. 24-539 (10th Cir., 116 F.4th 1178; cert. granted Mar. 10, 2025; oral argument on Oct. 7, 2025).** The Question Presented is: Whether a law that prohibits licensed counselors from engaging in "conversion therapy" with minors regulates conduct or violates the free speech clause of the First Amendment.

Decided Mar. 31, 2026 (607 U.S. __). Tenth Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion of the Court (Kagan, J., joined by Sotomayor, J., concurring) (Jackson, J., dissenting). A Colorado law prohibited licensed counselors from engaging in "conversion therapy," defined as any practice or treatment attempting to "change an individual's sexual orientation or gender identity" (or change gender expressions or same-sex attractions). At the same time, the law permitted counselors to provide "[a]cceptance, support, and understanding" for "identity exploration and development." Kaley Chiles, a licensed therapist, challenged the law, arguing that it violated the First Amendment as applied to her

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talk therapy—in which she helps her clients either accept their sexual orientation and gender identity or reduce their attractions and behaviors, depending on their goals. The lower courts upheld the law as regulating professional conduct and only incidentally regulating speech. The Supreme Court disagreed, holding that Colorado's law regulated speech based on viewpoint and thus was presumptively unconstitutional. As applied to Chiles, the Court reasoned, the law regulated speech and not conduct, since she engaged only in talk therapy and did not offer any physical interventions or medications. And the law engaged in viewpoint discrimination—an especially "egregious form" of speech regulation requiring strict scrutiny—by allowing Chiles to express acceptance of and support for her clients' identities but forbidding her from saying anything that sought to help them change their gender identities or reduce unwanted attractions, censoring one side of a debated issue. Colorado could not avoid the First Amendment by labeling Chiles's speech as "treatment" subject to medical licensing rules, or by censoring speech regarding "substandard care," since calling something "professional speech" does not reduce its constitutional protections. "'[T]he people lose' whenever the government transforms prevailing opinion into enforced conformity." If Colorado "could reclassify talk therapy as speech incidental to conduct, it might just as easily do the same for . . . 'teaching or protesting.'" The Court also rejected Colorado's attempt to rely on the Court's "speech-incident-to-conduct precedents," since the law neither "restrict[ed] speech only because it is integrally related to unlawful conduct" nor "restrict[ed] expressive conduct only for reasons unrelated to its content." Justice Kagan, joined by Justice Sotomayor, concurred to suggest that the case would be a closer call if Colorado's law regulated speech based on its content (*i.e.*, by regulating medical care on certain issues) but did not favor one viewpoint over another. In dissent, Justice Jackson argued that the law was a permissible regulation of medical treatment that only incidentally regulated providers' speech.

4. ***Barrett v. United States*, No. 24-5774 (2d Cir., 102 F.4th 60; cert. granted Mar. 3, 2025; oral argument on Oct. 7, 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).

Decided Jan. 14, 2026 (607 U.S. __). Second Circuit/Reversed in part and remanded. Justice Jackson delivered the opinion of the Court (Gorsuch, J., concurring in part). 18 U.S.C. § 924(c)(1)(A)(i) criminalizes using, carrying, or possessing a firearm in connection with a federal crime of violence or drug trafficking crime. Section 924(j) prescribes different penalties when "a violation of subsection (c)" causes death. Dwayne Barrett was convicted on separate counts under each provision based on a single robbery that resulted in death. The district court merged the two counts at sentencing, but the Second Circuit held that the two provisions were separate offenses for which the district court had to impose separate sentences. The Supreme Court reversed in relevant part, holding that a single act that violates both provisions can only give rise to one conviction, not two. Courts ordinarily presume that Congress does not intend to punish the same offense under two different statutes, so Congress must speak clearly to authorize multiple punishments. The two provisions at issue defined the same offense, since § 924(c)(1)(A)(i) is fully subsumed within, and thus a lesser included offense to, § 924(j). But nothing in the statute's text, operation, or structure showed that Congress clearly intended to authorize punishing the same act under both provisions; to the contrary, it expressly authorized dual convictions elsewhere in § 924(c) but chose not to do so for these provisions. Justice Jackson, joined only by Chief Justice Roberts and Justices Sotomayor and Kagan, also observed that the legislative history supported the same conclusion. Justice Gorsuch wrote separately to observe

that the Court would eventually have to clarify how the Double Jeopardy Clause applies where the government seeks to concurrently—rather than successively—secure multiple convictions for the same offense.

5. ***Bost v. Illinois State Board of Elections*, No. 24-568 (7th Cir., 114 F.4th 634; cert. granted June 2, 2025; oral argument on Oct. 8, 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.

   Decided Jan. 14, 2026 (607 U.S. __). Seventh Circuit/Reversed and remanded. Chief Justice Roberts delivered the opinion of the Court (Barrett, J., joined by Kagan, J., concurring in the judgment) (Jackson, J., joined by Sotomayor, J., dissenting). Illinois law allows the counting of mail-in ballots postmarked by Election Day if they are received within fourteen days of the election. Congressman Michael Bost and two other political candidates sued, claiming that federal law prohibited counting ballots received after Election Day. The district court and Seventh Circuit held that the candidates had not alleged an injury sufficient for Article III standing. The Supreme Court reversed, holding that a candidate for office has standing to challenge the rules that govern the counting of votes in his election. Candidates have a personal stake in those rules, the Court reasoned, given their interest in competing in a fair process. And a candidate has a particularized interest in ensuring an accurate vote tally in an election in which they are seeking to represent the will of the people—especially since unlawful miscounting of votes erodes public confidence in the election's legitimacy and inflicts reputational harms on the winner. The Court rejected the argument that a candidate needs to show a substantial risk that a rule will cause them to lose the election, fall short of a legally significant vote threshold, or win a smaller vote share. Such a rule, the Court observed, would channel many election disputes to right before or after the election—entangling federal courts in democratic processes while votes are being cast or counted—and force courts to engage in political prognostication or predict how election rules will affect certain candidates. Concurring in the judgment, Justice Barrett, joined by Justice Kagan, opined that Congressman Bost's expenditures on monitoring the counting of post-Election Day ballots were a classic pocketbook injury giving him standing, but disagreed with the majority that a candidate has standing without any showing that the rules disadvantage him. In dissent, Justice Jackson, joined by Justice Sotomayor, argued that a candidate's interest in a fair election process is not particularized to him and that Congressman Bost could not use his expenditures to manufacture standing without alleging some substantial risk of harm to his election performance.

6. ***United States Postal Service v. Konan*, No. 24-351 (5th Cir., 96 F.4th 799; cert. granted Apr. 21, 2025; oral argument on Oct. 8, 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.

