

The Supreme Court - January 11, 2021

Late on Friday, the Supreme Court of the United States granted certiorari in the following cases:

Minerva Surgical, Inc. v. Hologic, Inc., No. 20-440: Whether a defendant in a patent infringement action who assigned the patent, or is in privity with an assignor of the patent, may have a defense of invalidity heard on the merits.

Guam v. United States, No. 20-382: In a case implicating the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9607(a), the Court granted review on the following questions: 1) Whether a non-CERCLA settlement can trigger a contribution claim under CERCLA Section 113(f)(3)(B). 2) Whether a settlement that expressly disclaims any liability determination and leaves the settling party exposed to future liability can trigger a contribution claim under CERCLA Section 113(f)(3)(B).

HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association, No. 20-472: In order to qualify for a hardship exemption under §7545(o)(9)(B)(i) of the Renewable Fuel Standards, does a small refinery need to receive uninterrupted, continuous hardship exemptions for every year since 2011.

Mnuchin v. Confederated Tribes, No. 20-543, & **Alaska Native Village Corp. v. Confederated Tribes**, No. 20-544: Whether Alaska Native regional and village corporations established pursuant to the Alaska Native Claims Settlement Act are “Indian Tribe[s]” for purposes of the CARES Act, 42 U.S.C. §801(g)(1).

Americans for Prosperity Foundation v. Becerra, No. 19-251, & **Thomas More Law Center v. Becerra**, No. 19-255: 1) Whether the exacting scrutiny the Supreme Court has long required of laws that abridge the freedoms of speech and association outside the election context—as called for by *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and its progeny—can be satisfied absent any showing that a blanket governmental demand for the individual identities and addresses of major donors to

Related Capabilities

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private nonprofit organizations is narrowly tailored to an asserted law-enforcement interest. 2) Whether exacting scrutiny or strict scrutiny applies to disclosure requirements that burden non-electoral, expressive association rights. 3) Whether California's disclosure requirement violates charities' and their donors' freedom of association and speech facially or as applied to the Law Center.

Mahanoy Area School District v. B. L., No. 20-255: Whether *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), which holds that public school officials may regulate speech that would materially and substantially disrupt the work and discipline of the school, applies to student speech that occurs off campus.

Sanchez v. Wolf, No. 20-315: Whether, under 8 U.S.C. §1254a(f)(4), a grant of Temporary Protected Status authorizes eligible noncitizens to obtain lawful-permanent-resident status under 8 U.S.C. §1255.

United States v. Palomar-Santiago, No. 20-437: Whether a defendant charged with unlawful reentry into the United States following removal automatically satisfies all three of the prerequisites for asserting the invalidity of the original removal order as an affirmative defense — 1) if he “demonstrates that” he “exhausted any administrative remedies that may have been available to seek relief against the order,” 8 U.S.C. §1326(d)(1); 2) the removal proceedings “deprived [him] of the opportunity for judicial review,” 8 U.S.C. §1326(d)(2), and 3) “the entry of the order was fundamentally unfair,” 8 U.S.C. §1326(d)(3) — solely by showing that he was removed for a crime that would not be considered a removable offense under current circuit law, even if he cannot independently demonstrate administrative exhaustion or deprivation of the opportunity for judicial review.

San Antonio v. Hotels.com, L.P., No. 20-334: Whether, as the Fifth Circuit alone has held, district courts “lack[] discretion to deny or reduce” appellate costs deemed “taxable” in district court under Fed. R. App. P. 39(e).

Greer v. United States, No. 19-8709: Whether when applying plain-error review based upon an intervening United States Supreme Court decision, a circuit court of appeals may review matters outside the trial record to determine whether the error affected a defendant's substantial rights or impacted the fairness, integrity, or public reputation of the trial.

United States v. Gary, No. 20-444: Whether a defendant who pleaded guilty to possessing a firearm as a felon, in violation of 18 U.S.C. §922(g)(1) and §924(a), is automatically entitled to plain-error relief if the district court did not advise him that one element of that offense is knowledge of his status as a felon, regardless of whether he can show that the district court's error affected the outcome of the proceedings.

Terry v. United States, No. 20-5904: Whether pre-August 3, 2010 crack offenders sentenced under 21 U.S.C. §841(b)(1)(C) have a “covered offense” under Section 404 of the First Step Act.

