



ALAN MORRISON SUPREME COURT ASSISTANCE PROJECT

**CERT. PETITIONS OF PUBLIC INTEREST
September 24, 2018**

Prepared by Rylee Sommers-Flanagan, 2018–2019 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 Rylee Sommers-Flanagan, 2018–2019 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.

SEPTEMBER 24 CONFERENCE

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

BIO 6/13. Supp. Pet. Br. 9/14. Dist. for 9/24.

**Jurisdiction:
Personal Jurisdiction**

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.

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

CFR 3/12. BIO 6/8. Reply 6/22. Dist. for 9/24.

**First Amendment:
Bar Membership**

On whether North Dakota law requiring lawyers who practice in the state to join the state bar violates the First Amendment.

17-1198 Martins Beach 1, LLC v. Surfrider Foundation (Cal. Ct. App.)

CFR 4/12. BIO 6/13. Reply 6/27. Dist. for 9/24.

**Takings Clause:
Public Access**

On whether a compulsory public-access easement of indefinite duration is a *per se* physical taking, among other issues.

17-1201 Thacker v. Tennessee Valley Authority (11th Cir.)

BIO 6/29. Reply 7/13. Dist. for 9/24.

**Immunity:
Federal Tort Claims Act**

On whether the Federal Tort Claims Act’s “discretionary-function exception” immunizes governmental “sue and be sued” entities from suit.

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

BIO 6/1. Reply 6/15. Dist. for 9/24.

**Discrimination:
Americans with Disabilities Act**

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

17-1283 Atlanta Medical Center v. Care Improvement Plus South Century Insurance Co. (11th Cir.)

CFR 4/24. BIO 6/22. Reply 7/10. Dist. for 9/24.

**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 an interest in the outcome.

17-1284 Apodaca v. Raemisch (10th Cir.)

17-1289 Lowe v. Raemisch (10th Cir.)

**Eighth Amendment:
Solitary Confinement**

CFR 3/23, 3/28. BIO 6/22. Reply 7/10. Dist. for 9/24.

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 National Mining Ass’n v. Zinke (9th Cir.)

**Separation of Powers:
Delegation**

17-1290 American Exploration & Mining Ass’n v. Zinke (9th Cir.)

CFR 5/3. BIOs 7/31. Replies 8/13. Dist. for 9/24.

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.

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

**Arbitration:
Power of Attorney**

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 authorizes the holder of power of attorney to enter into “contracts of every nature in relation to both real and personal property” but does not authorize the holder to enter into arbitration agreements.

17-1320 Garvin v. New York (N.Y. Ct. App.)

**Fourth Amendment:
Warrantless Arrest**

CFR 5/8. BIO 6/6. Reply 6/19. Dist. for 9/24.

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.

**17-1335 Consolidation Coal Co. v. Director, Office of Workers’
Compensation Programs, Department of Labor (10th Cir.)**

**Administrative Procedure:
Black Lung Benefits Act**

BIOs 6/22, 6/23. Reply 7/31. Dist. for 9/24.

On whether Department of Labor’s interpretation of the 15-year presumption of the Black Lung Benefits Act violates substantive and procedural due process and the APA.

**17-1340 Andersen v. Planned Parenthood of Kansas & Mid-Missouri
(10th Cir.)**

**Right of Action:
Medicaid Act**

BIO 5/23. Reply 6/1. Dist. for 9/24.

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.)

**Eighth Amendment:
Juvenile LWOP**

CFR 4/16. BIO 6/13. Reply 6/26. Dist. for 9/24.

On whether the Eighth Amendment requires 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.

17-1349 Johnson v. United States (7th Cir.)
BIO 6/25. Reply 7/10. Dist. for 9/24.

**Fourth Amendment:
Probable Cause**

On whether “the Fourth Amendment forbids a pretextual seizure of a motorist based solely on probable cause to suspect a civil parking infraction.”

17-1353 Fort Peck Housing Authority v. Department of Housing & Urban Development (10th Cir.)
Bio 7/11. Reply 8/15. Dist. for 9/24.

**Administrative Procedure:
Specific Relief**

On whether an action for grant in aid funds is a suit for specific relief such that the United States’ sovereign immunity is waived pursuant to the APA or if it is instead a suit for money damages, barring relief in federal district court.

17-1375 Gerawan Farming, Inc. v. Agricultural Labor Relations Board (Cal.)
CFR 4/16. Supp. Pet. Br. 6/5. BIO 6/15. Reply 7/3. Dist. for 9/24.

**Fourteenth Amendment:
Due Process Clause**

On whether California’s mandatory arbitration process for drafting the terms of collective bargaining agreements for agricultural employers and farmworkers violates substantive due process and equal protection.

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.

**Eighth Amendment:
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 non-prejudicial.

17-1384 Droplets, Inc. v. Iancu (Fed. Cir.)
BIO 7/5. Reply 7/27. Dist. for 9/24.

**Administrative Procedure:
Grounds for Affirmance**

On whether federal courts can affirm a Patent Trial and Appeal Board decision based on different legal reasoning than articulated by the agency in the decision below, among other issues.

17-1393 Pavan v. Smith (Ark.)

Discrimination:

CFR 5/23. BIO 8/9. Reply 8/28. Dist. for 9/24.

Attorney's Fees

On whether, when the U.S. 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. BIO 7/25. Reply 8/8. Dist. for 9/24.

**Eighth Amendment:
Medical Care**

On whether a state prison complies with the Eighth Amendment by responding to a prisoner's serious medical needs with some medical care or whether adequate medical care is required.

17-1398 SWC, LLC v. Herr (6th Cir.)

BIOs 5/7, 7/6. Replies 7/20. Dist. for 9/24.

