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GIBSON DUNN

U.S. Supreme Court Round-Up

October Term 2025

The Supreme Court Round-Up summarizes opinions, previews upcoming cases, 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; argued 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. 465). 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). David 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; argued 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. 187). 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 Ann. 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; argued 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. 627). 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; argued 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. 128). 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; argued 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. 71). 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 counting 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 he is 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 him 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; argued 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. 391). 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, intentional or otherwise. 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; argued Oct. 14, 2025).** The Questions Presented are: (1) Whether 28 U.S.C. § 2244(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. 13). 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 filing; § 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 in full by Justices Thomas and Alito and on the jurisdictional issue by Justice 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; argued Oct. 14, 2025).** The Question Presented is: Whether criminal restitution under the Mandatory Victims Restitution Act is penal for purposes of the Ex Post Facto Clause.

   Decided Jan. 20, 2026 (607 U.S. 163). 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.

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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; argued Oct. 15, 2025), consolidated with *Robinson v. Callais*, No. 24-110 (W.D. La., 732 F. Supp. 3d 574; probable jurisdiction noted Nov. 4, 2024; argued Mar. 24, 2025; set for reargument June 27, 2025; argued 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.

   Decided Apr. 29, 2026 (608 U.S. 85). District Court for the Western District of Louisiana/Affirmed and remanded. Justice Alito delivered the opinion of the Court (Thomas, J., joined by Gorsuch, J., concurring) (Kagan, J., joined by Sotomayor and Jackson, JJ., dissenting). In 2022, Louisiana enacted a House district map, HB1, that included only one district in which black voters formed most of the voting-age population. HB1 was challenged in court under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and a federal district court concluded that HB1 likely violated Section 2 by failing to include a second majority-minority district. In response, Louisiana enacted a new district map, SB8, to add a second majority-minority district. SB8 was then challenged in a new lawsuit, with the plaintiffs claiming that SB8 was an unconstitutional racial gerrymander that violated the Equal Protection Clause of the Fourteenth Amendment. A three-judge district-court panel agreed that SB8 was an unconstitutional racial gerrymander, and the Supreme Court noted probable jurisdiction to hear a direct appeal. After the initial argument, which focused largely on standing and the racial-gerrymander ruling itself, the Court set the case for reargument and directed the parties to address the broader question the Court had repeatedly reserved in prior cases: whether a state's intentional creation of an additional majority-minority district to comply with Section 2 of the Voting Rights Act violates the Fourteenth or Fifteenth Amendments. After reargument, the Supreme Court affirmed the three-judge panel. The Court held, for the first time, that compliance with Section 2, "*properly construed*," "can indeed provide a compelling reason for race-based districting." But the Court also held that Section 2 must be construed narrowly so that it "does not impose liability at odds with the Constitution." The Court emphasized "the general rule that the Constitution almost never permits the Federal Government or a State to discriminate on the basis of race" and that the Fifteenth Amendment forbids only intentional discrimination in voting laws. Thus, the Court construed Section 2 to mean that minority voters are entitled to "nothing less and nothing more" than the same opportunity "to contribute their votes to a winning cause" as other voters in whatever districting or election system "results from the application of the State's combination of permissible criteria." Because the Voting Rights Act was enacted pursuant to Congress's enforcement authority under the Fifteenth Amendment, the Court concluded that Section 2 liability must be limited to circumstances that produce "a strong inference that intentional discrimination occurred." Along the way, the Court substantially revised the traditional multifactor test for voter dilution under Section 2 originally set out in *Thornburg v. Gingles*, 478 U.S. 30 (1986), emphasizing that plaintiffs cannot use race as a criterion in designing proposed alternative district maps; that illustrative maps must comply with "all the State's legitimate districting objectives," including partisan and incumbent protection; that any analysis of racially polarized voting must "contro[l] for party affiliation"; and that discrimination "that occurred some time ago" is "entitled to much less weight." Applying its newly formulated Section 2 framework, the Court then held that because Section 2 "did not require Louisiana to create an additional majority-minority district" in this case, "no compelling interest justified the State's use of race in creating SB8." Concurring, Justice Thomas, joined by Justice Gorsuch, reiterated his view that Section 2 "does not regulate districting at all." Dissenting, Justice Kagan, joined by Justices Sotomayor and Jackson, warned that "[u]nder the Court's new view of Section 2, a State can, without legal consequence, systematically dilute minority citizens' voting power."

10. ***Case v. Montana*, No. 24-624 (Mont., 553 P.3d 985; cert. granted June 2, 2025; argued 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. 107). 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 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. 609). 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 the abscondment 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.

    Decided Apr. 22, 2026 (608 U.S. 31). Fourth Circuit/Vacated and remanded. Justice Thomas delivered the opinion of the Court (Alito, J., joined by Roberts, C.J., and Kavanaugh, J., dissenting). In 2016, a Taliban operative employed by military contractor Fluor Corporation carried out a suicide bombing at Bagram Airfield in Afghanistan, killing five and wounding seventeen. The operative had been hired by

Fluor pursuant to the military's "Afghan First" initiative—which required contractors to maximize the employment of Afghans—and had been vetted and cleared for employment by the military. Former Army Specialist Winston Hencely, who suffered permanent brain injuries while intercepting the attacker, sued Fluor under South Carolina law for negligent supervision, negligent entrustment of tools, and negligent retention. The district court and Fourth Circuit held the claims were preempted under a "battlefield preemption" doctrine, reasoning that the FTCA's combatant-activities exception, 28 U.S.C. § 2680(j), reflects a congressional intent to bar all tort suits against military contractors arising from combatant activities. The Supreme Court disagreed, holding that the Fourth Circuit's broad preemption rule lacked any foundation in the Constitution, federal statutes, or the Court's precedents. The Court reaffirmed that federal preemption must derive from the Constitution or a federal statute, and that neither the Constitution nor the FTCA expressly preempted Hencely's suit. By its terms, the combatant-activities exception under the FTCA applies only to suits against the federal government, not federal contractors. Turning to *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), on which the Fourth Circuit had relied, the Court held that *Boyle* does not support blanket preemption of contractor suits arising in a wartime setting. *Boyle* requires a "significant conflict" between an identifiable federal policy and the operation of state law, and it protects contractors only when the government directed them to do the very thing challenged in the suit. Because Fluor's alleged negligence consisted of conduct the military neither directed nor authorized—and indeed allegedly prohibited—there was no significant conflict between federal interests and state-law negligence liability. The Court also rejected the argument that the Constitution's grant of war powers to Congress and the President implicitly bars all war-related state tort suits, noting that war powers have never been understood to foreclose such suits entirely. Absent a federal statute, contractors have a constitutional defense only when sued precisely for accomplishing what the federal government requested—a standard that could not be met where Fluor was alleged to have acted outside the authority the military granted it. Justice Alito, joined by the Chief Justice and Justice Kavanaugh, dissented, arguing that allowing state tort law to govern security arrangements on a foreign military base in an active war zone impermissibly intrudes on the federal government's exclusive constitutional authority to conduct war and foreign affairs, and that adjudicating Fluor's defenses would inevitably require evaluating military policy judgments.

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. 155). 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 adversary 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. 421). 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 court 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 Trump; and (2) If IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President.

    Decided Feb. 20, 2026 (607 U.S. 229). District Court for the 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 and 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.

Decided June 23, 2026 (609 U.S. 59). Fifth Circuit/Affirmed. Justice Gorsuch delivered the opinion of the Court (Jackson, J., joined by Sotomayor and Kagan, JJ., dissenting). Damon Landor, a Rastafarian prisoner whose faith requires him to leave his hair uncut, alleged that Louisiana corrections officers forcibly shaved his head in violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Landor sued both the Louisiana Department of Corrections and the individual officers in their personal capacities for damages. The district court dismissed both claims. On appeal Landor pursued only his claims against the officers, arguing that RLUIPA's authorization of "appropriate relief" against any "person acting under color of state law" entitled him to seek damages directly from the officers. The Fifth Circuit held that RLUIPA does not authorize suits against officers in their individual capacity. Before the Supreme Court, the parties disputed both whether RLUIPA permits damages suits at all and whether, consistent with the Constitution, RLUIPA permits suits against officers who had never consented to RLUIPA liability. The Court reached only the second issue and resolved it in the negative, holding that, as to statutes like RLUIPA enacted under the Spending Clause, Congress cannot authorize personal-capacity suits against individuals who have not individually agreed to answer such lawsuits. When Congress exercises its constitutional authority to spend money, such a statute "lacks independent regulatory force" and binds only those who "voluntarily and knowingly" consent to its terms. Drawing on well-established contract principles to determine whether the requisite consent existed, the Court held that the Louisiana Department of Corrections had consented to RLUIPA liability as a condition of federal funding, but the officers had not. The Court also rejected Landor's invocation of the Necessary and Proper Clause, explaining that a personal-capacity suit against officers is not incidental to Congress's spending power. Justice Jackson, joined by Justices Sotomayor and Kagan, dissented, calling the majority's contract analogy a "dramatic innovation" that contradicts precedent allowing the use of the Spending Clause to regulate nonrecipients of federal funds to protect the integrity and operation of the federal program, and arguing that the Necessary and Proper Clause empowers Congress to enforce RLUIPA through damages against the officials.

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. 438). 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 view, 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.

    Decided May 28, 2026 (608 U.S. 411). Second Circuit/Affirmed. Justice Barrett delivered the opinion of the Court (Sotomayor, J., joined by Kagan, J., concurring in the judgment) (Jackson, J., dissenting). Joe Fernandez was convicted of murder for hire and related firearms offenses for his role in the assassination of two gang members. After mostly unsuccessful direct appeals and rounds of postconviction proceedings under 28 U.S.C. § 2255, Fernandez challenged his conviction by seeking compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). He argued that his alleged actual innocence constituted an "extraordinary and compelling" reason for a sentence reduction. Although the district court granted relief based on doubts about the verdict, the Second Circuit reversed, holding that challenges to the validity of a conviction are not cognizable under § 3582. The Supreme Court affirmed. The Court held that prisoners seeking to challenge the validity of their convictions must proceed under § 2255, not § 3582. Allowing conviction challenges through the compassionate-release statute would circumvent § 2255's carefully crafted procedural limitations, including its restrictions on successive petitions and relitigation of claims. The Court also rejected Fernandez's argument that the statutes' different remedies permitted him to proceed under either one, explaining that compassionate release is designed to reduce otherwise valid sentences based on extraordinary personal circumstances, whereas § 2255 provides the appropriate remedy—vacatur—for an invalid conviction. Justice Sotomayor concurred in the judgment, reasoning that Fernandez's motion failed because it relied only on facts already considered at sentencing rather than changed circumstances arising afterward. Justice Jackson dissented, arguing that § 3582 operates independently of § 2255 and contains no categorical bar against considering conviction-related concerns when deciding whether compassionate release is warranted.

19. ***Rutherford v. United States*, No. 24-820 (3d Cir., 120 F.4th 360; cert. granted June 6, 2025; argued Nov. 12, 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).

Decided May 28, 2026 (608 U.S. 454). Third Circuit/Affirmed. Justice Barrett delivered the opinion of the Court (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting). Daniel Rutherford and Johnnie Carter were convicted of multiple violations of 18 U.S.C. § 924(c) and received lengthy mandatory sentences under the statute's then-existing "stacking" provision. Although Congress later eliminated that stacking requirement for first-time offenders in the First Step Act, it did not make the change retroactive. Rutherford and Carter nevertheless sought compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), arguing that the disparity between their sentences and those imposed under current law constituted an "extraordinary and compelling" reason for a sentence reduction. The Third Circuit rejected that argument, despite a 2023 Sentencing Commission policy statement permitting courts to consider certain sentencing disparities, and the Supreme Court affirmed. Focusing on the statutory text, the Court held that sentencing disparities resulting from Congress's decision not to make a sentencing amendment retroactive are neither "extraordinary" nor "compelling" within the meaning of § 3582(c)(1)(A)(i). Such disparities are ordinary because non-retroactive sentencing changes are the norm, and they are not compelling because they reflect Congress's deliberate decision to withhold the benefit of the new law from previously sentenced defendants. The Court also held that the Sentencing Commission's contrary policy statement could not override the statute because courts must independently interpret and apply Congress's enactments. Justice Sotomayor (joined by Justices Kagan and Jackson) dissented, arguing that Congress delegated to the Sentencing Commission the authority to define "extraordinary and compelling" reasons and that the Commission reasonably exercised that authority.

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).

