

The Supreme Court - July 9, 2020

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

Trump v. Mazars USA, LLP, No. 19-715; **Trump v. Deutsche Bank AG**, No. 19-760: In April 2019, three United States House of Representatives' committees issued subpoenas seeking information regarding the finances of President Trump (in his personal capacity), his children, and his affiliated businesses. The House committees asserted that the information sought would help guide legislative reform in a number of areas, including money laundering, terrorism, and foreign involvement in U.S. elections. The President did not claim executive privilege, but instead challenged the subpoenas contending the House lacked a valid legislative aim and that the subpoenas violated the separation of powers. In separate lawsuits concerning different subpoenas, the D.C. Circuit and Second Circuit affirmed that the subpoenas were properly issued. Today, the Court vacated and remanded, holding that although it remains "the duty of *all* citizens to cooperate" when Congress seeks information needed for intelligent legislative action, the courts below failed to take adequate account of the special concerns regarding the separation of powers implicated by congressional subpoenas for the President's information. Chief Justice Roberts issued the Court's opinion, joined by Justices Ginsburg, Breyer, Sotomayor, Kagan, Gorsuch, and Kavanaugh. Justice Thomas and Justice Alito filed separate dissenting opinions.

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

Trump v. Vance, No. 19-635: The New York County District Attorney's Office, as part of an investigation into "business transactions involving multiple individuals whose conduct may have violated state law" – and on behalf of a grand jury – served a subpoena to President Trump's personal accounting firm to produce financial records relating to the President and business organizations affiliated with him. The information sought included the President's tax returns. The President, in his personal capacity, brought suit in federal court to enjoin the subpoena, arguing that under Article II and the Supremacy

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Clause, a sitting President enjoys absolute immunity from state criminal process. The District Court dismissed the case. It abstained from exercising jurisdiction under *Younger v. Harris*, 401 U.S. 37 (1971), which generally precludes federal courts from interfering in ongoing state criminal prosecutions. It also alternatively ruled the President was not entitled to injunctive relief. The Second Circuit held *Younger* abstention inapplicable, but agreed that the preliminary injunction should be denied. The Court today affirmed and remanded, recognizing that this case involves the first state criminal subpoena directed to a President, and holding that the President is neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need. Chief Justice Roberts issued the Court's opinion, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Kavanaugh concurred in the judgment, joined by Justice Gorsuch. Justice Thomas and Justice Alito filed dissenting opinions.

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

McGirt v. Oklahoma, No. 18-9526: Under the federal Major Crimes Act, it is the federal government that has criminal jurisdiction over “[a]ny Indian who commits” certain enumerated offenses within “the Indian country.” 18 U.S.C. §1153(a). State courts generally have no jurisdiction to try Indians for conduct committed in “Indian country,” which is defined in the statute as including “all land within the limits of any Indian reservation under the jurisdiction of the United States.” Here, petitioner Jimcy McGirt was convicted in Oklahoma state court for serious sexual offenses. McGirt challenged the State's jurisdiction because he is an enrolled member of the Seminole Nation of Oklahoma and his crimes took place on lands reserved for the Creek in 19th century treaties. The consequences of McGirt's argument swept broadly, since the lands at issue encompass a large swathe of Northeastern Oklahoma that includes most of the city of Tulsa. The Oklahoma state courts rejected McGirt's arguments. Today, the Court reversed, holding that, because Congress has not said otherwise, the land in the 1832 and 1833 Treaties with the Creeks remains an Indian reservation for purposes of federal criminal law. Justice Gorsuch issued the Court's opinion, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Chief Justice Roberts dissented, joined in full by Justices Alito and Kavanaugh. Justice Thomas joined most of the Chief Justice's dissent, and also filed a separate dissenting opinion.

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

Sharp v. Murphy, No. 17-1107: Respondent Patrick Dwayne Murphy challenged his convictions by the State of Oklahoma on the same grounds as Mr. McGirt – arguing that he is an Indian and his offense occurred in Indian country, and thus he should have been tried in federal court under the Major Crimes Act. On federal habeas review, the Tenth Circuit concluded that the Creek Reservation had not been disestablished by Congress, and therefore Murphy should have been tried in federal court. The Court today – after first hearing arguments in the case over a year ago in November 2018 – summarily affirmed in a *per curiam* opinion for the reasons stated in McGirt. Justice Gorsuch took no part in the consideration or decision of the case. Justice Thomas and Justice Alito dissented.

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

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

Collins v. Mnuchin, No. 19-422; **Mnuchin v. Collins**, No. 19-563: These consolidated cases concern the Federal Housing Finance Agency (“FHFA”), which exercised its authority under a federal statute to appoint itself as conservator of Fannie Mae and Freddie Mac. These cases present the following questions: 1) Whether FHFA’s structure violates separation of powers. 2) Whether the courts must set aside a final agency action that FHFA took when it was unconstitutionally structured and strike down the statutory provisions that make FHFA independent. 3) Whether the anti-injunction clause in 12 U.S.C. §4617(f), which precludes courts from taking any action that would “restrain or affect the exercise of powers or functions of the Agency as a conservator,” precludes a federal court from setting aside the Third Amendment to agreements between FHFA and the Department of the Treasury. 4) Whether the federal statute’s succession clause – under which FHFA, as conservator, inherits the shareholders’ rights to bring derivative actions on behalf of the enterprises – precludes the shareholders from challenging the Third Amendment.

AMC Capital Mgmt., LLC v. FTC, No. 19-508; **FTC v. Credit Bureau Center**, No. 19-825: 1) Whether §13(b) of the Federal Trade Commission Act, by authorizing “injunction[s],” also authorizes the Federal Trade Commission to demand monetary relief such as restitution—and if so, the scope of the limits or requirements for such relief. 2) Whether §13(b) authorizes district courts to enter an injunction that orders the return of unlawfully obtained funds.

Facebook, Inc. v. Duguid, No. 19-511: Whether the definition of an “automatic telephone dialing system” (“ATDS”) in the Telephone Consumer Protection Act of 1991 encompasses any device that can “store” and “automatically dial” telephone numbers, even if the device does not “us[e] a random or sequential number generator.”

Uzuegbunam v. Preczewski, No. 19-968: Whether a government’s post-filing change of an unconstitutional policy moots nominal-damages claims that vindicate the government’s past, completed violation of a plaintiff’s constitutional right.