**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.

17-1408 Breckinridge Health, Inc. v. Azar (6th Cir.)

BIO 6/28. Reply 7/18. Dist. for 9/24

**Medicare:
Reimbursement**

On whether "state Medicaid payments to hospitals that provide services to disproportionately low-income patients constitute a refund of costs" that were "incurred in paying state taxes ordinarily reimbursable by Medicare, such that those taxes are no longer 'actually incurred' costs for purposes of Medicare reimbursement," among other issues.

17-1411 Aker Biomarine Antarctic AS v. Huynh (Wash. Ct. App.)

CFR 4/24. BIO 6/22. Reply 7/9. Dist. for 9/24.

**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 on a contractual connection that is unrelated to the conduct giving rise to the claim.

17-1419 Lummi Tribe v. United States (Fed. Cir.)

BIO 7/11. Reply 7/31. Dist. for 9/24.

**Jurisdiction:
Court of Federal Claims**

On whether 28 U.S.C. § 1491 grants "the court of federal claims jurisdiction over an action to recover grant-in-aid funds unlawfully recouped by the United States" or if the action is instead "one for specific relief which must be brought under the Administrative Procedure Act," among other issues.

17-1423 Simply Wireless, Inc. v. T-Mobile US (4th Cir.)

BIO 6/13. Supp. Pet. Br. 9/7. Dist. for 9/24.

**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.”

[17-1449 Arizona v. Rushing \(Ariz.\)](#)
BIO 6/19. Reply 7/3. Dist. for 9/24.

**Eighth Amendment:
Sentencing**

On whether the Arizona Supreme Court erred “in holding that introduction of a defendant’s past violent conduct in the penalty phase of a capital trial automatically requires that jurors be informed about the defendant’s parole ineligibility pursuant to the Due Process Clause,” among other issues.

[17-1453 Community Health Systems v. New York City Employees’ Retirement System \(6th Cir.\)](#)
CFR 5/9. BIO 7/9. Reply 7/25. Dist. for 9/24.

**Securities Litigation:
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.

[17-1455 Jordan v. City of Darien \(11th Cir.\)](#)
BIO 5/23. Supp. Pet. Br. 9/12. 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.

[17-1459 World Programming Ltd. v. SAS Institute, Inc. \(4th Cir.\)](#)
BIO 6/22. Reply 7/9. Dist. for 9/24.

**Diversity Jurisdiction:
Comity**

On whether “federal or state law governs the respect that must be accorded to the judgment of a foreign court in diversity cases,” among other issues.

[17-1470 Five Star Senior Living Inc. v. Lefevre \(9th Cir.\)](#)
BIO 6/14. Reply 6/29. Dist. for 9/24.

**Arbitration:
Representative Claims**

On whether the Federal Arbitration Act preempts a California rule prohibiting enforcement of arbitration agreements with respect to representative employment claims under California’s Private Attorneys General Act, among other issues.

[17-1471 Home Depot, U.S.A. v. Jackson \(4th Cir.\)](#)
BIO 6/25. Reply 7/10. Dist. for 9/24.

**Class Actions:
Removal**

Scott Nelson of Public Citizen is co-counsel for respondent.
[Brief in Opposition](#)

On whether the removal provision of the Class Action Fairness Act allows a party that is not a defendant to remove class counterclaims asserted by the defendant in a state-court action.

[17-1472](#) **Indiana v. Bowman (Ind. Ct. App.)**
CFR 5/25. BIO 6/18. Reply 7/2. Dist. for 9/24.

**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 v. Darden (5th Cir.)**
CFR 5/14. BIO 7/13. Reply 7/30. Dist. for 9/24.

**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.

[17-1477](#) **United States ex rel. Chase v. Chapters Health Systems, Inc. (11th Cir.)**
CFR 6/13. BIO 8/13. Reply 8/28. Dist. for 9/24.

**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.

[17-1478](#) **Jones v. Life Insurance Co. of North America (9th Cir.)**
BIO 5/25. Reply 6/22. Dist. for 9/24.

**ERISA:
Inconsistent Determinations**

On whether inconsistent disability determinations supplanted by inconsistent plan interpretations negate deference or constitute an abuse of discretion, among other issues.

[17-1484](#) **Azar v. Allina Health Services (D.C. Cir.)**
BIO 6/19. Reply 7/5. Dist. for 9/24.

**Administrative Procedure:
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.)**
BIOs 5/30. Dist. for 9/24.

**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 that it lacks the jurisdiction to decide them.

[17-1492](#) **Gee v. Planned Parenthood of Gulf Coast, Inc. (5th Cir.)**
BIO 7/2. Reply 8/2. Dist. for 9/24.

Right of Action:
Medicaid Act

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

[17-1498](#) **Atlantic Richfield Co. v. Christian (Mont.)**
BIO 7/2. Reply 7/18. Dist. for 9/24.

Environmental Regulation:
CERCLA

On whether “a landowner at a Superfund site is a ‘potentially responsible party’ that must seek EPA’s approval under CERCLA . . . before engaging in remedial action, even if EPA has never ordered the landowner to pay for a cleanup,” among other issues.

[17-1513](#) **Keithly v. Roberts (Va.)**
BIO 6/6. Dist. for 9/24.

Fourth Amendment:
“Knock-and-Announce” Rule

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

[17-1529](#) **Clearstream Banking S.A. v. Peterson (2d Cir.)**
[17-1530](#) **Banca UBAE, S.p.A. v. Peterson (2d Cir.)**
[17-1534](#) **Bank Markazi v. Peterson (2d Cir.)**
BIO 7/11. Reply 7/24. Dist. for 9/24.

Foreign Sovereign Immunities Act:
Execution

On whether the Foreign Sovereign Immunities Act affords execution immunity only to assets located in the United States.