   Decided Feb. 24, 2026 (607 U.S. __). Fifth Circuit/Vacated and remanded. Justice Thomas delivered the opinion of the Court (Sotomayor, J., joined by Kagan, Gorsuch, and Jackson, JJ., dissenting). The Federal Tort Claims Act ("FTCA")'s "postal exception" bars suits against the United States for claims "arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. § 2680(b). Lebene Konan sued after USPS workers allegedly intentionally withheld

her mail and interfered with its delivery. The Fifth Circuit allowed her claim to proceed on the view that the postal exception did not extend to intentional acts by postal employees. The Supreme Court disagreed, holding that such acts are covered by the exception. "Miscarriage," according to dictionaries contemporaneous with the FTCA's enactment, refers to when mail fails to properly arrive at its intended destination—whether the miscarriage was negligent or intentional. Likewise, "loss" means any deprivation of mail, regardless of whether the deprivation was intentional. And although the word "negligent" precedes "transmission," the Court reasoned, that does not import a negligence requirement into the other terms because an adjective modifies only the word it directly precedes. Congress added "negligent" before "transmission" not to enable suits based on intentional misconduct, but simply to prevent the broad term "transmission" from sweeping into the exception every mail-related claim. Justice Sotomayor, joined by Justices Kagan, Gorsuch, and Jackson, dissented, arguing that the words "loss" and "miscarriage" connote inadvertence, instead of intentional wrongdoing, and that Congress's purpose in including the word "negligent" was to leave intentional misconduct outside the scope of the postal exception.

7. ***Bowe v. United States*, No. 24-5438 (11th Cir., 2024 WL 4038107; cert. granted Jan. 17, 2025; oral argument on Oct. 14, 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.

Decided Jan. 9, 2026 (607 U.S. __). Eleventh Circuit/Vacated and remanded. Justice Sotomayor delivered the opinion of the Court (Jackson, J., concurring) (Gorsuch J., joined by Thomas and Alito, JJ., and in part by Barrett, J., dissenting). Federal prisoners seeking to obtain postconviction relief from their sentences must comply with 28 U.S.C. § 2255. Section 2255(h) requires that before a "second or successive motion" for relief can be brought in district court, it "must be certified" to meet certain standards by the court of appeals "as provided in section 2244," which governs applications for federal postconviction relief by state prisoners. The Eleventh Circuit held that the cross-reference to § 2244 incorporates that section's prohibition on asserting claims in second or successive applications that had been presented in a prior application, but the Supreme Court disagreed. The Court first held that it had jurisdiction despite § 2244(b)(3)(E)'s prohibition on petitioning for certiorari from a court of appeals' decision denying authorization to file a second or successive application. Congress needs to speak clearly to create exceptions to the Supreme Court's broad statutory certiorari jurisdiction, and § 2244(b)(3)(E) contains no such clear indication. The provision speaks only to "applications" by state prisoners, not "motions" by federal prisoners. And § 2255(h)'s cross-reference to § 2244 incorporates only the latter's provisions on the procedures for how a court of appeals certifies a second or successive filings; § 2244(b)(3)(E) does not fall within that category. On the merits, the Court held that § 2244(b)(1)'s prohibition on second or successive applications does not apply to federal prisoners. The provision on its face applies only to state prisoners, and the Court again noted that § 2255(h)'s cross-reference incorporates § 2244's provisions "only as they relate to" how a panel certifies a second or successive filing." Thus, although § 2255 borrows § 2244's certification processes, the only substantive limitations on second or successive filings are those in § 2255 itself. Justice Jackson concurred to assert that § 2244(b)(3)(E) only bars certiorari review of a court of appeals' ruling on a second or successive filing where the court has applied the appropriate "gatekeeping"

criteria. Justice Gorsuch, joined by Justices Thomas, Alito, and Barrett, dissented, arguing that the language and structure of the statutes indicate that § 2255(h) incorporates both § 2244(b)(3)(E)'s limitation on certiorari jurisdiction and § 2244(b)(1)'s bar on second or successive filings asserting previously presented claims.

8. ***Ellingburg v. United States*, No. 24-482 (8th Cir., 113 F.4th 839; cert. granted Apr. 7, 2025; oral argument on Oct. 14, 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.

   Decided Jan. 20, 2026 (607 U.S. __). Eighth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion for a unanimous Court (Thomas, J., joined by Gorsuch, J., concurring). Under the Mandatory Victims Restitution Act of 1996 ("MVRA"), defendants convicted of certain federal crimes must pay monetary restitution to their victims. Holsey Ellingburg was ordered to pay restitution under the MVRA for a crime he committed prior to the MVRA's enactment. He later challenged his restitution obligation under the Ex Post Facto Clause, but the Eighth Circuit held that MVRA restitution is not criminal punishment and so does not trigger the Ex Post Facto Clause. The Supreme Court disagreed, concluding that restitution under the MVRA amounts to criminal punishment. The Court relied on numerous factors, including that the MVRA labels restitution as a "penalty" for a criminal "offense"; a court may order restitution only with respect to a criminal defendant and only after a conviction for a qualifying crime; restitution is imposed during sentencing, where the government, not the victim, is the party adverse to the defendant; and the MVRA itself is codified in Title 18, "Crimes and Criminal Procedure." Justice Thomas, joined by Justice Gorsuch, concurred to argue that the Ex Post Facto Clauses prohibit the retroactive imposition of any coercive penalty for a public wrong—even if it is labeled as a civil penalty.

9. ***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; oral argument on Oct. 15, 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; oral argument on Oct. 15, 2025).** The Question Presented is: Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U.S. Constitution.

10. ***Case v. Montana*, No. 24-624 (Mont., 553 P.3d 985; cert. granted June 2, 2025; oral argument on Oct. 15, 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.

    Decided Jan. 14, 2026 (607 U.S. __). Montana Supreme Court/Affirmed. Justice Kagan delivered the opinion for a unanimous Court (Sotomayor, J., and Gorsuch, J., separately concurring). Montana police officers responded to a 9-1-1 call from William Case's ex-girlfriend stating that Case was threatening to shoot himself and may already have done so. When officers arrived at Case's home, they found signs that he may have shot himself and decided to enter the home to render emergency aid. When an officer approached the closet where Case was hiding, Case emerged with an object that looked like a gun, and the officer shot and injured him. Case was charged with assaulting a police officer and moved to suppress all evidence from the

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home entry as obtained in violation of the Fourth Amendment because the officers had entered without a warrant. The Montana state courts rejected Case's argument, and the Supreme Court agreed with them. The Court reaffirmed the rule from *Brigham City v. Stuart*, 547 U.S. 398 (2006), that officers can enter a home without a warrant if they have an "objectively reasonable basis" for believing that doing so is needed to provide emergency assistance. The Court rejected Case's argument that the probable cause standard should apply, since that standard is rooted in the criminal investigatory context and is ill-suited for a non-criminal, non-investigatory setting. Under the proper standard, the Court deemed the entry into Case's home appropriate because the 9-1-1 call and the officers' observations at the scene gave them reason to think Case had shot himself or would do so absent intervention. Justice Sotomayor concurred to urge officers and courts to consider whether, in situations involving mental health crises, police entry to render emergency aid would protect the occupant or escalate the situation. Justice Gorsuch concurred to explain that the emergency-aid doctrine derives from the common law.