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Decided Mar. 4, 2026 (607 U.S. 537). 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 of 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, 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 Mar. 25, 2026 (607 U.S. 583). 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 either that Cox had 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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    Decided Apr. 29, 2026 (608 U.S. 174). Third Circuit/Reversed and remanded. Justice Gorsuch delivered the opinion for a unanimous Court. New Jersey's Attorney General created a "Reproductive Rights Strike Force," which issued a consumer alert accusing groups like First Choice Women's Resource Centers, a religious nonprofit that provides counseling and resources to pregnant women, of providing false or misleading abortion-related information. The Attorney General then served a subpoena on First Choice that demanded documents that would reveal donors' personal identification and contact information and warned that failure to comply could result in contempt or other penalties. First Choice sued in federal court under 42 U.S.C. § 1983, claiming the demand violated its First Amendment right to freedom of association by compelling disclosure of the information of donors who want to stay anonymous and thus discouraging donors from associating with First Choice in the future. The district court and Third Circuit held that First Choice lacked Article III standing to challenge the subpoena in federal court because, absent a court order actually compelling production, First Choice had not yet suffered an injury. The Supreme Court reversed, holding that the issuance of the subpoena, even before enforcement, created a present injury to First Choice's First Amendment associational rights sufficient to confer Article III standing. A demand for private donor information serves to "chill" First Amendment rights by discouraging donors from associating with an organization—and that injury arises "not just when a demand is enforced, but when it is made and for as long as it remains outstanding." New Jersey argued that because the subpoena was not self-executing, First Choice had no duty to produce until the state enforced the subpoena, but the Court held that argument inadequate, noting that even a non-self-executing subpoena can cause reasonable donors to fear disclosure: "[T]he value of a sword of Damocles is that it hangs—not that it drops." The Court also disagreed that New Jersey's assent to a forthcoming order to keep any produced document confidential eliminated the injury, reasoning that "[e]ven if there [is] no disclosure to the general public," the "pressure" to avoid disfavored ties and speech as a result of compelled disclosure to the government can "be constant and heavy." The Court's decision means that organizations of all stripes targeted by state and federal officials for their First Amendment-protected advocacy will more readily have recourse in federal court to challenge governmental demands for information.

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; and (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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Decided Mar. 20, 2026 (607 U.S. 552). 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.

    Decided June 29, 2026 (609 U.S. 422). District Court for the District of Columbia/Reversed and remanded. Chief Justice Roberts delivered the opinion of the Court (Gorsuch, J., concurring) (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting). In creating the Federal Trade Commission ("FTC"), Congress provided that Commissioners can only be removed due to "inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. President Trump, however, removed Commissioner Rebecca Slaughter from her position without complying with that limitation. Slaughter sued, seeking reinstatement; the district court held that her removal was unlawful under *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), which had upheld the FTC's for-cause removal restrictions. The Supreme Court reversed, holding that the for-cause removal restriction violated the separation of powers, and overruled *Humphrey's Executor*. The Court explained that constitutional text and structure, history, and precedent both before and after *Humphrey's Executor* all require that the President be able to remove at will all principal officers exercising the executive power. The Constitution vests all of "[t]he executive Power" in a single President who must "take Care that the Laws be faithfully executed"; to fulfill his constitutional duty, the President must have power to superintend and, if necessary, remove officers tasked with executing the laws on the President's behalf. The FTC's Commissioners, the Court explained, fit that bill; the agency exercises significant executive power, including by "promulgat[ing] substantive rules that carry the force of law," "investigat[ing] businesses to ensure they comply with its statutes and rules," "enforc[ing] those statutes and rules through in-house adjudications," and "fil[ing] civil suits on behalf of the United States in federal court." The FTC "must therefore be controlled by the Chief Executive, in whom such power is vested," meaning "the President was entitled to cut [Slaughter's] tenure short." The Court left open whether non-Article III judges are subject to the same rule and whether certain functions "traditionally handled outside the Executive Branch"—like the banking operations of the Federal Reserve addressed in the concurrently issued *Cook* decision—can be independent of the President. Justice Gorsuch concurred to note that, while correct, the Court's decision would place large amounts of delegated legislative and judicial powers within the President's hands and that the Court had further work to do to "restore legislative and judicial powers to where they belong: in Congress and the courts." Justice Sotomayor, joined by Justices Kagan and Jackson, dissented, arguing that *stare decisis* supported upholding *Humphrey's Executor* and that, under first principles, Congress's power to create federal agencies allows it to "limit the causes for which the heads of Commissions like the FTC can be removed by the President."

25. ***National Republican Senatorial Committee v. Federal Election Commission*, 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.

    Decided June 30, 2026 (609 U.S. __). Sixth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Kagan, J., joined by Sotomayor and Jackson, JJ., dissenting). The Federal Election Campaign Act ("FECA") limits political parties' expenditures made in coordination with candidates, while permitting unlimited independent expenditures. 52 U.S.C. § 30116(d). In *Federal Election Commission v. Colorado Republican Federal Campaign Committee* (*Colorado II*), 533 U.S. 431 (2001), the Court upheld those limits as a means of preventing circumvention of contribution limits. In 2022, Republican Party committees and candidates challenged the limits under the First Amendment. The *en banc* Sixth Circuit upheld them under *Colorado II*, although a majority of its judges questioned that precedent. The Supreme Court reversed, holding that the limits violate the First Amendment. The Court reasoned that preventing *quid pro quo* corruption or its appearance is the only permissible interest supporting campaign-finance restrictions and that *Colorado II*'s "undue influence" rationale had been repudiated in *McCutcheon v. FEC*, 572 U.S. 185 (2014), and *FEC v. Ted Cruz for Senate*, 596 U.S. 289 (2022). The Court explained that circumvention of candidate contribution limits through party contributions is already addressed by less-restrictive measures, such as base contribution limits, earmarking limitations, and donor and spending disclosure requirements. Those measures provide "prophylaxis upon prophylaxis upon prophylaxis," making the coordinated-expenditure limits a disproportionate fourth layer that cannot survive the "rigorous" scrutiny required under the Court's more recent precedents. The Court also observed that a majority of States permit party coordinated expenditures for "state-level" candidates without evidence of resulting *quid pro quo* corruption. The Court thus concluded that *Colorado II* had been undermined by subsequent legal and factual developments and deemed it overruled. It emphasized that the ruling allows political parties to compete more freely with outside groups such as Super PACs, but expressly declined to address limits on coordinated expenditures by outside groups. Justice Kagan, joined by Justices Sotomayor and Jackson, dissented, arguing that coordinated-expenditure caps are a necessary backstop against circumvention of contribution limits and corresponding opportunities for *quid pro quo* corruption and warned that the decision leaves campaign finance law a "remnant of a remnant."

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.

    Decided May 21, 2026 (608 U.S. 278). Eleventh Circuit/Dismissed as improvidently granted. Per curiam (Sotomayor, J., joined by Jackson, J., concurring) (Thomas, J., dissenting) (Alito, J., joined by Thomas, J., in part by Roberts, C.J., and Gorsuch, J., dissenting). In 1998, Joseph Smith was convicted of first-degree murder and sentenced to death in Alabama. The Supreme Court later ruled in *Atkins v. Virginia*, 535 U.S. 304 (2002), that the Eighth Amendment's protection against cruel and unusual punishments prohibits the execution of intellectually disabled persons. Smith petitioned for federal habeas relief, asserting that he is intellectually disabled under Alabama's application of *Atkins*, which requires that a defendant seeking protection from the death penalty demonstrate "significantly subaverage intellectual functioning (an IQ of 70 or below).” *Ex parte Perkins*, 851 So.2d 453, 456 (Ala. 2002). In assessing the petition, the district court considered Smith’s scores on five separate IQ tests, which ranged from 72 to 78 and had a margin of error that extended to a lowest score of 69. The district court granted Smith habeas relief. The Eleventh Circuit affirmed based on a holistic review of the complete evidentiary record, including the IQ test scores and expert testimony. The Supreme Court granted the State’s petition for certiorari to answer “[w]hether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim.” In a single-sentence per curiam opinion, the Court dismissed the case as improvidently granted. Concurring, Justice Sotomayor, joined by Justice Jackson, argued that dismissal was proper because litigation in the lower courts had not meaningfully addressed how to consider multiple IQ scores; neither the district court nor the Eleventh Circuit had explicitly discussed whether or how courts must consider the “cumulative effect” of various IQ scores. Justice Thomas dissented separately to urge the overruling of *Atkins*, arguing that the Eighth Amendment prohibits only “*methods* of punishment,” and that “death, by itself, is not” cruel and unusual. In a dissent joined by Justice Thomas and in part by Chief Justice Roberts and Justice Gorsuch, Justice Alito suggested various methods for courts to measure a defendant’s “true” IQ from multiple IQ tests. He also argued, in a section of his dissent that Chief Justice Roberts and Justice Gorsuch did not join, that the lower courts “did not apply any defensible method to determine Smith’s IQ” and that the Court should have remanded Smith’s case to allow for a “proper analysis.”

27. ***FS Credit Opportunities 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; 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.

    Decided June 11, 2026 (608 U.S. 608). Second Circuit/Reversed and remanded. Justice Barrett delivered the opinion of the Court (Kagan, J., dissenting) (Jackson, J., joined by Sotomayor, J., and in part by Kagan, J., dissenting). So-called “activist investors” Saba Capital Master Fund, Ltd. and Saba Capital Management, L.P. (“Saba”) sued several funds for purportedly violating the Investment Company Act (“ICA”)’s requirement that “every share of stock . . . have equal voting rights,” 15 U.S.C. § 80a-18(i), by adopting resolutions limiting the voting rights of large shareholders. Saba argued that it had a cause of action under Section 47(b) of the ICA, which provides that, “at the instance of any party,” “a court may not deny rescission” of contracts that violate the ICA. 15 U.S.C. § 80a-46(b)(2). The district court and Second Circuit held that Section 47(b) creates an implied right of action, but the Supreme Court disagreed, holding that the phrase “rescission at the instance of any party” does not create an implied private right of action. Implying private rights of action is disfavored, given that Congress and not the courts decide who can enforce federal law. And Section 47(b)’s text and structure give no indication that Congress implicitly created a right of action: The provision contains no rights-creating language but instead simply directs courts not to deny the remedy of rescission to parties who are already in court; Congress created a “comprehensive agency enforcement scheme” giving the Securities and Exchange Commission primary responsibility for enforcing the ICA, suggesting that private parties generally cannot sue to enforce the statute; and Congress elsewhere in the ICA expressly provided for private rights of action, undermining the notion that Section 47(b) “implicitly created a private remedy.” The Court rejected the argument that legislative history is relevant to this question, declining to engage in a “‘psychoanalysis of Congress’” and reinforcing the notion that “[t]he judicial task is to read words, not minds." Justice Kagan briefly dissented to note her position that the text, structure, and history of Section 47(b) unambiguously support finding an implied right of action. Justice Jackson, joined by Justice Sotomayor and in part by Justice Kagan, also dissented, arguing that the Court should consult "all reliable indicia of Congress's intent when interpreting its statutes," including legislative history, and that both Section 47(b)'s text and context and its legislative history indicate that Congress intended to create a 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.

    Decided Apr. 17, 2026 (608 U.S. 1). Fifth Circuit/Vacated and remanded. Justice Thomas delivered the opinion of the Court (Jackson, J., concurring in the judgment). Justice Alito took no part in the decision. Plaquemines Parish sued Chevron, alleging that Chevron's crude-oil production within the Parish violated the Louisiana State and Local Coastal Resources Management Act. Chevron removed the case to federal court under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). That statute permits removal if three conditions are satisfied: (1) the defendant must be the United States, a federal agency, officer, or a person "acting under" a federal officer, (2) the suit must be "for or relating to any act under color of such office," and (3) the removing defendant must assert a "colorable federal defense." Chevron argued that the lawsuit was removable because it challenged Chevron's crude-oil production during World War II, which related to its performance of a federal contract to refine aviation gasoline ("avgas") for the military. The district court rejected this argument and was affirmed by the Fifth Circuit. But the Supreme Court disagreed. It held that Chevron's case "fits comfortably" within the ordinary meaning of "relating to" the performance of federal duties. The Court explained that "relating to" sweeps broadly. It does not require a strict causal relationship and covers connections so long as they are not "tenuous, remote, or peripheral." Chevron satisfied that standard because its wartime efforts to produce and supply crude oil were closely connected to its wartime avgas refining for the military. The specific conduct that the Parish complained of—such as vertical-drilling methods, canals, and earthen pits—allowed Chevron to produce more crude oil, thereby facilitating "more avgas refining" in accordance with federal directives. The Court rejected the argument that the "relating to" language requires the defendant to show that his federal duties "specifically invited" the challenged conduct. It also rejected the argument that the defendant must be "'acting under' a federal officer in taking the specific actions challenged in the suit." Justice Jackson concurred in the judgment, arguing that the "relating to" language still requires a "causal nexus" and that Chevron met that nexus.

29. ***West Virginia v. B.P.J.*, No. 24-43 (4th Cir., 98 F.4th 542; cert. granted July 3, 2025; argued Jan. 13, 2026), decided together with *Little v. Hecox*, No. 24-38 (9th Cir., 104 F.4th 1061; 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.

