

# Supreme Court: The Term in Review (2017–2018)

A FEDERAL JUDICIAL CENTER PROGRAM

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## Contents

Introduction .....	1
I. First Amendment .....	2
II. Fourth Amendment .....	3
III. Fifth Amendment .....	4
IV. Immigration Law .....	4
V. Bankruptcy Law .....	6
VI. Redistricting and Voters' Rights .....	6
VII. Federal Courts .....	8
VIII. Federal Statutes .....	9
IX. Federalism .....	11
X. Criminal Trials, Pleas, and Sentencing .....	12
Appendix: Summaries of Cases Not Discussed in the Program .....	14
Antitrust .....	14
Appellate Jurisdiction – Military Courts .....	14
Appellate Review .....	14
Appeals – Timeliness .....	15
Civil Rights – Section 1983 .....	15
Contracts .....	16
Criminal Law – Obstruction .....	16
Criminal Law – Restitution .....	17
Disputes Between States .....	17
Employment Law – Fair Labor Standards Act .....	17
Federal Courts .....	18
Federal Courts – Jurisdiction .....	18
First Amendment – Free Speech .....	19
Foreign Sovereign Immunity .....	19
Habeas .....	20
Habeas – AEDPA .....	20
Habeas – Death Penalty .....	21
Immigration Law .....	21
Mootness .....	22
Original Jurisdiction .....	22
Patents .....	23
Redistricting and Voters' Rights .....	24
Search and Seizure .....	24
Search and Seizure – Qualified Immunity .....	24
Securities Litigation .....	25
Sovereign Immunity – Indian Tribes .....	25

States – Water Rights .....	25
Taxation – Railroad Retirement .....	25
Voting Rights .....	26
Whistleblower Protection – Dodd–Frank Act .....	26
Faculty Biographical Information .....	27

## Introduction

In the Supreme Court's 2017–2018, the Court decided seventy-one cases, fifty-nine with signed opinions and twelve per curiam decisions.

Of the seventy-one decisions, fifty-seven were on certiorari to the circuit courts of appeals, one was on certiorari to the United States Court of Appeals for the Armed Forces, four were on appeal from or seeking writ of mandamus to district courts, seven were on certiorari to state courts, and two were original jurisdiction cases. The Court affirmed the lower courts in eighteen cases and reversed, remanded, or vacated the lower court decision in fifty-one cases.

This outline provides brief summaries of the majority or prevailing opinions in the cases that are scheduled to be discussed in the program. An appendix, arranged by topic, provides brief summaries of the cases not discussed in the program. The summaries are quick references to the holdings and give no more than cursory mention of the facts and reasoning. The online version links each case summary to the full text of the opinion.

## I. First Amendment

[Janus v. American Federation of State, County, and Municipal Employees](#), 138 S. Ct. 2448 (June 27, 2018)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Reversed.

5 – 4

Justice Alito, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Gorsuch.

Requiring public employees who choose not to join a union to subsidize it violates their free speech rights. *Aboud v. Detroit Bd. Of Ed.*, 431 U.S. 209 (1977), is overruled.

Justice Sotomayor, joined by Justices Ginsburg, Breyer, and Kagan, dissented with opinion.

[Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission](#), 138 S. Ct. 1719 (June 4, 2018)

Certiorari to the Court of Appeals of Colorado. Reversed.

7 – 2

Justice Kennedy, joined by Chief Justice Roberts and Justices Breyer, Alito, Kagan, and Gorsuch, and in part by Justice Thomas.

In ruling that a baker’s refusal to make a wedding cake for a same-sex couple violated their rights, the Colorado Civil Rights Commission “did not do so with the religious neutrality that the Constitution requires.” This violated the baker’s Free Exercise of religion rights. “The Civil Rights Commission’s treatment of [the baker’s] case has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection.”

Justice Kagan, joined by Justice Breyer, concurred with opinion. Justice Gorsuch, joined by Justice Alito, concurred with opinion. Justice Thomas concurred in part and in the judgment with opinion. Justice Ginsburg, joined by Justice Sotomayor, dissented with opinion.

[National Institute of Family and Life Advocates v. Becerra](#), 138 S. Ct. 2361 (June 26, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

5 – 4

Justice Thomas, joined by Chief Justice Roberts and Justices Kennedy, Alito, and Gorsuch.

A State law requiring clinics that serve pregnant women to notify women that the state provides free or low cost services, including abortions, violates the First Amendment.

Justice Kennedy, joined by Chief Justice Roberts and Justices Alito and Gorsuch concurred with opinion. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented with opinion.

## II. Fourth Amendment

[Carpenter v. United States](#), 138 S. Ct. 2206 (June 22, 2018)

Certiorari to the U.S. Court of Appeals for the Sixth Circuit. Reversed.

5 – 4

Chief Justice Roberts, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan.

Without a search warrant, police collected from wireless carrier companies' cell phone records that enabled them to determine Carpenter's movements and locations continuously over a period of several months. This was a search and required a search warrant. "Given the unique nature of cell phone location records, the fact that the information is held by a third part does not by itself overcome the user's claim to Fourth Amendment protection.

Justice Kennedy, joined by Justices Thomas and Alito, dissented with opinion. Justice Thomas dissented with opinion. Justice Alito, joined by Justice Thomas, dissented with opinion. Justice Gorsuch dissented with opinion.

[Collins v. Virginia](#), 138 S. Ct. \_\_\_ (May 29, 2018)

Certiorari to the Supreme Court of Virginia. Reversed.

8 – 1

Justice Sotomayor, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, Kagan, and Gorsuch.

"[T]he automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein."

Justice Thomas concurred with opinion. Justice Alito dissented with opinion.

[Byrd v. United States](#), 138 S. Ct. 1518 (May 14, 2018)

Certiorari to the U.S. Court of Appeals for the Third Circuit. Reversed.

9 – 0

Justice Kennedy for a unanimous Court.

"[T]he mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy." Other factors specific to the case, however, may defeat a reasonable expectation of privacy.

Justice Thomas, joined by Justice Gorsuch, concurred with opinion. Justice Alito concurred with opinion.

This decision resolved a split in the circuit courts of appeals. The U.S. Courts of Appeals for the Third, Fourth, Fifth, and Tenth Circuits had held that the driver of a rental car whose name is not on the agreement has no expectation of privacy in the vehicle. The U.S. Courts of Appeals for the Sixth, Eighth, and Ninth Circuits had held to the contrary.

### III. Fifth Amendment

[Currier v. Virginia](#), 138 S. Ct. 2144 (June 22, 2018)

Certiorari to the Supreme Court of Virginia. Affirmed.

5 – 4

Justice Gorsuch, joined by Chief Justice Roberts and Justices Thomas and Alito, and in part by Justice Kennedy.