NOVEMBER CALENDAR

11. ***Rico v. United States*, No. 24-1056 (9th Cir., 2025 WL 720900; cert. granted June 30, 2025; argued Nov. 3, 2025).** The Question Presented is: Whether the fugitive-tolling doctrine applies in the context of supervised release.

    Decided Mar. 25, 2026 (607 U.S. __). Ninth Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion of the Court (Alito, J., dissenting). After pleading guilty to federal drug trafficking charges, Isabel Rico violated the terms of her supervised release and was sentenced to additional jail time and 42 more months of supervised release, through 2021. While on her second stint of supervised release, she absconded, and a warrant was issued for her arrest. Rico was not located by federal authorities until 2023, and in the interim she committed multiple offenses, including, crucially, a state-law drug offense in 2022, after the term of her supervised release had formally ended. Nonetheless, the district court treated the 2022 drug offense as a supervised-release violation, calculated the Sentencing Guidelines range accordingly, and sentenced Rico to more incarceration followed by supervised release. Rico argued that it was improper to treat the 2022 drug offense as a supervised release violation because it occurred after the term of her supervised release expired in 2021, but the Ninth Circuit held that Rico's abscondment "tolled" the clock on her term. The Supreme Court rejected the Ninth Circuit's approach, concluding that it did not toll (*i.e.*, suspend) the term of supervised release, but in fact extended it beyond the original term—which the Ninth Circuit lacked authority to do. Although the Sentencing Reform Act gives courts multiple tools to address supervised-release violations, including the imposition of additional imprisonment followed by a new term of supervised release, nothing in the Act allows courts to automatically extend the existing term of supervised release beyond the statutory maximums when the defendant absconds. The Act permits some extensions and tolling, but only in certain (inapplicable) circumstances. In dissent, Justice Alito argued that the dispute over extending or tolling the supervised release was pointless because the district court properly considered Rico's drug offense under the Sentencing Reform Act and sentenced her accordingly.

12. ***Hencely v. Fluor Corporation*, No. 24-924 (4th Cir., 120 F.4th 412; cert. granted June 2, 2025; argued Nov. 3, 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.

13. ***Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (6th Cir., 109 F.4th 438; cert. granted June 6, 2025; argued Nov. 4, 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.

    Decided Jan. 20, 2026 (607 U.S. __). Sixth Circuit/Affirmed. Justice Alito delivered the opinion of the Court (Sotomayor, J., concurring in the judgment). Vista-Pro Automotive, LLC, entered bankruptcy in 2014 and initiated adversarial proceedings against Coney Island Auto Parts Unlimited, Inc., to collect allegedly unpaid invoices. Vista-Pro attempted to serve process on Coney Island by mail but purportedly failed to comply with Federal Rule of Bankruptcy Procedure 7004(b)(3)'s mail-service requirements. Coney Island did not file an answer, and the bankruptcy court entered a default judgment against it. Six years later, Coney Island sought to vacate the judgment under Federal Rule of Civil Procedure 60(b)(4), arguing that Vista-Pro's failure to make proper service rendered the judgment void. The lower courts denied relief, concluding that Coney Island had failed to bring its motion within a "reasonable time" under Rule 60(c). The Supreme Court agreed. Under the plain text of Rule 60(c)(1), a "motion under Rule 60(b) must be made within a reasonable time," and a request for relief from an allegedly void judgment is a "motion under Rule 60(b)." The Court rejected the argument that no time limit should apply because a void judgment is a legal nullity, explaining that the law routinely imposes time limits on when a party can seek relief from a judgment infected by error. The Court also found no basis for the notion that due process, or any other legal principle, gives parties the right to challenge void judgments at any time. Justice Sotomayor concurred in the judgment, arguing that the Court should not have addressed due process since Coney Island did not raise the issue.

14. ***The Hain Celestial Group, Inc. v. Palmquist*, No. 24-724 (5th Cir., 103 F.4th 294; cert. granted Apr. 28, 2025; argued Nov. 4, 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.

    Decided Feb. 24, 2026 (607 U.S. __). Fifth Circuit/Affirmed and remanded. Justice Sotomayor delivered the opinion for a unanimous Court (Thomas, J., concurring). Grant and Sarah Palmquist sued Hain Celestial Group and Whole Foods in Texas state court, alleging state-law tort claims for Hain's manufacturing and Whole Foods' marketing of contaminated baby food. Hain removed the case to federal court based on diversity jurisdiction. Both the Palmquists and Whole Foods are Texas citizens, which ordinarily would defeat diversity, but Hain argued that removal was proper because Whole Foods had been improperly joined and should be dismissed. The district court agreed with Hain. After trial, the court granted judgment as a matter of law to Hain. The Fifth Circuit, however, held that the district court erred in dismissing Whole Foods and vacated its judgment, reasoning that the erroneous dismissal of a nondiverse party before final judgment cannot cure a jurisdictional defect that existed when the case was removed to federal court. The Supreme Court agreed. While a district can cure a jurisdictional defect before final judgment, creating complete diversity through a *mistaken* legal holding does not cure the defect; a district court cannot "create jurisdiction through its own mistakes." And an uncured jurisdictional defect means the judgment entered without jurisdiction must be vacated, "regardless of how efficient it might be to leave the judgment in place." Hain also argued that

Whole Foods should be dismissed under Federal Rule of Civil Procedure 21, which permits a federal court "on its own" to "add or drop a party" "on just terms," but the Court rejected that argument. Using Rule 21 in this way would be improper because it would force the Palmquists, who chose to name both Hain and Whole Foods as defendants in their lawsuit, to litigate in federal court against their wishes despite their right, as plaintiffs, to choose their forum. Justice Thomas concurred to express his "skepticism" about the doctrine of improper joinder, since it appears to allow federal courts to enlarge their jurisdiction by assessing the merits of claims over which they lack jurisdiction.

15. ***Learning Resources, Inc. v. Trump*, No. 24-1287 (D.D.C., 784 F. Supp. 3d 209; cert. before judgment granted Sept. 9, 2025; argued Nov. 5, 2025), consolidated with *Trump v. V.O.S. Selections*, No. 25-250 (Fed. Cir., 149 F.4th 1312; cert. granted Sept. 9, 2025; argued Nov. 5, 2025).** The Questions Presented are: (1) Whether the International Emergency Economic Powers Act (IEEPA) authorizes the tariffs imposed by President Donald Trump; and (2) If IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the president.

