

The Supreme Court Update - July 2, 2024

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

On July 1, 2024, the last day of the 2023-2024 term, the Supreme Court of the United States issued four decisions:

Trump v. United States, No. 23-939: This case concerns the scope of former President Donald J. Trump's presidential immunity from criminal prosecution for alleged actions taken while he was President. The district court and D.C. Circuit Court of Appeals denied former President Trump's motion to dismiss federal charges based on his alleged actions after he lost the November 2020 election. The Court granted certiorari to consider "Whether and if so to what extent does a former President enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office." In a 6-3 opinion authored by Chief Justice Roberts, the Court held that a President "may not be prosecuted for exercising his core constitutional powers, and he is entitled, at a minimum, to a presumptive immunity from prosecution for all his official acts," but there is no immunity for unofficial acts. The Court examined the charges against former President Trump and determined that some allegations were subject to absolute immunity, while others were subject to presumptive immunity; the Court remanded the case to decide what aspects of the indictment may move forward. Justice Thomas concurred in full, but wrote separately to question the constitutionality of the appointment of the Special Counsel who brought charges against former President Trump. Justice Barrett concurred with the majority in part, but stated her view that evidence related to actions protected by presidential immunity can be used for other charges. Justice Sotomayor dissented and was joined by Justices Kagan and Jackson, stating that the "majority's single-minded fixation on the President's need for boldness and dispatch ignores the countervailing need for accountability and restraint" and asserting that "our Constitution does not shield a former President from answering for criminal and treasonous acts." Justice Jackson also filed a separate dissent, questioning whether the Court can "prevent Presidents from becoming Kings through case-by-case application of the indeterminate standards of their new Presidential accountability paradigm."

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Corner Post v. Board of Governors of the Federal Reserve System, No. 22-1008:

This case analyzes the statute of limitations governing lawsuits challenging agency actions under the Administrative Procedure Act (“APA”). In 2021, Corner Post sued the Federal Reserve Board based on a 2011 regulation governing interchange fees merchants pay on credit card transactions. The Eighth Circuit affirmed the dismissal of Corner Post’s lawsuit based on 28 U.S.C. § 2401(a), which states that civil suits against the United States “shall be barred unless the complaint is filed within six years after the right of action first accrues.” In a 6-3 decision authored by Justice Barrett, the Court held that an APA claim “accrues”—starting the statute of limitations clock—only when a plaintiff is injured by a final agency action, even if that injury takes place more than six years after an agency action becomes final. Because Corner Post sued within six years of its alleged injury, its lawsuit was timely. Justice Kavanaugh filed a concurrence. Justice Jackson dissented and was joined by Justices Sotomayor and Kagan.

View the Court's [decision](#).

Moody v. NetChoice, LLC, No. 22-277; NetChoice, LLC v. Paxton, No. 22-555: These cases, decided in a single opinion, arise from a Circuit split on whether state laws regulating social media platforms and other websites facially violate the First Amendment. The Florida and Texas laws challenged in these cases restrict social media platforms’ capacity to engage in content moderation. NetChoice, an internet trade association, challenged both laws on their face, and district courts in both states entered preliminary injunctions halting the laws’ enforcement. The Eleventh Circuit upheld the injunction, finding the Florida law was not likely to survive First Amendment review, while the Fifth Circuit reversed a similar injunction, primarily reasoning that the Texas law does not regulate any speech and so does not implicate the First Amendment. In a 9-0 decision authored by Justice Kagan, the Court vacated the Eleventh and Fifth Circuits’ decisions on grounds that neither properly considered the facial nature of NetChoice’s challenge to the laws, which, in First Amendment cases, requires a plaintiff to show that a law’s unconstitutional applications are substantial compared to its constitutional ones. Instead of addressing the full range of activities covered by the laws and measuring the constitutional against the unconstitutional applications, the analyses and arguments in the courts below focused on how the laws applied to the content-moderation practices that giant social-media platforms use on their best-known services to filter, alter, or label their users’ posts. The Court also considered how the laws regulate speech, finding that Texas’s asserted interest relates to the suppression of free expression, and it is not valid, let alone substantial. Justice Barrett filed a concurrence, stating that an “as-applied” challenge, in contrast to a facial challenge, would enable courts to focus on which functions are inherently expressive and answer platform- and function-specific questions that might bear on the First Amendment analysis. Justice Jackson filed an opinion concurring in part and in the judgment, stating that the Court should strive to avoid deciding more than necessary and decline to treat the facial challenges as “as-applied” challenges, previewing a potential merits ruling. Justice Thomas filed an opinion concurring in the judgment but disagreeing with the Court’s decision to opine on certain

applications of the laws, and, with Justice Gorsuch, joined in Justice Alito's opinion concurring in the judgment, which agreed that NetChoice failed to prove that the Florida and Texas laws are facially unconstitutional but deemed everything else in the majority opinion nonbinding dicta.

View the Court's [decisions](#).

Today, the Court granted certiorari in five cases:

Food and Drug Administration v. Wages and White Lion Investments, L.L.C., No. 23-1038:

This case involves a challenge to the Food and Drug Administration's ("FDA") denial of applications to market flavored e-cigarette products. Unlike other circuit courts that upheld similar denials, the FDA's denial at issue here was set aside by the Fifth Circuit Court of Appeals as arbitrary and capricious. The FDA sought Supreme Court review, arguing that the Fifth Circuit erred.

Free Speech Coalition, Inc. v. Paxton, No. 23-1122: This case concerns a Texas state law that requires pornographic websites to verify the age of their users. The Fifth Circuit Court of Appeals vacated a preliminary injunction against the law, allowing the law to be enforced pending judicial review, and applying rational-basis review to evaluate the law's potential benefits and burdens on speech. The question presented by the law's challengers is: Whether the court of appeals erred as a matter of law in applying rational-basis review to a law burdening adults' access to protected speech, instead of strict scrutiny as this Court and other circuits have consistently done.

Hewitt v. United States, No. 23-1002; Duffey v. United States, No. 23-1150: These consolidated cases seek to clarify the applicability of the criminal sentencing reforms in the 2018 First Step Act. The question presented is: Whether the First Step Act's sentencing reduction provisions apply to a defendant originally sentenced before the First Step Act's enactment when that original sentence is judicially vacated and the defendant is resentenced to a new term of imprisonment after the First Step Act's enactment.

Velazquez v. Garland, No. 23-929: This immigration law case presents the following question: When a noncitizen's voluntary-departure period ends on a weekend or public holiday, is a motion to reopen filed the next business day sufficient to avoid the penalties for failure to depart?