

The Supreme Court - May 28, 2019

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

Home Depot U.S.A., Inc. v. Jackson, No. 17-1471: After Citibank, N.A., filed a debt-collection action in state court against respondent George Jackson for charges related to his Home Depot credit card, Jackson responded by also bringing third-party class-action claims against Home Depot and another party. Home Depot removed the suit to federal court, invoking both the general removal statute, 28 U.S.C. §1441(a), and the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1453(b). The District Court granted Jackson’s motion to remand, and the Fourth Circuit affirmed. Today, the Court affirmed, holding that references to a “defendant” being able to remove a suit under both the general removal provision and CAFA apply only to the party sued by the original plaintiff, and neither provision allows a third party to remove. The majority opinion was authored by Justice Thomas and joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Alito dissented, joined by Chief Justice Roberts, Justice Gorsuch, and Justice Kavanaugh.

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

Smith v. Berryhill, No. 17-1606: The Social Security Act permits judicial review only of “any final decision of the [agency] made after a hearing.” 42 U.S.C. §405(g). This normally requires claimants to first seek an initial decision as to their eligibility; second, seek reconsideration; third, request a hearing by an administrative law judge (“ALJ”); and fourth, seek review by the Appeals Council, before being able to pursue judicial review in federal district court. Here, petitioner Ricky Lee Smith proceeded through the first three steps, but the Appeals Council dismissed Smith’s request for review as being untimely filed, and without good cause for missing the deadline. When Smith sought judicial review, the District Court held it lacked jurisdiction, and the Sixth Circuit affirmed. The Court today unanimously reversed in an opinion by Justice Sotomayor, holding that where the Social Security Administration’s Appeals Council has dismissed a request for review as untimely after a claimant has obtained a hearing from an ALJ on the merits,

Related Capabilities

- Appellate
- Class Action Litigation

that dismissal qualifies as a “final decision” within the meaning of §405(g).

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

Box v. Planned Parenthood of Indiana and Kentucky, Inc., No. 18-483: Indiana had petitioned the Court for certiorari over the Seventh Circuit's invalidation of laws relating to (1) the disposition of fetal remains by abortion providers; and (2) the knowing provision of sex-, race-, or disability-selective abortions by abortion providers. Today, in a *per curiam* opinion issued without oral argument, the Court reversed with respect to the invalidation of the fetal remains law, and denied review of the petition with respect to the second question concerning the selective abortion ban. The opinion held that Indiana's fetal remains law survived rational basis review, which the Court emphasized was the sole standard under which the law was challenged. The Court denied review as to the second question on the basis that no other circuit had yet considered the issue. Justice Sotomayor indicated she would have denied certiorari on both questions. Justice Thomas concurred, but wrote separately to address the selective abortion ban. Justice Ginsburg concurred in part and dissented in part, stating she would have denied Indiana's petition in its entirety and criticized the Court's summary reversal on the first issue.

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

Nieves v. Bartlett, No. 17-1174: Respondent Russell Bartlett was arrested during a winter sports festival in Alaska by Sergeant Luis Nieves and Trooper Bryce Weight. Although the accounts vary, the incident began when Nieves was talking with some partygoers and Bartlett (while heavily intoxicated according to law enforcement) yelled at them not to speak to police. Nieves approached Bartlett, but by Nieves' account, left to avoid escalating the situation when Bartlett yelled at him to leave. Minutes later, when Bartlett saw Weight asking a minor whether he had been drinking, Bartlett stood between Weight and the minor and told Weight not to speak to the minor. Weight pushed Bartlett back (after Bartlett stepped towards him in an aggressive way, according to Weight), and when Nieves saw the confrontation, he arrested Bartlett, who was forced to the ground after being slow to comply with orders. Bartlett brought a Section 1983 action, alleging that the officers arrested him in retaliation for his speech, in violation of his First Amendment rights. The District Court granted summary judgment to the officers on the basis that their probable cause to arrest Bartlett precluded his claim, but the Ninth Circuit reversed. Today, the Court reversed, holding that because police officers had probable cause to arrest Bartlett, his First Amendment retaliatory arrest claim fails as a matter of law. Chief Justice Roberts wrote the opinion, joined by Justices Breyer, Alito, Kagan, and Kavanaugh. Justice Thomas joined the majority opinion except as to one part, and wrote a separate concurrence. Justice Gorsuch and Justice Ginsburg each filed separate opinions concurring in part and dissenting in part. Justice Sotomayor dissented.

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

Today, the Supreme Court granted certiorari in the following case:

Hernandez v. Mesa, No. 17-1678: After remand by the Court in *Hernandez v. Mesa*, 137 S. Ct. 2003 (2017) – a suit against a United States Border Patrol agent who when standing on U.S. soil shot and killed a 15-year-old Mexican national standing on Mexican soil – the Court granted certiorari today on the question of whether, when plaintiffs plausibly allege that a rogue federal law enforcement officer violated clearly established Fourth and Fifth Amendment rights for which there is no alternative legal remedy, the federal courts can and should recognize a damages claim under *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).