Decided June 30, 2026 (609 U.S. __). Fourth Circuit/Reversed and remanded; Ninth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Thomas, J., concurring) (Gorsuch, J., concurring) (Sotomayor, J., joined by Kagan and Jackson, JJ., concurring in the judgment in part and dissenting in part) (Jackson, J., concurring in the judgment in part and dissenting in part). West Virginia and Idaho enacted laws limiting female sports teams to biological females. B.P.J. and Lindsay Hecox, both biological males who identify as female, challenged those laws after seeking to compete on girls' or women's teams. The Fourth Circuit ruled for B.P.J. on Title IX and remanded the equal-protection claim for further factfinding; the Ninth Circuit affirmed a preliminary injunction against Idaho's law on equal protection grounds. In a single opinion resolving both cases, the Supreme Court reversed, holding that Title IX and the Equal Protection Clause permit states and schools to determine eligibility for women's and girls' sports based on biological sex. On Title IX, the Court determined that the statute, the Javits Amendment, and the 1975 regulations authorize separate sports teams based on biological sex, reasoning that nothing in those sources "even hint[s]" that schools must make an exception for biological males who identify as female and have taken puberty blockers or hormones. That interpretation reasonably accounts for the "safety and competitive fairness issues" presented by competitive sports. The Court also rejected reliance on *Bostock*, explaining that Title VII and Title IX are "vastly different" and that *Bostock* did not address the distinct statutory and factual context of sex-separated sports. On equal protection, the Court applied intermediate scrutiny and held that safety and competitive fairness are important interests substantially served by limiting women's and girls' sports teams to biological females. The Court declined to provide individualized exceptions, warning that athlete-by-athlete assessments of physical capacity would create a "judicial quagmire," and emphasizing that legislatures—not courts—are responsible for policy, especially in "areas fraught with medical and scientific uncertainties." The Court closed by stressing that the "Constitution and Title IX do not require an overhaul of women's and girls' sports throughout America," while adding that no student-athlete "deserves to be ostracized or vilified." Justice Thomas concurred to argue that transgender status is not a suspect class and that sex is binary and immutable. Justice Gorsuch concurred to observe that Title IX, as Spending Clause legislation, did not clearly notify funding recipients that they may not sponsor sports teams restricted to biological women or girls and to further explain why *Bostock* "supports" the Court's Title IX holding. Justice Sotomayor, joined by Justices Kagan and Jackson, agreed that B.P.J.'s Title IX claim failed given her concession that "sex" under Title IX refers to biological sex, but dissented on equal protection, arguing that unresolved factual questions about whether transgender girls like B.P.J. pose safety or fairness concerns should have been resolved on remand and that "sports are often zero sum, but the law need not and should not be." Justice Jackson wrote separately to agree that B.P.J.'s Title IX claim failed given her concession, while arguing that the Court should have left open whether Title IX's understanding of "sex" is "more capacious."

30. ***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 Mar. 4, 2026 (607 U.S. 509). 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.

31. ***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.

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Decided June 25, 2026 (609 U.S. 185). Ninth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the Court (Barrett, J., joined in part by Thomas and Gorsuch, JJ., concurring) (Kagan, J., dissenting) (Jackson, J., joined by Sotomayor, J., dissenting). Under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), whether a law violates the Second Amendment is a two-step inquiry. First, the court must determine whether the law falls within the plain text of the Amendment by asking whether the law applies to "the people," whether it concerns "Arms," and whether it restricts the keeping or bearing of those arms. If so, it is presumptively unconstitutional. The Court found that Hawaii's law met this prong by prohibiting firearms on private property without the express consent of the property owner, flipping the common-law rule, which allowed individuals to carry on private property unless the property owner asked them not to do so. At step two, the government must show that a challenged restriction does not infringe the historical understanding of the codified right. *Bruen* identified three categories of historical inquiry as important for evaluating a firearm regulation: the number of jurisdictions in which those regulations were adopted, the extent to which they were well-accepted, and whether any analogue is relevantly similar to the modern law based on the method and reasons behind the restriction. Hawaii argued that its "particular customs and laws" supported the rule, but the Court rejected this argument because "local attitudes can neither shrink nor inflate the meaning of" the Second Amendment. The Court also rejected Hawaii's analogy to historical anti-poaching laws, reasoning that their coverage and purposes differed too sharply from Hawaii's broad restriction on carrying firearms for self-defense on private property open to the public. The Court also rejected an 1865 Louisiana analogue both because it was neither widespread nor widely accepted and because it was part of Louisiana's Black Code, enacted to subordinate newly freed black Americans. Justice Barrett concurred and argued, in response to Justice Jackson's contention that this was merely a state property-law case, that state property laws regulating arms-bearing conduct trigger Second Amendment scrutiny. Justice Kagan dissented, arguing that the challenged law was sufficiently close to historical anti-poaching statutes to withstand Second Amendment scrutiny. Justice Jackson, joined by Justice Sotomayor, also dissented, arguing that Hawaii's statute applied principles of property law and did not restrict the Second Amendment.

32. ***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.

    Decided May 21, 2026 (608 U.S. 264). D.C. Circuit/Affirmed. Justice Jackson delivered the opinion for a unanimous Court. ERISA requires an employer that withdraws from an underfunded multiemployer pension plan to pay "withdrawal liability"—the employer's share of the plan's unfunded vested benefits ("UVBs"), which is calculated "as of" the last day of the plan year before the employer's withdrawal. 29 U.S.C. § 1391. The amount of those UVBs turns not only on "hard data" about the plan, such as the number of beneficiaries and the value of plan assets, but also on actuarial assumptions about the future, including the discount rate used to calculate the present value of future obligations. Petitioners, four employers including M & K Employee Solutions, withdrew from the IAM National Pension Fund between April and December 2018. The Fund assessed their withdrawal liability "as of" December 31, 2017, the statutory measurement date, but applied a 6.50% discount rate that it had adopted in January 2018, rather than the 7.50% rate it had previously used. That change significantly increased the Fund's UVBs and, in turn, petitioners' withdrawal liability. Arbitrators agreed with the employers that the Fund had to use the assumptions "in effect" on the measurement date. The district courts disagreed, and the D.C. Circuit affirmed, holding that assumptions could be adopted after the measurement date provided they were based on information available as of that date. The Supreme Court affirmed. It held that ERISA's withdrawal-liability provisions do not require actuarial assumptions to be selected on or before the measurement date. Section 1391's "as of" language, the Court explained, fixes the factual inputs used in the UVB calculation as of the measurement date, but actuarial assumptions are "not factual inputs"; they are "predictive judgments" and "tools actuaries use to calculate" UVBs. Nor does § 1393, which requires actuarial assumptions to be "reasonable," impose a timing rule: It requires assumptions to account for the plan's experience and reasonable expectations, and to reflect the actuary's "best estimate," but it "provides no deadline at all." The Court also relied on Congress's decision to include timing limits elsewhere in ERISA but not in § 1393. It rejected petitioners' concerns about manipulation because "policy concerns cannot trump the best interpretation of the statutory text," especially since employers remain free to challenge unreasonable assumptions in arbitration. The Court left for another day whether assumptions adopted after the measurement date must be based only on information available as of that date.

33. ***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.

Decided June 29, 2026 (609 U.S. 528). Application for stay denied. Chief Justice Roberts delivered the opinion of the Court (Kavanaugh, J., concurring) (Jackson, J., concurring) (Thomas, J., dissenting) (Alito, J., joined by Gorsuch, J., dissenting) (Barrett, J., dissenting). Lisa Cook was appointed to serve a 14-year term as a governor of the Federal Reserve's Board of Governors. In August 2025, the Director of the Federal Housing Finance Agency accused Cook of mortgage fraud, alleging that she had falsely claimed two homes as her principal residence to obtain more favorable loan terms. After the accusation became public, President Trump stated that "Cook must resign, now!!!" Three days later, President Trump purported to fire her "for cause," as required by statute. He sent her a letter stating that he had reason to believe she may have made false statements in one or more mortgage agreements, lacked confidence in her integrity, and required her immediate removal. Cook sued and sought an injunction to remain in office. She alleged that she was not removed "for cause" and that the President failed to give her notice and an opportunity to respond to the charges against her. The district court agreed and enjoined her removal. The D.C. Circuit declined to stay the injunction, and the government sought a stay from the Supreme Court. The Court denied the application, concluding that the government had not shown a likelihood of success on the merits. The Court rejected the government's argument that the President's determination of "cause" is unreviewable, holding that courts may "discern the boundaries of the President's power" under the Federal Reserve Act. Without "fully demarcat[ing]" the meaning of "cause," the Court held that in the context of the Federal Reserve, it imposes a "substantial threshold" that turns in part on the seriousness of the alleged misconduct and its nexus to a Governor's professional duties, with the key question being whether the asserted cause "impl[ies] an unfitness for the place." The Court also held that courts may preliminarily protect an incumbent officer's possession of office while litigation over the validity of her removal proceeds. Ultimately, however, the Court denied the stay on the narrow ground that the President failed to provide Cook the pre-termination process required by the Federal Reserve Act. At minimum, Cook was entitled to an explanation of the evidence and an avenue to respond before a final decision was made. The Court did not decide whether the allegations against Cook ultimately constitute cause for removal. It also concluded that the Federal Reserve's for-cause removal protection is consistent with Article II, relying on the Nation's historical tradition of central-bank independence. Justice Kavanaugh concurred to emphasize that the Court had not decided whether Cook ultimately *could* be removed and to defend resolution of the constitutional status of the Federal Reserve's independence now. Justice Jackson, also concurring, would have denied the stay on the equities alone. Dissenting, Justice Thomas would have granted the stay and argued that the for-cause restriction violates Article II. Justice Alito, joined by Justice Gorsuch, objected to the Court's resolution of difficult legal questions at the preliminary stage. Justice Barrett also dissented to criticize the majority for resolving the constitutionality of the Federal Reserve's independence.

34. ***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."

    Decided May 21, 2026 (608 U.S. 235). Eleventh Circuit/Vacated and remanded. Justice Thomas delivered the opinion of the Court (Sotomayor, J., joined by Kavanaugh, J., concurring) (Kagan, J., dissenting). In the mid-20th century, Havana Docks Corporation held a time-limited concession to operate docks at the Port of Havana, which was set to expire in 2004. After the Cuban Revolution, however, the Cuban government seized the docks in 1960. Title III of the LIBERTAD Act, 22 U.S.C. § 6021 *et seq.*, creates a private right of action against those who knowingly and intentionally traffic in property confiscated by the Cuban government to which a U.S. national owns a claim. After President Trump allowed the Title III right of action to take effect in 2019, Havana Docks sued four cruise lines that had used the docks from 2016 to 2019, winning more than $100 million from each. The Eleventh Circuit reversed, holding that courts must view the property interest "as if there had been no expropriation." According to the Eleventh Circuit, because Havana Docks' right to use the docks was set to expire in 2004, use of the docks years later could not constitute trafficking. The Supreme Court disagreed, holding that "property which was confiscated" can refer to the physical property in which the plaintiff had an interest, not just the interest itself. The Act imposes liability for trafficking in "any property . . . and any . . . interest therein," § 6023(12)(A), making clear that confiscated property is "tainted" and that those who knowingly use it may be liable to persons who held an interest in it. The Court rejected the Eleventh Circuit's counterfactual approach because it would exclude paradigmatic trafficking cases, such as the purchase and sale of confiscated property interests. The Court also rejected the argument that the Cuban government confiscated only the concession, reasoning that when armed agents physically occupied the dock facilities, they seized "control of property" within the statutory definition of confiscation. Justice Sotomayor, joined by Justice Kavanaugh, concurred to flag that petitioner's reading could allow potentially unlimited recoveries and that a significant question remains whether the cruise lines' conduct fell within the statutory exception for uses of property incident to lawful travel to Cuba. Justice Kagan dissented, arguing that the only "property which was confiscated" from Havana Docks was its time-limited concession, and that because it expired in 2004, the cruise lines' later use of the docks did not constitute trafficking—reasoning that the majority's approach effectively converts time-limited property interests into perpetual ones.

35. ***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.

    Decided June 23, 2026 (609 U.S. 108). D.C. Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Kagan, J., joined

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by Sotomayor and Jackson, JJ., dissenting). The Helms-Burton Act creates a cause of action for U.S. nationals whose property was confiscated by the Cuban government to sue "any person or entity, including any agency or instrumentality of a foreign state," that "traffics in" the confiscated property. 22 U.S.C. § 6082(a)(1)(A); *id.* § 6023(11), (13). The Act also allows the President to suspend the ability of plaintiffs to bring lawsuits under the Act. *Id.* § 6085(c)(1)(B). After President Trump ended the longstanding suspension of such lawsuits in 2019, Exxon sued Cuban government-owned companies for seizing and using its Cuban refinery and service stations to sell oil and gas. The defendants invoked sovereign immunity, arguing that the suit could not proceed because Exxon had not satisfied any exception to immunity under the Foreign Sovereign Immunities Act ("FSIA"). The district court agreed, and the D.C. Circuit affirmed in relevant part. The Supreme Court reversed, holding that plaintiffs suing under the Helms-Burton Act are not required to separately satisfy an FSIA exception because "the Helms-Burton Act itself abrogates the sovereign immunity of Cuban agencies and instrumentalities." A waiver of sovereign immunity must be "clearly discernible from the sum total" of Congress's "work," and the Court pointed to four features of the Helms-Burton Act that, "taken together," establish that the Act contains such a waiver. *First*, the Act's cause of action "explicitly applies" against foreign agencies or instrumentalities. *Second*, it would render the Helms-Burton Act "self-defeating" if Congress authorized suits against Cuban instrumentalities and also required plaintiffs to satisfy an FSIA exception, since the U.S.-Cuba trade embargo codified by the Helms-Burton Act prohibits the very activity the FSIA's commercial-activity and expropriation exceptions require. *Third*, the Helms-Burton Act provides that suits under it proceed under general federal-question jurisdiction, not the FSIA's jurisdictional provisions, suggesting that the FSIA does not control. *Fourth*, the Act's Presidential suspension provisions "track[] the pre-FSIA foreign sovereign immunity regime," under which the Executive branch largely dictated whether foreign sovereigns were immune from suit, "rather than the FSIA's approach" of having judicially applied standards for immunity. In dissent, Justice Kagan, joined by Justices Sotomayor and Jackson, argued that Exxon's suit can proceed only if it satisfies an FSIA exception because "[n]othing in the text or 'architecture'" of the Helms-Burton Act indicates that Congress abrogated sovereign immunity and because no conflict exists between giving effect to the Act and preserving FSIA immunity.