Decided February 20, 2026 (607 U.S. __). District of District of Columbia/Vacated and remanded; Federal Circuit/Affirmed. Chief Justice Roberts delivered the opinion of the Court (Gorsuch, J., and Barrett, J., separately concurring) (Kagan, J., joined by Sotomayor and Jackson, JJ., concurring in part and concurring in the judgment) (Jackson, J., concurring in part and concurring in the judgment) (Thomas, J., dissenting) (Kavanaugh, J., joined by Thomas and Alito, JJ., dissenting). Businesses sued in both federal district court and the Court of International Trade ("CIT") to challenge the tariffs that President Trump imposed by invoking the International Emergency Economic Powers Act ("IEEPA"), which authorizes the President to "regulate . . . importation" during emergencies. The D.C. district court and the Court of International Trade each ruled that it had jurisdiction and that IEEPA did not authorize the tariffs, and the Federal Circuit affirmed the CIT. The Supreme Court agreed on the merits. The Court held that IEEPA's "regulate . . . importation" language does not grant the President the power to impose tariffs, which are "clear[ly] . . . a branch of the taxing power" that is committed to Congress under Article I of the Constitution. The power to "regulate" does not usually convey the "distinct and extraordinary" power to tax. And the "neighboring words" around "regulate" in IEEPA, which allow blocking or prohibiting transactions, reinforced that reading; tariffs are "different in kind" from those other authorizations because they "raise revenue for the Treasury." Congress typically grants the tariff power expressly when it permits imposing tariffs, and neither history nor precedent supported reading IEEPA to give the President an unlimited tariff power. The Court also concluded in a footnote that the CIT has exclusive jurisdiction to hear challenges to the modification of tariff schedules. In a portion of the principal opinion joined only by Justices Barrett and Gorsuch, the Chief Justice concluded that the tariffs were also unlawful because, under the major questions doctrine, which applies "with particular force" where the "power of the purse" is at issue, Congress did not clearly give the President the "extraordinary" power to impose unbounded tariffs under IEEPA. Justice Gorsuch concurred to address other Justices' treatment of the major questions doctrine, arguing that history and precedent both establish that a "clear statement is required to support a claim to an extraordinary delegated power." Justice Barrett concurred to further explain her view that the major questions doctrine reflects the ordinary meaning of statutory text. Justice Kagan, joined by Justices Sotomayor and Jackson, concurred in part and in the judgment, arguing that there was no need to apply the major questions doctrine because "ordinary tools of

statutory interpretation" sufficed to deem the tariffs unlawful. And Justice Jackson similarly concurred in part and in the judgment, writing that the Court should have consulted IEEPA's legislative history in its analysis. In dissent, Justice Thomas argued that Congress could permissibly delegate to the President the authority to impose duties on imports, because the nondelegation doctrine only forbids Congress from delegating the core legislative power of making rules governing deprivations of life, liberty, and property. Finally, Justice Kavanaugh's dissent, joined by Justices Thomas and Alito, asserted that the President could lawfully impose tariffs under IEEPA because "statutory text, history, and precedent" all showed that tariffs were "a traditional and common tool to regulate importation." The Court's decision cleared the way for—but said nothing about—litigation in the CIT over whether companies and individuals who paid the unlawful IEEPA tariffs can receive refunds. And it left the door open for the President to attempt to invoke other tariff authorities, which President Trump has since done.

16. ***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; argued Nov. 10, 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.

17. ***GEO Group, Inc. v. Menocal*, No. 24-758 (10th Cir., 2024 WL 4544184; cert. granted June 2, 2025; argued Nov. 10, 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.

Decided Feb. 25, 2026 (607 U.S. __). Tenth Circuit/Affirmed and remanded. Justice Kagan delivered the opinion of the Court (Thomas, J., concurring in part and concurring in the judgment) (Alito, J., concurring in the judgment). GEO Group, which operates a private detention facility in Colorado under a contract with U.S. Immigration and Customs Enforcement ("ICE"), was sued over its work policies for detainees. GEO moved to dismiss, arguing that ICE had authorized and directed it to carry out the policies and that under *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), it could not be held liable for acts undertaken pursuant to validly conferred governmental authority. The district court held that *Yearsley* did not apply to GEO's conduct and denied the motion; GEO appealed, but the Tenth Circuit held that the district court's order was not appealable. The Supreme Court agreed, holding that denials of *Yearsley* protection are not appealable under the collateral-order doctrine. While the collateral-order doctrine permits the immediate appeal of the denial of a true immunity from suit, the Court explained that *Yearsley* merely establishes a defense on the merits—that the contractor is not liable because it complied with the law. And while *Yearsley* is sometimes described as a doctrine of "derivative sovereign immunity," the phrase is a misnomer given "the general rule that sovereign immunity is not transferrable to agents." Thus, denials of a *Yearsley* defense are to be reviewed on appeal from a final judgment, just like other merits defenses. Justice Thomas agreed that *Yearsley* did not create an immunity like those previously recognized as giving rise to appealable collateral orders, but he declined to apply the collateral-order doctrine because it is neither authorized by any statute nor consistent with 28 U.S.C. § 1292(e), which allows federal courts to deem additional non-final orders appealable but only through the rulemaking process. Justice Alito agreed with the Court that *Yearsley* denials are not immediately appealable but disagreed that denials of merits defenses are never collateral orders;

in his views, such decisions can be appealed if doing so is necessary to vindicate important constitutional or public-policy interests.

18. ***Fernandez v. United States*, No. 24-556 (2d Cir., 104 F.4th 420; cert. granted May 27, 2025; argued Nov. 12, 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.

19. ***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; argued Nov. 12, 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).

DECEMBER CALENDAR

20. ***Urias-Orellana v. Bondi*, No. 24-777 (1st Cir., 121 F.4th 327; cert. granted June 30, 2025; argued Dec. 1, 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).

    Decided March 4, 2026 (607 U.S. __). First Circuit/Affirmed. Justice Jackson delivered the opinion for a unanimous Court. Douglas Humberto Urias-Orellana and his family were placed in removal proceedings and sought asylum. After a hearing, the Immigration Judge ("IJ") denied asylum because Urias-Orellana had not shown past persecution or a well-founded fear of future persecution. The First Circuit upheld the decision under the substantial-evidence standard, holding that it was bound by the IJ's finding on persecution unless no reasonable adjudicator would be compelled to conclude to the contrary. The Supreme Court affirmed, agreeing with the First Circuit's use of the substantial-evidence standard to review the agency's determination whether a given set of undisputed facts rises to the level of persecution. Under the Immigration and Nationality Act ("INA"), an IJ's "findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). That deferential standard, the Court held, extends to mixed questions of law and fact such as the decision whether a given set of facts meets the legal definition of persecution. The Court had previously applied a substantial-evidence standard of review to mixed questions under an earlier version of the INA, and Congress subsequently codified the Court's holding in § 1252(b)(4)(B). And although the Court had treated mixed questions as "question[s] of law" under a different part of the INA, its decisions on that front did not resolve the type of review courts must afford to such questions under § 1252(b).

21. ***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; argued Dec. 1, 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,

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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).

