



ALAN MORRISON SUPREME COURT ASSISTANCE PROJECT

**CERT. PETITIONS OF PUBLIC INTEREST
June 21, 2018**

Prepared by Tahir Duckett, 2017–2018 Project Fellow

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The [Alan Morrison Supreme Court Assistance Project](#) of Public Citizen Litigation Group regularly distributes this watch list to raise awareness of public interest issues presented to the U.S. Supreme Court. The Project monitors cert. petitions where the question presented implicates our public interest mission and there is some chance of a grant. The Project also offers pro bono assistance to litigants involved in some cases.

[Subscribe to the S. Ct. Watch List](#) to receive an update before each Supreme Court conference. Past conference watch lists are available in the [Watch List Archives](#). For more information, contact Tahir Duckett, 2017–2018 Supreme Court Assistance Project Fellow, at (202) 588-7713 or supremecourt@citizen.org.

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Resources

LINKS FOR MORE INFORMATION

- ✓ **Supreme Court's Website:**
<http://www.supremecourt.gov>. For information or status updates on a particular petition, click on the Docket Number included in this list for that petition. For news on all petitions, view the Orders List which comes out after each conference:
<http://www.supremecourt.gov/orders/ordersofthecourt.aspx>.
- ✓ **Alan Morrison Supreme Court Assistance Project of Public Citizen:**
<http://www.citizen.org/litigation/SupremeCourt>. Project information.
- ✓ **SCOTUS Blog:**
<http://www.scotusblog.com>. Frequent Supreme Court updates.
- ✓ **Office of the Solicitor General:**
<http://www.usdoj.gov/osg/supreme-court-briefs>. Briefs filed by the United States.

KEY TERMS & ABBREVIATIONS

Petition for Certiorari <i>Cert. Petition</i>	The brief filed at the Supreme Court by a party who lost in a lower federal or state court, asking the Supreme Court to grant certiorari and review the decision of the lower court. If cert. is granted, the Court will hear the case. If cert. is denied, the decision below stands.
Petitioner	The party who lost in the lower court and is asking the Supreme Court to review the lower court decision.
Respondent	Any party other than the petitioner, but generally the party opposing a grant of certiorari. These parties usually want the Court to <i>deny</i> cert.
BIO <i>Brief in Opposition</i>	The brief in opposition is the brief filed by a respondent in response to the petitioner's petition for certiorari, typically explaining why the Court should not grant the petition.
CFR <i>Call For a Response</i>	Where the respondent has initially waived filing a response, after reading the petition for certiorari but before deciding whether to hear the case, the Court sometimes issues a CFR, or asks the respondent to file a brief in opposition.
Conference	The conference is the meeting the Justices hold to consider whether to grant or deny pending cert. petitions. Conference dates are listed on the current Supreme Court calendar .
CVSG <i>Call for the Views of the Solicitor General</i>	Before deciding whether to hear a case, the Court sometimes invites the Solicitor General to file a brief providing the views of the United States regarding the question presented by the petition. The brief eventually filed is called an "invitation brief." Many of these briefs are available here .
Dist. <i>Distributed</i>	The distribution date is the date on which the cert-stage papers are sent to the Justices' Chambers. When the clerk's office distributes the papers, the docket will indicate the date of the Conference at which the Justices will consider the case.
GVR <i>Granted, Vacated, and Remanded</i>	The Supreme Court sometimes will grant, vacate, and remand the petition for reconsideration, usually in light of an intervening Supreme Court decision.
Held	The Court sometimes holds a petition for later consideration because it raises the same or similar questions as those presented by other petitions or granted cases. The Court will consider the petition again later, usually after announcing a decision in another case.
QP <i>Questions Presented</i>	The question or questions presented in a petition for the Supreme Court to decide. The Court usually does not address issues not included in the QP.
Vide	Occasionally, more than one party will ask the Supreme Court to hear the same case. Marking a petition "Vide" recognizes that it comes from the same lower court opinion as another pending petition and essentially consolidates the cases.

JUNE 21 CONFERENCE

16-163 Wynn Las Vegas, LLC v. Cesarz (9th Cir.)

CFR 9/15/16. BIO 11/16/16. Reply 11/30/16. Dist. for 1/6/17.
Supp. Pet'r Brief 8/2/17. Supp. Pet'r Br. 6/4. Supp. Resp. Br. 6/6. Dist. for 6/21.

**Fair Labor Standards Act:
Tip Pooling**

On whether the Department of Labor has authority to restrict employers' use of tip-pooling arrangements, among other issues.

16-166 Harris v. Cooper (M.D.N.C.)

Motion to dismiss or affirm 9/6/16. Appellants' Opp. 9/19/16.
Dist. for 10/7/16. Dist. for 5/25. Order re supp. letter briefing 5/26. Dist. for 6/1.
Appellants' Supp. 6/6. Appellees' Supp. 6/6. Dist. for 6/8. Dist. for 6/15. Dist. for 6/21.

**Voting:
Partisan Gerrymanders**

On whether the court below erred in determining that it could not strike down a legislative districting plan under the First and Fourteenth Amendments as a partisan gerrymander designed to favor Republicans.

16-920 Nat'l Restaurant Ass'n v. Dep't of Labor (9th Cir.)

BIO 5/22. Dist. for 6/21.

**Fair Labor Standards Act:
Tip Pooling**

On whether the Fair Labor Standards Act imposes restrictions on tip-pooling arrangements by employers who pay employees the full minimum wage and do not rely on the tip credit, amongst other issues.

16-1094 Republic of Sudan v. Harrison (2d Cir.)

CFR 4/26. BIO 6/26. Reply 7/13. Dist. For 9/25. CVSG 10/2.
Supp. Pet. Br. 1/30. Supp. Resp. Br. 3/9. SG Br. 5/22. Dist. for 6/14.
Dist. for 6/21.

**Foreign Sovereign Immunities Act:
Service of Process**

On whether plaintiffs seeking to hold Sudan responsible for providing "material support" for the bombing of the U.S.S. Cole can serve the foreign government by mail.

16-1189 E.I. DuPont de Nemours & Co. v. Smiley (3d Cir.)

BIO 4/28. Reply 5/12. Dist. for 6/21.

