

The Supreme Court - June 28, 2019

This morning, at the end of the Supreme Court's Term before its summer recess, the Court granted certiorari in the following thirteen cases:

Romag Fasteners, Inc. v. Fossil, Inc., No. 18-1233: Whether, under section 35 of the Lanham Act, 15 U.S.C. §1117(a), willful infringement is a prerequisite for an award of an infringer's profits for a violation of section 43(a), *id.* §1125(a).

Opati v. Sudan, No. 17-1268: Whether, consistent with this Court's decision in *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), the Foreign Sovereign Immunities Act applies retroactively, thereby permitting recovery of punitive damages under 28 U.S.C. §1605A(c) against foreign states for terrorist activities occurring prior to the passage of the current version of the statute.

GE Energy Power Conversion v. Outokumpu Stainless, No. 18-1048: Whether the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") permits a non-signatory to an arbitration agreement to compel arbitration based on the doctrine of equitable estoppel.

Rodriguez v. Federal Deposit Insurance Corp., No. 18-1269: Whether courts should determine ownership of a tax refund paid to an affiliated group based on the federal common law "Bob Richards rule," as three Circuits hold, or based on the law of the relevant State, as four Circuits hold.

Babb v. Wilkie, No. 18-882: Whether the federal-sector provision of the Age Discrimination in Employment Act of 1967, which provides that personnel actions affecting agency employees aged 40 years or older shall be made free from any "discrimination based on age," 29 U.S.C. §633a(a), requires a plaintiff to prove that age was a but-for cause of the challenged personnel action.

Thole v. U.S. Bank, N.A., No. 17-1712: The Petition presented two questions: 1) May an ERISA plan participant or beneficiary seek injunctive relief against fiduciary misconduct

Related Capabilities

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under 29 U.S.C. §1132(a)(3) without demonstrating individual financial loss or the imminent risk thereof? 2) May an ERISA plan participant or beneficiary seek restoration of plan losses caused by fiduciary breach under 29 U.S.C. §1132(a)(2) without demonstrating individual financial loss or the imminent risk thereof? The Court also directed the parties to brief a third question as to whether petitioners have demonstrated Article III standing.

Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc., No. 18-1086: Whether, when a plaintiff asserts new claims, federal preclusion principles can bar a defendant from raising defenses that were not actually litigated and resolved in any prior case between the parties.

Department of Homeland Security v. Regents of the University of California, No. 18-587; **Trump v. NAACP**, No. 18-588; **McAleenan v. Vidal**, No. 18-589: 1) Whether the Department of Homeland Security's ("DHS") decision to wind down the Deferred Action for Childhood Arrivals ("DACA") policy is judicially reviewable. 2) Whether DHS's decision to wind down the DACA policy is lawful.

Kelly v. United States, No. 18-1059: Does a public official "defraud" the government of its property by advancing a "public policy reason" for an official decision that is not her subjective "real reason" for making the decision?

Espinoza v. Montana Dept. of Revenue, No. 18-1195: Does it violate the Religion Clauses or Equal Protection Clause of the United States Constitution to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools?

Shular v. United States, No. 18-6662: Whether the determination of a "serious drug offense" under the Armed Career Criminal Act requires the same categorical approach used in the determination of a "violent felony" under the Act?