[17-1542](#) **McKee v. Cosby (1st Cir.)**
CFR 6/29. BIO 7/30. Reply 8/6. Dist. for 9/24.

First Amendment:
Limited Purpose Public Figure

On whether “a victim of sexual misconduct who merely states that she was victimized ... has thrust herself to the forefront of a public debate in an attempt to influence the outcome, thereby becoming a limited purpose public figure who loses her right to recover for defamation absent a showing of actual malice by clear and convincing evidence.”

[17-1543](#) **Olivar v. Public Service Employee Credit Union Long Term Disability Plan (Colo.)**
CFR 6/25. BIO 7/25. Dist. for 9/24

ERISA:
Proper Defendant

On whether “an ERISA benefit plan as an entity is always a proper defendant in an action to recover benefits brought pursuant to 29 U.S.C. § 1132,” among other issues.

[17-1548](#) **Pennsylvania Higher Education Assistance Authority v. Silver (9th Cir.)**

Telephone Consumer Protection Act:
Retroactivity

BIO 7/16. Dist. for 9/24.

Adina Rosenbaum of Public Citizen is co-counsel for respondent.
[Brief in Opposition](#)

On whether applying an amendment to the Telephone Consumer Protection Act to conduct predating the amendment's enactment would have an impermissible retroactive effect if doing so would eliminate a claim for damages that had already accrued.

[17-1552 Bruce v. Potomac Electric Power Co. \(D.C. Ct. App.\)](#)
BIO 6/15. Reply 7/3. Dist. for 9/24.

**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.

[17-1566 Lacaze v. Louisiana \(La.\)](#)
CFR 6/11. BIO 8/10. Reply 8/27. Dist. for 9/24.

**Fourteenth Amendment:
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.

[17-1569 Callwood v. Jones \(11th Cir.\)](#)
BIO 6/18. Reply 7/11. Dist. for 9/24.

**Fourth Amendment:
Excessive Force**

On whether law enforcement officers who repeatedly used a taser on a man until he was dead are entitled to qualified immunity when there was evidence that the tasers were administered for the purpose of inflicting pain.

[17-1574 Sands v. Menard \(Wis.\)](#)
BIO 6/21. Reply 7/2. Dist. for 9/24.

**Fourteenth Amendment:
Judicial Bias**

On whether state judges alleged to have benefitted from a civil defendant's donations were required to recuse themselves from the suit involving the donor, among other issues.

[17-1575 Yong v. Pennsylvania \(Pa.\)](#)
CFR 7/13. BIO 9/12. Dist. for 9/24.

**Fourth Amendment:
Probable Cause**

On whether "an officer who lacks probable cause or reasonable suspicion may conduct an arrest, search, or frisk, so long as a court later determines that another officer who happened to be present at the scene had the requisite personal knowledge, even if that officer did not communicate it to the acting officer."

[17-1584 Bartelt v. Wisconsin \(Wis.\)](#)
CFR 6/11. BIO 8/10. Reply 8/21. Dist. for 9/24.

**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.”

17-1603 Kelley v. Florida (Fla.)
BIO 7/30. Reply 8/9. Dist. for 9/24.

**Eighth Amendment:
Sentencing**

On whether “the Florida Supreme Court’s novel and unprecedented decision to allow only partial retroactivity violates the Eighth and Fourteenth Amendments because it arbitrarily uses . . . an earlier decision invalidating Arizona’s capital sentencing scheme” as the cutoff point “and denies relief to the inmates who deserve it the most.”

17-1619 Morris v. Branch Banking & Trust Co. (Tex.)
BIO 7/2. Reply 7/17. Dist. for 9/24.

**FDIC:
D’Oench Doctrine**

On whether federal common law protects the FDIC and assignees from claims or defenses of customers of a failed financial institution.

17-1624 Citizen Potawatomi Nation v. Oklahoma (10th Cir.)
CFR 8/10. BIO 9/10. Dist. for 9/24.

**Arbitration:
Enforceability**

On whether “the Court of Appeals erred in reversing the District Court’s confirmation and enforcement of the Arbitrator’s Award pursuant to the Federal Arbitration Act.”

17-1627 Lee v. Clinard (6th Cir.)
BIO 8/15. Reply 8/29. Dist. for 9/24.

**Criminal Law:
AEDPA**

On whether the Sixth Circuit misapplied *Strickland* in finding that an attorney’s ineffective assistance was not only deficient but also prejudiced the juvenile defendant, among other issues.

17-1628 Shin v. Uni-Caps, LLC (9th Cir.)
BIO 8/2. Reply 8/18. Dist. for 9/24.

**Fair Labor Standards Act:
Retaliation**

On whether the Fair Labor Standards Act requires more than “a showing of any non-discriminatory reason for termination” to defeat a claim of retaliation, among other issues.

17-1637 John Doe, fka Jane Doe v. Holcomb (7th Cir.)
CFR 6/26. BIOs 7/26. Reply 8/14. Dist. for 9/24

**Standing:
Challenge to State Law**

On whether a non-citizen who seeks to change his name has standing to seek relief against a governor, attorney general, and state court administrator to prevent continued enforcement of a state ban against granting a legal change of name to a non-citizen, among other issues.

17-1638 Sanchez v. Young County (5th Cir.)

CFR 7/26. Supp. Pet. Br. 8/20. BIO 8/24. Reply 8/30. Dist. for 9/24.

**Fourteenth Amendment:
Medical Care**

On whether an objective or subjective deliberate indifference standard applies to determine whether the actions or inactions of jail personnel amount to deliberate indifference of a pretrial detainee's serious medical needs under the Fourteenth Amendment.