**Fair Labor Standards Act:
Overtime Pay**

On whether the Fair Labor Standards Act allows an employer to treat compensation for non-compensable meal breaks included in its employees' regular rate of pay as a credit against compensation the employer owes for work hours, among other issues.

16-1498 Washington State Dep't of Licensing v. Cougar Den, Inc. (Wash.)

BIO 8/16. Reply 8/29. Dist. for 9/25. CVSG 10/2. SG Br. 5/15.
Dist. for 6/14. Supp. Resp. Br. 5/29. Dist. for 6/21.

**Native Americans:
Yakama Treaty of 1855**

On whether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of public highways.

17-108 Arlene’s Flowers v. State of Washington (Wash.)

BIOs 10/20. Reply 11/9. Dist. for 12/1. Dist. for 6/7. Supp. Pet. Br. 6/6.
Supp. Resp. Brs. 6/6, 6/7. Dist. for 6/14. Dist. for 6/21.

**First Amendment:
Compelled Speech**

On whether compelling the creation and sale of custom floral arrangements for a sex wedding ceremony violates the Free Speech or Free Exercise Clauses of the First Amendment.

17-290 Merck Sharp & Dohme Corp. v. Albrecht (3d Cir.)

BIO 10/25. Reply 11/8. Dist. for 12/1. CVSG 12/4. SG Br. 5/22.
Supp. Resp. Br. 6/5. Supp. Pet’r. Br. 6/7. Dist. for 6/21.

**Preemption:
Drug Regulation**

On whether a state-law failure-to-warn claim is preempted when the FDA rejected a drug manufacturer’s proposal to warn about the risk after being provided with the relevant scientific data.

17-419 James Dawson v. Steager, West Va. State Tax Commissioner (S. Ct. W. Va.)

BIO 11/20. Reply 12/5. Dist. For 1/5. CVSG 1/8. SG Br. 5/15.
Dist. for 6/14. Supp. Resp. Br. 5/29. Dist. for 6/21.

**State Tax:
Exemption for Retirees**

On whether the doctrine of intergovernmental tax immunity bar states from exempting groups of state retirees from state income tax but not similarly situated federal retirees based on the source of their retirement income.

17-425 Wass v. Idaho (Idaho)

CFR 10/25. BIO 1/23. Reply 1/30. Dist. for 2/16. Supp. Pet. Br. 6/5.
Dist. for 6/7. Record Req’d. 6/8. Dist. for 6/14. Dist. for 6/21.

**Fourth Amendment:
Miranda Warning**

On whether, where an officer elicits an admission without providing a *Miranda* warning, then provides the warning and elicits the same admission, the admissibility of the evidence is governed by an objective, suspect-focused test or a subjective, officer-focused test.

17-528 Strang v. Ford Motor Co. (6th Cir.)

BIO 12/11. Reply 12/27. Dist. for 1/19. CVSG 1/22. SG Br. 5/22.
Supp. Pet. Br. 6/1. Dist. for 6/21.

**ERISA:
Remedies**

On whether, under the Employee Retirement Income Security Act of 1974, a claimant is barred from alleging a claim for breach of fiduciary duty under the remedial provision in section 502(a)(3) whenever that claimant has the opportunity to allege a claim for benefits under the remedial provision in section 502(a)(1)(B).

17-532 Herrera v. Wyoming (D. Wy.)

BIO 11/9. Reply 11/28. Dist. For 1/5. CVSG 1/8. SG Br. 5/22.
Supp. Pet’r. Br. 6/5. Supp. Resp. Br. 6/5. Dist. For 6/21.

**Native Americans:
Treaty Rights**

On “[w]hether Wyoming’s admission to the Union or the establishment of the Bighorn National Forest abrogated the Crow Tribe of Indians’ 1868 federal treaty right to hunt on the ‘unoccupied lands of the United States,’ thereby permitting the present-day criminal conviction of a Crow member who engaged in subsistence hunting for his family.”

17-571 Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC (11th Cir.)
CFR 11/2. BIO 11/28. Reply 12/13. Dist. For 1/5. CVSG 1/5. SG Br. 5/16.
Supp. Pet. Br. 6/5. Dist. for 6/21.

**Copyright:
Registration**

On whether the “registration of [a] copyright claim has been made” within the meaning of 17 U.S.C. § 411(a) when the copyright holder delivers the required application, deposit, and fee to the Copyright Office, or only once the Copyright Office acts on that application.

17-646 Gamble v. United States (11th Cir.)
BIO 1/16. Reply 1/30. Dist. for 4/13. Dist. for 4/20. Dist. for 4/27.
Dist. for 5/10. Dist. for 5/17. Dist. for 5/24. Dist. for 5/31. Dist. for 6/7.
Dist. for 6/14. Dist. for 6/21.

**Criminal Law:
Double Jeopardy**

On whether “the Court should overrule the ‘separate sovereigns’ exception to the Double Jeopardy Clause.”

17-742 Sause v. Bauer (10th Cir.)
BIO 1/19. Reply 2/6. Dist. for 2/23. Dist. for 3/2. Dist. for 3/16.
Dist. for 3/23. Dist. for 3/29. Dist. for 4/13. Dist. for 4/20. Dist. for 4/27.
Dist. for 5/10. Dist. for 5/17. Dist. for 5/24. Dist. for 5/31. Dist. for 6/7.
Dist. for 6/14. Dist. for 6/21.

**Qualified Immunity:
Clearly Established Law**

On whether officers are entitled to qualified immunity from suit by a woman whom they stopped from praying to harass her.

17-1041 Sheridan v. Melendres (9th Cir.)
BIOs 3/28, 5/22. Reply 6/5. Dist. for 6/21.

**Justiciability:
Mootness**

On whether an appeal from a civil contempt of court finding for violating an injunction becomes moot when the litigant retires from the law enforcement position subject to the injunction.

17-1056 Quality Systems, Inc. v. City of Miami Fire Fighters’ and Police Officers’ Retirement Trust (9th Cir.)
CFR 2/20. BIO 3/22. Reply 4/10. Dist. for 4/27. Dist. for 5/10.
Dist. for 5/17. Dist. for 5/24. Dist. for 5/31. Dist. for 6/7. Dist. for 6/14. Dist. for 6/21.

