

The Supreme Court - June 15, 2020

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

Bostock v. Clayton County, No. 17-1618; **Altitude Express, Inc. v. Zarda**, No. 17-1623; **R. G. & G. R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission**, No. 18-107: The plaintiff in each of these cases brought suit under Title VII after being fired by their employer shortly after revealing that he or she is homosexual or transgender, and allegedly for no other reason other than the employee's homosexuality or transgender status. Title VII of the Civil Rights Act of 1964 commands that it is "unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a)(1). A circuit split developed, with the Eleventh Circuit holding *Bostock's* suit was not covered by Title VII, while the Second and Sixth Circuits allowed the claims in the other suits to proceed. Today, the Court affirmed the Second and Sixth Circuits and reversed the Eleventh Circuit, holding that an employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids. Justice Gorsuch delivered the Court's opinion, joined by Chief Justice Roberts, along with Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Alito filed a dissent joined by Justice Thomas. Justice Kavanaugh also separately dissented.

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

United States Forest Service v. Cowpasture River Preservation Assn, No. 18-1584; **Atlantic Coast Pipeline, LLC v. Cowpasture River Preservation Assn.**, No. 18-1587: Atlantic Coast Pipeline filed an application with the Federal Energy Regulatory Commission to construct and operate a 600-mile natural gas pipeline from West Virginia to North Carolina. Part of the pipeline's route would go through 16 miles of the George

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Washington National Forest, which required special use permits from the United States Forest Service. The Forest Service issued the permits and granted a right-of-way that also allowed the route to go beneath a portion of the Appalachian National Scenic Trail that crosses the George Washington National Forest. Respondents Cowpasture River Preservation Association and others filed a petition for review in the Fourth Circuit contending that issuance of the special use permit violated numerous federal laws. The Fourth Circuit vacated the Forest Service's special use permit, holding that the Mineral Leasing Act, 30 U.S.C. §181 *et seq.*, did not empower the Forest Service to grant the right-of-way beneath the Trail. The Fourth Circuit reasoned that the Secretary of the Interior's delegation of the Trail's administration to the National Park Service meant that the Trail was no longer within the authority of "the Secretary of the Interior or appropriate agency head" to grant pipeline rights under the Mineral Leasing Act. See 30 U.S.C. §185(a). The Court today reversed, holding that the Department of the Interior's decision to assign responsibility over the Appalachian Trail to the National Park Service did not transform the land over which the Trail passes into land within the National Park System, meaning that the Forest Service had the authority to issue the permit here.

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

Andrus v. Texas, No. 18-9674: Terence Andrus was convicted of capital murder in Texas for his involvement in a "bungled" carjacking. After a direct appeal of his conviction was unsuccessful, Andrus filed a habeas petition. The Texas trial court granted Andrus's petition and held that Andrus's defense counsel failed to present mitigating evidence during Andrus's sentencing. The Texas Court of Criminal Appeals reversed the trial court and held that Andrus failed to demonstrate the relevant *Strickland v. Washington* factors for ineffective assistance of counsel. Andrus filed a writ of certiorari, which the Court granted and reversed the Texas Court of Criminal Appeals. Today, in a per curiam opinion, the Court vacated and remanded, holding that Andrus's defense counsel failed to perform any investigation into mitigating evidence and remanding for the trial court to analyze whether this failure caused prejudice. Justice Alito filed a dissent joined by Justice Thomas and Justice Gorsuch.

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

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

Henry Schein, Inc. v. Archer and White Sales, Inc., No. 19-963: Whether a provision in an arbitration agreement that exempts certain claims from arbitration negates an otherwise clear and unmistakable delegation of questions of arbitrability to an arbitrator.

Albence v. Chavez, No. 19-897: Whether the detention of an alien who is subject to a reinstated removal order and who is pursuing withholding or deferral of removal is governed by 8 U.S.C. §1231, or instead by 8 U.S.C. §1226.