Currier moved to sever his trial on related charges. At the first was acquitted of charges that formed the predicate for felon-in-possession charges for which he was convicted in the second trial. The Double Jeopardy Clause did not prohibit the second trial.

Justice Kennedy concurred in part with opinion. Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, dissented with opinion.

[McCoy v. Louisiana](#), 138 S. Ct. 1500 (May 14, 2018)

Certiorari to the Supreme Court of Louisiana. Reversed.

6 – 3

Justice Ginsburg, joined by Chief Justice Roberts and Justices Kennedy, Breyer, Sotomayor, and Kagan.

“[A criminal] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel’s experience-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.” “Violation of a defendant’s Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called ‘structural’; when present, such an error is not subject to harmless-error review.”

Justice Alito, joined by Justices Thomas and Gorsuch, dissented with opinion.

### IV. Immigration Law

[Trump v. Hawaii](#), 138 S. Ct. \_\_\_ (June 26, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

5 – 4

Chief Justice Roberts, joined by Justices Kennedy, Thomas, and Alito.



The President's order excluding foreign nationals from specified countries from entering the United States is a valid exercise of the President's constitutional and statutory authority, and did not violate the Establishment Clause of the First Amendment.

Justice Kennedy concurred with opinion. Justice Thomas concurred with opinion. Justice Breyer, joined by Justice Kagan, dissented with opinion. Justice Sotomayor, joined by Justice Ginsburg, dissented with opinion.

[Jennings v. Rodriguez](#), 138 S. Ct. 830 (February 27, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

3 + 2 – 4

Justice Alito, joined by Chief Justice Roberts and Justice Kennedy, and in part by Justices Thomas and Gorsuch, and in part by Justice Sotomayor.

Aliens pending removal under 8 U.S.C. §§ 1225(b), 1226(a), or 1226(c) may be detained pending removal. Nothing in the statutory provides for a bail or release hearing during such detention.

Justice Thomas, joined by Justice Gorsuch, concurred in part and in the judgment with opinion. Justice Breyer, joined by Justices Ginsburg and Sotomayor, dissented with opinion.

[Sessions v. Dimaya](#), 138 S. Ct. 1204 (April 17, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Affirmed.

4 + 1 – 4

Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor and in part by Justice Gorsuch.

The Immigration and Nationality Act makes removable, without possibility of cancellation, an alien convicted of an aggravated felony, and defines aggravated felony, in 8 U.S.C. § 1101(a)(43)(F), to include the definition in 18 U.S.C. § 16(b): “a felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” The Court in *Johnson v. United States*, 576 U.S. \_\_\_\_ (2015), held § 16(b) void for vagueness for criminal law purposes, and it is also void for vagueness for immigration law purposes.

Justice Gorsuch concurred in part and in the judgment with opinion. Chief Justice Roberts, joined by Justices Kennedy, Thomas, and Alito, dissented with opinion. Justice Thomas, joined by Justices Kennedy and Alito, dissented with opinion.

## V. Bankruptcy Law

[Merit Management Group, LP v. FTI Consulting, Inc.](#), 138 S. Ct. 883 (February 27, 2018)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Affirmed.

9 – 0

Justice Sotomayor for a unanimous Court.

When a trustee exercises “avoiding power” to invalidate a transfer by a debtor, to determine whether a safe harbor provided in 11 U.S.C. § 546(e) saves the transfer from avoidance courts should look only to the transfer that the trustee seeks to avoid and not to component parts of the overall transfer.

This decision resolved a split in the circuit courts of appeals. The U.S. Courts of Appeals for the Second, Third, Sixth, Eighth, and Tenth Circuits had all held the safe harbor is applicable where it covered an intermediary. The U. S. Courts of Appeals for the Seventh and Eleventh Circuits had held that the safe harbor did not apply when the covered entity is an intermediary.

[Lamar, Archer & Cofrin, LLP v. Appling](#), 138 S. Ct. 1752 (June 4, 2018)

Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. Affirmed.

9 – 0

Justice Sotomayor, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, and Kagan, and in part by Justices Thomas, Alito, and Gorsuch.

A “statement respecting the debtor’s financial condition” under 11 U.S.C. § 523(a) (2) can be a statement about a single asset. If such a “statement is not in writing . . . the associated debt may be discharged, even if the statement was false.

[U.S. Bank N.A. v. Village at Lakeridge](#), 138 S. Ct. 960 (March 5, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Affirmed.

9 – 0

Justice Kagan for a unanimous Court.

When a bankruptcy court decides whether a person’s transactions with the debtor were at arm’s length for purposes of determining whether such person is a non-statutory insider, the correct standard of appellate review is clear error.

Justice Kennedy concurred with opinion. Justice Sotomayor, joined by Justices Kennedy, Thomas, and Gorsuch, concurred with opinion.

## VI. Redistricting and Voters’ Rights

[Gill v. Whitford](#), 138 S. Ct. 1916 (June 18, 2018)

Appeal from the U.S. District Court for the Western District of Wisconsin. Reversed.

7 + 2 – 0

Chief Justice Roberts, joined by Justices Kennedy, Ginsburg, Breyer, Alito, Sotomayor, and Kagan, and in part by Justices Thomas and Gorsuch.

Plaintiffs challenging Wisconsin’s legislative districting plan failed to prove that they were individually harmed by the plan and therefore lack standing. The case is remanded to afford plaintiffs the opportunity to demonstrate individual injuries.

Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, concurred with opinion. Justice Thomas, joined by Justice Gorsuch, concurred in part and in the judgment with opinion.

[Abbott v. Perez](#), 138 S. Ct. \_\_\_ (June 25, 2018)

Appeal from the U.S. District Court for the Western District of Texas. Reversed.

5 – 4

Justice Alito, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Gorsuch.

The congressional and state legislative districts drawn by the Texas legislature in 2013 are lawful, with one exception. The district court erred when it shifted the burden to the legislature to show that it had ‘c Sured’ unlawful intent that the district court found in a previous districting plan, rather than putting the burden on the challengers to show discriminatory intent.

Justice Thomas, joined by Justice Gorsuch, concurred with opinion. Justice Sotomayor, joined by Justices Ginsburg, Breyer, and Kagan, dissented with opinion.

[Husted v. A. Philip Randolph Institute](#), 138 S. Ct. \_\_\_ (June 11, 2018)

Certiorari to the U.S. Court of Appeals for the Sixth Circuit. Reversed.

5 – 4

Justice Alito, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Gorsuch.

Ohio law requires removing from voter rolls the names of persons who, after not having voted for two years, do not return a postage prepaid card verifying their address and who do not vote in any election for four more years. This law does not violate the National Voter Registration Act of 1993 as amended by the Help America Vote Act of 2002, see 52 U.S.C. § 20507.

