

The Supreme Court – June 15, 2022

by Ian Blodger

Today, the Supreme Court of the United States issued five decisions:

Viking River Cruises, Inc. v. Moriana, No. 20-1573: This case involves the Federal Arbitration Act's (FAA) preemption of a California law invalidating contractual waivers of the right to assert certain representative claims. The plaintiff's employment contract included a mandatory arbitration agreement and a "class action" waiver, barring the parties from bringing disputes as a class, collective, or representative action under California's Labor Code Private Attorneys General Act (PAGA). The plaintiff filed a PAGA action in California state court against her former employer, alleging a California Labor Code violation and other violations allegedly sustained by other employees. Applying California's *Iskanian* precedent, the California courts denied the defendant's motion to compel arbitration, holding that waivers of PAGA standing are contrary to California policy and that PAGA claims cannot be split into arbitrable "individual" claims and nonarbitrable "representative" claims. Today, in a fractured 8-1 decision, the Supreme Court reversed the lower courts. Justice Alito delivered the opinion of the Court, holding that the FAA preempts California's *Iskanian* rule insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate. Justice Sotomayor joined the Court's opinion in full, but wrote a concurrence. In a separate concurrence, Justices Barrett, Kavanaugh, and Roberts joined only one part of the Court's opinion. Justice Thomas dissented.

View the Court's [decision](#).

American Hospital Assn. v. Becerra, No. 20-1114: This is a statutory interpretation case involving a dispute over how to calculate Medicare reimbursement rates for certain prescription drugs provided by certain hospitals to Medicare patients. The American Hospital Association and others challenged the 2018 and 2019 reduced reimbursement rates that were set by the Department of Health and Human Services (HHS). The district court rejected HHS's argument that the Medicare statute precluded judicial review of the rate adjustment and concluded that HHS had acted outside its statutory authority in

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setting the 2018 and 2019 rates. The D.C. Circuit reversed, agreeing that the statute does not bar judicial review, but upholding HHS's rates. Today, in a unanimous opinion authored by Justice Kavanaugh, the Supreme Court reversed the D.C. Circuit. The Court first held that the Medicare statute does not preclude judicial review of HHS's reimbursement rates. Then, "employing the traditional tools of statutory interpretation," the Court held that HHS acted unlawfully by reducing the 2018 and 2019 reimbursement rates.

View the Court's [decision](#).

Golan v. Saada, No. 20-1034: This case involves the interpretation of the Hague Convention on the Civil Aspects of International Child Abduction, which requires courts to order the return of a child to the child's country of habitual residence if the authority finds the child has been wrongfully removed. The Hague Convention does not require a child to be returned, however, where doing so would expose the child to a "grave risk" of "physical or psychological harm or otherwise place the child in an intolerable situation." In a unanimous opinion, authored by Justice Sotomayor, the Supreme Court held that a court is not categorically required to examine all possible ameliorative measures before denying a Hague Convention petition for return of a child to a foreign country once the court has found that return would expose the child to a grave risk of harm.

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Yselta Del Sur Pueblo v. Texas, No. 20-493: In this case, the State of Texas sought to shut down all of the Yselta del Sur Pueblo Reservation's bingo activities, arguing that they were in violation of Texas' gaming laws based on the Yselta del Sur and Alabama and Coushatta Indian Tribes of Texas Restoration Act (the "Restoration Act"), which prohibited "[a]ll gaming activities which are prohibited by the laws of the state of Texas." The Yselta del Sur Pueblo Reservation argued that the later-passed federal Indian Gaming Regulatory Act permitted its conduct. The district court and Fifth Circuit agreed with Texas. In a 5-4 decision authored by Justice Gorsuch, the Supreme Court held that the Restoration Act bans as a matter of federal law on tribal lands only those gaming activities also banned in Texas. Because Texas only regulated bingo on non-tribal lands, as opposed to banning it outright, the Court held the tribe could offer bingo. Chief Justice Roberts dissented, joined by Justices Thomas, Alito, and Kavanaugh.

View the Court's [decision](#).

George v. McDonough, No. 21-234: When the Department of Veterans Affairs (VA) denies a veteran's claim for benefits that becomes final, a veteran seeking collateral review of this decision may do so by establishing the decision was "clear and unmistakable error." 38 U. S. C. §§5109A, 7111. In this case, a veteran sought collateral review of a 1977 decision by the VA denying his request for medical benefits, arguing that the regulation underlying the VA's decision was invalidated after its decision in 1977. The VA denied his claim and the Federal Circuit affirmed. In a 6-3 decision authored by Justice Barrett, the Supreme Court held the invalidation of a VA regulation after a veteran's benefits decision becomes final cannot support a claim for collateral relief.

based on clear and unmistakable error. Justices Sotomayor, Gorsuch, and Breyer dissented.

View the Court's [decision](#).

In addition to these five decisions, the U.S. Supreme Court also dismissed one case:

Arizona v. City & County of San Francisco, No. 20-1775 : This case concerns whether a group of states could intervene to defend a Trump-era immigration rule after the Biden administration declined to defend it. Today, the Supreme Court dismissed the writ of certiorari as improvidently granted.