36. ***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).

Decided Apr. 22, 2026 (608 U.S. 67). Sixth Circuit/Affirmed. Justice Sotomayor delivered the opinion for a unanimous Court. Enbridge owns and operates a petroleum pipeline with a 4-mile stretch traversing a waterway pursuant to an easement from the State of Michigan. In June 2019, the Michigan Attorney General filed suit in state court, seeking to void the easement and halt the pipeline operations. Enbridge was served with the complaint in July 2019 but did not remove the action to federal court within the 30-day deadline required by 28 U.S.C. § 1446(b)(1), instead removing 887 days after receiving the complaint. The Attorney General moved to remand, contending that removal was untimely. The district court denied the motion, holding that equitable principles justified excusing Enbridge's delay. The Sixth Circuit reversed, and the Supreme Court affirmed. Enbridge's argument proceeded in three steps: first, that Section 1446(b)(1)'s 30-day deadline is non-jurisdictional; second, that non-jurisdictional deadlines are presumptively subject to equitable tolling; and third, that nothing rebuts that presumption here. The Court agreed that Section 1446(b)(1)'s 30-day deadline is non-jurisdictional. But the Court held that, even assuming the presumption of equitable tolling applied, it was rebutted by the statute's text, structure, and context. Starting with the text, the Court noted that Section 1446(b)(1)'s mandatory "shall be filed within 30 days" formulation is at least consistent with treating the deadline as inflexible. More decisive was the statute's structure. The Court identified several provisions already reflecting equitable considerations: Section 1446(b)(3) extends the removal window when a case later becomes removable; Section 1446(c)(1) caps that extension at one year in diversity cases but carves out a bad-faith exception; and various provisions outside Section 1446 expressly authorize courts to enlarge Section 1446(b)'s time limits "for cause shown" in specific contexts. Each of these would be superfluous if general equitable tolling were already available. Finally, the Court emphasized Congress's manifest interest in resolving forum questions early and conclusively, which allowing open-ended tolling would undermine.

37. ***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.

Decided June 23, 2026 (609 U.S. 30). Sixth Circuit/Vacated and remanded. Justice Alito delivered the opinion of the Court (Sotomayor, J., joined by Gorsuch and Jackson, JJ., concurring) (Thomas, J., joined by Gorsuch, J., except as to footnote 1, concurring in part and in the judgment). The Pung family owed $2,241.93 in real-property taxes, so local tax authorities initiated foreclosure proceedings and sold the Pung home—assessed at $194,400 for tax purposes—for $76,008 at a public auction. Pung sued in federal court, arguing that the Fifth Amendment Takings Clause and the Eighth Amendment Excessive Fines Clause entitled him to compensation based on the property's fair market value, not just the surplus proceeds from the tax sale. The district court granted Pung partial summary judgment on his Fifth Amendment claim (and thus did not reach the Eighth Amendment claim) but held that Pung was entitled only to the surplus proceeds—the difference between the sale price and the tax debt—not the property's fair market value. The Sixth Circuit affirmed. The Supreme Court vacated and remanded, holding that the proper baseline for measuring "just compensation" is the auction sale price, not the property's hypothetical fair market value, at least when a sale is fairly conducted in light of the country's history of tax sales. The Court traced a long legal tradition, dating to the Founding, under which governments that seized and sold property to collect tax debts were obligated to return the "overplus"—the difference between the sale proceeds and the debt—nothing less, and nothing more. The Court also rejected Pung's reliance on eminent-domain cases in which fair market value is the default measure, explaining that what is "just" in one context may not be "just" in another: Unlike with eminent-domain seizures, property owners can generally avoid tax sales by paying their debts, refinancing, or selling the property themselves. The Court further reasoned that imposing a fair-market-value rule would place unprecedented burdens on taxing authorities and might render tax sales impractical as a debt-collection mechanism, since governments would often incur a net loss. The Court also rejected Pung's Eighth Amendment claim, finding no historical evidence that a fairly conducted tax sale violates the Excessive Fines Clause, and noting that a fair-market-value rule under the Eighth Amendment would produce the same impractical consequences. Justice Sotomayor, joined by Justices Gorsuch and Jackson, concurred to emphasize that the Court's opinion did not define the contours of a "fair" auction and left those issues for remand. Justice Thomas, joined by Justice Gorsuch, concurred in part and concurred in the judgment, agreeing that a historical exception to the fair-market-value rule can exist for tax sales but expressing the view that the County's conduct likely fell outside that historical tradition. He detailed the Pungs' circumstances—including that the underlying tax debt arose from an improper assessment—and argued that historical tax-sale procedures required the government to first pursue personal property or a portion of the debtor's land before foreclosing on the entire property, and that the County's failure to do so was likely unconstitutional.

38. ***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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Decided June 18, 2026 (608 U.S. 772). Fifth Circuit/Affirmed. Justice Gorsuch delivered the opinion of the Court (Thomas, J., concurring) (Jackson, J., joined by Sotomayor, J., concurring) (Alito, J., joined by Kagan, J., concurring in the judgment). After searching Ali Hemani's home on suspicion of terrorism-related activity and finding a firearm, the government prosecuted him under § 922(g)(3)—which bars an "unlawful user" of "any controlled substance" from possessing a firearm—based solely on his admission that he used marijuana "about every other day." Hemani moved to dismiss the indictment, arguing that it violated the Second Amendment. The district court granted the motion, and the Fifth Circuit affirmed. The Supreme Court agreed and affirmed. Applying *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Court held that the prosecution violated the Second Amendment because the government failed to show that disarming Hemani was "consistent with the Nation's historical tradition of firearm regulation." The Court concluded that the government's historical analogues—Founding-era "habitual drunkard" laws—were not "relevantly similar" to § 922(g)(3). Those laws targeted habitual drunkards not for merely using intoxicants but because their drinking practically incapacitated them, whereas § 922(g)(3) disarms anyone who regularly uses any amount of any controlled substance, without a showing that their drug use was incapacitating or dangerous. The Court also found that those historical laws pursued different purposes (suppressing vice or protecting drunkards and their families, rather than disarming the violent) and operated differently (typically requiring judicial process, unlike § 922(g)(3)'s self-executing ban). The Court's opinion ended by emphasizing the narrowness of its holding, declining to address bans on addicts, those presently intoxicated, convicted felons, or prosecutions supported by individualized proof of dangerousness. Justice Thomas concurred to assert that § 922(g)(3) also "appears to exceed" Congress's enumerated power to regulate interstate commerce. Justice Jackson, joined by Justice Sotomayor, concurred to reiterate her view that *Bruen* is unworkable and that the Court should return to the means-end scrutiny approach applied before *Bruen*. Justice Alito, joined by Justice Kagan, concurred in the judgment, reasoning more narrowly that the government failed to show that Hemani's marijuana use rendered him incapacitated in a manner analogous to the habitual drunkards regulated by the historical laws, and concluding that this mismatch alone was sufficient to decide the case.

39. ***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.

    Decided June 18, 2026 (608 U.S. 713). Fifth Circuit/Vacated and remanded. Justice Kagan delivered the opinion of the Court (Gorsuch, J., joined by Sotomayor and Jackson, JJ., concurring) (Kavanaugh, J., joined by Alito and Barrett, JJ., concurring) (Barrett, J., concurring) (Thomas, J., dissenting). Munson P. Hunter III pleaded guilty to aiding and abetting wire fraud and, like many defendants who enter plea agreements, waived his right to appeal his conviction and sentence. The district court sentenced him to 51 months' imprisonment and three years of supervised release, including a condition requiring him to participate in mental-health treatment and take medications prescribed by his treating physician. At the end of sentencing, however, the court told Hunter that he had a right to appeal. Hunter appealed the mandatory-medication condition as violating his fundamental due process liberty interest in avoiding unwanted medication. The Fifth Circuit dismissed the appeal under circuit precedent limiting exceptions to appeal waivers to ineffective-assistance claims and sentences exceeding the statutory maximum. The Supreme Court vacated and remanded, adopting the majority rule among the circuits that an appeal waiver is unenforceable when enforcement would result in a miscarriage of justice. The Court emphasized that the exception sets a "high bar": the sentencing error must be "egregious," "obvious," and of a kind that would undermine public confidence in the judiciary; ordinary sentencing errors do not suffice. The Court did not decide whether Hunter's medication condition meets that standard, leaving the issue for the Fifth Circuit on remand. The Court also held that the district court's "fairly inexplicable" statement that Hunter could appeal did not modify the plea agreement, which required written modifications and in any event lacked mutual assent, and that the government's failure to correct the misstatement did not waive or forfeit its right to enforce the appeal waiver. Justice Gorsuch, joined by Justices Sotomayor and Jackson, concurred to criticize the coercive development of modern plea bargaining and to describe the decision as a first step toward "reining in appeal waivers." Justice Kavanaugh, joined by Justices Alito and Barrett, concurred to stress that the majority's miscarriage-of-justice exception imposes a higher bar than Justice Gorsuch's concurrence suggested. Justice Barrett separately explained that she understood the rule as grounded in longstanding waiver principles and procedural common law, not supervisory power. Justice Thomas dissented, arguing that the new exception lacked a valid source in constitutional text, statute, rule, or common law and could not be justified through a purported supervisory power over lower federal courts.

40. ***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.

    Decided May 14, 2026 (608 U.S. 219). Seventh Circuit/Reversed and remanded. Justice Barrett delivered the opinion for a unanimous Court (Kavanaugh, J., joined by Alito, J., concurring). Petitioner Shawn Montgomery was injured when a truck driven for motor carrier Caribe Transport II, LLC, struck Montgomery's vehicle. Montgomery sued the carrier, the driver, and freight broker C.H. Robinson

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Worldwide, Inc. Montgomery claimed that C.H. Robinson negligently hired Caribe despite the carrier's "conditional" federal safety rating. That claim implicated the Federal Aviation Administration Authorization Act ("FAAAA"), which preempts state laws "related to a price, route, or service" of motor carriers and brokers, 49 U.S.C. § 14501(c)(1), but preserves "the safety regulatory authority of a State with respect to motor vehicles," § 14501(c)(2)(A). The Seventh Circuit deemed Montgomery's negligent-hiring claim preempted and outside the safety exception. The Supreme Court reversed, holding that even if § 14501(c)(1) would otherwise preempt the claim, the safety exception saves it. Giving the phrase "with respect to" its ordinary meaning of "concerns," the Court concluded that requiring a broker to exercise ordinary care in selecting a carrier plainly "concerns" the trucks that will transport the goods, and common-law duties form part of a State's authority to regulate safety. The Court rejected C.H. Robinson's counterargument that this reading would swallow the preemption provision, create surplusage, and produce an anomaly with § 14501(b)'s preemption of intrastate broker regulation. Admittedly, it was not obvious why Congress would completely preempt state regulation of brokers for *intra*state rates, routes, and services while only partially preempting state regulation of brokers for *inter*state rates, routes, and services. But the majority concluded that the text of § 14501(c)(2)(A) controls and that it would be "[b]etter to live with the mystery than to rewrite the statute." Justice Kavanaugh, joined by Justice Alito, concurred to emphasize that the decision "should not be read to mean that brokers will routinely be subject to state tort liability in the wake of truck accidents," observing that brokers should be able to defend such suits successfully when they have "acted reasonably and arranged transportation with reputable trucking companies."

MARCH CALENDAR

41. ***Watson v. Republican National Committee*, No. 24-1260 (5th Cir., 120 F.4th 200; cert. granted Nov. 10, 2025; argued 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.

    Decided June 29, 2026 (609 U.S. __). Fifth Circuit/Reversed and remanded. Justice Barrett delivered the opinion of the Court (Alito, J., joined by Thomas and Gorsuch, JJ., and in part by Kavanaugh, J., dissenting). Three federal statutes set the day for the election of Representatives, Senators, and the President. A Mississippi law permits the counting of absentee ballots postmarked by Election Day but received up to five days later. The Republican National Committee and others filed suit against various Mississippi officials, arguing that federal law prevents Mississippi from counting absentee ballots received after Election Day. The district court granted summary judgment to Mississippi, but the Fifth Circuit disagreed, holding that the federal election-day statutes require ballots to be received by Election Day and therefore preempt Mississippi's contrary statute. The Supreme Court reversed, holding that the federal election-day statutes do not preempt Mississippi's law. It explained that "the defining element of an 'election'"—the key term in all three statutes—"has always been the electorate's choice of candidate," and that this choice is made when voting is complete, not when ballots are received. The Court found further support in the 2022 amendment to the Presidential election-day statute, which provides that when a State modifies the "period of voting" in response to unexpected events, "election day" includes that modified voting period—indicating that voting, not ballot receipt, is the relevant act. A related statute, the Uniformed and Overseas Citizens Absentee Voting Act, likewise presupposes that ballot-receipt deadlines are supplied by state law, which would make little sense if the federal statutes already imposed a nationwide receipt deadline. And the Constitution itself, with respect to the Electoral College, envisions that voting and receipt may happen on different dates, with only the day of the former being uniform; it stands to reason the federal statutes follow the same pattern. Justice Alito, joined by Justices Thomas and Gorsuch and in part by Justice Kavanaugh, dissented, arguing that text, historical legal usage, precedent, and nearly two centuries of practice show that the electorate's collective choice is not authoritatively expressed until the relevant ballots have been received by election officials.