Justice Thomas concurred with opinion. Justice Breyer, joined by Justices Ginsburg, Kagan, and Sotomayor, dissented with opinion. Justice Sotomayor dissented with opinion.

## VII. Federal Courts

[China Agritech, Inc. v. Resh](#), 138 S. Ct. 1800 (June 11, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

8 + 1 – 0

Justice Ginsburg, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Breyer, Alito, Kagan, and Gorsuch.

Under *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), and *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), the timely filing of a class action tolls the applicable statute of limitations for all persons encompassed by the class complaint, and such persons may intervene in an existing suit or file their own individual suits after the class-action status has been denied. However, upon denial of class certification, a putative class member may not commence a class action anew beyond the time allowed by the applicable statute of limitations.

Justice Sotomayor concurred in the judgment with opinion.

This decision resolved a split in the circuit courts of appeals, which had reached several different results over when otherwise untimely successive class claims may be brought under *American Pipe*.

[Artis v. District of Columbia](#), 138 S. Ct. 594 (January 22, 2018)

Certiorari to the District of Columbia Court of Appeals. Reversed.

5 – 4

Justice Ginsburg, joined by Chief Justice Roberts and Justices Breyer, Sotomayor, and Kagan.

When a district court dismisses all claims independently qualifying for federal jurisdiction it also dismisses related state claims that were before it under supplemental jurisdiction. In such case, 28 U.S.C. § 1367(d) provides that any period of limitations for the claims under state law “shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed. As used in § 1367(d), “tolled” means that the state limitation period is held “in abeyance, i.e., to stop the clock.”

Justice Gorsuch, joined by Justices Thomas, Kennedy, and Alito, dissented with opinion.

[Wilson v. Sellers](#), 138 S. Ct. 1188 (April 17, 2018)

Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. Reversed.

6 – 3

Justice Breyer, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Sotomayor, and Kagan.

In determining the reasons for a state court decision under AEDPA, 28 U.S.C. § 2254(d) when the relevant state court decision does not include reasons, “the federal court should ‘look through’ the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning. But the State may rebut the presumption by showing that the unexplained affirmance relied or most likely did rely on different grounds . . . .”

Justice Gorsuch, joined by Justices Thomas and Alito, dissented with opinion.

This decision resolved a split in the circuit courts of appeals. The U.S. Courts of Appeals for the First, Third, Fourth, Sixth, and Ninth Circuits had all applied the “look-through” approach. The U.S. Court of Appeals for the Eleventh Circuit applied a “could have supported” approach.

[Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.](#), 138 S. Ct. 1865 (June 14, 2018)

Certiorari to the U.S. Court of Appeals for the Second Circuit. Reversed.

9 – 0

Justice Ginsburg for a unanimous Court.

When foreign law is relevant to a case, “[a] federal court should accord respectful consideration to a foreign government’s submission, but is not bound to accord conclusive effect to the foreign government’s statements.” “Relevant considerations include the statement’s clarity, thoroughness, and support; its context and purpose; the transparency of the foreign legal system; the role and authority of the entity or official offering the statement; and the statements consistency with the foreign government’s past positions.”

This decision resolved a split in the circuit courts of appeals, which had reached varying positions on the degree of deference to be given a foreign government’s statement of its law.

## VIII. Federal Statutes

[Epic Systems Corp. v. Lewis](#), 138 S. Ct. 1612 (May 21, 2018)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Affirmed.

5 – 4

Justice Gorsuch, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito.

Under the Federal Arbitration Act, courts must enforce an agreement between an employer and employee to resolve disputes through one-on-one arbitration, 9 U.S.C. § 2. Nothing in the National Labor Relations Act, 29 U.S.C. §§ 151–169, requires otherwise.

Justice Thomas concurred with opinion. Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, dissented with opinion.

[Murphy v. Smith](#), 138 S. Ct. 784 (February 21, 2018)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Affirmed.

5 – 4

Justice Gorsuch, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito.

Under 42 U.S.C. § 1997e(d)(2), when awarding attorney fees after a prisoner prevails in a suit, a court “must apply as much of the judgment as necessary, up to 25%, to satisfy an award of attorney’s fees” before looking to the defendant to contribute to the fees that are awarded.

Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented with opinion.

[Dahda v. United States](#), 138 S. Ct. 1491 (May 14, 2018)

Certiorari to the U.S. Court of Appeals for the tenth Circuit. Affirmed.

8 – 0

Justice Breyer, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Alito, Sotomayor, and Kagan.

An order approving a wiretap included a sentence that exceeded the judge’s statutory authority, by authorizing intercepting communications outside of the judge’s territorial jurisdiction, did not render the order “insufficient on its face” under 18 U.S.C. § 2518(10)(a)(ii), and evidence collected under the remainder of the order did not need to be suppressed.

Justice Gorsuch took no part in this case.

[Jesner v. Arab Bank, PLC](#), 138 S. Ct. 1386 (April 24, 2018)

Certiorari to the U.S. Court of Appeals for the Second Circuit. Affirmed.

5 – 4

Justice Kennedy, joined by Chief Justice Roberts and Justice Thomas, and in part by Justices Alito and Gorsuch.

Foreign corporations may not be defendants in suits brought under the Alien Tort Statute, 28 U.S.C. § 1350.

Justice Thomas concurred with opinion. Justice Alito concurred in part and in the judgment with opinion. Justice Gorsuch concurred in part and in the judgment with opinion. Justice Sotomayor, joined by Justices Ginsburg, Breyer, and Kagan, dissented with opinion.

## IX. Federalism

[Murphy v. National Collegiate Athletic Association](#), 138 S. Ct. 1461 (May 14, 2018)

Certiorari to the U.S. Court of Appeals for the Third Circuit. Reversed.

6 – 3

Justice Alito, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Kagan, and Gorsuch, and in part by Justice Breyer.

The Professional and Amateur Sports Protection Act, 28 U.S.C. § 3702, which prohibits states from authorizing gambling on sporting events, unconstitutionally commandeers states to adopt a specific policy in violation of state sovereignty.

Justice Thomas concurred with opinion. Justice Breyer concurred in part and dissented in part with opinion. Justice Ginsburg, joined by Justice Sotomayor, dissented with opinion.

[South Dakota v. Wayfair, Inc.](#), 138 S. Ct. 2080 (June 21, 2018)

Certiorari to the Supreme Court of South Dakota. Reversed.

5 – 4

Justice Kennedy, joined by Justices Thomas, Ginsburg, Alito, and Gorsuch.

The Commerce Clause does not prevent South Dakota from requiring an out-of-state seller with no physical presence in South Dakota to collect and remit sales tax. “The physical presence rule of *Quill* is unsound and incorrect. The Court’s decisions in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753 (1967), should be, and now are, overruled.”