**Private Securities Litigation Reform Act:
Forward-looking Statements**

On whether “or in what circumstances a defendant must admit that non-forward-looking statements are false or misleading, in order to be protected by the Private Securities Litigation Reform Act of 1995’s safe harbor for forward-looking statements.”

17-1058 SNR Wireless License Co. v. FCC (D.C. Cir.)
BIO 5/21. Reply 6/4. Dist. for 6/21.

**Administrative Procedure:
Wireless-Spectrum Licenses**

On whether FCC regulations discounting wireless-spectrum licenses for “very small businesses” as measured by annual revenue adequately placed these businesses on notice that the FCC may consider the revenue of the business’ ownership in determining eligibility for these discounts.

17-1060 United States ex rel. Carter v. Halliburton Co. (4th Cir.)
BIO 1/31. Reply 2/12. Dist. for 3/2. CVSG 3/5. SG Br. 5/22. Dist. for 6/21.

**False Claims Act:
First-to-file Bar**

On whether, under the first-to-file bar of the False Claims Act, later actions may proceed without refiling once all earlier actions have been dismissed, or whether later actions must be dismissed and refiled, among other issues.

17-1094 Nutraceutical Corp. v. Lambert (9th Cir.)
CFR 3/7. BIO 5/14. Reply 5/23. Dist. for 6/14. Dist. for 6/21.

**Civil Procedure:
Claim-processing Rules**

On whether the Ninth Circuit erred by holding that equitable exceptions apply to mandatory claim-processing rules and excusing a party’s failure to timely file a petition for permission to appeal.

17-1106 Sexton v. Beaudreaux (9th Cir.)
BIO 3/9. Reply 3/27. Dist. for 6/21.

**Habeas Corpus:
Deferential Review**

On whether the court of appeals violated AEDPA’s deferential review requirements in its setting aside of a state conviction based on an ineffective-assistance claim.

17-1153 Sierra Pacific Industries v. United States (9th Cir.)
BIO 5/22. Reply 6/4. Dist. for 6/21.

**Civil Procedure:
Fraud on the Court**

On whether a federal court adjudicating a motion under Federal Rule of Civil Procedure 60(d)(3) for “fraud on the court” may consider the totality of the evidence of fraud, including evidence that was known at the time of judgment, or is instead strictly limited to considering only later-discovered evidence in isolation.

17-1165 de Csepel v. Republic of Hungary (D.C. Cir.)
BIO 5/21. Reply 6/4. Supp. Resp. Br. 6/5. Dist. for 6/21.

**Foreign Sovereign Immunities Act:
Foreign States**

On whether a foreign state is immune from suit in the United States in a case in which the property rights at issue are for a property located outside the United States, the property is owned or operated by an agency or instrumentality of the foreign state, and that agency or instrumentality is engaged in commercial activity in the United States.

17-1174 Nieves v. Bartlett (9th Cir.)
CFR 4/12. Brief in Support 5/14. Dist. for 6/14. Dist. for 6/21.

**First Amendment:
Retaliatory Arrest**

On whether probable cause defeats a First Amendment retaliatory-arrest claim under § 1983 as a matter of law.

17-1180 Union Pacific Railroad Co. v. EEOC (7th Cir.)
BIO 5/18. Reply 6/5. Dist. for 6/21.

**Discrimination:
Subpoenas**

On whether the EEOC may enforce a subpoena after the charging employee has initiated litigation and the claim has been adjudicated meritless in court, among other issues.

17-1251 Casey v. United States (1st Cir.)
BIO 5/22. Reply 6/4. Dist. for 6/21.

**Habeas Corpus:
Armed Career Criminal Act of 1984**

On whether “a court may grant a § 2255 petition collaterally challenging a sentence under *Johnson v. United States* when the sentencing judge never specified whether the petitioner’s original sentence was enhanced pursuant to the Armed Criminal Career Act’s now-invalidated residual clause.”

17-1269 Kumar v. Republic of Sudan (4th Cir.)
Brief in Support 4/9. Dist. for 6/14. Dist. for 6/21.

**Foreign Sovereign Immunities Act:
Service of Process**

On whether a service packet is “addressed and dispatched to the head of the ministry of foreign affairs” of a foreign state when the service packet is addressed and sent to the state’s embassy in the United States.

17-1272 Henry Schein, Inc. v. Archer & White Sales, Inc. (5th Cir.)
BIO 5/11. Reply 5/29. Dist. for 6/14. Dist. for 6/21.

**Arbitration:
Questions of Arbitrability**

On whether the Federal Arbitration Act permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator where the court concludes that the claim of arbitrability is “wholly groundless.”

17-1279 Bernstein, Shur, Sawyer & Nelson, P.A. v. Snow (Me.)
CFR 4/26. Due 5/29. BIO 6/1. Reply 6/6. Dist. for 6/21.

**Preemption:
Federal Arbitration Act**

Scott Nelson of Public Citizen assisted respondents.
Brief in Opposition

On whether the Federal Arbitration Act preempts a state-law rule that requires informed consent to significant terms of attorney-client agreements.

17-1295 Rucho v. Common Cause (M.D.N.C.)
Motions to Affirm 4/27. Reply 5/15. Dist. for 5/31.
Supp. Appellee Br. 5/18. Dist. for 6/21.

**Voting:
Partisan Gerrymanders**

On “whether the district court erred in invalidating North Carolina’s 2016 congressional districting map as an unconstitutional partisan gerrymander, among other issues.

17-1299 Franchise Tax Bd. of Cal. v. Hyatt (Nev.)
CFR 5/1. BIO 5/31. Reply 6/6. Dist. for 6/21.

**Jurisdiction:
State Sovereign Immunity**

On whether *Nevada v. Hall*, which permits a sovereign State to be sued in another State’s courts without its consent, should be overruled.

17-1300 Findlay v. Federal Housing Finance Auth. (2d Cir.)
BIO 5/18. Reply 6/4. Dist. for 6/21.

**Securities Act:
Section 12(a)(2) Claim**

On whether “the Seventh Amendment requires a claim under Section 12(a)(2) of the Securities Act to be tried by a jury where petitioners did not sell the relevant securities and never possessed any proceeds from those sales,” among other issues.