42. ***Keathley v. Buddy Ayers Construction, Inc.*, No. 25-6 (5th Cir., 2025 WL 673434; cert. granted Oct. 20, 2025; argued 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.

    Decided June 11, 2026 (608 U.S. 647). Fifth Circuit/Vacated and remanded. Justice Jackson delivered the opinion for a unanimous Court (Thomas, J., joined by Gorsuch, J., concurring) (Sotomayor, J., concurring). A debtor in Chapter 13 bankruptcy proceedings must provide an accounting of all assets, including any potential legal claims against third parties, whether or not those claims have been filed. The bankruptcy court relies on those disclosures to determine whether a proposed bankruptcy plan is acceptable. Petitioner Thomas Keathley was allowed to proceed with a bankruptcy plan that required him to repay his debts over a five-year period. During the repayment period, Keathley was involved in an automobile accident, allegedly due to the negligence of an employee of Buddy Ayers Construction. Keathley informed his bankruptcy counsel of the accident and of Keathley's negligence claims but neither Keathley nor his bankruptcy counsel disclosed the potential personal-injury claims to the bankruptcy court. Buddy Ayers Construction then filed for summary judgment in the personal-injury action based on a theory of judicial estoppel, arguing that Keathley was estopped from claiming negligence against Buddy Ayers because Keathley's bankruptcy filings did not acknowledge the existence of any such claim. The district court granted summary judgment to Buddy Ayers Construction, and the Fifth Circuit affirmed. The Supreme Court disagreed. Assuming (without deciding) that judicial estoppel applies in bankruptcy and that "inadvertence or mistake" can function as an exception to that application, the Court held that judges determining whether an omission was inadvertent or mistaken for purposes of judicial estoppel must consider the totality of the circumstances. The Court declared that the lower court's test was both "too rigid" and "too broad." Its analysis was too rigid because equitable doctrines require room to consider all of the particulars. But the lower court permitted only two narrow ways of showing inadvertence or mistake: where the debtor did not know the facts underlying the potential claim, or where the debtor had no potential motive to conceal the claim. And the Fifth Circuit's analysis was too broad because it would trigger estoppel in any case in which debtors omitted information they could potentially have an interest in withholding. But that test improperly results in a single factor becoming dispositive in nearly all cases, since there would usually be some conceivable motivation for withholding information. Justice Thomas, joined by Justice Gorsuch, concurred in full but expressed doubt about the foundation of the doctrine of judicial estoppel. Justice Sotomayor also concurred in full, arguing that it may not ever make sense to apply judicial estoppel when bankruptcy proceedings are pending but, in any context, judicial estoppel should turn on the totality of the circumstances.

43. ***Mullin v. Al Otro Lado*, No. 25-5 (9th Cir., 138 F.4th 1102; cert. granted Nov. 17, 2025; argued 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.

Decided June 25, 2026 (609 U.S. 258). Ninth Circuit/Reversed and remanded. Justice Alito delivered the opinion of the Court (Thomas, J., concurring) (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting) (Jackson, J., dissenting). In 2016, the Department of Homeland Security adopted a "metering" policy at the U.S.–Mexico border limiting the number of individuals seeking admission whom U.S. Customs and Border Protection ("CBP") would inspect each day and allow to apply for asylum under 8 U.S.C. §§ 1158(a)(1), 1225(a)(1). The policy was enforced by officials who physically prevented individuals from crossing to U.S. soil. The district court certified a class of noncitizens denied access to the asylum process after presenting themselves at certain ports of entry along the U.S.–Mexico border and granted declaratory relief, after which the government rescinded the policy. The Ninth Circuit affirmed in relevant part, holding that an alien may "arrive in the United States" by encountering a U.S. official at the border while standing on the Mexican side and that CBP's metering policy was unlawful withholding of agency action under the APA. The Supreme Court reversed, holding that an alien "arrives in the United States" only when he physically crosses the border. The Court concluded the phrase carried its ordinary meaning of physical entry within U.S. territory. The Court acknowledged that this interpretation creates some redundancy between Section 1158(a)(1)'s references to aliens who "arriv[e] in the United States" and those "physically present in the United States," but concluded that the partial overlap could not overcome the statute's ordinary meaning and context. Concurring in full, Justice Thomas argued that the district court's classwide declaratory relief appeared to circumvent Section 1252(f)(1)'s restriction on classwide injunctive relief and "may well have unconstitutionally infringed" on the Executive's inherent authority to exclude aliens. Justice Sotomayor, joined by Justices Kagan and Jackson, dissented, arguing that the INA's overall statutory scheme requires CBP to inspect and process all noncitizens who present themselves at ports of entry and that the majority's interpretation created perverse incentives for illegal border-crossing that could not have been congressionally intended. Dissenting separately, Justice Jackson viewed the majority opinion as an advisory opinion raising serious justiciability issues, as the metering policy had already been rescinded.

44. ***Flowers Foods, Inc. v. Brock*, No. 24-935 (10th Cir., 121 F.4th 753; cert. granted Oct. 20, 2025; argued 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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Decided May 28, 2026 (608 U.S. 380). Tenth Circuit/Affirmed. Justice Gorsuch delivered the opinion for a unanimous Court. Flowers Foods produces packaged baked goods in 19 States and distributes them across the country. Angelo Brock, a Flowers distributor, picks up Flowers products from a Colorado warehouse and delivers them to Colorado stores without ever leaving the State. In 2022, Brock sued Flowers in federal district court, alleging that it underpaid him and other distributors. Flowers filed a motion seeking to arbitrate the dispute. The court denied the motion. The Tenth Circuit affirmed, reasoning that, while the Federal Arbitration

Act generally requires courts to enforce arbitration agreements, Section 1 contains an applicable exception for "workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Tenth Circuit concluded that Brock's intrastate route was part of the interstate journey of Flowers's goods from out-of-state bakeries to their intended destinations at retail stores. The Supreme Court affirmed, holding that, to be engaged in interstate commerce, a worker need not either cross state lines or interact with a vehicle that does. The Court noted that it has repeatedly read the Section 1 exception broadly to include independent contractors, workers who did not cross state lines, and workers outside the transportation industry so long as they are transportation workers whose work plays a direct and necessary role in the free flow of goods across borders. The Court explained that neither the term "engage" nor "interstate commerce" requires an individual to cross state lines or interact with a vehicle that does. And the opinion reiterated that Section 1 requires a worker to have a "direct," "necessary," and "active" role in moving goods across borders, while clarifying that a worker can do that without ever crossing state lines or interacting with vehicles that do.

45. ***Abouammo v. United States*, No. 25-5146 (9th Cir., 122 F.4th 1072; cert. granted Dec. 5, 2025; argued 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.

Decided June 11, 2026 (608 U.S. 597). Ninth Circuit/Reversed and remanded. Justice Kagan delivered the opinion for a unanimous Court. While working at Twitter, Ahmad Abouammo provided confidential information to a high-level Saudi official about two Saudi dissidents posting on Twitter's platform. In return, the official wired Abouammo a total of $300,000. Around the same time, Abouammo left Twitter and relocated to Seattle, where he started a social-media consulting company. Two San Francisco-based FBI agents later flew to Seattle to interview Abouammo at his home about unauthorized disclosures of Twitter account information. During the interview, Abouammo denied giving the Saudi official confidential information, claiming the payments were for consulting work. He also went upstairs, created a fake invoice in support of this claim, and emailed it to one of the agents. Back in San Francisco, the agents discovered from the document's metadata that Abouammo had created the invoice during the interview. Abouammo was indicted in the Northern District of California for falsifying a record under 18 U.S.C. § 1519, which makes it a crime to knowingly falsify a document with the intent to obstruct a federal investigation. He moved to dismiss the charge for improper venue, arguing that he could be tried only where the alleged falsification occurred. The trial court denied the motion, finding that venue was also proper where the FBI's investigation was based. A jury convicted Abouammo of the Section 1519 charge. The Ninth Circuit affirmed the venue ruling, reasoning that Section 1519's intent requirement made the contemplated effects of the falsification part of the essential conduct of a Section 1519 offense. The Supreme Court reversed, holding that "the venue for trying a Section 1519 offense must be where a document's falsification happened." Because the "only prohibited act in" Section 1519 "is the falsification of a document," once a person has committed that act with the requisite intent, "he need do nothing more to violate the law." The Supreme Court explained that Section 1519, unlike laws barring actual obstruction, does not require that falsifying a document have any impact on an investigation. And a person can commit a Section 1519 crime without taking any steps toward another crime—for example, by falsifying a document with the requisite intent and then putting the document away in a drawer without ever using it to obstruct an investigation. That is because Section 1519 is a standalone offense—not an inchoate offense tied to other obstruction crimes. Thus, because Abouammo created the false invoice in Seattle, venue was proper only in the Western District of Washington.

46. ***Jules v. Andre Balazs Properties*, No. 25-83 (2d Cir., 2025 WL 1201914; cert. granted Dec. 5, 2025; argued 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.

Decided May 14, 2026 (608 U.S. 200). Second Circuit/Affirmed. Justice Sotomayor delivered the opinion for a unanimous Court. Adrian Jules sued Andre Balazs Properties and others in federal court, alleging that the Chateau Marmont Hotel unlawfully discriminated in violation of federal and state law when it terminated his employment. Pointing to an arbitration agreement Jules had signed before beginning work at the hotel, respondents moved to stay the federal proceedings pending arbitration under Section 3 of the Federal Arbitration Act ("FAA"). The district court held that the arbitration agreement covered Jules's claims and stayed the proceedings. The arbitrator subsequently ruled against Jules on all claims. Respondents moved to confirm the award under Section 9 of the FAA in the same district court that issued the stay, while Jules opposed confirmation and cross-moved to vacate the award under Section 10 of the FAA. Jules argued that, under the Supreme Court's ruling in *Badgerow v. Walters*, 596 U.S. 1 (2022), the district court lacked jurisdiction to confirm the award because neither Section 9 nor Section 10 of the FAA presents independent grounds for federal court jurisdiction. The district court disagreed and confirmed the award. The Second Circuit affirmed, reasoning that *Badgerow* involved a freestanding action commenced for the sole purpose of vacating an arbitral award while the present action started as a federal-question suit before it was stayed pending arbitration. The Supreme Court affirmed as well. The Court distinguished *Badgerow* by explaining that unlike in that case (which involved a removed state-court action where the only proceeding filed in federal court was the application to confirm or vacate the award), Jules's suit *originated* in a federal court, which had already established federal-question jurisdiction prior to issuing the stay. "Nothing in the FAA eliminated that jurisdiction while the parties arbitrated," and thus there was no need to "look through" the arbitration proceedings to determine the existence of federal jurisdiction over the underlying substantive dispute. The Court further reasoned that this outcome was consistent with the scheme of the FAA, which requires a stay of proceedings pending arbitration, and allows courts to supervise the parties' arbitration to the end, including through confirmation or vacatur. Applying the *Badgerow* rule to Section 9 and 10 cases that already have an independent jurisdictional basis would diminish the courts' supervisory role over arbitrations and likely undermine the efficiency interests of the FAA by leading to wasteful, complex dual-track litigation in state and federal courts.

47. ***Pitchford v. Cain*, No. 24-7351 (5th Cir., 126 F.4th 422; cert. granted Dec. 15, 2025; argued 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.

