

The Supreme Court - March 19, 2019

The Supreme Court of the United States issued three decisions this morning:

Washington State Dept. of Licensing v. Cougar Den, Inc., No. 16-1498: The State of Washington has a statute that taxes “motor vehicle fuel importer[s]” who bring fuel into the State by “ground transportation,” which includes “railcar, trailer, [or] truck.” Wash. Rev. Code §§82.36.010(4), (12), (16) (2012). The State tried to enforce this tax against respondent Cougar Den, Inc., a wholesale fuel importer owned by a member of the Yakama Nation, which buys fuel in Oregon and transports the fuel over public highways to the Yakama Reservation, where it is sold to Yakama-owned retail gas stations. Cougar Den challenged the assessment on the basis that it was pre-empted by the Yakama Nation’s 1855 treaty with the United States, which reserved for the Yakamas “the right, in common with citizens of the United States, to travel upon all public highways.” A Washington Superior Court, as well as the Washington Supreme Court, agreed that the tax was pre-empted. Today, a fractured Court affirmed, concluding that the 1855 treaty forbids the State of Washington to impose its fuel tax upon fuel importers that are members of the Yakama Nation.

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

Air & Liquid Systems Corp. v. DeVries, No. 17-1104: In this maritime tort case, respondents Kenneth McAfee and John DeVries brought negligent failure to warn claims against petitioner Air & Liquid Systems Corp. and others based on their exposure to asbestos when aboard Navy ships. The manufacturers produced equipment for Navy ships that required asbestos insulation or parts to function as intended, but the manufacturers delivered the equipment without asbestos, which the Navy later added. The district court granted summary judgment to the manufacturers, agreeing with their “bare-metal defense” that they should not be liable for harm caused by later-added third-party parts. The Third Circuit vacated and remanded, based on a foreseeability approach. The Court today affirmed that the District Court should reconsider summary judgment, holding that in the maritime tort context, a product manufacturer has a duty to

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warn when (i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize that danger.

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

Nielsen v. Preap, No. 16-1363: Generally, aliens who are arrested on the basis that they are believed to be deportable may apply for release on bond or parole by proving at a hearing that they would not endanger others and would not flee if released from custody. See 8 U.S.C. §1226(a). Congress enacted an exception, however, under §1226(c), mandating that certain aliens thought to pose a heightened risk of engaging in further crime or failing to appear for their removal hearings be arrested and detained without a chance to apply for release on bond or parole. Under that statutory exception, §1226(c)(1) first sets out four categories of covered aliens based on having committed certain crimes or having some relationship to terrorist activity. That first paragraph also provides that the Secretary of Homeland Security “shall take into custody” any such alien “when the alien is released.” The second paragraph, §1226(c)(2), then provides that the Secretary can only release “an alien described in paragraph (1)” pending a decision on removal under one circumstance that is inapplicable here. The respondents in this case claimed they were entitled to a bond hearing because, although they fell within the four categories of aliens covered by §1226(c)(1), they were not immediately taken into custody “when [they were] released.” They argued they were thus not “an alien described in paragraph (1),” and could not be detained under §1226(c)'s exception. The District Court ruled for respondents, and the Ninth Circuit affirmed. Today, the Court reversed, concluding that the Ninth Circuit's interpretation of §1226(c) is contrary to the plain text and structure of the statute.

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