17-1652 Credit One Bank, N.A. v. Anderson (2d Cir.)

CFR 7/2. BIO 8/1. Reply 8/15. Dist. for 9/24.

**Arbitration:
Questions of Arbitrability**

On whether an agreement that requires a customer to resolve a dispute through arbitration is enforceable under the Federal Arbitration Act, "notwithstanding the provisions of the Bankruptcy Code providing for a statutorily enforceable discharge of debtor's debts."

17-1654 Wise v. Hurt (7th Cir.)

17-1655 Vantlin v. Hurt (7th Cir.)

CFR 8/14. BIO 9/13. Dist. for 9/24.

**Qualified Immunity:
Clearly Established Law**

On whether the Seventh Circuit created a new legal standard when it denied qualified immunity under certain circumstances involving review of a videotaped interrogation.

17-1662 Aspen Insurance (UK) Ltd. v. Black & Veatch Corp. (10th Cir.)

BIO 7/10. Dist. for 9/24.

**Diversity Jurisdiction:
Erie Doctrine**

On whether "a federal court sitting in diversity must give deference to a state intermediate appellate court decisions on a question of state law, absent state highest court precedent, or whether those intermediate court decisions are merely on factor among many to be considered in predicting the highest court's likely ruling on that question."

17-1669 Promega Corp. v. Life Technologies Corp. (Fed. Cir.)

BIO 8/15. Reply 8/28. Dist. for 9/24.

**Civil Procedure:
Rule 50**

On whether "a verdict winner must raise new-trial arguments in its opposition to a motion for judgment as a matter of law in order to raise those arguments in a timely motion for a new trial after entry of judgment."

17-1678 Hernández v. Mesa (5th Cir.)

BIO 8/6. Reply 8/17. Dist. for 9/24.

**Fifth Amendment:
Bivens Claim**

On whether "when plaintiffs plausibly allege that a rogue federal law enforcement officer violated clearly established Fourth and Fifth Amendment rights for which there is no alternative legal remedy, the federal courts can and should recognize a damages claim under *Bivens*," among other issues.

17-1685 Mamakos v. Town of Huntington (2d Cir.)

Fourth Amendment:

BIO 7/18. Dist. for 9/24.

Probable Cause

On whether “the Code which requires property owners to consent to an inspection through either a town official or a third party who is required to report to the Town any violations of federal, state, county, or town statutes, rules or regulations where there is no cause for a warrant is permitted by the Fourth Amendment,” among other issues.

17-1687 Suhl v. United States (8th Cir.)

**Statutory Interpretation:
Jury Instructions**

BIO 8/20. Reply 9/5. Dist. for 9/24.

On whether “the government may obtain convictions for bribery under the honest-services fraud statute, 18 U.S.C. § 1346, and the federal-programs bribery statute 18 U.S.C. § 666, in the absence of jury instructions expressly requiring an intended *quid pro quo* exchange.”

17-1697 Marshall v. Royal Caribbean Cruises Ltd. (11th Cir.)

**Maritime Law:
Premises Liability**

BIO 7/18. Dist. for 9/24.

On whether “a premises owner has no duty to inspect its premises so as to discover dangerous conditions under general maritime law.”

17-1702 Manhattan Cmty. Access Corp. v. Halleck (2d Cir.)

**First Amendment:
Public Forum Doctrine**

BIO 8/22. Reply 9/4. Dist. for 9/24.

On whether “private entities operating public access television stations are state actors for constitutional purposes where the state has no control over the private entity’s board or operations.”

17-1706 Puiatti v. Florida (Fla.)

**Eighth Amendment:
Sentencing**

BIO 7/23. Reply 8/7. Dist. for 9/24.

On whether “the decisions in *Hurst I* and *Hurst II* announce new substantive rules of federal constitutional law, and if so, whether they must be applied retroactively on state collateral review under the Supremacy Clause and *Montgomery v. Louisiana*,” among other issues.

17-1708 Smith v. Loudon County Public Schools (4th Cir.)

**Discrimination:
Americans with Disabilities Act**

BIO 7/26. Dist. for 9/24.

On whether “a mixed motive plaintiff seeking relief under the ADA for wrongful discharge must prove but-for causation or may prove causation by showing only that discriminatory animus ‘played a motivating part’ in her termination.”

17-1712 Thole v. U.S. Bank, N.A. (8th Cir.)

**ERISA:
Fiduciary Misconduct**

BIO 8/22. Reply 9/5. Dist. for 9/24.

On whether an ERISA plan participant or beneficiary may seek injunctive relief against or restoration of plan losses caused by fiduciary misconduct “without demonstrating individual financial loss or the imminent risk thereof.”

17-1717 The American Legion v. American Humanist Ass’n (4th Cir.)
BIO 7/27. Reply 8/21. Dist. for 9/24

**First Amendment:
Establishment of Religion**

On whether “the Establishment Clause requires the removal or destruction of a 93-year-old memorial to American servicemen who died in World War I solely because that memorial bears the shape of a cross.”

18-1 C.G. v. Deborah Heart & Lung Center (N.J. Super. Ct. App. Div.)
BIO 7/26. Dist. for 9/24.

**Preemption:
Health Care Quality Improvement Act**

On whether the federal Health Care Quality Improvement Act of 1986 preempts state laws governing a hospital’s immunity for reports allegedly made about a doctor’s patient care.

18-3 Ohlendorf v. Local 876, United Food & Commercial Workers International Union (6th Cir.)
BIO 8/14. Reply 8/28. Dist. for 9/24.

**Right of Action:
Labor Management Relations Act**

On whether the Labor Management Relations Act Section 302 provides a private right of action, among other issues.