Justice Thomas concurred with opinion. Justice Gorsuch concurred with opinion. Chief Justice Roberts, joined by Justices Breyer, Sotomayor, and Kagan, dissented with opinion.

[Lucia v. Securities and Exchange Commission](#), 138 S. Ct. 2044 (June 21, 2018)

Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. Reversed.

6 + 1 – 2

Justice Kagan, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Alito, and Gorsuch.

Administrative law judges (ALJs) for the Securities and Exchange Commission (SEC) qualify as “officers of the United States” under the Appointments Clause, Art. II, § 2, cl. 2. The SEC’s ALJs were not appointed in accordance with the requirements of the Appointments Clause. “[T]he ‘appropriate’ remedy for an adjudication tainted with and appointments violation is a new ‘hearing before a properly appointed’ official.”

Justice Thomas concurred with opinion. Justice Breyer concurred in the judgment in part and dissented in part with opinion. Justice Sotomayor, joined by Justice Ginsburg, dissented with opinion.

This decision resolved a split in the circuit courts of appeals. The U.S. Court of Appeals for the Tenth Circuit had held that the SEC’s ALJs were not appointed properly under the Appointments Clause. The U.S. Court of Appeals for the District of Columbia had upheld the ALJs’ appointments.

## X. Criminal Trials, Pleas, and Sentencing

[Hughes v. United States](#), 138 S. Ct. 1765 (June 4, 2018)

Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. Reversed.

6 – 3

Justice Kennedy, joined by Justices Ginsburg, Breyer, Sotomayor, Kagan, and Gorsuch.

A defendant who pleads guilty and agrees to a specific sentence under Federal Rule of Criminal Procedure 11(c)(1)(C), “is generally eligible for a sentence reduction if there is a later, retroactive amendment to the relevant Sentencing Guidelines range.” “[A] sentence imposed pursuant to a Type-C agreement is ‘based on’ the defendants Guidelines range so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement.”

Justice Sotomayor concurred with opinion. Chief Justice Roberts, joined by Justices Thomas and Alito, dissented with opinion.

This decision resolved a variety of interpretations in the circuit courts of appeals that resulted from the Court’s 4-1-4 decision in *Marks v. United States*, 430 U.S. 188 (1977).

[Koons v. United States](#), 138 S. Ct. 1783 (June 4, 2018)

Certiorari to the U.S. Court of Appeals for the Eighth Circuit. Affirmed.

9 – 0

Justice Alito for a unanimous Court.

Defendants pleaded guilty and, based on substantial assistance, were sentenced below the mandatory minimum sentences that applied in their cases. Despite a later reduction in the Sentencing Guidelines range that would have applied in their cases, defendants are not eligible to a sentence reduction because their sentences “were ‘based on’ their mandatory minimums and on their substantial assistance to the Government, not on sentencing ranges that the Commission later lowered.”

[Rosales-Mireles v. United States](#), 138 S. Ct. 1897 (June 18, 2018)

Certiorari to the U.S. Court of Appeals for the Fifth Circuit. Reversed.



7 – 2

Justice Sotomayor, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, Kagan, and Gorsuch.

A sentence issued pursuant to a miscalculation of the Sentencing Guideline range is plain error under Fed. R. Crim. P. 52(b) and “will in the ordinary case, as here, seriously affect the fairness, integrity, or public reputation of judicial proceedings, and thus will warrant relief.

Justice Thomas, joined by Justice Alito, dissented with opinion.

[Chavez-Meza v. United States](#), 138 S. Ct. 1959 (June 18, 2018)

Certiorari to the U.S. Court of Appeals for the Tenth Circuit. Affirmed.

5 – 3

Justice Breyer, joined by Chief Justice Roberts and Justices Thomas, Ginsburg, and Alito.

When resentencing an offender based on a reduction in the applicable Sentencing Guideline range, a judge must adequately explain the reasons for the new sentence. The judge’s “minimal” explanation in this case was adequate, “given the simplicity of this case, the judge’s awareness of the arguments, his consideration of the relevant sentencing factors, and the intuitive reason why he picked a sentence above the very bottom of the range. . . .”

Justice Kennedy, joined by Justices Sotomayor and Kagan, dissented with opinion. Justice Gorsuch did not participate in this case.

[Class v. United States](#), 138 S. Ct. 798 (February 21, 2018)

Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. Reversed.

6 – 3

Justice Breyer, joined By Chief Justice Roberts and Justices Ginsberg, Sotomayor, Kagan, and Gorsuch.

Class’s guilty plea did not bar him from appealing his conviction on the ground that that statute of conviction violates the Constitution. The agreement pursuant to which Class pled guilty “said nothing about the right to raise on direct appeal a claim that the statute of conviction was unconstitutional.”

Justice Alito, joined by Justices Kennedy and Thomas, dissented with opinion.

## Appendix: Summaries of Cases Not Discussed in the Program

### *Antitrust*

[Ohio v. American Express Co.](#), 138 S. Ct. 2274 (June 25, 2018)

Certiorari to the U.S. Court of Appeals for the Second Circuit. Affirmed.

5 – 4

Justice Thomas, joined by Chief Justice Roberts and Justices Kennedy, Alito, and Gorsuch.

American Express requires merchants who use its credit card services to agree to an “antisteering contractual provision” that prohibits the merchant from discouraging customers from using their American Express credit card so that the merchant can avoid American Express’s higher fee. The antisteering agreement do not unreasonably restrain trade and do not violate 15 U.S.C. § 1.

Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented with opinion.

### *Appellate Jurisdiction – Military Courts*

[Ortiz v. United States](#), 138 S. Ct. 2165 (June 22, 2018)

Certiorari to the U.S. Court of Appeals for the Armed Forces. Affirmed.

7 – 2

Justice Kagan, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, and Sotomayor.

Even though the Court of Appeals for the Armed Forces is not Article III courts, the Supreme Court has jurisdiction to review its decisions. The fact that one of the judges on the Air Force Court of Criminal Appeals that reviewed Ortiz’s court-martial conviction had also been appointed by the President, and confirmed by the Senate, to sit simultaneously on the Court of Military Commission Review violated neither the Appointments Clause, Art. II, § 2, cl. 2, nor 10 U.S.C. § 973(b)(2)(A).

Justice Thomas concurred with opinion. Justice Alito, joined by Justice Gorsuch, dissented with opinion.

### *Appellate Review*

[In Re United States](#), 138 S. Ct. 443 (December 20, 2017)

On Petition for Writ of Mandamus to the U.S. District Court for the Northern District of California or Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Remanded.

Per Curiam.

