

The Supreme Court - May 21, 2018

The Supreme Court of the United States issued two decisions today:

Epic Systems Corp. v. Lewis, No. 16-285: Three cases from three different circuits – the Fourth Circuit, Seventh Circuit, and Ninth Circuit – all presented substantially similar facts. An employee entered into an agreement with his or her employer agreeing to individualized arbitration in any disputes arising between them. The employee in each case, however, instead brought Fair Labor Standards Act and related state law claims in federal court as class actions or collective actions. The employees argued – and some of the lower courts agreed – that the Federal Arbitration Act’s “savings clause” removed the obligation to enforce the arbitration agreement as written if it violated some other federal law, here the National Labor Relations Act. Today, the Court rejected that argument, holding that in the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements according to their terms – including terms providing for individualized proceedings, and that the National Labor Relations Act does not offer a conflicting command.

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

Upper Skagit Tribe v. Lundgren, No. 17-387: Petitioner, the Upper Skagit Tribe, bought land in 2013 where it says tribal members are buried, with an eye towards asking the federal government to take the land into trust and add it to the tribe’s existing reservation. On that land, a barbed wire fence runs along the boundary between the Tribe’s land and that owned by respondents Sharline and Ray Lundgren. The Tribe claimed the fence was built in the wrong place, putting an acre of the Tribe’s land on the Lundgren’s side. The Lundgrens then filed a quiet title action in Washington state court asserting adverse possession and mutual acquiescence. The Tribe asserted sovereign immunity, but the Supreme Court of Washington rejected that argument, citing *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992), as holding that sovereign immunity only applies to *in personam* jurisdiction over the Tribe, and not to *in rem* jurisdiction like in this case. Today, the Court vacated and remanded,

Related Capabilities

- Appellate
- Labor & Employment
- Indian & Alaska Native
- International Arbitration & Litigation

holding that *Yakima* did not address the scope of tribal sovereign immunity, but only a question of statutory interpretation concerning the Indian General Allotment Act of 1887.

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

Today, the Supreme Court granted certiorari in four cases:

Jam v. International Finance Corp., No. 17-1011: Whether the International Organizations Immunities Act – which affords international organizations the “same immunity” from suit that foreign governments have, 22 U.S.C. § 288a(b) – confers the same immunity on such organizations as foreign governments have under the Foreign Sovereign Immunities Act, 28 U.S.C. §§1602-11.

Royal v. Murphy, No. 17-1107: Whether the 1866 territorial boundaries of the Creek Nation within the former Indian Territory of eastern Oklahoma constitute an “Indian reservation” today under 18 U.S.C. §1151(a).

Virginia Uranium, Inc. v. Warren, No. 16-1275: Does the Atomic Energy Act preempt a state law that on its face regulates an activity within its jurisdiction (here uranium mining), but has the purpose and effect of regulating the radiological safety hazards of activities entrusted to the Nuclear Regulatory Commission (here, the milling of uranium and the management of the resulting tailings)?

Culbertson v. Berryhill, No. 17-773: Whether attorney fees for Social Security benefits claims subject to 42 U.S.C. §406(b)'s 25-percent cap include, as the Sixth, Ninth, and Tenth Circuits hold, only fees for representation in court or, as the Fourth, Fifth, and Eleventh Circuits hold, also fees for representation before the agency.