18-12 Kennedy v. Bremerton School District (9th Cir.)
BIO 8/21. Reply 9/5. Dist. for 9/24.

**First Amendment:
Establishment of Religion**

On whether public school teachers and coaches retain certain First Amendment rights when at work and “in the general presence of” students.

18-17 Keister v. Bell, in His Official Capacity as President of the University of Alabama (11th Cir.)
BIO 8/2. Reply 8/20. Dist. for 9/24.

**First Amendment:
Public Forum**

On whether the adjacent college campus buildings negate the First Amendment public forum status of a sidewalk running along a public street.

18-18 Maryland-National Capital Park & Planning Commission v. American Humanist Ass’n (4th Cir.)
BIO 8/2. Reply 8/21. Dist. for 9/24.

**First Amendment:
Establishment of Religion**

On whether “the Establishment Clause requires the removal or destruction of a 93-year-old memorial to American servicemen who died in World War I solely because that memorial bears the shape of a cross.”

**18-40 Legacy Community Health Services, Inc. v. Smith, Executive
Commissioner, Texas Health & Human Services Commission (5th Cir.)**
BIO 8/6. Reply 8/21. Dist. for 9/24.

**Medicaid:
Reimbursement**

On whether Congress has imposed “an independent duty on States to fully reimburse [federally-qualified health centers for all services they provide to Medicaid beneficiaries regardless of how a State structures its managed-care network or whether the [centers] are in or out of that network.”

18-47 McClary v. Commodores Entertainment Corp. (11th Cir.)
BIO 8/8. Dist. for 9/24.

**Jurisdiction:
Lanham Act**

On whether a “substantial effect on United States commerce” granted federal courts jurisdiction “to expand the Lanham Act to extraterritorial conduct under *Steele v. Bulova Watch Co., Inc.*,” among other issues.

18-48 Minnesota v. Chute (Minn.)
CFR 8/27. BIO 9/14. Dist. for 9/24.

**Fourth Amendment:
Probable Cause**

On whether “an officer’s subjective intent [is] still irrelevant to the lawfulness of entry on to impliedly open curtilage,” among other issues.

18-54 Dabbs v. Anne Arundel County (Md.)
BIO 8/9. Reply 8/27. Dist. for 9/24.

**Fifth Amendment:
Eminent Domain**

On whether “legislatively proscribed monetary exactions on land use development are subject to scrutiny under the unconstitutional conditions doctrine.”

18-84 ConAgra Grocery Products Co. v. California (Cal. Ct. App.)
18-86 The Sherwin-Williams Co. v. California (Cal. Ct. App.)
BIO 8/22. Replies 9/4. Dist. for 9/24.

**Fourteenth Amendment:
Due Process Clause**

On whether “imposing massive and retroactive ‘public nuisance’ liability without requiring proof that the defendant’s nearly century-old conduct caused any individual plaintiff injury violates the Due Process Clause,” among other issues.

18-93 Zimmerman v. City of Austin (5th Cir.)
CFR 8/14. BIO 9/13. Dist. for 9/24.

**First Amendment:
Campaign Finance**

On whether the city of Austin’s “\$350 base limit on campaign contributions violations the First Amendment,” among other issues.

**18-96 Tennessee Wine & Spirits Retailers Ass’n v. Byrd, Executive
Director of the Tennessee Alcoholic Beverage Commission (6th Cir.)**
BIO 8/16. Reply 9/4. Dist. for 9/24.

**Commerce Clause:
Regulation of Liquor Sales**

On whether “the Twenty-first Amendment empowers States, consistent with the dormant Commerce Clause, to regulate liquor sales by granting retail or wholesale licenses only to individuals or entities that have resided in-state for a specific time.”

18-97 Liu v. Janssen Research & Development, LLC (Cal. Ct. App.)
BIO 8/22. Reply 9/5. Dist. for 9/24.

**Clinical Trials:
Duty of Care**

On whether a drug company conducting a study has “a duty under federal regulations to exercise its independent power to stop a clinical study and refer a participant to medical care when it is aware that the participant is suffering from a life-threatening medical condition.”

**18-174 Applied Underwriters Captive Risk Assessment Co.,
v. Citizens of Humanity, LLC (Neb.)**
**18-175 Applied Underwriters, Inc. v. Citizens
of Humanity, LLC, (Cal. Ct. App.)**
BIOs 8/21, 8/22. Reply 9/4. Dist. for 9/24.

**Arbitration:
Choice-of-Law Clause**

On whether a general choice-of-law clause in a contract containing an arbitration agreement imports state substantive law but not state rules on arbitration, among other issues.

18-189 Smartflash LLC v. Samsung Electronics America (Fed. Cir.)
BIO 8/22. Reply 9/5. Dist. for 9/24.

**Separation of Powers:
Appointments Clause**

On whether administrative patent judges of the Patent Trial and Appeal Board are principal officers of the United States who must be appointed by the President with the advice and consent of the Senate under the Appointments Clause.

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.

**17-498 Berninger v. Federal Communications Commission (D.C. Cir.) Administrative Procedure:
17-499 AT&T Inc. v. Federal Communications Commission (D.C. Cir.) Internet Service Providers
17-500 American Cable Ass’n v. Federal Communications Commission (D.C. Cir.)**

17-501 CTIA-The Wireless Ass’n v. Federal Communications Commission (D.C. Cir.)

17-502 NCTA-The Internet & Television Ass’n v. Federal Communications Commission (D.C. Cir.)

17-503 TechFreedom v. Federal Communications Commission (D.C. Cir.)

17-504 U.S. Telecom Ass’n v. Federal Communications Commission (D.C. Cir.)
BIOs 8/2, 9/14.

