

The Supreme Court Update - January 20, 2026

by Andrew Brantingham, Ian Blodger, Jessica M. Leano, and Brock Huebner

On January 20, 2026, the Supreme Court of the United States issued three decisions:

Berk v. Choy No. 24-440: This case involves state “affidavit of merit” statutes that require certain types of lawsuits, like medical malpractice claims, to be filed with an affidavit signed by an expert and/or the plaintiff’s attorney declaring that the claim has merit. There was a split in the U.S. Courts of Appeals over whether such state laws apply to lawsuits filed in federal court. In this case, a District of Delaware court dismissed plaintiff Harold Berk’s medical malpractice lawsuit for failure to comply with Delaware’s affidavit of merit law, and the Third Circuit affirmed dismissal. In a 9-0 decision authored by Justice Barrett, the Court reversed and held that Delaware’s affidavit of merit requirement does not apply in federal court. The Court determined that the state law conflicted with Rules 8 and 12 of the Federal Rules of Civil Procedure, which do not require plaintiffs to provide evidence of their claims at the pleadings stage. Because Rules 8 and 12 are procedural, rather than substantive, they are valid under the Rules Enabling Act, 28 U.S.C. § 2072(b), and must be enforced. Justice Jackson authored a concurrence, arguing that the state laws conflict with Federal Rules of Civil Procedure 3 and 12, not Rule 8.

Coney Island Auto Parts Unlimited, Inc. v. Burton, No. 24-808: This case interprets Federal Rule of Civil Procedure 60(c)(1), which requires parties to make Rule 60(b) motions for relief from a judgment within a “reasonable time.” The petition here argued the “reasonable time” requirement did not apply to its Rule 60(b)(4) motion to set aside a default judgment as void for lack of proper service. In a 9-0 decision authored by Justice Alito, the Court held that the “reasonable time” requirement applies. The Court applied Rule 60’s plain text and determined that no principle of law allows a party to allege voidness at any time. Justice Sotomayor concurred in the judgment.

Ellingburg v. United States, No. 23-3129: This case involves the Mandatory Victim Restitution Act (the “Act”) and considers whether restitution orders under the Act are

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penal for purposes of the Ex Post Facto Clause, which prohibits government from applying penal laws retroactively. Here, Holsey Ellingburg was ordered to pay restitution under the Act for an offense he committed before the Act became law. In a 9-0 decision authored by Justice Kavanaugh, the Court reversed the restitution order and held that restitution under the Act is penal for purposes of the Ex Post Facto Clause. Looking to the Act's text and structure, the Court held that "[w]hen viewed as a whole, then, the [Act] makes abundantly clear that restitution is criminal punishment." Justice Thomas (joined by Justice Gorsuch) authored a concurrence suggesting the Court reconsider how it conducts its Ex Post Facto Clause analyses.

On January 16, 2026, the Supreme Court of the United States granted certiorari in four cases:

Hikma Pharmaceuticals v. Amarin Pharma, No. 24-889: This case addresses the scope of potential patent infringement claims against generic drug manufacturers. The Hatch-Waxman Act authorizes generic drug manufacturers to use so-called "skinny labels" to "carve out" patented uses from their labels, leaving only instructions to use generic drugs for their unpatented uses. 21 U.S.C. § 355(j)(2)(A)(viii). This process is meant to ensure that one patented use of a drug will not foreclose marketing a generic drug for other unpatented uses. The questions presented are: (1) whether, when a generic drug label fully carves out a patented use, allegations that the generic drugmaker calls its product a "generic version" and cites public information about the branded drug (e.g., sales) are enough to plead induced infringement of the patented use; and (2) whether a complaint states a claim for induced infringement of a patented method if it does not allege any instruction or other statement by the defendant that encourages, or even mentions, the patented use.

Monsanto Company v. Durnell, No. 24-1068: This case concerns the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), which creates a comprehensive regulatory scheme governing the use, sale, and labeling of pesticides and preempts any state "requirement[] for labeling or packaging in addition to or different from those required under" FIFRA. 7 U.S.C. § 136v(b). For decades, the Environmental Protection Agency ("EPA") has exercised its authority under FIFRA to find that Monsanto's Roundup product line and its active ingredient, glyphosate, do not cause cancer in humans. Consistent with that understanding, the EPA has repeatedly approved Roundup's label without a cancer warning. The federal courts of appeals and state appellate courts have become divided over whether FIFRA preempts claims that seek to hold Monsanto liable for not warning users that glyphosate causes cancer. The question presented is: Whether FIFRA preempts a label-based failure-to-warn claim where the EPA has not required the warning.

Chatrue v. United States, No. 25-112: This criminal procedure case considers the

constitutionality of “geofence warrants,” which empower law enforcement to obtain the identities of cell phone users that were in a certain place at a certain time. The question presented is: Whether the execution of a geofence warrant violated the Fourth Amendment.

Anderson v. Intel Corporation Investment Policy Committee, No. 25-498: This case involves the pleading standard to assert fiduciary breach claims under the Employee Retirement Income Security Act (“ERISA”) related to the investment options offered in an ERISA-governed retirement plan. The question presented is: Whether, for claims predicated on fund underperformance, pleading that an ERISA fiduciary failed to use the requisite “care, skill, prudence, or diligence” under the circumstances and thus breached ERISA’s duty of prudence when investing plan assets requires alleging a “meaningful benchmark”— a comparable, better performing investment that should have been offered instead.