

The Supreme Court - June 1, 2020

Today, the Supreme Court of the United States issued the following five opinions:

Thole v. U. S. Bank N. A., No. 17-1712: Plaintiffs-petitioners James Thole and Sherry Smith are two retired participants in respondent U.S. Bank N.A.'s defined-benefit plan. They brought a putative class action under ERISA against U.S. Bank for alleged mismanagement of the plan from 2007-2010. Despite the fact that as a defined-benefit plan, Thole and Smith continued to receive the same pension payment each month regardless of the plan's value or investment decisions, and are legally and contractually entitled to receive those same monthly payments for the rest of their lives, the plaintiffs nonetheless claimed that U.S. Bank should repay the purported losses suffered, and asked for other injunctive relief and attorney's fees. The District Court in Minnesota dismissed the case under Article III, and the Eighth Circuit affirmed on the alternative ground that there was a lack of statutory standing. Today, the Court affirmed, holding that the plaintiffs lack Article III standing because they have no concrete stake in the dispute, given that they had received all of their vested pension benefits to date and were legally entitled to receive the same monthly payments for the rest of their lives. Justice Kavanaugh delivered the Court's opinion, joined by Chief Justice Roberts, and Justices Thomas, Alito, and Gorsuch. Justice Thomas also filed a concurring opinion, joined by Justice Gorsuch. Justice Sotomayor dissented, joined by Justices Ginsburg, Breyer, and Kagan.

***Dorsey & Whitney LLP represented U.S. Bank N.A. as counsel of record in the District Court and Eighth Circuit, and as co-counsel in the Supreme Court.**

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

GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC, No. 18-1048: In this arbitration-related dispute, ThyssenKrupp Stainless USA, LLC entered into contracts with F. L. Industries for the construction of cold rolling mills for ThyssenKrupp's plant in Alabama. Each contract contained an arbitration clause for "[a]ll

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disputes arising between both parties in connection with or in the performance of the Contract.” F. L. Industries then entered into subcontractor agreements with petitioner GE Energy Power Conversion France SAS, Corp., and respondent Outokumpu Stainless USA, LLC acquired ownership of the Alabama plant. When the cold rolling mills allegedly failed, Outokumpu brought suit in Alabama state court against GE Energy. GE Energy then removed the case to federal court under 9 U.S.C. §205, which governs removal for arbitration agreements under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention. The District Court then granted GE Energy’s motion to dismiss and compel arbitration, finding both Outokumpu and GE Energy were parties to the contracts. The Eleventh Circuit reversed, interpreting the New York Convention as requiring that the parties actually sign an agreement to arbitrate – which did not happen here – and also holding state law equitable estoppel doctrines to enforce the arbitration agreement conflicted with the New York Convention’s signatory requirement. The Court today reversed, holding that the New York Convention does not conflict with domestic equitable estoppel doctrines that permit the enforcement of arbitration agreements by nonsignatories to those agreements. Justice Thomas delivered the Court’s unanimous opinion.

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

Financial Oversight and Management Bd. for Puerto Rico v. Aurelius Investment, LLC, No. 18-1334: In response to Puerto Rico’s fiscal crisis, Congress in 2016 enacted the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), 130 Stat. 549, 48 U.S.C. §2101 et seq. The Act created a Financial Oversight and Management Board composed of seven members appointed by the President without Senate confirmation (along with the Governor serving as an ex officio member) who had authority to, inter alia, file for bankruptcy on behalf of Puerto Rico. After President Obama selected the Board’s members and the Board filed bankruptcy petitions, several creditors moved to dismiss the proceedings on the basis that the selection of the Board members violated the Constitution’s Appointments Clause, which requires that “Officers of the United States” be appointed “with the Advice and Consent of the Senate.” Art. II, §2, cl. 2. The lower court denied the motion, but the First Circuit reversed, holding that the Board members’ selection violated the Appointments Clause, while also finding that the Board’s actions taken thus far remained valid under the “de facto officer” doctrine. Today, the Court reversed, holding that the Board members were not “Officers of the United States” subject to the Appointments Clause, but rather had primarily local duties such that the Board instead existed pursuant to Congress’s constitutional authority to create local offices for Puerto Rico, the District of Columbia, and the Territories. Justice Breyer delivered the Court’s opinion. Justice Thomas and Justice Sotomayor separately concurred in the judgment.

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

Nasrallah v. Barr, No. 18-1432: The Government initiated deportation proceedings against petitioner Nidal Khalid Nasrallah, a lawful permanent resident and native and citizen of Lebanon, based on his guilty plea to two counts of receiving stolen property.

Federal law provides that noncitizens who commit certain crimes specified under 8 U.S.C. §1252(a)(2)(C) are removable from the United States. During removal proceedings, a noncitizen can raise claims under the Convention Against Torture (“CAT”) that they would be tortured if removed to the designated country. Here, the Immigration Judge found that Nasrallah was removable, but granted CAT relief after finding Nasrallah had previously been tortured by Hezbollah because he was a member of the Druze religion, and would likely be tortured again if returned to Lebanon. On appeal to the Board of Immigration Appeals (“BIA”), the BIA disagreed that Nasrallah would likely be tortured again and vacated the order granting CAT relief. Nasrallah then appealed to the Eleventh Circuit. On appeal, it was undisputed that federal law only permitted judicial review for constitutional and legal challenges to the final order of removal; not to factual challenges to that order. But Nasrallah argued the same limit did not apply to judicial review of CAT orders, and that instead factual challenges could be reviewed under a deferential standard. The Eleventh Circuit found the factual findings unreviewable. The Court today reversed, holding that under the text of the relevant statute, the court of appeals may review factual challenges to a CAT order under a deferential substantial-evidence standard of review. Justice Kavanaugh delivered the Court’s opinion. Justice Thomas, joined by Justice Alito, dissented.

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

Banister v. Davis, No. 18-6943: Under federal law, state prisoners are entitled to one fair opportunity to seek federal habeas relief, but are generally foreclosed from making a “second or successive habeas corpus application.” 28 U.S.C. §2244(b). Here, petitioner Gregory Banister sought federal habeas relief for his Texas conviction. When the District Court denied his application for habeas relief and entered judgment, Banister filed a motion to alter the judgment under Federal Rule of Civil Procedure 59(e) to fix claimed “manifest errors of law and fact.” After the District Court denied the motion, Banister appealed, consistent with the rule that the time period to file a notice of appeal generally does not begin to run until after a timely-filed Rule 59(e) motion is decided. The Fifth Circuit, however, dismissed the appeal as untimely, instead construing the Rule 59(e) motion as a successive habeas petition because it attacked the federal court’s previous resolution of Banister’s claims on the merits, and thus not as a motion that postponed the 30-day time period from judgment to file the notice of appeal. Today, the Court reversed, holding that a Rule 59(e) motion to alter or amend a habeas court’s judgment does not qualify as a successive petition, and that as such, Banister’s appeal was timely. Justice Kagan delivered the Court’s opinion. Justice Alito dissented, joined by Justice Thomas.

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