On whether a now-superseded 2015 order classifying broadband internet service providers as common-carriers and subjecting them to new regulations violated the Administrative Procedure Act or the First Amendment.

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.

17-1056 Quality Systems, Inc. v. City of Miami Fire Fighters’ & Police Officers’ Retirement Trust (9th Cir.)

**Securities Litigation:
Forward-looking Statements**

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. Dist. for 6/27.

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.”

17-1404 Gordon v. Lafler (6th Cir.)
CFR 6/5. BIO 8/6. Reply 8/21.

**Fourteenth Amendment:
Judicial Bias**

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

17-1463 Segovia v. United States (7th Cir.)
CFR 5/29. BIO 8/29. Reply 9/11. Dist. for 10/5.

**Voting:
Absentee Balloting**

On whether eligibility criteria for the right to vote in federal elections are subject to heightened scrutiny, among other issues.

17-1510 Veal v. Georgia (Ga.)
CFR 5/29. BIO 8/27. Reply 9/11. Dist. for 10/5.

**Eighth Amendment:
Juvenile LWOP**

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.”

17-1511 Newton v. Indiana (Ind. Ct. App.)
BIO 8/3. Reply 8/17.

**Eighth Amendment:
Juvenile LWOP**

On whether *Miller v. Alabama* applies to discretionary life-without-parole sentences for juvenile offenders or is limited to mandatory life-without-parole sentences.

17-1610 Jones v. Department of Health & Human Services (Fed. Cir.)
BIO 8/30. Reply 9/18.

**Statutes of Limitations:
Merit Systems Protection Board**

On whether the time limit in 5 U.S.C. § 7703(b)(1)(A) for a federal employee seeking judicial review of a final decision by the Merit Systems Protection Board is a jurisdictional requirement or a claim-processing rule subject to equitable tolling.

17-1618 Bostock v. Clayton County (11th Cir.)
CFR 7/13. BIO 8/10. Reply 8/24.

**Discrimination:
Sexual Orientation**

On whether discrimination against an employee based on sexual orientation is prohibited under Title VII of the Civil Rights Act of 1964.

17-1623 Altitude Express, Inc. v. Zarda (2d Cir.)
BIO 8/16. Reply 9/4.

**Discrimination:
Sexual Orientation**

On whether discrimination against an employee based on sexual orientation is prohibited under Title VII of the Civil Rights Act of 1964.

17-1636 California Sea Urchin Commission v. Combs, Acting Assistant Secretary for Fish, Wildlife, & Parks (9th Cir.)

**Administrative Procedure:
Chevron Deference**

On whether statutory silence triggers *Chevron* deference and whether courts can assess the reasonableness of an agency's interpretation where it is based on the absence of relevant statutory text.

17-1679 Gray v. O'Rourke (Fed. Cir.)
BIO 9/7.

**Jurisdiction:
VA Interpretive Rule**

On whether the Federal Circuit has jurisdiction under 38 U.S.C. § 502 to review an interpretive rule of the Department of Veterans Affairs promulgated through an adjudication manual.

17-1699 Mr. P. v. West Hartford Board of Education (2d Cir.)
BIO 8/24. Reply 9/7. Dist. for 10/5.

**IDEA:
Mental Health**

On whether, under the Individuals With Disabilities Education Act, students with mental health needs are entitled to the same standard of a free appropriate public education as students with other types of disabilities.

17-1703 Honeywell International Inc. v. Mexichem Fluor Inc. (D.C. Cir.)
BIO 8/27. Reply 9/12. Dist. for 10/5.

**Environmental Regulation:
Clean Air Act**

On whether “under the ‘safe alternatives policy’ of § 612 of the Clean Air Act, EPA lacks authority to prohibit the use of a less-safe substitute for an ozone-depleting substance in favor of a safer alternative, just because a company has already begun using the less-safe substitute.”

17-1705 PDR Network, LLC v. Carlton & Harris Chiropractic, Inc. (4th Cir.)
CFR 8/1. BIO 8/29. Reply 9/11. Dist. for 10/5.

**Administrative Procedure:
Chevron Deference**

On whether “the Hobbs Act strip[s] courts of jurisdiction to engage in a traditional *Chevron* analysis and require[s] automatic deference to an agency's order even if there has been no challenge to the ‘validity’ of such order,” among other issues.

17-1713 Emerson Electric Co. v. Superior Court of California (Cal.)
BIO 9/7.

**Preemption:
Occupational Safety & Health Act**

On whether the Occupational Safety and Health Act “‘preempts all state occupational safety and health laws’ relating to issues covered by federal standards ‘unless they are included in the state plan,’” or whether states “may employ supplement enforcement mechanisms for workplace safety standards even if not included in the state plan.”

18-2 Natural Resources Defense Council v. Mexichem Fluor, Inc. (D.C. Cir.)
BIOs 8/27. Reply 9/11. Dist. for 10/5.

**Environmental Regulation:
Clean Air Act**

On whether “under the ‘safe alternatives policy’ of § 612 of the Clean Air Act, EPA lacks authority to prohibit the use of a less-safe substitute for an ozone-depleting substance in favor of a safer alternative, just because a company has already begun using the less-safe substitute.”

18-56 Shoop v. Hill (6th Cir.)
BIO 8/29. Reply 9/10. Dist. for 10/5.

**Criminal Law:
Mental Disability**

On whether the Sixth Circuit correctly held that the state erred in its application of *Atkins v. Virginia* (2002) when it found a death-row inmate was not intellectually disabled.

18-128 Abouelmagd v. Newell (Cal. Ct. App.)
BIO 8/27. Reply 9/13. Dist. for 10/5.

**Statutes of Limitations:
Tolling**

On whether a California tolling statute that suspend the statute of limitations for out-of-state residents is unconstitutional as applied to nonresidents who engage in business transactions with California residents.