Decided March 25, 2026 (607 U.S. __). Fourth Circuit/Reversed and remanded. Justice Thomas delivered the opinion of the Court (Sotomayor, J., joined by Jackson, J., concurring in the judgment). The Copyright Act does not expressly render anyone liable for infringement committed by another. Nonetheless, the Supreme Court has recognized two forms of secondary liability for copyright infringement based on legal principles predating the Copyright Act: vicarious liability and (the subject of this case) contributory liability. Sony sued internet provider Cox Communications for secondary liability because Cox continued to provide internet services to users with knowledge that they would use the service to commit copyright infringement. Sony enlisted a third party, MarkMonitor, to send Cox notices whenever its customers used Cox's internet services to commit infringement. MarkMonitor sent Cox 163,148 such notices in the relevant period, and although Cox sent warnings to the relevant customers, Cox ultimately terminated only 32 subscribers. Cox was held liable in the district court on both contributory and vicarious liability. The Fourth Circuit affirmed as to contributory liability, reasoning that Cox's knowledge that customers would use its services to infringe was alone sufficient. The Supreme Court reversed. The Court has "repeatedly made clear that mere knowledge that a service will be used to infringe is insufficient to establish" contributory liability, which requires "intent to infringe." Intent may be demonstrated by showing either that the provider induced the infringement (such as by marketing its service as a tool for infringement) or that the service is tailored to infringement (such as where it has no significant non-infringing uses). Sony adduced no evidence that Cox had either marketed its internet services as an infringement tool or that those services have no significant non-infringing uses. The Fourth Circuit thus had established "a new form of contributory liability"—contrary to the Court's precedents. Because contributory liability has been read into the Copyright Act by judicial precedent, rather than codified in the Act's text, the Court was "loath to expand such liability." Concurring in the judgment, Justice Sotomayor (joined by Justice Jackson) disagreed with the majority's limitation of secondary liability. She would have entertained additional "common-law theories of such liability, like aiding and abetting." But she concluded that even if aiding-and-abetting liability applied, Sony still had failed to show that Cox had the requisite intent to aid copyright infringement.

22. ***First Choice Women's Resource Centers, Inc. v. Davenport*, No. 24-781 (3d Cir., 2024 WL 5088105; cert. granted June 16, 2025; argued Dec. 2, 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.

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Counsel for Amicus Curiae Annunciation House, Inc.

Partner
Allyson N. Ho

23. ***Olivier v. City of Brandon*, No. 24-993 (5th Cir., 2023 WL 5500223; cert. granted July 3, 2025; argued Dec. 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.

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Counsel for Petitioner Gabriel Olivier

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Decided March 20, 2026 (607 U.S. __). Fifth Circuit/Reversed and remanded. Justice Kagan delivered the opinion for a unanimous Court. Gabriel Olivier, a street preacher in Mississippi, violated a city ordinance restricting protests to designated areas, pleaded no contest, and paid a fine without serving any prison time. He then sued the city under 42 U.S.C. § 1983, arguing that the ordinance violated his First Amendment free speech rights and seeking prospective declaratory and injunctive relief preventing enforcement of the ordinance in the future. The district court and Fifth Circuit held his suit barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), which prohibits using § 1983 to challenge the validity of a prior conviction or sentence to obtain release from custody or monetary damages. The Supreme Court reversed, holding that *Heck* does not bar a suit seeking purely prospective relief even if the plaintiff was previously convicted for violating the law he seeks to challenge. A suit challenging the constitutionality of a local law seeking to prevent the law's future enforcement against the plaintiff falls within § 1983's heartland. *Heck*, meanwhile, prohibits using § 1983 to seek damages or release from prison—since such a suit amounts to a collateral attack on a prior conviction, which must be brought (if at all) in habeas corpus proceedings. Suits seeking wholly prospective relief do not intrude on the core of the federal habeas statute and so are not barred by *Heck*. And although *Heck* deemed impermissible § 1983 suits that would "necessarily imply" the invalidity of a prior conviction, that broad general language was meant to bar suits that were disguised efforts to challenge old convictions; it did not foreclose future-oriented suits like Olivier's.

24. ***Trump v. Slaughter*, No. 25-332 (D.D.C., 2025 WL 1984396; cert. before judgment granted Sept. 22, 2025; argued Dec. 8, 2025).** The Questions Presented are: (1) Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor v. United States* should be overruled; and (2) Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

25. ***NRSC v. FEC*, No. 24-621 (6th Cir., 117 F.4th 389; cert. granted June 30, 2025; argued Dec. 9, 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.

26. ***Hamm v. Smith*, No. 24-872 (11th Cir., 2024 WL 4793028; cert. granted June 6, 2025; argued Dec. 10, 2025).** The Question Presented is: Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim.

27. ***FS Credit Corporation 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; argued Dec. 10, 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.

JANUARY CALENDAR

28. ***Chevron USA Incorporated v. Plaquemines Parish, Louisiana*, No. 24-813 (5th Cir., 103 F.4th 324; cert. granted June 16, 2025; argued Jan. 12, 2026).** 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.

29. ***Little v. Hecox*, No. 24-38 (9th Cir., 104 F.4th 1061; cert. granted July 3, 2025; argued Jan. 13, 2026).** 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; argued Jan. 13, 2026).** 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. ***Galette v. New Jersey Transit Corporation*, No. 24-1021 (Pa., 332 A.3d 776; cert granted July 3, 2025; argued Jan. 14, 2026), consolidated with *New Jersey Transit Corporation v. Colt*, No. 24-1113 (N.Y., 2024 WL 4874365; cert granted July 3, 2025; argued Jan. 14, 2026).** The Question Presented is: Whether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes.

    Decided March 4, 2026 (607 U.S. __). Pennsylvania Supreme Court/Reversed and remanded; New York Court of Appeals/Affirmed and remanded. Justice Sotomayor delivered the opinion for a unanimous court. The New Jersey Transit Corporation ("NJ Transit") was created by the New Jersey Legislature to operate public transit in New Jersey, Philadelphia, and New York City. It was set up as an instrumentality of New Jersey whose actions can be vetoed by the governor and legislature. Even so, NJ Transit is a corporation that is not subject to supervision or control by the state transportation agency; has authority to, among other things, sue and be sued, own property, enter into contracts, set rules, and exercise eminent domain powers; it is also responsible for its own debts. After NJ Transit buses injured plaintiffs in Manhattan and Philadelphia on separate occasions, the high courts of New York and Pennsylvania disagreed on whether NJ Transit was an arm of New Jersey entitled to share in New Jersey's interstate sovereign immunity, which insulates the State from suits in other States' courts, or an independent entity not protected by state sovereign immunity. The Supreme Court held that NJ Transit was not an arm of New Jersey. Although the Court's precedents have evolved in how they assess whether an entity is an arm of the State, the central question has always been whether the State structured the entity as a legally separate entity—*i.e.*, one with traditional corporate powers to sue and be sued, hold property, make contracts, and incur debt—that is liable for its own judgments as a formal matter. Functional considerations, such as expectations that the State will reimburse judgments against the entity and whether the State exercises control over it, matter less. Under these principles, the Court determined that NJ Transit was not an arm of the State because it was a separate legal entity possessing typical corporate powers that was formally liable for its own debts and liabilities. True, New Jersey had substantial control over NJ Transit and labeled it as an instrumentality of the state, but NJ Transit was still a legally separate corporation under state law.