The government seeks a writ of mandamus or certiorari to overturn an order to it to complete the administrative record with all “emails, letters, memoranda, notes, media items, opinions and other materials” pertaining to the decision to rescind the program known as Deferred Action for Childhood Arrivals (DACA). Certiorari granted and case remanded to the court of appeals. “Under the specific facts of this case, the District Court should have granted respondents’ motion . . . to stay implementation of the challenged . . . order and first resolved the Government’s threshold arguments (that the Acting Secretary’s determination to rescind DACA is unreviewable because it is ‘committed to agency discretion,’ . . . and that the Immigration and Nationality Act deprives the District Court of Jurisdiction).”

### *Appeals – Timeliness*

[Hamer v. Neighborhood Housing Services of Chicago](#), 138 S. Ct. 13 (November 8, 2017)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Reversed.

9 – 0

Justice Ginsburg for a unanimous Court.

The time limit for a notice of appeal was set by Federal Rule of Appellate Procedure 4(a)(1)(A), and not by statute. Therefore, it was not jurisdictional, and is subject to waiver or forfeiture.

### *Civil Rights – Section 1983*

[Kisela v. Hughes](#), 138 S. Ct. 1148 (April 2, 2018)

On petition for writ of certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

Per Curiam.

The Court of Appeals erred in denying qualified immunity to a police officer who shot a person carrying a knife. Under the circumstances the shooting did not violate clearly established law. “This Court has ‘repeatedly told courts . . . not to define clearly established law at a high level of generality.’”

Justice Sotomayor, joined by Justice Ginsburg, dissented with opinion.

[Sause v. Bauer](#), 138 S. Ct. 2561 (June 28, 2018)

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the tenth Circuit. Reversed.

Per Curiam.

Sause’s First Amendment claim that officers denied her constitutional right to pray also contained a colorable Fourth Amendment claim, so the courts below erred in dismissing her complaint for failure to state a claim.

## *Contracts*

[CNH Industrial N.V. v. Jack Reese](#), 138 S. Ct. 761 (February 20, 2018)

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit. Reversed.

Per Curiam.

M&G Polymers, USA, LLC v. Tackett, 574 U.S. \_\_\_\_ (2015), held that the Sixth Circuit Court of Appeals failed to apply “ordinary principles of contract law” in interpreting collective-bargaining agreements when it used inferences stemming from its decision in *International Union, United Auto, Aerospace, & Agricultural Implement Workers of America v. Yard-Man, Inc.*, 716 F. 2d 1476 (3d Cir. 1983). The Sixth Circuit erred in the instant case by using Yard-Man inferences to render ambiguous an otherwise unambiguous collective-bargaining agreement.

[Sveen v. Melin](#), 138 S. Ct. 1815 (June 11, 2018)

Certiorari to the U.S. Court of Appeals for the Eighth Circuit. Reversed.

8 – 1

Justice Kagan, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, Alito, and Sotomayor.

After Mark Sveen named his spouse the beneficiary of a life insurance policy, Minnesota changed its law to provide that a divorce automatically revokes such a designation. Sveen and his wife divorced after that and Sveen died without having taken any steps to designate a new beneficiary. The Minnesota law does not violate the Contracts Clause, Art. I, § 10, cl. 1. “Minnesota’s revocation-on-divorce statute does not substantially impair pre-existing contractual arrangements” because Sveen could easily have re-designated his spouse as beneficiary if he had wished to do so.

Justice Gorsuch dissented with opinion.

This decision resolved a split in the circuit courts of appeals and among several state courts. The U.S. Court of Appeals for the Eighth Circuit held that laws like Minnesota’s violate the Contracts Clause. The U.S. Court of Appeals for the Ninth Circuit had held that such laws do not violate the Contracts Clause.

## *Criminal Law – Obstruction*

[Marinello v. United States](#), 138 S. Ct. 1101 (March 21, 2018)

Certiorari to the U.S. Court of Appeals for the Second Circuit. Reversed.

7 – 2

Justice Breyer, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Sotomayor, Kagan, and Gorsuch.

The Internal Revenue Code makes it a felony “corruptly or by force” to “endeavor[r] to obstruct or imped[e] the due administration of this title,” 26 U.S.C. § 7212(a) (the “Omnibus Clause”). “[T]o secure a conviction under the Omnibus Clause, the Gov-

ernment must show (among other things) that there is a ‘nexus’ between the defendant’s conduct and a particular administrative proceeding, such as an investigation, an audit, or other targeted administrative action.” Administrative action “does not include routine, day-to-day work carried out in the ordinary course by the IRS.”

Justice Thomas, joined by Justice Alito, dissented with opinion.

This decision resolved a split in the circuit courts of appeals. The U.S. Court of Appeals for the Sixth Circuit had held that a nexus with a pending proceeding is required under the Omnibus Clause. The U.S. Court of Appeals for the Second Circuit had held that it is not.

### *Criminal Law – Restitution*

[Lagos v. United States](#), 138 S. Ct. 1684 (May 29, 2018)

Certiorari to the U.S. Court of Appeals for the Fifth Circuit. Reversed.

9 – 0

Justice Breyer for a unanimous Court.

The Mandatory Victims Restitution Act of 1996 requires defendants convicted of fraud, and other offenses, to reimburse the victim for “expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.” 18 U.S.C. § 3663A(b)(4). As used in the Act, “the words ‘investigation’ and ‘proceedings’ are limited to governmental investigations” and do not include private investigations or civil proceedings carried out or participated in by the victim.

This decision resolved a split in the circuit courts of appeals. The U.S. Court of Appeals for the Eleventh Circuit had held that the Act does not cover private investigation costs. The U.S. Courts of Appeals for the Second, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits had held that it does.

### *Disputes Between States*

[Texas v. New Mexico](#), 138 S. Ct. 954 (March 5, 2018)

Original Jurisdiction

9 – 0

Justice Gorsuch for a unanimous Court.

Under the circumstances of this cases, a dispute about water rights under the Rio Grande Compact between Colorado, New Mexico, and Texas, the United States may intervene to “assert essentially the same claims Texas already has.”

### *Employment Law – Fair Labor Standards Act*

[Encino Motorcars, LLC v. Navarro](#), 138 S. Ct. 1134 (April 2, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

5 – 4

Justice Thomas, joined by Chief Justice Roberts and Justices Kennedy, Alito, and Gorsuch.

The Fair Labor Standards Act’s exemption from overtime for “any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles” at an automobile dealership includes “service advisors—employees at car dealerships who consult with customers about their servicing needs and sell them servicing solutions.”

Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, dissented with opinion.

### *Federal Courts*

[Hall v. Hall](#), 138 S. Ct. 1118 (March 27, 2018)

Certiorari to the U.S. Court of Appeals for the Third Circuit. Reversed.

9 – 0

Chief Justice Roberts for a unanimous Court.