Decided May 28, 2026 (608 U.S. 391). Fifth Circuit/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Gorsuch, J., joined by Thomas, Alito, and Barrett, JJ., dissenting). The prosecutor used peremptory strikes against four of the five black potential jurors during jury selection at Terry Pitchford's capital murder trial. Pitchford's counsel raised a *Batson* objection and made a prima facie showing that the strikes were based on race. The trial court asked the prosecutor to offer race-neutral reasons for each strike, which the prosecutor provided. The trial court declared each reason race neutral but never afforded defense counsel an opportunity to rebut those reasons as pretextual or make any findings regarding pretext. The trial court also twice cut off counsel's attempts to raise *Batson* again—while assuring counsel that the objection was preserved in the record. The empaneled jury of 11 white jurors and 1 black juror convicted Pitchford of capital murder and sentenced him to death. On direct appeal, the Mississippi Supreme Court concluded that Pitchford had waived his *Batson* objection by not arguing to the trial court that the prosecutor's stated reasons were pretextual. On federal habeas review, the district court granted relief, but the Fifth Circuit reversed. The Supreme Court, in turn, reversed the Fifth Circuit. It held that the Mississippi Supreme Court had unreasonably applied the clearly established *Batson* precedents and unreasonably concluded that Pitchford had waived his opportunity to rebut the prosecutor's asserted race-neutral reasons for the peremptory strikes of the four black prospective jurors. The Court explained that the trial court erroneously omitted *Batson's* requirement that Pitchford receive a sufficient opportunity to rebut the prosecutor's proffered race-neutral reasons for the strikes and never determined whether the prosecutor's stated reasons were pretextual. Especially given the trial court's explicit assurance that the objection was preserved, it was unreasonable to find waiver. The Court rejected the State's effort to distinguish between preserving a "*Batson* objection" and preserving a "*Batson* pretext argument," reasoning that after the prosecutor offers race-neutral reasons, the *Batson* objection is a pretext argument. While acknowledging AEDPA's deferential standard for obtaining habeas relief, the Court stated that "deference does not mean abdication" and does not automatically preclude relief. Justice Gorsuch, joined by Justices Thomas, Alito, and Barrett, dissented, arguing that Pitchford made his prima facie case based on a statistical argument and never presented the comparative juror argument pressed on appeal during jury selection; he introduced such an argument only in a single sentence in a post-trial motion, making the Mississippi Supreme Court's waiver finding reasonable under AEDPA's constraints.

48. ***Trump v. Barbara*, No. 25-365 (D.N.H., 790 F. Supp. 3d 80; cert. before judgment granted Dec. 5, 2025; argued Apr. 1, 2026).** The Question Presented is: Whether Executive Order No. 14,160 complies on its face with the Citizenship Clause of the Fourteenth Amendment and with 8 U.S.C. § 1401(a), which codifies that Clause.

Decided June 30, 2026 (609 U.S. __). District Court for the District of New Hampshire/Affirmed. Chief Justice Roberts delivered the opinion of the Court (Jackson, J., joined by Sotomayor, J., in part, concurring) (Kavanaugh, J., concurring in the judgment and dissenting in part) (Thomas, J., joined by Gorsuch, J., dissenting) (Alito, J., and Gorsuch, J., separately dissenting). On January 20, 2025, President Trump issued Executive Order No. 14,160, which created exceptions to birthright citizenship for children born in the United States to parents unlawfully or temporarily present in the country. A group of parents, including some on behalf of their children, challenged the Order under the Fourteenth Amendment's Citizenship Clause and the Immigration and Nationality Act (INA), which both provide that persons born in the United States and "subject to the jurisdiction thereof" are U.S. citizens. The district court agreed and preliminarily enjoined the Order's enforcement. The Supreme Court granted certiorari before judgment and affirmed, holding that children born in the United States to parents unlawfully or temporarily present in the country are "subject to the jurisdiction" of the United States and therefore citizens at birth under the Fourteenth Amendment. The Court reasoned that the Citizenship Clause codified the common-law rule of *jus soli* (meaning, the "right of the soil"), under which children born in a sovereign territory became its "subjects" due to an implied allegiance owed to the sovereign in exchange for the sovereign's protection. The Court departed from that common-law rule in *Dred Scott v. Sandford*, 19 How. 393 (1857), when it held that African Americans could not be citizens despite their birth on American soil. After the Civil War, the Court explained, Congress repudiated *Dred Scott* by adopting the common-law rule of *jus soli* in the Civil Rights Act of 1866. The Fourteenth Amendment then permanently enshrined that rule into the Constitution. Any child born in the United States and "subject to the jurisdiction thereof" was therefore a citizen. While children of foreign ministers and members of Indian tribes did not fall within the United States' "jurisdiction" under the common-law rule, "children born of parents unlawfully or temporarily present" in the country did. The Court further explained that its prior decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), confirmed that the Fourteenth Amendment incorporated the common law when it held that a man born in the United States to Chinese-citizen parents was a U.S. citizen. In a concurring opinion responding to Justice Thomas's dissent, Justice Jackson emphasized her view that the Fourteenth Amendment's Citizenship Clause reflects a universalist, anticaste principle of citizenship not limited to the specific circumstances of freed slaves. Justice Kavanaugh concurred in the judgment, concluding that the Order violated the INA, but not the Constitution. In Justice Kavanaugh's view, Congress could amend the INA or enact new legislation to create exceptions to birthright citizenship for children born to foreign citizen parents unlawfully or temporarily within the United States. Justice Thomas, joined by Justice Gorsuch, dissented. He argued that neither the Fourteenth Amendment nor the Civil Rights Act of 1866 applies to children born of parents not domiciled—meaning without a legal home—in the United States. In another dissent, Justice Alito argued that the Citizenship Clause confers citizenship only on children who at birth owe allegiance solely to the United States. Finally, Justice Gorsuch dissented separately to explain that *Wong Kim Ark* is consistent with interpreting the Citizenship Clause to confer citizenship only on children born of parents domiciled within the United States.

APRIL CALENDAR

49. ***Sripetch v. Securities and Exchange Commission*, No. 25-466 (9th Cir., 154 F.4th 980; cert. granted Jan. 9, 2026; argued 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.

    Decided June 4, 2026 (608 U.S. 555). Ninth Circuit/Affirmed. Justice Gorsuch delivered the opinion for a unanimous Court (Thomas, J., concurring). Under 15 U.S.C. § 78u(d)(5), the Securities and Exchange Commission ("SEC") may seek "any equitable relief" in enforcement actions so long as, under the Court's prior decision in *Liu v. SEC*, 591 U.S. 71 (2020), "the remedy adheres to traditional equity principles." One such principle is that equitable remedies, like disgorgement awards, must go to victims. 15 U.S.C. § 78u(d)(7), which was enacted after *Liu*, explicitly authorizes the SEC to seek disgorgement. In an SEC enforcement action brought against Ongkaruck Sripetch for engaging in fraudulent schemes involving penny-stock companies, the SEC sought $4.1 million in disgorgement. Sripetch objected on the basis that his schemes did not cause investors any financial losses and therefore created no victims. The district court disagreed, finding that the investors had suffered pecuniary losses. While the Ninth Circuit affirmed, it reasoned that the investors were victims, even absent pecuniary losses, because Sripetch's schemes interfered with their legally protected interests. The Supreme Court affirmed, holding that a showing of pecuniary loss to investors is not required before the SEC may obtain a disgorgement award. The Court first assumed without deciding that disgorgement sought under § 78u(d)(7), as under § 78u(d)(5), is an equitable remedy that must comply with traditional equitable principles. While money damages seek to compensate a plaintiff's losses, the Court explained, traditional equitable remedies are measured by "the defendant's gain attributable to his wrongdoing against the plaintiff." When a defendant interferes with the plaintiff's legally protected rights, the plaintiff can recover "the defendant's unlawful gains" from that invasion without the need to show "any loss." Traditional equitable principles therefore "do not require a showing of a pecuniary loss to justify a disgorgement award." Justice Thomas concurred to explain his view that disgorgement is a legal, not equitable, remedy that requires a jury trial under the Seventh Amendment.

50. ***T. M. v. University of Maryland Medical System Corporation*, No. 25-197 (4th Cir., 139 F.4th 344; cert. granted Dec. 5, 2025; argued 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.

Decided June 18, 2026 (608 U.S. 668). Fourth Circuit/Affirmed. Justice Sotomayor delivered the opinion of the Court (Thomas, J., concurring) (Barrett, J., joined by Roberts, C.J., and Kagan and Gorsuch, JJ., dissenting). Petitioner T. M. was involuntarily committed at a University of Maryland Medical System facility and then released pursuant to a state-court consent order governing the terms of her release. She then sued in federal district court, seeking declarations that the consent order violated her due-process rights and was obtained under duress and an injunction against its enforcement. At the same time, she separately appealed the order in Maryland's appellate courts. The district court dismissed the suit *sua sponte* under the *Rooker-Feldman* doctrine, which bars federal district courts from hearing cases brought by "state-court losers" seeking "review and rejection" of state-court judgments. The Fourth Circuit affirmed. Resolving a circuit split, the Supreme Court affirmed, holding that *Rooker-Feldman* applies even when the state-court judgment remains subject to further review in state appellate proceedings, and is not limited to final judgments of a State's highest court. The Court reasoned that T. M.'s suit fell within the doctrine because she complained of injuries caused by, and sought relief from, the consent order itself, and limiting the doctrine to final judgments of the highest state court would depart from precedent, create anomalous results, and undermine the "[c]ooperation and comity" on which the federal system depends. The Court emphasized that its decision "neither expands nor constrains *Rooker-Feldman*" but "leaves the doctrine as it found it." Justice Thomas concurred, joining the Court in full and writing separately to defend *Rooker* as correct as an original matter. In dissent, Justice Barrett, joined by Chief Justice Roberts and Justices Kagan and Gorsuch, argued that under *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), *Rooker-Feldman* should reach only suits brought after state proceedings have ended, and that the majority's approach left an already confusing doctrine "worse off."

51. ***Federal Communications Commission v. AT&T, Inc.*, No. 25-406 (5th Cir., 149 F.4th 491; cert. granted Jan. 9, 2026; argued 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; argued 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.

Decided June 4, 2026 (608 U.S. 531). Fifth Circuit/Reversed and remanded; Second Circuit/Affirmed. Chief Justice Roberts delivered the opinion of the Court (Thomas, J., dissenting). The Communications Act authorizes the FCC to issue notices of apparent liability, determine liability, and assess forfeitures for violations of the communications laws. 47 U.S.C. §§ 503(b), 504(a). If a regulated party does not pay, however, the Department of Justice may bring a civil enforcement action, which the statute provides "shall be a trial de novo." After the FCC assessed forfeitures of approximately $57 million against AT&T and $47 million against Verizon for their handling of customer-location data, the carriers paid under protest and argued that the FCC's administrative-forfeiture process violated the Seventh Amendment. The Supreme Court reversed the Fifth Circuit (which agreed with AT&T's challenge), affirmed the Second Circuit (which rejected Verizon's), and held that the FCC's forfeiture procedures are constitutional. The Court explained that the Seventh Amendment requires only that a jury make the "ultimate determination of issues of fact" before a party's legal obligations are conclusively established. Because an FCC forfeiture order neither compels payment nor has binding factual effect in a later § 504 enforcement action, where the government must prove its case in a trial de novo, the jury still "gets the last word." The Court distinguished *SEC v. Jarkesy*, 603 U.S. 109 (2024), explaining that the SEC's penalties were immediately enforceable and rested on the agency's conclusive factual findings, whereas FCC forfeiture orders are merely statutory prerequisites to a later enforcement action and impose no adverse consequences for nonpayment. Justice Thomas dissented, agreeing with the Court's interpretation of the statute going forward but arguing that the carriers reasonably relied on the FCC's characterization of its orders as binding "final orders" requiring payment within 30 days and could not have expected the de novo judicial process the Court described because courts in 2024 generally denied regulated parties that form of review.

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52. ***Blanche v. Lau*, No. 25-429 (2d Cir., 130 F.4th 42; cert. granted Jan. 9, 2026; argued 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.

Decided June 23, 2026 (609 U.S. 1). Second Circuit/Vacated and remanded. Justice Thomas delivered the opinion of the Court (Jackson, J., joined by Sotomayor and Kagan, JJ., dissenting). Under the Immigration and Nationality Act ("INA"), a lawful permanent resident ("LPR") returning from temporary travel abroad ordinarily is regarded as already admitted (and need not reapply for admission), but the government may regard him as "seeking an admission" (and not already admitted) if he "has committed" certain offenses, including a crime involving moral turpitude. 8 U.S.C. § 1101(a)(13)(C)(v). Muk Choi Lau, an LPR since 2007, was charged with trademark counterfeiting in New Jersey and traveled abroad while awaiting trial. Upon his return, a border officer treated him as an applicant for admission based on the pending charge and paroled him into the country (allowing

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him to physically enter without being formally admitted). After Lau pleaded guilty, he was ordered removed as an applicant for admission who was inadmissible because of his conviction for a crime involving moral turpitude. The Second Circuit vacated the removal order, holding that a border officer may treat a returning LPR as seeking admission only if the officer has clear and convincing evidence that the LPR committed a qualifying crime—a standard a pending charge alone could not satisfy. The Supreme Court disagreed, holding that nothing in the INA requires a border officer to have clear and convincing evidence of the crime. The Court explained that removal on inadmissibility grounds proceeds in two steps: commission of a qualifying crime allows the LPR to be treated as seeking admission, and conviction establishes inadmissibility. Although the INA expressly imposes evidentiary burdens elsewhere, neither its terms nor BIA precedent imposes a clear-and-convincing-evidence burden on border officers at the point of reentry. In dissent, Justice Jackson, joined by Justices Sotomayor and Kagan, argued that the statute's directive that a returning LPR "shall not be regarded" as seeking admission requires the government to determine that an exception to admissibility applies at the border—before divesting the LPR of his already-admitted status—rather than justify that determination afterward with later-acquired evidence.