32. ***Wolford v. Lopez*, No. 24-1046 (9th Cir., 116 F.4th 959; cert. granted Oct. 3, 2025; argued Jan. 20, 2026).** The Question Presented is: Whether the U.S. Court of Appeals for the 9th Circuit erred in holding that Hawaii may presumptively prohibit

the carry of handguns by licensed concealed carry permit holders on private property open to the public unless the property owner affirmatively gives express permission to the handgun carrier.

33. ***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; argued Jan. 20, 2026).** 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.

34. ***Trump v. Cook*, No. 25A312 (D.C. Cir., 2025 WL 2654786; stay application deferred pending oral argument Oct. 1, 2025; argued Jan. 21, 2026).** The Question Presented is: Whether the Supreme Court should stay the district court's preliminary injunction ordering the reinstatement of a member of the Federal Reserve Board of Governors removed by the President for cause.

FEBRUARY CALENDAR

35. ***Havana Docks Corporation v. Royal Caribbean Cruises, Ltd.*, No. 24-983 (11th Cir., 119 F.4th 1276; CVSG June 30, 2025; cert. recommended Aug. 27, 2025; cert. granted Oct. 3, 2025; argued Feb. 23, 2026).** The Question Presented is: Whether a plaintiff under Title III of the LIBERTAD Act must prove that the defendant trafficked in property confiscated by the Cuban government as to which the plaintiff owns a claim, or instead that the defendant trafficked in property that the plaintiff would have continued to own at the time of trafficking in a counterfactual world "as if there had been no expropriation."

36. ***Exxon Mobil Corporation v. Corporación Cimex, S.A. (Cuba)*, No. 24-699 (D.C. Cir., 111 F.4th 12; CVSG May 5, 2025; cert. recommended Aug. 27, 2025; cert. granted Oct. 3, 2025; argued Feb. 23, 2026).** 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.

37. ***Enbridge Energy, LP v. Nessel*, No. 24-783 (6th Cir., 104 F.4th 958; cert. granted June 30, 2025; argued Feb. 24, 2026).** 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).

38. ***Pung v. Isabella County, Michigan*, No. 25-95 (6th Cir., 2025 WL 318222; cert. granted Oct. 3, 2025; argued Feb. 25, 2026).** The Questions Presented are: (1) Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the takings clause of the Fifth Amendment when the compensation is based on the artificially depressed auction sale price rather than the property's fair market value; and (2) Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for a fraction of its real value constitutes an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed.

39. ***United States v. Hemani*, No. 24-1234 (5th Cir., 2025 WL 354982; cert. granted Oct. 20, 2025; argued Mar. 2, 2026).** The Question Presented is: Whether 18 U.S.C. § 922(g)(3), the federal statute that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violates the Second Amendment as applied to respondent.

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40. ***Hunter v. United States*, No. 24-1063 (5th Cir., 2024 WL 5003582; cert. granted Oct. 10, 2025; argued Mar. 3, 2026).** The Questions Presented are: (1) Whether the only permissible exceptions to a general appeal waiver are for claims of ineffective assistance of counsel or that the sentence exceeds the statutory maximum; and (2) Whether an appeal waiver applies when the sentencing judge advises the defendant that he has a right to appeal and the government does not object.

41. ***Montgomery v. Caribe Transport II, LLC*, No. 24-1238 (7th Cir., 124 F.4th 1053; cert. granted Oct. 3, 2025; argued Mar. 4, 2026).** The Question Presented is: Whether a federal statute, 49 U.S.C. § 14501(c), preempts a state common-law claim against a broker for negligently selecting a motor carrier or driver.

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MARCH CALENDAR

42. ***Watson v. Republican National Committee*, No. 24-1260 (5th Cir., 120 F.4th 200; cert. granted Nov. 10, 2025; argument on Mar. 23, 2026).** The Question Presented is: Whether the federal election-day statutes, 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1, preempt a state law that allows ballots that are cast by federal election day to be received by election officials after that day.

43. ***Keathley v. Buddy Ayers Construction, Inc.*, No. 25-6 (5th Cir., 2025 WL 673434; cert. granted Oct. 20, 2025; argument on Mar. 24, 2026).** The Question Presented is: Whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in bankruptcy filings from pursuing that claim simply because there is a potential motive for nondisclosure, regardless of whether there is evidence that the plaintiff in fact acted in bad faith.

44. ***Mullin v. Al Otro Lado*, No. 25-5 (9th Cir., 120 F.4th 606; cert. granted Nov. 17, 2025; argument on Mar. 24, 2026).** The Question Presented is: Whether an alien who is stopped on the Mexican side of the U.S.–Mexico border "arrives in the United States" within the meaning of the Immigration and Nationality Act, 8 U.S.C. 1101 et seq., which provides that an alien who "arrives in the United States" may apply for asylum and must be inspected by an immigration officer.

45. ***Flower Foods, Inc. v. Brock*, No. 24-935 (10th Cir., 121 F.4th 753; cert. granted Oct. 20, 2025; argument on Mar. 25, 2026).** The Question Presented is: Whether workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders—are "transportation workers" "engaged in foreign or interstate commerce" for purposes of the exemption in Section 1 of the Federal Arbitration Act.

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46. ***Abouammo v. United States*, No. 25-5146 (9th Cir., 122 F.4th 1072; cert. granted Dec. 5, 2025; argument on Mar. 30, 2026).** The Question Presented is: Whether venue is proper in a district where no offense conduct took place, so long as the statute's intent element "contemplates" effects that could occur there.

47. ***Jules v. Andre Balazs Properties*, No. 25-83 (2d Cir., 2025 WL 1201914; cert. granted Dec. 5, 2025; argument on Mar. 30, 2026).** The Question Presented is: Whether a federal court that initially exercises jurisdiction and stays a case pending arbitration maintains jurisdiction over a post-arbitration Section 9 or 10 application where jurisdiction would otherwise be lacking.

48. ***Pitchford v. Cain*, No. 24-7351 (5th Cir., 126 F.4th 422; cert. granted Dec. 15, 2025; argument on Mar. 31, 2026).** The Question Presented is: Whether, under the standards set forth in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254(d), the Mississippi Supreme Court unreasonably determined that petitioner waived his right to rebut the prosecutor's asserted race-neutral reasons for exercising peremptory strikes against four black jurors.

49. ***Trump v. Barbara*, No. 25-365 (D.N.H., 2025 WL 1904338; cert. before judgment granted Dec. 5, 2025; argument on Apr. 1, 2026).** The Question Presented is: Whether Executive Order No. 14,160 complies on its face with the citizenship clause of the 14th Amendment and with 8 U.S.C. § 1401(a), which codifies that clause.