When one of multiple cases consolidated under Federal Rule of Civil Procedure 42(a) has been finally decided, the losing litigant may appeal that case even though proceedings in other cases in the same consolidation are still pending in the lower court.

### *Federal Courts – Jurisdiction*

[National Association of Manufacturers v. Department of Defense](#), 138 S. Ct. 617 (January 22, 2018)

Certiorari to the U.S. Court of Appeals for the Sixth Circuit. Reversed.

9 – 0

Justice Sotomayor for a unanimous Court.

The Environmental Protection Agency and the Army Corps of Engineers issued a rule defining waters of the United States (WOTUS Rule) under the Clean Water Act (CWA). Because the WOTUS Rule is neither an action “approving or promulgating any effluent limitation or other limitation [under certain provisions of the CWA]” nor one “issuing or denying any permit [under the CWA],” the WOTUS Rule is outside the ambit of actions for which direct review is in the federal courts of appeals under 33 U.S.C. § 1369(b)(1). Any challenges to the WOTUS Rule “must be filed in federal district courts.”

[Patchak v. Zinke](#), 138 S. Ct. 897 (February 27, 2018)

Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. Affirmed.

4 + 2 – 3

Plurality opinion by Justice Thomas, joined by Justices Breyer, Alito, and Kagan.

During Patchak’s suit contesting the taking of land into trust by the Department of Interior for an Indian Tribe, Congress enacted a law providing that suits relating to that land “shall not be filed or maintained in a Federal court and shall be promptly dismissed.” This was a valid exercise of Congress’ authority to establish the jurisdiction of federal courts. “This kind of legal change is well within Congress’ authority and does not violate Article III.” The suit is dismissed.

Justice Breyer concurred with opinion.

Justice Ginsburg, joined by Justice Sotomayor, concurred in the judgment: the law here “displaced” the waiver of sovereign immunity as to this piece of property, so the suit cannot proceed.

Chief Justice Roberts, joined by Justices Kennedy and Gorsuch, dissented with opinion.

### *First Amendment – Free Speech*

[Lozman v. City of Riviera Beach](#), 138 S. Ct. 1945 (June 18, 2018)

Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. Reversed.

8 – 1

Justice Kennedy, joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Alito, Sotomayor, Kagan, and Gorsuch.

That there was probable cause to arrest Lozman does not defeat his claim of retaliatory arrest where “retaliation against protected speech is elevated to the level of official policy.”

Justice Thomas dissented with opinion.

[Minnesota Voters Alliance v. Mansky](#), 138 S. Ct. 1876 (June 14, 2018)

Certiorari to the U.S. Court of Appeals for the Eighth Circuit. Reversed.

7 – 2

Chief Justice Roberts, joined by Justices Kennedy, Thomas, Ginsburg, Alito, Kagan, and Gorsuch.

Minnesota prohibits wearing “political” badges, buttons, or insignia at a polling place. A state may prohibit wearing items or apparel in a polling place because of the “message” they convey, but Minnesota’s law lacks objective, workable standards and thus violates the First Amendment.

Justice Sotomayor, joined by Justice Breyer, dissented with opinion.

### *Foreign Sovereign Immunity*

[Rubin v. Islamic Republic of Iran](#), 138 S. Ct. 816 (February 21, 2018)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Affirmed.

8 – 0

Justice Sotomayor for a unanimous Court, except Justice Kagan, who took no part in this case.

“28 U.S.C. § 1610(g) does not provide a freestanding basis for parties holding a judgment under § 1605A to attach and execute against the property of a foreign state, where the immunity of the property is not otherwise rescinded under a separate provision within § 1610.”

This decision resolved a split in the circuit courts of appeals. The U.S. Courts of Appeals for the Ninth and District of Columbia Circuits had held that § 1610 does provide a freestanding exception to attachment and execution immunity. The U.S. Courts of Appeals for the Second and Seventh Circuits had held that it does not.

### *Habeas*

[Tharpe v. Sellers](#), 138 S. Ct. 545 (January 8, 2018)

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. Reversed.

Per Curiam.

The court of appeals erred in denying Tharpe a certificate of appealability. Tharpe presented an affidavit from one of the jurors in his capital trial that indicated racial bias, but the state courts concluded that Tharpe had failed to show prejudice as to his procedurally defaulted claim. “At the very least, jurists of reason could debate whether Tharpe has shown by clear and convincing evidence that the state court’s factual determination was wrong.”

Justice Thomas, joined by Justices Alito and Gorsuch, dissented with opinion.

### *Habeas – AEDPA*

[Dunn v. Madison](#), 138 S. Ct. 9 (November 6, 2017)

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit. Reversed.

Per Curiam.

The evidence showed that Madison knew he was to be executed for murder, although he might not remember details of the crime. State courts’ conclusion that Madison was competent to be executed was supported by the evidence and was not an unreasonable application of Supreme Court precedent.

Justice Ginsburg, joined by Justices Breyer and Sotomayor, concurred with opinion. Justice Breyer concurred with opinion.

[Kernan v. Cuero](#), 138 S. Ct. 4 (November 6, 2017)

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit.



Reversed.

Per Curiam.

After Cuero pleaded guilty under a plea agreement to one set of charges, the State moved to amend the complaint. Cuero was permitted to withdraw his guilty plea. He then pleaded guilty to the new complaint and received a higher sentence than he would have under the original plea agreement. On habeas review, the Circuit Court of Appeals held that Cuero was entitled to specific performance of his original plea agreement and the lower sentence that it included. This was error. “[W]e . . . are unable to find in Supreme Court precedent that ‘clearly established federal law’ demanding specific performance as a remedy. To the contrary, no ‘holdin[g] of this Court’ requires the remedy of specific performance.”

[Sexton v. Bourdreaux](#), 138 S. Ct. \_\_\_ (June 28, 2018)

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

Per Curiam.

The circuit court “committed fundamental errors that this Court has repeatedly admonished courts to avoid” in granting Bourdreaux’s habeas petition.

Justice Breyer dissented.

### *Habeas – Death Penalty*

[Ayestas v. Davis](#), 138 S. Ct. 1080 (March 21, 2018)

Certiorari to the U.S. Court of Appeals for the Fifth Circuit. Reversed.

9 – 0

Justice Alito for a unanimous Court.

The court of appeals applied the wrong legal standard to Ayestas’s request for funding under 18 U.S.C. § 3599(f) for investigative services in pursuit of habeas relief. The “substantial need” standard applied by the court of appeals is a higher standard than the “reasonably necessary” standard in the statute.

Justice Sotomayor, joined by Justice Ginsburg, concurred with opinion.