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

Decided June 29, 2026 (609 U.S. __). Fourth Circuit/Vacated and remanded. Justice Kagan delivered the opinion of the Court (Jackson, J., joined by Sotomayor, J., concurring) (Gorsuch, J., concurring in the judgment) (Alito, J., joined in part by Thomas and Barrett, JJ., dissenting) (Barrett, J., dissenting). In May 2019, a Virginia credit union was robbed by a man using a cell phone. Unable to identify the robber using conventional means, investigators obtained a "geofence warrant" directed at Google, under which Google would use the stored location data of its users to identify individuals near the robber's location. Google identified Okello Chatrie; after he was charged with the robbery, he moved to suppress the information Google provided. The district court denied that motion, holding that the geofence warrant violated the Fourth Amendment but the evidence was admissible under the good-faith exception to the exclusionary rule. A Fourth Circuit panel affirmed on the ground that no search had occurred, but the en banc Fourth Circuit divided evenly on that issue and affirmed in a one-sentence decision. The Supreme Court granted certiorari only on the Fourth Amendment question and concluded that obtaining the location and identity information from Google was a search for Fourth Amendment purposes. Relying on *Carpenter v. United States*, 585 U.S. 296 (2018), the Court held that individuals have a legitimate expectation of privacy in their cell-phone location data, which presents a "retrospectiv[e]" and "fine-tuned picture of a person's movements" that, at least for the data Google collects, users treat as a "personal journal" that can be reasonably expected "to be shielded from the 'inquisitive eyes' of the government." The invasion of that expectation of privacy thus constituted a search—and it was of no moment that the information collected consisted of only two hours of data, since even short-term surveillance can be used to "reveal" an individual's "private matters." Similarly, the fact that Google collected Chatrie's data with his consent did not mean the investigation was not a search: "A cell-phone user is not to be viewed as sharing private information with third parties—which then can be freely passed on to the government—just by doing the ordinary things cell-phone users do," such as using an app's location services. The Court remanded to the Fourth Circuit for further proceedings on whether the geofence warrant was sufficiently particularized to pass constitutional muster and whether the evidence was admissible under the good-faith exception. Justice Jackson, joined by Justice Sotomayor, concurred to argue that the warrant was invalid under the Fourth Amendment because it allowed officers too much discretion unsupervised by a magistrate. Justice Gorsuch concurred in the judgment, arguing that the Court should abandon its reasonable-expectation-of-privacy line of cases but agreeing that the government conducted a search because Chatrie had a property interest in his location data. Justice Alito dissented. In a portion of the dissent joined by Justice Thomas, Justice Alito argued that the petition should have been dismissed as improvidently granted because the judgment below was supported by the good-faith exception and because Google has since changed its services to preclude complying with future geofence warrants. He also argued, solo, that *Carpenter* was wrongly decided and that, under traditional Fourth Amendment principles, obtaining the information from Google was not a search. Finally, in a portion joined by Justice Barrett, Justice Alito argued that, even accepting *Carpenter*, the government conducted no search. Justice Barrett also dissented, noting that she has "no quarrel with *Carpenter*" but that "Chatrie had no reasonable expectation of privacy in data about his public movements that he voluntarily disclosed to Google."

54. ***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; argued Apr. 27, 2026).** The Question Presented is: Whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts a label-based failure-to-warn claim where EPA has not required the warning.

    Decided June 25, 2026 (609 U.S. 371). Court of Appeals of Missouri, Eastern District/Reversed and remanded. Justice Kavanaugh delivered the opinion of the Court (Thomas, J., concurring) (Jackson, J., joined by Gorsuch, J., dissenting). Monsanto manufactures Roundup, a glyphosate-based weedkiller, and EPA has repeatedly concluded that glyphosate is not likely to cause cancer, so it has never required a cancer warning on Roundup's label. John Durnell sued in Missouri state court, alleging that Roundup gave him non-Hodgkin's lymphoma and that Monsanto should have warned of the cancer risk; a jury awarded him more than $1 million on his failure-to-warn claim. The Supreme Court reversed, holding that FIFRA's preemption clause—which bars States from imposing labeling "requirements . . . in addition to or different from" those required under FIFRA, 7 U.S.C. § 136v(b)—expressly preempts the claim. The Court reasoned that once EPA approves a pesticide's label at registration, the manufacturer is legally required to use that label unless and until EPA approves or requires a change. Monsanto was therefore required to sell Roundup without a cancer warning, and Durnell's tort claim would force it to add one—a requirement "in addition to" and "different from" its federal obligations. The Court rejected Durnell's reliance on FIFRA § 136a(f)(2)—which says registration is not a "defense" to misbranding—explaining that the provision addresses only EPA enforcement actions and does not reach state tort suits, and that reading it otherwise "would effectively erase FIFRA's express preemption clause." Justice Thomas concurred in full but wrote separately to flag "underlying constitutional infirmities" in FIFRA, questioning Congress's Commerce Clause authority, the delegation of legislative power to EPA, and whether agency action can preempt state law under the Supremacy Clause. In dissent, Justice Jackson, joined by Justice Gorsuch, argued that the Court "reads into FIFRA a labeling requirement that does not exist," contending that EPA's label approval is only "prima facie evidence" of compliance, and that Durnell's claim merely parallels FIFRA's own misbranding prohibition and so is not preempted.

55. ***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; argued 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.

    Decided June 23, 2026 (609 U.S. __). Ninth Circuit/Reversed and remanded. Justice Barrett delivered the opinion of the Court (Jackson, J., joined by Kagan, J., concurring in judgment in part and dissenting in part) (Sotomayor, J., joined in part by Kagan and Jackson, JJ., dissenting). Practitioners of Falun Gong alleged that the Chinese government persecuted them and that Cisco enabled that persecution by developing the surveillance technology used to target them. They sued Cisco under the Alien Tort Statute ("ATS"), alleging that the company aided and abetted torture and other international law violations, and one plaintiff sued two Cisco executives under the Torture Victim Protection Act ("TVPA") for aiding and abetting torture. The Ninth Circuit held that both statutes authorized aiding-and-abetting liability. The Supreme Court reversed. As to the ATS, the Court held that courts may not create new causes of action under that statute, which is purely jurisdictional. Although *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), left open the possibility of judicially created causes of action under the ATS, that authority—"always described as slight"—"is more accurately described as nonexistent." Courts cannot create new causes of action, since that power belongs to Congress. And that restriction has particular force in this context because ATS cases "by their nature implicate foreign policy," making it hard to imagine a new ATS cause of action that would not have "detrimental foreign policy consequences" intruding on the roles of the political branches. The Court thus declined to further "indulge the fiction" that creating new ATS actions is ever appropriate. As to the TVPA, the Court held, relying on *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U.S. 164 (1994), that the statute's "silence" on aiding-and-abetting liability "settle[s] the issue." And the TVPA's imposition of liability on one who "subjects" another to torture does not sweep as widely as aiding-and-abetting liability, which "encompasses many forms of assistance . . . one (or more) steps removed from the torturer." Justice Jackson, joined by Justice Kagan, agreed that the TVPA does not reach aiding and abetting but concurred only in the judgment because she disagreed with the majority's treatment of *Central Bank* as a "magic words" test for aiding-and-abetting liability. She otherwise agreed with the ATS analysis in Justice Sotomayor's dissent. Justice Sotomayor dissented with respect to both statutes. On the ATS, she argued (joined by Justices Kagan and Jackson) that the Court had overruled *Sosa* "without even acknowledging that it is doing so," thus disregarding the heightened stare decisis owed to statutory precedents. As to the TVPA, Justice Sotomayor argued that "subjects" textually includes those who aid and abet torture.

56. ***Mullin v. Doe*, No. 25-1083 (S.D.N.Y., 2025 WL 4477179; cert. before judgment granted Mar. 16, 2026; argued Apr. 29, 2026), consolidated with *Trump v. Miot*, No. 25-1084 (D.D.C., 2026 WL 266413; cert. before judgment granted Mar. 16, 2026; argued Apr. 29, 2026).** The Questions Presented are: (1) Whether 8 U.S.C. § 1254a(b)(5)(A) precludes judicial review of respondents' Administrative Procedure Act ("APA") claims challenging the Secretary's termination of TPS designations for Syria and Haiti; and (2) Whether, if reviewable, respondents' APA claims fail on the merits.

    Decided June 25, 2026 (609 U.S. 324). District Court for the Southern District of New York/Reversed and remanded; District Court for the District of Columbia/

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Reversed and remanded. Justice Alito delivered the opinion of the Court except as to Part III-A and an opinion as to that Part joined by Chief Justice Roberts and Justices Thomas and Kavanaugh (Thomas, J., concurring) (Kagan, J., joined by Sotomayor and Jackson, JJ., dissenting). Congress in 1990 created Temporary Protected Status ("TPS") to provide short-term humanitarian relief for aliens who cannot safely return to their home countries. Syria and Haiti received TPS designation in 2012 and 2010, respectively. In 2025, the Secretary of Homeland Security announced that she would terminate Syria's and Haiti's TPS designations. Syrian and Haitian TPS holders sued, alleging that the government violated the Administrative Procedure Act ("APA") in terminating the countries' TPS status. The Haitian TPS holders also alleged that the Haiti termination violated the constitutional right to equal protection. The district courts in both cases granted interim relief blocking the terminations, and the respective courts of appeals declined to issue a stay. The Court held that the TPS statute's provision that "[t]here is no judicial review of any determination of the [Secretary of Homeland Security] with respect to the designation, or termination or extension of a designation, of a foreign state" bars judicial review of non-constitutional claims challenging a TPS termination. 8 U.S.C. § 1254a(b)(5)(A). The term "determination" may mean either an individual decision or the process leading to a decision—but under either meaning, the judicial-review bar prevents review of any substantive or procedural errors in the termination or in any subsidiary decision forming the ultimate decision. The Court also held that the Haitian plaintiffs' equal-protection claim failed on the merits. Justice Alito, joined by the Chief Justice and Justices Thomas and Kavanaugh, concluded that the rule of *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998), that jurisdictional questions must be resolved before the merits did not apply. Because the question was simply whether interim relief was appropriate and the Court was not making a final decision, the Court could reach the likelihood of success on the merits of the constitutional claim without deciding whether the judicial-review bar stripped courts of jurisdiction over constitutional claims. On the merits, the Court assumed that heightened scrutiny applied but concluded that the plaintiffs were unlikely to establish that a discriminatory purpose was a "motivating factor" in the termination. Particularly in the immigration context, respondents had not shown that race motivated the decision because the President's or Secretary's statements that supposedly showed discriminatory purpose were not overtly racial and expressed a policy view that had a race-neutral explanation—that the administration simply opposed the entire TPS program. Justice Thomas concurred to argue that the equal-protection claim was jurisdictionally barred and failed on the merits because "aliens have no equal protection rights against the Federal Government." Dissenting, Justice Kagan, joined by Justices Sotomayor and Jackson, argued that the judicial-review bar did not prohibit procedural challenges to the Secretary's compliance with the statutory requirement that she consult with other agencies before terminating TPS designations, and that on the merits of that claim the Secretary did not properly consult. Justice Kagan also would have held that the plaintiffs were likely to succeed on their equal-protection claim because it was "more than plausible" that Haiti's designation was terminated based on "racial animus."

57. ***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; argued 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.

Decided June 4, 2026 (608 U.S. 580). Federal Circuit/Reversed and remanded. Justice Jackson delivered the opinion for a unanimous Court. Federal law permits manufacturers to market FDA-approved generic versions of brand-name drugs so long as they do not infringe patented uses. A manufacturer that "actively induces infringement of a patent" may be held liable under 35 U.S.C. § 271(b). Amarin Pharma, Inc., the manufacturer of the brand-name drug Vascepa, which contains icosapent ethyl, sued Hikma Pharmaceuticals USA Inc., the manufacturer of a generic icosapent ethyl, alleging that Hikma's statements on its label, website, and press releases were sufficient to show that it took "active steps" to induce infringement of Amarin's methods-of-use patents under the statute. The Federal Circuit allowed the claim to proceed on the view that physicians could plausibly interpret Hikma's statements "as an instruction or encouragement" to prescribe Hikma's generic for patented uses of the brand-name drug. The Supreme Court disagreed, holding that Amarin did not plausibly allege induced infringement. The Court emphasized that the issue is whether "Hikma actively encouraged infringing uses, not merely whether doctors could plausibly read the alleged statements as instructions to infringe." The Court thus focused on whether Hikma itself took affirmative "statements or actions" to encourage infringement, rather than on how physicians might interpret ambiguous statements. The Court also stressed that ordinary acts incident to marketing and distribution of a lawful generic drug cannot, without more, establish inducement liability. Turning to Amarin's claims, the Court explained that several of Hikma's statements had "obvious alternative explanations," like compliance with federal labeling requirements (rather than inducement). Omissions also do not constitute active inducement, as Section 271(b) requires affirmative conduct, not silence. And Hikma's remaining statements simply were too vague to plausibly show active encouragement or inducement.

Cases To Be Argued Next Term

OCTOBER CALENDAR

1. ***Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (Colo., 2025 WL 1363355; cert. granted Feb. 23, 2026; to be argued Oct. 5, 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.

2. ***Johnson v. United States Congress*, No. 25-735 (11th Cir., 151 F.4th 1287; cert. granted Apr. 6, 2026; to be argued Oct. 5, 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?