**17-1301 Harvey v. UTE Indian Tribe of the Uintah
& Ouray Reservation (Utah)**
BIO 5/21. Reply 6/5. Dist. for 6/21.

**Native Americans:
Tribal Remedies Exhaustion Doctrine**

On whether “the tribal remedies exhaustion doctrine, which requires federal courts to stay cases challenging tribal jurisdiction until the parties have exhausted parallel tribal court proceedings, applies to state courts as well,” amongst other issues.

**17-1302 Nomura Securities Int’l v. Federal Housing
Finance Agency (2d Cir.)**
BIO 5/18. Reply 6/4. Dist. for 6/21.

**Securities Act:
Section 12(a)(2) Claim**

On whether “the Seventh Amendment requires a claim under Section 12(a)(2) of the Securities Act to be tried by a jury where petitioners did not sell the relevant securities and never possessed any proceeds from those sales,” among other issues.

17-1307 Obduskey v. McCarthy & Holthus, LLP (10th Cir.)
BIO 5/16. Reply 5/30. Dist. for 6/21.

**Fair Debt Collection Practices Act:
Non-judicial Foreclosure Proceedings**

On whether the Fair Debt Collection Practices Act applies to non-judicial foreclosure proceedings.

17-1309 Universal Processing Servs. of Wisc. v. FTC (11th Cir.)
BIO 5/16. Reply 6/1. Dist. for 6/21.

**Federal Trade Commission Act:
Joint and Several Liability**

On whether a passive service provider found liable for a violation of the Telemarketing Sales Rule can be held jointly and severally liable for co-defendants’ violation of the Federal Trade Commission Act.

[17-1328](#) **Preston v. Acosta (11th Cir.)**
BIO 5/21. Reply 5/31. Dist. for 6/21.

**ERISA:
Statute of Repose**

On whether the non-statutory doctrine of waiver can extend the time limit imposed by ERISA's statute of repose.

[17-1348](#) **Nev. Dep't of Wildlife v. Smith (Cal. Ct. App.)**
CFR 5/3. BIO 6/1. Reply 6/7. Dist. for 6/21.

**Jurisdiction:
State Sovereign Immunity**

On whether *Nevada v. Hall*, which permits a sovereign State to be haled into another State's courts without its consent, should be overruled.

[17-1351](#) **Greer v. Green Tree Servicing, LLC (9th Cir.)**
BIO 5/29. Reply 6/4. Dist. for 6/21.

**Fair Debt Collection Practices Act:
Non-judicial Foreclosure Proceedings**

On whether the Fair Debt Collection Practices Act applies to non-judicial foreclosure proceedings.

[17-1354](#) **Gelhaus v. Lopez (9th Cir.)**
BIO 4/26. Reply 5/11. Dist. for 5/31. Dist. for 6/7.
Dist. for 6/14. Dist. for 6/21.

**Qualified Immunity:
Clearly Established Law**

On whether the Ninth Circuit erred in denying qualified immunity to an officer who shot a teenage boy carrying a toy replica of an AK-47.

[17-1356](#) **Kaushal v. Indiana (Ind. Ct. App.)**
CFR 4/9. BIO 5/9. Reply 5/24. Dist. for 6/14. Dist. for 6/21.

**Immigration:
Guilty Pleas**

On whether a resident alien who pleads guilty after incorrect advice by counsel and discovers the error prior to sentencing must prove he would have opted for trial had he been correctly advised when the sole remedy he seeks is to proceed to trial.

[17-1364](#) **North Carolina v. Covington (M.D.N.C.)**
Motion to Affirm 4/27. Reply 5/15. Dist. for 5/31. Dist. for 6/7.
Dist. for 6/14. Dist. for 6/21.

**Voting:
Racial Gerrymanders**

On whether the lower court erred by finding that four districts were racially gerrymandered, among other issues.

PENDING FOR UPCOMING CONFERENCES

16-317 Deutsche Bank Trust Co. Americas v. Robert R. McCormick Foundation (2d Cir.)

**Bankruptcy:
Fraudulent Transfers**

BIO 10/24/17. Reply 11/4/17. Dist. for 4/13/17. Dist. for 4/21/17.
Dist. for 4/28/17. Dist. for 5/11/17. Dist. for 3/2. Dist. for 3/16. Dist. for 3/23.
Dist. for 3/29.

On whether a Bankruptcy Code provision prohibiting a trustee from avoiding a transfer made “by or to (or for the benefit of)” a financial institution applies when the effects of the transfer ultimately fall on companies that are not financial institutions, among other issues.

17-508 Livnat v. Palestinian Authority (D.C. Cir.)

**Jurisdiction:
Terrorist attack abroad**

BIO 6/13.

On whether the Fifth Amendment’s Due Process Clause precludes federal courts from exercising personal jurisdiction in suits by American victims of a terrorist attack abroad carried out by the Palestinian Authority.

17-664 Petróleo Brasileiro S.A. v. Universities Superannuation Scheme Ltd. (2d Cir.)

**Class Actions:
Class Certification**

BIO 11/14. Reply 11/27. Dist. for 1/12. Mot. To Defer Granted 1/16.

On whether Federal Rule 23 requires proponents of class certification to show that class membership can be ascertained through administratively feasible means, among other issues.

17-886 Fleck v. Wetch (8th Cir.)

**First Amendment:
Compelled Speech**

CFR 3/12. BIO 6/8.

On whether the First Amendment prohibits state law from presuming that public employees consent to subsidizing non-chargeable speech, and requires that public employees affirmatively consent to subsidizing such speech, among other issues.

17-1222 Multnomah County, OR v. Updike (9th Cir.)

**Discrimination:
Americans with Disabilities Act**

BIO 6/1. Reply 6/15.

On whether the level of discriminatory intent required to award compensatory damages under the Americans with Disabilities Act is discriminatory animus or deliberate indifference.

17-1318 Kindred Hursing Centers Ltd. Partnership v. Wellner (Ky)

**Preemption:
Federal Arbitration Act**

CFR 4/26. BIO 5/29. Reply 6/13. Dist. for 9/24.

On whether the Federal Arbitration Act preempts a court-created rule that a power of attorney authorizing the holder to enter into “contracts of every nature in relation to both real and personal property”

does not encompass arbitration agreements because those agreements instead relate to rights to trial by jury and access to court.

17-1320 Garvin v. New York (N.Y. Ct. App.)
CFR 5/8. BIO 6/6.

