

The Supreme Court - February 3, 2021

Today, the Supreme Court of the United States issued the following three decisions:

Federal Republic of Germany v. Philipp, No. 19-351: In this Foreign Sovereign Immunities Act (“FSIA”) case, the respondents – heirs of three Jewish residents of Frankfurt who were members of a consortium of art firms – brought suit against Germany in the United States alleging that the Nazi government had coerced the consortium into selling its art collection for approximately one-third of its value. The District Court denied Germany’s motion to dismiss on sovereign immunity grounds, and the D.C. Circuit affirmed, finding that the claims fell within the FSIA’s exception to immunity in any case “in which rights in property taken in violation of international law are in issue.” 28 U.S.C. §1605(a)(3). Today, the Court vacated and remanded, holding that the phrase “rights in property taken in violation of international law” in the FSIA’s exception refers to violations of the international law of expropriation and thereby incorporates the domestic takings rule, under which a foreign sovereign’s taking of its own nationals’ property is not a violation of international law. Chief Justice Roberts issued the Court’s unanimous opinion.

The Court’s decision is available [here](#).

Republic of Hungary v. Simon, No. 18-1447: In a case challenging Hungary’s seizure of personal property belonging to certain Holocaust survivors, the D.C. Circuit reversed the District Court’s dismissal of the suit on grounds of international comity and *forum non conveniens*. After granting certiorari to address both of those asserted grounds for dismissal, the Court today, in a *per curiam* opinion, vacated the D.C. Circuit’s opinion and remanded the case for further proceedings consistent with the decision issued in *Federal Republic of Germany v. Philipp*.

The Court’s decision is available [here](#).

Salinas v. Railroad Retirement Bd., No. 19-199: Petitioner Manfredo Salinas, a former

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railroad employee, applied for benefits under the Railroad Retirement Act of 1974. The U.S. Railroad Retirement Board that administers the system denied Salinas' application for benefits when he applied in 2006, but later granted him benefits when he reapplied in 2013. When Salinas then requested that the Board reopen its decision to deny his 2006 application, the Board declined. Salinas filed a petition for review in the Fifth Circuit, which was dismissed for lack of jurisdiction, with the Fifth Circuit joining the majority of circuits in holding that federal courts cannot review the Board's refusal to reopen a prior benefits determination. The Court today reversed, holding that the Board's refusal to reopen a prior benefits determination is a "final decision" within the meaning of 45 U.S.C. §355(f), which grants judicial review "of any final decision of the Board." Justice Sotomayor delivered the Court's opinion, joined by Chief Justice Roberts and Justices Breyer, Kagan, and Kavanaugh. Justice Thomas dissented, joined by Justices Alito, Gorsuch, and Barrett.

The Court's decision is available [here](#).

Today, the Supreme Court of the United States granted certiorari in the following case:

PennEast Pipeline Co. v. New Jersey, No. 19-1039: 1) Whether the Natural Gas Act delegates to FERC certificate holders the authority to exercise the federal government's eminent domain power to condemn land in which a state claims an interest. 2) Did the Court of Appeals properly exercise jurisdiction over this case?

Today, the Supreme Court also issued an order granting the Federal Government's motion to remove the following two Trump administration immigration-related cases from the February argument calendar: **Mayorkas v. Innovation Law Lab**, No. 19-1212 and **Biden v. Sierra Club**, No. 20-138.