Cases Scheduled for Oral Argument

APRIL CALENDAR

50. ***Sripetch v. Securities and Exchange Commission*, No. 25-466 (9th Cir., 154 F.4th 980; cert. granted Jan. 9, 2026; argument on Apr. 20, 2026).** The Question Presented is: Whether the SEC may seek equitable disgorgement under 15 U.S.C. § 78u(d)(5) and (d)(7) without showing investors suffered pecuniary harm.

51. ***T. M. v. University of Maryland Medical System Corporation*, No. 25-197 (4th Cir., 139 F.4th 344; cert. granted Dec. 5, 2025; argument on Apr. 20, 2026).** The Question Presented is: Whether the *Rooker-Feldman* doctrine can be triggered by a state-court decision that remains subject to further review in state court.

52. ***Federal Communications Commission v. AT&T, Inc.*, No. 25-406 (5th Cir., 149 F.4th 491; cert. granted Jan. 9, 2026; argument on Apr. 21, 2026), consolidated with *Verizon Communications Inc. v. Federal Communications Commission*, No. 25-567 (2d Cir., 156 F.4th 86; cert. granted Jan. 9, 2026; argument on Apr. 21, 2026).** The Question Presented is: Whether the Communications Act provisions that govern the FCC's assessment and enforcement of monetary forfeitures are consistent with the Seventh Amendment and Article III.

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Partners
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53. ***Blanche v. Lau*, No. 25-429 (2d Cir., 130 F.4th 42; cert. granted Jan. 9, 2026; argument on Apr. 22, 2026).** The Question Presented is: Whether, to remove a lawful permanent resident who committed an offense listed in Section 1182(a)(2) and was subsequently paroled into the United States, the government must prove that it possessed clear and convincing evidence of the offense at the time of the lawful permanent resident's last reentry into the United States.

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Partner
Lauren M. Blas

54. ***Chatrie v. United States*, No. 25-112 (4th Cir., 136 F.4th 100; cert. granted Jan. 16, 2026; argument on Apr. 27, 2026).** The Question Presented is: Whether the execution of a geofence warrant violated the Fourth Amendment.

55. ***Monsanto Company v. Durnell*, No. 24-1068 (Mo. Ct. App., 707 S.W.3d 828; CVSG June 30, 2025; cert. recommended Dec. 1, 2025; cert. granted Jan. 16, 2026; argument on Apr. 27, 2026).** The Question Presented is: Whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts a state-law failure-to-warn claim when the Environmental Protection Agency has repeatedly concluded that the warning is not required and the warning cannot be added to a product without EPA approval.

56. ***Cisco Systems, Inc. v. Doe I*, No. 24-856 (9th Cir., 73 F.4th 700; CVSG May 27, 2025; cert. recommended Dec. 9, 2025; cert. granted Jan. 9, 2026; argument on Apr. 28, 2026).** The Questions Presented are: (1) Whether the Alien Tort Statute allows a judicially-implied private right of action for aiding and abetting; and (2) Whether the Torture Victim Protection Act allows a judicially-implied private right of action for aiding and abetting.

57. ***Mullin v. Doe*, No. 25-1083 (S.D.N.Y., 2025 WL 4477179; cert. before judgment granted Mar. 16, 2026; argument on Apr. 29, 2026), consolidated with *Trump v. Miot*, No. 25-1084 (D.D.C., 2026 WL 266413; cert. before judgment granted Mar. 16, 2026; argument on Apr. 29, 2026).** The Question Presented is: Whether the Court should stay the district courts' orders postponing the effective dates of the Secretary of Homeland Security's decisions terminating Temporary Protected Status designations for Syria and Haiti.

58. ***Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*, No. 24-889 (Fed. Cir., 104 F.4th 1370; CVSG June 23, 2025; cert. recommended Dec. 5, 2025; cert. granted Jan. 16, 2026; argument on Apr. 29, 2026).** 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.

Cases To Be Argued Next Term

1. ***Anderson v. Intel Corporation Investment Policy Committee*, No. 25-498 (9th Cir., 137 F.4th 1015; cert. granted Jan. 16, 2026).** The Question Presented is: Whether, for claims predicated on fund underperformance, pleading that an ERISA fiduciary failed to use the requisite "care, skill, prudence, or diligence" under the circumstances and thus breached ERISA's duty of prudence when investing plan assets requires alleging a "meaningful benchmark."

2. ***Salazar v. Paramount Global*, No. 25-459 (6th Cir., 133 F.4th 642; cert. granted Jan. 26, 2026).** The Question Presented is: Whether the phrase "goods or services from a video tape service provider," as used in the Video Privacy Protection Act's definition of "consumer," refers to all of a video tape service provider's goods or services or only to its audiovisual goods or services.

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3. ***Suncor Energy Inc. v. County Commissioners of Boulder County*, No. 25-170 (Colo., 2025 WL 1363355; cert. granted Feb. 23, 2026).** The Questions Presented are: (1) Whether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate; and (2) Whether this Court has statutory and Article III jurisdiction to hear this case.

4. ***Department of the Air Force v. Prutehi Guahan*, No. 25-579 (9th Cir., 128 F.4th 1089; cert. granted Mar. 9, 2026).** The Questions Presented are: (1) Whether the federal government's submission to a state or territorial regulator of an application to renew a Resource Conservation and Recovery Act of 1976 (RCRA) permit is "final agency action" that is immediately reviewable under the Administrative Procedure Act; and (2) Whether the federal government must comply with the general environmental-review procedures of the National Environmental Policy Act of 1969, before submitting a permit-renewal application under RCRA, which sets forth its own specific procedures to review environmental impacts in the context of hazardous-waste treatment.

5. ***Younge v. Fulton Judicial Circuit District Attorney's Office, Georgia*, No. 25-352 (11th Cir., 2025 WL 974309; cert. granted Mar. 30, 2026).** The Question Presented is: Whether, where a defendant has filed an answer without pleading an affirmative defense, the defendant may nonetheless assert that affirmative defense as the basis for a summary judgment motion, without amending or seeking to amend its answer to plead that affirmative defense, and whether a defendant may do so even if an amendment adding that affirmative defense would be barred by Rule 16(b)(4).

6. ***Johnson v. United States Congress*, No. 25-735 (11th Cir., 151 F.4th 1287; cert. granted Apr. 6, 2026).** The Question Presented is: Did the Veterans' Judicial Review Act strip district courts of the jurisdiction, recognized by this Court in *Johnson v. Robison*, 415 U.S. 361 (1974), to hear challenges to the constitutionality of acts of Congress affecting veterans' benefits?

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

1. ***Cotter Corporation v. Mazzocchio*, No. 24-1001 (8th Cir., 120 F.4th 565; CVSG Oct. 6, 2025).** The Question Presented is: Whether federal nuclear safety regulations preempt state tort standards of care in public liability actions.