**Fourth Amendment:
Warrantless Arrest**

On whether “a police officer who remains outside a suspect’s home violates the Fourth Amendment by arresting the suspect by show of authority without a warrant when the suspect is at the front door but has not stepped outside,” among other issues.

**17-1340 Andersen v. Planned Parenthood of Kansas & Mid-Missouri
(10th Cir.)**
BIO 5/23. Reply 6/1.

**Medicaid Act:
Right of Action**

On whether the Medicaid Act’s free-choice-of provider provision confers a right enforceable under 42 U.S.C. § 1983.

17-1343 Davis v. Mississippi (Miss.)
CFR 4/16. BIO 6/13.

**Eighth Amendment:
Sentencing**

On whether “the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible in order to impose a sentence of life in prison without the possibility of parole,” among other issues.

**17-1375 Gerawan Farming, Inc. v. Agricultural Labor
Relations Board (Cal.)**
CFR 4/16. Due 5/16. Ext. 6/15. Supp. Pet. Br. 6/5. BIO 6/15.

**Due Process Clause:
California Agricultural Labor Relations Act**

On whether a state may compel a private employer into a state-administered mediation process with the power to install a contract between the employer and its employees.

17-1376 Norfolk Southern Railway Co. v. Parsons (Ill. Ct. App.)
BIO 5/30. Reply 6/8. Dist. for 9/24.

**Federal Employers Liability Act:
Assumption of Risk**

On whether an inapplicable assumption of risk instruction constitutes reversible error in a Federal Employers Liability Act case.

17-1382 Lance v. Sellers (11th Cir.)
BIO 5/2. Reply 5/18. Dist. for 6/7. Record Req’d 6/1. Dist. for 9/24.

**Criminal Law:
Sentencing**

On whether the failure to conduct any investigation or offer any evidence of a capital defendant’s significant mental health impairments at the penalty phase can be nonprejudicial.

[17-1398](#) SWC, LLC v. Herr (6th Cir.)
BIO 5/7 (Resp. Herr). Ext. 7/6 (US Resp.)

**Property Clause:
Regulation of Lakes**

On whether “the United States Forest Service’s powers under the Property Clause...to limit gas-powered motorboat use on lakes in Congressionally-designated wilderness areas are dependent upon and subservient to whether a state has first acted to restrict motorboat activities on the same lakes,” among other issues.

[17-1423](#) Simply Wireless, Inc. v. T-Mobile US (4th Cir.)
BIO 6/13.

**Arbitration:
Questions of Arbitrability**

On whether the Federal Arbitration Act permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator where the court concludes that the claim of arbitrability is “wholly groundless.”

[17-1445](#) United States v. Herrold (5th Cir.)
BIO 5/21. Conditional cross-pet. 5/21. Reply 6/5.

**Criminal Law:
Armed Career Criminal Act of 1984**

On whether “a state offense that criminalizes continued unpermitted presence in a dwelling following the formation of intent to commit a crime has ‘the basic elements of unlawful remaining in a building or structure, with intent to commit a crime’ under the Armed Career Criminal Act of 1984.”

[17-1455](#) Dwight E. Jordan v. City of Darien, GA (11th Cir.)
BIO 5/23. Dist. for 9/24.

**First Amendment:
Retaliatory Arrest**

On whether the existence of probable cause defeats a First Amendment retaliatory arrest claim as a matter of law.

[17-1470](#) Five Star Senior Living Inc. v. Lefevre (9th Cir.)
BIO 6/15.

**Preemption:
Federal Arbitration Act**

On whether a California rule that prohibits the enforcement of arbitration agreements with respect to representative employment claims under California’s Private Attorneys General Act is preempted by the Federal Arbitration Act because the rule discriminates against arbitration agreements, among other issues.

[17-1478](#) Jones v. Life Insurance Co. of N. Am. (9th Cir.)
BIOs 5/25. Dist. for 9/24.

**ERISA:
Disability**

On whether inconsistent disability determinations supplanted by inconsistent plan interpretations negate deference or constitute abuse of discretion under *Conkright’s* “one strike” rule, among other issues.

[17-1484](#) Azar v. Allina Health Servs. (D.C. Cir.)
BIO 6/19.

**Administrative Procedure:
Notice-And-Comment Rulemaking**

On whether the Department of Health and Human Services must conduct notice-and-comment rulemaking before providing instructions to a Medicare Administrative Contractor that makes initial determinations of payments due under Medicare.

[17-1487](#) **Cook v. Harding (9th Cir.)**
BIO 5/30.

**Civil Procedure:
Issue Preclusion**

On whether a party can be precluded from raising federal constitutional issues in federal court after a state court considers those issues and determines it lacks the jurisdiction to decide them.

[17-1513](#) **Keithly v. Roberts (Va.)**
BIO 6/6.

**Fourth Amendment:
“Knock-and-Announce” Rule**

Whether failure to follow the “knock-and-announce” rule pursuant to an unlawful search warrant violates the Fourth Amendment.

[17-1552](#) **Bruce v. Potomac Electric Power Co. (D.C. Ct. App.)**
BIO 6/15

**Civil Procedure:
Subpoena Duces Tecum**

On whether the D.C. Court of Appeals improperly enforced a subpoena duces tecum to allow the issuing party to inspect and copy the contents of an individual’s cell phone after she produced a photo of a fire resulting from a downed power line.

[17-1569](#) **Callwood v. Jones (11th Cir.)**
BIO 6/18

**Fourth Amendment:
Excessive Force**

On whether law enforcement officers who repeatedly used a taser on a man until he was dead were entitled to qualified immunity when there was evidence in the record that the tasers were administered for no other purpose than to inflict pain.

CALLS FOR RESPONSE

NEW CFR

[17-1477](#) **United States ex rel. Chase v. Chapters Health System, Inc. (11th Cir.)**
CFR 6/13. Due 7/13.

**False Claims Act:
Particularity**

On whether a relator filing a suit under the False Claims Act may satisfy Rule 9(b) of the Federal Rules of Civil Procedure without identifying a specific false or fraudulent claim submitted to the government, but instead by alleging the details of a false or fraudulent scheme and facts sufficient to infer that false or fraudulent claims were submitted to the government.