3. ***Anderson v. Intel Corporation Investment Policy Committee*, No. 25-498 (9th Cir., 137 F.4th 1015; cert. granted Jan. 16, 2026; to be argued Oct. 6, 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."

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4. ***Department of the Air Force v. Prutehi Guahan*, No. 25-579 (9th Cir., 128 F.4th 1089; cert. granted Mar. 9, 2026; to be argued Oct. 7, 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. ***Beaird v. United States*, No. 25-5343 (5th Cir., 2025 WL 1410410; cert. granted Apr. 20, 2026; to be argued Oct. 13, 2026).** The Question Presented is: Whether *Stinson v. United States*, 508 U.S. 36 (1993), still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines.

6. ***Salazar v. Paramount Global*, No. 25-459 (6th Cir., 133 F.4th 642; cert. granted Jan. 26, 2026; to be argued Oct. 14, 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.

NOVEMBER CALENDAR

7. ***Maxwell v. Dinis*, No. 25-5930 (5th Cir., 133 F.4th 453; cert. granted June 1, 2026; to be argued Nov. 2, 2026).** The Question Presented is: Whether a claim regarding application of time credits under the First Step Act of 2018, seeking accelerated transfer to a halfway house or home confinement, can be brought in a habeas petition under 28 U.S.C. § 2241.

8. ***Younge v. Fulton Judicial Circuit District Attorney's Office, Georgia*, No. 25-352 (11th Cir., 2025 WL 974309; cert. granted Mar. 30, 2026; to be argued Nov. 2, 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).

9. ***St. Mary Catholic Parish v. Roy*, No. 25-581 (10th Cir., 154 F.4th 752; cert. granted Apr. 20, 2026; to be argued Nov. 3, 2026).** The Questions Presented are: (1) Whether proving a lack of general applicability under *Employment Division v. Smith*, 494 U.S. 872 (1990), requires showing unfettered discretion or categorical exemptions for identical secular conduct; and (2) Whether *Carson v. Makin*, 596 U.S. 767 (2022), displaces the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions.

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10. ***Guerrero v. Johnson*, No. 25-1003 (5th Cir., 2025 WL 2060781; cert. granted June 15, 2026; to be argued Nov. 4, 2026).** The Question Presented is: Whether a claim relies on a "new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," 28 U.S.C. § 2244(b)(2)(A), when the habeas petitioner could have asserted a claim based on the rule in a prior federal habeas petition.

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11. ***Nielsen v. Watanabe*, No. 25-417 (9th Cir., 115 F.4th 1034; cert. granted June 22, 2026; to be argued Nov. 9, 2026).** The Question Presented is: Whether the U.S. Court of Appeals for the Ninth Circuit erred here in recognizing a *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), cause of action.

12. ***Hoffmann v. WBI Energy Transmission, Inc.*, No. 25-159 (8th Cir., 132 F.4th 1058; CVSG Dec. 8, 2025; cert. recommended May 22, 2026; cert. granted June 29, 2026; to be argued Nov. 9, 2026).** The Question Presented is: Whether, in private condemnations under the Natural Gas Act, just compensation should be determined by reference to state law.

13. ***Department of Labor v. Sun Valley Orchards, LLC*, No. 25-966 (3d Cir., 148 F.4th 121; cert. granted Apr. 27, 2026; to be argued Nov. 10, 2026).** The Questions Presented are: (1) Whether Article III of the Constitution precludes the Department of Labor from adjudicating proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H-2A workers and domestic workers in corresponding employment; and (2) Whether 8 U.S.C. § 1188(g)(2) authorizes the Department of Labor to adjudicate proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H-2A workers and domestic workers in corresponding employment.

DECEMBER CALENDAR

14. ***Crowther v. Board of Regents of the University System of Georgia*, No. 25-183 (11th Cir., 121 F.4th 855; CVSG Dec. 8, 2025; cert. recommended Apr. 9, 2026; cert. granted May 18, 2026; to be argued Nov. 30, 2026).** 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.

15. ***Wassily v. Blanche*, No. 25-842 (2d Cir., 150 F.4th 100; cert. granted June 29, 2026; to be argued Nov. 30, 2026).** The Question Presented is: Whether noncitizens who were "granted asylum," but whose asylum was later terminated, are eligible for adjustment to LPR status under Section 1159(b) (as the Fifth Circuit held) or are categorically ineligible (as the Second and Fourth Circuits held).

16. ***Jouppi v. Alaska*, No. 25-246 (Alaska, 566 P.3d 943; cert. granted July 20, 2026; to be argued Dec. 1, 2026).** The Question Presented is: Whether, in determining whether a fine contravenes the Excessive Fines Clause, courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing.

17. ***Viramontes v. Cook County*, No. 25-238 (7th Cir., 2025 WL 1553896; cert. granted June 30, 2026; to be argued Dec. 2, 2026), consolidated with *Grant v. Higgins*, No. 25-566 (2d Cir., 153 F.4th 213; cert. granted June 30, 2026; to be argued Dec. 2, 2026).** The Question Presented is: Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

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18. ***International Partners for Ethical Care, Inc. v. Ferguson*, No. 25-840 (9th Cir., 146 F.4th 841; cert. granted June 29, 2026; to be argued Dec. 7, 2026).** The Question Presented is: Whether parents have standing to challenge a law or policy that deliberately displaces their decisionmaking role as to "gender transitions" of their children, and in so doing creates present and likely future impediments to their ability to parent their children as they deem best for them.

19. ***Republican National Committee v. Mi Familia Vota*, No. 25-1017 (9th Cir., 129 F.4th 691; cert. granted June 29, 2026; to be argued Dec. 8, 2026).** The Questions Presented are: (1) Whether the National Voter Registration Act or a federal consent decree prohibits Arizona from requiring voter-registration applicants to produce "satisfactory evidence" of U.S. citizenship when registering with a state registration form; and (2) Whether the NVRA prohibits Arizona from implementing a program within 90 days of a federal election to cancel the registrations of voters who are not U.S. citizens.

20. ***Grand v. City of University Heights*, No. 25-965 (6th Cir., 159 F.4th 507; cert. granted June 30, 2026; to be argued Dec. 9, 2026).** The Question Presented is: Whether the First Amendment's established chilling-effect doctrine—under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury—is displaced by *Williamson County*'s land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.

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CASES AWAITING ARGUMENT DATE

21. ***Kian v. Florida*, No. 25-6623 (Fla. Dist. Ct. App. 4th Dist., 421 So. 3d 439; cert. granted June 15, 2026).** The Question Presented is: Whether the petitioner was deprived of his right, under the Sixth and Fourteenth Amendments, to a trial by a 12-person jury when the defendant is charged with a serious felony.

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22. ***RiseandShine Corporation v. PepsiCo, Inc.*, No. 24-1016 (2d Cir., 2024 WL 5165388; CVSG Oct. 6, 2025; cert. opposed May 20, 2026; cert. granted June 29, 2026).** The Question Presented is: Whether trademark strength is a question of fact in a likelihood-of-confusion analysis under 15 U.S.C. § 1114.

23. ***Montoya Palacios v. Liggins*, No. 25-1223 (4th Cir., 2026 WL 1154321; cert. granted June 29, 2026).** The Question Presented is: Whether, under the Equal Access to Justice Act, "any civil action" encompasses an action seeking a writ of habeas corpus to challenge civil immigration detention.

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24. ***Apple Inc. v. Epic Games, Inc.*, No. 25-1311 (9th Cir., 161 F.4th 1162; cert. granted June 30, 2026).** The Question Presented is: Whether a court may hold a party in civil contempt based on a violation of an injunction's "spirit" where the injunction is silent as to the conduct upon which contempt is based, or, instead, whether a court must ground a finding of civil contempt on the violation of an order that clearly and unambiguously proscribes the precise conduct at issue.

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

1. ***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.

2. ***Robinhood Markets, Inc. v. Sodha*, No. 25-944 (9th Cir., 154 F.4th 1019; CVSG June 1, 2026).** The Questions Presented are: (1) Whether an issuer violates Section 11(a) of the Securities Act of 1933’s misleading-omissions prong by failing to disclose interim financial data that investors may consider material, without an inquiry into whether the omission rendered any affirmative statement misleading; and (2) Whether an issuer violates Item 303—and thus Section 11(a)’s required-statements prong—by failing to disclose and quantify interim financial data before quarterly reporting deadlines.

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3. ***Saadeh v. New Jersey State Bar Association*, No. 25-1002 (N.J. Super. Ct. App. Div., 2024 WL 5182533; CVSG June 22, 2026).** The Question Presented is: Whether the First Amendment overrides antidiscrimination laws when the discrimination furthers the defendant’s views about “diversity,” “equity,” or “inclusion.”

4. ***Pharmaceutical Research and Manufacturers of America v. O’Day*, No. 25-1018 (9th Cir., 153 F.4th 795; CVSG June 22, 2026).** The Questions Presented are: (1) Whether a government reporting requirement is subject to intermediate First Amendment scrutiny, and satisfies such scrutiny, so long as it aims to correct “information asymmetries” that are “product-specific”; and (2) Whether entities that operate in “highly regulated” industries categorically lack reasonable investment-backed expectations in their trade secrets for purposes of the Takings Clause.

5. ***Republican National Committee v. Eakin*, No. 25-962 (3d Cir., 149 F.4th 291; CVSG June 29, 2026).** The Questions Presented are: (1) Whether a non-discriminatory rule imposing the usual burdens of voting is constitutional; (2) Whether a mail-voting rule is subject only to rational-basis review when the state makes in-person voting available; and (3) Where *Anderson-Burdick* applies, whether a minimally burdensome voting rule is subject only to rational-basis review, and whether a rule’s burden is measured by the cost of compliance or the consequence of noncompliance.

6. ***Pennsylvania v. Eakin*, No. 25-967 (3d Cir., 149 F.4th 291; CVSG June 29, 2026).** The Question Presented is: Does Pennsylvania’s requirement that mail-in voters provide a handwritten date when signing a pre-printed declaration on a ballot return envelope violate the First or Fourteenth Amendment to the United States Constitution?

7. ***Roybal v. Griffith*, No. 25-442 (10th Cir., 129 F.4th 790; CVSG June 30, 2026).** The Questions Presented are: (1) Whether a transgender inmate's challenge to sex-based prison policies is subject to heightened scrutiny under *United States v. Virginia*, 518 U.S. 515 (1996), or subject to the deferential standard of "reasonable relationship to legitimate penological interests" under *Turner v. Safley*, 482 U.S. 78 (1987); and (2) Whether a rule prohibiting cross-identified-gender strip searches in prisons is contrary to the flexible and deferential rule adopted in *Bell v. Wolfish*, 441 U.S. 520 (1979), and reaffirmed in *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. 318 (2012).

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.

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. recommended 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. ***Nebraska v. Colorado*, No. 22O161 (Original Jurisdiction; CVSG Nov. 17, 2025; leave to file bill of complaint recommended May 20, 2026; leave to file bill of complaint granted June 29, 2026).** 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.

4. ***Renteria v. New Mexico Office of the Superintendent of Insurance*, No. 25-113 (10th Cir., 2025 WL 635754; CVSG Oct. 14, 2025; hold pending *St. Mary Catholic Parish v. Roy* recommended May 26, 2026).** 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. ***GEO Group, Inc. v. Nwauzor*, No. 25-828 (9th Cir., 127 F.4th 750; CVSG May 18, 2026; cert. recommended Sept. 15, 2026).** The Question Presented is: Whether the Supremacy Clause allows a state to reclassify federal immigration detainees participating in a federal work program as employees and thereby impose its state minimum-wage law just because a private contractor provides detention services at the federal facility where the detainees are housed.

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. ***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.

3. ***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.

4. ***Cotter Corporation v. Mazzocchio*, No. 24-1001 (8th Cir., 120 F.4th 565; CVSG Oct. 6, 2025; cert. opposed Apr. 9, 2026; cert. denied May 18, 2026).** The Question Presented is: Whether federal nuclear safety regulations preempt state tort standards of care in public liability actions.

5. ***Kingdom of Spain v. Blasket Renewable Investments, LLC*, No. 24-1130 (D.C. Cir., 112 F.4th 1088; CVSG Oct. 6, 2025; cert. opposed May 26, 2026; cert. denied June 29, 2026).** 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.

6. ***Highland Capital Management, L.P. v. NexPoint Advisors, L.P.*, No. 25-119 (5th Cir., 132 F.4th 353; CVSG Oct. 14, 2025; cert. opposed May 22, 2026; cert. denied June 29, 2026).** 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.

7. ***Doe v. Hochul*, No. 24-1015 (2d Cir., 2024 WL 5182675; CVSG Dec. 8, 2025; cert. opposed May 18, 2026; cert. denied June 29, 2026).** 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. ***Wells Pharma of Houston, L.L.C. v. Zyla Life Sciences, LLC*, No. 25-257 (5th Cir., 134 F.4th 326; CVSG Jan. 12, 2026; cert. opposed May 21, 2026; cert. denied June 29, 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.

9. ***Aldridge v. Regions Bank*, No. 25-590 (6th Cir., 144 F.4th 828; CVSG Apr. 6, 2026; cert. opposed Aug. 31, 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.

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. Fifteen 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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