18-132 Elmhirst v. McLaren Northern Michigan Hospital (6th Cir.)
BIO 8/30.

**Health:
EMTALA**

On whether a defendant hospital’s motivation must be malicious to violate the “appropriate medical screening” requirement under the Emergency Medical Treatment and Active Labor Act.

18-164 First Solar, Inc. v. Mineworkers’ Pension Scheme (9th Cir.)
BIO 9/5. Reply 9/19.

**Securities Litigation:
Loss Causation**

On whether a private securities-fraud plaintiff may establish loss causation based on a decline in market price of a security where the triggering event did not reveal the fraud on which the claim is based.

18-167 MCC (Xiangtan) Heavy Industrial Equipment Co. v. Liebherr Mining & Construction Equipment, Inc. (Va.)
BIO 9/6.

**Jurisdiction:
Personal Jurisdiction**

On whether the Due Process Clause permits a court to exercise personal jurisdiction over a non-resident defendant based on the defendant’s alleged co-conspirators’ contacts with the forum state.

18-206 Cunningham v. General Dynamics Information Technology, Inc. (4th Cir.)
BIO 9/17.

**Immunity:
Government Contractor**

On whether a government contractor is entitled to immunity from both federal and state-law claims arising out of actions that a federal agency authorized.

CALLS FOR RESPONSE

NEW CFR

17-1572 Peterson v. Franklin (8th Cir.)

CFR 7/19. Due 8/20. Ext. 9/19.

**Qualified Immunity:
Interlocutory Appeals**

On whether there is “interlocutory appellate jurisdiction to review the district court’s assessment that disputed facts establish a triable question on a legal element essential to liability.”

17-1641 Thomas v. Williams (5th Cir.)

CFR 8/13. Due 9/12. Ext. 10/12.

**Qualified Immunity:
Summary Judgment**

On whether a grant of summary judgment was error due to failure to adhere to the summary judgment standard.

17-1660 City of Escondido v. Emmons (9th Cir.)

CFR 7/25. Due 8/24. Ext. 9/24.

**Qualified Immunity:
Clearly Established Law**

On whether the court applied “clearly established law at too high a level of generality rather than” through “particularized consideration to the facts and circumstances” of the case in denying qualified immunity, among other issues.

17-1692 Ahsan v. Staples the Office Superstore East, Inc. (2d Cir.)

CFR 9/12. Due 10/12.

**Civil Procedure:
Rule 50**

On whether “the Seventh Amendment categorically bars review of district court denials of motions for a new trial made on the ground that the weight of the evidence does not support the verdict.”

18-7 Choctaw County v. Jauch (5th Cir.)

CFR 8/16. Due 9/17. Ext. 10/17.

**Qualified Immunity:
Clearly Established Law**

On whether “a county and local county sheriff can be held liable under 42 U.S.C. § 1983 for a pretrial detainee’s ninety-six-day detention where the moving force behind the deprivation of her protected liberty interest are state court rules,” among other issues.

18-16 Elijah v. United States (4th Cir.)

CFR 8/10. Due 9/10. Ext. 10/10.

**Criminal Law:
Sentencing Guidelines**

On whether, when the district court commits a Sentencing Guidelines calculation error that results in a dramatic upward variance, an appellate court can skip “to a substantive reasonableness analysis, presuming for purposes of harmless error review, that the district court would have awarded the same sentence even if it had decided the Guidelines issue in the defendant’s favor.”

On whether “the requirement of frequent, in-person reporting renders an offender-registration law punitive, such that applying the law retroactively violates the Ex Post Facto Clause.”

[18-59 Stand Up for California! v. Department of the Interior \(D.C. Cir.\)](#)
CFR 8/29. Due. 9/28.

Statutory Interpretation:
Indian Gaming Regulatory Act

On whether “the Secretary may conclude that a casino ‘would not be detrimental to the surrounding community’ despite uncontroverted evidence that the casino will have unmitigated detrimental impacts to the community,” among other issues.

[18-67 Hurst v. Caldwell \(Ky. Ct. App.\)](#)
CFR 8/23. Due 9/24.

Fourteenth Amendment:
Due Process Clause

On whether the special relationship rule applies “to shield a state actor from liability under 42 U.S.C. § 1983, when the challenged conduct by that actor specifically targets an individual by name and directly puts them in danger,” among other issues.

[18-73 Carpenter v. Jordan \(6th Cir.\)](#)
CFR 8/22. Due 10/9.

Statute of Limitations:
Wrongful Conviction

On whether a wrongful conviction claim for unconstitutionally withholding exculpatory evidence accrues when a conviction is “invalidated” by post-conviction procedures set out in *Heck* or when it is “invalidated” and plaintiff is no longer subject to criminal prosecution due to a “favorable termination.”

[18-89 AmeriCulture, Inc. v. Los Lobos Renewable Power, LLC \(10th Cir.\)](#)
CFR 8/27. Due 9/26.

First Amendment:
Anti-SLAPP Laws

On whether “a state anti-SLAPP provision requiring an award of attorneys’ fees and costs to a prevailing defendant applies in federal court.”

[18-98 Cook v. Mississippi \(Miss. Ct. App.\)](#)
CFR 9/11. Due 10/11.

Eighth Amendment:
Juvenile LWOP

On whether the Eighth Amendment requires a sentencing authority to find a juvenile “permanently incorrigible” in order to impose a sentence of life in prison without the possibility of parole.

[18-110 Burningham v. Raines \(8th Cir.\)](#)
CFR 9/13. Due 10/15.