PENDING CFR

[17-1283](#) **Atlanta Medical Center v. Care Improvement Plus South Central Ins. Co. (11th Cir.)**
CFR 4/24. Due 5/24. Ext. 6/22.

**Medicare:
Exhaustion**

On whether healthcare providers must exhaust the Medicare appeals process before challenging a Medicare Advantage Organization's refusal to pay for medical care when the enrollee no longer has any interest in the outcome.

[17-1284](#) **Apodaca v. Raemisch (10th Cir.)**
CFR 3/28. Due 4/27. Ext. 6/22.

**Eighth Amendment:
Solitary Confinement**

On whether "clearly established Eighth Amendment law permits prison officials to permanently deprive a prisoner in solitary confinement of outdoor exercise without a security rationale."

[17-1286](#) **Nat'l Mining Assoc. v. Zinke (9th Cir.)**
[17-1290](#) **Am. Exploration & Mining Assoc. v. Zinke (9th Cir.)**
CFR 5/3. Due 6/4. Ext. 7/5.

**Separation of Powers:
Delegation**

On whether Congress' delegation to the Department of Interior of withdrawal authority over large tracks of land can survive after the legislative veto Congress included as a check on the exercise of that authority was held unconstitutional.

[17-1289](#) **Lowe v. Raemisch (10th Cir.)**
CFR 3/23. Ext. 6/22.

**Eighth Amendment:
Solitary Confinement**

On whether "clearly established Eighth Amendment law permits prison officials to permanently deprive a prisoner in solitary confinement of outdoor exercise without a security rationale."

[17-1386](#) **Wilson v. Bridges (10th Cir.)**
CFR 5/25. Due 6/25.

**Qualified Immunity:
Clearly Established Law**

On whether the Tenth Circuit erred in denying qualified immunity to an officer by disregarding the officer's testimony to create a fact dispute, among other issues.

[17-1393](#) **Pavan v. Smith (Ark.)**
CFR 5/23. Due 6/22.

**Discrimination:
Attorney's Fees**

Whether, when the Supreme Court summarily reverses a state supreme court's denial of a constitutional right previously recognized, the state court may subsequently deny the prevailing party's application for attorney's fees under 42 U.S.C. 1988 without providing any basis for its denial.

[17-1397](#) **Spencer v. Abbott (10th Cir.)**
CFR 5/25. Due 6/25. Ext. 7/25.

**Eighth Amendment:
Medical Care**

On whether those working in a state prison comply with the Eighth Amendment simply by responding to a prisoner's serious medical needs with some medical care, or whether the prison must provide adequate medical care.

[17-1404](#) **Gordon v. Lafler (6th Cir.)**
CFR 6/5. Due 7/5.

**Due Process Clause:
Judicial Bias**

On whether it is clearly established that a judge presiding over a murder trial must be free from an unconstitutionally high appearance of bias, not just actual bias.

[17-1411](#) **Aker Biomarine Antarctic AS v. Huynh (Wash. Ct. App.)**
CFR 4/24. Due 5/24. Ext. 6/22.

**Jurisdiction:
Personal Jurisdiction**

On whether the "but for" causation test for personal jurisdiction is constitutional when it sweeps a foreign defendant into Washington state court to answer claims based on conduct that occurred in a foreign country, based solely on a contractual connection that is unrelated to the alleged tort or the conduct giving rise to the claim.

[17-1453](#) **Community Health Syst. v. New York City
Employees' Retirement System (6th Cir.)**
CFR 5/9. Due 6/8. Ext. 7/9.

**Federal Securities Fraud:
Loss Causation**

On whether, in a loss causation pleading in a claim for federal securities fraud, an alleged "corrective disclosure" is determined based on fixed rules or a totality-of-the-circumstances analysis, among other issues.

[17-1463](#) **Segovia v. United States (7th Cir.)**
CFR 5/29. Due 6/28.

**Voting:
Absentee Balloting**

On whether the right to vote in federal elections is fundamental, warranting heightened scrutiny of discriminatory eligibility criteria, among other issues.

17-1472 Indiana v. Bowman (Ind. Ct. App.)
CFR 5/25. Due 6/25.

**Fourth Amendment:
Probable Cause**

On whether the Indiana Court of Appeals' evaluation of probable cause contravenes the Court's subsequent decision in *District of Columbia v. Wesby*.

17-1476 City of Ft. Worth, Tex. v. Darden (5th Cir.)
CFR 5/14. Due 6/13. Ext. 7/13.

**Qualified Immunity:
Clearly Established Law**

On whether the Fifth Circuit erred by failing to identify any clearly established law in denying qualified immunity to officers who restrained a man who suffered a fatal heart attack.

17-1510 Veal v. Georgia (Ga.)
CFR 5/29. Due 6/28. Ext. 8/27.

**Eighth Amendment:
Sentencing**

On whether "the Eighth Amendment requires a trial court to consider a juvenile's youth and attendant circumstances before imposing a de facto life without parole sentence."

17-1566 Lacaze v. Louisiana (La.)
CFR 6/11. Due 7/11.

**Due Process Clause:
Judicial Bias**

On whether a judge's failure to disclose that he was a witness in the police investigation relating to the likely murder weapon in a capital case, or to recuse on the same basis, violated due process.

17-1584 Bartelt v. Wisconsin (Wisc.)
CFR 6/11. Due 7/11.

**Fifth Amendment:
Custodial Interrogations**

On whether "a non-custodial interrogation at a police station becomes custodial once the defendant confesses to a serious crime, because at that point a reasonable person would know that he is not free to leave."

CALLS FOR THE VIEWS OF THE SOLICITOR GENERAL

NEW CVSG

**17-1285 Assoc. des Éleveurs de Canards et d'Oies du Québec
v. Becerra (9th Cir.)**
BIO 5/14. Reply 6/4. Dist. for 6/14. CVSG 6/18.

**Preemption:
Poultry Products Inspection Act**

On whether a State's ban on the sale of poultry products based on the way in which the poultry ingredient was produced imposes an "ingredient requirement" such that the ban is preempted by the Poultry Products Inspection Act.

PENDING CVSG

**17-667 Pioneer Centres Holding Company Stock Ownership Plan
v. Alerus Financial, N.A. (10th Cir.)**
BIO 2/5. Reply 2/20. Dist. for 3/16. CVSG 3/19.