### *Immigration Law*

[Pereira v. Sessions](#), 138 S. Ct. 2105 (June 21, 2018)

Certiorari to the U.S. Court of Appeals for the First Circuit. Reversed.

8 – 1

Justice Sotomayor, joined by Chief Justice Roberts and Justices Kennedy, Thomas, Ginsburg, Breyer, Kagan, and Gorsuch.

Certain aliens who are subject to removal but who have accrued at least ten years of continuous presence in the United States may be eligible for cancellation of remov-

al. However, such continuous presence is deemed to end when the alien “is served a notice to appear under [8 U.S.C. §] 1229(a).” This is known as the “stop-time” rule. Service of a document labeled “notice to appear,” but which does not specify either the time or place of the removal proceedings does not trigger the “stop-time rule.” “The plain text, the statutory context, and common sense all elad inescapably and unambiguously to that conclusion” so deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is not appropriate.

Justice Kennedy concurred with opinion. Justice Alito dissented with opinion.

This decision resolved a split in the circuit courts of appeals. The U.S. Court of Appeals for the Third Circuit had held that notice of the time and place of hearing is necessary for the stop-time rule to apply. The U.S. Courts of Appels for the Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits had deferred to the Bureau of Immigration Appeals interpretation that notice of time and place of a hearing is not required.

### *Mootness*

[Azar v. Garza](#), 138 S. Ct. 1790 (June 4, 2018)

Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. Vacated. Per Curiam.

During the pendency of this litigation over whether JD, a minor in the custody of the Office of Refugee Resettlement, could obtain an abortion, JD obtained an abortion. Therefore, the case is vacated as moot. “When ‘a civil case from a court in the federal system . . . has become moot while on its way here,’ this Court’s ‘established practice’ is to reverse or vacate the judgment below and remand with a direction to dismiss.”

[United States v. Sanchez-Gomez](#), 138 S. Ct. 1532 (May 14, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

9 – 0

Chief Justice Roberts for a unanimous Court.

Pursuant to district court policy, respondents were shackled during pretrial proceedings in their criminal cases. They appealed the district court’s denial of their motions challenging the constitutionality of these restraints, but their cases ended before the court of appeals ruled. Respondents’ appeals were, therefore, moot.

### *Original Jurisdiction*

[Florida v. Georgia](#), 138 S. Ct. 2502 (June 27, 2018)

Original Jurisdiction

5 – 4

Justice Breyer, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, and Sotomayor.

In this dispute over the apportionment of water from an interstate water basin, “the Special Master applied too strict a standard when he determined that the Court would not be able to fashion an appropriate equitable decree.”

Justice Thomas, joined by Justices Alito, Kagan, and Gorsuch, dissented with opinion.

### *Patents*

[Oil States Energy Services, LLC v. Greene’s Energy Group, LLC](#), 138 S. Ct. 1365 (April 24, 2018)

Certiorari to the U.S. Court of Appeals for the Federal Circuit. Affirmed.

7 – 2

Justice Thomas, joined by Justices Kennedy, Ginsburg, Breyer, Alito, Sotomayor, and Kagan.

The U.S. Patent and Trademark Office (PTO) is authorized to reconsider and cancel an existing patent in a process called “inter partes review.” 35 U.S.C. §§ 301-319. Inter partes review by the PTO does not violate Article III or the Seventh Amendment of the Constitution.

Justice Breyer, joined by Justices Ginsburg and Sotomayor, concurred with opinion. Justice Gorsuch, joined by Chief Justice Roberts, dissented with opinion.

[SAS Institute Inc., v. Iancu](#), 138 S. Ct. 1348 (April 24, 2018)D

Certiorari to the U.S. Court of Appeals for the Federal Circuit. Reversed.

5 – 4

Justice Gorsuch, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito.

“When the Patent Office initiates an inter partes review, [under 35 U.S.C. § 318(a), it must] resolve all of the claims in the case,” and may not select only some of them. (Emphasis in original)

Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, dissented with opinion. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented with opinion.

[WesternGeco LLC v. Ion Geophysical Corp.](#), 138 S. Ct. 2129 (June 22, 2018)

Certiorari to the U.S. Court of Appeals for the Federal Circuit. Reversed.

7 – 2

Justice Thomas, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Alito, Sotomayor, and Kagan.

A company that infringes a patent by shipping components of a patented invention overseas for assembly can be held liable for lost foreign profits. 35 U.S.C. §§ 271(f)(2), 284.

Justice Gorsuch, joined by Justice Breyer, dissented with opinion.

### *Redistricting and Voters' Rights*

[Benisek v. Lamone](#), 138 S. Ct. 1942 (June 18, 2018)

On Appeal from the U.S. District Court for the District of Maryland. Affirmed. Per Curiam.

The district court did not err in denying a preliminary injunction to plaintiffs challenging an allegedly gerrymandered district.

### *Search and Seizure*

[United States v. Microsoft](#), 138 S. Ct. 1186 (April 17, 2018)

Certiorari to the U.S. Court of Appeals for the Second Circuit. Vacated. Per Curiam.

The enactment of the Clarifying Lawful Overseas Use of Data (CLOUD) Act, Pub. L. 115-141, makes clear that data stored abroad is subject to a search warrant issued in the United States, and moots the issues in this case.

### *Search and Seizure – Qualified Immunity*

[District of Columbia v. Wesby](#), 138 S. Ct. 577 (January 22, 2018)

Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. Reversed.

7 + 1 + 1 – 0

Justice Thomas, joined by Chief Justice Roberts and Justices Kennedy, Breyer, Alito, Kagan, and Gorsuch.

Police had probable cause to arrest a group of party goers for unlawful entry in an apparently vacant house. Despite the partiers' assertions that they had been invited to the house, the totality of the circumstances sufficed for the police to discount these claims. The police were also entitled to qualified immunity. "[A] reasonable officer, looking at the legal landscape at the time of the arrests, could have interpreted the law as permitting the arrests here."

Justice Sotomayor concurred in part and in the judgment with opinion. Justice Ginsburg concurred in the judgment with opinion.

### *Securities Litigation*

[Cyan, Inc. v. Beaver County Employees Retirement Fund](#), 138 S. Ct. 1061 (March 20, 2018)

Certiorari to the Court of Appeal of California, First Appellate District. Affirmed.  
9 – 0

Justice Kagan for a unanimous Court.

The Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, did not strip state courts of jurisdiction over class actions alleging violations of only the Securities Act of 1933, 15 U.S.C. §§ 77a–aa, nor did it empower defendants to remove such actions from state to federal court.

This decision resolved a split among various state and federal courts.

### *Sovereign Immunity – Indian Tribes*

[Upper Skagit Indian Tribe v. Lundren](#), 138 S. Ct. \_\_\_ (May 21, 2018)

Certiorari to the Supreme Court of Washington. Reversed.