Qualified Immunity:
Interlocutory Appeals

On whether interlocutory appeal of a denial of qualified immunity is foreclosed “where the underlying evidentiary fact is undisputed, but where different inferences may be drawn from the particular fact, or do such disputes concern evaluation of the materiality of a particular fact, which ... is a legal issue, and therefore subject to interlocutory appeal.”

18-119 Gotech International Technology Ltd. v. Nagravisio SA (5th Cir.)
CFR 8/10. Due 9/10. Ext. 10/10.

**Jurisdiction:
Personal Jurisdiction**

On whether “a plaintiff invoking jurisdiction under Rule 4(k)(2) must plead that ‘the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction.’”

18-121 Rothery v. Blanas (9th Cir.)
CFR 8/31. Due 10/1.

**Second Amendment:
State Law**

On whether “California’s general prohibition to carry a loaded handgun outside the home, coupled with an arbitrary and capricious licensing scheme for citizens who wish to carry a concealed weapon, violate Californians’ fundamental right to keep and bear arms for self-defense guaranteed by the Second Amendment,” among other issues.

18-122 Sinegal v. Polk (5th Cir.)
CFR 9/14. Due 10/15.

**Qualified Immunity:
Clearly Established Law**

On whether “candidacy for political office, standing alone, is a protected right under the First Amendment” and whether that right was clearly established in the Fifth Circuit.

18-125 Grussgott v. Milwaukee Jewish Day School, Inc. (7th Cir.)
CFR 8/29. Due 9/28.

**First Amendment:
Establishment of Religion**

On whether the two-prong ministerial exception test requires that a religious institution have “an ordained or lay minister and/or a hierarchy of such ministers” rather than an administration of lay people without ministerial certification who conduct the hiring and firing.

18-149 Laur v. Mangan (9th Cir.)
CFR 9/14. Due 10/15.

**First Amendment:
Campaign Finance**

On whether Montana’s base candidate contribution limits on individual and political committees and aggregate candidate contribution limits on all political party entities are unconstitutional.

18-162 Ball al. v. LeBlanc (5th Cir.)
CFR 8/23. Due 9/24. Ext. 10/24.

**Eighth Amendment:
Prison Conditions**

On whether the Prison Litigation Reform Act’s tailoring requirement prohibits district courts from ordering a prison to maintain a maximum heat index to remedy a constitutional violation caused by heat.

On whether the Eighth Amendment requires a sentencing authority to find a juvenile “permanently incorrigible” before imposing a sentence of life in prison without the possibility of parole, among other issues.

[18-227 Wolfe v. Virginia \(Va.\)](#)
CFR 9/12. Due 10/12. Ext. 11/13.

**Criminal Law:
Right to Appeal**

On whether a guilty plea in state court waives a defendant’s right to challenge the state’s constitutional authority to prosecute and so precludes a claim of vindictive prosecution.

PENDING CFR

[17-1386 Wilson v. Bridges \(10th Cir.\)](#)
CFR 5/25. Due 6/25. Ext. 8/8. Ext. 9/14.

**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.

CALLS FOR THE VIEWS OF THE SOLICITOR GENERAL

PENDING CVSG

17-834 Kansas v. Garcia (Kan.)

BIO 3/12. Reply 3/23. Dist. for 4/13. CVSG 4/16.

**Preemption:
Immigration Reform & 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.

17-1165 de Csepel v. Republic of Hungary (D.C. Cir.)

BIO 5/21. Reply 6/4. Supp. Resp. Br. 6/5. Dist. for 6/21. CVSG 6/25

**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.

17-1183 Airline Service Providers Ass'n 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.

17-1285 Ass’n 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.

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

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

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

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

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.

**17-1301 Harvey v. UTE Indian Tribe of the Uintah
& Ouray Reservation (Utah)**

**Indian Law:
Tribal Remedies Exhaustion Doctrine**

BIO 5/21. Reply 6/5. Dist. for 6/21. CVSG 6/25.

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,” among other issues.

HELD / AWAITING ACTION

17-1269 Kumar v. Republic of Sudan (4th Cir.)

Brief in Support 4/9. Dist. for 6/14. Dist. for 6/21.

(Likely held for 17-1236, *Republic of Sudan v. Owens*, 17-1268, *Opati v. Republic of Sudan* and 17-1406, *Republic of Sudan v. Opati*)

**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.

17-1348 Nevada Department of Wildlife v. Smith (Cal. Ct. App.)

CFR 5/3. BIO 6/1. Reply 6/7. Dist. for 6/21. Dist. for 6/27.

(Likely held for 17-1299, *Cal. Franchise Tax Board v. Hyatt*)

**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. Dist. for 6/27.

(Likely held for 17-1307, *Obduskey v. McCarthy & Holthus*)

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

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

GRANTED CASES INVOLVING PUBLIC CITIZEN – 2018 TERM

17-340 New Prime, Inc. v. Oliveira (1st Cir.)
Cert. Granted 2/26. Arg. 10/3.

**Arbitration:
Section 1 Exemption**

Public Citizen filed an amicus brief at the merits stage in support of respondent.

Amicus Brief

On whether a dispute over applicability of the FAA’s Section 1 exemption is an arbitrability issue that must be resolved in arbitration pursuant to a valid delegation clause, among other issues.

17-961 Frank v. Gaos (9th Cir.)
Cert. Granted 4/30. Arg. 10/31.

**Class Actions:
Cy Pres**

Public Citizen filed an amicus brief at the merits stage in support of respondent.

Amicus Brief

On whether, or in what circumstances, a class-action settlement that provides a cy pres award of class-action proceeds comports with the requirement that a settlement binding class members must be “fair, reasonable, and adequate.”

17-988 Lamps Plus, Inc. v. Varela (9th Cir.)
Cert. Granted 4/30. Arg. 10/29.

**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.