**ERISA:
Causation**

On whether the plaintiff bears the full burden proof of establishing loss causation under the Employee Retirement Income Security Act of 1974.

17-834 Kansas v. Garcia (Kans.)
BIO 3/12. Reply 3/23. Dist. for 4/13. CVSG 4/16.

**Preemption:
Immigration Reform and Control Act**

On whether the Immigration Reform and Control Act preempts the States from using information entered on a federal Form I-9 in a prosecution for identity theft and making false writings, among other issues.

17-936 Gilead Sciences, Inc. v. United States ex rel. Campie (9th Cir.)
BIO 3/5. Reply 3/20. Dist. for 4/13. CVSG 4/16.

**False Claims Act:
Materiality**

On whether a False Claims Act should be dismissed due to immateriality when the Government continued to approve and pay for products after learning of the alleged regulatory infractions.

**17-1183 Airline Service Providers Assoc. v. Los Angeles
World Airports (9th Cir.)**
BIO 4/25. Reply 5/11. Dist. for 5/31. CVSG 6/4.

**Preemption:
Airline Deregulation Act**

On whether the "market participant" exception to the Airline Deregulation Act's preemption of state and local regulations relating to airline prices applies where a city, in its capacity as proprietor on an airport, seeks to impose on companies providing services at the airport a contractual provision requiring them to enter a "labor peace" agreement with any union that demands one.

**17-1236 Republic of Sudan v. Owens (D.C. Cir.)
17-1268 Opati v. Republic of Sudan (D.C. Cir.)**

**Foreign Sovereign Immunities Act:
Burden of Proof**

17-1406 Republic of Sudan v. Opati (D.C. Cir.)

BIOs 4/9, 5/7, 5/8. Replies 5/8, 5/22. Dist. for 6/7. CVSG 6/11.

On whether plaintiffs suing a foreign state bear a lighter burden in establishing the facts necessary for jurisdiction than in proving a case on the merits, among several other issues relating to the Foreign Sovereign Immunities Act.

HELD / AWAITING ACTION

[17-166](#) **Zanders v. Indiana (Ind.)**

BIO 10/2. Reply 10/12. Dist. for 11/3.
(Likely held for 16-402, *Carpenter v. United States*)

**Fourth Amendment:
Cell Phone Searches**

On whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user over the course of 30 days is permitted by the Fourth Amendment.

[17-211](#) **Mountain Right to Life, Inc. v. Becerra (9th Cir.)**

BIO 10/10. Reply 10/24. Dist. for 11/9.
(Likely held for 16-1140, *National Institute of Family & Life Advocates v. Becerra*)

**First Amendment:
Compelled Speech**

On whether a law compelling faith-based nonprofit crisis pregnancy centers to advertise free or low-cost abortions available from the state is a content-based restriction of speech subject to strict scrutiny.

[17-243](#) **Abdirahman v. United States (C.A.A.F.)**

BIO 9/18. Dist. for 10/13.
(Likely held for 16-961, *Dalmazzi v. United States*; 16-107, *Cox v. United States*;
and 16-1423, *Ortiz v. United States*)

**Separation of Powers:
Appointments Clause**

On whether judges' simultaneous service on both the Court of Military Commission Review and the Army or Air Force Court of Criminal Appeals violated the Appointments Clause.

[17-475](#) **Securities and Exchange Commission v. Bandimere (10th Cir.)**

BIO 10/10. Reply 10/25. Supp. Resp. Br. 12/1.
Dist. for 1/5. Dist. for 1/12.
(Likely held for 17-130, *Lucia v. Securities and Exchange Commission*)

**Appointments Clause:
Administrative Law Judges**

On whether administrative law judges of the Securities and Exchange Commission, who act as hearing officers in administrative proceedings, are inferior officers under the Appointments Clause.

[17-701](#) **Richards v. United States (C.A.A.F.)**

BIO 1/16. Reply 1/31. Dist. for 2/16.
(Likely held for 16-961, *Dalmazzi v. United States*; 16-107, *Cox v. United States*;
and 16-1423, *Ortiz v. United States*)

**Fourth Amendment:
Electronic Searches**

On whether “the Fourth Amendment’s particularity clause requires a search authorization for “all electronic media” to include a temporal limitation, when the time frame of the alleged criminal conduct was known to law enforcement when they sought authorization to search,” among other issues.

[17-840](#) **Cash v. United States (C.A.A.F.)**

Resp. Mem. 1/11. Dist. for 2/16.
(Likely held for 16-961, *Dalmazzi v. United States*; 16-107, *Cox v. United States*;

**Appointments Clause:
Court of Military Commission Review**

and 16-1423, *Ortiz v. United States*)

On whether judges are barred from simultaneous service on the Court of Military Commission Review and the Court of Criminal Appeals, amongst other issues.

17-950 Ulbricht v. United States (2d Cir.)

Resp. Mem. 3/7. Reply 3/21. Dist. for 4/13.
(Likely held for 16-402, *Carpenter v. United States*)

**Fourth Amendment:
Electronic Searches**

On whether “the warrantless seizure of an individual’s Internet traffic information without probable cause violates the Fourth Amendment,” among other issues.

17-981 Riffey v. Rauner (7th Cir.)

CFR 2/15. BIOs 4/19, 5/3. Dist. for 6/14.
(Likely held for 16-1466, *Janus v. AFSCME, Council 31*)

**First Amendment:
Compelled Speech**

On whether the government inflicts a First Amendment injury when it compels individuals to subsidize speech without their prior consent when the individuals do not object to the subsidy.

17-976 CTIA-The Wireless Assoc. v. City of Berkeley (9th Cir.)

CFR 1/30. BIO 4/2. Reply 4/17. Dist. for 5/10.
(Likely held for 16-1140, *Nat’l Institute of Family & Life Advocates v. Becerra*)

**First Amendment:
Compelled Speech**

On whether the reduced scrutiny of compelled commercial speech articulated in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio* applies beyond the need to prevent consumer deception.

17-1087 First Resort, Inc. v. Herrera (9th Cir.)

BIO 4/19. Reply 5/1. Dist. for 5/24.
(Likely held for 16-1140, *Nat’l Institute of Family & Life Advocates v. Becerra*)

**First Amendment:
Commercial Speech**

On whether a municipal law penalizing false advertising by limited service pregnancy centers is subject to strict scrutiny.