7 – 2

Justice Gorsuch, joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, Sotomayor, and Kagan.

The lower court erred in interpreting *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992), to mean that Indian tribes lack sovereign immunity in in rem lawsuits. “Yakima did not address the scope of tribal sovereign immunity.” Rather, Yakima only interpreted the Indian General Allotment Act of 1887 to permit states to collect property taxes on fee-patented land within Indian reservations.

Chief Justice Roberts, joined by Justice Kennedy, concurred with opinion. Justice Thomas, joined by Justice Alito, dissented with opinion.

### *States – Water Rights*

[Montana v. Wyoming](#), 138 S. Ct. 758 (February 20, 2018)

Original Jurisdiction

Judgment

Wyoming must pay damages to Montana for reducing the volume of water in the Tongue River.

### *Taxation – Railroad Retirement*

[Wisconsin Central Ltd. v. United States](#), 138 S. Ct. 2067 (June 21, 2018)

Certiorari to the U.S. Court of Appeals for the Seventh Circuit. Reversed.

5 – 4

Justice Gorsuch, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito.

Employee stock option plans are not “compensation” under 26 U.S.C. § 3231(e)(1) and therefore are not included when calculating the tax railroads pay to support the federal railroad pension fund. Stock options are not a “form of money remuneration.”

Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented with opinion.

### *Voting Rights*

[North Carolina v. Covington](#), 138 S. Ct. 2548 (June 28, 2018)

On Appeal from the U.S. District Court for the Middle District of North Carolina. Affirmed in part and reversed in part.

Per Curiam.

The district court was correct in adopting a special master’s districting maps as to several districts to cure racial gerrymandering; however, the district court erred in overriding certain districts “because it found that the legislature’s revision of them violated the North Carolina Constitution’s ban on mid-decade redistricting, not federal law.”

### *Whistleblower Protection – Dodd–Frank Act*

[Digital Realty Trust, Inc., v. Somers](#), 138 S. Ct. 767 (February 21, 2018)

Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Reversed.

6 + 3 – 0

Justice Ginsburg, joined by Chief Justice Roberts and Justices Kennedy, Breyer, Sotomayor, and Kagan.

The anti-retaliation provision in the Dodd-Frank Act, 15 U.S.C. § 78u–6(a)(6), does not extend to someone who has not reported a violation of securities laws to the Securities and Exchange Commission.

Justice Sotomayor, joined by Justice Breyer, concurred with opinion. Justice Thomas, joined by Justices Alito and Gorsuch, concurred in part and concurred in the judgment with opinion.

## Faculty Biographical Information

**JIM CHANCE:** Senior Judicial Education Attorney, Federal Judicial Center, Washington, D.C.

**Education:** Postdoctoral study in Constitutional Laws (with Sir David C.M. Yardley), The Queen’s College, Oxford University (1982); J.D., University of Baltimore School of Law (1982); M.F.A., Acting, The Catholic University of America (1990); B.A., Government and Politics, University of Maryland (1975); Emerging Leaders Program, George Washington University Center for Excellence in Public Leadership (2011); Certificate, Mediation, The Center for Understanding in Conflict (2014).

**Professional Experience:** FJC, Judicial and Legal Education (2014–present); FJC, Probation and Pretrial Services Education (2010–2014); Host, FJC’s *Supreme Court Term in Review* (2011–present); Designer and Faculty, *Pretrial Release/Detention Decision Making for Magistrate Judges* (2013–2018); Certified Mediator and Designer, Mediation Skills for Federal Judges (2016–present); Author (with Dr. Jason Cantone), *Alternative Dispute Resolution in the United States: An International Perspective for the Republic of Uzbekistan* (2018); Faculty, Academia de Intercambio y Estudios Judiciales (AIEJ), Argentina (2017–present); Litigator and Counsel to State and Local Governments (1983–2010); Admissions: State and Federal Bar of Maryland; Fourth Circuit U.S. Court of Appeals; U.S. Supreme Court; Omicron Delta Kappa, National Leadership Honor Society.

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**Professional Experience:** Deputy Director, Federal Judicial Center since 2006; Director, Judicial Education Division, Federal Judicial Center, 1998–2006. In April

1998, retired with the rank of Brigadier General after twenty-six years in the Army Judge Advocate General's Corps. Last position in the Army was Chief Judge, U.S. Army Court of Criminal Appeals, and Commander, U.S. Army Legal Services Agency. During 2001–2002, served as the Chair, Standing Committee on Armed Forces Law, American Bar Association.

**LAURIE L. LEVENSON:** Professor of Law & David W. Burcham Chair in Ethical Advocacy, Loyola Law School, Los Angeles, California.

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**Professional Experience:** Law Clerk to the Judge James Hunter III, U.S. Court of Appeals for the Third Circuit, 1980–1981; Assistant U.S. Attorney (Trial Attorney, Chief of Criminal Appellate Section), Los Angeles, 1981–1989; Associate Professor, Loyola Law School, 1989–1994; Professor since 1994; Dean of Academic Affairs, 1996–1999; Professor of Law & William M. Rains Fellow, Loyola Law School; Director, Loyola Law School's Project for the Innocent, 2011–present.

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**Professional Experience:** Ms. Wiggins has been on the research staff of the Federal Judicial Center since 1989. Prior to joining the Center, she was an Assistant Professor of Psychology at Barnard College of Columbia University, 1987–1988; a post-doctoral fellow in the Department of Psychology at Ohio State University, 1987–1988; and on the research staff at the Institute of Government at the University of North Carolina, 1980–1982.



**ANNE FLEMING:** Associate Professor of Law, Georgetown Law, Washington, D.C.

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**Professional Experience:** Professor Fleming’s research interests include contract law, commercial law, and American legal history, with a focus on the relationship between law and poverty. The American Society for Legal History has recognized her work with the Kathryn T. Preyer Scholar Award and a William Nelson Cromwell Foundation fellowship. She has also received the K. Austin Kerr Prize and the Herman E. Krooss dissertation prize from the Business History Conference. Fleming received her J.D., magna cum laude, from Harvard Law School, where she served as a board member of the Legal Aid Bureau. After law school, she served as a law clerk to Judge Miriam Goldman Cedarbaum of the U.S. District Court for the Southern District of New York and Judge Marjorie O. Rendell of the U.S. Court of Appeals for the Third Circuit. She also practiced as a staff attorney for South Brooklyn Legal Services, representing low-income homeowners facing foreclosure. Before joining the Georgetown faculty, Fleming taught at Harvard Law School as a Climenko Fellow and Lecturer on Law. Her first book, *City of Debtors: A Century of Fringe Finance*, explores the history of “fringe lending” and its regulation in the twentieth-century United States. It will be published by Harvard University Press in January 2018.