2. ***RiseandShine Corporation v. PepsiCo, Inc.*, No. 24-1016 (2d Cir., 2024 WL 5165388; CVSG Oct. 6, 2025).** The Question Presented is: Whether trademark strength is a question of fact in a likelihood-of-confusion analysis under 15 U.S.C. § 1114.

3. ***Spain v. Blasket Renewable Investments, LLC*, No. 24-1130 (D.C. Cir., 112 F.4th 1088; CVSG Oct. 6, 2025).** The Questions Presented are: (1) Whether 28 U.S.C. § 1605(a)(6) allows United States courts to assert jurisdiction over a foreign sovereign without determining whether the sovereign consented to arbitrate differences between itself and the plaintiff; and (2) Whether, in suits to confirm foreign arbitral awards, *forum non conveniens* dismissal is categorically unavailable, unavailable in at least some suits, or depends on the facts of each case.

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4. ***Renteria v. New Mexico Office of the Superintendent of Insurance*, No. 25-113 (10th Cir., 2025 WL 635754; CVSG Oct. 14, 2025).** The Questions Presented are: (1) Under *Employment Division v. Smith*, 494 U.S. 872 (1990), whether state laws must always be deemed "neutral" unless plaintiffs prove officials acted against them with subjective religious animus and discriminatory motive; (2) Under *Smith*, whether courts determining a law's "general applicability" must disregard the law's preference for secular over religious organizations on the grounds that secular and religious organizations are inherently motivated by different purposes and thus incomparable; (3) Whether hostile statements of government actors against religious adherents are sufficient to establish a First Amendment free exercise violation, or whether states may try to justify their hostility by satisfying strict scrutiny; and (4) Whether the Affordable Care Act (ACA)'s exemption for individuals who participate in health care sharing ministries (HCSMs) preempts New Mexico's determination that those individuals' HCSMs may not operate in New Mexico until they forfeit their federal statuses as HCSMs under the ACA.

5. ***Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, No. 25-119 (5th Cir., 132 F.4th 353; CSVG Oct. 14, 2025).** The Questions Presented are: (1) Whether a bankruptcy court can act as a gatekeeper to screen noncolorable lawsuits against nondebtor bankruptcy participants; and (2) Whether a bankruptcy court can to a limited degree exculpate nondebtor bankruptcy participants from liability for conduct arising from the bankruptcy process.

6. ***Nebraska v. Colorado*, No. 25O161 (Original Jurisdiction; CVSG Nov. 17, 2025).** The Question Presented is: Whether Colorado has violated the South Platte River Compact between it and Nebraska by allowing water diversions and frustrating Nebraska's efforts to construct a canal.

7. ***Doe v. Hochul*, No. 24-1015 (2d Cir., 2024 WL 5182675; CSVG Dec. 8, 2025).** The Questions Presented are: (1) Whether compliance with state laws directly contrary to Title VII of the Civil Rights Act of 1964's requirement to provide a reasonable accommodation for religious beliefs may serve as an undue hardship justifying an employer's noncompliance with Title VII; and (2) Whether a state law that requires employers to deny without any consideration all requests by employees for a religious accommodation, contrary to Title VII's religious nondiscrimination provision, is preempted by Title VII and the Supremacy Clause of the Constitution.

8. ***Hoffmann v. WBI Energy Transmission, Inc.*, No. 25-159 (8th Cir., 132 F.4th 1058; CVSG Dec. 8, 2025).** The Question Presented is: Whether in private condemnations under the Natural Gas Act, just compensation should be determined by reference to state law.

9. ***Crowther v. Board of Regents of the University System of Georgia*, No. 25-183 (11th Cir., 121 F.4th 855; CSVG Dec. 8, 2025).** The Question Presented is: Whether Title IX provides employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment.

10. ***Wells Pharma of Houston, LLC. v. Zyla Life Sciences, LLC*, No. 25-257 (5th Cir., 134 F.4th 326; CVSG Jan. 12, 2026).** The Question Presented is: Whether the Federal Food, Drug, and Cosmetic Act preempts private state-law unfair competition and consumer protection claims premised on the marketing of compounded drugs without premarket approval.

11. ***General Dynamics Corporation v. Scharpf*, No. 25-293 (4th Cir., 137 F.4th 188; CVSG Jan. 12, 2026).** The Question Presented is: Whether plaintiffs adequately plead that defendants engaged in fraudulent concealment, for purposes of tolling the 15 U.S.C. § 15b (Clayton Act) statute of limitations, by alleging that defendants maintained an unwritten agreement.

12. ***Aldridge v. Regions Bank*, No. 25-590 (6th Cir., 144 F.4th 828; CVSG Apr. 6, 2026).** The Questions Presented are: (1) Whether, when proceeding under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3), a beneficiary may seek surcharge, a remedy that this Court has described as being "exclusively equitable"; and (2) Whether, if surcharge is unavailable under § 1132(a)(3), a beneficiary may pursue state-law claims arising out of a contract that is separate and apart from an ERISA plan and that is not required by the plan, or whether these state-law claims are preempted, thereby leaving the beneficiary without a remedy under either federal or state law.

CVSG: Petitions In Which The Solicitor General Supported Certiorari

1. ***Parker-Hannifin Corporation v. Johnson*, No. 24-1030 (6th Cir., 122 F.4th 205; CVSG June 30, 2025; cert. recommended Dec. 9, 2025).** The Question Presented is: Whether pleading an imprudent-investment claim under ERISA, based on how the investment's returns compared to some performance benchmark, requires allegations showing that the benchmark is a sound basis for comparison for that investment.

CVSG: Petitions In Which The Solicitor General Opposed Certiorari

1. ***Wye Oak Technology, Inc. v. Republic of Iraq*, No. 24-759 (D.C. Cir., 109 F.4th 509; CVSG Apr. 28, 2025; cert. opposed Sept. 15, 2025; cert. denied Nov. 10, 2025).** The Questions 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. ***Agudas Chasidei Chabad of United States v. Russian Federation*, No. 24-909 (D.C. Cir., 110 F.4th 242; CVSG June 2, 2025; cert. opposed Dec. 9, 2025; cert. denied Jan. 20, 2026).** 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.

3. ***Duke Energy Carolinas, LLC v. NTE Carolinas II, LLC*, No. 24-917 (4th Cir., 111 F.4th 337; CVSG June 2, 2025; cert. opposed Dec. 1, 2025; cert. denied Jan. 12, 2026).** 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.

4. ***The Hertz Corporation v. Wells Fargo Bank, N.A.*, No. 24-1062 (3d Cir., 120 F.4th 1181; CVSG June 2, 2025; cert. opposed Dec. 3, 2025; cert. denied Jan. 12, 2026).** 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.

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 28 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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Special thanks to Shannon Bader, Daniella Cass, Ester Cross, Nat Deacon, Riley Segars, David Tye, Kevin Wang, and Phillip Yan for their contributions to the Round-Up.

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