17-1194 Int’l Refugee Assistance Project v. Trump (4th Cir.)

Mem. 2/28. Dist. for 3/23.
(Likely held for 17-965, *Trump v. Hawaii*)

**Immigration:
Executive Power**

On whether the preliminary injunction of the third travel ban was properly limited to individuals with a bona fide relationship to a person or entity in the United States, among other issues.

17-1270 Trump v. Int’l Refugee Assistance Project (4th Cir.)

Mem. 4/11.
(Likely held for 17-965, *Trump v. Hawaii*)

**First Amendment:
Establishment Clause**

On whether the President’s suspensions of entry of aliens abroad violates the Establishment Clause, among other issues.

**[17-1369](#) Mayor & City Council of Baltimore v. Greater Baltimore
Center for Pregnancy Concerns (4th Cir.)**
BIO 4/30. Reply 5/14. Dist. for 5/31.
(Likely held for 16-1140, *NIFLA v. Becerra*)

**First Amendment:
Compelled Speech**

On whether the First Amendment prohibits the City of Baltimore from requiring an unlicensed entity to make truthful disclosures about the scope of medical services it offers when the entity holds itself out to the public as a medical practice and engages in “purposely vague” advertising.

GRANTED CASES INVOLVING PUBLIC CITIZEN – 2017 TERM

15-1439 **Cyan v. Beaver County Employees Retirement Fund (Cal. Ct. App.)**
Cert. granted 6/27. Argt. 11/28. Decided 3/20, 9-0 in favor of respondent.

Jurisdiction:
SLUSA

Public Citizen filed an amicus brief in support of respondent.

Amicus brief

On whether state courts lack subject matter jurisdiction over covered class actions that allege only Securities Act of 1933 claims.

16-307 **NLRB v. Murphy Oil USA, Inc. (5th Cir.)**
Cert granted 1/13. Argt. 10/2. Decided 5/21, 5-4 in favor of respondent.

Arbitration:
Inter Partes Review

Public Citizen filed an amicus brief in support of petitioner.

Amicus brief

On whether arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum are prohibited as an unfair labor practice under the National Labor Relations Act.

16-980 **Husted v. A. Philip Randolph Institute (6th Cir.)**
Cert granted 5/30. Argt. 11/8. Decided 6/11, 5-4 in favor of petitioner.

Voting:
Voter Registration

Public Citizen filed an amicus brief in support of respondents.

Amicus brief

On whether Ohio's list-maintenance process, which uses a registered voter's inactivity as a reason to send a confirmation notice to that voter, violates the National Voter Registration Act of 1993 and the Help America Vote Act of 2002.

16-1140 **Nat'l Institute of Family & Life Advocates v. Becerra (9th Cir.)**
Cert granted 11/13. Argt. 3/20.

First Amendment:
Compelled Speech

Public Citizen filed an amicus brief in support of respondent.

Amicus brief

On whether the disclosures required by the California Reproductive FACT Act violate the protections set forth in the free speech clause of the First Amendment, applicable to the states through the 14th Amendment.

16-1161 **Gill v. Whitford (W.D. Wis.)**
Application accepted 6/19. Argt. 10/3. Decided 6/18 in favor of petitioner.

Voting:
Partisan Gerrymanders

Public Citizen joined an amicus brief in support of respondents.

[Amicus brief](#)

On whether partisan-gerrymandering claims are justiciable, among other issues.

16-1454 Ohio v. American Express (2d Cir.)

Cert. granted . Argt. 2/26.

**Antitrust:
Rule of Reason**

Public Citizen joined an amicus brief in support of petitioners.

[Amicus brief](#)

On whether, under the “rule of reason,” the government's showing that American Express' anti-steering provisions stifle price competition on the merchant side of the credit-card platform suffices to prove anti-competitive effects and thereby shifts to American Express the burden of establishing any pro-competitive benefits from the provisions.

16-1466 Janus v. AFSCME, Council 31 (7th Cir.)

Cert. granted 9/28. Argt. 2/26.

**First Amendment:
Compelled Speech**

Public Citizen filed an amicus brief in support of respondents.

[Amicus brief](#)

On whether *Abood v. Detroit Board of Education* should be overruled and public-sector “agency shop” arrangements invalidated under the First Amendment.

**17-368 Salt River Project Agricultural Improvement & Power
Dist. v. Tesla Energy Operations (9th Cir.)**

Cert granted 12/1. Dismissed 3/22.

**Jurisdiction:
Appellate Jurisdiction**

Public Citizen filed an amicus brief in support of respondent.

[Amicus brief](#)

On whether orders denying state-action immunity to public entities are immediately appealable under the collateral-order doctrine.

17-432 China Agritech, Inc. v. Resh (9th Cir.)

Cert granted 12/8. Argt. 3/26. Decided 6/11, 9-0 in favor of petitioner.

**Class Actions:
American Pipe Tolling**

Public Citizen filed an amicus brief in support of respondents.

[Amicus brief](#)

On whether the rule of *American Pipe and Construction Co. v. Utah* tolls statutes of limitations to permit a previously absent class member to bring a subsequent class action outside the applicable limitations period.

17-801 In re United States (9th Cir.)

Cert granted 12/20. GVR 12/20.

**Administrative Procedure:
Discovery**

Public Citizen joined an amicus brief in opposition to the petition.

Amicus brief

On whether, in an action challenging the Department of Homeland Security's Deferred Action for Childhood Arrivals policy, a district court may order discovery to expand the administrative record beyond the record presented by the agency. The Ninth Circuit denied mandamus relief. Treating the petition for a writ of mandamus as a petition for a writ of certiorari, the Court granted, vacated, and remanded for consideration of threshold issues, without reaching the question presented.

17-988 Lamps Plus, Inc. v. Varela (9th Cir.)

BIO 3/14. Reply 3/28. Dist. for 4/13. Dist. for 4/20. Dist. for 4/27.
Cert. Granted 4/30.

**Arbitration:
Class Arbitration**

Scott Nelson of Public Citizen is co-counsel for respondent.

Brief in Opposition

On whether the court of appeals erred in construing the arbitration agreement at issue in this case to authorize class arbitration, among other issues.