

The Supreme Court - January 16, 2018

On Friday afternoon, the Supreme Court granted certiorari and agreed to hear arguments in twelve cases:

Animal Science Products v. Hebei Welcome, No. 16-1220: Whether a court may exercise independent review of an appearing foreign sovereign's interpretation of its domestic law (as held by the Fifth, Sixth, Seventh, Eleventh, and D.C. Circuits), or whether a court is "bound to defer" to a foreign government's legal statement, as a matter of international comity, whenever the foreign government appears before the court (as held by the opinion below in accord with the Ninth Circuit).

WesternGeco LLC v. ION Geophysical Corp, No. 16-1011: Whether the court of appeals erred in holding that lost profits arising from prohibited combinations occurring outside of the United States are categorically unavailable in cases where patent infringement is proven under 35 U.S.C. §271(f).

Lamar, Archer & Cofrin, LLP v. Appling, No. 16-1215: Whether, and if so when, a statement concerning a specific asset can be a "statement respecting the debtor's . . . financial condition" within Section 523(a)(2) of the Bankruptcy Code.

South Dakota v. Wayfair, Inc., No. 17-494: Should the Supreme Court abrogate the sales-tax only, physical-presence requirement in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

Wisconsin Central, Ltd. v. United States, No. 17-530: Whether stock that a railroad transfers to its employees is taxable under the Railroad Retirement Tax Act, 26 U.S.C. §3231(e)(1).

Lucia v. SEC, No. 17-130: Whether administrative law judges of the Securities and Exchange Commission are Officers of the United States within the meaning of the Appointments Clause.

Related Capabilities

- Appellate
- International Arbitration & Litigation
- Intellectual Property Litigation
- Bankruptcy & Financial Restructuring
- Tax Controversy & Litigation
- Securities & Financial Services Litigation & Enforcement
- Indian & Alaska Native
- Immigration

Lagos v. United States, No. 16-1519: Whether 18 U.S.C. §3663A(b)(4) of the Mandatory Victims Restitution Act covers costs for reimbursement that were “neither required nor requested” by the government, including costs incurred for the victim’s own purposes and unprompted by any official government action.

Washington v. United States, No. 17-269: A case involving a series of treaties between the federal government and northwest Indian tribes raises the following questions: (1) Whether the treaty “right of taking fish, at all usual and accustomed grounds and stations . . . in common with all citizens” guaranteed “that the number of fish would always be sufficient to provide a ‘moderate living’ to the Tribes.” (2) Whether the district court erred in dismissing the State’s equitable defenses against the federal government where the federal government signed these treaties in the 1850’s, for decades told the State to design culverts a particular way, and then filed suit in 2001 claiming that the culvert design it provided violated the treaties it signed. (3) Whether the district court’s injunction violates federalism and comity principles by requiring Washington to replace hundreds of culverts, at a cost of several billion dollars, when many of the replacements will have no impact on salmon and Plaintiffs showed no clear connection between culvert replacement and tribal fisheries.

Pereira v. Sessions, No. 17-459: The “stop-time rule” marks the end of an immigrant’s eligibility for cancellation of removal. The question presented is whether, to trigger the stop-time rule by serving a “notice to appear,” the government must “specify” the items listed in the definition of a “notice to appear,” including “[t]he time and place at which the proceedings will be held.”

Chavez-Meza v. United States, No. 17-5639: When a district court decides not to grant a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), must it provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the United States Courts of Appeals for the Sixth, Eighth, Ninth, and Eleventh Circuits have held, or can it issue its decision without any explanation whatsoever so long as it is issued on a pre-printed form order containing boilerplate language providing that the court has “tak[en] into account the policy statement set forth at U.S.S.G. §1B1.10 and the sentencing factors set forth in 18 U.S.C. §3553(a), to the extent that they are applicable,” as the Courts of Appeals for the Fourth, Fifth, and Tenth Circuits have held?

Abbott v. Perez, Nos. 17-586 & 17-626: (1) Whether the district court issued an appealable interlocutory injunction when it invalidated Texas’ duly enacted redistricting plan and ordered the parties to appear at a remedial hearing to redraw Texas House of Representatives districts unless the Governor called a special legislative session to redraw the Texas House map within three business days. (2) Whether the Texas Legislature acted with an unlawful purpose when it enacted Texas House of Representatives districts originally imposed by the district court to remedy any potential constitutional and statutory defects in a prior legislative plan that was repealed without ever having taken effect. (3) Whether the Texas Legislature engaged in intentional vote dilution when it adopted Congressional District 27 in 2013 after the district court found, in 2012, that CD27 did not support a plausible claim of racially discriminatory purpose and

did not dilute Hispanic voting strength because it was not possible to create an additional Hispanic opportunity district in the region. (4) Whether any of the invalidated districts that were unchanged from the 2012 court-imposed remedial plan to the 2013 legislatively adopted plan (in Bell, Dallas, and Nueces Counties) are unlawful, where the district court in 2012 issued an opinion explaining why these districts were lawful. (5) Whether the Legislature engaged in racial gerrymandering in Congressional District 35 when it simply adopted the district unchanged as part of the court-ordered remedial plan. (6) Whether the Texas Legislature had a strong basis in evidence to believe that consideration of race to maintain a Hispanic voter-registration majority was necessary in HD90 in Tarrant County, where one of the plaintiffs in the lawsuit told the Legislature it had to keep the district's population above 50% Spanish-surnamed voter registration to avoid diluting Hispanic voting strength.